



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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October 10, 2018

Dr. Robert J. Jones
Chancellor
University of Illinois – Urbana-Champaign
Henry Administration Building
506 South Wright Street
Champaign, IL 61801

OCR Case No. 05-16-2331

Dear Dr. Jones:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the University of Illinois – Urbana-Champaign (University). The complaint alleges that the University discriminated against XX Student A on the basis of sex by failing to provide a prompt and equitable response to XX Professor A.¹

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681–1688, and Title IX’s implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the University is subject to the requirements of Title IX and its implementing regulation. OCR therefore has jurisdiction over this complaint.

OCR investigated the complaint by interviewing the Complainant and University staff, and by reviewing documents from both parties. As communicated to the University on July 9, 2018, OCR finds by a preponderance of the evidence that the University violated Title IX by failing to provide a prompt and equitable response to XX, and by failing to provide sufficient oversight of the Title IX investigation by the office of the Title IX Coordinator.

¹ OCR initially notified the parties that the “complaint raises whether the University fails to promptly and equitably respond to complaints, reports and/or incidents of sexual violence of which it had notice, thereby creating a sexually hostile environment for the complainant and other students.” OCR has since determined that the appropriate scope of the investigation is as stated in the allegation above.

The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

University Policies and Procedures

The University of Illinois at Urbana-Champaign offers academic programs through 15 colleges and instructional units for undergraduate and graduate students, including a law school and a medical school. During the fall 2016 academic year, 44,880 students were enrolled at the University, 11,413 (25.4%) of whom were graduate students and 20,465 (45.6%) of whom were women. The University has 2,738 faculty members.

Title IX Policies and Procedures

A comprehensive University webpage entitled “At Illinois We Care” provides information on sexual misconduct support, response, and prevention.² The University’s Sexual Misconduct Policy³ (Sexual Misconduct Policy) prohibits discrimination based on sex, including harassment. The Sexual Misconduct Policy includes the name, title, office address, email address, and telephone number of the University’s Title IX Coordinator. The Sexual Misconduct Policy directs questions about the University’s policies and procedures related to sex discrimination (including sexual misconduct) to the Title IX Coordinator.

The policy states, “The Lead Title IX Coordinator is responsible for coordinating the University’s efforts to comply with and carry out its responsibilities under Title IX...which prohibits sex discrimination, including sexual misconduct, in education programs and activities for institutions that receive federal financial assistance, as well as retaliation for the purpose of interfering with any right or privilege protected by Title IX.” The Title IX Coordinator has oversight responsibilities for all Title IX investigations. Both her website and the Sexual Misconduct Policy state: “The Title IX Coordinator oversees the University’s response to all reports and complaints of sexual misconduct to monitor outcomes, identify and address any patterns or systemic problems, and to assess their effects on the campus climate.”

The Sexual Misconduct Policy posted on the University’s website provides detailed information on reporting options and resources available to victims of sexual harassment. The Policy includes links to other relevant campus policies, including the University’s nondiscrimination policy,⁴ which prohibits sex discrimination, states that sex discrimination is prohibited by Title IX, and refers questions about the implementation of the policy to the Title IX Coordinator, with appropriate contact information. Although the nondiscrimination policy does not refer questions to OCR, the “At Illinois We Care” website states that questions about Title IX can be directed to OCR, and provides appropriate contact information.⁵

The University has an online reporting form that anyone may complete to report sexual harassment. Reports filed through the online form are sent automatically to both the

² <http://wecare.illinois.edu>

³ <http://cam.illinois.edu/policies/sexual-misconduct/>.

⁴ <http://cam.illinois.edu/policies/discrimination/>.

⁵ OCR will provide technical assistance to the University regarding consolidating the required Notice of Nondiscrimination information in one location on its website

University's Title IX and Disability Office and the Office of Diversity, Equity, and Access (ODEA).

ODEA is responsible for investigating complaints of sex discrimination against faculty members and employees using the University's "Procedural Guidelines for Handling Discrimination and Harassment Complaints Under the Nondiscrimination Policy of the University of Illinois at Urbana-Champaign" (Procedural Guidelines).⁶ The Procedural Guidelines were last modified on December 21, 2016. An earlier version of the Guidelines was in place during most of the events in question in this complaint.⁷

The Procedural Guidelines provide information about various topics, including how to file and pursue a complaint, the process by which the University notifies the respondent, the respondent's right to answer the complaint in writing, confidentiality, the role of investigators, the prohibition on retaliation, the availability of interim measures, and the investigative process. The Procedural Guidelines state that either party "may be accompanied by a support person or an advisor of their choice to any meeting that occurs under these procedures," and will have an equal "opportunity to review any information that will be offered by the other party in support of the other party's position," consistent with applicable privacy laws. The Procedural Guidelines note that the University applies the preponderance of the evidence standard of proof.

Although previous versions of the Procedural Guidelines allowed for both formal and informal methods of resolving a complaint,⁸ the current version does not include an informal mechanism of complaint resolution. The Procedural Guidelines provide 60 days from the date the complaint is filed for investigating complaints, barring an extension of time, which may "be granted when necessary to ensure a thorough investigation." The Guidelines do not require (or discuss) periodic updates to the parties during the investigation. The Guidelines give the parties an equal right to identify potential witnesses, provide and review documents and statements, and otherwise participate in the proceedings. Upon the conclusion of the investigation, the investigator prepares a report that includes findings of fact and conclusions regarding whether the Nondiscrimination and/or Sexual Misconduct Policy has been violated. The investigator provides copies of this report to the Complainant, Respondent, and appropriate unit executive office(s). The Procedural Guidelines do not include the option for a hearing in complaints where the respondent is a faculty member.

The Procedural Guidelines also provide an appeals process to both parties, and state that the Associate Chancellor shall decide the appeal and issue a written determination as soon as possible, but no later than 45 calendar days from the final submission of appeals materials, barring an extension "when necessary." Appeals may be filed challenging the investigation's factual findings, conclusions, or procedural violations. The Procedural Guidelines do not describe or limit the remedies available as a result of appeal.

⁶ http://diversity.illinois.edu/complaint_procedures.pdf.

⁷ The former Policy and Procedures were issued on February 25, 2000 and revised on November 5, 2012. They remained in effect until the Procedural Guidelines went into effect on December 21, 2016.

⁸ The former Policy and Procedures stated: "Informal resolution techniques will not be employed in instances in which sexual misconduct that constitutes sexual assault or sexual violence is alleged."

In addition to reporting alleged sexual harassment and utilizing the University's internal complaint procedures, an individual can report alleged sexual harassment to the University of Illinois Police Department. The "At Illinois We Care" webpage includes a "FAQ About Police Options," which provides information about the police investigative process and includes relevant contact information. The FAQs describe the interplay between police and University investigations as follows: "A criminal investigation and a university investigation have two separate purposes and proceed nearly independently of each other. Police seek to arrest and convict people who have broken the law. The university considers whether a student has violated the Student Code and determines what disciplinary sanction is appropriate for that violation. Investigators on either side may share information regarding the incident, but the two processes are separate and the standards for holding someone responsible differ."⁹

Title IX Coordinator

The University employs a Title IX Coordinator to oversee the University's compliance with state and federal laws, including Title IX. The current Title IX Coordinator was named to her position on a permanent, full-time basis on January 16, 2017. Prior to being hired as the permanent Title IX Coordinator, she served as Title IX Coordinator on an interim basis, beginning on August 16, 2016. Her predecessor also had served as interim Title IX Coordinator. While serving as interim Title IX Coordinator, both individuals had a percentage of their time devoted to other responsibilities on campus. The current Title IX Coordinator spent 25% of her time as Assistant Dean in the Office of Student Conflict Resolution. The previous interim Title IX Coordinator spent 50% of her time on work in the Dean of Students' Office.

The Title IX Coordinator told OCR she is responsible for managing and ensuring the accuracy of the data the University maintains related to Title IX, the Clery Act, and the Violence Against Women Act. She is responsible for ensuring that the University provides sufficient supportive services to individuals involved in Title IX investigations. In addition, she reviews complaints and data to identify patterns, including prior complaints against individuals and Departments within the University. She serves in advisory capacity at case meetings where Title IX complaints are reviewed. The Title IX Coordinator does not participate directly in investigating Title IX complaints. The University has three Deputy Title IX Coordinators. Two of the Deputy Title IX coordinators are responsible for investigating allegations of sexual misconduct, while the third assists with the University's Title IX athletics compliance.

Facts

On XX, Student A filed a complaint with the University alleging that Professor XX. The University conducted an investigation and determined in a letter dated XX. On XX, Student A appealed the University's determination. By letter dated XX, the University denied her appeal. On XX, while her case was pending with the University, Student A filed a complaint with OCR alleging that the University's investigation was neither prompt nor equitable.

⁹ <http://www.wecare.illinois.edu/faq/police/>.

Student A's ODEA Title IX Complaint

Student A filed a report with the University on XX. The report stated that the XX. Later that day, Student A received an email from the University acknowledging receipt of her report.

Documents produced by the University show that on XX, Student A's case was assigned to an EEO Investigator in ODEA, the office responsible for investigating complaints of sexual misconduct involving faculty or staff. OCR interviewed the EEO Investigator, who said that, as of XX, she was XX and was responsible for investigating all types of complaints. She told OCR that she began working for the University in XX and that Student A's complaint was the XX she had been assigned at the University. She could not recall whether the University had provided her any Title IX training prior to assigning her Student A's complaint. In an e-mail to her supervisor on XX, the EEO Investigator acknowledged the assignment, asked questions about how to process it, and wrote, "At some point I need to have Title IX training on logistics."¹⁰

The EEO Investigator's handwritten notes indicate that she spoke with Student A by phone on XX.¹¹ According to the University's narrative response to this complaint, "Although [Student A] indicated during their telephone conference that she ultimately intended to pursue a sexual harassment claim, she first wanted to draft a timeline of the events and schedule another telephone conference before initiating a formal complaint." However, during her interview with OCR, the EEO Investigator contradicted this statement and said that she probably was the one who requested a timeline because that is her typical practice. Student A told OCR that the EEO Investigator asked her to prepare a written timeline. The EEO Investigator's notes from the XX conversation do not indicate that Student A wanted to wait to pursue a Title IX complaint, reading instead: "wants to file complaint + sexual harassment."

Student A denied that she asked the University not to investigate while she prepared the requested timeline. She told OCR that she believed, based on her initial phone contact with the EEO Investigator, that the EEO Investigator would investigate her complaint while she prepared the timeline, and that the timeline would be used to supplement the investigation. On XX, the EEO Investigator followed up the conversation with an e-mail to Student A

¹⁰ In XX, the University informed OCR that the EEO Investigator underwent two training sessions conducted by private vendors after being assigned to investigate Student A's complaint. One, a webinar provided on XX, was entitled "XX," and focused on the steps of a Title IX investigation. XX. The other, "XX," was held from XX, and similarly focused on investigating cases of sexual misconduct. XX. Neither training focused on the University's specific Title IX policies and procedures. The EEO Investigator told OCR that she participated in another training in XX, although she was unable to identify the topics covered.

¹¹ During OCR's interview, the EEO Investigator was unable to recall the number of times she interviewed Student A or Professor A, the dates of those interviews, or details of the interviews. She repeatedly told OCR that she documented all steps she took in her investigation in her notes and the case file, and referred OCR to the notes/file instead of answering questions. OCR reviewed the case file from the EEO Investigator that was provided by the University and did not find notes for multiple conversations with Student A or Professor A that other documents reference. The University conceded to OCR that the EEO Investigator "may not have extensively documented all her investigatory efforts." The Title IX Coordinator told OCR that, while EEO investigators are required to maintain records of case-related correspondence and final decisions, currently there are no protocols for the preservation of investigators' notes, witness interview summaries, and other informal investigatory materials.

confirming their discussion, offering to meet to discuss campus and community resources, and providing a link to the “At Illinois We Care” website, which includes information on resources such as counseling and academic assistance.

The EEO Investigator told OCR that she did not take further investigative steps until she received Student A’s written timeline XX. Prior to receiving Student A’s timeline, the EEO Investigator did not interview Professor A or potential witnesses or locate documentary evidence. The EEO Investigator did not put in place a no-contact order between Professor A and Student A. The EEO Investigator said she attempted to confirm that Student A and Professor A would not have any additional contact, satisfying herself of this by the fact that XX.

The University provided no documentary evidence to suggest that, prior to receiving the timeline, the EEO Investigator made any effort to determine whether any campus restrictions for Professor A might be necessary to protect the University community. More specifically, the EEO Investigator did not at that time ascertain whether any other complaints had been made against Professor A, or XX. She said that Professor A XX. The University did not supply any information to OCR indicating that it XX.

On XX, Student A emailed the EEO Investigator a written timeline XX.

University’s ODEA Title IX Investigation

According to Student A, the EEO Investigator contacted her via telephone on XX, without providing any advanced notice.¹² Student A told OCR that the EEO Investigator said the complaint could not be investigated because it was untimely and because Student A lacked “standing.” On XX, Student A filed a complaint with OCR requesting that OCR investigate the alleged XX. Student A’s OCR complaint asserted that the University would not investigate her complaint because it was untimely and she did not have standing. She informed OCR that she disagreed with the University’s assessment of her complaint’s timeliness.

OCR asked the EEO Investigator whether she told Student A that her complaint would not be investigated because it was not timely. The EEO Investigator told OCR that she discussed with Student A that the policies and procedures have a 180-day window for filing a complaint. The University’s policy at the time stated that an individual seeking to resolve a complaint through “informal means” must contact ODEA within 180 days of “the last occurrence of the behavior or incident of discrimination.” The policy stated: “Informal resolution techniques will not be employed in instances in which sexual misconduct that constitutes sexual assault or sexual violence is alleged.” The policy did not provide a time limit for filing formal complaints of discrimination. The EEO Investigator told OCR that XX requested a waiver of the 180-day filing requirement, and that the EEO Investigator obtained permission from her supervisor to grant a waiver. When asked why she had granted the waiver, the EEO Investigator said because the case involved XX.

¹² OCR reviewed the EEO Investigator’s handwritten notes for this case, but they did not appear to memorialize any conversation with Student A other than the XX conversation.

Student A told OCR that the EEO Investigator then told her that, because of the dated nature of the claims, she could only offer an informal investigation. OCR asked the EEO Investigator whether this was correct, but she could not recall. The EEO Investigator also could not recall whether she told Student A that she lacked standing to pursue a complaint.

On XX, the EEO Investigator wrote in an e-mail to Student A, “I will be contacting the Respondent likely today to start the formal investigation.” The EEO Investigator also said that Professor A would be told not to contact Student A. About fifteen minutes later, the EEO Investigator emailed Student A again to ask a series of clarifying questions about her allegations. Over the following days, the EEO Investigator and Student A exchanged emails in which Student A responded to the EEO Investigator’s additional questions. XX

Student A told OCR that, on several occasions toward the beginning of the investigation, the EEO Investigator called with additional questions without providing advance notice. Because these calls were not scheduled, Student A did not have the opportunity to have XX. She told OCR that she repeatedly told the EEO Investigator during these calls that she would prefer that XX. Student A estimated that she made this comment repeatedly over the course of approximately three phone calls. She told OCR that the EEO Investigator either said, “OK,” and kept asking questions, or disregarded the request. The Title IX Coordinator told OCR that complainants have a right to XX. The University did not deny the specific instances cited by Student A, but stated generally that once Student A XX.

Student A informed OCR that the EEO Investigator’s questioning was biased and accusatory. She said that the EEO Investigator expressed skepticism XX by asking questions like, “Do you really think this happened,” or, “Are you sure?” She also questioned Student A’s claim that XX, asking whether she was XX. The University stated that, “While the investigator questioned both parties in a manner that sought to test their credibility, the investigator did not berate [Student A] nor make any indication to [Student A] that she did not believe or questioned [Student A’s] allegations.”

Student A sent an email to the EEO investigator questioning her neutrality, noting that her questioning seemed biased. When the EEO Investigator responded that asking difficult questions was part of her job, Student A wrote that she hoped the Investigator was being equally thorough with Professor A. The EEO investigator told Student A that she would have an opportunity to review Professor A’s written statement, just as he would have an opportunity to review Student A’s timeline.

The Complainant told OCR that because she did not feel comfortable with the EEO Investigator’s questions XX, she requested that the EEO Investigator communicate with her only in writing. The EEO Investigator confirmed this to OCR. An email from Student A to the EEO Investigator on XX, confirms that Student requested all future communication be in writing. The EEO Investigator stated that, from that point forward, she communicated with Student A exclusively via email. The record includes no further communication between Student A and the EEO Investigator regarding the underlying allegations of the Title IX complaint.

Professor A was not notified that a complaint had been filed against him until XX. On XX, the EEO Investigator and her assistant contacted Professor A via email to schedule a meeting. During a phone call the following day, she informed him that he had been accused of XX and was XX while the University conducted an investigation. The EEO Investigator's notes of the XX conversation indicate that Professor A "denies all charges relating to XX." The notes also state that the EEO Investigator put in place a no-contact order. She discussed the terms of the no-contact order with Professor A, instructing him that he would not XX. OCR found no evidence that the EEO investigator informed Student A that a no-contact order had been issued.

OCR reviewed an e-mail in which Professor A stated that his XX. The University sent Professor A official correspondence dated XX, confirming its acceptance of his decision: XX. There is no evidence indicating that Professor A's decision effectively XX was requested or required by the University.

The EEO Investigator interviewed Professor A after the initial phone call, but she did not keep detailed notes of her conversations and does not appear to have documented all of her contacts with him. She did not keep detailed notes of her interviews in the case file and she was uncertain whether she interviewed him in person or over the phone. According to the EEO investigator, Professor A denied XX with Student A and denied XX.

Sharing Student A's Timeline with Professor A

At some point, the EEO Investigator shared the contents of Student A's timeline with Professor A. The University informed OCR that the EEO Investigator "shared the details of [Student A's] allegations with the accused instructor after obtaining [Student A's] consent." The EEO Investigator informed Student A on XX, that she planned to provide Professor A with a copy of Student A's timeline. In subsequent emails, Student A expressed concern over the EEO Investigator's plan to share the timeline and requested that she not do so. Student A's concerns included XX. The EEO Investigator responded that Professor A "has the right to know the allegations you describe." Student A told OCR that the EEO Investigator told her she could revise her allegations; however, Student A was concerned how revising the timeline might affect her credibility and declined to do so. Instead, she provided the EEO Investigator with a brief statement of her allegation.

On XX, the XX contacted the EEO Investigator by e-mail and wrote that providing the timeline to Professor A "seemed inappropriate given [Student A's] desire to pursue a police investigation." The XX said she had discussed the matter with the head of investigations at the University of Illinois Police Department (UIPD), who "thought an investigation and possible prosecution would become much more difficult" if the EEO Investigator provided the timeline to Professor A. The XX closed, "I hope that you will seriously reconsider this action given how detrimental it could be to further recourse in this situation."

A detective (Detective 1) with the Special Victims Unit at the UIPD met with the EEO Investigator on or about XX, and similarly expressed concern about the investigator's plan to share Student A's timeline with Professor A. Detective 1 asserted that doing so could

compromise UIPD’s ability to conduct a criminal investigation. However, Detective 1 said that, as of XX, the EEO Investigator had already shared the timeline with Professor A.

The EEO Investigator told OCR that that she did not think she provided a physical copy of Student A’s written timeline to Professor A. She could not recall whether she reviewed Student A’s timeline in-person with Professor A or over the telephone. The EEO Investigator said, however, that when she reviewed Student A’s allegations with Professor A, she referred to Student A’s timeline and likely read from it. She could not recall whether she summarized the information in the timeline, read directly from it, or showed it to him and allowed him to read it. The EEO Investigator could not recall the date on which this occurred, including whether it was before or after XX asked her not to share the timeline, or whether it was before or after Detective 1 expressed concern about sharing it.

UIPD’s Concurrent Criminal Investigation

Student A also filed a complaint with the UIPD, which opened a criminal investigation of the matter. The criminal investigation took place concurrently with, but independently from, ODEA’s investigation, and was led by Detective 1, who had extensive experience investigating XX. On XX, Detective 1 interviewed Student A, whose account closely followed the written timeline she had provided to the EEO Investigator. The EEO Investigator did not participate in Detective 1’s interview. Detective 1 wrote a police report and kept an audio recording of the interview.

On XX, Detective 1 and a UIPD colleague (Detective 2) interviewed Professor A. Detective 1 wrote a police report and maintained a video recording of the interview. During the police interview, after initially denying XX, Professor A admitted to XX, consistent with the incidents described in Student A’s timeline. He then denied, however, that the XX. The police report reflects that Professor A acknowledged there was a string of e-mail exchanges in which he referred to Student A as XX. Both he and Student A had since deleted those e-mails.

Additional Steps in Title IX Investigation

The EEO Investigator and Professor A set up another telephone call to discuss the case on XX. It is not clear from the University’s documents whether this meeting took place. On XX, the EEO Investigator e-mailed Professor A: “This email is to officially notify you that the complaint filed by [Student A] is a formal investigation. Per our policy and procedures, you as the Respondent have 14 days from this email to respond in writing to the Complainant’s allegations.”

On XX, Professor A provided a written response to the EEO Investigator regarding Student A’s Title IX complaint. His response took the form of two emails. In his response, he XX.

In addition, the EEO Investigator requested copies of Student A and Professor A's emails from the University, and was provided copies of some of the requested emails on XX.¹³ The EEO Investigator told OCR that she did not review these emails as part of her investigation.

The EEO Investigator could not recall whether she shared Professor A's responses with Student A or otherwise notified her that Professor A had responded to the Title IX complaint. Her file makes no reference to sharing this information with Student A, and the University conceded to OCR that the EEO Investigator did not do so. The Policy and Procedures in effect at the time stated: "A copy of the Respondent(s)'s response will be provided to the Complainant." Student A told OCR that the EEO Investigator did not provide her with a copy of Professor A's response or summarize it for her, nor did the EEO Investigator tell her that Professor A had submitted a written response to the complaint. Student A was not aware that Professor A had responded to her complaint until OCR informed her during its investigation.

The EEO Investigator's notes show that she interviewed Professor A again on XX. Although the EEO Investigator was unable to recall what was discussed during that conversation, her notes state that Professor A again stated XX. The EEO Investigator did not identify any investigatory steps she took after this date, and the case file does not include documentation of any further investigation.

The EEO Investigator said that Professor A told her that XX, while Student A said the opposite. When asked if she took any investigative steps to determine whether Student A XX, the EEO Investigator said she called the XX. The University provided no documentation of this or any other step taken by the EEO Investigator to establish whether XX. She did not attempt to interview witnesses who may have observed XX.

Completion of UIPD's Criminal Investigation

In addition to interviewing Student A and Professor A, Detective 1 also executed a search warrant in an attempt to obtain their e-mail correspondence. Although most of Professor A's emails had been deleted and Student A's email XX. Copies of these emails were provided to Detective 1.¹⁴

Detective 1 reviewed the emails produced in response to the search warrant and prepared a police report summarizing her findings. Detective 1's review determined that Professor A may have XX.

Detective 1 told OCR that she provided the EEO Investigator with a copy of her investigative reports, including the interviews of Student A and Professor A and the summary of e-mails. Detective 1 said she handed the investigative reports to the EEO Investigator in person, to ensure receipt. Detective 1 could not recall the exact date when she provided the police file, but said the Title IX investigation was "definitely still open" at the time. She said that the police's investigative notes were highly relevant to the Title IX case because Professor A made admissions of fact during his police interview that he had denied to the EEO

¹³ The University was unable to access XX.

¹⁴ As noted previously, copies of the same emails were provided to the EEO Investigator on XX.

Investigator. Detective 1 characterized the interview as “particularly important” to the Title IX investigation.

The EEO Investigator told OCR that she received the police file, and while she could not recall the date, she said she may have received it while her own investigation was still open. The EEO Investigator told OCR that she did not review the police file as part of her investigation of Student A’s complaint. She stated that Detective 1 did inform her verbally that Professor A admitted to XX, despite at the time having denied this to the EEO Investigator. During her OCR interview, the EEO Investigator gave no reason for her decision not to review any of the evidence gathered during UIPD’s investigation. The Title IX Coordinator told OCR that University investigators are permitted to use police reports as they investigate Title IX complaints.

Communications about Processing

Student A sought several updates on the status of her case in XX, including XX. Each time, the EEO investigator told Student A that the investigation would be completed soon. On XX, Student A again inquired as to the status of her case. XX then reached out to the Title IX Coordinator directly. An internal e-mail exchange shows that the Title IX Coordinator contacted the EEO Investigator on XX. The Title IX Coordinator wrote that Student A had contacted her to say that she requested several updates on the status of the investigation, but “didn’t get a follow up and was hoping to know where things stood/what happened.” She asked the EEO Investigator to “close the loop” with Student A. The EEO Investigator noted that the University’s review process for the decision had been delayed. The Director of ODEA subsequently wrote to the Title IX Coordinator to say that her office would take steps to bring the investigation to a close.

The Title IX Coordinator told OCR that she did not participate in the investigation of Student A’s complaint, although she did retain ultimate oversight authority over the case. Her request for a status update in XX was her first direct involvement in the investigation. She said that she may have discussed the case with the EEO Investigator or other staff during biweekly meetings to review Title IX cases involving faculty, but that she could not recall for certain. She did not begin attending case review meetings until XX. She did not review the University’s decision in Student A’s case before it was issued or have direct contact with the parties, other than to help explain the time-frame for appeals to Student A in XX.

The University’s Title IX Decision and Appeal Process

The University issued its Title IX decision on XX. The Title IX Policy and Procedures in effect at the time provided: “The investigator will prepare a report at the conclusion of the investigation within 60 days from the date the investigator receives the complaint (or as soon as feasible when extensions are necessary to ensure a thorough investigation).” However, the University did not issue its Title IX decision until 226 days after Student A filed her complaint.

Emails provided by the University show the EEO Investigator had completed drafting the determination letter XX. The EEO Investigator told OCR that no significant substantive

changes were made to the determination she drafted. The decision states that the University could not find by a preponderance of the evidence that XX.

Several weeks later, XX, Detective 1 interviewed XX. Student A had asked both the EEO Investigator and Detective 1 to interview XX, respectively. The EEO Investigator declined to do so. On XX. Student A followed up with Detective 1 on XX, but the Detective and XX had difficulty scheduling a time to talk. OCR reviewed Detective 1's police report on XX.

Also on XX, Student A appealed the University's Title IX decision. Her written appeal lists "procedural error" and "new evidence" as the basis for overturning the EEO Investigator's findings. The appeal cites various procedural issues, including the delay in investigating her case; the EEO Investigator's XX; hostile and biased questioning; a lack of clarity about the formal or informal nature of the investigation; disorganization by ODEA staff; and concerns about the EEO Investigator's sharing Student A's timeline with Professor A. In terms of new evidence, Student A said that the University had not considered the XX provided to the UIPD.

The University denied Student A's appeal in a XX decision dated XX.¹⁵ XX. The decision did not address Student A's claim that the EEO Investigator had XX, in violation of the Procedural Guidelines. As to delays during the Title IX investigation, the decision acknowledged that "there were delays in the processing and ultimate investigation of the complaint," but stated: "The pertinent question is whether the delays you experienced impacted the outcome of the investigation." The University concluded that there was no evidence that the delays "negatively impacted the outcome of the investigation, or altered the conclusions [the EEO Investigator] ultimately reached."

Regarding new evidence, the University wrote that the XX was provided to the University after the EEO Investigator completed her investigation. "Thus, the information provided was not made available to her and therefore was not considered as part of her investigation. Consideration of the report would require that the investigation be reopened—which is not within the purview of this appeal."¹⁶ The decision also stated that the XX. The letter states, "In any case, XX would have been appropriately weighed against the other evidence presented in this case." The letter did not analyze the new evidence beyond these statements.

In conclusion, the XX stated that he concurred with the EEO Investigator's decision.

After the Investigation's Conclusion

Student A contacted the Title IX Coordinator by e-mail on XX, to express her concerns about the Title IX process she had experienced. She described the lengthiness of the investigation, cited examples where she believed the University had deviated from its policies, and criticized the EEO Investigator's "lack of knowledge of the policy, poor interpretation of the

¹⁵ The Title IX Policy and Procedures in place at the time state that an appeal will be decided "as soon as possible, but no later than 45 days of the final submission of appeal materials (or as soon as feasible when extensions are necessary)." The University issued its decision 49 days after Student A filed her appeal.

¹⁶ The Title IX Policy and Procedures in place at the time are silent as to appeal remedies, including the reopening of an investigation.

policy, not following the policy guidelines, lack of communication, misplacing information, [and] providing false supportive information.” The Title IX Coordinator responded the following day by e-mail. She thanked Student A for her feedback and apologized “for the difficulties you experienced in the investigation.” The Title IX Coordinator closed by writing, “I do want you to know I take what you’re saying seriously and will use your feedback in my review.”

As a result of the concerns that Student A shared, the Title IX Coordinator told OCR that she took several actions. She commissioned a review by an external law firm of the University’s procedures for investigating Title IX complaints against faculty members. This review has resulted in changes in how the University processes and handles Title IX complaints against faculty. The review was completed in approximately XX, and the University stated they were in the process of revising the procedures at the conclusion of OCR’s investigation. The University anticipates that new policies and procedures will be formalized in the near future. The Title IX Coordinator also ensured that ODEA staff received training not merely on Title IX investigations generally, but also on the University’s procedures for conducting such investigations. XX. The Title IX Coordinator developed a checklist for investigators to follow during their investigations. Finally, the Title IX Coordinator told OCR that she shared Student A’s concerns about the EEO Investigator with the EEO Investigator’s supervisor.

Applicable Legal Standard

Title IX prohibits discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. 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.

Recipient’s Responsibility to Prevent and Address Harassment

A recipient has notice of harassment based on sex or disability 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.

In cases involving allegations that students have been sexually harassed by an employee during any university activity, consideration of these factors will generally lead to a conclusion that the harassment occurred in the context of the employee’s provision of aid, benefits, or services. If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out these responsibilities over students engages in sexual

harassment, the recipient is responsible for the discriminatory conduct. The recipient is, therefore, also responsible for remedying any effects of the harassment on the victim, as well as for ending the harassment and preventing its recurrence.

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. The specific steps required for a given investigation will vary depending on the case's unique facts and circumstances. However, in all cases the inquiry must be prompt, thorough and impartial. 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 complainant¹⁷ 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.

- *Offer Interim Services*

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 measures needed by each student may change over time, and 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.

Procedural Requirements of Title IX

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

¹⁷ The term "complainant" as used throughout this section refers to an individual who is the subject of alleged sexual violence or other types of 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 investigations of any complaint communicated to the University alleging a violation of Title IX. 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, then one coordinator should be designated as having ultimate oversight responsibility. 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).

- *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 sexual violence and other types of sexual harassment. The procedures for addressing and resolving complaints of sexual harassment should be written in language that is easily understood, should be easily located, and should be widely distributed.

Title IX does not require a recipient to provide separate grievance procedures for sexual misconduct and other types of sexual harassment complaints. A recipient may use student disciplinary or other separate procedures for these complaints; however, any procedures used to resolve complaints of sexual harassment, including disciplinary proceedings, must afford both parties a prompt and equitable resolution.

OCR has identified a number of elements in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the recipient: (i) provides notice to students and employees of the procedures, including where complaints may be filed; (ii) applies the procedures to complaints alleging discrimination carried out by other students, employees or third parties; (iii) ensures an adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and the respondent to present witnesses and other evidence; (iv) designates and follows a reasonably prompt timeframe for major stages of the complaint process; (v) notifies the parties of the outcome of the

complaint; and (vi) provides assurance that the recipient will take steps to prevent recurrence of 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 sexual harassment 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 sexual misconduct 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.

Analysis

The preponderance of the evidence establishes that the University violated Title IX when it did not promptly initiate an investigation of Student A's complaint, respond to Student A's complaint in a reasonable timeframe, employ a properly trained investigator, maintain complete records of the investigation, or provide Student A an equitable opportunity to participate in the investigation or appeal. In addition, OCR finds that the office of the University's Title IX Coordinator did not provide sufficient oversight of the investigation.

The University did not provide a prompt and equitable response to Student A’s complaint as required by 34 C.F.R. § 106.8(b)

OCR finds that the University failed to provide a prompt and equitable response to Student A’s complaint of XX Professor A.

Equitable

OCR first finds that the University failed to provide an equitable response to Student A’s complaint. The evidence establishes that the University assigned the case to an investigator who was not trained adequately in the University’s obligations under Title IX. The EEO Investigator’s handling of Student A’s complaint revealed that the training she subsequently received during the investigation was ineffective to ensure the University’s compliance with the regulations and statute. As a result, the EEO Investigator provided inaccurate or unclear information to the Complainant about the timeliness of the complaint and the formal or informal nature of the investigation.

The University did not promptly commence an investigation after receiving Student A’s complaint, and did not take necessary and appropriate investigative steps from XX. The University stated that Student A did not decide to pursue a formal complaint until after submitting a written timeline in XX. Student A denied this assertion, and Student A’s version of the conversation is supported by the EEO Investigator’s notes from her first conversation with Student A, which state: “wants to file complaint + sexual harassment.” OCR must frequently weigh conflicting accounts and reach a decision based on the preponderance of the evidence. The preponderance of the evidence establishes that Student A filed a complaint in XX that triggered the University’s obligation to commence an investigation and did not ask the University to delay the investigation by XX pending receipt of her timeline.

The University did not give the parties equal opportunities to present and review evidence. Despite objections from Student A, XX, and two UIPD detectives, the EEO Investigator shared details from Student A’s timeline with Professor A. The University’s assertion that the EEO Investigator obtained Student A’s “consent” before sharing the timeline is inconsistent with the documentary evidence. Moreover, the EEO Investigator did not provide Student A an equal opportunity to review relevant evidence. The EEO Investigator did not share Professor A’s written responses to the complaint with Student A or give her an opportunity to respond to his statements.

Furthermore, the EEO Investigator did not conduct an adequate, reliable investigation by synthesizing all available evidence—including both inculpatory and exculpatory evidence—and taking into account the unique and complex circumstances of the case, nor did the investigator provide an equitable investigative process when she failed to consider relevant evidence supportive of Student A’s complaint allegations. In particular, the EEO Investigator chose not to review the police file produced by the University police during the criminal investigation, which contained inculpatory information that could have informed the EEO Investigator’s determination regarding whether XX. The police file contained statements by Professor A that were inconsistent with what he had told the EEO Investigator about XX, as well as an admission that XX. The evidence establishes that Detective 1 hand-delivered a

copy of the police file to the EEO Investigator during the Title IX investigation, and that the EEO Investigator did not review it. The EEO Investigator did not provide a reason she did not review the police file and did not make a determination whether the information was relevant to her findings. Detective 1 informed OCR that the information in the file would be highly relevant to the Title IX complaint investigation yet the EEO Investigator made her determination that the preponderance of the evidence did not establish XX without considering this evidence.

OCR additionally finds that the University's appeal process in this case was not equitable. The appeal did not address Student A's claim that the EEO Investigator XX, a right guaranteed by the University's policies and procedures. As to new evidence, Student A asked the University on XX. The University did not do so until XX after the Title IX investigation had ended. When Student A raised this as new evidence in support of her appeal, the University concluded that the evidence had been unavailable to the investigator and therefore could not be considered on appeal because it would require reopening the investigation. However, it was the University's own delay XX unavailable during the investigation.

Prompt

In addition, OCR finds that the University's Title IX investigation in this case was not prompt. The University's Title IX procedures at the time provided for a timeframe of 60 days, unless an extension is necessary to ensure a thorough investigation. Resolution of this complaint took 226 days from the date of the complaint filing to the determination, 288 days to the appeal, and the University did not provide sufficient evidence to support the need for an extension to ensure a thorough investigation. The EEO Investigator did not take steps to investigate the complaint for approximately two months after receiving the complaint. Once she began to investigate, she completed witness interviews by XX, but the University did not issue its decision until XX. The University failed to apprise Student A of the status of the investigation or the reason for the delay, despite her repeated requests. Although OCR applies no fixed time frame in which a university must complete a Title IX investigation, the evidence does not establish a legitimate basis for the University's unreasonable delay in this investigation.

The appeal process, at 49 days, lasted four days longer than the 45-day timeframe set out in the University's Title IX procedures at the time. Although this delay was not overly burdensome on its own, it contributed to a Title IX process that consistently took longer than Student A was told to expect and than the Title IX procedures allow. Moreover, the appeal decision incorrectly states that an investigative delay is problematic only if it affects the outcome of the investigation. The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires a grievance process that provides for the prompt resolution of complaints.

The office of the Title IX Coordinator provided insufficient oversight of the investigation as required by 34 C.F.R. § 106.8(a)

OCR finds that the University did not satisfy its obligation under § 106.8(a). Although the University designated an employee to coordinate its efforts to comply with Title IX and provided her contact information to the University community consistent with the regulation,

the designated Title IX Coordinator did not meet her obligations in processing this case. The Title IX Coordinator did not ensure that the EEO Investigator was trained before she investigated sexual assault cases, or that she conducted a prompt investigation that gave both parties equal opportunities to present and access evidence. The evidence shows that the Title IX Coordinator did not participate in the investigation or exercise oversight other than to inquire about its progress, in response to Student A's inquiries, XX after the complaint had been filed, and to discuss the case with Student A at its conclusion.

Conclusion

The attached Resolution Agreement is aligned with the complaint allegations and, when fully implemented, will resolve the Title IX violations described above. The Resolution Agreement requires the University to ensure: its Title IX Coordinator fulfills her responsibilities under Title IX; the ODEA (recently renamed the "Office for Access and Equity") staff members directly involved in receiving, processing, investigating, adjudicating, and/or resolving complaints of sexual violence and other forms of sexual harassment receive training and have the resources, qualifications, and experience to fulfill their responsibilities under Title IX; all University staff receive training on the University's procedures and their responsibilities under Title IX; all students participate in mandatory training related to sex discrimination, including the University's policies, procedures, and investigative process; and the University maintains adequate documentation of reports of possible sex discrimination and the University's response to these reports.

The letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may file a private suit in federal court whether or not OCR finds a violation.

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 complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, 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 privacy.

If you have questions about this letter, you may contact Melissa Katt of my staff at 312-730-1617 or melissa.katt@ed.gov.

Sincerely,

Dawn R. Matthias
Team Leader

cc: Craig Hofer