



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

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REGION XV
MICHIGAN
OHIO

September 11, 2014

Dr. Michael V. Drake
President
Ohio State University
205 Bricker Hall
190 North Oval Mall
Columbus, Ohio 43210

Re: OCR Docket #15-10-6002

Dear Dr. Drake:

This is to advise you of the resolution of the above-referenced compliance review that was initiated by the U.S. Department of Education, Office for Civil Rights (OCR), on June 23, 2010. The compliance review examined whether The Ohio State University (the University) responded promptly and equitably to complaints, reports and any other notice to the University of incidents of sexual harassment, sexual assault and other forms of sexual violence and whether any failure to respond appropriately allowed for the creation and/or continuation of a sexually hostile environment.

OCR initiated this review under Title IX of the Education Amendments of 1972 and its implementing regulation at 34 C.F.R. Part 106 (Title IX), which prohibit discrimination on the basis of sex in programs and activities that receive Federal financial assistance from the U.S. Department of Education. OCR had jurisdiction to proceed in this case because the University is a recipient of such Federal financial assistance.

This letter summarizes the facts and conclusions found by OCR during its investigation and resolution of this review. OCR determined that the University's notice of nondiscrimination complies with the Title IX requirements and that the University has taken several important steps during the course of this investigation to bring its practices, as well as its policies and procedures, more fully in line with Title IX requirements. However, OCR determined that the University violated Title IX in that OSU's written grievance policies and procedures failed to comply with the requirements of Title IX.

During the course of this compliance review, the University conducted an investigation of alleged sexual harassment within its Marching Band and found that there was a sexually hostile environment for students in the Marching Band of which the University had notice and failed to adequately address. The University requested to resolve the review with a resolution agreement prior to the completion of OCR's investigation of all the issues in the review. As such, OCR is not making any further compliance determinations under Title IX, including whether the University has complied with the Title IX requirements for the prompt and equitable resolution of sexual harassment and sexual violence complaints in the implementation of its sexual harassment policies and procedures. On September 8, 2014, the University signed the enclosed resolution agreement (the Agreement), which when fully implemented, will address all of the issues in this compliance review. OCR incorporates in the Resolution Agreement the University's own corrective action steps for the Marching Band as requirements.

The University is the largest university in the state of Ohio with approximately 61,000 students, including 48,000 undergraduates and 13,000 graduate and professional students. The student body is comprised of slightly more male than female students -- approximately 50.4% male and 49.6% female. The majority of University students (approximately 56,000) attend classes at the main campus located in Columbus, Ohio. The remaining students attend classes at one of the five Ohio regional campuses located in Lima, Mansfield, Marion, Newark, and Wooster.¹

OCR's investigation in this compliance review included reviewing the University's policies and procedures related to sexual harassment and sexual violence, review of internal case investigation files from academic years 2008-2009 and 2009-2010 and then also from the 2012-2013 academic year to January 2014, interviews of relevant University personnel, interviews of students through focus groups, written interview questions of various student constituencies and interviews of resident advisors (RAs) in the University's student housing.

Legal Authority

The Title IX regulation at 34 C.F.R. § 106.31 provides generally that, except as provided elsewhere in the regulation, no person shall on the basis of sex be excluded from participation in, denied the benefits of, or subjected to discrimination in education programs or activities operated by recipients of Federal financial assistance.

Under Title IX, colleges and universities that receive Federal financial assistance are responsible for providing students with a nondiscriminatory educational environment. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault

¹ Information obtained from the University's spring 2014 term enrollment report: http://oesar.osu.edu/student_enrollment.aspx. OSU has informed OCR that currently it enrolls 63,000 students.

or acts of sexual violence. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the recipient's program.²

OCR considers a variety of related factors to determine if a sexually hostile environment has been created and considers the conduct in question from both an objective and a subjective perspective. Factors examined include the degree to which the misconduct affected one or more students' education; the type, frequency, and duration of the misconduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment, the size of the school, location of the incidents, and the context in which they occurred; and other incidents at the school. The more severe the conduct, the less the need to show a repetitive series of incidents; this is particularly true if the harassment is physical. A single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment. A single instance of rape is sufficiently severe to create a hostile environment.

Once a recipient knows or reasonably should know of possible sexual harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation 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, prevent the harassment from recurring and, as appropriate, remedy its effects. These duties are a recipient's responsibility, regardless of whether a student has complained, asked the recipient to take action, or identified the harassment as a form of discrimination. A recipient has notice of harassment if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. If a recipient delays responding to allegations of sexual harassment or responds inappropriately, the recipient's own action may subject the student to a hostile environment. If it does, the recipient will be required to remedy the effects of both the initial sexual harassment and the effects of the recipient's failure to respond promptly and appropriately. A recipient's obligation to respond appropriately to sexual harassment complaints is the same irrespective of the sex or sexes of the parties involved.

Even if the sexual harassment did not occur in the context of an education program or activity, a recipient must consider the effects of the off-campus sexual harassment when evaluating whether there is a hostile environment on campus or in an off-campus

² The applicable legal standards described herein are more fully discussed in OCR's 2011 Dear Colleague letter on Sexual Violence, which is available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html> (April 4, 2011); for further clarification on this topic, see "Questions and Answers on Title IX and Sexual Violence," at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> (April 29, 2014). See also OCR's 2010 Dear Colleague letter on Harassment and Bullying, which is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html> (October 26, 2010), and OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html> (January 19, 2001).

education program or activity because students often experience the continuing effects of off-campus sexual harassment while at school or in an off-campus education program or activity.

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

Sexual harassment of a student by a faculty member or other school employee also violates Title IX. 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 remedying any effects of the harassment on the complainant, as well as for ending the harassment and preventing its recurrence. This is true whether or not the recipient has notice of the harassment.

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

In evaluating whether a recipient's grievance procedures are prompt and equitable, OCR reviews all aspects of a recipient's policies and practices, including the following elements that are critical to achieve compliance with Title IX:

- 1) notice to students and employees of the procedures, including where complaints may be filed;
- 2) application of the procedure to complaints alleging discrimination and harassment carried out by employees, other students, or third parties;
- 3) provision for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and respondent to present witnesses and other evidence;

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

- 4) designated and reasonably prompt timeframes for the major stages of the complaint process;⁴
- 5) written notice to both parties of the outcome of the complaint and any appeal; and
- 6) assurance that the recipient will take steps to prevent recurrence of any sex discrimination or harassment found to have occurred, and to correct its discriminatory effects on the complainant and others, if appropriate.

To ensure that students and employees have a clear understanding of what constitutes sexual violence, the potential consequences for such conduct, and how the recipient processes complaints, the recipient's Title IX grievance procedures should also include the following in writing:

1. a statement of the recipient's jurisdiction over Title IX complaints;
2. adequate definitions of sexual harassment (which includes sexual assault) and an explanation as to when such conduct creates a hostile environment;
3. reporting policies and protocols, including provisions for confidential reporting;
4. identification of the employee or employees responsible for evaluating requests for confidentiality;
5. notice that Title IX prohibits retaliation;
6. notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;
7. notice of available interim measures that may be taken to protect the student in the educational setting;
8. the evidentiary standard that must be used (preponderance of the evidence) in resolving a complaint;
9. notice of potential remedies for students;

⁴ OCR evaluates on a case-by-case basis whether the resolution of sexual violence complaints is prompt and equitable. OCR has noted that, based on its experience in typical cases, there is a 60-calendar day timeframe for investigations. "Whether OCR considers an investigation to be prompt as required by Title IX will vary depending on the complexity of the investigation and the severity and extent of the alleged conduct. OCR recognizes that the investigation process may take longer if there is a parallel criminal investigation or if it occurs partially during school breaks. A school may need to stop an investigation during school breaks or between school years, although a school should make every effort to try to conduct an investigation during these breaks unless so doing would sacrifice witness availability or otherwise compromise the process." See F-8, in "Questions and Answers on Title IX and Sexual Violence."

10. notice of potential sanctions against perpetrators; and
11. sources of counseling, advocacy and support.

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.

Pending the outcome of an investigation of a report or complaint, Title IX requires a recipient to take steps to ensure equal access to its education programs and activities and to protect the complainant and ensure his or her safety as necessary, including taking interim measures before the final outcome of an investigation. The recipient should take these interim measures promptly once it has notice of the harassment allegation and should provide the complainant with periodic updates on the status of the investigation. The recipient should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow the complainant to change academic and extracurricular activities or his or her living, transportation, dining, and working situation as appropriate. The specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. In general, when taking interim measures, recipients should minimize the burden on the complainant. Recipients should also check with complainants to ensure that the interim measures are effective and, if ineffective, identify alternatives. Recipients should also ensure that the complainant is aware of his or her Title IX rights and any available resources, such as advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance, and the right to report a crime to campus or local law enforcement.

In addition, recipients should provide training to employees about the applicable grievance procedures and their implementation. All persons involved in implementing a recipient's grievance procedures (*e.g.*, Title IX coordinators, investigators and adjudicators) must have training or experience in handling complaints of sexual harassment, and in the recipient's grievance procedures as well as applicable confidentiality requirements. In sexual assault cases in particular, the fact-finder and the decision-maker also should have adequate training or knowledge regarding sexual assault. Recipients should also provide training about its grievance procedures and their implementation to any employees likely to witness or receive reports of sexual harassment; including faculty, recipient law enforcement unit employees, recipient administrators, recipient counselors, general counsels, health personnel, and resident advisors. Recipients need to ensure that their employees are trained so that they know to report sexual harassment to appropriate officials, and so that employees with the authority to address sexual harassment know how to respond properly.

Throughout the recipient's investigation and in any hearing, both parties must have equal opportunity to present relevant witnesses and other evidence and to otherwise participate in the grievance process. Also, the recipient must use a preponderance of the evidence

standard for investigating allegations of sexual harassment. If a recipient provides for appeal of the findings, it must do so for both parties. The recipient must maintain documentation of all proceedings.

For Title IX purposes, if a student requests that his or her name not be revealed to the accused or asks that the recipient not investigate or seek action against the accused, the recipient should inform the student that honoring the request may limit its ability to respond fully to the incident, including pursuing disciplinary action against the accused. The recipient should notify students of the information that will be disclosed, to whom it will be disclosed, and why. The recipient should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. If the student still requests that his or her name not be disclosed to the accused or that the recipient not investigate or seek action against the accused, the recipient will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the student who reported the harassment. If the school determines that it can respect the student's request not to disclose his or her identity to the accused, it should take all reasonable steps to respond to the complaint consistent with the request.

When a recipient knows or reasonably should know of possible retaliation by other students or third parties, including threats, intimidation, coercion, or discrimination (including harassment), it must take immediate and appropriate steps to investigate or otherwise determine what occurred. OCR has advised recipients to be aware that complaints of sexual harassment/assault may be followed by retaliation by the alleged perpetrator or his or her associates. For instance, friends of the alleged perpetrator may subject the complainant to name-calling and taunting. Title IX requires recipients to protect the complainant and witnesses and ensure their safety as necessary. At a minimum, this includes making sure that complainants and witnesses know how to report retaliation by university officials, other students, or third parties by making follow-up inquiries to see if any retaliation or new incidents of harassment have occurred and respond promptly and appropriately to address any new problems.

Grievance procedures generally may include voluntary informal mechanisms (*e.g.*, mediation) for resolving some types of sexual harassment complaints; however, it is improper for a complainant alleging harassment to be required to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the recipient (*e.g.*, participation by a trained counselor, a trained mediator, or, if appropriate, a university faculty member or administrator). 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. Moreover, in cases involving allegations of sexual assault/violence, mediation is not appropriate even on a voluntary basis. OCR recommends that recipients clarify in their grievance procedures that mediation will not be used to resolve sexual assault/violence complaints.

The Title IX implementing 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. The recipient is further required, by the Title IX implementing regulation at 34 C.F.R. § 106.9(a), to notify all students and employees of the name (or title), office address, and telephone number of the designated employee(s). In addition, OCR's 2011 Dear Colleague Letter on Sexual Violence states that recipients should notify all students and employees of the electronic mail (email) address of the Title IX Coordinator. The coordinator's responsibilities include overseeing the recipient's response to Title IX reports and complaints of sexual harassment/assault, and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. The coordinator or designee should be available to meet with students, as needed. The Title IX coordinator should not have other job responsibilities that may create a conflict of interest. Also, as noted above, recipients must ensure that employees designated to serve as Title IX coordinators have training or experience in handling sexual harassment and sexual violence complaints, and in the operation of the recipient's grievance procedures.

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires that recipients notify applicants for employment, students, employees, 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 education 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.

Factual Information

A. Title IX Coordinator

When OCR initiated this compliance review in 2010, the University identified several points of contact for Title IX compliance, including the Student Judicial Affairs (SJA) Director, the Human Resources (HR) Director, and the General Counsel. In 2012, the University created a new centralized compliance office, the Office of University Compliance and Integrity (Compliance/Integrity Office). The Office addresses, among other issues, Title IX compliance and houses the Title IX Coordinator, who is responsible for overseeing the University's efforts to prevent and address sexual harassment and sexual assault. In addition, the University delegated Title IX investigatory responsibilities to three Deputy Title IX Coordinators, one each for students, faculty and staff, and athletics. In May 2014, the University named a new Title IX Coordinator, whose name and contact information, along with the names and contact information for the three Deputy Coordinators, can be found on the University's website.

The University also established a Sexual Violence Consultation Team (SVCT). The SVCT is a group of first responders that generally meets biweekly to discuss all sexual harassment/violence complaints received by the University to determine whether the correct responder is investigating the complaint and that the appropriate resources are being provided, to ensure that correct referrals are being made, and to provide review and input on related issues and inquires.

The University informed OCR that the Title IX Coordinator regularly meets and communicates with constituent offices and is regularly apprised of developing issues, including during meetings of the University's SVCT. In addition, an electronic notification system is used to alert the Title IX Coordinator of student conduct matters involving allegations of sexual harassment/assault and the Title IX Coordinator is provided with copies of reports of all Title IX matters reported to the University police.

B. Notice of Nondiscrimination

When OCR initiated this compliance review, the University's notice of nondiscrimination did not meet the Title IX requirements, at 34 C.F.R. § 106.9, in that, although some of the University's professional schools (*e.g.*, the Moritz College of Law) had individual notices of nondiscrimination on the basis of sex, not all schools within the University had a notice of nondiscrimination and there was not a general University-wide notice. During the review, the University established a University-wide notice of nondiscrimination that covers sex discrimination and meets the Title IX requirements.⁵ The University posted the nondiscrimination notice on the University's main web page and the Title IX webpage.⁶ The University also created a web link to the nondiscrimination statement on the footer banner on many of the University web pages. The notice provides the names and contact information for the Title IX Coordinator and the Deputy Coordinators.

C. Sexual Harassment Complaint Investigation Process and Procedures

At the start of OCR's investigation, the University's policies and procedures addressing sex discrimination, including sexual harassment against students, included guidelines posted on the Office of Student Life's Student Conduct (Student Conduct) website titled "General Information: Sexual Harassment by Students" and the University's Code of Student Conduct (the Code). The policies and procedures did not include designated timeframes for the completion of the major stages of an investigation. In addition, although the University used its disciplinary Code to address complaints of sexual harassment against students, the Code did not ensure that the complainant was provided an equal opportunity to participate in the grievance process.

⁵ See <http://hr.osu.edu/public/documents/policy/resources/110nondiscrimnotice.pdf?t=20148111348>.

⁶ See <http://www.osu.edu> and <http://titleix.osu.edu/>.

Of the students who responded to OCR's request for information in 2011, a minority reported having knowledge or personal experience with incidents of sexual harassment/assault. Some students expressed concerns about the University not having taken sufficient or any action to respond to reports of sexual assaults that had occurred, and about the University not sufficiently addressing retaliation fears for complainants. The majority of students interviewed by OCR in 2011 stated that they believed the University takes complaints of sexual harassment/assault seriously and is responsive. The majority of students reported they feel comfortable reporting sexual harassment/assault; however, there was substantial confusion among students, including RAs, regarding how and where to report incidents of sexual harassment/assault. RAs are required to inform the Housing Directors of any sexual harassment reports or complaints they receive and inform the student of his or her rights to file with the Title IX Coordinator and Student Conduct, and law enforcement. Nearly a quarter of the RAs who responded to OCR's request for information in 2011 indicated that they were unaware of a process for responding to complaints of sexual harassment/assault. Additionally, there seemed to be a correlation between the level of training received and the awareness of policies and procedures for responding to complaints of sexual harassment/assault. Over 20% of the RAs reported having received little or no training to address complaints of sexual harassment/assault and a majority of those individuals also reported being unaware of a complaint process for sexual harassment/assault.

After the initiation of OCR's investigation and issuance of OCR's 2011 Dear Colleague Letter on Sexual Violence, the University revised its sexual harassment/violence policies and procedures. In 2012, the University also created the new Compliance/Integrity Office.

In December 2013, University officials launched a new and dedicated Title IX website within the University website that contains a compilation of resources and is designed to be a "one-stop shop" for information on Title IX and sex discrimination.⁷ University officials indicated that the website is designed to provide easier access to information about Title IX issues, including the ability to file a complaint directly on that site. The Title IX web page is located within the site for the University's Compliance/ Integrity Office. The main page includes the University's nondiscrimination statement, names and contact information for the current Title IX Coordinator and the three Deputy Coordinators, and a link ("Submit a Complaint/Report") to an electronic complaint form. The website states that the complaint form is not required to make a complaint and that a complaint can be made through the University's anonymous reporting line ("EthicsPoint"), by phone, or by web, or by contacting the University police, Student Conduct, HR, or the Title IX Coordinator directly. This page indicates the Title IX Coordinator will oversee the investigation of the complaint and that the University prohibits sexual harassment by "vendors, contractors, volunteers, and third parties acting as agents for the University." The page also states that "conduct alleged to constitute harassment is evaluated from the perspective of a reasonable person." The website also includes links to a "Title IX Program Statement" dated May 13, 2014, which provides an

⁷ The Title IX web page can be found at <http://titleix.osu.edu/>.

outline of the resources available at the University, links to five University sexual harassment/violence policies, as well as reporting and complaint procedures, policies, education and training, and support services.

The Title IX page includes a link to “Accommodations,” which states that OSU will assist students who report sexual harassment and sexual violence in obtaining medical support and information regarding available legal and Student Conduct resources, as well as counseling and support services, and will also assist students in notifying the University Police or other local police if the assistance of law enforcement is requested. The available “accommodations” listed include changing the complainant’s living situation, including obtaining emergency housing or moving into another residence facility, assisting the complainant with exploring options to address academic concerns, such as transferring class sections, taking an incomplete in a class or filing a grade grievance and assisting the complainant with financial concerns, including providing financial aid guidance. The statement directs students to make requests for accommodations “to the department in which the accommodation is sought.”

Currently, there are five university policies that address sexual assault and sexual harassment:

1. Code of Student Conduct, which prohibits all types of sexual misconduct;⁸
 2. Policy Guidelines: “Sexual Harassment by Students in the Non-Employment Context Policy;”⁹
 3. HR Policy 1.15, “Sexual Harassment Policy;”¹⁰
 4. HR Policy 1.10, “Affirmative Action, Equal Employment Opportunity and Nondiscrimination/Harassment Policy;”¹¹ and
 5. HR Policy 7.05, “Workforce and Family Relationship Violence Policy.”¹²
1. Code of Student Conduct (Code)

The University identified its Code as its grievance procedure for student Title IX complaints. The Code can be found on the University’s Student Conduct and Title IX websites. University officials stated that the Code is reviewed every three years, and in August 2011, the University conducted a review of the Code to address the points in OCR’s April 2011 Dear Colleague letter on sexual violence. Subsequently, the University notified OCR that the Code was revised on June 18, 2012; this is the version currently posted on the University’s website.

⁸ <http://studentlife.osu.edu/csc/>

⁹ <http://studentconduct.osu.edu/page.asp?id=35>.

¹⁰ <http://hr.osu.edu/public/documents/policy/policy115.pdf?t=201482793124>.

¹¹ <http://hr.osu.edu/public/documents/policy/policy110.pdf?t=201482793225>.

¹² <http://hr.osu.edu/public/documents/policy/policy705.pdf?t=20148279343>.

The Code prohibits sexual misconduct, which it defines as physical contact or other non-physical conduct of a sexual nature in the absence of clear, knowing and voluntary consent, including but not limited to: non-consensual sexual intercourse or contact, sexual exploitation, sexual harassment as defined in applicable University policy, and indecent exposure. The Code defines consent as the act of knowingly and affirmatively agreeing to engage in a sexual activity and states that consent must be voluntary. The Code provides that an individual cannot consent who: is substantially impaired by any drug or intoxicant; has been compelled by force, threat of force, or deception; is unaware that the act is being committed; whose ability to consent is impaired because of a mental or physical condition; or who is coerced by supervisory or disciplinary authority. The Code provides that consent may be withdrawn at any time, and that prior sexual activity or relationship does not, in and of itself, constitute consent. The same definitions of sexual misconduct and consent appear on the Title IX web page.

The Code states that anyone who has witnessed what the person believes to be a possible code violation should notify an authorized University official and provides a number of choices about where to make the initial report: the residence hall director if it occurred in the residence halls; the director of student conduct if it is a non-residence hall incident; the coordinator of the committee on academic misconduct if related to academic misconduct; and the University police or other appropriate law enforcement agency if it involves a violation of a criminal law in addition to a code violation.

The Code states that the University may proceed with disciplinary action under the Code independently of any criminal proceeding and may impose sanctions for violation of the Code, even if such criminal proceeding is not yet resolved or is resolved in the student's favor. Under the Student Conduct procedures section, the Code states that University police or other appropriate law enforcement has primary responsibility for the investigation of acts that involve suspected violation of federal, state, or local laws, while residence hall directors, assistant hall directors, and the Director of Student Conduct are authorized to investigate alleged violations other than those involving academic misconduct. The Code states in the Hearing Procedures section that it uses the preponderance of the evidence standard to determine if a particular student violated the Code. Upon completion of an investigation, the investigator will decide upon an appropriate course of action, which may include: taking no action; deferring further action with or without conditions; or initiating charges with the appropriate University student conduct body.

2. Policy Guidelines: “Sexual Harassment by Students in the Non-Employment Context”

The Policy Guidelines state that the University will maintain an environment for “work and study” free from sexual harassment through prompt corrective measures taken to stop sexual harassment whenever it occurs. The Policy Guidelines define sexual harassment in the same manner as other documents listed on the Title IX web page. The Policy Guidelines further provide examples of behavior that may be considered sexual harassment and describes the variety of relationships where sexual harassment can occur

(peer on peer, faculty and student, staff and student, supervisor and employee). The Guidelines state that filing a complaint with Student Conduct does not preclude the individual from filing a complaint with an external agency. The Guidelines also state that the University prohibits retaliation against an individual for reporting sexual harassment or for participating in an investigation and that allegations of retaliation should be directed to Student Conduct.

3. HR Policy 1.15: “Sexual Harassment Policy”

HR Policy 1.15 is the most commonly referenced HR document in the University’s Title IX materials. This policy, dated April 24, 2014, states that it applies to faculty, staff, student employees, graduate associates, students, and volunteers. However, the policy also states that cases involving student-on-student sexual harassment not in the employment setting will be handled by Student Conduct pursuant to the Code of Student Conduct. It does not state where complaints against third parties may be filed. It states that sexual harassment is prohibited and that prompt corrective measures will be taken to stop sexual harassment whenever it occurs. The policy defines sexual harassment the same as it is defined on the Title IX web page. It provides examples of sexual harassment.

HR Policy 1.15 requires any HR professional, supervisor, chair/director, or faculty to report sexual harassment of which they become aware to HR by using the HR discrimination/harassment complaint form or other appropriate documentation within five working days. It states that HR and the relevant unit’s HR personnel will determine how to proceed with the complaint. HR Policy 1.15 states that, when it is determined that sexual harassment has occurred, steps will be taken to ensure the harassment is stopped immediately. It further states that “corrective measures consistent with the severity of the offense will be imposed consistent with applicable university procedures and may include sanctions,” and lists types of sanctions that might be imposed. HR Policy 1.15 states that “sexual harassment concerns can often be resolved by the person being harassed addressing the matter directly with the alleged harasser.” It states that “when such resolution is not feasible” then a faculty or staff member, student, or volunteer may bring an allegation.

The policy states that complaints of sexual harassment may be made with the HR professional within the department or unit, a HR consultant, or any supervisor, faculty member, or faculty or staff administrator. The policy states that these designated individuals will be given training by HR on handling sexual harassment allegations.

HR Policy 1.15 indicates that the procedures for filing and investigating allegations of sexual harassment are addressed in HR “Guidelines for Investigating Complaints of Discrimination and Harassment” (Guidelines).¹³ The Guidelines are dated January 1, 2013, and state that they apply to faculty, staff, students, student employees, and volunteers, and that HR is “ultimately responsible for investigating all complaints of discrimination and harassment.” The Guidelines state that complaints should be filed

¹³ <http://hr.osu.edu/public/documents/hrpubs/guidelinesdiscrim.pdf?t=201482793140>.

within 180 days. They state that the individual should talk with the responsible party or seek to resolve the situation in consultation with the supervisor and/or college or unit HR professional and indicate that only if this step is taken and the issue is not resolved may the individual file a complaint.

The Guidelines indicate that the method of investigation may range along a continuum from “a one-on-one conversation with the accused with an agreement as to further interactions” to “an inquiry with several witness interviews.” The Guidelines state that the investigator might conduct interviews and gather relevant documents, but do not explicitly state that the parties will be given the opportunity to identify witnesses or evidence. The Guidelines state that written notice of the outcome will be provided to both parties. There is no appeal process. No specific timeframe is provided for the stages of the investigation, although the Guidelines state that investigations should be concluded “within a reasonable timeframe from the date the complaint was filed.”

The Guidelines state that, if discrimination, including harassment, is found to have occurred, the University will take necessary action steps to correct the behavior. Only sanctions are listed as potential action steps. There is no provision for interim measures or systemic or individual remedies.

The Title IX Coordinator is not mentioned in the Guidelines as having any role in the process at any stage. The Guidelines state that all investigation records will stay within HR, although records of corrective action taken might appear in employing unit’s files.

4. HR Policy 1.10: “Affirmative Action, Equal Employment Opportunity & Non-Discrimination/Harassment Policy”

HR Policy 1.10, dated September 1, 2013, applies to faculty, staff, student employees, graduate associates, volunteers, and applicants. The policy only applies to employment discrimination. HR Policy 1.10 states that the Guidelines described above are the procedures for the filing and management of discrimination and harassment complaints under the policy.

5. HR Policy 7.05, “Workforce and Family Relationship Violence Policy”

HR Policy 7.05, which was updated on April 15, 2014, applies to faculty, staff and students that are graduate associates and student employees. The policy was promulgated to promote a safe work environment and to prevent workplace violence.

In addition to the University’s new Title IX dedicated website, OCR’s investigation revealed that information about the University’s sexual harassment policies and procedures is included on several other University websites, including the websites for 1) Student Conduct; 2) Campus Police; 3) The Office of Diversity and Inclusion, 4) The Student Wellness Center, and 5) HR.

For example, on the Student Conduct website, the University in 2014 added various resources, including the Student Code of Code and under the section titled “Sexual Violence,” information about sexual harassment and sexual violence, including the definitions of misconduct, consent, filing complaints, the standard of proof used to investigate allegations of sexual harassment and sexual violence, available resources, the law enforcement process and availability of no contact and protection orders , The link titled “Title IX Compliance” states that the University will provide a timely and thorough investigation and, barring exigent circumstances, cases of sexual misconduct or sexual harassment will be resolved within 60 days. This page also states that all parties will be informed of the decision of the hearing officer or a University Conduct Board in writing, and all parties have the right to appeal and will be notified of any appeals. Appeals must be filed within 5 business days and any responses to an appeal by the other party must be filed within 5 business days from notice of the appeal. The University also provides pages titled “Victim’s Rights” and “Accused’s Rights,” which both provide similar information about both parties’ rights during the Title IX complaint process, including but not limited to the University conducting a timely and thorough investigation, the right for both parties to be informed of the University’s process and possible outcomes, available resources, the right to one advisor throughout the process, and the right to be updated throughout the investigation and informed of the outcome.

The University’s campus police web page includes a link titled “Reporting Sexual Assault” that has information about reporting sexual assault, the relationship between the University police and Student Conduct, the University’s disciplinary procedures as they relate to complaints of sexual assault, contact information, criminal and civil options, and victim resources, both on and off campus. The site also has a section titled “The Ohio State University Survivor’s Rights Guarantee.”

The Student Conduct process is governed by the guidelines and policies described above. While students are directed to file complaints with the Title IX Coordinator, Deputy Coordinators and Student Conduct, students may also first report sexual harassment to Sexual Violence Education and Support (SVES,) Wellness Center, and Residence Life, who forward complaints to the Title IX Coordinator. OCR asked University officials about the fact that complaints could be filed in several different places and about efforts made by the University to coordinate complaint investigations. For example, the Code provides that the Student Conduct Board for residential life only hear cases involving Code violations that occur within University housing. The Board is required to refer cases back to Office of Student Conduct if it appears that the violation may be serious enough to warrant suspension or dismissal. The University explained that this would happen by an RA elevating the matter to the assistant hall director, and then the hall director for a decision. The University said there is a great deal of collaboration between those offices on an as-needed basis. SVES and the Wellness Center are required to report any complaints to the Title IX Coordinator. In addition, the SVCT ensures coordination across the campus.

The former SJA Director advised OCR that she trained residence hall staff on residence hall staff on the connection between Title IX and sexual harassment/sexual assault and resources for students. There is a web-based document system (CIF), in which housing staff reports are stored and to which Student Conduct has access. Student Conduct reviews the CIF reports to ensure the residence halls are not keeping a matter that should be referred to Student Conduct.

Student Conduct Sexual Harassment Investigation. According to OCR interviews with University officials and review of the applicable policies and procedures, Student Conduct does the fact-finding for Student Conduct sexual harassment investigations. The complainant does not have the burden of presenting his or her case or providing the sexual harassment allegations. Student Conduct interviews complainants, explains the process, provides interim relief and provides information regarding available resources. If the complainant is not willing to speak with the Student Conduct investigator, Student Conduct still makes a determination about whether to move forward with its investigation. Student Conduct also interviews the accused, other relevant witnesses, and gathers reports and other information. It then determines if there is cause to charge a student with a violation of the Code. Student Conduct may encourage the complainant to report to police or may make a third-party report; Student Conduct can report the matter to the University police if the matter is within its jurisdiction (*i.e.*, if the incident giving rise to the complaint occurred on campus). The accused can accept responsibility, ask for an administrative hearing with an officer (who did not participate in the investigation), or request a hearing before a judicial panel (faculty, staff, students). Faculty and staff have three-year rotations on the Student Conduct hearing panel, while students have two-year rotations.¹⁴ An administrative hearing can be quicker than a judicial panel, which takes the longest. Both the complainant and the accused may have a support person or advisor present during hearings. The SJA Director stated that the panel can have expert consultants (*e.g.*, on medical issues). The expert is not a witness, but acts as consultant to interpret facts or issues in which the panel lacks expertise. However, OCR's review of the hearing files did not indicate the use of an expert in any hearings.

Under the Code, there are a minimum of four panel members for a hearing panel, and a staff member sits in *ex officio*. Neither the hearing officer nor the chair is permitted to have been involved with the investigation. Investigators would not be on the panel or act as chair. The *ex officio* staff member manages the flow of the hearing, and determines relevance of the evidence to be presented. During a hearing, complainants do not directly confront the accused and the accused is not permitted to directly question the complainant. The chair makes opening remarks, the complainant can make an opening statement, and then the accused can make a statement. The Student Conduct packet includes information about the written complaint, police report, interviews, and witness

¹⁴ The Code provides that a hearing quorum shall include no fewer than four voting members, including two student members. The University informed OCR that students will no longer serve on Student Conduct or Residential Life hearing boards in cases that involve sexual violence. This practice will be consistent with OCR policy, which discourages recipients from allowing students to serve on hearing boards in cases involving sexual violence. See OCR 2014 "Questions and Answers on Title IX and Sexual Violence," at n. 30.

statements. The hearing panel members all have a copy of the packet of the information obtained during the investigation, as do the complainant and the accused. It is not given to the complainant and accused to keep, but they can review it in advance of the administrative hearing, and are provided a copy during the hearing. University witnesses speak first, then the accused's witnesses. While it is not the complainant's burden to prove his or her case as part of the hearing, the complainant is provided several opportunities to speak during the hearing. The parties can ask questions of each other, but only funneled through the chair, and they each can make closing remarks. The complainant can also make an impact statement. The presence of the complainant is not required, but University officials stated that they believe it weakens the case if he or she is not present and there are no other witnesses. The University has made provisions for complainants to attend conduct hearings via Video Teleconference (VTC).

During the investigation, Student Conduct maintains regular communication with the parties to keep them informed of the process. Prior to the initiation of a hearing, there are meetings with both the complainant and the accused to review the process and procedures and share information. At the end of the process, both parties are informed of the outcome in writing.

The Student Conduct process provides penalties ranging from informal reprimand to dismissal. Conduct dismissals are permanent. There is no limit on the sanction range (*e.g.*, community service, writing a paper, meeting with officials). However, since September 2013, almost all students found to have committed sexual misconduct have been permanently dismissed. In some cases where dismissal is not an appropriate penalty, the violator might meet with the SVES coordinator for appropriate training.

Based on interviews with University officials and the review of sexual assault complaint files from the 2008-2009 and 2009-2010 academic years, OCR determined that, when a complaint was filed with Student Conduct, the University usually completed the investigation of the complaint within one quarter or 10 weeks. Timing depended in part on witness availability. If the complaint was filed immediately before a summer or other academic break, and, as a result, witnesses were not available, the complaint process might take longer. The University also advised that the completion timeframe also depended on whether the accused accepts responsibility or how the case will be heard.

Coordination with Law Enforcement. While there is no written protocol, University officials indicated that there is strong coordination between University police and Student Conduct regarding the handling of sexual harassment and sexual assault complaints. This coordination is described in the Title IX Program Statement discussed above.

All allegations of sexual assault are investigated by the University's Department of Public Safety, which includes the University police, to determine if criminal charges are warranted. When University police receive information about any sexual assault, the police forward that information to Student Conduct. In addition, in instances where police receive complaints that have no criminal component (*e.g.*, sexual harassment

complaints that do not involve violence), the police also refer the complaints to Student Conduct. This process was confirmed through interviews with University officials (although OCR noted that information on the campus police website indicates that it is the responsibility of the students who report incidents of sexual assault to the campus police to also report the incident to Student Conduct, University Housing, or SVES in the Wellness Center). Student Conduct may encourage a complainant to report to the police or may opt to file a third-party complaint with University police if the alleged conduct is believed to be also a criminal matter within the University police's jurisdiction. Police tell students about resources and also share information with Student Advocacy, which will reach out to students.

In cases where law enforcement does not pursue a criminal investigation, Student Conduct still conducts Title IX investigations. The University is not guided by the outcome of the police investigation. When there is an ongoing criminal investigation, the police keep the appropriate University individuals updated on the status of the investigation, for example by sharing the results of the preliminary investigation with Student Conduct or HR. The University may coordinate timing of witness interviews with the police. The University advised OCR that it continues with its Title IX investigation to the extent that it does not interfere with the criminal investigation. The University also explains on its website the difference between the criminal process and the Student Conduct process.¹⁵ Both the Student Conduct Director and the Deputy Police Chief indicated that they participate on the SVCT to ensure the correct entity has the case and prevent cases from "falling through the cracks." The Director of Student Conduct gets SVCT reports on all matters referred to police.

OCR reviewed police reports provided by the University for complaints from the 2008-2009 and 2009-2010 academic years; however, most of the names of the accused were blacked out and OCR was unable to determine whether incidents were referred to Student Conduct. The documents confirmed that the police provided students with sexual assault pamphlets and referrals for medical and counseling services.

Confidentiality. Both the "Victim's Rights" and "Accused Rights" sections on the Student Conduct website state that the University will make reasonable efforts to protect confidentiality within the parameters of FERPA¹⁶ and the University Student Conduct process, as described above. In addition, the Title IX website contains a specific "Confidentiality" page, which states that the University is obligated to follow up on all sexual harassment allegations and that in some situations "it may be necessary to reveal the complainant's identity to conduct an investigation." Finally, the University's policy titled "Sexual Harassment by Students" states, "To the extent possible, all information received in connection with the filing, investigation, and resolution of allegations will be

¹⁵ See <http://studentconduct.osu.edu/page.asp?id=11> ("There are significant differences between the campus conduct process and the criminal justice procedures. The processes are not mutually exclusive. A student may be arrested and charged in the criminal justice system as well as under the Code. Alternatively, charges can occur for alleged violations of the Code, which may not be violations of the law.")

¹⁶ Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99.

treated as confidential except to the extent it is necessary to disclose particulars in the course of the investigation or when compelled to do so by law. All individuals involved in the process should observe the same standard of discretion and respect for the reputation of everyone involved in the process.”

D. Response to Sexual Harassment/Violence Incidents

OCR reviewed eighty-seven sexual harassment files from 2008-2009 and 2009-2010. These files consisted of files from the campus police, from Student Conduct, and the Housing Office. While the files contain detailed information about the incidents giving rise to the cases, they were often unclear or incomplete with regard to the completion of the investigation, including any sanctions and/or interim and final remedies taken. In many cases, the complainants declined to pursue charges; however, there was no indication in the files that the University pursued further actions in the cases where the accused could be identified. The files demonstrated that complainants were routinely provided sexual assault resource and counseling information. Many of the files include handwritten notes of investigators that were illegible and not transcribed into a legible format; therefore, it was difficult to determine in some cases whether the University took any action to address the incident. OCR’s investigation revealed that the University did not always maintain complete records with regard to complaints that arose in student housing. As such, OCR was unable to determine whether every complaint of sexual harassment that arose in student housing and could possibly result in suspension or dismissal was referred to Student Conduct. OCR also noted information in the files indicating that the process took over 60 days in some cases without additional explanation in the file as to the reason for the length of time.

The University also provided OCR with files for Title IX complaints filed with the University since the creation of the new compliance office and the naming of the Title IX Coordinator in September 2012. OCR’s review of these files, which included cases from September 2012 to January 2014, noted a significant improvement in the University’s documentation and recording of these investigations. The University uses a software tracking system to track all Title IX investigations. The file review found that witnesses were properly identified, located and interviewed, charges were clearly set forth and findings were clearly identified, and both parties were notified of the outcome in writing. These complaint files show that the University completed the majority of the investigations and hearings within the 60 days, as is now required by the University’s policies. For those that took longer than 60 days, the reporting of the incident and investigation usually occurred at the beginning of, or during, a semester break or when witnesses were not otherwise available for questioning.

OCR noted that in the more recent complaint files, almost all students found to have committed sexual assault or engaged in non-consensual sex were permanently dismissed from the University with no opportunity to reenroll in the future. The case files showed that the University used interim measures such as moving the accused out of the residence hall, immediate suspensions during an investigation, and no contact orders, and offered complainants information for counseling services. OCR did find clear

documentation in the files regarding other remedies such as academic support. OCR noted that in cases where the accused was found not to have violated the Code, the University still imposed no contact orders. The files reviewed showed that both parties received notices of appeals and opportunities to respond to an appeal.

On May 23, 2014, the University received a complaint against the Director of the University's Marching Band alleging that the Band's culture facilitated acts of sexual harassment, creating a sexually hostile environment for students. The complaint cited a culture that was "sexualized" and that its members were made to swear secrecy oaths about objectionable traditions and customs. The University's Marching Band has 225 members. The Band Members receive academic credit for their participation through the College of Arts and Sciences. The University conducted an investigation of the matter within 60 days, interviewing current students, alumni, and staff. The investigation found a culture that included numerous objectionable, secret traditions, and misconduct including excess alcohol consumption that contributed to a sexual assault. On July 22, 2014, the University issued a report regarding the investigation, in which the University concluded that there was a sexually hostile environment for students in the Marching Band and that the Band's Director "failed to eliminate the sexual harassment, prevent its recurrence and address its effects."¹⁷ Additionally, the University concluded that the Marching Band's Director, knew or reasonably should have known about this culture but failed to eliminate the sexual harassment, prevent its recurrence, and address its effects.

The University announced a number of steps that it was committing to take in response that include evaluating and strengthening the Marching Band leadership, revisions to policies and procedures, counseling and training for students and staff and climate surveys and controls. The University also issued the following statement on "Ohio State Marching Band Culture," which is posted on the band's website and includes remarks from you, as President of the University, stating:

The Ohio State University takes very seriously its responsibility to provide a world class education, which is enriched by a positive campus culture, diverse academic experience and opportunities for personal growth. Those responsibilities are built on the University's core values of integrity, personal accountability, openness and trust.

While the Ohio State Marching Band has embraced a tradition of excellence and become a source of enormous pride for the entire Buckeye family, a recent review of the Marching Band culture and practices revealed conduct by members of the band and staff that is inconsistent with the University's values and Title IX requirements.

A thorough investigation by the Office of University Compliance over the past two months revealed serious cultural issues and an environment conducive to sexual harassment within the Marching Band. In addition, the investigation

¹⁷ While the finding was limited to sexual harassment, OCR notes that the University's report states that sexual assault allegations were also made.

determined that Director Waters was aware or reasonably should have known about this culture but failed to eliminate it, prevent its recurrence and address its effects.

Jon Waters has been terminated from his position as Director of the Marching Band.

‘Nothing is more important than the safety of our students,’ said The Ohio State University President Michael Drake. ‘We expect every member of our community to live up to a common standard of decency and mutual respect and to adhere to university policies.’

Moving forward, we must abide by a zero tolerance policy at the University—both with the Marching Band and the entire campus community—for any behavior that creates a hostile culture at Ohio State. I view this as a new day and an opportunity for the Ohio State community to come together and embrace the values and behavior that have made this University great.’

In addition to changing the leadership of the Marching Band, the University immediately has taken additional steps to ensure that change is swift and impactful. This begins with the appointment of Betty Montgomery, former Ohio

Attorney General, to lead an independent task force, reporting directly to President Drake and the Chairman of the Board of Trustees, to review this matter in its entirety. . .

At this time, the Ohio State Marching Band season will continue under new leadership and steps are being taken to swiftly identify an interim band director. Additional training and guidance will be developed with new band leadership to create a proper culture, and nurturing environment.

E. Training/Outreach and Student/Climate Information

OCR’s investigation revealed that the University has provided training for University officials responsible for handling the University’s compliance with Title IX, the former Title IX Coordinator, the SJA Director and the HR Compliance Manager. The training addressed the investigation of complaints of sexual harassment and sexual assault. In addition, HR has provided regular ongoing training offered for faculty and staff, and they often call on SVES to present at these trainings. The former SJA Director stated that she trained the Student Conduct hearing officers, who also receive training at national conferences and academies. The hearing officers also receive annual training from SVES, which covers the dynamics of sexual harassment and assault, power differences, consent, alcohol and drugs, consent and coercion, defenses that the accused may use, rape myths, the impact of rape trauma syndrome on memory, and power and privilege issues.

The University police have received sexual harassment training through HR. The Police Chief also trains security officers at the local hospital, which includes sexual harassment training and explaining the difference between sexual harassment and sex crimes. The Chief is also a member of a core group of individuals at the University who provide sexual harassment training at the University. In addition, many of the University police officers have gone through sexual assault training provided through the Sexual Assault Response Network of Central Ohio (SARNCO).

In 2011, some of the RAs who responded to OCR's request for information stated that they had not received any training that specifically referenced Title IX. However, a majority of RAs did respond that they had received some training by the University regarding sexual harassment. Most of the responses indicated that RAs were trained prior to the beginning of the school year through a program called "Behind Closed Doors." This program included role-playing situations and discussed the emotional needs for students subjected to sexual harassment/assault. Generally, most RAs responded that the training taught them to report incidents of sexual harassment/assault to their supervisor. In March 2012, the University provided OCR with Title IX training materials that were used to train residence hall staff for the 2011-2012 school year. Specifically, the University provided OCR with copies of pre- and post-tests administered to Resident Advisors and Resident Managers; PowerPoint presentations used for the Resident Advisor training, Resident Manager training, and the hourly office assistant trainings; and a list of the Office Assistants that had been trained from desk staff across the residence halls. The training made clear the connection between Title IX and sexual harassment/sexual assault and it provided the residence hall staff with a number of resources to which to direct students; however, because the University had not yet named an official Title IX Coordinator at the time, the materials did not identify any person designated as the Title IX Coordinator.

Since September 2012, the Title IX Coordinator has been responsible for training members of the University community and providing broader oversight for training initiatives by other areas that play a key role in the University's Title IX programs and processes, such as Residence Life.

In addition, during orientation for new students, the University created a website that includes a section titled "Alcohol and Sexual Violence" that provides an introductory video advocating bystander intervention. This section of the orientation website also includes links to resources regarding bystander intervention, counseling and student health services, and sexual violence. In addition, links are provided to direct students to the Sexual Violence Education and Support (SVES) at the Wellness Center, the Student Advocacy Center, and Student Conduct.¹⁸ Furthermore, on the Student Wellness Center's website, under the "Sexual Violence" section, there is a page with a list of seven presentations addressing sexual assault and related issues, such as the relationship between alcohol and sex, consent, myths of sexual violence, and bystander intervention.¹⁹

¹⁸ See <http://studentlife.osu.edu/orientation/>.

¹⁹ See <http://swc.osu.edu/sexual-violence/presentations-for-sexual-violence-education-support>.

These presentations can be requested through the Student Wellness Center. The majority of students interviewed by OCR in 2011 consistently identified the Student Wellness Center as a helpful resource.

The University's Assessment of Climate

The University stated that it regularly assesses campus climate with regard to sexual harassment and related issues, and added that the University's Center for the Study of Student Life conducts ongoing climate surveys, which touch on many areas pertinent to Title IX.²⁰ One survey from September 2012 assessed topics of general health, health-related impediments to academic performance, relationships, alcohol and other drug use, sexual behavior, nutrition, exercise, mental health, and sleep. This survey asked students if they had sex with someone without giving the other person their consent (1.9% responded they did), or if they had sex with someone without getting the other person's consent (1.3%). Another survey from August 2011 (findings from 2009) about sexual behavior, but this survey did not include questions about sexual harassment/assault, consent, or other related issues.

Analysis and Conclusions

- **Title IX Coordinator (34 C.F.R. §§ 106.8 and 106.9(a))**

OCR's investigation determined that the University has designated a Title IX Coordinator and named three Deputy Coordinators, and it has provided their names and contact information in multiple locations on the University's website. Prior to the completion of OCR's investigation of the training provided to the current Title IX Coordinator and Deputy Coordinators, OCR entered the Agreement with OSU, which requires the University to provide adequate training to the Coordinators on what constitutes sexual harassment, including sexual assault, and that they understand how the recipient's grievance procedures operate.

- **Notice of Non-Discrimination (34 C.F.R. § 106.9)**

The University's previous notice of nondiscrimination did not fully meet the requirements of 34 C.F.R. § 106.9 in that, although some of the colleges within the University had individual notices, not all of the colleges had individual notices and OSU did not have a general notice that applied to all of the colleges within the University. During the review, the University established a University-wide notice of nondiscrimination that covers sex discrimination, includes contact information for its Title IX Coordinator, and has been broadly disseminated and posted, and the notice therefore meets the Title IX requirements. Based on the information obtained, OCR finds that the University is currently in compliance with the Title IX requirement at 34 C.F.R. § 106.9 regarding its notice of nondiscrimination.²¹

²⁰ See <http://cssl.osu.edu/>.

²¹ OCR noted that the University's other notices of nondiscrimination were inconsistent with respect to references to other statutes enforced by OCR, including 34 C.F.R. § 100.6(d), 34 C.F.R. § 104.8, 34 C.F.R.

- **Sexual Harassment Policies and Procedures and Responses (34 C.F.R. §§ 106.8(b) and 106.31)**

OCR found that the policies and procedures in place at the start of OCR’s review in 2010 did not comply with Title IX in several respects, including that the policies and procedures did not designate reasonable timeframes for the major stages of the process and, in using Code of Student Conduct as its grievance process for student complaints of sexual harassment, the University did not ensure that the complainant was provided an equal opportunity to participate in the grievance process. Information obtained in OCR’s investigation revealed that students, including RAs, were confused as to the process on how to report sexual harassment.

OCR’s investigation revealed that, during the course of the review, OSU undertook a number of steps to improve its efforts to prevent and respond to sexual harassment, including establishing a new centralized “Office of University Compliance and Integrity,” which addresses Title IX compliance; creating a “one-stop shop” Title IX webpage for information about Title IX and sex discrimination; and forming its “Sexual Assault Consultation Team” to discuss and ensure coordination in the University’s response to all sexual assault complaints; and developing on-line training modules for students on bystander intervention.

OCR’s review of the University’s current policies found that the University has published five sets of policies and procedures relating to sexual harassment and sexual assault, including the Student Code, Sexual Harassment Policy Guidelines (for students in the non-employment context) and several HR policies. These are all linked to the “one-stop shop” discussed above and are also located on other University websites.

The University’s current sexual harassment policies and procedures are easily located and widely distributed. However, the policies and procedures continue to be confusing due to inconsistent definitions and omissions from version to version. For example, it is not sufficiently clear which listed policy would apply to which type of complaint, and the descriptions overlap in some instances (*e.g.*, “Sexual Harassment by Students in the Non-Employment Context” is described as applying to sexual harassment in the work and study context, as is HR Policy 1.15 titled “Sexual Harassment Policy.”) Some additional examples of inconsistencies are that the “Victim’s Rights” page states that this process will be timely and thorough, and barring unforeseen circumstances, will be completed within 60 days. The “Accused Rights” page only states that the process will be “timely and thorough.” The notice to the parties is outlined in the “Victim’s Rights” and “Accused Rights” sections; however, it does not state that it will be in writing.

With respect to the application of the procedure to complaints alleging discrimination and harassment carried out by employees, other students, or third parties, OCR found that the University’s procedures do not comply with Title IX requirement that grievance procedures apply to third parties. The University’s description of its Sexual Harassment

§ 110.25, and 28 C.F.R. § 35.106. OCR has provided technical assistance to OSU on revising these non-Title IX nondiscrimination notices.

Policy on the Title IX website states that it applies to students, employees, vendors, contractors, volunteers, and “third parties acting as agents for the university.” The applicable sexual harassment HR policies do not state that they apply to third parties. In addition, the University’s Title IX website states that conduct alleged to constitute harassment is evaluated from the perspective of a reasonable person. Under OCR policy, in determining whether a hostile environment has been created, the conduct in question must be considered from both a subjective and an objective perspective of a reasonable person in the alleged victim’s position, considering all the circumstances.

With one exception, the University’s policies and procedures provide for adequate, reliable, and impartial investigation of complaints, including equal opportunity for both the complainant and respondent to present witnesses and other evidence and to otherwise participate in the grievance process. The exception is that the University’s procedures inappropriately suggest and, in some instances, seem to require that parties work out alleged sexual harassment directly with the accused harasser prior to filing a complaint with the University. With respect to student peer harassment, the Policy Guidelines recommend that in “simple situations” (a term that is not defined), the complainant should talk to the responsible party or seek to resolve the situation. If the situation is not resolved, then the complainant should contact Student Conduct. The HR Guidelines state that the individual should talk with the responsible party or seek to resolve the situation in consultation with the supervisor and/or college or unit HR professional and indicate that only if this step is taken and the issue is not resolved may the individual file a complaint.

The procedures do comply with Title IX requirements in stating the standard for review, specifically that the preponderance of the evidence standard will be used for investigating allegations of sexual harassment or assault. The procedures also allow the parties access to information used at a hearing and provide similar and timely access to both parties; and properly notify the complainant of the right to proceed with a criminal investigation and a Title IX complaint simultaneously.

With respect to the requirement for designated and reasonably prompt timeframes for the major stages of the complaint process, the University’s procedures are not in compliance with Title IX. The HR 1.15 policy states only that the process will be completed within a “reasonable timeframe.” OCR also noted the following inconsistencies between the policies relating to timeframes. The Student Conduct procedures, in the section entitled “Title IX Compliance,” state that both the complainant and the accused are provided five days for filing an appeal. In the section entitled “Victim’s Rights,” the five-day timeframe is again clearly described. This specificity is omitted from the “Accused Rights” page.

With respect to written notice to both parties of the outcome of the complaint and any appeal, OCR noted that HR 1.15 is silent regarding the University’s obligation to provide written notice of the outcome of complaints to both parties; however, this requirement is described in the Code of Conduct.

With respect to providing assurance that the recipient will take steps to prevent recurrence of any sex discrimination or harassment found to have occurred, and to correct its discriminatory effects on the complainant and others, if appropriate, OCR noted that this language was included in many of the policies. Multiple documents state that the University has a compelling interest in taking steps to prevent recurrence of any sex discrimination or harassment found to have occurred, and to correct its discriminatory effects on the complainant and others, if appropriate. Information is provided to complainants about sources of counselling, advocacy and other support.

In addition, OCR's review of the files from hearings revealed that the University does maintain documentation of the proceedings; does not appear to allow conflicts of interest by those handling the procedures; and informs students at regular intervals of the status of the investigation. The University also outlines steps available to protect the complainant as necessary, including interim steps before the final outcome of the recipient's investigation (*e.g.*, no contact order; change in academic or living situations as appropriate; counseling; health and mental services; escort services). The University also provides specifics regarding academic support and the ability to retake a course or withdraw without penalty, although as noted above, OCR did not find documentation of these types of remedies being offered in the files that it reviewed.

The Code covers a range of sanctions that can be levied against the accused. Sanctions include a formal written letter of reprimand, disciplinary probation, suspension, and dismissal. The Code outlines other sanctions as well that can be imposed by a hearing officer or board in conjunction with the above sanctions such as reassignment of rooms, restriction of access to campus locations, community service, and referral to counseling. OCR's review of the files found a range of sanctions imposed, including dismissal from the University.

The University has clear guidelines for addressing confidentiality for the complainant (although OCR recommends that the University specifically identify the employee who will be responsible for evaluating requests for confidentiality), and OCR's review of file documentation relating to the hearings suggest that the University disallows evidence of past relationships. Some policies also make clear that this evidence is disallowed. Some but not all of the University's procedures contain a section prohibiting retaliatory harassment. The University policies do not suggest that sexual assault complaints be mediated; however, the policies do not explicitly state that sexual assault complaints are not to be mediated even on a voluntary basis.

Based on its review of the University's current policies and procedures, OCR has determined that, while the University has made substantial improvements in its written policies and procedures, the current policies and procedures do not comply with Title IX. The critical deficiencies, as described, are that the policies do not apply to all third parties, that the policies include an inappropriate definition of sexual harassment that does not include a subjective (as well as objective) perspective, and that the policies do not uniformly include designated and reasonable timeframes for the major stages of the grievance process.

As noted above, the University requested to resolve this review with a voluntary resolution agreement prior to the completion of OCR's investigation of all the issues in the review.

As such, OCR is not making a compliance determination under Title IX regarding whether the University's implementation of its policies and procedures complies with the Title IX requirements for prompt and equitable resolution of sexual assault complaints. With respect to whether the University provided prompt and equitable responses to the sexual harassment complaints reviewed by OCR, OCR identified some deficiencies in our file reviews from 2008-2009 and 2009-2010, including incomplete information about the interim and final remedies taken and final outcomes/determination for cases, and information suggesting that the University did not pursue the Title IX investigation if the complainant did not want to pursue the complaint. OCR found that the complaint files reviewed earlier in its investigation did not include sufficient documentation to make a Title IX compliance determination as to whether the University provided prompt and equitable responses to the complaints OCR reviewed.

OCR reviewed files for complaints filed in the 2012-2013 academic year to January 2014 because they were generated after the University created a centralized compliance office and revised its policies and procedures. OCR found that the more recent complaint files included more complete documentation of the information considered by the University and steps it had taken in investigating the complaints. The files do not have a full documentation of the range of any interim and final remedies provided to complainants but did have documentation of the full range of sanctions imposed on accused students.

Also, the University conducted an investigation of alleged sexual harassment within its Marching Band and found that there was a sexually hostile environment for students in the Marching Band of which the University had notice and failed to adequately address.

On September 8, 2014, the University agreed to implement the enclosed Agreement. When fully implemented, the Agreement entered into by the University will resolve the above-cited Title IX compliance issues. The agreement requires that OSU address sexual assault and sexual harassment on its campuses in a prompt and equitable manner, including by taking effective steps to stop sexual harassment, prevent its recurrence, eliminate any hostile environment, and remedy its discriminatory effects on the complainant and any others as appropriate. Specifically the University will take the following actions:

Under the terms of the Agreement, the University will:

1. Develop a statement of the roles and responsibilities and mandatory training requirements for its Title IX Coordinator.
2. Disseminate information to ensure students and staff members are aware of Title IX's prohibition against sexual assault and sexual harassment, including how to recognize it when it occurs, and how to report incidents.

3. Revise its policies and procedures to provide a clear and internally consistent grievance procedure that ensures prompt and equitable resolution of sexual assault and harassment allegations and does not require students to work out sexual harassment complaints directly with the accused.
4. Provide timely and effective interim relief for complainants, including academic adjustments, housing changes, counseling, and health and mental services, as necessary, and document this relief in investigative files; the Title IX Coordinator or other specifically designated University employee will coordinate the provision of interim measures so that complainants are not required to arrange such measures by themselves through multiple University departments and offices and the University must the burden on the complainant in providing the interim relief;
5. Provide mandatory sexual assault and harassment training to all members of the university community – including students, faculty, administrators and university police.
6. Conduct annual climate checks with students to assess the effectiveness of steps taken, pursuant to the agreement, or otherwise, to achieve its goal of a campus free of sexual harassment, in particular sexual assault.
7. Establish a campus focus group consisting of representative leaders from the student community (*e.g.*, women’s groups, athletes, residential assistants, student government leaders, fraternity and sorority leaders, etc.) and University officials to provide input regarding strategies for ensuring that students understand their rights under Title IX, how to report possible violations of Title IX, and the University’s obligation to promptly and equitably respond to Title IX complaints.
8. Review the files of reports made of sexual harassment/assault during and since academic year 2011-2012, to determine whether the University investigated each complaint appropriately under Title IX. The University will take appropriate action to address any problems identified in the manner in which these complaints were handled, including providing appropriate remedies that may still be available for the complainants, such as counseling or academic adjustments.
9. Maintain comprehensive documentation of its receipt, investigation, and resolution of all oral and written complaints, reports or other notice of sexual harassment, including any interim measures provided to complainants pending the completion of an investigation and, where sexual harassment is found to occur, documentation fully detailing all of the steps, individual and systematic, taken by OSU.

10. Implement the University's recommendations and corrective actions from its investigative report pertaining to the Marching Band, which have been specifically incorporated into the Agreement. Submit to OCR for review and approval (1) its proposed timetable for implementing the steps outlined in the report and any additional proposed recommendations and findings, and (2) the specific individual remedies that OSU proposes to provide to individual band members subjected to the sexually hostile environment, including the basis and timetable for providing the remedies.

OCR will monitor the University's implementation of the Agreement. As stated in the Agreement, if the University fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the University written notice of the alleged breach and a minimum of 60 calendar days to cure the alleged breach. Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has participated in an OCR investigation. If this happens, the harmed individual may file a complaint alleging such treatment.

We appreciate the University's cooperation during OCR's compliance review and resolution of this complaint. If you have any questions regarding resolution of this compliance review, please contact Kelly Marie Johnson, Team Leader, at 216-522-2675 or by email at Kelly.M.Johnson@ed.gov. The OCR staff person responsible for the monitoring of the University's implementation of the agreement is Erin Barker Brown, OCR Attorney, who can be reached at 216-522-4978 or at Erin.Barker-Brown@ed.gov. Should you choose to submit future monitoring reports electronically, please send them to OCRCleMonitoringReports@ed.gov.

Sincerely,

/s/

Meena Morey Chandra
Regional Director

Enclosure

cc: Christopher M. Culley
Senior Vice President and General Counsel