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to participate, and we understand the dynamics that make such conversations unlikely to occur. However, this left us with an insufficient foundation to make observations and conclusions in response to specific allegations in individual cases – allegations that but for a full and fair vetting of facts, cannot be resolved based on the mere assertion of one party to the dispute. We are hopeful that OCR will bring resolution to the campus community by addressing the unresolved allegations raised by OSAC. While we remain available to those who wish to be heard, we recognize that

The College has made significant investments to address issues of sexual and gender-based harassment and violence over the past several years. Many of these efforts have been at the College's own initiative, while others have been driven by steadfast pressure from activists and student/faculty groups.

In the fall of 2011, the College convened a Sexual Misconduct Committee, charged with making recommendations to the Dean of Students Office. The College also reviewed recommendations from two faculty members who would later, in February 2012, assist in forming the Oxy Sexual Assault Coalition (OSAC). In November 2012, OSAC issued a list of

We encourage any individual who has reported sexual or gender-based violence to the College (anonymously or otherwise), whether or not those complainants were the subject of an investigation or adjudication by a hearing panel, to consider reaching out to the College's Title IX Coordinator to address any outstanding concerns and share feedback about their participation in the process. We have learned indirectly that there are concerns that individuals may have been discouraged from reporting an incident of sexual misconduct under prior policies and administration. We especially encourage those individuals who felt they were discouraged from reporting an incident to the College or from moving forward with an investigation and resolution to contact the Title IX Coordinator to explore current options for support, accommodations, protective measures or resolution of a complaint.

In addition, we encourage Occidental to review all anonymous and informal reports received for the past two years and to ensure that each complainant known to the College receives information about resources, accommodations and current options for reporting and the resolution of a report, both on-campus and off-campus.

We recommend that the College finalize the Interim Policy. In doing so, we recommend that the College consider: 1) clarifying and coordinating reporting responsibilities for campus employees (faculty and staff) to integrate the multiple reporting requirements and systems under the Clery Act (Campus Security Authority), Title IX (responsible employee), mandatory child abuse reporting and California state law (obligations of health care professionals); 2) drafting procedures for resolution of complaints against staff and faculty; 3) incorporating expanded guidance from the pending regulations implementing the 2013 Reauthorization of VAWA, including the requirement that the parties may be accompanied by an advisor of their choice; and 4) supplementing the Interim Policy with additional resource documents, including FAQs, flow charts and a "real talk" version of the policy to reinforce clarity and ongoing delivery of relevant information.

Although the College has continued to expand staff and dedicate resources to this critical arena, we recommend that the College supplement the personnel and resources available to respond to Title IX reports by hiring a permanent Hearing Coordinator to facilitate the implementation of the Interim Policy.

We recommend that the College conduct

We live in a community of diverse ideas and beliefs. This means there may be more than one right way to respond to sexual or gender-based harassment and violence.³ Our hope is that the meaningful participation of campus activists and community members, the steps taken by the College, our recommendations, and the forthcoming conclusions by the DOE provide a platform where the Occidental community can heal and rebuild trust.

At Occidental, we have sought input from all voices. We listened with an earnest intent to hear all insights. We are particularly grateful to the individuals who candidly shared their experiences, observations, recommendations and hopes with us. We encourage a continued dialogue and conversation on these issues and remain available to any Occidental community member, through the anonymous suggestion box⁴ and/or direct communication.

In synthesizing these thoughts for the Occidental community, we brought our best efforts, informed by our collective forty-five years of experience with sexual and gender-based harassment and violence, the current state of the evolving law and insights gleaned from our work on campuses across the country. We are grateful to President Veitch, the Board of Trustees and senior leadership for entrusting us with this responsibility and for embracing the College's mission to provide a welcoming and safe environment for all students and employees.

³ *2001 Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties - Title IX*, at iii, <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>.

⁴ The anonymous suggestion box is available at https://oxy.qualtrics.com/SE/?SID=SV_8d1V3gEt6szEaix.

In late March 2013, we were engaged by Occidental College to conduct an external policy audit and assessment regarding the College's response to sexual and gender-based harassment and violence under Title IX of the Education Amendments of 1972.⁵ At the time of our engagement, the College was working with its community to address concerns about its response to sexual and gender-based harassment and violence. Students and faculty, through the Oxy Sexual Assault Coalition (OSAC), were openly critical of the College's process. Prior to our arrival on campus, there was open campus dissension following interactions between the President, other members of senior administration and OSAC. Nationally, the efforts of coordinated activism by students began to take root, and the federal government, through the United States Department of Education's Office for Civil Rights (OCR), focused their enforcement efforts on Title IX across the nation. Indeed, campus efforts at Occidental found a national platform, and later that spring, OCR notified the College that it was opening an investigation into complaints of discrimination on the basis of sex.

In April 2013, OSAC informed the Occidental community that it had filed two federal complaints against the College. In its open letter to the community, entitled "Why is OSAC Filing Federal Complaints against Occidental College?," OSAC detailed its reasons for filing two complaints: "one with the Office for Civil Rights establishing a failure to protect women on campus and a second complaint documenting violations of the Clery Act, a law that requires that colleges disclose reports of crime."⁶

moving forward.”⁹ We too, are hopeful that OCR will bring resolution to the campus community by addressing the specific allegations raised by OSAC. While we remain available to those who wish to be heard, we recognize that we have gathered sufficient information to provide guidance to the College, and this report could no longer wait. We also note that the College maintains a variety of options for individuals to receive support on these matters and encourage any individual to contact the College’s Title IX Coordinator directly to discuss concerns, make a report or seek support and assistance.

In addition to the strained campus dynamics, since 2011, the federal government’s enforcement strategies have become more aggressive and have shifted in tone, focus and application during the course of our engagement. For Occidental, as for colleges and universities across the country, the seismic plates have been shifting below the institutional foundations, leaving many institutions, administrators and students struggling to find stable footing.

Given these dynamics, in many respects, our task was akin to navigating the straits between Scylla and Charybdis with little hope for successful resolution. Undaunted, we embraced our task at Occidental. We began with an intense period of community engagement, dissected policies and procedures and reviewed all cases spanning two academic years (2011-2012 and 2012- 2013). As detailed in this report, we met or heard from hundreds of students, staff, faculty, parents and alumni, and reviewed thousands of pages of documents. We led community forums, had individual conversations with and provided training to students, staff and faculty. On April 30, we provided the College with specific recommendations about structure and implementation, most of which were implemented on a timely basis, including establishing a full-time independent Title IX Coordinator and a full-time confidential victim advocate.¹⁰ During the summer of 2013, we worked diligently to incorporate the lessons learned from these efforts and interactions to inform our advice as to both implementation and revision of policies and procedures.

In completing our review, we struggled with how to best capture our observations, how to bring calm to unrest, how to reconcile law and guidance and, most importantly, how to help the College best serve its students and employees. This report provides an overview of the context of the issues reported and the college’s response to the allegations.

As noted above, the College first engaged Pepper Hamilton LLP in March of 2013. In an April 16, 2013 letter to the community, President Veitch outlined our engagement as follows:

I have asked Ms. Smith and Ms. Gomez to provide an honest assessment of where we are and where we need to go. Their task includes a period of community engagement and education, a review of all relevant policies and procedures, and an evaluation of our current practices for investigating and resolving reports of sexual assault. As part of this assessment, they will review a representative sample of cases from prior years, and will be available to speak to any participants in those cases who wish to do so.

We have concluded these tasks: the period of community engagement and education; the review of all relevant policies and procedures; the evaluation of the College's practices for investigating and resolving reports of sexual assault; and, to the best of our ability given the available information, the review of cases from prior years. Our review included consideration of both written records and conversations with individuals impacted by and involved with those cases. To be clear, we were not tasked with reinvestigating prior matters or commenting on the validity of the outcomes or sanctions. Rather, we reviewed past cases to understand how policies and procedures were implemented in practice, and to incorporate lessons learned from that review into policies, procedures and implementation moving forward. Indeed, our review of past cases directly valums. Tosard(t)-2(a)4(nd h)-4(r)-I2d-4(e cl6(n)-14(g)6)3(d0)-2(di)-2 Tlvav)242(1n)-(ei)-6(i)-6(n)ln ()-10(r)3((f)3o(a)4(l)-2(i)-2 (e)-6(e)4((d h)-4()4(r)3(s)-1(t)-2(a)4(nd how)(he

responding to allegations of sexual and gender-based harassment and violence, to provide education and training, enhance our understanding of how policy has been implemented at Occidentce

and to improve the effectiveness of institutional responses. We have had the opportunity to work with over one hundred private and public institutions across the country in shaping policy, structuring systems, supporting effective implementation and delivering training and education programs. We have also had the opportunity to work directly with the DOE, OCR and the White House Task Force, and to present educational and training programs through the Clery Center and other professional organizations dedicated to improving campus responses to sexual and gender-based harassment and violence. We are committed to changing the conversation with respect to campus responses by building the framework to develop compassionate, trauma-informed and compliant practices that tend to the individual needs of students and employees. Indeed, we start our work at each institution by “flipping the lens” and viewing policies, procedures and practices from the student perspective. The lessons learned from student perspectives at campuses across the country inform our observations and recommendations.

In framing this report, it is important to provide an overview of the broader context of sexual and gender-based harassment and violence on college campuses. The issues are complex for any single institution to navigate, but in our work across the country, we have identified many shared themes, dynamics and challenges. This section provides an informed discussion of the complexities of the issue, which we view as a critical part of educating the community in order to understand our observations and recommendations and to help pave a path forward for the Occidental community.

As outlined later in this report, a coordinated response to sexual and gender-based harassment and violence requires integration of the following concepts:

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requirements. While GGP notes that “guidance documents used properly can channel the

or living arrangements as appropriate, academic support, providing counseling or emotional support and allowing for other equitable solutions or responses for both parties.

respond to sexual harassment in the same reasonable, commonsense manner as they would to other types of serious misconduct.³⁴

Under this lens, enforcement efforts since 2001 have been guided by the following principle: “OCR always provides the school with actual notice and the opportunity to take appropriate corrective action before issuing a finding of violation.”³⁵ Moreover, the effectiveness of an institution’s response is based on a reasonableness standard.³⁶

Following the April 4, 2011 Dear Colleague Letter, however, the enforcement scheme at OCR has evolved. The 2011 DCL styled itself as a call to action, calling upon institutions to review their policies and implement changes as needed. It also served as a catalyst for a significant increase in Title IX complaints. Representatives from OCR have publicly acknowledged a significant increase in sexual harassment and sexual violence complaints in the post-secondary context; indeed from 2012 to 2013, OCR noted an 88% increase in complaints of sexual violence in the post-secondary context. Equally as important, OCR has acknowledged a political priority in responding to sexual violence complaints, noting that any sexual violence complaint received, even if not timely filed, will trigger a compliance review under Article V of the CPM. And, as of April 2014, OCR shifted its long-term practice regarding confirmation of open investigations and now publicizes a weekly list of all active investigations.

The current compliance environment is interpretative at best – the lens being used by OCR goes far beyond the “musts” of the law and implementing regulations and strays into the “shoulds” of the guidance documents. This has the effect of creating heightened expectations by students and communities across the country about what is legally required for Title IX compliance. For example, many institutions comply with the requirements of the implementing regulations: they promulgate a notice of non-discrimination, designate a Title IX coordinator and have prompt and equitable grievance procedures. While the first two requirements are fairly self-evident, what constitutes prompt and equitable has become fodder for significant variations in interpretation across the country.

As an example, Occidental College had, and continues to have, a Title IX Coordinator who exercises oversight of all reports, investigations and resolutions of sexual and gender-based harassment and violence. Occidental also had, and continues to have, a notice of non-discrimination. And, as outlined in Section IV of this report, Occidental had, and continues to have, grievance procedures for the investigation and resolution of Title IX complaints. The policies and procedures, which have been updated regularly in accordance with the evolving guidance, seek to provide prompt and equitable process. Each of these concepts – prompt and equitable –has been a moving target as OCR has focused on the implementation of the grievance

³⁴ 2001 Guidance at ii-iii.

³⁵ *Id.* at iv.

³⁶ *Id.* at vi.

As the laws and guidance continue to evolve, Occidental, like all colleges and universities, must continue to adapt and incorporate the new federal and state law, regulations and guidance.

It is important to frame this discussion with an understanding of how the dynamics of sexual and gender-based harassment and violence inform campus responses. Most incidents of harassment or violence occur between individuals known to one another, often behind closed doors and typically without witnesses or physical evidence. The nature of the relationship between a complainant and respondent can impact whether and when an incident is reported. There is significant underreporting, both on college campuses and in society at large, and there is often a delay in reporting, which can result in the loss of whatever physical or forensic evidence may have been available at the time of the incident. Investigating and evaluating an incident, therefore, requires an assessment of the credibility of the complainant and respondent – in other words, a word-against-word credibility assessment.

Our experience as sex crimes prosecutors who have evaluated thousands of word-against-word credibility cases reveals that an effective investigation demands scrupulous rigor in fact gathering by individuals with appropriate training or experience, a toolkit designed to access relevant and material information and precise documentation to support reliable decisions. The investigation and evaluation of credibility also requires special expertise to evaluate the impact of trauma, counter-intuitive behaviors, the unique response by each and every complainant, the impact of alcohol or other drugs, and the use of predatory, pattern and grooming behaviors by a respondent.

The very nature of a credibility determination uniformly subjects the results to question by the non-prevailing party. Indeed, in 100% of credibility cases, at least 50% of the constituencies involved will be dissatisfied with the result. That outcome dissatisfaction is not only directed at the individual who caused the harm but also at the investigative or adjudicative process or implementers who evaluated the conduct. The outcome is often challenged through an appeal, an OCR complaint or a civil lawsuit filed by a complainant, a respondent or, in some cases, both parties.

In both the educational and law enforcement setting, there is a wide range of skill, competence, experience and training of investigators and adjudicators. The criminal justice system and the courts have long grappled with the dynamics of sexual, domestic and dating violence and there is an evolving body of law designed to address what we know about the nature of sexual assault cases. Over the past four decades, societal understanding has evolved aided by the efforts of experts in the field of sexual and gender-based violence. Consequently the law too eventually evolved to include what we have learned from those with training and experience. The resulting statutes and case law address concepts regarding: sufficiency of the evidence (the word alone of a complainant in a sexual assault case is sufficient to convict); rape

in the law enforcement context, there is no similar mechanism to test the exercise of discretion to investigate or prosecute based on the investigator or prosecutor's lack of quality, training,

That narrative follows a simple, yet compelling structure: A student is sexually assaulted. When she gathers up the courage to report the crime to her administration, she is met with indifference or outright resistance. A shockingly callous quote from law enforcement or a campus administrator is almost always included.⁴⁷

Indeed, the author credits the activists for successfully “mount[ing] a stunning media campaign – outing accused

moments' is hard to confirm, but they make for good headlines, attract hundreds of comments, and have sparked a he-said/she-said battle between universities and survivors."⁵²

The media coverage at Occidental has been no exception. Although the

- x “Students are generally very active and not scared to share their experiences, but now students and administrators feel cornered.”
- x “The campus dynamic is detrimental to the conversation.”
- x “The environment causes students to feel triggered and stressed.”
- x “One student described the fear that his opinion would not match that of the popular narrative, so he has stopped speaking.”
- x “Both sides pointing fingers has created an environment where students who would like to be part of the debate are not able to if they have any difference in thinking.”
- x “The strong advocates who are involved will continue to handle this in a way that does not allow the conversation or the process of handling this difficult issue to grow or move forward. This involves several discussions and individuals and they all need to be considered.”
- x “Staff and faculty are afraid to speak freely for fear of being ostracized or pilloried.”
- x “Recognition that administrators do not have ill intentions, but that attacks on them have become so personal that the dialogue can get caught up in defensiveness rather than turning to the process and framework.”
- x “The administration doesn’t take this seriously; they are doing whatever they can to silence the voices of survivors.”
- x “Pride in students stand

- x “There is a culture of fear on the campus – fear to express a view that is contrary to OSAC. This fear exists in faculty, in administrators and in students and has changed the course of education at Oxy.”

We include this representative sampling of concerns and observation to shine a light on how Occidental’s campus dynamics have eclipsed the potential for candid dialogue and meaningful change, and in some aspects, have created a challenging environment for students who are unable to navigate the conflict. We also heard concerns that some members of the Occidental student body, including African-American women and members of the LGBTQ community, have been marginalized and excluded from this conversation. We find these dynamics unfortunate in that they serve no one, least of all the students whose safety and welfare is a priority for us all.

On March 26, 2014, members of the faculty issued a “Letter of Faculty Concern” to their fellow faculty members. This letter echoes many of the same observations and concerns shared with us through the anonymous suggestion box and in direct conversations over the course of the past 18 months. In particular, the letter describes “a sense that our faculty participation in College issues is becoming increasingly unproductive.” Further, while recognizing that “several of the issues currently on our minds might only have emerged through direct and TJ0.826, 2014, met(h)JT6(e)JTJ56roductsing4(l)-2((ve)4(e)4a4oQ.4 2ow)-dim6(v)-4(e n)owery

collaborative partnership, and moving toward an improved future rather than remaining mired in the past. We encourage the College and community members to create safe spaces for conversation that prioritize inclusivity, diversity of view and respect for civil discourse. This requires listening openly to our fellow community members, seeking to understand their perspective, and searching for an inference of good will, rather than presuming a negative inference.

The community dynamics at Occidental are broader than sexual and gender-based harassment and violence, and frankly, they are beyond our skill set to completely and effectively remedy. As we noted earlier, our climate observations are based on our campus visits and experiences in the spring of 2013 and the 2013-2014 academic year. We note that the climate appears to have been relatively quiet this fall, but we remain concerned about the community's ability to transcend the past difficulties. As recently as September 17, 2014, OSAC members referred to a "culture of retaliation and hostility" on campus.⁵³ We have also observed continued concerns by students, staff and faculty who decline to engage in conversation or campus efforts because of fear of OSAC's response. We hope that the significant steps taken by the College over the past 18 months and the hard work invested by those community members pressing for needed change may be seen as a sign of a shared commitment to these issues and earnest steps toward improved and effective policy and practice that tends to the welfare of students, staff and faculty. As the College's work continues, we encourage community members to seek reconciliation, to listen intently to one another and to endeavor to give each other an inference of good faith. The students you serve deserve nothing less.

⁵³ See OSAC Facebook Page, <https://www.facebook.com/osacoalition>.

Over the past several years, the College has invested significant energy, resources and personnel to addressing issues of sexual and gender-based harassment and violence affecting students, staff and faculty on campus. Some of these actions have been at the College's own initiative. Others have been in response to campus community members who have steadfastly kept attention focused on the issues of sexual and gender-based harassment and violence. This section provides an overview of the evolution of policies, procedures and practices and prior recommendations to the College.

The Sexual Assault Working Group was tasked with examining issues surrounding sexual assault on campus and making recommendations to the Dean of Students Office about how to improve the College's policies and procedures. The Working Group issued a written Report and Recommendations identifying the following issues of concern:

- x Faculty/staff are not fully aware of their obligations if a student reports an incident of sexual assault to them.
- x Students are not fully aware of their options if they are sexually assaulted.
- x Drunk sex is considered part of the college "hook up" culture and not considered rape by most.
- x Students do not understand "effective consent."
- x Students do not make formal complaints of sexual assault for many reasons, one of them being that they do not want to "ruin" lives, due to the automatic expulsion sanction.
- x The appeals process goes to a single administrator to make the final decision, which may place undue pressure on one individual.
- x The appeals panel has too much authority to change the outcome.
- x Sexual assault prevention discussions tend to be heteronormative and not inclusive of LGBTQ audience members.⁵⁵

As a result of the work of the Working Group and the recommendations by NCHERM, the College made significant changes to policies and procedures in the fall of 2011 (outlined below).

In July 2011, the College appointed Associate Dean of Students Dr. Erica O'Neal Howard as Title IX Coordinator. Moving the Title IX Coordinator from a faculty position to an administrative position was based on: 1) recommendations by NCHERM; and 2) concerns raised by students regarding the potential barrier to reporting caused by having a former, current or prospective professor involved in the oversight of a report.

Services), Sarah Mofford (student and participant in Vagina Monologues), Assistant Dean of Students Tamara Rice (Chair) and Dale Widoff (Athletics).

⁵⁵ *Sexual Assault Working Group 2010-2011 Report and Recommendations* (undated).

In the fall of 2011, the College convened a Sexual Misconduct Committee, comprised of administrators, faculty members and students.⁵⁶ This Committee was charged with examining issues of sexual misconduct at Occidental and making recommendations to the Dean of Students Office. The Sexual Misconduct Committee issued a set of written recommendations that included educational programming and training recommendations, development of an advocate program, enhanced visibility and access to anonymous reporting, addition of an opportunity for participation in restorative justice/informal process and removal of “zero tolerance” terminology that could be negatively associated with automatic expulsion.⁵⁷

The College also reviewed specific recommendations from Professors Caroline Heldman and Lisa Wade, faculty members who would later assist in forming the Oxy Sexual Assault Coalition (OSAC).⁵⁸ OSAC, officially formed on February 14, 2012, describes its mission on its webpage: “to raise awareness of the sexual assault epidemic, and to advocate for best policies and practices that provide for a safe and equitable student experience at Occidental College.”⁵⁹

On November 2, 2011, the College implemented a Sexual Misconduct Policy to incorporate the recommendations made by NCHERM, the Sexual Misconduct Committee and Professors Heldman and Wade. Key changes in the policy included:

- x Unification of separate sexual harassment and sexual assault policies into one uniform policy and grievance procedure for students (sexual harassment involving faculty and staff continued to be addressed separately);
- x Expansion of the role of the Title IX Coordinator to monitor each stage of the grievance procedure and institute sanctions;
- x Modification of the investigative model to use two investigators;

⁵⁶ The Sexual Misconduct Committee included: Assistant Dean of Students Tamara Rice, Dominic Alletto (Assistant Director, Intercultural Community Center), Matthew Calkins (Director, Emmons Health and Counseling Center), Assistant Dean Ella Turenne, Roberta Dacus (Lead Nurse Practitioner, Emmons Health and Counseling Center), Caroline Heldman (Associate Professor of Politics), Thalia Gonzalez (Assistant Professor of Politics), Bianca Di Marcello (student, Program Assistant, Project SAFE), Audrey Logan (Program Assistant, Project SAFE), Maurice Judge (student, KOXY radio host) and Alana Murphy (student).

⁵⁷ *Sexual Misconduct Committee Recommendations – 2011-2012* (undated).

- x Removal of penal code definitions for rape and sexual battery and move to tiered system of prohibited conduct: non-consensual sexual contact and non-consensual sexual intercourse;
- x Removal of automatic expulsion sanction and imposition of discretionary, graduated sanction system (and subsequent removal of “zero tolerance” language based on recommendation of Sexual Misconduct Committee);
- x Reframing of the 2010 definition of consent to recognize non-verbal forms of communication in the 2011 definition:
 - o 2010 Sexual Assault Policy definition, in relevant part: Both parties who have the capacity to act freely must receive verbal agreement *or* physical cooperation for sexual contact to be considered consensual under this Policy. Both parties who have the capacity to act freely must receive verbal agreement *and* positive physical cooperation for sexual intercourse to be considered consensual under this Policy.
 - o 2011 Sexual Misconduct Policy definition, in relevant part: Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.
- x Narrowing of the definition of incapacitation to require a more discerning evaluation of a person’s ability to give consent, based on the person’s ability to make reasonable decisions rather than simply equating intoxication with incapacitation.

In May 2012, OSAC completed an evaluation of the College’s sexual assault policies, practices and programming using “promising practices from academic scholarship, the Department of Justice, and feedback from Oxy students who have experienced the process.”⁶⁰ Those recommendations provided a foundation for many changes enacted by the College in 2012 and 2013.

In the fall of 2012, at the request of Dean Avery, Assistant Dean of Students Tamara Rice and Assistant Director Dominic Alletto developed a Sexual Assault Education Strategic Plan. This plan reviewed the recommendations of the Sexual Assault Working Group, the Sexual Misconduct Committee and OSAC in order to assess implementation of those recommendations. Dean Howard also requested that Jennifer Heetderks, Counselor, Emmons

Dr. LaMesha Carter, Visiting Fellow, Division of Student Affairs, commissioned a presentation by the California Coalition Against Sexual Assault and a subsequent report on the development of a Coordinated Community Response Team.

On November 6, 2012, OSAC issued a list of “12 Demands” to the Occidental administration: 1) remove the automatic appeals language from the policy; 2) reinstate consent as verbal consent in the policy; 3) establish a permanent Sexual Assault Advisory Committee; 4) return the Title IX Coordinator position to the faculty; 5) inform the campus of all changes to the sexual misconduct policy; 6) double the size of Project SAFE and give program assistants more decision-making authority; 7) use the College’s crime alert system to inform the campus of reported sexual assaults; 8) distribute a detailed annual sexual misconduct report; 9) establish a 24-hour sexual assault hotline; 10) provide annual Peace Over Violence training to all staff involved in the sexual assault process; 11) provide annual Peace Over Violence training to all student leaders; and, 12) bring Peace Over Violence to orientation for the next five years.⁶¹

As reflected elsewhere in this letter, the College implemented many, although not all, of these demands, albeit not as quickly as some had hoped. With respect to the policy demand to remove the autodemicd[(, a)-eo a[(, a)--2(ni1z)-6(e)-e(, a)(i)4alhe r Vt -2(s)-1(e)4, 2013,(ode)4(m)-2

to engage the community in conversation. This process contemplated the evaluation of discretionary policy concepts about which there were diverse perspectives at Occidental.

As outlined in President Veitch's August 23, 2013 letter to the community, the policy:

- x recognizes the importance of respect for the autonomy and agency of complainants;
- x seeks to remove barriers to reporting by delineating confidential resources and promoting ease of access to reporting options;
- x provides a

Interim Policy was informed by individual perspectives, community feedback and the dynamics of trauma and sexual and gender-based harassment and violence. It will continue to be an iterative document and will continue to evolve on an annual basis. We are confident that OCR's review of this Interim Policy will acknowledge the care and attention to the law, the guidance and the input of all community members, including the OSAC recommendations. Indeed, we note that the White House Task Force released a policy checklist in April 2014 that recommended language for inclusion in campus sexual misconduct policies. Occidental's Interim Policy, implemented six months before the White House Task Force report, already incorporated the component parts of the White House Task Force's policy checklist.⁷¹

Since April 2013, the College has significantly expanded the professional resources available to assure a coordinated and integrated approach to sexual and gender-based harassment and violence. The College implemented dedicated resources at each level of the institutional response: a Survivor Advocate to provide confidential advocacy for student survivors; a dedicated Title IX Coordinator to oversee and provide education, prevention and training programs, oversee the investigation and resolution of reports, assure compliance with all aspects of Title IX and VAWA, and provide for consistent application of the Interim Policy; a Hearing Coordinator to facilitate the hearing process; and a Clery Coordinator to oversee the College's compliance with Clery reporting responsibilities. In addition, the College has hired a new Chief of Campus Safety and a new ed-10(unt)-2(Tc 0.004 Tw [(a n)-14(ew)en)-4Cof 0 Tc e ex

In early September 2013, just prior to the beginning of the fall semester, the College appointed Lauren Carella as the new Interim Title IX Coordinator. Ms. Carella, a former sexual assault prosecutor from Pennsylvania, actively worked to resolve cases that were reported late in the spring of 2013, in a timely manner. Several factors contributed to delays in these cases including: the difficulty in scheduling given the impact of summer break on the availability of witnesses, investigators and panel members; the volume of cases reported late in the semester; the transition of the Title IX Office to an independent and at that time not yet fully resourced office; and Dr. Girton's sudden and unexpected unavailability.

In October 2013, the College hired Cherie Scricca to serve as the Hearing Coordinator under the Interim Policy. Previously, Dr. Scricca served as an independent consultant to colleges, universities and higher education professional associations, advising them on compliance-based concerns, organizational strategy, product development and service diversification. Before coming to Occidental, Dr. Scricca held leadership positions at: the University of Southern California; University of Maryland; University of California, Berkeley; Golden Gate University; University of California, Hastings College of the Law; and Minnesota State University, Mankato.

In February 2014, after a national search, the College hired Ruth Jones as the permanent Title IX Coordinator. Ms. Jones previously served as a Professor of Law and Associate Dean for Scholarship at the University of the Pacific, McGeorge Law School. She has also served as a staff attorney for the National Organization for Women (NOW) Legal Defense and Education Fund, where she pursued litigation, legislative advocacy, writing and public speaking on women's rights, and as an Assistant District Attorney in the New York County District Attorney's Office, where she prosecuted domestic violence and child sexual abuse cases. Ms. Jones is an accomplished author and lecturer on issues related to sexual and gender-based harassment and violence. A copy of Ms. Jones' curriculum vitae is attached as Appendix VI.

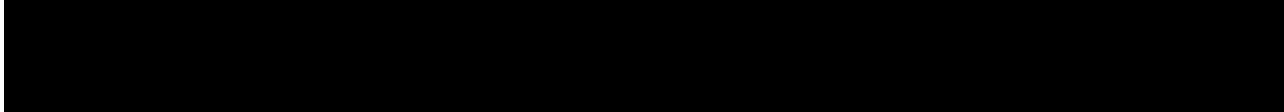
In June 2014, with funds from a grant from the U.S. Department of Justice's Office on Violence Against Women (OVW), the College hired Karla Aguilar as the full-time Project S.A.F.E. Program Coordinator and Prevention Program Specialist. In this role, Ms. Aguilar plans, coordinates and administers activities related to the goals of the OVW grant, namely, developing and coordinating data collection, participating in OVW training workshops and preparing and distributing program materials. She is also responsible for coordinating and implementing prevention programming and bystander intervention training and assisting with the Coordinated Community Response Team (CCRT). Before coming to Occidental, Ms. Aguilar worked with the Los Angeles Conservation Corps and the American Civil Liberties Union's Reproductive Justice Project. She also currently volunteers as a certified sexual assault coordinator/advocate at Peace Over Violence and is certified in domestic violence training. Ms. Aguilar has a master's in social work from the University of Southern California.

In August 2014, the College hired full-time General Counsel Leora Freedman. Ms. Freedman previously served as University Counsel in the Chancellor's Office in the California State University system, where she was responsible for both the San Bernardino and Stanislaus campuses. At CSU, she served as a member of the Academic/Student Affairs team

and as an expert resource in the areas of student con

Our review of cases encompassed two academic years: 2011-2012 and 2012-2013. We conducted an in-depth review of all formal complaints of non-consensual sexual intercourse or non-consensual sexual contact that proceeded to resolution through an investigation and/or hearing panel. In 2011-2012, there were ten formal complaints: eight involved a complaint of non-consensual sexual intercourse and two involved a complaint of non-consensual sexual contact. In 2012-2013, there were seven formal complaints that met these criteria: six involved a complaint of non-consensual sexual intercourse and one involved a complaint of non-consensual sexual contact.

The terms non-consensual sexual intercourse and non-consensual sexual contact encompass a broad range of behavior. Under the Sexual Misconduct Policy in effect between 2011-2012 and 2012-2013, non-consensual sexual intercourse was defined as:



Responsible Expulsion 133 days*

| | | | | |
|-----------------------------|-------------------------------------|---------|---|-----|
| Admission by the Respondent | One semester probation | 27 days | None (Later expelled on another matter) | N/A |
| Admission by the Respondent | One semester probation | 8 days | None | N/A |
| Admission by the Respondent | Three months disciplinary probation | 55 days | None (Later expelled for another complaint) | N/A |

| | | | | |
|-----------------|------|-----------|--|------------|
| Not Responsible | None | 52 days | Appeal denied | 13 days |
| Not Responsible | None | 43 days | None (Immediately expelled on a concurrent matter) | N/A |
| Not Responsible | None | 48 days | Appeal denied | 20 days |
| Not Responsible | None | 135 days* | Appeal denied | 121 days** |
| Not Responsible | None | 109 days* | Appeal filed and later withdrawn | 29 days |

* Four of these reports were made in April or May, near or at the end of the academic year. The extended period of resolution includes the intervening summer break. One of these reports involved a more extensive investigation.

** The delays in resolving these appeals included challenges in identifying the appellate authority and panel members. One of these matters was ultimately resolved by an external adjudicator.

In addition to these seventeen complaints, during this time frame, the College

All of the complainants involved in these seventeen reports are female and all of the respondents are male. We recognize that these cases do not provide an accurate view of the

extensive and clearly delineated options for reporting, which seek to remove barriers and foster increased reporting. Reports may be made to: the Title IX Coordinator, Deputy Title IX Coordinators, the Dean of Students Office (including the Dean on Duty), Campus Safety and an anonymous reporting option on the College's website. In addition, the College has long provided confidential resources such as the Emmons Heal-4(e t)-6c 0 Tw ull-2(i)-2(a)elpr26.87 rels

has also required that all incoming students complete an online training program, “Alcohol-Wise,” as a mandatory pre-registration requirement. As explained in the College’s orientation materials, Alcohol-Wise is “designed to assist students in making healthy decisions regarding alcohol use in college.” The course discusses “how expectations influence behavior; alcohol’s effect on learning and memory; and how to recognize and respond to an alcohol-related

sanctions against the perpetrator and providing remedies for the complainant and school community, as appropriate.⁷⁷

OCR clarified that this timeframe does not include appeals, but noted that “an unduly long appeals process may impact whether the school’s response was prompt and equitable as required by Title IX.”⁷⁸

remaining five took over 100 days to resolve. Each of those five matters, however, was either reported late in the semester (April or May) or involved multiple allegations. Other factors impacting delays at Occidental included the complexity of the investigation, the timing of the report during the semester, the availability of the witnesses and administrators during school breaks and the transition to a new Title IX Coordinator in the midst of active matters. In some instances, delays were occasioned based upon the request of the parties. The more significant delays, however, involved matters that were initiated in the spring of 2013 and involved timing challenges based on the summer break and the transition within a short time span between two separate interim Title IX Coordinators. While these delays may be deemed reasonable, they nonetheless had a disruptive effect on the lives of the students.

We find that the College made good faith efforts to comply with the time frames as designated in College policy and outlined in OCR's most recent guidance. As noted above, where there were delays, there were reasonable explanations, although not always fully communicated to the parties. We recognize the impact that delays of this nature can have on individual complainants, respondents and community members and how such delays can undermine faith in the process. We encourage the College to remain committed to prompt and equitable resolution of reports and to provide transparent communication where timeframes may need to be extended for good cause.

At Occidental, the criticisms of the investigative process shared with us include:

- x "Investigations were inadequate."
- x "Complainants were not updated enough."
- x "Complainants were contacted too much (had to tell their story too many times)."
- x "Not all witnesses were contacted."
- x "Investigations took too long."
- x "

These perceptions are critical to understand and address. For an educational institution, the investigation of sexual and gender-based harassment and violence is one of the most sensitive and difficult tasks involved in campus responses to sexual and gender-based harassment and violence. The quality and integrity of an investigation is vital in providing a sufficient factual foundation to support determinations of responsibility and establishing faith in outcomes and sanctions. In the context of word-against-word credibility assessments, it is imperative that this aspect of the College's response be conducted by individuals with appropriate training and experience.

According to the 2011 Dear Colleague Letter, Title IX requires adequate, reliable and impartial investigations that are conducted by investigators with sufficient experience or training.⁸² OCR expanded on this guidance in the 2014 Title IX Q&A, noting that "provisions for adequate, reliable, impartial and prompt investigation of complaints require: the opportunity for both parties to present witnesses and evidence; interim measures to be implemented before the final outcome of the investigation; periodic updates on the status of the investigation to be presented to the parties; and the application of the preponderance of the evidence standard."⁸³ OCR has also noted that "a balanced and fair process that provides the same opportunities to both parties will lead to sound and supportable decisions."⁸⁴ Notably, OCR has not provided specific standards of care for investigations beyond broadly capturing concepts such as adequate, reliable, impartial and thorough.⁸⁵

Applying the above standard to Occidental, the investigations we reviewed included the minimum elements identified by OCR: the opportunity for both parties to present witnesses and evidence; interim measures to be implemented before the final outcome of the

Given our decades of experience in conducting sexual misconduct investigations and in training investigators and multi-disciplinary teams nationally, both in the context of criminal investigations and in the educational setting, we have high and exacting standards regarding the quality and nature of investigations. In part because there are no standards of care for campus Title IX investigations, we observe great disparity across the country in the manner in which investigations are conducted and documented. At Occidental, we believe that the College has the opportunity to make meaningful improvements in its investigative practices and protocols. We shared these observations with the College during the summer of 2013. In the August 2013 Interim Sexual Misconduct Policy, the College incorporated the option to engage an outside investigator as needed, and began to do so in the fall of 2013. As noted in our recommendations section below, we encourage the College to continue to explore alternative investigative models to address the above concerns.

There has been great discussion across the country and on the Occidental campus in particular about appropriate outcomes and sanctions and about the concept of umQ]mepproduriugernh particu

found not responsible. The final outcomes for the eight individuals found responsible were as follows:

- x Five respondents were ultimately expelled (63%);
- x One respondent received a one-semester suspension (13%);
- x One respondent received probation as the most significant sanction (13%); and,
- x One respondent received 50 hours of community service and an educational sanction (13%).

With respect to these twelve respondents, four respondents were the subject of two or more allegations. In only one of those cases, however, was the College aware of any reported incident prior to the date of the second or subsequent incident.

- x For one respondent, the conduct allegedly occurred in September 2010 and January 2011, but neither incident was reported to the College until September and October 2011. The respondent was ultimately expelled.
- x For another respondent, the conduct occurred in August 2011 and early fall of 2011 (date unknown), but the incidents were not reported to the College until November 2011 and April 2012, respectively. The respondent received probation for the first incident, and his transcript was held for a year. Because he had already completed his course requirements before the second report resolved, the sanction imposed post-graduation included a prohibition from returning to campus for student or alumni activities.
- x One respondent was the subject of three reports. All three incidents occurred before any of the conduct was reported to the College for follow-up and investigation. The incidents occurred in September 2009, August 2010 and September 2011. The first report to the College was made in 2011, prior to date of the last incident, but the complainant did not share the name of the respondent with the College at the time of the initial report. It was not until October 2011, after the last incident had occurred, that the College first learned the identity of the respondent. The second and third reports were made in November 2011 and March 2012. The respondent was subsequently expelled.
- x In the last matter, the first reported incident of non-consensual sexual contact occurred in August 2011 and was reported in August 2012. The respondent admitted to the conduct and was placed on a three-month probation. In May 2013, four months after the completion of his

probationary period, an incident of non-consensual sexual intercourse involving the respondent, occurring in March 2013, was reported to the College. The respondent has since been found responsible and expelled from the College.

We note that the outcome in each of these complaints is based on the unique facts and circumstances of each incident. Given our retrospective evaluation, we are not positioned to reinvestigate or reevaluate sanctions imposed. However, we recognize the importance of a careful and consistent approach to the imposition of sanctions to ensure that the sanctions are properly tailored to the conduct and reflect consideration of the seriousness and impact of the conduct violation. We also note the value of transparency in outcomes. One way to achieve transparency is to report outcomes in the aggregate to the community with a semester or year delay to protect the identity of those involved in the process.

The Interim Policy tends to both of these goals. It provides a clear description of the range of available sanctions and carefully delineates a list of factors that should be considered by the adjudicator in every case. The range of available sanctions, as set forth in the Interim Policy, includes: warning; censure; disciplinary probation; restitution; removal from campus housing; suspension; expulsion; revocation of admission and/or degree; and withholding degree. Other sanctions may be imposed instead of, or in addition to, these sanctions, including service, education or research projects.⁸⁷ The Interim Policy further provides:

The law and guidance give great deference to an institution to fashion an appropriate sanction. We note that, since we did not reinvestigate or reevaluate the incidents in question, we could not substitute our judgment as to sanction. Recognizing that reasonable minds may differ regarding the appropriate sanction in any given case, in the Interim Policy, the College has sought to address concerns about its sanctioning processes. The goal of the Interim Policy is to create consistency, transparency and realistic expectations by setting forth clear guidance, presumptive sanctioning and consistent sanctioning considerations. This approach is certainly within the parameters of the law and the guidance, which are largely silent as to sanctions.

As with sanctions, the law and the guidance provide educational institutions wide latitude to provide for an appeal of the findings or remedies, so long as the process provides equal access by both parties, prompt and equitable resolution of the appeal by an impartial decision-maker and written notice of the outcome of the appeal.

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the scope of the administrator's job duties. In contrast, we also reviewed correspondence that

implementation. College administrators and front-line staff properly trained in the impacts of trauma and in understanding the many trajectories of healing in the aftermath of a traumatic incident can learn how to better support complainants in these initial conversations, and importantly, how to buttress the effectiveness of these communications.

In the absence of clear and effective communication, particularly in the current context, the result is often a negative inference. As an example, in *Why is OSAC Filing Federal Complaints against Occidental College?*, OSAC identified a concern that students had been discouraged from reporting. In one example, OSAC noted that a student was told that “They should not go to the police (e.g., by saying that the “LAPD wasn’t going to be as nice” as Oxy).” As an outside observer, without knowing the identity of the parties or the circumstances of the conversation, we nevertheless understand some of the underlying dynamics of such a conversation. Acknowledging that there are examples of miscommunication at campuses across the country, we often observe a disconnect between the

In addition to our engagement, frank assessments and recommendations over the past eighteen months, the College has taken what we believe to be significant steps to enhance the level of resources and accessible information available to students, improve the immediate responsi2(m)-d[(t)-2(Mf0 Tchv0pof0 Tt4(1)-2(e)4m)3(or)3(m-2(2((a)onduc2(m)-2(e, (s)-1(,r)3(md)4(di)-(ol)-2

- x Appointment of Deputy Title IX Coordinators (March 2014)
 - o Jacalyn Feigelman, Associate Director of Human Resources
 - o Alison Haehnel, Title IX athletic issues
- x With funds from a U.S. Justice Department grant, hired Karla Aguilar as the full-time Project S.A.F.E. Program Coordinator and Prevention Education Specialist (June 2014)
- x Adopted a new case management software system, designed specifically for higher education recordkeeping, to improve recordkeeping, document management, and analyze trends and patterns through an analytics component (July 2014)
- x Hired Veronika Barsegyan as the College's first full-time Clery Administrator (August 2014)
- x Title IX Office created and distributed new brochures on how to report, available resources, rights and responsibilities of complainants and respondents and responsible employees (August 2014)
- x Revised slideshows describing each stage of the formal resolution process to be shown to complainants and respondents (August 2014)
- x Project Safe created a print empowerment guide for survivors (August 2014)
- x Developed and implemented more formal Title IX office protocols for complaint assignment to investigators and communications with participants in the process (August 2014)
- x Hired Leora Freedman, former University Counsel for California State University, as full-time legal counsel (August 2014)
- x Solicited recommendations for faculty to serve as Deputy Title IX Coordinator (September 2014)
- x Hired Victor Clay, a 28-

- x Hired student employees to translate training materials into Spanish (September 2014)
- x Title IX office update e-mail sent to community (September 2014)
- x Training for advisors (September 2014)
- x Office of Institutional Research to draft a campus climate survey to be administered during the current 2014-15 academic year

These actions reflect a significant commitment to holistically responding to sexual and gender-based harassment and violence by integrating the evolving requirements of the regulatory framework and an understanding of the dynamics of sexual and gender-based harassment and violence into current policies, procedures and practices. These efforts, which are focused on prevention and education as well as effective investigative and remedial responses, reflect a commitment that goes beyond the mere “check-the-box” compliance requirements. Consistent with the institutional values as set forth in the Interim Policy, these efforts reflect the

policies and administration. We especially encourage those individuals to contact the Title IX Coordinator to explore current options for support, accommodations, protective measures or resolution of a complaint.

In addition, we encourage Occidental to review all anonymous and informal reports received for the past two years, and to ensure that each complainant known to the College receives information about resources, accommodations and current options for reporting and the resolution of a report, both on-campus and off-campus. We note that the College has established a practice of providing such information in response to all reports where the complainant's identity is known, and we encourage the College to take steps to ensure consistent adherence to that practice.

We recommend that the College finalize the Interim Policy. We recommend that the College consider the following steps in finalizing the policy:

- 1) Clarify the reporting responsibilities of all employees, including faculty and staff, to integrate the multiple reporting requirements and systems under the Clery Act (Campus Security Authority), Title IX (responsible employee), mandatory child abuse reporting and California state law (obligations of health care professionals);
- 2) Draft procedures for resolution of complaints against staff and faculty (in progress);
- 3) Incorporate expanded guidance from the pending regulations implementing the 2013 Reauthorization of VAWA, including the requirement that the parties may be accompanied by an advisor of their choice (in progress); and
- 4) Supplement the policy with additional resource documents as necessary to increase its accessibility, reinforce clarity and facilitate ongoing delivery of relevant information.

Although the College has continued to expand staff and dedicate resources to this critical area, we recommend that the College supplement the personnel and resources available to

We re

As a second step, we recommend drafting internal operating procedures that funnel all information to a centralized Title IX assessment, outline workflow steps, build mechanisms for timely coordination of information and outline the institutional sequence following a report.

We recommend that the College identify a sustainable investigative model that protects the safety of complainants and promotes accountability for respondents in the context of fair and impartial processes. Given the climate and context as it relates to student affairs, this may involve hiring a dedicated Title IX investigator or, as the College is currently doing, deciding to engage external investigators on a contract or as-needed basis. Depending on the structure of the investigative model, the College may choose to eliminate the use of a hearing panel and streamline administrative responses. There are many discretionary aspects in drafting a new investigative model. As options, the College should consider:

- 1) The use of current trained and experienced employees, the hiring of a dedicated Title IX investigator, and/or the continued retention of external investigators;
- 2) Exploring options in the scope of the investigator's role, including allowing the investigator to gather the facts, make a threshold determination, or make the final determination, by a preponderance of the evidence, whether there is sufficient information to find that the policy has been violated.
- 3) Depending on the role of the investigator, designating an individual administrator, panel, or external adjudicator as the decision-maker and/or disciplinary authority.

Regardless of the chosen model(s), we recommend that the College implement consistent investigative protocols that address: forens 94fohe n(1)-22(to)2(c)6(o)2(l)s]TJ2(to)2Tc3.3sH (3aCe1(e

employment environment or create barriers to reporting. This may include: an assessment of the campus climate; an evaluation of the role of alcohol or other drugs on campus and the efficacy of existing alcohol and other drug policies; and an assessment of any areas of risk for students. A canvassing of all campus community members through a variety of methods – online and in-person, both anonymous and in open forums – serves a critical role in identifying key issues, assessing campus climate as reflected in recent OCR guidance, identifying educational and training needs for all constituencies and, ultimately, eliminating a hostile environment based on a greater understanding of the context. It also demonstrates the College’s commitment to addressing issues of sexual violence directly and openly.

There is no legal requirement, at this time, that the College conduct a climate assessment. In the 2011 Dear Colleague Letter, OCR recommended that schools “conduct[], in conjunction with student leaders, a school or campus ‘climate check’ to assess the effectiveness of efforts to ensure that the school is free from sexual harassment and violence, and us[e] the resulting information to inform future proactive steps that will be taken by the school.”⁹³ In the Title IX Q&A, OCR also suggested that a school consider conducting climate surveys, but framed the goal as “to learn more about the prevalence of sexual violence at the school,” rather than evaluati5B66c 0 Tw 32.96 00 t

We recognize that there are many methods of conducting climate assessments, many of which do not i

- 5) Continue to provide regular and ongoing integrated training to all employees that addresses reporting responsibilities for campus employees regarding:
 - a. Clery: Campus Security Authority
 - b. Title IX: Responsible Employee
 - c. Mandatory child abuse reporting
 - d. California state law (obligations of health professionals).
- 6) Review existing training programs to assure that they encompass the expanded scope of content under the Title IX Q & A. A training guide is provided as Appendix VII.

informed responses. Occidental has demonstrated meaningful and ongoing efforts to serve its students well – to overhaul policies and procedures, change personnel and structure and continually hold a mirror to its own actions.

We live in a community of diverse ideas and beliefs. This means there may be more than one “right” way to respond to sexual or gender-based harassment and violence.⁹⁷ Our

APPENDIX I

Appendix I:

Our Efforts to Engage Individual Community Members

In early April, 2013, during our first visit to Occidental, we met with faculty and student members of the Oxy Sexual Assault Coalition (OSAC). During that meeting, we expressly requested to meet with complainants in order to directly understand their concerns. OSAC faculty members present that day specifically told us that they would not permit us to meet with complainants. We continued, however, to express our interest in doing so, both in that initial meeting and by providing other opportunities, including community forums, the online suggestion box and an open invitation to the campus for any individual who wished to speak with us to have individual meetings. Many community members, including complainants, took advantage of those invitations and spoke with us.

And yet, we still felt that there were more voices to be heard at Occidental. In particular, we felt it important to understand the perspective of those individuals who had negative experiences with the College's policies and procedures. We learned that a Title IX complaint had been filed with the Office for Civil Rights outlining specific concerns by students and faculty, but that complaint has not been made available to the College or to us. On our second campus visit in late April 2013, at our request, we again met with OSAC. We also met with Oxy Men Against Rape (OMAR). And in July, in preparation for our August campus visit, the College directly contacted faculty members affiliated with OSAC on our behalf to request a meeting with complainants:

On Tue, Jul 30, 2013 at 5:49 PM, Rebecca Stolz <rstolz@oxy.edu> wrote:

Dear Caroline [Heldman], Danielle [Dirks], James [Ford] and Richard [Mora],

Gina Smith and Leslie Gomez, who are conducting an independent review of Oxy's sexual misconduct policies and procedures, will be on campus August 23-26 to meet with various groups. I am assisting them with scheduling for this visit.

Would you please let me know how best to extend an invitation to OSAC and OMAR members to meet with Gina and Leslie while they are on campus? Would the two groups prefer a joint meeting, or separate meetings?

Please let me know how best to proceed, or if I should contact someone else.

Thank you!

Rebecca

The College received the following response:

From: Caroline Heldman <heldman@oxy.edu>

Date: Wed, Jul 31, 2013 at 3:29 PM

Subject: Re: OSAC and OMAR ~~me~~ meetings with Gina & Leslie?

To: Rebecca Stolz <rstolz@oxy.edu>

Cc: Danielle Dirks <dirks@oxy.edu>, Richard Mora <rmora@oxy.edu>, James Ford <jford@oxy.edu>

Dear Rebecca,

Thank you for this invitation. OSAC will not be participating with Smith and Gomez's investigation since our previous meetings with these attorneys have been

Over the past year, we have sought input of survivors in our review of past cases. While we've heard from many, we believe that there are others with concerns and experiences that may be valuable to our review. Is there a forum or shared list serve for OSAC members where you would be willing to post the message below?

Thank you,

Leslie and Gina

To student members of OSAC,

In April 2013, we were tasked with conducting an external review of the College's response to cases over the past two years. To us, a central part of that review is understanding the perspectives and experiences of those who have reported, felt discouraged from reporting, participated in an investigation or hearing, or otherwise intersected with the College's Sexual Misconduct Policy ns alrevo us,

many other Oxy community members, our independence and our ability to call it as we see it is critical to our effectiveness. Since beginning our careers in the Philadelphia District Attorney's Office 2 to 3 decades ago, we have devoted our lives to championing the rights of victims, working tirelessly for justice and seeking improvement in societal responses to sexual violence. The underpinnings of our work at Oxy are no different.

While we have read the Survivor Stories on the OSAC webpage and incorporated that information in our review, it is no substitute for understanding the individual student experience. In short, we believe that there are still more voices to be heard at Occidental before we can complete our report. As we shared with the Occidental Weekly on February 7, 2014:

In synthesizing the information learned to date, however, we felt that we were still missing some voices in the conversation. Before completing our final report, we are taking an additional opportunity to invite Occidental community members to participate in our review. The suggestion box remains open, but we are also available to speak directly with any student, staff or faculty member who would like to be heard on the issues before we conclude our review.

Please know that we respect the autonomy of any survivor to choose to speak or decline to speak with us. We understand that the choice to do so is a deeply personal one. Please also know that any information shared by a survivor will be used in an aggregate form, meaning that the survivor's name and other identifying information will not be shared with the College by us. Our goal is to have a sensitive, informed conversation – in person, by telephone or by Skype – with any survivor interested in speaking with us. We are hopeful that many of you consider taking the time to speak with us, or if you prefer, to communicate by email or through the anonymous Suggestion Box.

We can be reached at:

APPENDIX II

Appendix II:

List of Individuals/Groups Who Provided Foundation for Recommendations

- € Participants in the process:
 - o Individual complainants and parents
 - o Investigators
 - o Advisors
 - o Hearing panel members
 - o Appeals committee members
- € Individual faculty, staff and students who spoke with us confidentially
- € Senior Leadership, including President Jonathan Veitch, Dean of College and Vice President for Academic Affairs Jorge Gonzalez, Vice President for Finance and Planning Amos Himmelstein, Dean of Students and Vice President for Student Life Barbara Avery, Vice President for Institutional Advancement Shelby Radcliffe, Associate Vice President for Strategic Initiatives Brett Schraeder, Associate Vice President and Director of Athletics Jamie Hoffman and Vice President for Admission and Financial Aid Vince Cuseo
- € Current and former Title IX and Deputy Title IX Coordinators, including Lauren Carella, Irene Girton, Erica O'Neal Howard, Maryanne Horowitz, Richard Ledwin and Jaime Hoffman
- € Faculty Council as of April 2013, including professors Amy Lyford, Aram Nersissian, Julie Prebel and Susan Gratch
- € Campus Safety members, including John Nieto, Tim Chang and Sean Kennedy
- € OSAC, including professors Caroline Heldman, Danielle Dirks, Lisa Wade, Richard Mora and student members
- € Oxy Men Against Rape (OMAR), including Professor Richard Mora and several students
- € February 2013 Sexual Assault Task Force, including Vice President for Institutional Advancement Shelby Radcliffe (Co-Chair), Assistant Professor Danielle Dirks (Co-Chair), Aja-Fullo Sanneh '13, Sr. Associate Dean of Students and Title IX Coordinator Erica O'Neal Howard, Professor John Swift, Lead Nurse Practitioner Roberta Dacus, and Hailey Jures '14

€

- Faculty Meetings, April 23, 2013 and August 26, 2013
- Alumni Board of Governors
- Town Hall, Homecoming/Family Weekend, October 2013
- Steve Healy, Margolis Healy and Associates
- Online suggestion box, which provided direct, candid and typically anonymous feedback from more than 100 Occidental community members, including, but not limited to, staff members, parents or other relatives, faculty members, current students, alumni and complainants
- Dear Oxy Tumblr <http://dearoxy.tumblr.com/>
- OSAC website <http://oxysexualassaultcoalition.wordpress.com/> including
 - o Why is OSAC filing Title IX and Clery Federal Complaints Against Occidental College
<http://www.slideshare.net/osacoalition/why-is-osac-filing-tite-ix-and-clery-federal-complaints-against-occidental-college>
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APPENDIX III

Appendix III:

Overview of Regulatory Framework

I. Title IX

This section discusses three categories of legal authority relevant to Title IX: (1) the Title IX statute, 20 U.S.C. § 1681 et seq, which sets forth the law; (2) Title IX's implementing regulations, 34 C.F.R. Part 106, which have the force and effect of law; and (3) guidance documents from the Department of Education's Office for Civil Rights (OCR). Specifically, OCR has issued several "significant guidance documents" that constitute policy guidance to assist schools with meeting their Title IX obligations. The most notable of these guidance documents are the April 4, 2011 Dear Colleague Letter ("2011 DCL") and the April 29, 2014 Questions and Answers on Title IX and Sexual Violence ("Title IX Q&A"). Links to these and other guidance documents from OCR are available in Appendix IV, Links to Federal Law, Regulations and Guidance Sexual and Gender-Based Harassment and Violence, Dating Violence, Domestic Violence and Stalking.

Although guidance documents from OCR do not add requirements to applicable law, they provide information and examples to

perhaps best known for its mission to achieve gender equity in athletic programming, Title IX's protections are much broader in scope. It applies to all forms of sexual discrimination, including sexual harassment, sexual misconduct and sexual violence.⁷ Title IX applies equally to students, staff and faculty.⁸ It protects students and employees from sexual harassment by any school

Once a school has notice of a sexual harassment or violence allegation, it must promptly take steps to protect the complainant and the campus community as necessary, including taking interim steps while the investigation is pending.¹⁹ Examples of interim remedies may include no-contact orders, adjustments to academic schedules or living arrangements as appropriate, academic support, providing counseling or emotional support and allowing for other equitable solutions or responses for both parties.²⁰

Under Title IX, if a school knows or reasonably should know about sexual harassment that creates a hostile environment, the school must eliminate the harassment, prevent its recurrence and address its effects.²¹ Once a school is on notice of off-campus sexual violence, it must assess whether there are any continuing effects on campus or in an off-campus education program or activity that are creating or contributing to a hostile

The Daily Crime Log must include all crimes reported to campus police or security for the required geographic location.⁴⁰ The geographic location includes all reported crimes that occur “on campus, in or on noncampus buildings or property or on public property within the campus or immediately adjacent to and accessible from the campus,” as well as all crimes that occur within the patrol jurisdiction of the campus police.⁴¹ The patrol jurisdiction comprises any property that does not meet any Clery geographic area definitions but is regularly provided with police or security patrol services by campus security.⁴²

The Clery Act requires timely warning notification to the campus community of all Clery Act crimes that are reported to Campus Security Authorities or local police and are considered by the school to represent a threat to students and employees.⁴³ Warnings are to be made as soon as the pertinent information is available, so as to effectively alert the community of a continuing threat to safety and in the prevention of similar crimes.⁴⁴ Schools must issue a timely warning when a Clery crime is considered by the school to represent a “serious or continuing” threat to students and employees.⁴⁵ The decision to warn is to be made by the school on a case-by-case basis taking into consideration the nature of the crime, the threat of continuing danger and the coordination with law enforcement.⁴⁶ If the school concludes that a warning is appropriate, the warning should be in a format that is reasonably likely to reach the entire campus community, e.g., via e-mail, intranet, text message, etc.⁴⁷

Finally, the Clery Act mandates that schools develop policies, procedures, and programs regarding sex offenses.⁴⁸ The reporting procedures should outline the procedures that a student should follow if a sexual offense occurs, including who should be contacted, the importance of preserving evidence, and how the alleged offense should be reported.⁴⁹ The school should also have procedures for disciplinary action, including an equal right to have

⁴⁰The Handbook for Campus Safety and Reporting, *supra*, at 91; 20 U.S.C. § 1092 (f)(4)(A); 34 C.F.R. § 668.46(f).

⁴¹The Handbook for Campus Safety and Reporting, *supra*, at 91; see also 34 C.F.R. § 668.46(f).

⁴²The Handbook for Campus Safety and Reporting, *supra*, at 92.

⁴³ 20 U.S.C. § 1092 (f)(3); 34 C.F.R. § 668.46(e).

⁴⁴ The Handbook for Campus Safety and Reporting, *supra*, at 111.

⁴⁵ *Id.* at 118; see also 20 U.S.C. § 1092 (f)(3) (requiring that campus security “make timely reports to the campus community on crimes considered to be a threat to students and employees”); 34 CFR 668.46(e)(iii) (requiring warnings when crimes are “[c]onsidered by the institution to represent a threat to students and employees”).

⁴⁶ The Handbook for Campus Safety and Reporting, *supra*, at 112-13.

⁴⁷ *Id.* at 114.

⁴⁸ 20 U.S.C. § 1092 (f)(8); 34 C.F.R. § 668.46(b)(11).

⁴⁹ 20 U.S.C. § 1092 (f)(8)(B)(iii); 34 C.F.R. § 668.46(b)(11)(ii).

persons present during the proceeding, to be informed of the outcome and the sanctions imposed, and to speak about the offense.⁵⁰ Additionally, the policy should list the potential sanctions for offenses.⁵¹ The victim should be informed of his or her right to call police (both local and on-campus), the availability of on- and off-campus counseling and mental health services, and the options for reasonable accommodations in general academic and living situations after an alleged sexual assault incident.⁵²

III. Overview of Section 304 of the 2013 Reauthorization of the Violence Against Women Act (VAWA)

On March 7, 2013, President Barack Obama signed a bill reauthorizing the Violence against Women Act (VAWA).⁵³ Section 304 of VAWA revised schools' requirements with respect to education and prevention, reporting and policy and procedures with respect to sexual assault. It also expanded those same categories of requirements to domestic violence, dating violence and stalking.

Under the new data collection requirements, VAWA requires that schools: disclose incidents of domestic violence, dating violence, sexual assault and stalking, in annual campus crime statistic reports; expand the definition of reportable hate crimes to include bias crimes that are based on an individual's national origin or gender identity; and withhold the names of complainants as confidential in early warnings notifications. Schools must also provide information about how they will protect

information regarding risk reduction; and the school's ongoing prevention and awareness campaigns for students and faculty.

Furthermore, VAWA requires that a school's written policy contains all of the information taught in the school's education program. The policy must also contain: possible sanctions or protective measures that the school may impose following a final determination of rape, acquaintance rape, domestic violence, dating violence, sexual assault or stalking; procedures individuals should follow if a sex offense, domestic violence, dating violence, sexual assault or stalking occurs; information regarding the importance of preserving evidence; identification of the administrator to whom alleged offenses should be reported; options regarding notifying law enforcement and campus authorities about alleged offenses, including

investigators, and adjudicators) have training in the recipient's grievance procedure"; "ensure that all persons involved in implementing grievance procedures (e.g. Title IX Coordinators, investigators, and adjudicators) have training in confidentiality requirements"; and "in sexual violence cases, the fact-finder and decision-maker should have adequate training or knowledge regarding sexual violence."⁵⁴

IV. The Coordinated and Integrated Approach

In implementing Clery Act, Title IX and VAWA requirements, educational institutions are tasked with integrating complex and at times inconsistent provisions of each of these three statutes to provide integrated, coordinated and compliant institutional responses. In order to appropriately respond to incidents of sexual and gender-based harassment and violence, intimate partner violence and stalking, institutions must necessarily consider how these laws intersect, overlap, and in some instances, conflict. College universities can achieve seamless and effective service to students and employees by investing the time to develop a comprehensive and coordinated understanding of the applicable laws and guidance.

Colleges and universities are tasked with providing a safe and nondiscriminatory educational environment.⁵⁵ In the arena of sexual harassment, sexual assault, dating violence, domestic violence and stalking, schools are responsible for prevention, investigation, evaluation and adjudication of allegations of sexual violence – an arena traditionally reserved for law enforcement officers and prosecutors seemingly beyond the traditional role of an institution of higher education. The reality is that current law requires that schools take appropriate action under campus policies, regardless of whether the matter is reported to law enforcement.⁵⁶

At the same time, schools must coordinate with law enforcement. A criminal investigation and a Title IX investigation are two distinct processes; the same procedural protections and legal standards are not required in each.⁵⁷ The purpose of a criminal investigation is to determine whether an individual violated a law.⁵⁸ If an individual is found guilty, the individual may be imprisoned or subject to other criminal penalties.⁵⁹ Therefore, the Constitution provides criminal defendants with the right to a speedy trial, the right to counsel, the right to a speedy trial, the right

⁵⁴ See generally January 19, 2001 Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties - Title IX; 2011 DCL.

⁵⁵ Title IX Q&A, at C-3, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

⁵⁶ Id. at F-2, F-3.

⁵⁷ Id. at F-2.

⁵⁸ Id.

⁵⁹ Id.

to a jury trial, the right against self-incrimination and the right to confrontation.⁶⁰ In addition, police and prosecutors usually have discretion to decide which

In assessing the effectiveness of policies and procedures, schools should begin the assessment with an understanding of the context in which we conceptualize in three broad categories: first, the legal mandates (Title IX, the Clery Act, and VAWA, to name a few); second, the dynamics of sexual harassment, sexual assault, dating and domestic violence, stalking and the impacts of trauma; and finally, each institution's unique culture, climate, policies and procedures, personnel, resources and underlying institutional values. By understanding the intersection of these three distinct categories, a school can develop a coordinated and integrated institutional response that is principled and intentional to achieve compliance and tend to the welfare of students, faculty and staff.

To successfully implement a coordinated response, we recommend that institutions: designate an instit

- € An independent Title IX Coordinator with sufficient authority and resources to effectively navigate overlapping responsibilities;
- € A similarly situated independent Clery Administrator;
- € A coordinated multi-disciplinary response team to provide support, resources and accommodations and to facilitate informed decision-making;
- € A centralized reporting and review process to ensure consistent application of policies and procedures;
- € An initial assessment in each report designed to address: the protection of the complainant and the campus community; whether there have been other sexual violence complaints about the same respondent; whether the respondent has past arrests or records indicating a history of violence; the protection of the complainant's privacy to the greatest extent possible; the consistent provision of interim remedies and measures; and the identification of the appropriate institutional response (remediation-based vs. sanctions-based);
- € Separation of support and advocacy functions from impartial investigative and adjudicative processes;
- € Reliable and thorough investigations by experienced and trained investigators;
- € Procedures for resolution that recognize the balance between complainant autonomy/agency and fair and impartial process that includes notice and an opportunity to be heard;
- € Regular communication with the parties and transparency about processes to maintain the trust of individual stakeholders and the community;
- € Consistent training, education and prevention programs; and
- € Centralized record-keeping and documentation for tracking and monitoring reported incidents, monitoring patterns and assessing campus climate.

APPENDIX IV

- 2013 University of Montana Letter

APPENDIX V



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President Jonathan Veitch
Page 2
April 30, 2013

- Sexual Harassment Policy, Faculty Handbook

2012 Annual Security Report

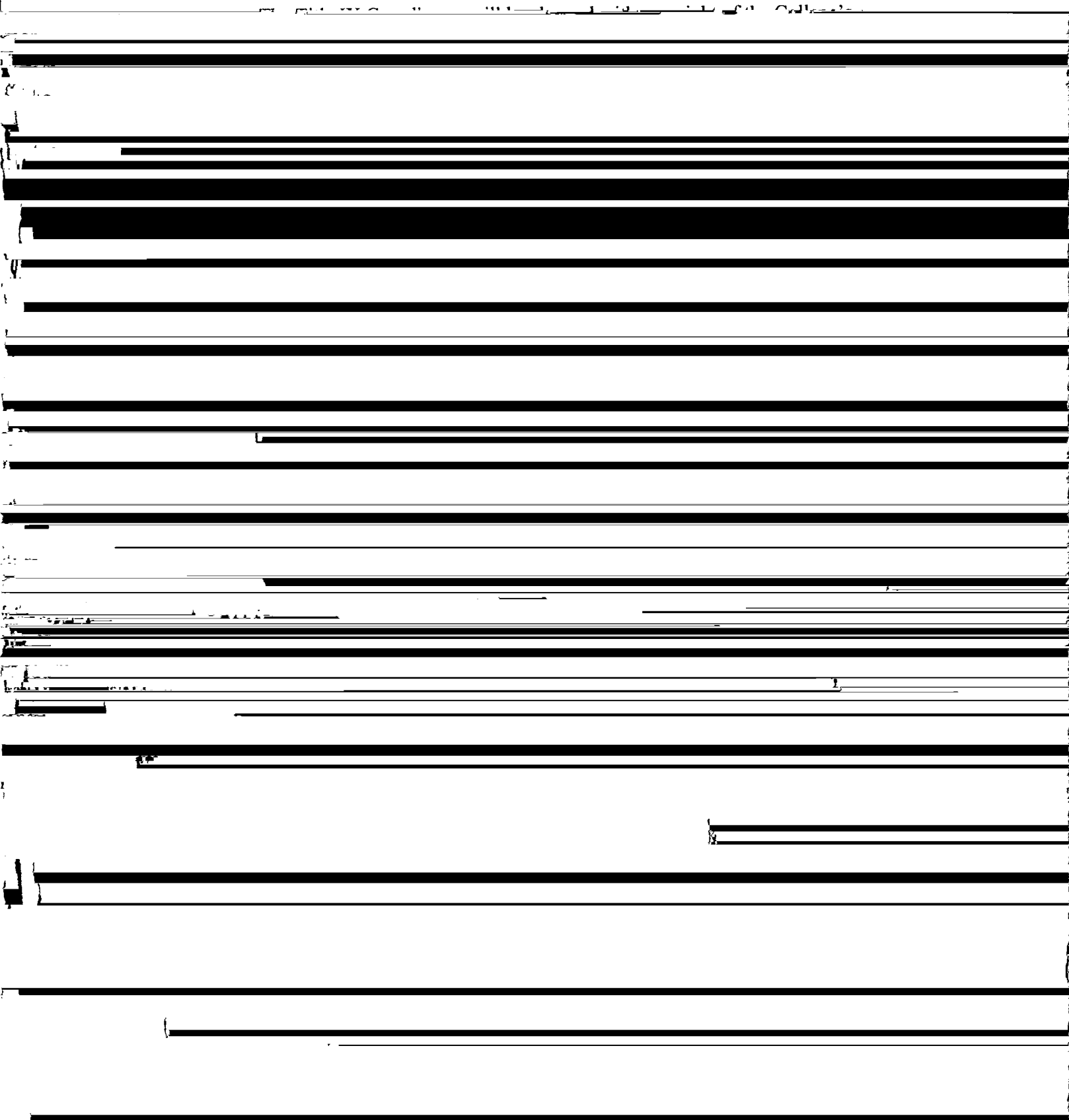
President Jonathan Veitch

Page 3

April 30, 2013

College's response to allegations of sexual assault. As a caveat to this initial communication, we

President Jonathan Veitch
Page 4
April 30, 2013



[REDACTED]

President Jonathan Veitch
Page 6
April 30, 2013

Next Steps

Our engagement over the next several months will encompass the following tasks: policy development, assistance in the implementation of policy and procedure and a review of past

APPENDIX VI

RUTH JONES

LEADERSHIP PROFILE

- ❖ Attorney with track-record of instructional and administrative leadership; independent thinker who values fairness and finds pragmatic ways to negotiate, resolve disputes and manage change; familiar with post-secondary institutions and their operating protocols;

- ❖ Self-starter who identifies potential challenges ahead of time and designs cost effective methods to address them quickly and completely;
- ❖ Results-driven team leader who supports capacity-building and treats others with professional respect; adept at devising customized programs to implement best practices;
- ❖ Engaging educator with a gift for asking probing questions, inviting students to investigate issues and for finding innovative strategies to develop critical thinking skills in others;

... by internally and externally by email announcements about scholarly

and

Presiding Member Student Disciplinary Committee, 2009-2010

- Faculty-and-student committee responsible for the adjudication of putative violations of the student code; implemented adjudication process consistent with institutional policy and the law; presided at disciplinary hearing; ruled on motions and drafted decisions and committee reports.

Dean Search Committee, 2000-2001; 2001-2002

- Identified outreach strategy to minority communities to increase applicant pool diversity; and

information and create accurate candidate profiles.

DEPAUL UNIVERSITY COLLEGE OF LAW

Spring 2008

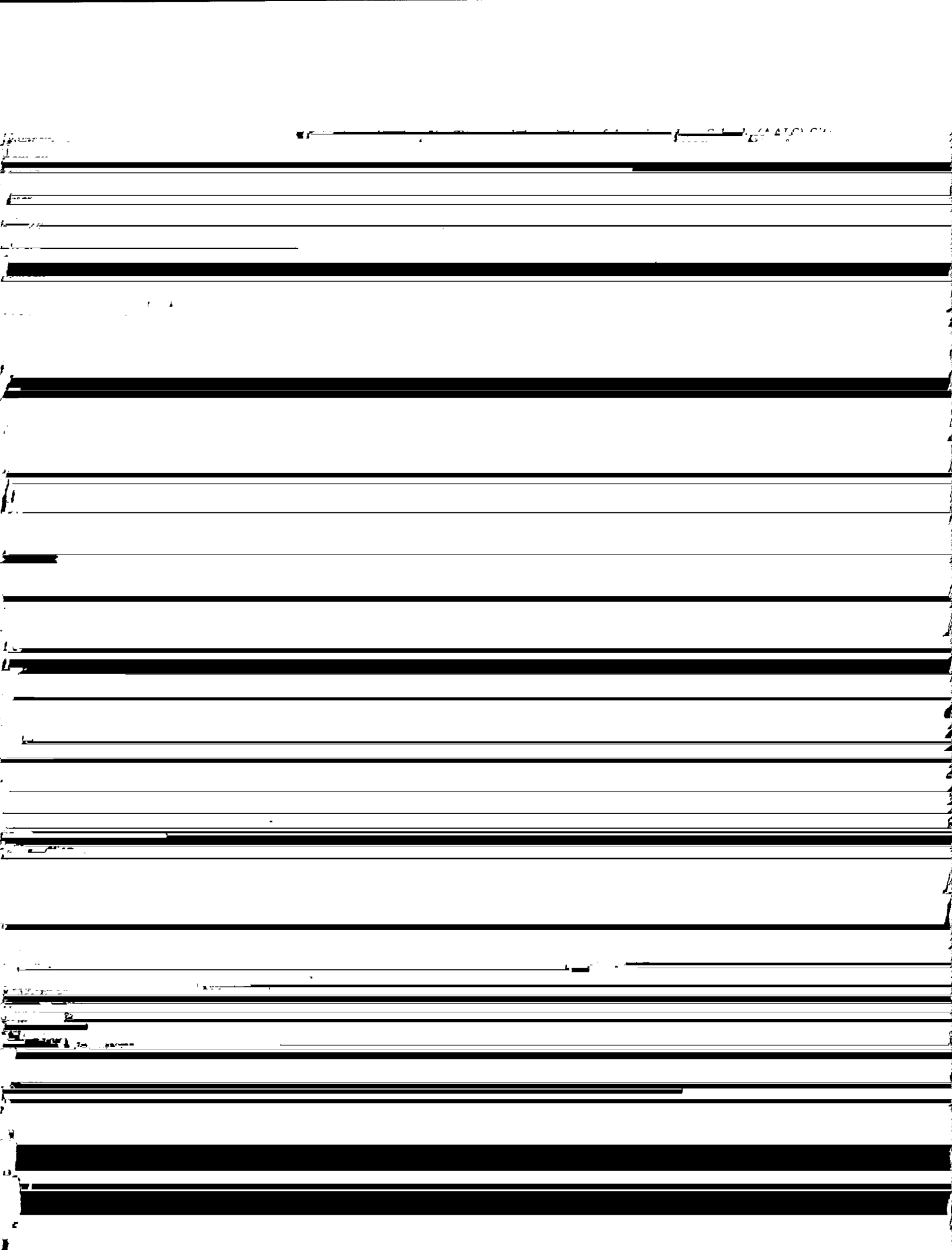
SUFFOLK UNIVERSITY SCHOOL OF LAW
Visiting Professor of Law

Fall 2007

FORDHAM UNIVERSITY SCHOOL OF LAW
Adjunct Clinical Professor of Law

1994-1996

1 1 2000



APPENDIX VII

Appendix VII:

Training and Education Guide

I. Title IX Training Mandates

Title IX requires training of all community members regarding what constitutes sexual harassment and sexual violence, the institution's policies and disciplinary procedures and the consequences of violating those policies.⁷⁴ Moreover, all implementers (persons involved in implementing the grievance procedures, including the Title IX Coordinator, investigators and adjudicators) must have training or experience in responding to complaints of sexual harassment and sexual violence and in the institution's grievance procedures.⁷⁵

On April 29, 2014, in its Questions and Answers on Title IX and Sexual Violence, OCR provided further guidance regarding Title IX and sexual violence training that institutions should provide to their employees.⁷⁶ OCR noted that, while there is no minimum number of hours required, training could be provided on a regular basis. Each school should determine, based on its particular circumstances, how training should be conducted, who has the relevant expertise required to conduct the training and who should receive the training, to ensure that the training adequately prepares employees, particularly responsible employees, to fulfill their duties under Title IX.⁷⁷ Training should cover the following areas:

- € Responsible employees with the authority to address sexual violence need to know how to respond appropriately to reports of sexual violence and need to know that they are obligated to report sexual violence incidents to the Title IX coordinator or other appropriate official. This reporting includes the names of the alleged perpetrator and student involved in the sexual violence, as well as relevant facts including the date, time and location, although efforts should be made to comply with requests for confidentiality from the complainant. All other employees should know how to respond to reports of sexual violence.⁷⁸
- € Responsible employees should understand that they do not need to determine whether the alleged sexual harassment or sexual violence actually occurred or that a hostile environment has been created before reporting an incident to the school's Title IX coordinator. Because the Title IX coordinator should have in-depth knowledge of Title IX and Title IX complaints at the school, the coordinator is likely to be in a better

⁷⁴ 2011 DCL at 14-15.

⁷⁵ Id. at 12

⁷⁶ Title IX Q&A at 39.

⁷⁷ Id.

⁷⁸ Id. at 38.

- o rights to file a Title IX complaint with the school and to report a crime to campus or local law enforcement.⁸²

All persons involved in implementing a school's grievance procedures (Title IX coordinators, others who receive complaints, investigators and adjudicators) must have training or experience in handling sexual violence complaints and in the operation of the school's grievance procedures.⁸³ OCR also notes:

In rare circumstances, employees involved in implementing a school's grievance procedures may be able to demonstrate that prior training and experience has provided them with competency in the cases covered in the school's training. For example, the combination of effective prior training and experience investigating complaints of sexual violence, together with training on the school's current grievance procedures, may be sufficient preparation for an employee to resolve Title IX complaints consistent with the school's grievance procedures. In-depth knowledge regarding Title IX and sexual violence is particularly helpful. Because laws and school policies and procedures may change, the only way to ensure that all employees involved in implementing the school's grievance procedures have the requisite training or experience is for the school to provide regular training to all individuals involved in implementing the school's Title IX grievance procedures, even if such individuals also have prior relevant experience.⁸⁴

The training for implementers should include:

- € information on working with and interviewing persons subjected to sexual violence;
- € information on particular types of conduct that constitute sexual violence, including same-sex sexual violence;
- € the proper standard of review for sexual violence complaints (preponderance of the evidence);
- € information on consent and the role drugs and alcohol can play in the ability to consent;
- € the importance of accountability for individuals found to have committed sexual violence;
- € the need for remedial actions for perpetrator, complainant and school community;

⁸² Id. at 38-39.

⁸³ Id. at 40.

⁸⁴ Id.

- € how to determine credibility, how to evaluate evidence, and weigh it in an impartial manner;
- € how to conduct investigations;
- € confidentiality;
- € the effects of trauma, including neurobiological change; and
- € cultural awareness training regarding how sexual violence may impact students differently depending on their cultural backgrounds.⁸⁵

Schools should provide age-appropriate training to their students regarding Title IX and sexual violence.⁸⁶ Training may be provided separately as part of the school's broader training on sex discrimination and sexual harassment.⁸⁷ However, sexual violence is a unique topic that should not be assumed to be covered adequately in other educational programming or training provided to students.⁸⁸ The school may want to include this training in its orientation programs for new students; training for student athletes and members of student organizations; and back-to-school nights.⁸⁹ A school should consider educational methods that are most likely to help students retain information when designing its training, including repeating the training at regular intervals.⁹⁰ OCR recommends that, at a minimum, the following topics (as appropriate) be covered in this training:

- € Title IX and what constitutes sexual violence, including same-sex sexual violence, under the school's policies;
- € the school's definition of consent applicable to sexual conduct, including examples;
- € how the school analyzes whether conduct was unwelcome under Title IX;
- € how the school analyzes whether unwelcome sexual conduct creates a hostile environment;
- € reporting options, including formal reporting and confidential disclosure options and any timeframes set by the school for reporting;

⁸⁵ Id.

⁸⁶ Id. at 41.

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ Id.

- € the school's grievance procedures used to process sexual violence complaints;
- € disciplinary code provisions relating to sexual violence and the consequences of violating those provisions;
- € effects of trauma, including neurobiological changes;
- € the role alcohol and drugs often play in sexual violence incidents, including the deliberate use of alcohol and/or other drugs to perpetrate sexual violence;
- € strategies and skills for bystanders to intervene to prevent possible sexual violence;
- € how to report sexual violence to campus and local law enforcement and the ability to pursue law enforcement proceedings simultaneously with a Title IX grievance; and
- € Title IX's protections against retaliation.⁹¹

The training should also encourage students to report incidents of sexual violence and should explain that students (and their parents or friends) do not need to determine whether incidents of sexual violence or other sexual harassment created a hostile environment before reporting the incident.⁹² OCR recommends that a school inform students that the school's primary concern is student safety and that use of alcohol or drugs never makes the survivor at fault for sexual violence.⁹³ It is also important for a school to educate students about the persons on campus to whom they can confidentially report incidents of sexual violence, including the offices or individuals who can provide resources such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services and legal assistance.⁹⁴

II. VAWA Training Mandates

The Violence Against Women Reauthorization Act of 2013 (VAWA) also requires schools to develop education, primary prevention and awareness programs for all incoming students and new employees, and ongoing prevention and awareness campaigns for students and faculty.⁹⁵ VAWA requires education programs to promote the awareness of rape,

⁹¹ Id.

⁹² Id. at 41-42.

⁹³ Id. at 42.

⁹⁴ Id.

⁹⁵ Section 304 of the VAWA, Pub. L. 113-4, Violence Against Women Reauthorization Act of 2013 (Mar. 7, 2013).

acquaintance rape, sexual assault, domestic violence, dating violence and stalking.⁹⁶ Under VAWA, educational and training programs must include:

- € a statement that the school prohibits the offenses of domestic violence, dating violence, sexual assault and stalking;
- € the definition of domestic violence, dating violence, sexual assault and stalking in the applicable jurisdiction;
- € the definition of consent, in reference to sexual activity, in the applicable jurisdiction;
- € safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene where there is a risk of domestic violence, dating violence, sexual assault or stalking against a person other than such individual;
- € information on risk reduction to recognize warning signs of abuse behavior and how to avoid potential attacks;
- € possible sanctions or protective measures the school may impose following a final determination of an institutional disciplinary procedure regarding sexual assault, domestic violence, dating violence or stalking;
- € procedures victims should follow if a self-defense, domestic violence, dating violence, sexual assault or stalking has occurred, including information in writing about:
 - o the importance of preserving evidence as may be necessary to the proof of criminal domestic violence, dating violence, sexual assault or stalking, or in obtaining a protection order;
 - o to whom the alleged offense should be reported;
 - o options regarding law enforcement and police authorities, including notification of the victim's options to:
 - f* (1) notify proper law enforcement authorities, including on-campus and local police,
 - f* (2) be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses and
 - f* (3) decline to notify the authorities.

⁹⁶ Id.

- o the rights of victims and the institution's responsibilities regarding orders of protection, no contact orders, restraining orders or similar lawful orders issued by a criminal, civil or tribal court;
- € procedures for institutional disciplinary action in cases of alleged domestic violence, dating violence, sexual assault or stalking, which shall include a clear statement that the proceedings shall:
- o (1) provide a prompt, fair and impartial investigation and resolution;
 - o (2) be conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual assault and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;
 - o (3) assure that the accuser and the accused are entitled the same opportunities to have others present during an institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice;
 - o (4) both the accuser and the accused shall be simultaneously informed, in writing, of:
 - f (a) the outcome of any institutional disciplinary proceeding that arises from an allegation of domestic violence, dating violence, sexual assault or stalking;
 - f (b) the institution's procedures for the accused and the victim to appeal the results of the institutional disciplinary proceeding, of any change to the results that occurs prior to the time that such results become final; and
 - f (c) when such results become final.

In addition, VAWA requires annual education of implementers on the issues related to domestic violence, dating violence, sexual assault and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

On October 20, 2014, the final VAWA Negotiated Regulations were published. The regulations seek to implement the concepts outlined above.

III. Additional Considerations for Prevention, Education and Training

We recommend that educational institutions proactively engage in the education and prevention of sexual and gender-based harassment and violence, including sexual assault, domestic violence, dating violence and stalking. Education and prevention requires an integrated

⁹⁷ <https://www.federalregister.gov/articles/2014/10/20/2014-24284/violence-against-women-act>

communications plan to effectively share institutional policies, prevention efforts, reporting options and resources with all community members. Clear communication in all training and education programs is critical for a Title IX team to be successful and compliant. In a coordinated and integrated approach to the ongoing training requirement, it is critical for a designated administrator, or prevention and education team, to outline the tone (balanced, sensitive, informed, and impartial), content (legally compliant and psychologically informed) and timing (early and ongoing) of the Title IX team's communication strategy and maintain consistency in all training and education programs.

All communications platforms should be developed with the core constituents in mind – students, faculty, and staff, while considering the perspective of additional interested constituencies – administration, board, alumni, community partners, and regional Offices for Civil Rights.

A balanced and sensitive tone should frame the delivery of legally informed content and will set the stage for all subsequent materials and messages. The Title IX team should develop a communications campaign brand that Title IX education and prevention materials with a sensitive and impartial tone. Any spokespersons, web materials, written copy, collateral and broadcast materials should be consistent and reinforce the chosen tone and content. In developing the campaign, consider concepts of primacy, repetition, and branding in developing relevant messages that can be heard and will resonate with listeners.

Recognizing that there are as many different learning styles and communication modes on campus as there are community members, the communications plan should include a diversified portfolio to reach all constituencies. This portfolio should provide many different access points, including: in person, both in targeted settings like residence halls or classes and in broader more community-based presentations; listening sessions; through the use of online technology, including trainings, e-mail communications, and a web page dedicated to sexual respect; through student media, including daily and monthly publications; and anonymously, through ethics point or an anonymous hotline/suggestion box. The goal is to provide a safe and supported space for contributors to embrace the tension these issues naturally engender, and to allow the campus climate and culture to both shape the conversation, and importantly, to be shaped by the conversation.

Education and prevention must be an institutional priority that involves high-level administrators, faculty members, and coaches. We recommend that schools consider creating an educational seminar designed by faculty members and administrators that addresses issues of sexual violence, gender equity, tolerance and diversity, alcohol and substance abuse, intimacy, consent, the "hook up" culture, social media, bullying, hazing, classism, racism, and other issues that can impact the campus culture and the development and education of students. This direct educational approach is a for-credit seminar that utilizes the skills of our most effective and engaging educators and is a cutting edge practice in changing culture that demonstrates the school's commitment to student welfare and development.

Education and prevention must also actively engage students in the development of educational programming. This may include residence life campaigns, art or design contests,

