



**UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS**

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December 1, 2017

Dr. Charles R. Johnson  
President  
Vincennes University  
1002 N. First St.  
Vincennes, Indiana 47591

Re: OCR Docket #05-14-2334, #05-16-2115

Dear Dr. Johnson:

This is to notify you of the disposition of the above-referenced complaints filed under Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681-1688, against Vincennes University (University) with the U.S. Department of Education (Department), Office for Civil Rights (OCR).

Complaint #05-14-2334 alleged that the University subjected a female undergraduate student (Student A) to discrimination based on sex in the 2013-2014 academic year. By letter dated March 20, 2014, OCR informed the University that the complaint raised whether the University fails to promptly and equitably respond to complaints, reports, and/or incidents of sexual violence of which it has notice, including Student A's report of sexual assault committed against her by a male student (Student B), thereby creating for students a sexually hostile environment.

In consideration of the allegation made and information provided by the complainant, OCR has determined that the scope of investigation for complaint #05-14-2334 is now framed as follows: whether in the 2013-2014 academic year the University subjected Student A to discrimination based on sex when it failed to promptly and equitably respond to Student A's report of sexual assault committed against her by Student B, thereby creating for Student A a sexually hostile environment.

Complaint #05-16-2115 alleged that the University subjected a female undergraduate student (Student C) to discrimination based on sex, in that the University failed to respond promptly and equitably to Student C's August 2015 report that two male undergraduate students (Students D and E) had sexually assaulted her in XXXX.

During its investigation, OCR reviewed data from the University and the complainants and interviewed University personnel and students. Based on its investigation, OCR determined that the University failed to comply with the requirements of Title IX to adopt grievance procedures and to designate a trained individual to coordinate the University's responsibilities to comply with and carry out its Title IX obligations, as well as the manner in which it responded to Students A's and C's reports of sexual assault. Prior to the conclusion of OCR's investigation of

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whether the University had failed to respond to a hostile environment created for Students A and C, the University entered into the enclosed Resolution Agreement (Agreement) to resolve the issues in these complaints. The bases for these determinations are set forth below.

### **Legal Standards**

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states that no individual may, because of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any education program or activity operated by a recipient of Federal financial assistance from the Department.

#### *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, location of the incidents, and 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.

- *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. Coordination of recordkeeping will also ensure that the recipient can and will resolve recurring problems and identify students or employees who have multiple complaints filed against them. 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 It 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.

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 the hostile environment, 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 some instances, a complainant may allege harassing conduct that constitutes both sex discrimination and possible criminal conduct. In situations where reported sexual harassment may constitute a criminal act, a recipient should notify a complainant<sup>1</sup> 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 must take immediate steps to protect the complainant and allow continued access to the recipient’s programs and activities. Because legal standards for criminal investigations are

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<sup>1</sup> The term “complainant” as used here refers to an individual who is the subject of alleged sexual violence or other types of sexual harassment.

different, police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve a recipient of its duty to respond promptly and effectively.

- *Offer Interim Measures*

It may be appropriate for a recipient to take steps to ensure equal access to its programs and activities and to protect either or both parties as necessary, including taking interim measures prior to an investigation or while an investigation is pending. The recipient should take these interim measures promptly once it has notice of the harassment allegation. The individualized interim measures implemented and the process for implementing those measures will vary depending on the facts of each case.

In 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' 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.

- *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 of the grievance procedures 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 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 on the complainant and others, 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.

Any rights or opportunities that a recipient makes available to one party during the investigation should be made available to the other party on equal terms.

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 reporting and responding parties and appropriate officials must have timely and equal access to any information that will be used during informal and formal disciplinary meetings and hearings. 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.

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 appeal (i) solely by the responding party; or (ii) by both parties, in which case any appeal procedures must be equally available to both parties.

### **Facts**

During the XXXXXX academic year, Student A was a XXXXX at the University. She lived in a dormitory on campus. During the XXXXX academic year, Student C was a XXXXX at the University. She also lived in a dormitory on campus. At the times Student A reported to University police she was sexually assaulted by Student B and Student C reported to University police she was sexually assaulted by Students D and E, the University had policies in effect prohibiting sexual violence and other types of sexual harassment. The University's website confirms that the policies in place at the time of the alleged conduct and the procedures in place at the time of Student A's and C's sexual assault reports have not changed, but the University has since posted a Nondiscrimination Policy Statement (Statement) and Title IX Discrimination Complaint Form<sup>2</sup> on its website, as described below.

As described in more detail below, the University's Title IX Coordinator has not been actively involved in coordinating the University's response to reports of sexual violence. Instead, the University has relied on its police department not only to gather facts but also to complete investigations, and the former Dean of Students (Dean) was the administrator responsible for overseeing implementation of the applicable Title IX policies and procedures and for disciplining students for violations of those policies and procedures. The Dean did not receive training in handling complaints of sexual harassment. Documents provided to OCR indicated that when complainants informed the University police that they did not wish to pursue criminal charges, neither the University Police Department (UPD) nor others at the University conducted a separate administrative investigation under Title IX; the documents did not state whether the University police told complainants of their option to pursue a Title IX complaint with the University.

### **Nondiscrimination Notice**

The University's nondiscrimination notice (Statement) is on the University's website.<sup>3</sup> The Statement says the University "is committed to providing equal access to its educational programs, activities, and facilities...without discrimination on the basis of...sex." The

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<sup>2</sup> Information on the University's website indicates that the Title IX Discrimination Complaint Form was created on February 6, 2014 and last modified on May 26, 2016.

<sup>3</sup> <https://my.vinu.edu/nondiscrimination-policy>

Statement also says the University “prohibits sex discrimination, including sexual harassment” in compliance with Title IX. The Statement does not refer to the University’s Title IX Coordinator nor does it indicate that inquiries about Title IX’s application or sex discrimination complaints, including sexual harassment complaints, may be brought to the Title IX Coordinator or to OCR. However, the Statement includes a link to a Title IX Discrimination Complaint Form.<sup>4</sup> The Title IX Discrimination Complaint Form refers to the Title IX Coordinator and to OCR and provides the title, office address, and telephone number for the Title IX Coordinator but does not provide the Title IX Coordinator’s e-mail address. Together, the Statement and the Title IX Discrimination Complaint Form notify students and employees that the University does not discriminate on the basis of sex.<sup>5</sup>

### Sexual Assault/Harassment Policies and Procedures

The University’s website contains a page titled “Sexual Assault, Sexual Harassment, Stalking, and Other Policies.”<sup>6</sup> On this webpage, the University describes its Sexual Assault Policy and Sexual Harassment Policy.

#### *Sexual Assault Policy and complaint procedures*

The Sexual Assault Policy states, “Vincennes University is committed to maintaining an environment free from all exploitation and intimidation based on sex. The University will not tolerate sexual assault or sexual harassment in any form.” The Sexual Assault Policy also states, “Non-consensual sexual activity shall include, but not be limited to, situations in which the victim is unable to consent because he or she is physically helpless, mentally incapacitated due to drug or alcohol consumption, or unconscious, regardless of whether the consumption was with the victim’s consent.”

The Sexual Assault Policy contains a section that outlines “steps” for individuals to follow “to ensure the possibility of criminal prosecution and/or University student judicial finding” under the heading “If You or a Friend Are the Victim of a Sexual Assault.” It first encourages students to “get to a safe place” and call the UPD or, if the assault occurred off-campus, to call 911; other than this reference, the Sexual Assault Policy is silent as to its application to off-campus incidents. The Sexual Assault Policy says that, in addition to reporting to law enforcement, “victims may also confidentially report sexual assaults to the Counseling Center ...or seek assistance from other members of the University community.” The section also encourages students to preserve physical evidence, seek medical attention and contact the Counseling Center for assistance in applying for victim’s compensation to cover the costs of treatment and counseling. It states that students can contact the Dean of Students office and the Housing office to “seek to have their academic and living situations changed if such changes are reasonably available,” but does not define “reasonably available,” nor does it identify any other interim measures that may be provided such as academic support and a written no-contact order. The

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<sup>4</sup> [https://my.vinu.edu/documents/10181/3750859/Title+IX+Discrimination+Complaint+Form\\_2015.pdf/a4245a66-4a50-4978-9117-600cfe97c0b2](https://my.vinu.edu/documents/10181/3750859/Title+IX+Discrimination+Complaint+Form_2015.pdf/a4245a66-4a50-4978-9117-600cfe97c0b2)

<sup>5</sup> At the time of the alleged conduct and Student A’s and C’s sexual assault reports, the Statement and the Title IX Discrimination Complaint form had not been posted on the University’s website.

<sup>6</sup> <http://www.vinu.edu/web/guest/sexual-assault-sexual-harassment-stalking-and-other-policies>

Dean, Director of Counseling Services, and UPD administrators said they provide interim measures as appropriate, including offering counseling, providing social services, providing assistance in classes, providing an escort, and implementing an interim suspension of the accused student, when appropriate; when interviewed by OCR, they did not point to specific examples where they have provided such services.

The Sexual Assault Policy contains a brief explanation of procedures for investigating and responding to sexual assault complaints (procedures). In particular, the procedures explain that the Judicial Affairs unit within the Dean of Students Office handles disciplinary proceedings for sexual assault complaints. The procedures state that both the complainant and accused student may request that an advisor be assigned to assist them through the process including during a hearing and also state that the parties will be informed of the outcome of any disciplinary proceedings. The Dean told OCR that the accused student receives written notice of the decision and sanction, but the complainant receives notice verbally. The procedures do not include timeframes for stages of complaint processing. The Sexual Assault Policy advises students who wish to obtain more information about the procedures to contact the Office of the Dean of Students or refer to the Standards of Student Behavior described below.

After the OCR investigation began and at the start of each semester, the University posted letters to students under the “Office of Civil Rights - Campus Sexual Violence Elimination Act (Campus SaVE Act) Summary” heading, which stated, “Institutions must adopt and disclose policies that ... [r]equire that both the accuser and accused shall be simultaneously informed, in writing, of ... [t]he outcome of any institutional disciplinary proceeding.”<sup>7</sup> The University’s 2016-2017 Residence Hall Handbook included identical language in the section on the SaVE Act, which was in a separate section of the Residence Hall Handbook from the Sexual Harassment Policy section.<sup>8</sup>

The procedures state that sanctions for violation of University policies regarding sexual assault may include relocation or loss of campus housing privileges, reassignment of academic courses to avoid contact with the complainant, and “status sanctions,” including disciplinary probation, suspension, or expulsion.

### *Sexual Harassment Policy*

The Sexual Harassment Policy states that the University is committed to “preventing sexual harassment and to promptly addressing any violations of the policy.” The Sexual Harassment Policy defines sexual harassment as “a form of prohibited discrimination on the basis of sex” and notes that sexual harassment is a violation of Title IX. The Sexual Harassment Policy “applies to all persons at the University or attending University sponsored classes, events and programs.” The Sexual Harassment Policy does not identify specific procedures for reporting sexual harassment or for the University’s response to such reports, including timeframes, but says, “The Office of Diversity and Affirmative Action is charged with distributing this policy to the

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<sup>7</sup> <https://my.vinu.edu/documents/4594367/0/Dear+Student+Spring+2017.pdf/eac1f9fc-25ef-4039-abd6-58dc3720a090>

<sup>8</sup> <https://my.vinu.edu/documents/4068791/4069194/Res+Hall+Hndbk%2C+REVISED+2016-17.pdf/dc7679c8-3f4a-4c75-b884-78f5226bed8c>

University community and providing educational opportunities appropriate to faculty, staff, and students.” The Dean said that an allegation of student on student sexual harassment is processed through his office; he said the University would take statements and gather information and then hold a hearing.

### *Student Bill of Rights*

Within the University’s website page titled “Sexual Assault, Sexual Harassment, Stalking, and Other Policies,” the University also provides a link<sup>9</sup> to a document that restates the same University Sexual Assault Policy and Sexual Harassment Policy described above and includes a “Student Bill of Rights,” which affords protections to persons subjected to sexual assault on the University’s campus, where the person subjected to harassment or the accused is a student at the University, and/or when the person subjected to harassment is a student involved in an off-campus sexual assault. The Bill of Rights provides the student subjected to sexual assault “the same access to legal assistance as the accused,” “the same opportunity to have others present during any campus disciplinary proceeding that is allowed the accused,” and the opportunity “to be notified of the outcome of the ... proceeding.” The Student Bill of Rights also requires “campus personnel to take reasonable and necessary actions to prevent further unwanted contact of victims by their alleged assailants.”

### *Survival Guide*

The University’s “Survival Guide,” as published in both the 2014-2015 and 2015-2016 academic years, in the section entitled “Human Resources and Affirmative Action/Title IX,” stated that the “University does not discriminate on the basis of ... sex ...in its employment or educational programs or activities.” The section also stated, “Any person who believes that such discrimination has occurred in this institution should contact the Affirmative Action Officer” and provided the name and address for this person (no telephone number or email address was included). The Survival Guide also stated that the University prohibits sexual assault and sexual harassment and provided the names and phone numbers of individuals to contact to report harassment, including the Title IX Coordinator, the Dean of Students, and Director of Counseling Services. The 2014-2015 Survival Guide appeared on the University’s website.<sup>10</sup> The 2015-2016 and 2016-2017 Survival Guides do not appear on the University’s public website; the University provided OCR an electronic copy of the 2015-2016 Survival Guide.

### *Standards of Student Behavior and conduct adjudication procedures*

The University’s Standards of Student Behavior (the Standards)<sup>11</sup> cover all types of misconduct “that takes place on university premises and addresses off-campus behavior when it may have or has had an adverse impact upon the university community or, if repeated on the university [premises], poses a threat to the safety of members of the university community.” The Standards

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<sup>9</sup> <http://www.vinu.edu/documents/10181/3758807/VU+policy+draft+8-09+revised+4-14.pdf/6ccd7894-3ee3-42a0-a8fa-5f7a37f19188>

<sup>10</sup> See archived webpage at [https://bak16.vinu.edu/sites/vinu.edu/files/2014Survival%20guide\\_word\\_7x9.pdf](https://bak16.vinu.edu/sites/vinu.edu/files/2014Survival%20guide_word_7x9.pdf)

<sup>11</sup> <https://my.vinu.edu/standards-of-student-behavior>

which have been in effect during OCR’s investigation<sup>12</sup> include a section entitled “Protecting the Rights, Safety and Dignity of the Individual.” This section states that students are prohibited from engaging in any act that is “sexual in nature,” which is committed “under pressure, force, threat, or coercion, or without the full and informed consent of all persons involved.” The Standards require that consent be “freely and actively given through mutually understandable terms or actions.” They deem a person incapable of giving consent when that person is “a minor, is mentally disabled, mentally incapacitated, physically helpless, under the influence of alcohol or drugs to the point of being unable to make a rational decision, unconscious, or asleep.” The Standards state that a person “always retains the right to revoke consent at any time during a sexual act.”

The Standards provide procedures for the “conduct adjudication” of alleged violations of the Standards; they define conduct adjudication as “a process, which is used for all alleged violations, which may result in a change of student status.” The conduct adjudication procedures include “three fundamental steps” – presentation of the alleged violations, a hearing, and a decision by the Dean of Students or designee – but do not identify timeframes for these steps. The conduct adjudication procedures state that a student who is accused of a violation is notified, either in writing or verbally, of the alleged violation by the Dean or Associate Dean of Students. The conduct adjudication procedures do not specify that an investigation will occur but reference hearings. Under the conduct adjudication procedures, hearings may be conducted individually by the Associate Dean of Students, Dean of Students or other hearing officers designated by the Dean of Students; the conduct adjudication procedures do not indicate who the designees could be, nor do they identify the basis for determining when a hearing will be conducted. The conduct adjudication procedures state that during the hearing the accused student will have an opportunity to respond to charges and present witnesses; the procedures do not specify the role and/or rights of the complainant in the hearing.<sup>13</sup>

The conduct adjudication procedures state that “the hearing officer through questioning, seeks to arrive at the truth.” Following the hearing, the accused student is provided an explanation of the outcome and of the right to appeal; potential disciplinary sanctions may include a warning, disciplinary probation, loss of privileges, restitution, suspension, expulsion and immediate temporary suspension. The conduct adjudication procedures identify the “preponderance of the evidence” as the standard used. The conduct adjudication procedures state, “A student has the opportunity to appeal the decision of the disciplinary hearing to the Student Life Advisory Committee. Appeal requests must be presented to the Dean of Students or designate in writing within five business days of the receipt of the decision from the hearing process.”

In addition to appearing within the Standards, the conduct adjudication procedures are located separately on the Dean of Students’ webpage on the University’s website.<sup>14</sup> The procedures posted on the Dean of Students’ webpage differ from those referenced above in three ways: the

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<sup>12</sup> Personnel interviewed by OCR did not know when the Standards were put in place and the Standards themselves do not identify an effective date.

<sup>13</sup> As noted above, the Student Bill of Rights contains provisions for participation of complainants in the University’s handling of sexual violence allegations.

<sup>14</sup> <https://my.vinu.edu/web/dean-of-students-office/conduct-adjudication>

standard of proof is not identified, the timeframe for appeals is identified as 24 hours from receipt of the decision, and there is a link to an appeal form.<sup>15</sup>

According to the conduct adjudication procedures, the Student Life Advisory Committee, which considers appeals, is composed of faculty, professional staff, and support staff who serve a one-year term. The appeal hearings include the sanctioned student, who may be assisted by an advisor, the Dean or Associate Dean of Students, an appeals hearing moderator, and the Student Life Advisory Committee. The conduct adjudication procedures do not identify the complainant's role and/or rights in the appeal process; as noted above, the Letter to Students and Residence Hall Handbook both state that "Institutions must adopt and disclose policies that ... [r]equire that both the accuser and accused shall be simultaneously informed, in writing, of ... [t]he procedures for the accused and the victim to appeal the results of the proceeding."

### Title IX Coordinator

The University informed OCR that its Human Resources (HR) Director is the University's Affirmative Action Officer and Title IX Coordinator. When OCR initiated its investigation, she was not identified as the Title IX Coordinator on the University's website, in the University's Standards of Student Behavior, or in the University's policies related to sexual violence and other types of sexual harassment. However, the 2014-2015 and 2015-2016 Survival Guides include her name and telephone number, as noted above, and also include her title (Affirmative Action/Title IX Coordinator). She informed OCR that she has held the position of Title IX Coordinator since approximately the spring of 2014.

In spring 2016, the Title IX Coordinator told OCR that she received training on Title IX and its legal requirements through outside training seminars and federal workshops, including an online Title IX training seminar through the National Association of College and University Attorneys (NACUA). Regarding training on the University's sexual assault policies, she described herself as familiar with the policies and said her training has been "self-taught." She reported to OCR that, during her tenure as Title IX Coordinator, she has not received any direct reports of sexual violence and other types of sexual harassment, nor has she conducted any investigations. She stated that she oversees the investigations of reports of sexual violence that the UPD receives by having the UPD Chief notify her of the reports received; she said she "waits to hear back from him" regarding how the investigation is going and that he generally "keeps her apprised of the situation." She stated she has not participated in any meetings or discussions regarding interim measures to be offered or provided to any students who reported sexual violence or other sexual harassment or to any students who were accused of sexual violence or other sexual harassment.

Although the UPD administrators OCR interviewed said they are "aware" of the University's Title IX policies, UPD officers and the UPD administrators had not been formally trained on Title IX.

### Criminal Complaints and the Role of Law Enforcement

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<sup>15</sup> <https://my.vinu.edu/documents/10181/3758935/Appeals+Hearing+application+form+-+2015-fillable.pdf/001876e9-e796-4d26-8f7d-48e1679f406b>

The Sexual Assault policy encourages students to first call the UPD if they believe they have been sexually assaulted, and the Dean told OCR that he would refer a student who reported a sexual assault directly to him to the UPD to process and investigate the report. The UPD conducts investigations into allegations, including interviews of witnesses. The Sexual Assault policy says that if an assault occurs off-campus, the student should “call 911 immediately.” The UPD does not investigate potential criminal conduct that occurs off-campus, but defers such investigation to the City of Vincennes Police Department. The Dean said that although he received information daily from the UPD about reports made, he did not take action on a report to the UPD until after the UPD concluded its investigation and provided him the file, at which time he contacted the complainant. The Dean said he also met three times each week with the UPD to discuss all security issues, which could include sexual assault. The Title IX Coordinator said she previously did not attend these meetings, but now attends for informational purposes only. The Title IX Coordinator said she is kept apprised of the sexual assault and sexual harassment investigations but does not have any other involvement in the investigations.

#### Alleged Sexual Assault of Student A

As noted above, Student A was a XXXX at the University at the time of the incidents that gave rise to the OCR complaint. She participated in the XXXX

Student A asserted in her OCR complaint that on XXXX, she was with her roommate at when Student B approached her, gave her his telephone number, and demanded she call him. Student A said she had not met Student B<sup>16</sup> previously and told OCR that she did not intend to call him.

Student A further asserted that, on XXX, Student B approached Student A XXXXXX. He called her XXXXXX. She told him to leave and said that XXXXX. She did not report his behavior to the University. She stated that, for the next week, Student B XXXXXX. Student A did not report any of this conduct by Student B to the University at the time.

Student A asserted in her OCR complaint that, on XXXX, Student B XXXXXX. She said that later that evening, after she drove them back to campus, Student B XXXXX.

Student A stated in her OCR complaint that, from XXXX, Student B XXXXX. At one point, Student B XXXXX. Student A said she XXXX, but did not go immediately to the UPD or to local law enforcement.

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<sup>16</sup> The University provided reports by three female students who had previously complained that Student B XXXXX. The records indicate that the UPD repeatedly told Student B to XXXXX. On XXXX, Student B was found responsible for XXXX on XXXX, in violation of the Standards; Student I had reported to the UPD XXXXXX activity by Student B. Student B was given a XXXXX and required to complete two on-line training modules on personal decision making and understanding and managing conflict. In a letter to Student B, the Dean stated, “My office has received statements ranging from you XXXXX to you XXXX. It is important that you realize these behaviors must stop.” No information provided to OCR indicated that the University made a determination as to whether Student B XXXXX or that XXXXXX. The Dean said that Student I did not report to the University any problems with Student B after XXXX.

*The University's Response*

According to a UPD report, on XXXX, Student A contacted the UPD to report what had happened; she identified XXXX and indicated that she wanted to XXXXX. The police took a statement in which Student A XXXXX.

Documentation from the University indicated that, on XXXX, the UPD interviewed Student B and he asserted that XXXXX, although he acknowledged XXXXX. Also on XXXX, after the UPD informed the Dean of the report, the Dean spoke with Student B about the report made to the UPD and stated that Student B would be XXXXXX. The University's documentation does not indicate that a XXXXXXXX.

According to the UPD administrators, University police worked diligently on the investigation and were in frequent communication with XXXXX.

Student A stated that she made a report to the President on XXXX, and he referred her to the Dean. On XXXX, the Dean sent a letter to Student B outlining the specific sections of the Standards he allegedly violated, including XXXXX. The letter referenced the prohibitions against XXXXX. Prior to issuing the letter, the Dean said he spoke with Student B, notified him of the charges and told him he would have an opportunity to present "his side of the story"; he said he asked him when he would be prepared for a hearing and Student B said he could do it XXXXX. The letter thus set a hearing for XXXX. The Dean included with the letter a copy of a pamphlet explaining the judicial procedure and also referred Student B to the University's website where the process was described.

Student A stated in her OCR complaint that, on XXXX, with the assistance of XXXXX, she requested and was granted XXXXX. Student A provided OCR a copy of XXXXX. The University did not XXXXX.

According to Student A, she requested assistance with her studies, specifically additional XXXX. Student A informed OCR that the University refused to provide her with XXXXX. The Dean confirmed that Student A XXXX did in fact receive XXXX, when she stopped XXXXX; the University provided OCR with XXXXX. Student A told OCR that she explained to a University XXXX representative what had happened to her and requested XXXXX. She said the XXXX representative denied her request and threatened to XXXXX. XXXX She said that XXXXXXXX.

On XXXX, the Dean convened a meeting with Student B and provided Student B an opportunity to provide his version of events; the Dean did not provide Student B with an opportunity to bring an advocate, prepare and submit a written statement, identify witnesses, produce exculpatory documents or request questions to ask of potential witnesses. Following the meeting, the Dean sent a letter to Student B informing him that the Dean found Student B responsible for violation of the Standards and XXXXX; the XXXX letter said, "Specifically ... you were involved in XXXXX." XXXXX. The Dean also included an appeal request form if Student B chose to exercise his right to an appeal. Student B did not appeal. Student A did not receive a written determination in connection with her complaint or notification that she could appeal the sanction.

Student A stated that on XXXX, XXXXX met with the Dean. Student A said the Dean did not XXXXX.

The Dean told OCR that on or about XXXX 2013, he met with XXXXX. He recalled that XXXXX.

Student A stated to OCR that during the week of XXX, Student B's friends XXXXX. She stated that she reported the students to the UPD's Assistant Chief. The Assistant Chief told OCR that Student A reported that XXXXX and that he talked to the students identified by Student A. Student A said they continued to XXXXX so she reported it a second time, and then the behavior stopped; the Assistant Chief denied receiving a second report. Student A stated that she requested XXXX. Student A said she then asked a male friend (Witness A) to XXXXX. Witness A told OCR that XXXXX. He stated that Student A told him she did XXXXX. The Assistant Chief told OCR that it is UPD's practice to XXXXX.

Student A stated in her OCR complaint that, on XXXX, she tried to schedule an appointment with XXXXXX, but they said the earliest they could meet with her was XXXX. The University informed OCR it has a XXXXX.

Student A stated that, on XXXX, she and XXXXX met with the Dean. She said he informed them that XXXXX. Student A said XXXXX. The Dean told OCR he did not recall a meeting on XXXX, and denied suggesting XXXXXX.

On XXXX, Student A XXXXX . She has not XXXXX since that time.

#### Alleged Sexual Assault of Student C

As noted above, Student C was a XXXX at the University in the XXXX academic year. Student C's XXXXreport with UPD asserted that in XXXX, she XXXXX. She reported that XXXXX. University police told OCR that after taking Student C's statement, they provided her information regarding XXXXX. They said they did not offer her XXXXX. The OCR complaint asserted that no University officials contacted Student C until 78 calendar days after her report to the UPD, that the University failed to XXXXX, and that the University failed to XXXXXX. The OCR complaint further asserted that Student C XXXXX.

#### *The University's Response*

The UPD file indicates that the Assistant Chief and an officer visited on XXXX, the same day the UPD received Student C's report, after interviewing Student C. They interviewed Students D and E; Student E was XXXXX. Students D and E acknowledged XXXX, but asserted that XXXX. According to the UPD, friends who attended the party with Student C, and whom Student C had identified as witnesses, indicated that XXXXX.

On XXXX, the UPD XXXXX. On XXXX, XXXXX informed the UPD that he XXXXX. Documentation provided to OCR did not indicate that Student C requested that the University

initiate its judicial process; however, the Dean reached out to Student C to attempt to set up a meeting with her. By e-mail dated XXXX, in response to an e-mail from Student C asking why he wished to meet with her, the Dean explained that the purpose of the meeting was “to review the information I have and to let you know the process I use when conducting a judicial hearing. You will not be going through the hearing process but you will be informed of my decision once it is completed.” Later that day, Student C asked for clarification of this sentence, asking in particular what decision there would be if she did not go through the hearing process. The Dean responded the same day, explaining that he receives UPD files when they are done and then convenes a judicial hearing; he advised her that this hearing would include a meeting in which she would be able to provide her “side of what occurred” to the Dean and he would then convene a disciplinary hearing with the accused students for them to provide their accounts, after which the Dean would inform Student C of the outcome.

By e-mail dated XXXX, Student C requested that the Dean be removed from the discipline proceedings and replaced with an “independent and trained person” because the Assistant Chief had told XXXX, that the Dean had XXXXX. The Dean said he told Student C that XXXXX. The Dean indicated in this e-mail that he had been ready to proceed with the judicial hearing had he been able to XXXXX, but that the Assistant Dean would now be available to hold the hearing; he said the Assistant Dean has been made aware that Student C would be contacting her. The University told OCR that Student C did not contact the Assistant Dean. The Assistant Dean did not reach out to Student C after the Dean delegated to her responsibility for handling XXXXX.

On XXXX, Student C’s attorney (Attorney) sent a letter to the University’s Title IX Coordinator requesting that XXXXX. The Attorney also requested XXXXX. The Attorney further sought XXXXX. Finally, the Attorney asked that XXXXX. University officials told OCR that they did not respond to this letter because they believed XXXXX; by the time University officials met to discuss the requests, Student C had XXXX. The University made no further attempts to follow up with Student C or conduct any additional investigation beyond that completed by the UPD.

## **Analysis and Conclusions**

### **Notice of Nondiscrimination**

The University’s Nondiscrimination notices did not initially comply with 34 C.F.R. § 106.9. While the Sexual Assault Policy, Sexual Harassment Policy, and Nondiscrimination Policy Statement each indicated that the University does not permit sexual harassment and stated that sexual harassment is a violation of Title IX, none of the notices directly identified the Title IX Coordinator with appropriate contact information, nor referred individuals to OCR. However, at some point prior to or during the 2016-2017 academic year, the University corrected this compliance violation when it added a direct link to the Title IX Complaint Form to the Nondiscrimination Policy Statement.

The Nondiscrimination Policy Statement, when read together with the Title IX Complaint Form, contains the required information. Specifically, the Nondiscrimination Policy Statement states that sex discrimination and sexual harassment are prohibited by Title IX and University policy.

The Title IX Complaint Form provides the contact information for the University's Title IX Coordinator and explains that questions about discrimination and harassment may be raised with the Title IX Coordinator and with OCR. Although it may be preferable for at least one of the University's policies (either the Nondiscrimination Policy Statement, the Sexual Assault Policy and/or the Sexual Harassment Policy) to contain all of the information required by 34 C.F.R. § 106.9, when read together, the Nondiscrimination Policy Statement and Title IX Complaint Form now satisfy the requirements of the regulation.

#### Title IX Coordinator

The evidence indicates that, although the University identified its Title IX Coordinator by name and office phone number in its 2014 Survival Guide, it did not provide an office address, and did not identify the Title IX Coordinator in the University's applicable policies and procedures. As noted above, at some time during the 2016-2017 academic year, the University addressed this aspect of the compliance violation when it included the Title IX Coordinator's contact information on the Title IX Complaint Form that is available on the University's website.

However, OCR found that the University violated Title IX when the designated Title IX Coordinator failed to adequately coordinate the University's responsibilities to comply with and carry out its responsibilities under Title IX, and when the University did not provide the Title IX Coordinator with adequate training. The evidence established that the Title IX Coordinator has not received training on the University's policies and procedures, although she received some general Title IX training from a national organization. Moreover, the University has not clearly defined the role of the Title IX Coordinator, nor has it structured the position so that the Title IX Coordinator maintains ultimate oversight and coordination responsibilities to ensure the University provides equitable investigations and resolutions to complaints of sexual misconduct. In particular, the evidence established that the Title IX Coordinator was not involved in handling Title IX investigations, receiving reports and complaints raising Title IX issues, meeting with students and stakeholders, considering requests for confidentiality, monitoring outcomes, assessing patterns of sexual harassment, ensuring adequate resources are available for students and staff who report sexual harassment, considering the effects of incidents of sexual harassment on the campus climate, and assessing the general campus climate. Finally, although the Title IX Coordinator has received some training on Title IX and is self-trained on the University's policies and procedures, until recently she had not coordinated training for the campus community on the University's Sexual Harassment or Sexual Assault Policy, nor had she coordinated efforts to inform students and staff of available resources.

Based on the above, OCR determined that the University has failed to comply with the Title IX regulation at 34 C.F.R. § 106.8(a).

#### Grievance Procedures

OCR found that the University failed to provide a prompt and equitable grievance process to Students A, B and C in resolving the complaints of sexual violence.

The evidence established that the University failed to provide Student A an opportunity to participate at the judicial proceeding stage and also failed to provide Student A with a determination as to whether she had been subjected to sexual harassment as alleged. Additionally, the evidence obtained by OCR indicates that Student B also did not receive an equitable process, as he was provided only one day notice of a meeting with the Dean after which the University XXXXX; although he had the opportunity to provide the Dean with his version of the events, he did not receive sufficient time to prepare a response or participate meaningfully in the meeting.<sup>17</sup>

As to Student C, the evidence established that the University did not provide her a prompt and equitable resolution to her sexual assault complaint in violation of Title IX. The Dean did not contact her about initiating the University's judicial process until 78 calendar days after her XXXXX. In explaining the judicial process, the Dean informed Student C that the basis for a hearing into her report would be the information and evidence that the Dean obtained from the UPD as a result of its investigation. The Dean noted that he would consider information Student C provided during her meeting with him to provide her version of the events, but did not indicate that he or anyone else at the University would further investigate and make a finding as to whether Student C was XXXXX. OCR also determined that, after Student C requested an "independent and trained person" to handle her judicial process based on her apparent belief that XXXXX, the Dean granted her request and directed her to the Assistant Dean, but neither the Assistant Dean nor anyone else at the University followed up with Student C to initiate the judicial process. In addition, the University did not XXXX, even after the Attorney XXXXX. The evidence showed that University personnel assumed that XXXXX. Finally, the University did not make an assessment as to XXXXXX.

Moreover, the current grievance procedures are inconsistent with OCR's requirements in numerous respects. Most notably the procedures do not clearly provide an equal opportunity to present evidence and call witnesses during hearings, include designated and reasonably prompt timeframes for the major stages of the complaint process, or require equivalent notice to both parties of the outcome of the complaint or provide sufficient clarity regarding applicability and scope of rights to appeal.<sup>18</sup> In addition, the Dean, who was responsible for implementing the University's grievance procedures and served as a de facto Title IX Coordinator, failed to communicate with the University's designated Title IX Coordinator about individual reports, and, more critically, despite being informed of each report of alleged sexual harassment and sexual assault made to the UPD, failed to fulfill the University's independent Title IX obligation to investigate and/or otherwise respond to the conduct. To the extent the Dean took steps to

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<sup>17</sup> OCR notes that XXXX. Thus, under these circumstances, the University could have given him more time to prepare his defense without XXXX; its failure to do so denied Student B an equitable process.

<sup>18</sup> As discussed above, after the OCR investigation began, the University posted a letter to students stating that notice of the outcome of proceedings would occur in writing. Because there is not similar language in the University's policies and procedures and the University has an inconsistent record of actually providing such written notice, the presence of this language in the Letter to Students and Residence Hall Handbook does not resolve the violation.

fulfill the University's Title IX obligations, he failed to maintain records of his efforts, as required by Title IX.<sup>19</sup>

Based on the above, OCR determined that the University has failed to comply with the Title IX regulation at 34 C.F.R. § 106.8(b).

### Hostile Environment

Additional information is required for OCR to assess the existence of a hostile environment based on sex for Student A and/or Student C. The University has requested to resolve the cases prior to their completion.

OCR has not completed its investigation of whether actions taken by the University to respond to Student A's and Student C's reports XXXXX were sufficient to eliminate a hostile environment if one had been created, prevent its recurrence, and address its effects. OCR also has not completed its investigation of whether the University's actions created or contributed to a hostile environment for either student or whether the University's response to Student A's reports XXXXX created and/or contributed to a hostile environment. The University has requested to resolve these issues prior to OCR completing its investigation.

### Overall Conclusion

On November 1, 2017, the University signed the enclosed Resolution Agreement that, when fully implemented, will resolve the issues in these complaints.

The Agreement requires the University to take the following actions:

- ensure that its Title IX Coordinator has received sufficient training to fulfill all responsibilities specified in the Agreement and has a line of reporting that provides for sufficient autonomy and authority to effectively execute these responsibilities;
- revise its policies and procedures for addressing sexual violence and other forms of sexual harassment so that they are consistent with Title IX requirements and to ensure that they adequately address any incident of sexual violence or other forms of sexual harassment and provide for the prompt and equitable resolution of complaints alleging any form of sexual harassment;
- examine the University's Standards of Student Behavior and disciplinary procedures to determine whether the current rules of behavior and offense categories appropriately and adequately address violations of the University's policies and procedures prohibiting

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<sup>19</sup> See 34 C.F.R. § 100.6(b), incorporated by reference into the Title IX regulation at 34 C.F.R. § 106.71 (requiring recipients "to keep such records . . . containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part.").

sexual violence and other forms of sexual harassment and revise them to the extent necessary to ensure they contain such rules of behavior and offense categories;

- adopt, implement and publish the revised policies and procedures and Standards of Student Behavior;
- provide effective in-person or online Title IX training to all University employees;
- provide effective training to all University employees, including Title IX Coordinator designees and UPD officers, directly involved in receiving, processing, investigating, adjudicating and/or resolving complaints of sexual violence and other forms of sexual harassment;
- ensure implementation of regular, mandatory sexual harassment training for all students;
- ensure the availability of adequate counseling support services to students consistent with the University's Title IX policies and procedures;
- send letters via certified mail to Student A, Student B, and Student C 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 University's handling of the earlier reports;
- should Student A or Student C re-enroll in the University at any time during in the 2017-2018 academic year, take all steps necessary to ensure that Student A and/or Student C is not subjected to a hostile environment on the basis of sex on University grounds and in University sponsored programs and activities; and
- develop a record-keeping policy that requires preservation of documentation of the University's responses to and investigations of reports and complaints of sex discrimination, including sexual harassment and sexual violence, and prohibits destruction of records of such reports and complaints for a minimum of three years.

Based on the commitments the University 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.

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 University 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.

OCR greatly appreciates the ongoing cooperation received from the University during the investigation and resolution of this case. We particularly appreciate the cooperation of Ms. Jill Doggett, counsel for the University. If you have any questions, please contact Salina Gamboa, Senior Equal Opportunity Specialist, at 312-730-1627 or by e-mail at [Salina.Gamboa@ed.gov](mailto:Salina.Gamboa@ed.gov).

Sincerely,

Jeffrey Turnbull  
Team Leader

Enclosure

cc: Ms. Jill Doggett