

UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION XV



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REGION XV  
MICHIGAN  
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Matthew J. Wilson, Esq.  
President  
The University of Akron  
302 Buchtel Common  
Akron, Ohio 44325-4702

Re: OCR Docket #15-14-2157

Dear Mr. Wilson:

The U.S. Department of Education's Office for Civil Rights (OCR) has concluded its investigation of the above-referenced complaint filed against the University of Akron (the University) on April 8, 2014. The complaint alleged that the University failed to promptly and equitably respond to XXX complaint by a student (the Student) alleging sexual assault, and, as a result, the Student was subjected to a sexually hostile environment.<sup>1</sup> The complaint also alleged that the University employees who first responded to the Student's report of sexual assault discriminated against her on the basis of national origin when they did not take her report seriously because XXX. The complaint further alleged that the University retaliated against the Student for having reported the sexual assault by XXX.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation, at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance from the U.S. Department of Education (Department). OCR is also responsible for enforcing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the bases of race, color, and national origin by recipients of Federal financial assistance from the Department. Persons who seek to enforce their rights under these laws are also protected from retaliation. As a recipient of Federal financial assistance, the University is subject to these laws.

Based on the complaint allegations, OCR investigated the following legal issues:

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<sup>1</sup> OCR notes that although the notification letters stated that this allegation concerned whether the University failed to promptly and equitably respond to complaints, reports, and/or incidents of sexual violence of which it had notice, including the Student's XXX complaint of sexual assault, OCR's investigation and this letter of finding do not address any other students' individual complaints of sexual violence.

- whether the University provided a prompt and equitable response to a student complaint of sex discrimination as required by the Title IX implementing regulation at 34 C.F.R. § 106.8(b);
- whether the University, on the basis of sex, subjected a student to a sexually hostile environment, i.e., sexual harassment that was sufficiently severe, pervasive, or persistent so as to interfere with or limit a student from participation in, deny a student the benefit of, or otherwise subject a student to discrimination under any program or service of the University, in violation of the Title IX implementing regulation at 34 C.F.R. § 106.31;
- whether the University intimidated, threatened, coerced, or discriminated against an individual for the purpose of interfering with any right or privilege secured by Title IX or because he or she made a complaint under Title IX, in violation of Title IX's implementing regulation at 34 C.F.R. § 106.71; and
- whether the University excluded a student from participation in, denied her the benefits of, or otherwise subjected her to discrimination under its program based on XXX, in violation of Title VI's implementing regulation at 34 C.F.R. § 100.3.

To investigate these issues, OCR staff interviewed the Student and relevant University witnesses. OCR also reviewed documents the University submitted. The Student did not respond to OCR's attempts to provide her with an opportunity to respond to information the University submitted and to give additional information about her allegations. Based on the evidence obtained, OCR found that the University failed to provide the Student a prompt and equitable resolution of her XXX complaint. OCR also found that the University's nondiscrimination notice and Title IX grievance procedures did not meet Title IX regulatory requirements. The University has submitted the enclosed Resolution Agreement (Agreement) to resolve OCR's non-compliance findings. Evidence OCR obtained indicated that the Student reported to the University that she was being subjected to retaliatory harassment XXX and that the University may not have appropriately responded; however, the University voluntarily submitted the Agreement prior to the completion of OCR's investigation of this issue, and the Agreement resolves this issue. Finally, OCR found the evidence was insufficient to conclude that the University discriminated against the Student on the basis of national origin or retaliated against her. The bases for OCR's findings are explained below.

## **Background**

The University is a public, postsecondary institution, with its main campus located in Akron, Ohio. The University also offers courses at four additional locations in Ohio, as well as online. The University offers associate, bachelor, master's, doctorate, and law degree programs. The University indicated that it uses the same Title IX process for all of its locations/programs. According to the University's website, almost ninety percent of University's approximately 22,000 students commute to campus rather than living on-campus.<sup>1</sup>

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<sup>1</sup> <http://www.uakron.edu/offcampus/off-campus-living-myths-and-realities> (last accessed on November 15, 2017).

## Summary of OCR's Investigation

- **Information Obtained from the Student**

XX-----Paragraph deleted-----XX

The Student stated that on XX, she was sexually assaulted by a male student (the respondent), XX.

XX-----Paragraphs deleted-----XX

- **Information Obtained from the University**

The University denied that it had discriminated against the Student on the basis of sex and national origin in its investigation and denied that it had retaliated against her.

XX-----Paragraphs deleted-----XX.

- **Alleged Sexual Harassment**

The regulation implementing Title IX provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by recipients of Federal financial assistance, such as recipient universities. 34 C.F.R. § 106.31(a). The regulation, at 34 C.F.R. § 106.31(b), details specific prohibitions on recipient conduct, such as subjecting any person to separate or different rules of behavior, sanctions, or other treatment and denying or limiting them in their ability to participate in or benefit from the recipient's programs or activities on the basis of sex.

Sexual harassment may constitute sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature, which can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Conduct is unwelcome if the student did not request or invite it and regarded the conduct as undesirable or offensive. Acquiescence in the conduct or the failure to complain does not always mean that the conduct was welcome.

If a student sexually harasses another student and the conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the recipient's program, and if a recipient knows or reasonably should know about the harassment, the recipient is responsible for taking immediate effective action to eliminate the hostile environment and prevent its recurrence. As long as a recipient, upon notice of the harassment, responds by taking prompt and effective action to end the harassment and prevent its recurrence, the recipient has carried out its responsibility under the Title IX implementing regulation. On the other hand, if, upon notice, the recipient fails to take prompt, effective action, its own inaction has permitted the student to be subjected to a hostile environment that denies or limits the student's ability to participate in or benefit from its program on the basis of sex. In that case, the recipient is responsible for taking

effective corrective actions to stop the harassment, prevent its recurrence, and remedy effects on the student that could reasonably have been prevented had it responded promptly and effectively.

In determining whether a hostile environment based on sex has been created, OCR considers the conduct from both a subjective and objective perspective and considers a number of related factors, including the degree to which the conduct affected one or more students' education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject/subjects of the harassment; the size of the recipient institution, location of the incidents, and context in which they occurred; other incidents at the institution; and the occurrence of incidents of gender-based, but non-sexual, harassment. It is the totality of the circumstances in which the behavior occurs that is critical in determining whether a hostile environment exists. The more severe the conduct, the less the need to show a repetitive series of incidents, particularly true if the harassment is physical. A single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment. A series of incidents at an institution, not involving the same students, could, taken together, create a hostile environment, even if each by itself would not be sufficient.

Once a recipient has notice of possible sexual harassment of students, whether carried out by employees, other students, or third parties, it should take immediate and appropriate steps to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the recipient institution, and other factors. In all cases, the inquiry must be prompt, thorough, and impartial.

It may also be appropriate for a recipient to take interim measures during the investigation of a complaint. 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.

In some instances, a complainant may allege harassing conduct that constitutes both sex discrimination and possible criminal conduct. Police investigations or reports may be useful in terms of fact gathering; however, because legal standards for criminal investigations are 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.

If a recipient determines that sexual harassment occurred, it must take timely and effective steps reasonably calculated to end any harassment. For example, a recipient may need to counsel, warn, or take disciplinary action against the harasser, depending on the severity of the harassment and/or any record of prior incidents. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment. In addition, in some cases, it may be appropriate to further separate the harassed student and the harasser, e.g., by changing housing arrangements or directing the harasser to have no further contact with the

harassed student. Responsive measures should be designed to minimize, as much as possible, the burden on the student who has been harassed.

The recipient should also take steps to eliminate a hostile environment, if one has been created, and to prevent harassment from occurring again. For example, a recipient may need to deliver special training or other interventions to repair the educational environment. In some situations, a recipient may be required to provide other services to students who have been harassed to address the effects of the harassment. If a recipient delays its response or responds inappropriately to information about harassment, by, for example, ignoring a complaint of peer-on-peer harassment, the recipient is required to remedy the effects of harassment it could have prevented by responding promptly and effectively.

Finally, a recipient should take steps to prevent further harassment and prevent retaliation against the person who was subjected to harassment. At a minimum, this includes making sure that the harassed students and their parents know how to report any subsequent problems and making follow-up inquiries to see if there have been any new incidents or any retaliation. To prevent recurrences, counseling for the harasser may be appropriate to ensure that he or she understands what constitutes harassment and the effects it can have. In addition, depending on how widespread the harassment was and whether there have been any prior incidents, the recipient may need to provide training for the larger campus community. If a hostile environment has affected an entire campus, an effective response may need to include dissemination of information, the issuance of new policy statements, or other steps that are designed to clearly communicate the message that the recipient does not tolerate harassment and will be responsive to any student who reports such conduct.

These steps are a recipient's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the recipient to take action.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), also requires that a recipient adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action prohibited by the regulation implementing Title IX. Title IX does not require a recipient institution to adopt a policy specifically prohibiting sexual harassment or to provide separate grievance procedures for sexual harassment complaints; however, its nondiscrimination policy and grievance procedures for handling discrimination complaints must provide prompt and effective means for preventing and responding to sexual harassment.

OCR has identified a number of elements relevant to whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for: (1) notice to students and employees of the procedures, including where complaints may be filed; (2) application of the procedure to complaints alleging discrimination or harassment carried out by employees, other students, or third parties; (3) adequate, reliable, and impartial investigation of complaints, including an opportunity to present witnesses and other evidence; (4) designated and reasonably prompt timeframes for the major stages of the complaint process; (5) notice to the parties of the outcome of the complaint; and (6) an assurance that the recipient will take steps to prevent recurrence of any discrimination or harassment and to correct its discriminatory effects on the

complainant and others, if appropriate. A grievance procedure cannot be prompt or equitable unless members of the recipient's community are aware of its existence, how it works, and how to file a complaint.

Grievance procedures may include informal mechanisms for resolving complaints to be used if the parties agree to do so and if the school determines that the particular Title IX complaint is appropriate for such a process. However, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process.

In the instant case, the University acknowledged that the Student had made an allegation of sexual assault XXX. University police investigated by interviewing witnesses present at XXX and other witnesses, gathering physical evidence, and XXX. The University police concluded its criminal investigation in approximately one week. During that week, however, the University's XXX, a University police officer told the Student that, if she did not respond to police requests for a follow-up meeting, it would close her complaint and also told the Student not to speak about the case with anyone.

The University also acknowledged that the Student filed a sexual assault charge against the respondent XXX and that, due to an error XXX, the case was closed shortly thereafter. Although XXX employees discovered this error in XXX, the subsequent XXX communication to the Student did not acknowledge the actual mistake and stated that it needed more information XXX to move forward. However, by that time the Student had already XXX. When the Student did not respond to XXX contact XXX, XXX did not proceed with its investigation. The University documented that its deputy Title IX coordinator conducted a Title IX investigation of the Student's sexual assault complaint XXX, but the University did not issue a letter of its findings to the parties until XXX. The University provided no description of further investigation occurring during that time or any reason for that delay except for the deputy Title IX coordinator's statement that she was consulting with unspecified others at the University in the interim. The University's documentation did not evidence any communication with the Student during the intervening months informing her of what was happening with the Title IX investigation or even that it was still pending.

In this case, the evidence supports that University did not, therefore, promptly conclude an investigation through its SCCS process due to University error. In addition, the evidence shows that the University did not provide a prompt resolution of the Student's alleged sexual assault through its Title IX process, which included an unreasonable delay of over XXX months between the completion of witness interviews and the conclusion. The evidence is therefore sufficient to support that the University failed to provide a prompt response to the Student's complaint in violation of the Title IX implementing regulation at 34 C.F.R. § 106.8(b).

While OCR did not complete its investigation into the issue of whether the University responded to retaliatory harassment of the Student XXX of which it had notice, the evidence obtained to date raises compliance concerns regarding the apparent lack of follow-up or response to several reports XXX. The enclosed resolution agreement signed by the University also resolves these concerns, pursuant to Section 302 of OCR's *Case Processing Manual*. Section 302 provides that an allegation or issue may be resolved before the conclusion of an OCR investigation if a

recipient expresses an interest in resolving the allegation or issue and OCR determines that such resolution is appropriate. Such a request does not constitute an admission of liability on the part of the recipient, nor does it constitute a determination by OCR that the recipient has violated any of the laws that OCR enforces.

- **Alleged National Origin Discrimination**

The Title VI implementing regulation, at 34 C.F.R. § 100.3, prohibits recipients of Federal financial assistance from excluding a student from participation in, denying her the benefits of, or otherwise subjecting her to discrimination under its program based on race, color, or national origin.

In this case, the sole evidence the Student provided to support her claim of national origin discrimination was her assertion that XXX. XXX denied to OCR that such a comment had been made. The University stated that University police acted without regard to gender or national origin. OCR's review of the University investigations did not establish that the University police investigation of the Student's complaint was different than other, similar University police investigations. The Student did not respond to OCR's attempts to provide her with an opportunity to respond to information submitted by the University and to give additional information about her allegations.

OCR has, therefore, determined that the evidence is insufficient to support a finding that the University discriminated against the Student on the basis of national origin in violation of the Title VI implementing regulation, as alleged.

- **Alleged Retaliation**

The regulation implementing Title VI, at 34 C.F.R § 100.7(e), prohibits recipients of Federal financial assistance from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by the regulation or because that individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing; opposed prohibited discrimination; or asserted rights under the regulation. This requirement is incorporated by reference into the regulation implementing Title IX at 34 C.F.R. § 106.71.

In analyzing whether a *prima facie* case of retaliation has been made under the laws OCR enforces, that is, one that creates an inference of retaliation that could be rebutted, OCR analyzes whether: (1) an individual experienced an adverse action caused by a recipient; and (2) the recipient knew that the individual engaged in an activity protected under Title IX or believed the individual might engage in a protected activity in the future; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. If these elements are established, OCR examines whether the recipient has articulated a legitimate, non-retaliatory reason for its actions. If the recipient has proffered a legitimate, non-retaliatory reason for the adverse action, OCR next analyzes whether the recipient's stated reason is a pretext for retaliation.

In the instant case, OCR located no direct evidence of retaliation. The Student’s complaint to the University of sexual assault constituted a protected activity under Title IX that relevant University personnel knew about, XXX constituted a materially adverse action, and the proximity in time of these events is evidence from which a causal connection could be inferred. These elements therefore created a prima facie case of retaliation. The University provided OCR with what could constitute a legitimate, non-retaliatory reason for its action: XXX.

OCR therefore examined whether this reason was a pretext for prohibited retaliation under Title IX by, first, examining whether the University followed University policy in XXX. XXX. There was no written University policy concerning XXX. However, OCR identified at least two cases where students filed sexual misconduct charges, and the evidence demonstrated XXX, but University documentation does not demonstrate that the University XXX. This evidence supports that filing a sexual assault complaint in and of itself does not always result in XXX where XXX but also could be seen to show that the University treated the Student differently from how it has treated other students in the past. OCR notes that neither of the other cases involved XXX.

The evidence also demonstrates that the University ultimately followed its policies, procedures, and practices regarding XXX involved, including its rationales for XXX of any XXX students who might have been in similar circumstances XXX. OCR’s investigation did not produce other evidence to support that the University XXX to retaliate against her for filing her complaint.

Based on the foregoing, the evidence is not sufficient to support a finding that the University retaliated against the Student in violation of the Title IX regulation at 34 C.F.R. § 106.71.

### **The University’s Title IX Process**

As part of its investigation into the Student’s allegations, OCR also obtained and analyzed evidence about the University’s process in general for responding to Title IX complaints and other notice of sex discrimination, including sexual harassment.

- **Nondiscrimination Notice and Title IX Coordinator**

The University’s overall policy of nondiscrimination in education and employment is articulated in its “Affirmative action policy and program” statement, 3359-38-01, and, as of September 2017, the most recent version of this policy available on its website took effect February 1, 2015. The affirmative action policy is posted on the University’s website at <http://www.uakron.edu/contentAsset/raw-data/1344496/fileAsset>. The notice is also available via a link on the University’s overall Title IX web page at <http://www.uakron.edu/title-ix/>. This policy prohibits discrimination at the University on the basis of race, color, religion, sex, sexual orientation, gender identity, age, national or ethnic origin, disability, military status, genetic information, or status as a veteran. The notice states that it applies to “all students, faculty, staff, employees, and applicants for admission to the university and its programs and activities.” It describes various state and federal laws the University must comply with, although it does not include Section 504 or the Age Discrimination Act among the listed federal civil rights laws applicable to the University’s education program.

As of May 2016, OCR found at least seven different nondiscrimination notices being used on the University's website. For instance, different notices were posted on the University's School of Law career services web page, the University's Office of General Counsel web page, and a web page of the University's Institute for Teaching and Learning dedicated to "mandatory training" regarding nondiscrimination. Some of the posted notices include the protected statuses stated in the nondiscrimination policy above; others include a different list. Some variations of the notice indicate that the nondiscrimination requirement extends to both educational programs and activities and employment and admissions, but other variations discuss only employment or only educational programs. OCR searched the University's website again in June and October 2017, and found that the University continued to post multiple different versions of the notice. For example, the notice posted at the Office of General Counsel web page was different from the notice in the 2016-2017 Student Organization Resource Manual.

During the time period at issue in this complaint, the University had designated a Title IX coordinator to oversee its compliance with Title IX and currently has a different Title IX coordinator. In addition, the University had designated three administrators as deputy Title IX coordinators for the main University campus: a Deputy Title IX Coordinator for Students; a Deputy Title IX Coordinator for Employees; and a Deputy Title IX Coordinator for Athletics. Different versions of the University's nondiscrimination notice reviewed by OCR during the investigation failed to identify or include any or complete contact information for the Title IX coordinator(s). For example, on the mandatory nondiscrimination training web page, the notice as of May 2016 included a phone number for the "EEO/AA Office," stated it was located in the "Administrative Services Building," and included the names, building locations, and phone numbers for the University's Title IX Coordinator and Deputy Title IX Coordinators for Employees and Students. As of June 2017, the same information was provided, although it appeared from other web pages that the Title IX Coordinators' information was then outdated. In addition to the partial information provided through some of the University's published notices of nondiscrimination, the names, titles, phone numbers, and e-mail addresses for the Title IX Coordinator and Deputy Title IX Coordinators were published at the University's Title IX web page at <http://www.uakron.edu/title-ix/>. Campus building locations for the Title IX Coordinator and the Deputy Title IX Coordinators for Employees and Athletics were provided, but a physical location for the Deputy Title IX Coordinator for Students was not. As of June and October 2017, the notice about Title IX Coordinators posted on the University's Title IX web page had been updated to include a new overall Title IX Coordinator and a new Deputy Title IX Coordinator for Employees, but other notices throughout the University's web page had not.

As of May 2016, the Title IX page did not explain the Title IX Coordinator's and Deputy Coordinators' specific roles. OCR interviewed the individuals who held these positions in fall 2015. The Title IX Coordinator stated that he oversaw "the entire Title IX process," although he mentioned only "the athletics piece" and campus sexual assault. The Deputy Title IX Coordinators generally described being resources and points of contact for their designated constituencies, as well as being involved in determining and coordinating interim measures in sexual harassment/violence matters. The Title IX Coordinator and Deputy Title IX Coordinators, along with the Director of SCCS, the University's Equal Employment Opportunity (EEO director), and a University police liaison, are the University's "Title IX team." They

described being apprised of all complaints and matters raising Title IX issues and meeting twice per month to discuss pending complaints and detect any patterns of discrimination needing to be addressed. They indicated they did not typically investigate complaints nor make determinations on student complaints, except for the Deputy Title IX Coordinator for Employees, who issued determinations on complaints made against employees. The Title IX team also worked on training and outreach for the University community. The Title IX team's make-up and structure described by the witnesses had been put into place in the summer of 2014.

With respect to the Title IX Coordinator's and Deputy Title IX Coordinators' roles as to addressing sexual harassment, the University's Protocol document described in the section below states that they assist with: access to medical and mental health treatment; reporting the offense to law enforcement; reporting the offense to SCCS and/or the Equal Employment Opportunity/Affirmative Action (EEO/AA) office for investigation; and providing victim support and resources, including interim measures. The Title IX Coordinators are not mentioned in either the University's Policy or the Code referenced in the section below. In addition, the Title IX Coordinator does not appear to have a formal role in SCCS determinations nor appeal determinations.

- **Applicable University Policies and Procedures**

The University and University witnesses consistently identified the University's "Sexual Harassment Policy," 3359-11-13 (Policy), the "Code of student conduct of the University of Akron," 3359-41-01 (Code), and the University's affirmative action policy and program statement, 3359-38-01, as policies and procedures under which the University addresses sex discrimination, including sexual harassment/violence. The Policy, Code, and affirmative action policy are all posted on the University's Title IX web page. Although not identified by the University or University witnesses in response to OCR's queries about such policies during the investigation, the most prominently published sexual harassment document on the University's website is its "Reporting Sexual Misconduct and Sexual Assault" protocol (Protocol), which is the first set of procedures listed on the University's Title IX web page. According to information provided by University personnel, the Protocol most closely matches the way the University reports handling sexual harassment complaints.

Taken together, the policies, Code, and Protocol include many of the elements required for a prompt and equitable Title IX grievance procedure, but none taken separately contain all the required elements. For example, neither the University-identified Title IX policies and procedures nor the Protocol address any type of sex discrimination other than sexual harassment/violence, including gender-based harassment, athletic inequity, pregnancy or marital status discrimination, or different treatment based on sex. In addition, the policies are unclear as to how or whether the University would address alleged sexual harassment if a complainant could not identify a specific perpetrator (e.g., a rape by an unknown assailant or anonymous messages or graffiti), as the procedures being used appear designed as disciplinary processes involving specific, accused individuals.

- **Policy**

The Policy provides definitions and a number of examples of prohibited sexual harassment. It states that any person who believes he or she has been the victim of sexual harassment by an employee, student, or visitor of the University, or any third person with knowledge or belief of such conduct, can file a complaint. However, the section addressing complaint resolution is focused almost exclusively on cases where a faculty or staff member is accused; the Policy does not make clear what would happen if a student or other party were found to have perpetrated sexual harassment or what process would be followed if the identity of the alleged perpetrator is unknown. In addition, the Policy does not reference the University's Title IX Coordinators but rather references the "affirmative action officer," without contact information. Furthermore, the Policy identifies both informal and formal complaint procedures but does not provide notice to complainants of their right to end the informal process at any time prior to resolution; nor does it include a way to skip the informal process altogether. With respect to the formal process, the Policy does not detail how the affirmative action officer will conduct an investigation; for example, it does not state whether witnesses will be interviewed or whether the parties will be given an opportunity to identify witnesses or other evidence. In addition, the Policy includes timeframes for when a complaint must be filed and for how long overall the resolution processes may take but provides no other timeframes. Other than potential sanctions against a respondent, the Policy does not list any potential actions to prevent recurrence or to remedy the effects of sexual harassment found to have occurred.

- **Code**

The Code states that SCCS is the "exclusive administrative unit that has authority to investigate reports of misconduct" listed in the Code and to implement Code procedures and sanctions. The Code sets forth the disciplinary process for any student alleged to have violated a Code provision. The process is initiated when any person (a complainant) submits a report to SCCS making such an allegation. The Code lists 22 different categories of "student misconduct" to which it applies, including "Sexual misconduct, sexual assault as defined in applicable federal, state or municipal law, or imposition or sexual harassment in violation of rule 3359-11-13 of the Administrative Code" (i.e., the Policy).

OCR noted that the Code sets forth a definition of sexual misconduct that is different from the definitions of sexual harassment stated in the Policy. The Code does not state how a report of a Code violation is to be made. Moreover, as the Code describes a discipline process, its provisions generally describe rights and procedures relating to accused students; it does not clarify whether the same or similar rights and procedures apply for complainants. For example, accused students (respondents) have the right to be informed of all available materials related to the alleged violation before or at the initial fact-finding meeting. The respondent is informed that he/she is not required to make a statement, that any statement may be used later in disciplinary proceedings, and that he/she has the right to have an advisor present. The Code specifies that, when a complaint proceeds to a hearing, the respondent has the right to be provided access to copies of all information related to the conduct hearing, including the names of all known witnesses who may testify; to challenge any member of the hearing board for good cause; to be provided written notice of the time and place of the hearing and information on the hearing procedures; to object to consideration of a written witness statement by the hearing board and, if the statement is written, to provide a rebuttal to the statement; and to be provided the

University hearing board’s written report. The Code makes no mention of comparable rights/opportunities for the complainant. In addition, the Code lists sanctions that might be imposed if a student is found to have violated the Code but does not state any other potential steps to prevent recurrence or remedy the effects of sexual harassment on the victim and others, as appropriate, or any mechanism for providing such steps. Finally, the Code provides for an “alternative resolution process,” described as an educational conference, mediation, or restorative justice process conducted by “a person chosen by [SCCS] who has been trained in mediation based on the principles of restorative justice.” While the Code states that SCCS may recommend this alternative resolution process “based on the nature of the incident” and the willingness of the parties to participate, it provides no timeframes or other details about this process.

- **Protocol**

As of April 2016, the Protocol set forth information about reporting sexual misconduct and sexual assault, the University’s response to such reports, and resources available to complainants. The Protocol focuses on alleged rape and sexual assault, domestic violence, dating violence, and stalking, although it references the Policy and the Code and states that sexual harassment and misconduct as defined in those documents are included as potential Title IX offenses.

OCR noted that the original version of the Protocol OCR reviewed during the investigation twice stated that “a full statement of Title IX offense definitions” was available at “Appendix D,” but, at the time period in question, there was no Appendix D. By June 2017, the University had added in that section. The Protocol states that additional information concerning the process for offenses that occur in the employment setting “or that involve third-party contractors on the University campus” is available at <http://www.uakron.edu/title-ix/employees/>. As of May 2016, that link largely reiterated statements from the Protocol. A link on the page, entitled “Reporting Title IX Concerns,” led back to the Protocol. The page concerned investigations “involving University of Akron employees” and did not state any process for making complaints of harassment by third parties. Although the Protocol provides for complainants to be given written notice of their rights and various resources available to them, it does not provide for any similar notice to respondents. For allegations against an employee, the Protocol indicates that the Policy is applied and that investigations are conducted “pursuant to the Policy” “by trained investigators.” No information is provided as to how the investigation will be conducted. For investigations handled by the University’s EEO/AA office, the Protocol states only that the complainant has the right to appeal. Although the Protocol states that complaints can also be made to the University police department, the SCCS, the EEO/AA office, or any designated “Campus Security Authority,” it provides only partial phone numbers for SCCS and the EEO/AA office (and in one place provides the wrong number for SCCS), provides only a phone number for University police, and does not provide contact information for any of the Campus Security Authorities.

- **Applicable Legal Standards, Analysis, and Conclusion**

In addition to the legal standards explained above, the regulation implementing Title IX, at 34 C.F.R. § 106.9, contains detailed requirements that specify the information that must be included in a recipient's notice of nondiscrimination; it requires each recipient to implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary academic institution students, 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 any educational program or activity which it operates and that it is required by Title IX and its implementing regulation at 34 C.F.R. Part 106 not to discriminate in such a manner.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), also requires recipient institutions to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulation implementing Title IX (a Title IX coordinator), including investigation of any complaint communicated to the recipient institution alleging any action which would be prohibited by that regulation. That regulation provision also requires a recipient institution to notify all its students and employees of the Title IX coordinator's contact information (name, address(s), and telephone number).

As stated above, OCR's search for notices of nondiscrimination located at least seven different nondiscrimination notices on the University's website, with different notices including a different array of protected statuses and with different descriptions of which University programs were subject to the nondiscrimination requirement. In addition, although the University had designated a Title IX coordinator and deputy Title IX coordinators, their respective roles were not well defined during the time period in question, and the Title IX coordinator did not appear to have adequate authority to actually coordinate the University's efforts to comply with and carry out its responsibilities under the Title IX regulation. In addition, the Title IX team appeared to focus mainly on sexual misconduct and partly on athletic inequity, rather than the rest of the University's obligations under Title IX. Finally, as noted above, although some University documents and web pages include clear identification of and sufficient contact information for the Title IX coordinator and deputy coordinators, other documents that should include this information pursuant to the requirements at 34 C.F.R. § 106.9 do not, and there are conflicting publications on the University's website as to the identity of the current Title IX coordinator and deputy coordinators.

As the University's website contains inconsistent descriptions of its nondiscrimination responsibilities and incomplete or out-of-date contact information as to its Title IX coordinators, OCR has determined that the University is not in compliance with the notice of nondiscrimination requirements of the Title IX implementing regulation at 34 C.F.R. §§ 106.8(a) and 106.9.

OCR also found that the University's published Title IX grievance procedures do not meet the requirements of the Title IX regulation at 34 C.F.R. § 106.8(b).

First, the University's use of at least four different policies/procedures—the affirmative action policy, the Policy, the Code, and the Protocol—all of which contain conflicting requirements and

information and none of which seems to be fully consistent with the University's actual practices for addressing sexual harassment complaints, further increases the likelihood that a person attempting to access and follow the University's procedures will have difficulty doing so.

None of the documents provides for the resolution of allegations of actions prohibited by the Title IX regulation except for sexual harassment. For example, gender-based harassment, different treatment, athletic inequity, admissions discrimination, and pregnancy and marital status discrimination are not covered by the Policy, the Code, or the Protocol or any other document OCR obtained during the course of this investigation. In addition, because the procedures are based in disciplinary processes, they do not apply to sexual harassment where no specific perpetrator has been identified (e.g., a rape by an unknown assailant). They also do not provide a process for the University to address patterns or practices but rather are designed to address individual allegations against one individual respondent at a time.

In addition, none of the conflicting procedures as written on its own meets the prompt and equitable standard required by the Title IX regulation. For example, the Policy provides for an "affirmative action officer" to handle complaints of sexual harassment, but the University has not identified any such person. Although on its face, the Policy applies to complaints alleging sexual harassment carried out by students or third parties, many of the provisions are solely focused on employee respondents. It does not provide for an adequate or reliable investigation. The Policy includes some timeframes, but not for each major stage of the process. The Policy does not include an assurance that the University will take steps to prevent recurrence of harassment other than sanctions against a respondent, nor to correct its discriminatory effects on the complainant and others if appropriate.

The Code also does not meet the prompt and equitable standard. For example, it does not clearly explain how to file a complaint; applies only to allegations that a student violated the Code; and does not provide for an adequate, reliable investigation. In fact, for cases that are brought to hearing, it places the onus on the complainant to prosecute the allegations as opposed to making the University responsible for the investigation and resolution of the complaint. It also does not include an assurance that the University will take steps to prevent recurrence of harassment other than sanctions against a respondent, nor to correct its discriminatory effects on the complainant and others if appropriate. Written notice of the outcome is provided only for the respondent. There are other rights that are provided only to the respondent, including access to the information used at a hearing. The alternate resolution process in the Code does not provide for the complainant to be notified of the right to end the process at any time.

Although the Protocol contains a number of required elements not present in the Policy or the Code, it also fails to meet the prompt and equitable standard. Unlike the Policy, it includes an assurance that the University will take steps to prevent recurrence of harassment and to correct its discriminatory effects. It also states that the process is to provide the same procedural safeguards to both parties. However, the Protocol does not provide clear contact information for all of the persons with whom complaints may be filed; states that it applies to sexual harassment carried out by third parties but contains no actual process to do so; does not provide for an adequate, reliable investigation; and, for complaints against employees, provides appeal rights only to the complainant.

Based on the above, OCR has determined that the evidence is sufficient to support that the University violated the Title IX regulation at 34 C.F.R. § 106.8(b) by failing to have procedures in place to ensure the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation.

- **Additional University Actions Relating to Sexual Harassment since 2013**

During the pendency of this investigation, the University undertook many actions to address campus climate and responsiveness to sexual assault. For example, during the spring 2015 semester, the University's Sexual Assault Resource Team (SART) conducted an all-campus campus climate and sexual assault survey. A description of the survey, the results, and areas the University noted as meriting further attention were posted on the University's website at <http://www.uakron.edu/dotAsset/859cc371-43a2-463f-9e90-8be8a76b3c4d.pdf>. This was the first campus climate survey of this type that the University had conducted. All members of the University community were invited to participate in the survey, including students, staff, faculty, and administrators on the main campus and on three of the University's regional campuses. The survey was administered online, and responses were anonymous. Out of 27,363 potential respondents, 3,340 completed the survey (12.1%). A wide range of individuals participated in the survey, but freshman students made up 20% of the respondents. The University informed OCR that responses to the survey have been useful in identifying training opportunities, as well as areas of focus, and have been used to guide action in other areas across the University. Based on guidance from the Ohio Department of Higher Education, the University also conducted two benchmarking campus climate surveys in 2016 and 2017, and used the responses for comparative purposes and to guide action.

The University also informed OCR that numerous staff members involved in receiving and responding to reports of sexual harassment had participated in extensive and continuous Title IX and investigative training. In addition, all new University employees are required to complete an online training program on sexual harassment and other forms of discrimination, and the EEO/AA office has tracked attendance. The University informed OCR in 2017 that, at the start of each fall semester, the Title IX Coordinator and Dean of Students speak at New Faculty Orientation ("NFO"). The topics include how to identify sexual misconduct and the faculty's role as a responsible employee with a duty to report any incidents or complaints of sexual misconduct or gender discrimination.

Periodically, the University distributes educational information about sexual assault to students, faculty, and staff through electronic newsletters and also through The Digest, an e-mail system utilized to communicate to staff and faculty information related to sexual violence, including avenues to report sexual assaults and harassment, as well as Zipmail, the e-mail system used to communicate to students. The University provided information about approximately 20 Zipmail messages issued since 2011 regarding information related to sexual assault, including announcement of forums/workshops that students could attend.

The University's SART was created in May 2014 for the purpose of coordinating the University's response services to victims and to further improve education about and responsiveness to Title IX issues. It arranges education and training initiatives, such as Sexual

Assault Awareness Month, “Take Back the Night,” “Walk a Mile in Her Shoes,” and “Walk of Heroes.” As part of the SART initiatives, all incoming students were required to take an interactive, online learning module called “Think About It,” focused on making informed decisions about sex, drugs, alcohol, relationships, and other issues faced by students as they first start attending college, as well as bystander intervention. A SART presentation was also included as part of “New Roo” weekend, a required freshman orientation. In addition, most freshmen took a program called “The Akron Experience, University 101,” which included a Title IX presentation where students learned bystander intervention techniques from rape crisis center advocates and campus partners and also learned about reporting mechanisms, confidential resources, and issues related to sexual respect. The SCCS director told OCR that some transfer students also took the 101 program, but it was not clear if non-freshman students new to the University were regularly included in the various student trainings/programs the University provided described above. The University also stated that its Title IX Coordinator and the Dean of Students frequently partner with the rape crisis center to provide targeted training on campus to high-risk populations and first-responders. OCR notes that many training activities appeared to take place in University residences, while 84 percent of undergraduate students and 90 percent of all students live off-campus, according to the University’s website.

In October 2014, the University entered into a Memorandum of Understanding with a local rape crisis center to provide University students with resources, including having a total of seven full-time rape crisis center staff available on the University’s campus. In 2014, the University created a Title IX website with an online reporting tool and other reporting options, along with links to relevant University policies, to the Protocol, and to resources.

The University informed OCR that it provides a half-day, in-person, comprehensive annual training specific to sexual misconduct cases to student conduct hearing board members. This training includes information about the hearing process and focuses on areas such as consent and the requisite burden of proof. Only those hearing board members who receive the required training are authorized to participate and decide sexual misconduct cases. Similarly, only those who have received the training may hear student conduct appeals related to sexual misconduct.

### **Voluntary Resolution and Conclusion**

To resolve the violation findings and compliance concern identified above, the University submitted the enclosed Agreement to OCR. In light of the signed Agreement, OCR finds that this complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will monitor the University’s implementation of the Agreement.

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.

This concludes OCR’s investigation of the complaint and should not be interpreted to address the University’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute unwarranted invasion of personal privacy.

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

OCR appreciates the cooperation of the University during the investigation and resolution of this complaint. If you have any questions about this letter or OCR's resolution of this case, you may contact Traci Ext, Regional Chief Attorney, at (216) 522-2671 or [Traci.Ext@ed.gov](mailto:Traci.Ext@ed.gov). We look forward to receiving the University's first monitoring report on March 30, 2018. Please direct the report to the attention of Karla Ussery, who will be overseeing the University's implementation of the Agreement. Ms. Ussery can be contacted by telephone at (216) 522-2683 or by e-mail at [Karla.Ussery@ed.gov](mailto:Karla.Ussery@ed.gov).

Sincerely,

Meena Morey Chandra  
Regional Director

Enclosure

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