EFFECTIVE IMPLEMENTATION OF THE INSTITUTIONAL RESPONSE TO SEXUAL MISCONDUCT UNDER TITLE IX AND RELATED GUIDANCE

June 19 - 22, 2013

Gina Maisto Smith
Pepper Hamilton LLP
Philadelphia, PA

Leslie Marie Gomez
Pepper Hamilton LLP
Philadelphia, PA

Most of us grew up knowing Title IX as the law that leveled the playing field for young women. Our children, born decades after Congress enacted the law in 1972, will grow up knowing Title IX as the law that leveled the playing field for victims of sexual harassment and violence on college campuses. Through Title IX, colleges and universities are tackling sexual misconduct and changing the conversation around how we identify, respond to and prevent acts of sexual misconduct.

At its core, Title IX is about balance, equity, and fundamental fairness. It is both a sword and a shield, and when implemented properly, a holistic response to sexual misconduct. Our goal here is to outline some common challenges in compliance and implementation of an institution's response to sexual misconduct, and to propose some solutions, recognizing that while there are some "musts," some "shoulds," and some "mays," there is no one size fits all approach to Title IX.

I. The Paradigm Shift

Over the past several years, we have been engaged, seemingly night and day, in conducting Title IX audits for colleges and universities across the country: assessing organizational structures, decluttering complicated regulatory guidance, learning how institutions implement the requirements of Title IX, and providing recommendations as to the mechanics of implementation: systems, structure, policy, procedure, personnel, education and training.

We are often asked why there is such demand. Why this focus now? The easy answer is the now infamous April 4, 2011, Dear Colleague Letter ("DCL"), which served as a call to action for many campuses. Framing the answer with only the DCL, however, would be an incomplete and unsatisfactory response. Many schools heeded the call to implement changes just over two years ago, and did so quickly, implementing changes including standard language about the preponderance of the evidence standard, balance in process, and timeframes.

The more nuanced answer requires an understanding of the shift in culture and public awareness of the issues. The first wave of change came in the fall of 2011 – just over six months after the DCL, with the public account of the actions of Jerry Sandusky and the subsequent criminal prosecution of campus administrators for failing to report suspected child abuse. As a

nation, we were riveted by the media coverage, drawn by the specter of deceit and betrayal by trusted individuals looming largely in our voyeuristic and collective common experiences. As institutions of higher education, we raised the question: could that happen here? As parents, we raised the question: could that happen to my child? The response by schools across the country: a renewed focus on drafting and revising child protection policies, evaluating our intersections with minors on campus and ensuring appropriate training for all employees. Still, this institutional response was a relatively compliance based approach that looked at the role of administrators.

The public discourse about predatory child sexual abuse and institutional failures opened the floodgates of conversation to chip away at the culture of silence shrouding other forms of sexual misconduct in the campus setting. As a nation, we began to listen to the roar of conversations on campuses, in board rooms, dorm rooms, coffee houses, and at kitchen tables -- conversations that focused on the view from the opposite end of the telescope – not from the institutional perspective regarding compliance, but from the human lens of those affected by sexual harassment and violence. In recent years, we have been offered compelling and harrowing accounts by complainants across the nation, accounts not about the underlying assault, but about perceived maltreatment by the "administration." These accounts have served as a catalyst on many campuses to change the conversation from compliance to compassion.

The public courage of these complainants is unprecedented in our collective history. The platform has been social media, which allows virtual strangers to discuss intimately personal concepts from the safety of an electronic connection. Social media also allows us to self-select our news input and to decide for ourselves what is important. Additionally, it allows complainants to speak freely, unedited, and to share their accounts – a marked change from traditional news coverage where the identity of the victim (appropriately so) is always protected.

As a result, scores of schools across the nation are continuing to take a hard look at existing practices – to look beyond compliance to consider how we can implement effective practices that treat our community members with compassion and care, that are rooted in an informed and educated perspective, and that engender trust in our processes. This approach will foster reporting and allow schools to provide outcomes that can be respected and accepted by the entire campus community.

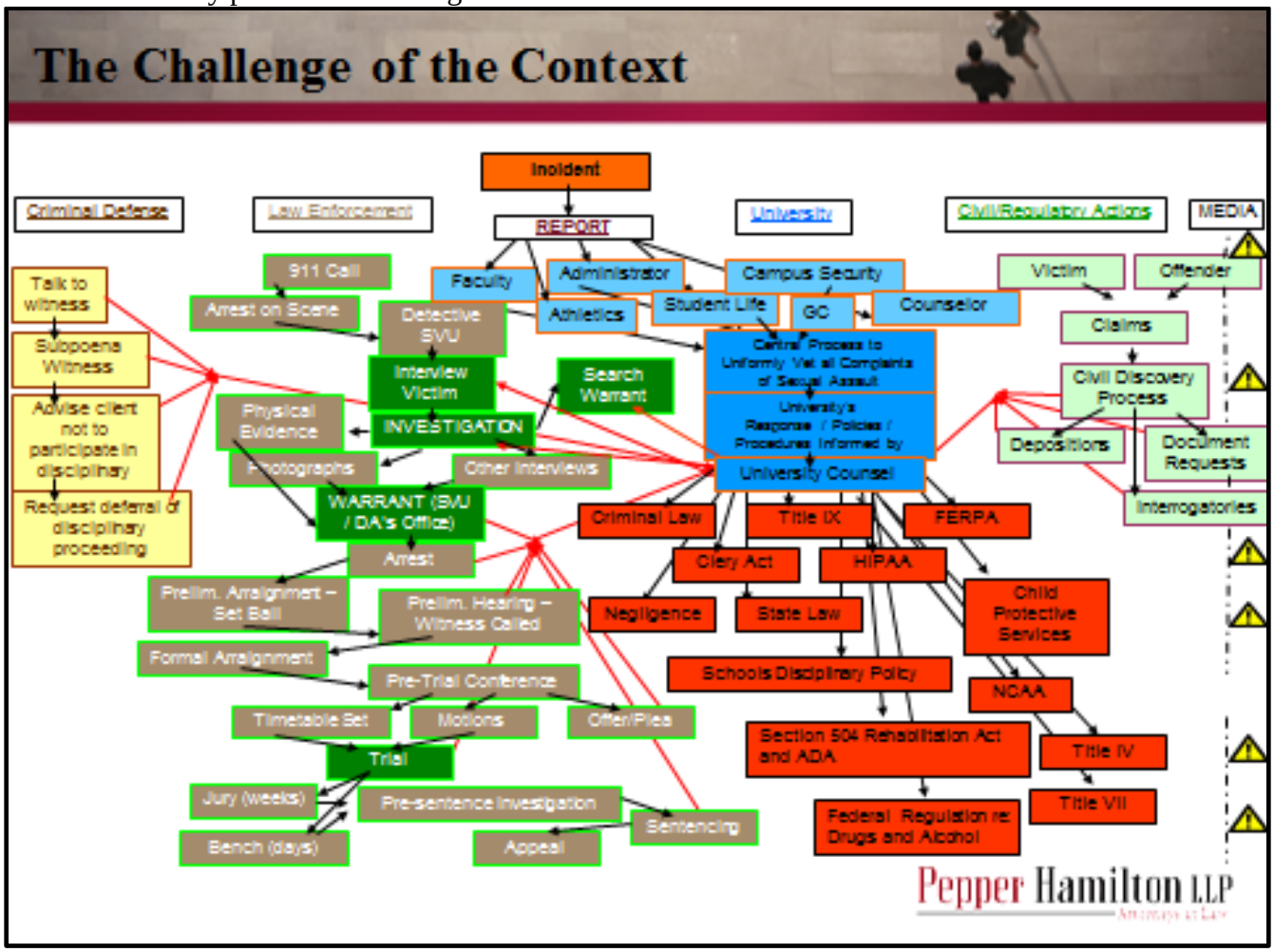
Finally, the legislation and guidance in this area is continually evolving. On March 7, 2013, President Barack Obama signed a bill to reauthorize the Violence against Women Act, including the Campus Sexual Violence Elimination Act ("Campus SaVE Act"). A primary focus of the Campus SaVE Act is intimate partner violence. In addition, as recently as April 23, 2013, OCR issued a new Dear Colleague Letter, decrying retaliation and urging schools to ensure they are in compliance. Thus, the changing landscape of the regulatory guidance gives institutions another chance to check and correct their footing to ensure policies and procedures are compassionate, consistent, clear and compliant.

II. The Context

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

In assessing the effectiveness of policies and procedures, schools should begin the assessment with an understanding of the context, which we conceptualize as three broad categories: the legal mandates (Title IX, the Clery Act, and the Campus SaVE Act, to name a few); the dynamics of sexual assault and other forms of misconduct; and each institution's unique culture, climate, policies and procedures, personnel, resources, and underlying institutional values.

The goal is to marry these three distinct concepts to develop a coordinated and integrated institutional response. A response that is principled and intentional to achieve compliance and the laudatory goal of *tending* to our students, faculty and staff. That coordinated and integrated approach requires an understanding of the concomitant responsibilities schools must fulfill. This visual may provide some insight into the context:



A. The Legal Mandates

This narrative is not intended to be an exhaustive treatise on Title IX and other relevant authority. Rather, the following sections are included to provide some framework and common understanding of the high level mandates guiding institutional behavior. The focus here is on Title IX, and to some extent the Clery Act, but schools must also consider the Family Educational Rights and Privacy Act ("FERPA"), state criminal statutes, state child protective services law and mandatory reporter statutes, state statutes that require reporting of certain criminal offenses, statutes governing use of criminal investigative records, state sex offender registration statutes, and other legal authority.

1. Title IX and Related Guidance

Title IX is a federal law enacted in 1972 that prohibits discrimination on the basis of sex in education programs and activities and employment. Title IX applies to all colleges and universities that receive federal financial assistance, either directly or indirectly.

Title IX provides, "no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." Although Title IX is 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. It also applies to all forms of gender-based harassment. Title IX applies equally to students, staff, and faculty. It protects students and employees from sexual harassment by any school employee, student, or non-employee third party.

Title IX requires: that a school publish a non-discrimination statement; appoint a Title IX Coordinator; adopt and publish grievance procedures that are prompt and equitable and allow for adequate, reliable, and impartial investigation of complaints; use and enforce appropriate remedies; provide education and prevention programs; provide general training for all campus community members about the school's policies and procedures; and specific training for implementers and adjudicators about the school's grievance procedures and its response to complaints of sexual harassment and sexual violence.

Title IX also requires that a school's grievance procedures be prompt and equitable. Policies must designate reasonably prompt timeframes for the major stages of the complaint process. Both the complainant and the respondent should be given periodic status updates, receive notification of the outcome, and be informed of his/her right to appeal. There should be mechanisms for remedies which address both individual and community safety, implement no contact orders, provide academic support, adjust academic schedules or living arrangements, provide counseling or emotional support, and allow for other equitable solutions or responses for both parties as warranted. Grievance procedures must ensure an investigation that is adequate, reliable and fair, must apply a preponderance of the evidence standard, and must balance the rights of the complainant and respondent.

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. As such, a school violates Title IX if it has "notice" of a sexually hostile environment and fails to take immediate and corrective action. A school is deemed to have notice if a responsible employee knew or, in the exercise of reasonable care, should have known about the harassment. A responsible employee includes any employee who: (1) has the authority to take action to redress the harassment; (2) has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees; or (3) a student could reasonably believe has the authority or responsibility to take action.

Additional guidance can be found in the *2001 Revised Sexual Harassment Guidance*, the October 26, 2010 Dear Colleague Letter on bullying and hazing, and the April 4, 2011 DCL addressing student on student sexual harassment.

2. Voluntary Resolution Agreements

Any individual may file a Title IX complaint with the Department of Education's Office for Civil Rights ("OCR"). Complaints accepted for investigation are often resolved through a voluntary resolution agreement between the school and OCR. These voluntary resolution agreements, which are generally public, can provide insight into how OCR interprets and implements Title IX. The agreements, however, are specific to the school *and* to the unique set of facts that served as the impetus for the complaint. Thus, while the agreements may be instructive, they are by no means binding legal mandates.

Recent Agreements Include:

- September 2010 Notre Dame College
- November 2010 Eastern Michigan University
- July 2011 University of Notre Dame
- June 2012 Yale University
- July 2012 Xavier University
- May 2013 University of Montana

The most recent voluntary resolution agreements arise out of an investigation at the University of Montana by the United States Department of Justice, Civil Rights Division, Educational Opportunities Section ("DOJ") and OCR. The agreements, dated May 9, 2013, address both Title IX concerns *and* Title IV of the Civil Rights Act of 1964 ("Title IV"), 42 U.S.C. § 2000c-6. In the May 9, 2013 letter to the University of Montana ("Letter of Findings"), outlining the findings and summarizing the provisions of the voluntary resolution agreement, the DOJ and OCR assert that, "The Agreement will serve as a blueprint for colleges and universities throughout the country to protect students from sexual harassment and assault." Despite this assertion, caution should be exercised in applying the provisions of this agreement wholesale at other institutions. As noted above, this agreement was crafted through the lens of a particular institution and a particular set of facts. It is also an agreement between a public institution and the federal government developed through the lens of enforcement, not a pronouncement of federal policy. Indeed, while the agreement makes some sweeping recommendations for the University of Montana – some of which appear to go beyond the guidance of the April 4, 2011

DCL – the agreement should not be read to change policy or create new benchmarks for schools to achieve.

Key provisions in the agreement concerning the alleged violations of Title IX and Title IV require the University of Montana to:

- Retain an Equity Consultant with expertise in the area of sex-based harassment prevention and training in higher education to:
    - Evaluate and recommend revisions to the University's policies, procedures and practices for preventing, investigating and remediating sex-based harassment;
    - Develop and provide mandatory Title IX training for *all* students, University staff and faculty, including specialized training for all implementers and first responders;
    - Develop one or more annual climate surveys
- Develop a resource guide;
- Develop and institute a system for tracking and reviewing reports, investigations, interim measures and resolutions of student and employee conduct that may constitute sex-based harassment; and,
- Ensure that the educational environment of each enrolled student who reported sexual harassment, sexual assault or retaliation is free of harassment and retaliation and if not, take steps to eliminate the hostile environment.

While the parameters of this presentation do not allow for an in depth discussion of the Montana Letter of Findings and voluntary resolution agreements, several areas are worth highlighting here. The first concerns the definition of sexual harassment in the Letter of Findings and whether it constitutes a change in federal authority and hence, an encroachment on First Amendment protections. Despite some public discourse regarding this concern, however, the Letter of Findings did not intend to create new definitions or to alter First Amendment jurisprudence. In the Letter of Findings, the DOJ and OCR referred prior guidance, including the April 4, 2011 DCL, the *2001 Revised Sexual Harassment Guidance* and controlling case law in its discussion of sexual harassment.

Second, the Letter of Findings appears to expand expectations and responsibilities regarding retaliation and suggests that a school must take proactive and ongoing steps to prevent retaliation, determine whether any new incidents of retaliation have occurred, and eliminate any hostile environment.

Third, the Letter of Findings and agreements significantly expand the scope and nature of training required by the April 4, 2011 DCL for all University staff and faculty, students, first responders and implementers.

Fourth, the Letter of Findings effectively expands the definition of responsible employee to require *all* Montana employees, except those who are statutorily barred from reporting, to

report sexual assaults and harassment of which they become aware to the Title IX Coordinator within 24 hours of receiving information about sex discrimination. While many schools have been implementing policies that do require all employees to report, others have relied upon a more restrictive definition of responsible employee under Title IX, which arguably does *not* include *all* employees.

Fifth, the Letter of Findings expands the tracking and monitoring requirements set forth in the April 4, 2011 DCL by specifically requiring the school to institute a system for tracking and reviewing reports (including reports that do not result in the filing of a discrimination complaint), investigations, interim measures and resolutions of student and employee conduct.

3. The Clery Act

The Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092(f), is a federal statute, enacted in 1990, that requires all schools that receive federal financial assistance—either directly or indirectly—to maintain and publish information about crime on or near their campus. The purpose of the Clery Act is to provide students, their families, and employees with accurate, complete, and timely information about campus safety to better inform future decisions.

Clery requires that schools report offenses and disclose statistics for crimes that were reported to the local police and individuals designated as campus security authorities ("CSAs"). Reportable crimes include those that occurred on-campus, in or on on-campus buildings or property, or on public property within or immediately adjacent to and accessible from the school's campus. Furthermore, it is not necessary for the crime to have been investigated by the police or CSA, nor must a finding of guilt or responsibility be made. As long as there is a reasonable basis for believing the information and it is not rumor or hearsay, it should be reported under Clery.

For Clery purposes, the report must contain information about: (1) where the crime occurred; (2) the type of crime; (3) to whom the crime was reported; and (3) when the crime was reported. When reporting sex crimes, the offenses should be divided into two categories: forcible and non-forcible. Forcible sex offenses include (1) any sexual act that is directed against another person either forcibly and/or against that person's will or (2) non-forcibly or against the person's will and the victim is incapable of giving consent. Examples of forcible sex offenses are forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. Examples of non-forcible sex offenses include incest and statutory rape.

Moreover, the Clery Act requires that schools maintain a public daily crime log of all crimes reported to schools' CSAs. The log must include information about: (1) the nature of the crime; (2) the date of the crime; (3) the time of the crime; (4) the general location of the crime; and (5) the disposition of the complaint, if known. The log must be accessible to the public during normal business hours and remain open for 60 days, after which it must be made available upon request within two business days.

The Clery Act requires timely warning notification to the public of all Clery Act crimes that are reported to campus security authorities or local police and are considered by the school

to represent a continuing threat to students and employees. Warnings are to be made as soon as the pertinent information is available to effectively alert the community of a continuing threat to safety and aid in the prevention of similar crimes. The decision whether to warn should be made by schools on a case-by-case basis taking into consideration the nature of the crime, the threat of continuing danger, and coordination with law enforcement. If a school concludes that a warning is appropriate, the warning should be made in a format that is reasonably likely to reach the entire campus community i.e. via e-mail, intranet, text message, etc.

Finally, the Clery Act mandates that schools develop policies, procedures, and programs regarding sex offenses. 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 to whom the alleged offense should be reported. Schools should also have procedures for disciplinary action, including an equal right to have persons present during the proceeding, to be informed of the outcome and the sanctions imposed, and to speak about the offense. Additionally, the policy should list the potential sanctions for offenses. The complainant should be informed of his/her right to contact law enforcement on and off campus, the availability of on- and off-campus counseling and mental health services, and the options for reasonable accommodations in changing academic and living situations after an alleged sexual assault incident.

4. Campus Sexual Violence Elimination Act (Campus SaVE ACT)

On March 7, 2013, President Barack Obama signed a bill reauthorizing the Violence against Women Act. Included in the bill was the Campus Sexual Violence Elimination Act. The Campus SaVE Act requires that incidents of domestic violence, dating violence, sexual assault, and stalking be disclosed in annual campus crime statistic reports. It also requires that students or employees reporting victimization be provided with their written rights to: (1) be assisted by campus authorities if reporting a crime to law enforcement; (2) change academic, living, transportation, or working situations to avoid a hostile environment; (3) obtain or enforce a no contact directive or restraining order; and (4) have a clear description of their institution's disciplinary process and range of possible sanctions. Students or employees reporting victimization should also receive contact information about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available both on-campus and in the community.

The act further provides that, at a minimum, institutional disciplinary procedures covering domestic violence, dating violence, sexual assault, and stalking should ensure:

i. Disciplinary proceedings will have a prompt, fair, and impartial investigation and resolution and will be conducted by officials receiving annual training on domestic violence, sexual assault, and stalking;
ii. Both parties may have others present during the disciplinary proceeding and any related meeting, including an advisor of their choice; and
iii. Both parties will receive written outcomes of all disciplinary proceedings at the same time.

The act further requires colleges and universities to provide programming for students and employees addressing the issues of domestic violence, dating violence, sexual assault and stalking. Education programs should include:

i. Primary prevention and awareness programs for all incoming students and new employees, including safe and positive options for bystander intervention;
ii. Information on risk reduction to recognize warning signs of abusive behavior; and
iii. Ongoing prevention and awareness programs for students and faculty.

The Act also established collaboration between the U.S. Departments of Justice, Education, and Health and Human Services to collect and disseminate best practices for preventing and responding to domestic violence, dating violence, sexual assault, and stalking.

5. April 24, 2013 Dear Colleague Letter

On April 24, 2013, OCR issued a "Dear Colleague Letter" on retaliation. The letter notes that retaliation against individuals who complain formally or informally to a college about potential civil rights violations or participate in an Office of Civil Rights investigation and/or proceeding is a violation of federal civil rights laws. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against the individual.

According to the letter, if OCR finds that a recipient of Federal financial assistance retaliated in violation of federal civil rights laws, OCR will seek the recipient's voluntary commitment through a resolution agreement to take specific measures to remedy the violation. The resolution must ensure that the individual who was retaliated against receives redress and ensure that the recipient complies with the prohibition against retaliation in the future. Monetary relief may be appropriate based on the facts of the case.

OCR noted that to ensure compliance in the future, the recipient could be required to:

i. Train employees about the prohibition against retaliation and ways to avoid engaging in retaliation.
ii. Adopt a communications strategy for ensuring that information concerning retaliation is continually being conveyed to employees.
iii. Include incorporating the prohibition against retaliation into relevant policies and procedures.
iv. Implement a public outreach strategy to reassure the public that the recipient is committed to complying with the prohibition against retaliation.

Where OCR finds that a recipient engaged in retaliation and the recipient refuses to voluntarily resolve violation or fails to live up to its commitments in the resolution agreement, enforcement action may include initiating administrative proceedings to suspend, terminate, or refuse to grant or continue financial assistance made available through the Department to the recipient; or referring the case to the U.S. Department of Justice for judicial proceedings.

B. The Dynamics of Sexual Assault

Understanding the above legal framework, however, is just the beginning of a successful integrated response. The next step is a careful assessment of the dynamics of sexual assault to determine if a school's policies speak to the needs of students – individuals who may be in the midst of significant emotional trauma, but who are entitled to clear information, appropriate support, and fair and impartial proceedings.

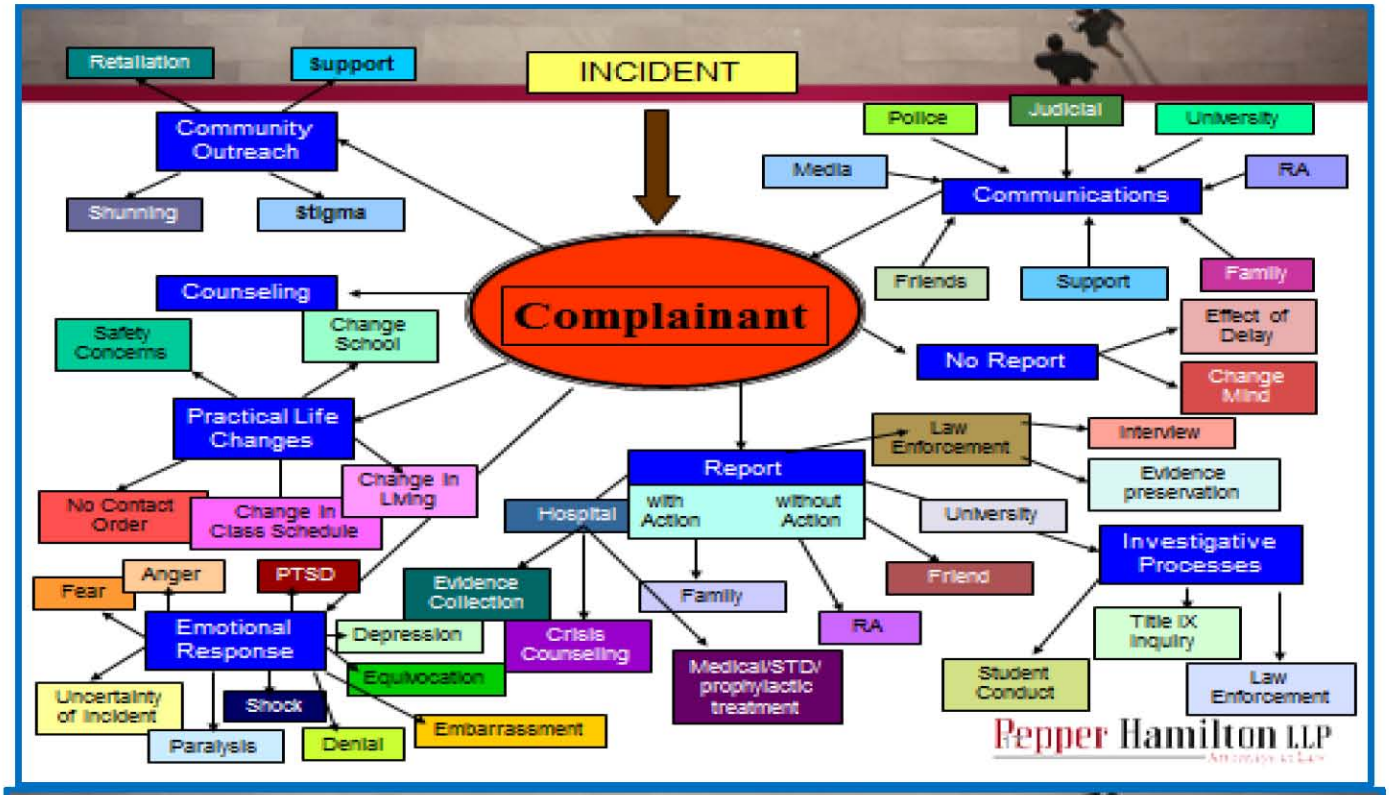
Any discussion about the institutional response to sexual misconduct must be informed by a robust understanding of the dynamics of sexual assault. Sexual assault cases are incendiary in nature, have a high likelihood of occurrence, and carry tremendous consequences for individuals and institutions. The nature of victimization is dramatically different from any other type of crime—as are the stakes and potential consequences for the accused. The overwhelming majority of sexual assaults on college and university campuses involve acquaintances or individuals who know one another, the use of alcohol or other drugs by one or both parties, and a dispute over the consensual nature of the sexual act. These cases are sometimes marked by counterintuitive victim behaviors, a delay in reporting, and wavering levels of cooperation. Because there is often little to no physical evidence or eyewitness accounts, most cases require a careful assessment of credibility that professionals in many campus communities feel unprepared or unqualified to undertake.

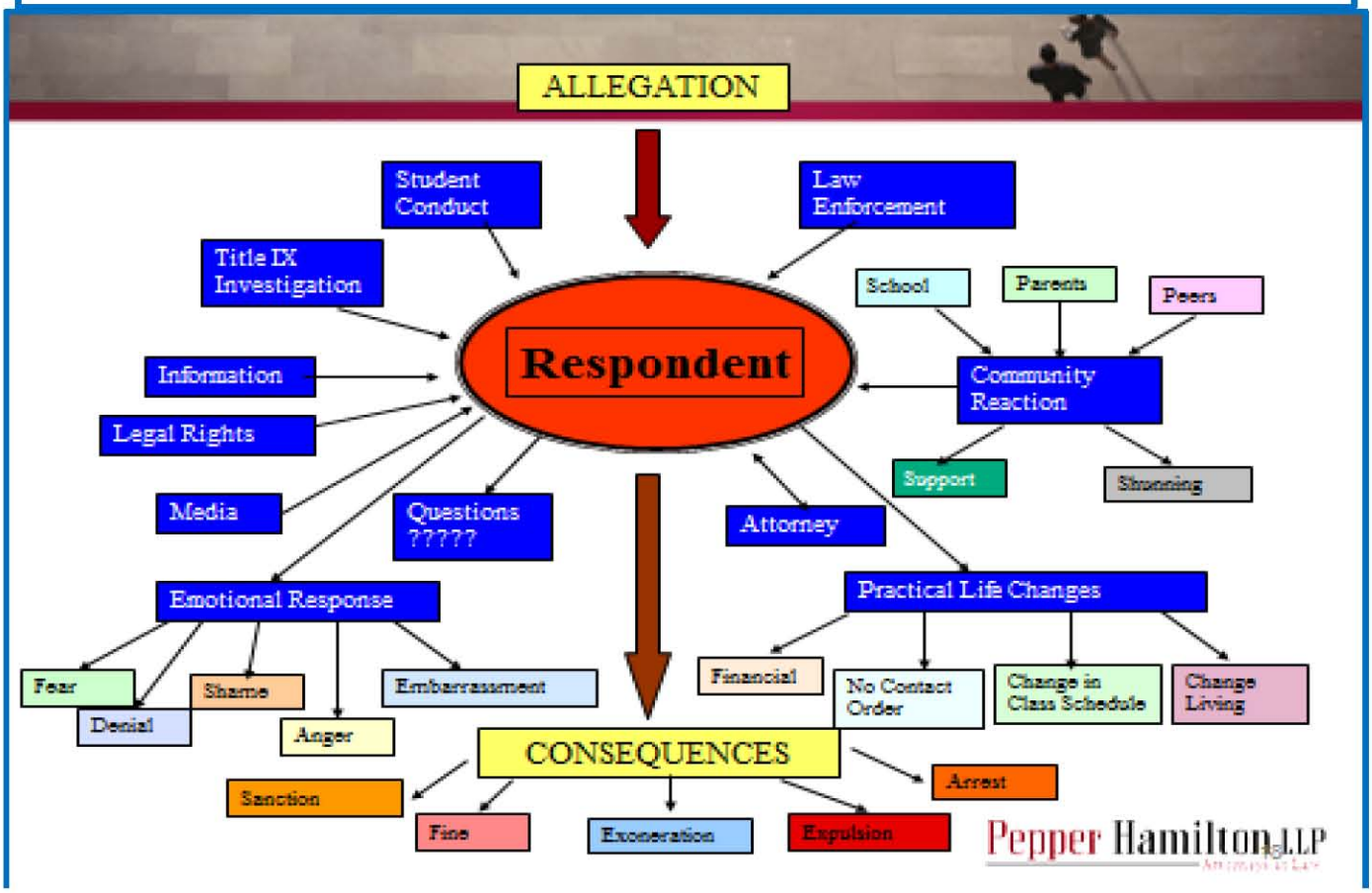
When we factor in the residential setting of many campuses – large numbers of students living together in close quarters, wholly unsupervised for the first time in life, at an age where sexual exploration is developmentally appropriate and sexual activity is often a marker in the social hierarchy – it is easy to understand the high likelihood of sexual assault in a campus setting and the complicated campus dynamics that ensue.

This context is also marked by significant barriers to reporting, including, at many schools, concern about the role of "administration," the perception that there is a failure to tend individual needs, perceived inconsistent, ineffective and unclear policies, and lack of coordination of systems, personnel and information. From the perspective of students, we often hear the following concerns:

- Don't know how to find information
- Don't know what to expect
- Not being told all the options
- Not being treated fairly
- Feeling judged or isolated
- Not having the right support during or after the process
- Lack of transparency in the process
- Dissatisfaction with outcomes and sanctions

The following visuals may help to demonstrate the complexity of emotions and life circumstances that a complainant or respondent may confront following a sexual assault.


INCIDENT
Retaliation
Support
Community Outreach
Shunning
Stigma
Police
Judicial
University
Media
RA
Communications
Friends
Support
Family
Complainant
Counseling
Safety Concerns
Change School
No Report
Effect of Delay
Change Mind
Practical Life Changes
No Contact Order
Change In Class Schedule
Change In Living
Law Enforcement
Interview
Evidence preservation
Report
with Action
without Action
Hospital
University
Investigative Processes
Friend
Fear
Anger
PTSD
Evidence Collection
Family
RA
Emotional Response
Depression
Crisis Counseling
Equivocation
Medical/STD/ prophylactic treatment
Title IX Inquiry
Student Conduct
Law Enforcement
Uncertainty of Incident
Shock
Paralysis
Denial
Embarrassment
Pepper Hamilton LLP


ALLEGATION
Student Conduct
Law Enforcement
Title IX Investigation
School
Parents
Peers
Information
Respondent
Community Reaction
Legal Rights
Support
Shunning
Media
Questions ?????
Attorney
Emotional Response
Practical Life Changes
Fear
Shame
Embarrassment
Financial
No Contact Order
Change in Class Schedule
Change Living
Denial
Anger
CONSEQUENCES
Arrest
Sanction
Fine
Exoneration
Expulsion
Pepper Hamilton LLP

C. Understanding the School

Within this regulatory framework, and accounting for the dynamics of sexual misconduct, an effective institutional response must still take into account the individual culture, climate, history, resources, policies, procedure, and personnel of each institution. The goal is to assess history and current climate, evaluate the coordination of systems and personnel, and understand student perceptions of the campus response.

In light of FERPA protections, which are designed to keep educational records private and prohibit release of information without the consent of the student, schools are unable to share much meaningful information with the community beyond the affected individuals. Consequently, our campus grievance procedures are often cloaked in an air of mystery. The downside to this privacy protection is that most of our campus population operates without specific information about outcomes, or worse, misinformation. Those gaps in information, on many campuses, tend to be filled in with negative inferences, inferences that lead to misperceptions about the process. Those misperceptions, unfortunately, often become a reality, and it is incumbent on a school to identify and correct misperceptions by creating a consistent tone and message, and providing a coordinated and integrated institutional response.

Institutions across the nation are seeking benchmarks and a best practices model. It is our position that there is no "best practices" approach. Each school is unique in its characteristics, including size, student-body composition, institutional values, governance, public versus private status, and culture. Indeed, OCR has stated that "depending on the circumstances, there may be more than one right way to respond." (*2001 Revised Sexual Harassment Guidance*, p. iii). Further, OCR has noted, "the specific steps in a school's investigation will vary depending on the nature of the allegations, the age of the student or students involved . . . , the size and administrative structure of the school, and other factors." (April 4, 2011 DCL, p. 5). While some mandatory guideposts exist, institutions still have flexibility in designing grievance procedures, selecting investigative models, and developing sexual harassment and misconduct policies to achieve fair and impartial processes and effective training and prevention programming.

II. A Coordinated and Integrated Approach

A coordinated and integrated response to sexual misconduct is the key to Title IX compliance and successful implementation of the institutional response. One approach to this coordination is to create a Title IX Team to support the Title IX Coordinator and provide a core group of administrators who work together to implement intentional, consistent, and compassionate responses.

The goal of this centralized process is to provide a coordinated and integrated institutional response that is both compliant with law and sensitive to the unique issues attendant to a case of sexual harassment or misconduct. Sharing all reports with the Title IX Team will help to ensure a prompt and equitable review, investigation and resolution. The use of a centralized process encourages consistent application of the policy to all individuals and allows schools to respond promptly and equitably to eliminate the harassment, prevent its recurrence and eliminate its effects. This approach will help to eliminate ad hoc responses across campus,

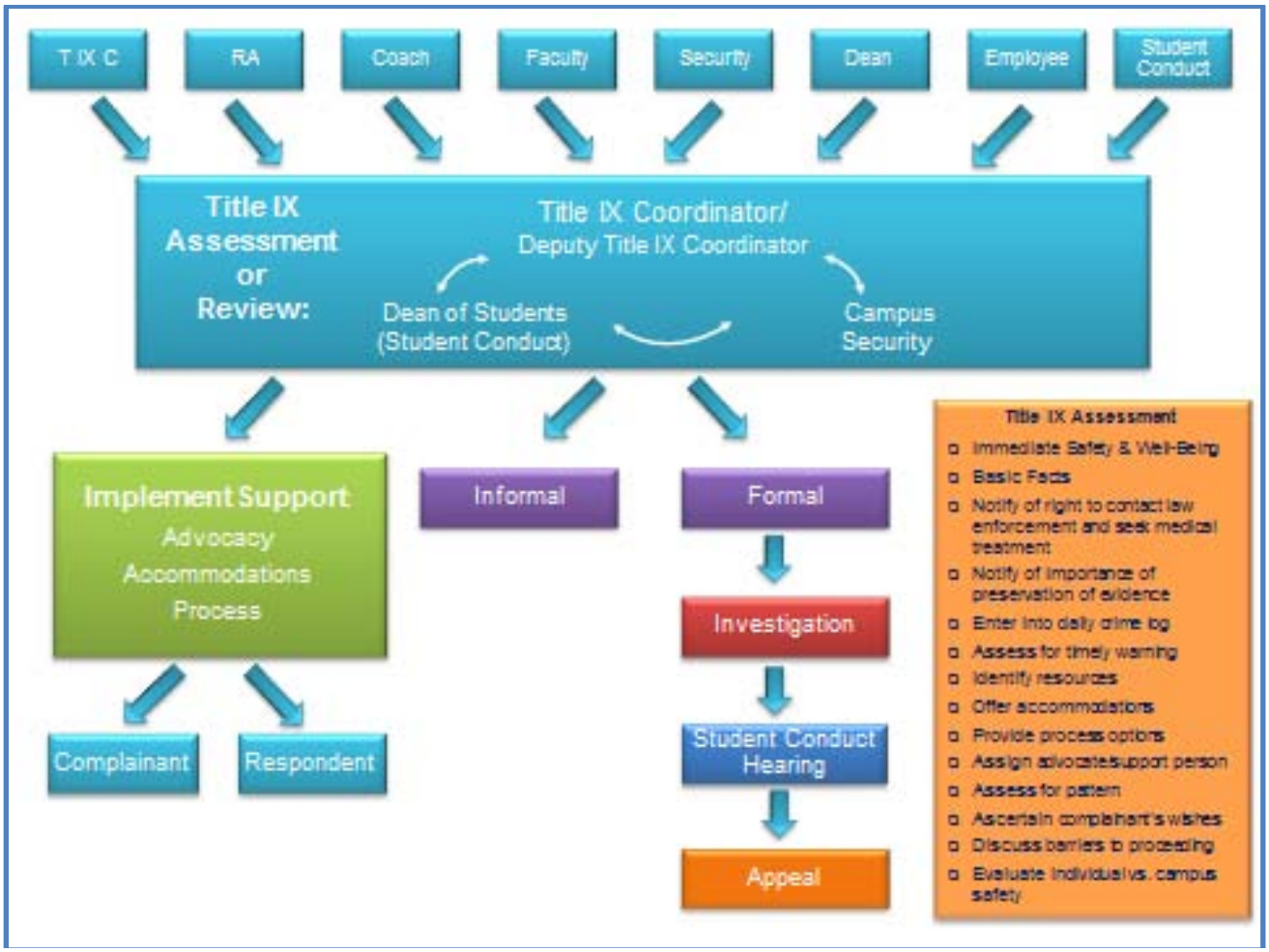
allow for central record keeping for assessment of patterns, and ensure that the review or investigation is thorough, fair and impartial.

Key members of the campus community should be called upon to form a Title IX response team to serve as the institutional backbone of the centralized review, investigation, and resolution of all sexual harassment and misconduct reports. Team members may vary across campuses, but institutions should work toward a common goal of eliminating harassment, preventing its recurrence, and addressing its effects so that campus community members can pursue an education free from sexual discrimination. Stakeholders may include the Title IX Coordinator, Deputy Title IX Coordinators, student conduct or student affairs professionals, campus safety/police officers, human resources, faculty leadership, health services, counseling, members of the LGBTQ or multicultural communities and other campus members as identified on each campus. All team members should be appropriately trained in the regulatory framework, dynamics of sexual assault and harassment, and in the school's grievance procedures.

In order to fully benefit from the team approach, a first step is to sequence the institutional response. This step involves clearly identifying and articulating the roles and responsibilities of each school employee involved in implementing the institution's responses. This step also includes discussion about the primary responsibility of each department, the coordination and sharing of information between and among relevant departments, and the protocols that should be followed where there are overlapping responsibilities or conflicts in roles.

This mapping of roles and responsibilities can serve as the initial framework for the drafting of internal operating protocols. Those internal operating procedures should funnel all information to a centralized institutional response, outline workflow steps, utilize template forms and communications, and create checkpoint lists to ensure a consistent response. Schools should consider building in decision trees regarding timely warning, how to proceed if a complainant requests confidentiality, the use of interim remedies, when to use interim suspension, how to respond to retaliation, and other key determinations to seek a consistent institutional response. This approach will minimize the risks attendant to relying upon ad hoc responses to each incident. There should also be clear expectations about coordinated communication and protocols for regular documentation and record-keeping.

The following visual will help you understand the initial steps that should follow a report of sexual misconduct.



Schools should be reassured that this process may be far less complicated than it appears. Most schools, even with limited resources, have the capacity, competency, and commitment to create effective institutional responses. Core institutional values and knowledge of historical events, combined with expert-guided discussion, provide a roadmap to declutter the minefield.

A coordinated and integrated response requires careful attention to the following elements, each of which we will discuss in greater detail below:

- Role of the Title IX Coordinator
- Policy
- Confidential Resources vs. Reporting Options
- The Confidentiality Conundrum
- Support Services
- Coordination with Law Enforcement
- Investigation
- Adjudication
- Remedies

A. The Role of the Title IX Coordinator

The Title IX Coordinator ("Coordinator") oversees a school's centralized review, investigation, resolution of reports of sexual harassment and misconduct under the relevant complaint processes, and coordinates the school's compliance with Title IX. This is a critical role for compliance with Title IX and the guidance offered by the DCL. The Coordinator's role and responsibilities should be clearly defined, and contact information should be easily accessible to students and staff. The Coordinator must have adequate training on what constitutes sexual harassment or sexual violence, and must thoroughly understand how the school's grievance procedures work. The Coordinator should oversee all Title IX complaints, serve as a check and balance for the school, and provide oversight to ensure that the school is compliant with the federal mandates as noted above.

The Coordinator should also receive, store, and review all complaints to identify and address any systemic problems, assess student activities periodically to ensure that the practices and behaviors of the students do not violate the polices on sexual harassment and violence, and be involved in the education, prevention, and training programs regarding sexual misconduct. The Coordinator should have access to campus law enforcement or security records, should monitor the campus climate, and should ensure that remedies are tailored to the individual and the community needs. The Coordinator should also be available to meet with students as needed.

The Coordinator should not have competing responsibilities that would create a conflict of interest. For example, the Coordinator should not be both the fact-finder and the decision-maker.

In general, a Coordinator must have appropriate authority, access, autonomy, and resources. The role should be one of oversight, rather than "in the weeds" of an investigation or adjudication. A school should give careful consideration to the reporting structure of the Coordinator's role to ensure that the Coordinator has the trust of diverse campus constituents. For example, a Coordinator that sits within student affairs may be less likely to engender the trust of faculty members, or vice versa, a student might be less comfortable reporting to or meeting with a Coordinator who sits in human resources. The general consideration in structure should be to place the Coordinator where he/she can be wholly independent and can exercise appropriate oversight authority. This may involve a direct report to a member of senior staff. In addition, the Coordinator should not be reporting to an individual in one department that he/she may be overseeing in the Title IX context.

A Coordinator may be supported by Deputy Title IX Coordinators. The goal in designating Deputy Title IX Coordinators is to ensure adequate representation across a school's diverse campus to allow campus constituents to easily access a trusted individual within their sphere of interaction. The placement of these Deputy Title IX Coordinators should be inclusive of relevant constituents and departments, with particular attention to more insular sections of the campus. Deputy Title IX Coordinators may be designated based on subject matter (e.g., policy, prevention, and case management), the nature of the constituents (student, faculty, and employee) or subsets of the campus population (athletics, the Greek system, LGBTQ, multicultural or international students). The size of the campus may dictate the number of Deputy Title IX Coordinators.

Deputy Title IX Coordinators can serve as a reporting option, provide information as to resources and procedural options, be available to meet with complainants and respondents, and facilitate access to interim remedies and measures. Deputy Title IX Coordinators can also assist in assessing climate in the constituency within their purview.

Deputy Title IX Coordinators can also lead education and training efforts at the department or program level. As part of a train the trainer program, the Coordinator can provide consistent programming and educational tools to the Deputy Title IX Coordinators, who are then positioned to implement training for their designated population.

This team of Deputy Title IX Coordinators, under the oversight of the Coordinator, will serve as a visible demonstration of a school's commitment to prevention and education, a climate that encourages reporting, and a coordinated and effective institutional response.

B. Policy

Schools must thoroughly and honestly assess existing policies and procedures to explore issues of effectiveness, equity, balance, and institutional values.

Schools should consider the use of an umbrella sexual harassment and misconduct allows for a consistent institutional response, alignment in student, staff and faculty grievance procedures, and achieves clarity and ease of access for all constituents. A coordinated overall policy should provide clear and easily accessible information to students, staff, and faculty regarding the purpose and scope of the policy, definitions of sexual harassment and more specific forms of prohibited conduct, confidential resources, reporting options, grievance procedures, and appeals processes. The policy should be widely distributed and easily accessible to students, faculty and staff in both written and electronic form. The policies and procedures should be written in language that is non-judgmental, easily understood, and well organized by concept and theme.

Schools should also consider forming a Title IX task force to support the administration in its revision of policies and procedures, to design educational and prevention programming, and to assist in culture and climate assessment. A task force may include the Title IX coordinator, the chief student affairs officer, human resources, health services, counseling, public safety or sworn law enforcement officers, the provost or other faculty representative, victim's advocates, general counsel, and any other department that plays a role in the institution's response as well as student representatives. The assessment process should be community-building in nature, effectively tearing down pre-existing silos to create an interconnected web of communication and responsiveness. The policy development should be informed by the information gathered in the campus culture assessment detailed below. The gathering of these responses, through as many formats as possible (constituency meetings, online suggestion boxes, anonymous submissions, and campus surveys) provide an evidence-based process which will serve to inform the language and content of the policy and create investment of all constituencies.

Schools should explore the centralization of information on a school's website in a Resource Page which details emergency resources, preservation of evidence, on campus and off campus confidential resources, on campus reporting options, coordination with local law enforcement, and grievance procedures. A thorough and thoughtful policy is of little value unless all community members can easily access the information in the policy with a simple internet search keyed to respond to common terms. The Resource Page can be supplemented with a "Frequently Asked Questions" ("FAQ") document and flow charts to explain procedural options. These tools provide a more informal and direct manner for students to access information sometimes buried in lengthy policies. The combination of the Resource Page, FAQ and flow charts provide organization of resources and support, easy access to relevant policies, and a demonstration of a school's commitment to centralization of reporting, investigation, and resolution of sexual misconduct allegations.

Consider the following policy questions:

- Does your policy communicate your values?
- Does your policy thoroughly implement the law?
- Does your policy provide practical procedures?
- Does your policy incorporate an awareness of the dynamics of sexual violence?
- Does your policy create a perception of bias as to what kind of response a complainant chooses?
- Does your policy incorporate effective tools to address safety and retaliatory conduct?
- Does your policy provide for balanced access to support for the respondent?
- Are your policies and procedures effectively communicated to your constituents?
- Are administrators well informed about policy and responding in a timely and consistent fashion?
- Does your policy include periodic or annual reviews to incorporate changes in the law and lessons learned through application of the policy?

Here are some initial considerations:

- Where is the policy located and how is it structured?
  - Alphabetical?
  - Multiple policies?
  - Umbrella policy?
- Language
  - Tone
  - Value-laden terms
  - Consistency
- Organization
  - Modular
  - Intuitive
  - Redundant
- Web-based
  - Searchable
  - Links

- Supported by
  - Flow Charts
  - Clear step by step guidance
  - FAQ
- Consistent definitions
- Alignment

Some key policy components include:

- Institutional values
- Notice of non-discrimination
- Purpose
- Set behavioral expectations
- Scope
  - Applies to all community members
  - On and off campus
- Privacy vs. confidentiality
- Resources
- Confidential
  - Campus
  - Community
- Interim remedies
- Reporting options
- Emergency assistance for safety, physical and emotional well-being
- *All* employees directed to share with central review process
- Investigative/review process
- Complainant no consent
- Threshold determination?
- Procedures for resolution
  - Based on role of the respondent
  - Must be in alignment
  - Timeframes for investigation, hearing, and appeal
- Definitions
  - Sexual harassment
    - Forms
    - Examples
  - Sexual violence
    - Tie to sexual harassment
- Prohibited forms of conduct
- Consent
- Incapacitation
- Intimate partner violence
- Prior sexual history or pattern evidence
- Consensual relationships
  - Prohibited?

- Discouraged?
- Child protection policies
- Mandatory reporter obligations
- Protections
  - No retaliation
  - Alternative presence
  - No cross-examination

C. Confidential Resources vs. Reporting Options

There should be clear delineation between confidential resources, whether on campus or in the community, and reporting options. Students or employees wishing to obtain confidential assistance may do so by speaking with professionals who are obligated by law to maintain confidentiality. Although there are exceptions based on state law, these confidential resources generally include medical providers, mental health providers, clergy, and rape crisis counselors.

In contrast, if a student or employee discloses sexual assault or harassment to any responsible employee of a school, that employee should be trained to share the report with the administrators on campus specifically charged with implementing the school's Title IX response. We recommend that all school employees, including faculty, staff, administrators, student employees who have a responsibility for student welfare, and student volunteers who have a responsibility for student welfare, be required to share with a member of the Title IX team any report of sexual harassment or misconduct they receive or of which they become aware. Examples of students who may have a duty to share the information with the centralized Title IX team include residential assistants or counselors, peer advocates and peer educators.

The goal of centralized reporting is to ensure consistent application of the policy for all individuals, and to allow the school to respond promptly and equitably to eliminate the harassment, prevent its recurrence and address its effects. This reporting structure represents an effective vehicle for breaking the culture of silence.

A first priority in reporting options is individual safety and physical well-being. Schools should ensure that these reporting options are displayed prominently, including a statement about the importance of preservation of evidence. Schools should also designate dedicated campus reporting options: Title IX Coordinator, campus safety/police, student conduct or student affairs, and human resources. In addition, we recommend an anonymous reporting option, but one that allows follow up communication (such as Ethics Point).

Conflicts may arise for individuals on campus who wear more than one hat: for example, a licensed clinician *and* an administrator. For those individuals, clear expectations about confidentiality should be set depending on the nature of their role.

D. The Confidentiality Conundrum

Perhaps the most controversial pronouncement in the April 4, 2011 DCL is that an institution must first obtain the consent of a complainant before beginning an investigation, and that even if the complainant asks that the complaint not be pursued, the institution is still

obligated to respond. Traditionally, institutions felt secure in a decision to take no action because it was viewed as respecting the complainant's wishes. OCR, however, has made it clear that "doing nothing is always the wrong response" and that institutions must "take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation."

One solution to this conundrum: manage expectations and provide information to campus communities *before* an incident occurs or a report is made. Each institution should have a sexual harassment and misconduct policy that clearly identifies the distinction between confidential resources—where complainants may seek guidance and support without triggering a report to the institution—and reporting options. Students and staff members must be educated about on- and off-campus confidential resources as well as privacy limitations when reporting sexual harassment to a non-confidential source. Complainants must be informed that a report to any college or university employee will trigger the centralized review process. While those reports *will* be kept private, they are not cloaked in absolute legal confidentiality protections. The policy, training and educational programming should encourage prompt reporting and inform community members *in advance* what their options are so that they may make an informed choice as to how – or if – they wish to report to a school employee who will be required to elevate the report to the Title IX Team.

This response resets the balance of communication and empowers complainants to make informed decisions as to when, where, and how to report—including the decision to *not* report. Policies should demonstrate recognition that not all individuals will be ready to report and that institutions are willing to meet them wherever they are in the disclosure process. The institution bears the responsibility of ensuring all campus employees understand their obligation to elevate reports to the centralized review process. This training must be widespread, consistent, and repeated over time to foster a culture that encourages reporting and accountability.

When a report is made, and a complainant still requests that his or her identity remain confidential or that the institution not pursue an investigation, the institution should inform the complainant that its ability to respond may be limited. The institution should seek to remove any barriers to reporting by informing the complainant that retaliation will not tolerated. The institution should establish a review process that weighs the request for confidentiality against a number of factors, including the seriousness of the alleged harassment, the respective ages and positions of the complainant and the respondent, whether there have been other harassment complaints against the respondent, and the respondent's right to receive information if such information is maintained in an "education record" under FERPA. The institution must exercise good judgment to determine whether the relevant factors allow it to follow a complainant's wishes or require it to proceed with the complaint in light of broader community and safety issues. The transparency of this approach will educate campus constituencies, demonstrate a commitment to taking each case seriously, and remove barriers to reporting on campuses.

E. Support Services

We recommend that all schools examine the existing campus resources to ensure that appropriate services are available to students on an emergency and ongoing basis and to identify any gaps in services. This includes an assessment of the extent to which resources are available

outside of business hours (24/7 availability, evenings, weekends, and school breaks), the visibility and transparency to students, the level of training and/or sensitivity by staff, whether there is any conflict in the roles of individuals providing services who also bear other job responsibilities on campus, and whether there is a clear articulation and understanding of confidential versus non-confidential resources.

As soon as a complaint is received by the school, the school should consider providing access to an advocate or advisor to assist the complainant. This individual should be made available regardless of whether or not a decision has been made to pursue any particular course of action.

In general, a school should provide the following sexual assault supports:

- Ensure physical safety and advise re: medical treatment
- Advise re: preservation of evidence
- Confidentiality and privacy limitations
- Identify rights of both accused and accuser
- Explain University's obligation to discharge Title IX investigative responsibilities
- Provide information on option to notify appropriate law enforcement authorities and ensure the accuser knows know what that process entails
- Provide notification that the university will assist accuser in notifying authorities
- Provide notification of existing on and off campus counseling, mental health or other services for victims
- Provide information on grievance procedures and disciplinary process options, and clarify that internal school investigation does not foreclose report to law enforcement
- Notify the complainant of his or her options to avoid contact with the alleged perpetrator and explain no-contact orders
- Allow students to change academic or living situations as appropriate
- Minimize the burden on the complainant when taking steps to separate the parties
- Not, as a matter of course, remove complainants while allowing alleged perpetrators to remain

F. Coordination with Law Enforcement

Many institutions struggle with how to coordinate the campus response with concurrent law enforcement investigations. In general, institutions should encourage prompt reporting of all allegations to law enforcement to ensure that complaints are reviewed by trained investigators and that key evidence is preserved. The standards by which law enforcement officials evaluate whether to proceed with a case may be different than standards employed on campuses. The institutional burden of proof is lower and the goal broader in Title IX educational and remedial scope, meaning institutions need to proceed regardless of whether there is a criminal prosecution.

The key to managing this intersection is a process of coordination similar to internal policy assessment practices. Schools, local law enforcement agencies, local prosecutors, medical providers, and victims' advocates should draft a shared Memorandum of Understanding ("MOU"). This MOU should identify the initial sequencing steps and key time frames and assign a hierarchy to decisions that must be made in conjunction with one another. For example, there

should be a clear understanding of when a school will refer a matter to local law enforcement. A college may agree not to notify an alleged offender until after the initial stages of the criminal investigation are completed, but will have the ability to communicate with the complainant regarding Title IX rights, grievance procedures, and the implementation of interim measures to ensure safety and well-being. A local law enforcement unit may choose to share investigative notes or findings with the college or university. Protocols may be established for using a sexual assault examination kit and subsequent forensic testing even if criminal charges are not pursued.

G. Investigation

The critical nature of a competent investigation cannot be overestimated. Institutions can choose from a variety of models: campus investigator, public safety, sworn law enforcement officers, outside investigator, student conduct staff, human resources personnel, or the Title IX coordinator. Regardless of the model, the goal is the same: fair and impartial gathering of the facts.

Colleges and universities are required to conduct an adequate, reliable and impartial investigation under Title IX. The traditional student conduct model of asking each party to write his/her own statement, conducting little to no additional investigation, and requiring a student to present his/her own case at a panel hearing fails to satisfy Title IX mandates. As significantly, the lack of a competent and thorough investigation has the potential of leading to inequitable findings by a panel that bases a decision on incomplete development of facts or reliance on information that is not fully developed or supported by other corroborative information.

A competent Title IX investigation should be conducted by skilled investigators trained in the dynamics of sexual assault, counter-intuitive victim behaviors, intimate partner violence, the impact of drugs and alcohol, and evaluating consent. Evidence preservation by law enforcement and/or medical facilities is crucial, regardless of whether the case follows a traditional law enforcement track or is handled by student conduct or a Title IX investigator. Investigators should be trained in how to evaluate a credibility case, including an understanding of demeanor, interest, detail, corroboration and known patterns of human behavior. Investigators should remain neutral and impartial and not serve as advocates for either party.

The goals of a good investigation should be: to gather the most robust set of facts; to listen with an earnest intent to understand; to learn, not assume; to tend to the individual; and to search for corroboration where is should reasonably be expected to exist. Throughout the investigation process, there should be regular and timely communications from a designated member of the Title IX Team that can help to set and manage expectation.

A thorough interview must be conducted of both the complainant and, if available, the respondent that seeks all relevant and attendant information about the incident, any pre-existing relationship, and the circumstances of the report. The interview should be followed by an exhaustive search for corroboration through other witnesses and physical or documentary evidence, including electronic communications, photographs, medical records, and forensic evidence. The existence of pattern evidence should also be explored. Depending on its scope and format, the traditional student conduct approach may not constitute an adequate, thorough, and reliable investigation. While both a complainant and a respondent should have an equal

opportunity to present evidence and be heard, the burden of conducting the investigation should not rest solely on either party.

Recognizing that the focus of a student conduct process is educational and corrective, the consequences of failing to fully and competently investigate an allegation of sexual assault are severe. Allowing a decision maker to evaluate a set of facts based on minimal or even misleading information can lead to potentially unjust determinations.

Some factors to consider include:

- Choice of language:
  - Investigation
  - Review
  - Assessment

- Who investigates?
  - Student conduct
  - Campus safety/police
  - Attorney
  - Mental health professional
  - Dedicated Title IX investigator
  - EEO/Human Resources
  - External investigator

- Considerations:
  - Training & experience
  - Impartiality
  - Culture of campus
  - No conflict in role
  - Cannot serve dual role of victim support and impartial investigation
  - Should not be fact-gather and fact-finder

H. Grievance Procedures

Grievance procedures vary from campus to campus, but each institution's response must be prompt and equitable. Policies must designate reasonably prompt time frames for the major stages of the complaint process. Both the complainant and the respondent should be given periodic status updates, receive notification of the outcome, and be informed of their right to appeal. There should be mechanisms for remedies that address both individual and community safety, implement no-contact orders, provide academic support, adjust academic schedules or living arrangements, provide counseling or emotional support, and allow for other equitable solutions or responses for both parties. Title IX also mandates that grievance procedures employ a "preponderance of the evidence" standard—a common civil standard that simply means "more likely than not." Another way to conceptualize this level of proof is to consider whether the allegation is supported by the greater weight of the attendant circumstances and available information.

A critical feature of grievance procedures is balance. Procedures should be student-centered with balanced attention to the equitable treatment of all parties—complainants, respondents, and third-party witnesses. Balance is critical in defining prohibited conduct, consent, and the role of intoxication versus incapacitation. With respect to alcohol, we recommend an unambiguous line of demarcation drawn between intoxication or impairment and incapacitation. Incapacitation should be defined in a manner that allows all community members to understand how to apply the concept in evaluating sexual misconduct allegations that involve alcohol or other drugs. Balance is also critical in determining how an institution will consider prior sexual history of the parties. While this information is generally prohibited, there are two exceptions: 1) where a complainant and a respondent have a prior intimate or sexual relationship, this information may be relevant to a determination of responsibility; and 2) where the respondent has a prior history or pattern of sexual misconduct, this information may be also be probative.

Schools have wide latitude to determine if cases will be adjudicated by an individual or a panel. Panel composition is also within the discretion of the school. Panels may include students, faculty or staff, or some combination thereof. The key considerations are privacy, impartiality, and sufficient training and experience. Training for adjudicators should include, at a minimum, the following topics:

- Title IX mandates
- University policies
- Elements of conduct violations
- Dynamics of sexual assault
- Counter-intuitive victim behaviors
- Understanding disclosure and recantation
- Components of a competent investigation
- Typical sources and types of evidence
- Applying the preponderance of the evidence standard
- How to evaluate credibility: demeanor, interest, detail, corroboration, common sense
- Evaluating consent
- Understanding the role of alcohol: intoxication, impairment, and incapacitation
- Addressing the admissibility and relevance of facts (prior sexual history or pattern evidence)
- Identifying bias and ensuring objectivity
- Proper questioning techniques
- Proper deliberation techniques
- Appropriate sanctions
- Self-care re: secondary trauma
- Confidentiality of proceedings
- Recusal or conflict of interest

I. Training

The April 4, 2011 DCL requires general training for students and staff and more specific training for implementers, investigators, and adjudicators. Schools should provide training in the following categories:

Campus-wide Training of all Community Members: All community members should receive training on the school's policies regarding sexual harassment and misconduct, the need to elevate reports to a centralized process, and any mandatory child abuse reporting obligations. Students and staff should receive information about how to report sexual harassment, either as a complainant or a third party, and confidential resources should be clearly identified. The training should also clearly outline the investigative processes and grievance procedures that apply based on the role of the parties and the nature of the incident.

Training for Employees and Others in Positions of Authority: In addition to the above, all individuals on campus who may be a "first responder" or the first point of contact (e.g. faculty, coaches, resident advisors, and peer advisors) should receive practical information as to how to identify and report sexual harassment and violence, how to respond to a report by addressing immediate safety, health, and well-being concerns, how to access support and emergency assistance, and how to elevate the report to a centralized process.

Training for Implementers: Those charged with implementing the school's responses, including individuals involved in investigating and/or adjudicating complaints, should receive more detailed and specific training on the school's policies and grievance procedures for handling complaints of sexual harassment and sexual violence, and the dynamics of sexual harassment and violence. For example, all hearing board members – whether faculty, staff, or student – should receive a consistent level of training.

J. Remedies

Schools should explore and develop systems to routinely provide interim remedies and responses. There should be mechanisms for remedies that address both individual and community safety, implement no contact orders, provide academic support, adjust academic schedules or living arrangements, provide counseling or emotional support, and allow for other equitable solutions or responses for both parties. The interim remedy response system should build in uniform follow-up and check in communications (both oral and written) with both the complainant and the respondent, use template forms, and provide protocols for coordination of information as necessary between individuals and groups on campus. Such a system will ensure that all appropriate remedies are available, offered, and where appropriate, implemented on a consistent basis. The system should also ensure that protective remedies are strictly enforced and any violation responded to promptly and equitably to protect individual and community safety.

In general, here are some caveats about remedies:

- Should be a holistic approach on the micro and macro level
- No remedy can take root without the appropriate teeth and supervision
- Remedy must consider the whole person and should fit specific needs

- Tailor the remedy to the conduct and the context of the individual
- Can tailor to the individual or the community
- Should augment sanction/outcome
- Title IX remedies often extend beyond conclusion of case

1. No Contact Orders

In general, a school should not automatically impose a mutual stay order between the parties. Rather, there should be a principled decision by the administration to assess the known facts, and importantly, the complainant's stated request.

- Separate the parties – change in classes, living, no contact orders
- Enforcement of no contact orders – institution must identify and charge someone with enforcement and oversight
- Need proactive checking in on behalf of school rather than leaving burden to the student
- No contact orders need to have teeth with consequences that are articulated in advance
- Swift, certain consequence to shape and guide behavior
- If there is a violation, oversight person has to ensure that the consequence is enforced

2. Individual Title IX Remedies

- Alcohol awareness and prevention
- Academic support
- Counseling
- Mentoring
- Reintegration support
- Traditional disciplinary sanctions
- Suspension or expulsion
- Educational programs that focus on rehabilitation of the mindset

3. Community Title IX Remedies

- Alcohol awareness and prevention
- Engage students to design education appropriate to the culture of their institution
- Sponsor a contest in sexual assault awareness and prevention
- Challenge students to work in a coordinated way to change student bodies
- Engage students from marketing, psychology & women's studies to develop innovative and creative programs for credit
- To the extent that it is necessary, broader group education for reintegration and restoration of a hostile-free environment

III. Education and Prevention

Schools should be proactively engaged in education and in the prevention of sexual violence. Education and prevention require an integrated communications plan to effectively share institutional policies, prevention efforts, reporting options and resources with all constituency members. 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 small, 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-mails communications, and a dedicated web page 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 conversation, 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 a top down priority, and involve high level administrators, faculty members, and coaches alike. We recommend the creation of an educational seminar designed by faculty members 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, classicism, racism, and other issues that can impact our campus culture and the development and education of our students. This direct educational approach – a for credit seminar which utilizes the skills of our most effective and engaging educators – is a cutting edge practice in changing culture that demonstrates the College's commitment to student welfare and development.

Education and prevention must also encompass a bottom up or grass roots endeavor that actively engages students in the development of educational programming. This may include residence life campaigns, art or design contests, competitions for the best alternative social events, and other creative ideas shaped by the engaging and entrepreneurial minds of our student population. The direct involvement of our students can engender responsibility for self and others, ownership of prevention and education, and a more closely connected campus culture through programs like bystander intervention training, peer advisors, and other student-run initiatives.

Any education and prevention program must involve widespread and ongoing campus initiatives throughout the academic year. Programming must be consistent, ongoing and repeated in many formats and forums, not simply limited to new student orientation. The goal of this scaffold approach is to foster a climate that encourages reporting by providing consistency in message, policy, procedure, and outcome. Empowering students to respect themselves and one another and to confront difficult issues with openness and transparency has the potential to directly impact culture. Similarly, identifying and addressing barriers to reporting through education efforts can help to instill confidence across the campus community that allegations will be investigated, evaluated, and adjudicated in a fair and equitable manner that is supportive to both complainant and respondent.

IV. Changing Culture

The high-level goal of Title IX is to provide a safe educational environment that maximizes student welfare and development while protecting the community. Policies must align, diverse constituents must unite in a shared goal, and all campus representatives must be adequately trained and committed to developing a culture of accountability. Through commitment, coordination, and competence, colleges and universities can confidently provide an equitable and just institutional response to sexual misconduct that is rooted in a culture of prevention and intervention and a climate that encourages reporting and trust in the institutional Title IX response. Consider the following steps to shift culture:

A. Define Your Culture

- Prioritize student welfare
- Develop foundational elements for accountability and respect for others
- Foster a climate that encourages reporting
- Strive for direct, open, transparent communication
- Set clear expectations for behavior
- Guide student behavior with swift, fair and certain university response

B. Key Concepts

- Engage your community
- Embrace the tension of the conflict
- Dissect concerns through informed and respectful dialogue
- Encourage creativity and innovation of your team
- Replace the tyranny of the OR with the genius of the AND
- Create fertile ground through education and conversation
- Plant the seeds to cultivate change
- Scaffold your message
- Develop a relevant, coordinated and consistent message

C. Fostering Climate Change

- Demonstrate priority and commitment through “tone at the top”
- Involve the highest level of administration
- Encourage conversation from the dorm room to the boardroom
- Allocate sufficient resources
- Invest in technology, marketing & communications
- Develop message that will resonate at the grass roots level
- Involve students in prevention, education and policy revision
- Education, education, education

D. Methods of Community Engagement

- Draft student, faculty and staff ambassadors for change
- Identify campus and community partners

- Identify key leaders in faculty, staff and administration
- Involve leaders in the field and subject matter experts on the faculty
- Involve athletic teams and Greek communities
- Seek the assistance of student activity leaders
- Involve peer educators
- Use social networking tools
- Create a dedicated website that coordinates all policies, prevention and education, and action plan

E. Forums for Community Engagement

- Use a diversified portfolio that gives all community members a time and place to be heard
- Town halls
- Focused groups for engagement:
  - Faculty
  - Staff
  - Residence halls
  - Athletic teams
  - Student groups
  - Affinity groups
- Diversified groups
- Sit in/day of dialogue
- Online anonymous reporting options
- Online suggestion box
- Constituency surveys
- Electronically
  - Tied to class registration
  - Tied to funding of student activities

F. Targeted Education and Prevention

- For complainant, respondent, community groups, faculty and staff and broader campus population
- Build the scaffolded message
- Primacy & recency with repeated reinforcement
- Engage each constituency to commit to a program every 4th month: students, faculty, staff, administration
- Vary methods and approaches
- Redefine the campus meme in t-shirts, pamphlets, posters, door hangers

G. Creative Initiatives for Awareness, Risk Reduction and Prevention

- Surf the net
- Crazy hat day
- Livestrong bracelet
- Facebook page

- Twitter/Blogs
- Clothesline Project
- IPhone App
- Interactive skits and plays
- RA bulletin board contest
- Back of ID card resource information
- Lockdown weekend
- Red Solo Cup safety messages
- Dorm-room door hangers
- Sexual assault awareness videos
- Radio public service announcements
- Handbills and posters
- Bystander intervention
- Intimate partner violence
- Walk a Mile in Her Shoes
- Don't Cancel Class
- YouTube videos

H. Radical Proposals

- Consider mandatory course for all students that covers the following topics:
    - Sexual respect/root cause analysis
    - Consent and communication
    - Social media & intimacy
    - Intimate partner violence
    - Alcohol and other drugs
    - Bullying/hazing
    - Eating disorders
    - Mental health concerns
    - Depression & suicide
- Outreach to students and parents before they come on campus
- Partner with K-12 schools in education and prevention
- Tie student activity funding to training completion
- Consider potent tie-ins to ensure education efforts reach student population (i.e., dorm lottery number tied to completion of online training)
- Partner with community agencies

V. The Plan (Your Homework)

- Identify your Title IX team
- Audit policies
- Assess response structure
- Sequence institutional response
- Develop internal operating procedures
- Review prior cases

- Engage your community
    - Students
    - Faculty
    - Staff
- Engage leadership
- Collaborate with community partners
- Develop a plan with measurable action items
- Consider task force
- Consider external policy audit
- Survey campus constituencies
- Develop monthly training and education schedule
- Change the conversation

References

1. Campus Sexual Violence Elimination Act (March 7, 2013), http://www.gpo.gov/fdsys/pkg/PLAW-113publ4/pdf/PLAW-113publ4.pdf

2. Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 CFR Part 99, http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title34/34cfr99_main_02.tpl

3. Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092 (f), http://www.law.cornell.edu/uscode/text/20/1092

4. Office for Civil Rights, Dear Colleague Letter (October 26, 2010), http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf

5. Office for Civil Rights, Dear Colleague Letter (April 4, 2011), http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf

6. Office for Civil Rights, Dear Colleague Letter (April 23, 2013), http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201304.pdf

7. Office for Civil Rights, Voluntary Resolution Agreement, Eastern Michigan University (November 2010), http://www2.ed.gov/about/offices/list/ocr/docs/investigations/15096002-b.pdf

8. Office of the Civil Rights, Voluntary Resolution Agreement, Notre Dame College (September 2010), http://www2.ed.gov/about/offices/list/ocr/docs/investigations/15096001-b.pdf

9. Office for Civil Rights, Voluntary Resolution Agreement, University of Notre Dame (July 2011), http://www2.ed.gov/about/offices/list/ocr/docs/investigations/05072011-b.pdf

10. Office for Civil Rights, Voluntary Resolution Agreement, Xavier University (July 2012), http://www.atixa.org/documents/Xavier%20Resolution%20Agreement.pdf

11. Office for Civil Rights, Voluntary Resolution Agreement, Yale University (June 2012), http://www2.ed.gov/about/offices/list/ocr/docs/investigations/01112027-b.pdf

12. Office for Civil Rights, University of Montana Letter (May 9, 2013), http://www2.ed.gov/documents/press-releases/montana-missoula-letter.pdf

13. United States Department of Education, Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX (January 2001), http://www2.ed.gov/offices/OCR/archives/pdf/shguide.pdf

14. United States Department of Justice and the University of Montana Regarding the University of Montana Office of Public Safety's Response to Sexual Assault, Memorandum of Agreement (May 2013), http://www.justice.gov/iso/opa/resources/249201359163319932992.pdf

15. University of Montana - Missoula, United States Department of Justice, Civil Rights Division, Educational Opportunities Section and United States Department of Education, Office for Civil Rights, Resolution Agreement (May 2013), http://www.justice.gov/iso/opa/resources/528201359144329545 96.pdf

16. Title IX of the Education Amendments of 1972 20 U.S.C. § 1681 et seq., http://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr106.html

	2011 Dear Colleague Letter	University of Montana Letter	Resolution Agreement	MOA Re: University of Montana Office of Public Safety's Response to Sexual Assault
Educational Environment	Education has long been recognized as the great equalizer in America. The U.S. Department of Education and its Office for Civil Rights (OCR) believe that providing all students with an educational environment free from discrimination is extremely important. The sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and, in the case of sexual violence, is a crime. – Pg. 1		The University will ensure that the educational environment of each enrolled student who reported sexual harassment, sexual assault, or retaliation is free of harassment and retaliation, and if not, will take steps to eliminate the hostile environment (e.g. by providing academic services, counseling, escort services, and changing housing assignments and scheduling for classes, dining services, etc.). Each academic semester, the University shall document its efforts to contact such students and any steps it takes to address the student's environment, including the nature and duration of any such steps. Pg. 9	
Definition and Enforcement of Title IX	Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq., and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. – Pg. 1 The U.S. Department of Justice enforces Title IV. – Pg. 1	The United States conducted this investigation and review of the University under its Title IX and Title IV authority. Title IX and its implementing regulations, 28 C.F.R. Part 54 and 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs and activities operated by recipients of federal financial assistance. DOJ also enforces Title IV, which prohibits discrimination against students in public schools and colleges and		

		universities based on sex, race, color, religion, and national origin. The University is a public school that receives federal financial assistance* and therefore is subject to the requirements of both Title IX and Title IV. In the context of DOJ-initiated court actions for injunctive relief and OCR-initiated administrative enforcement actions, DOJ and OCR interpret Title IX and Title IV as applying the same standard to allegations of sex-based harassment. Thus, in the context of this investigation and compliance review of the University, the United States applied the same legal standards under Title IX and Title IV to conduct its legal analysis and reach its findings. Pg. 4 *The University receives federal financial assistance from both DOJ and the U.S. Department of Education. Therefore, both agencies are authorized to conduct Title IX compliance reviews of the University.		
Definitions			The term "employee" means any non-student employee of the University, including but not limited to faculty, administrators, Office of Public Safety ("OPS") employees, and staff. The term "student employee" means a student who is enrolled at and employed by the University; allegations of sex discrimination against student employees may	The following terms and definitions shall apply to this agreement: a) "OPS" means the University of Montana's Office of Public Safety and its agents, officers, detectives, supervisors, command staff, employees (both sworn and unsworn), and contractors. b) "DOJ" means the United States Department of Justice's Civil

			require the University to take measures applicable to both students and employees. The term "University Court" is the tribunal consisting of students, faculty, and staff that holds hearings regarding alleged violations of the Student Conduct Code (SCC) under certain circumstances prescribed by the SCC. Pg. 2	Rights Division and its agents and employees. c) "Effective Date" means the day the parties sign this agreement. d) "Implement" or "implementation" means the development or putting into place of a policy or procedure, including the appropriate training of all relevant personnel, and the consistent and verified performance of that policy or procedure in actual practice. e) "Include" or "including" means "include or including, but not limited to." f) "Independent Reviewer" means a person or team of people, independent from the University, who shall be selected to assess and report on the University's implementation of this Agreement. g) "MCAO" means the Missoula County Attorney's Office. h) "MPD" means the Missoula Police Department. i) "MOU" means the Memorandum of Understanding currently in effect between OPS and MPD addressing the transfer of certain felony criminal investigations from OPS to MPD, and any future similar agreement. j) "On campus" means anywhere that OPS officers have jurisdiction to investigate an alleged crime, as defined by Montana state law and/or any private agreements between law

				enforcement agencies entered into consistent with state law; k) "OPS personnel" or "OPS employee" means all OPS employees, contractors, and volunteers, including command staff, supervisors, officers, detectives, and civilian employees. l) "Policy" or "protocol" means a written regulation or directive, regardless of the name of the regulation or directive, describing the duties, functions, and obligations of OPS m) personnel, and providing specific direction in how to fulfill those duties, functions, or obligations. o) "Shall" means that the provision imposes a mandatory duty. p) "Supervisor" means a sworn OPS employee at the rank of sergeant or above (or anyone acting in those capacities) and non-sworn personnel with oversight responsibility for OPS personnel. q) "University" and "UM" mean the University of Montana.
Definition of Sexual Assault				n) "Sexual assault," for the purposes of this Agreement, means both rape and other types of sexual assault as defined by Montana Code Annotated §§ 45-5-502 (sexual assault) and 45-5-503 (sexual intercourse without consent), exclusive of child sexual assault

Definition of Sex-Based Harassment			As used in this Agreement, the term "sex-based harassment" includes both sexual harassment, including but not limited to sexual assault, and gender-based harassment. Pg. 2	
Definition of Sex Discrimination			For purposes of this Agreement, "sex discrimination" includes sex-based harassment, other discrimination on the basis of sex, and retaliation relating to complaints of sex discrimination.	
Definition of Sexual Harassment	Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX. – Pg. 1 Sexual harassment is unwelcome conduct of a sexual nature. Pg. 3 The of the term "sexual harassment" throughout this document includes sexual violence unless otherwise noted. Sexual harassment also may violate Title IV of the Civil Rights Act of 1964 (42 U.S.C. § 2000c), which prohibits public school districts and colleges from discriminating against students on the basis of sex, among other bases. – Pg. 1	Sexual harassment is a form of sex discrimination prohibited by Title IX and Title IV. Pg. 4 The confusion about when and to whom to report sexual harassment is attributable in part to inconsistent and inadequate definitions of "sexual harassment" in the University's policies. First, the University's policies conflate the definitions of "sexual harassment" and "hostile environment." Sexual harassment is unwelcome conduct of a sexual nature. Pg. 8 The University's Sexual Harassment Policy, however, defines "sexual harassment" as conduct that "is sufficiently severe or pervasive as to disrupt or undermine a person's ability to participate in or receive the benefits, services, or opportunities of the University, including unreasonably interfering with a person's work or educational	The term "sexual harassment" means unwelcome conduct of a sexual nature. Pg. 2	

		performance." Sexual Harassment Policy 406.5.1. While this limited definition is consistent with a hostile educational environment created by sexual harassment, sexual harassment should be more broadly defined as "any unwelcome conduct of a sexual nature." Defining "sexual harassment" as "a hostile environment" leaves unclear when students should report unwelcome conduct of a sexual nature and risks having students wait to report to the University until such conduct becomes severe or pervasive or both. Pg. 8. If the University is defining "sexual harassment" as conduct that creates a hostile environment because a student or employee may face disciplinary consequences upon a University finding that sexual harassment occurred, then the University should clarify its discipline practices rather than define "sexual harassment" too narrowly, which will likely discourage students from reporting sexual harassment until it becomes severe and pervasive. Pg. 9 The DGP does not define sexual harassment or hostile environment appropriately and lacks procedural elements to ensure it is prompt and equitable.		

		Pg. 20 Sexual harassment is unwelcome conduct of a sexual nature. However, the Officer assessed whether the conduct was severe or pervasive to determine whether the conduct constituted sexual harassment. The Agreement requires the University to provide accurate definitions of sexual harassment in its policies and procedures. It also requires the University to ensure that those responsible for responding to allegations of sexual harassment receive training regarding (1) the appropriate legal standards to apply, (2) the need to stop the harassment, (3) the obligation to take interim measures where appropriate, and (4) the need to take steps to prevent harassment from recurring. Pg. 22		
Acts that Fall Into the Category of Sexual Harassment	[Sexual Harassment] includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. – Pg. 3	Sexual harassment is unwelcome conduct of a sexual nature and can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Pg. 4 The applicable legal standards described herein are more fully discussed in OCR's 2011 Dear Colleague Letter on Sexual Violence, which is available at: http://www2.ed.gov/about/offic	Although "sexual assault" is a form of "sexual harassment," where this Agreement refers to "sexual assault" and "sexual harassment" separately, it is differentiating sexual contact, including intercourse, without consent ("sexual assault") from unwanted conduct of a sexual nature that does not rise to the level of sexual assault. Pg. 2	

		es/list/ocr/letters/colleague-201104.html (Apr. 4, 2011). See also OCR's 2010 Dear Colleague Letter on Harassment and Bullying, which is available at: http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html (Oct. 26, 2010); OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties at: http://www.ed.gov/about/offices/list/ocr/docs/shguide.html (Jan. 19, 2001) Pg. 3 Although "sexual assault" is a form of "sexual harassment," where this letter refers to "sexual assault" and "sexual harassment" separately, it is differentiating sexual contact, including intercourse without consent ("sexual assault"), from unwanted conduct of a sexual nature that does not rise to the level of sexual assault. Pg. 1 Third, the SCC is not an adequate Title IX grievance procedure for sexual harassment because it does not clearly cover sexual harassment that does not constitute sexual assault. The SCC covers "malicious intimidation or harassment," which the University defines as "[w]hen a student, with the intent to terrify, intimidate, threaten, harass, annoy, or offend,		

		(1) causes bodily injury to another, (2) causes reasonable apprehension of bodily injury in another, (3) damages, destroys, or defaces any property of another or any public property, or (4) makes repeated telephone communications anonymously or at extremely inconvenient hours or in offensively coarse language." This definition does not explicitly include sexual harassment, and the requirements of malicious intent and bodily harm, fear of bodily harm, destruction of property, or repeated telephone communications exclude many forms of unwelcome conduct of a sexual nature that constitute sexual harassment. Pg. 18 Under the Agreement, the University will clarify to which types of sexual harassment the SCC and/or DGP apply and ensure that all forms of sexual harassment and sexual assault are covered. In all cases, reports of sexual harassment and sexual assault will be investigated promptly, reliably, adequately, and impartially. And even if the University uses its DGP or another procedure that does not currently provide a means of disciplining alleged harassers to process peer-on-peer sexual harassment complaints that do not allege sexual assault, the University needs to provide a means of disciplining students		

		who engaged in sexual harassment short of sexual assault to ensure that adequate remedies are available. Pg. 18		
Letter Guidance Overview	In order to assist recipients, which include school districts, colleges, and universities (hereinafter "schools" or "recipients")in meeting these obligations, this letter explains that the requirements of Title IX pertaining to sexual harassment also cover sexual violence, and lays out the specific Title IX requirements applicable to sexual violence. -Pg. 1 The Department has determined that this Dear Colleague Letter is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007) *available at:* http://www.whitehouse.gov/sites/default/files/omb/assets/Regulator_matters_pdf/012507_good_guidance .pdf. OCR issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights, under the civil rights laws and implementing regulations that we enforce. OCR's legal authority is based on those laws and regulations. This letter does not add	The Agreement will serve as a blueprint for colleges and universities throughout the country to protect students from sexual harassment and assault. Pg. 1 As discussed above, the University has voluntarily and proactively agreed to make changes to its procedures and practices related to Title IX and Title IV compliance. The Agreement details specific steps the University will take to: 1. revise the University's policies, procedures, and investigative practices to provide a grievance procedure that ensures prompt and equitable resolution of sexual harassment and sexual assault allegations; 2. adequately investigate or respond to allegations of retaliation by students who have alleged sexual assault or sexual harassment; 3. take sufficient effective action to fully eliminate a hostile environment based on sex, prevent its recurrence, and address its effects; 4. ensure that the individuals		

	requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to us at the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202. – Pg. 1	designated to coordinate its Title IX efforts receive adequate training and coordinate these efforts effectively; and 5. revise the University's notice of nondiscrimination to adequately inform students that sex discrimination is prohibited. Pg. 30-31		
Resolution of the Investigation and Compliance Review Overview		The United States Department of Justice, Civil Rights Division, Educational Opportunities Section ("DOJ") and the United States Department of Education, through its Office for Civil Rights ("OCR"), are pleased to confirm the resolution of their investigation and compliance review of the University of Montana's (the "University") handling of allegations of sexual assault and harassment at its Missoula campus.1 DOJ and OCR (collectively, the "United States") conducted the review under Title IX of the Education Amendments of 1972 ("Title IX"), as amended, 20 U.S.C. §§ 1681–1688, and its implementing regulations, 28 C.F.R. pt. 54 and 34 C.F.R. pt. 106. DOJ also conducted its investigation under Title IV of the Civil Rights Act of		

		1964 ("Title IV"), 42 U.S.C. § 2000c-6. The Resolution Agreement (the "Agreement") reflects the collaborative efforts of the University and the United States to identify reforms that will assist the University's ongoing efforts to prevent sexual assault and harassment and improve its responses to reports of such misconduct in compliance with Title IX and Title IV. The United States appreciates the University's full cooperation from the outset, its proactive efforts to date, and its commitment to address the findings of our investigation and ensure a safe campus in Missoula. We also appreciate the University's cooperation throughout the related investigation by DOJ's Special Litigation Section ("SPL") of the University's Office of Public Safety ("OPS") among other law enforcement entities. DOJ and the University have also successfully resolved that investigation through a separate settlement agreement, and its investigation's findings, which are based on independent assessments of compliance with the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("42 U.S.C. § 14141"), and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d ("Safe		

		Streets Act"), are set out in a separate report. However, because OPS is covered by and must comply with the University's Title IX obligations, OPS is referenced in this letter and required to participate in certain remedies required by the enclosed Agreement, such as training for first responders. We look forward to continuing our collaboration with the University as it implements both agreements to resolve the United States' findings. The implementation of the agreements will build on the University's efforts to date. The Title IX and Title IV agreement is available at http://www.justice.gov/crt/about/edu/documents/classlist.php#sex. The SPL agreement regarding OPS is available at http://www.justice.gov/crt/about/spl/ findsettle.php#police. The background, investigative approach, applicable legal standards, the United States' findings, and the remedies in the Agreement that address those findings are explained below. OPS acts as a first responder to reports of on-campus sexual assault because it provides policing services to the University community and has primary jurisdiction on the University campus. To the extent that SPL		

		made findings regarding OPS under 42 U.S.C. § 14141 and the Safe Streets Act that also implicate Title IX in ways not addressed by the remedies in this Agreement, those findings are addressed by remedies in the SPL Agreement.		
Consent	An individual also may be unable to give consent due to an intellectual or other disability. – Pg. 1			
Acts that Fall into the category of Sexual Violence	A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX. – Pg. 1-2			
Definition of Sexual Violence	Sexual violence, as that term is used in this letter, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. – Pg. 1 Sexual violence is a form of sexual harassment prohibited by Title IX. – Pg. 3			
Statistics on Sexual Violence	The statistics on sexual violence are both deeply troubling and a call to action for the nation. A report prepared for the National Institute of Justice found that about 1 in 5 women are victims of completed or attempted sexual assault while in college. The report also found that			

	approximately 6.1 percent of males were victims of completed or attempted sexual assault during college. -Pg. 2 CHRISTOPHER P. KREBS ET AL., THE CAMPUS SEXUAL ASSAULT STUDY: FINAL REPORT xiii Nat'l Criminal Justice Reference Serv., Oct. 2007), available at http://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf. This study also found that the majority of campus sexual assaults occur when women are incapacitated, primarily by alcohol. Id. at xviii. Pg. 2 Id. Pg. 2			
Gender Based Harassment	Title IX also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature. The Title IX obligations discussed in this letter also apply to gender-based harassment. Gender based harassment is discussed in more detail in the 2001 Guidance, and in the 2010 Dear Colleague letter on Harassment and Bullying, which is available at http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf. – Pg. 2		The term "gender-based harassment" means non-sexual harassment of a person because of the person's sex and/or gender, including, but not limited to, harassment based on the person's nonconformity with gender stereotypes.	
College and	According to data collected			

School Data collected under the Clery Act	under the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (Clery Act), 20U.S.C. § 1092(f), in 2009, college campuses reported nearly 3,300 forcible sex offenses as defined by the Clery Act. This problem is not limited to college. During the 2007-2008 school year, there were 800 reported incidents of rape and attempted rape and 3,800 reported incidents of other sexual batteries at public high schools. Pg. 2 SIMONE ROBERS ET AL.,INDICATORS OF SCHOOL CRIME AND SAFETY:2010at 104 (U.S. Dep't of Educ. & U.S. Dep't of Justice, Nov. 2010), available at http://nces.ed.gov/pubs2011/2011002.pdf. Pg. 2 SIMONE ROBERS ET AL.,INDICATORS OF SCHOOL CRIME AND SAFETY:2010at 104 (U.S. Dep't of Educ. & U.S. Dep't of Justice, Nov. 2010), available at http://nces.ed.gov/pubs2011/2011002.pdf. Pg. 2			
Sexual Assault as it relates to women with intellectual disabilities	Additionally, the likelihood that a woman with intellectual disabilities will be sexually assaulted is estimated to be significantly higher than the general population.			

	ERIKA HARRELL & MICHAEL R. RAND, CRIME AGAINST PEOPLE WITH DISABILITIES,2008 (Bureau of Justice Statistics, U.S. Dep't of Justice, Dec. 2010), available at http://bjs.ojp.usdoj.gov/content/pub/pdf/capd08.pdf. Pg. 2			
Department concerns re: school safety	The Department is deeply concerned about this problem and is committed to ensuring that all students feel safe in their school, so that they have the opportunity to benefit fully from the school's programs and activities. Pg. 2			
Letter Overview	This letter begins with a discussion of Title IX's requirements related to student-on-student sexual harassment, including sexual violence, and explains schools' responsibility to take immediate and effective steps to end sexual harassment and sexual violence. These requirements are discussed in detail in OCR's Revised Sexual Harassment Guidance issued in 2001 (2001 Guidance). Pg. 2 This letter supplements the 2001 Guidance by providing additional guidance and practical examples regarding the Title IX requirements as they relate to sexual violence. This letter concludes by discussing the proactive efforts schools can take to prevent sexual			

	harassment and violence, and by providing examples of remedies that schools and OCR may use to end such conduct, prevent its recurrence, and address its effects. Although some examples contained in this letter are applicable only in the postsecondary context, sexual harassment and violence also are concerns for school districts. The Title IX obligations discussed in this letter apply equally to school districts unless otherwise noted. Pg. 2 The 2001 Guidance is available on the Department's Web site at http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf. This letter focuses on peer sexual harassment and violence. Schools' obligations and the appropriate response to sexual harassment and violence committed by employees may be different from those described in this letter. Recipients should refer to the 2001 Guidance for further information about employee harassment of students. Pg. 2			
Hostile Environment	As explained in OCR's 2001 Guidance, when a student sexually harasses another student, the harassing conduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the	To determine whether a hostile environment based on sex exists, the United States considers whether there was harassing conduct that was sufficiently serious—that is, sufficiently severe or pervasive—to deny or limit a student's ability to participate in or benefit from the		

	school's program. The more severe the conduct, the less need there is to show a repetitive series of Incidents to prove a hostile environment, particularly if the harassment is physical. Indeed, a single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. For instance, a single instance of rape is sufficiently severe to create a hostile environment. Pg. 3 If a school knows or reasonably should know about student-on-student harassment that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects. Pg. 4 This is the standard for administrative enforcement of Title IX and in court cases where plaintiffs are seeking injunctive relief. See 2001 Guidance at ii-v, 12-13. The standard in private lawsuits for monetary damages is actual knowledge and deliberate indifference. See Davis v. Monroe Cnty. Bd. of Ed., 526 U.S. 629, 643, 648 (1999). Pg. 4 See, e.g., Jennings v. Univ. of N.C., 444 F.3d 255, 268, 274 n.12 (4th Cir. 2006)	school's program based on sex. Under Title IX's administrative enforcement standard and Title IV's injunctive relief standard, "severe or pervasive" sexual harassment can establish a hostile environment that a university must remedy and prevent from recurring. Pg. 5 In determining whether this denial or limitation has occurred, the United States examines all the relevant circumstances from an objective and subjective perspective, including: the type of harassment (e.g., whether it was verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved (e.g., teacher-student or student student); the setting and context in which the harassment occurred; whether other incidents have occurred at the college or university; and other relevant factors. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. Indeed, a single instance of rape is sufficiently severe to create a hostile environment. Pg. 5 If harassment that creates a hostile environment is found, the university must take prompt and effective action to stop the harassment, eliminate the hostile		

	(acknowledging that while not an issue in this case, a single incident of sexual assault or rape could be sufficient to raise a jury question about whether a hostile environment exists, and noting that courts look to Title VII cases for guidance in analyzing Title IX sexual harassment claims); Vance v. Spencer Cnty. Pub. Sch. Dist., 231 F.3d 253, 259 n.4 (6th Cir. 2000) (“‘[w]ithin the context of Title IX, a student’s claim of hostile environment can arise from a single incident’” (quoting Doe v. Sch. Admin. Dist. No. 19, 66 F. Supp. 2d 57, 62 (D. Me. 1999))); Soper v. Hoben, 195 F.3d 845, 855 (6th Cir. 1999) (explaining that rape and sexual abuse “obviously qualif[y] as…severe, pervasive, and objectively offensive sexual harassment”); see also Berry v. Chi. Transit Auth., 618 F.3d 688, 692 (7th Cir. 2010) (in the Title VII context, “a single act can create a hostile environment if it is severe enough, and instances of uninvited physical contact with intimate parts of the body are among the most severe types of sexual harassment”); Turner v. Saloon, Ltd., 595 F.3d 679, 686 (7th Cir. 2010) (noting that “‘[o]ne instance of conduct that is sufficiently severe may be enough,’” which is “especially true when the touching is of an intimate body part” (quoting	environment, and address its effects. The university must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment. Pg. 5 To assess whether a hostile environment exists on campus, we also analyzed the University’s responses to complaints, its reform efforts taken in response to Justice Barz’s reports, and numerous interviews with relevant stakeholders. While those efforts were significant, we found the University did not take sufficient effective action to fully eliminate a sexually hostile environment, prevent its recurrence, and address its effects. Pg. 7 When sexual harassment is sufficiently severe or pervasive to deny or limit a student’s ability to participate in or benefit from the school’s program based on sex, it creates a hostile environment. Pg. 8. It is in the University’s interest to encourage students to report sexual harassment early, before such conduct becomes severe or pervasive, so that it can take steps to prevent the harassment from		

	Jackson v. Cnty. of Racine, 474 F.3d 493, 499 (7th Cir. 2007))); McKinnis v. Crescent Guardian, Inc., 189 F. App'x 307, 310 (5th Cir. 2006) (holding that "'the deliberate and unwanted touching of [a plaintiff's] intimate body parts can constitute severe sexual harassment'" in Title VII cases (quoting Harvill v. Westward Commc'ns, L.L.C., 433 F.3d 428, 436 (5th Cir. 2005))). Pg. 3	creating a hostile environment.* * The University defines "malicious harassment" as "[w]hen a student, with the intent to terrify, intimidate, threaten, harass, annoy, or offend, (1) causes bodily injury to another, (2) causes reasonable apprehension of bodily injury in another, (3) damages, destroys, or defaces any property of another or any public property, or (4) makes repeated telephone communications anonymously or at extremely inconvenient hours or in offensively coarse language." The University of Montana Student Conduct Code 13, 14 (2012), http://life.umt.edu/vpsa/documents/Student%20Conduct%20Code%20FULL%20-%20UPDATED%20AUG%2028%202012.pdf. Pg. 7-8 Second, the University's policies do not define "sexual harassment" consistently. The Sexual Misconduct Policy incorrectly implies that sexual harassment must be both "severe and pervasive" to establish a hostile environment, as opposed to "severe or pervasive"—the longstanding Title IX administrative enforcement standard and Title IV injunctive standard. In contrast, the Sexual Harassment Policy states that "sexual harassment" must be		

		"severe or pervasive." The SCC prohibits only "malicious intimidation or harassment of another"12 and does not explicitly reference or define "sexual harassment." Pg. 9 Third, Sexual Harassment Policy 406.5.1 improperly suggests that the conduct does not constitute sexual harassment unless it is objectively offensive. This policy provides examples of unwelcome conduct of a sexual nature but then states that "[w]hether conduct is sufficiently offensive to constitute sexual harassment is determined from the perspective of an objectively reasonable person of the same gender in the same situation." Whether conduct is objectively offensive is a factor used to determine if a hostile environment has been created, but it is not the standard to determine whether conduct was "unwelcome conduct of a sexual nature" and therefore constitutes "sexual harassment." As explained in the Legal Standards section above, the United States considers a variety of factors, from both a subjective and objective perspective, to determine if a hostile environment has been created. Pg. 9 Finally, none of the policies explicitly defines "hostile environment," accurately defines		

		"sexual harassment," or indicates that a single instance of sexual assault can constitute a hostile environment. To address these issues, the Agreement requires the University to revise its policies so that they provide accurate definitions of sexual assault, sexual harassment, and conduct that may constitute sex discrimination and may provide the basis for a Title IX complaint, and to dispel any confusion about when, where, and how students should report various types of sex discrimination. Pg. 9 In reaching this conclusion, the Officer applied the University's Sexual Harassment Policy, which states that conduct becomes sexual harassment when it is "sufficiently severe or pervasive as to disrupt or undermine a person's ability to participate in or to receive the benefits, services, or opportunities of the University, including unreasonably interfering with a person's work or educational performance." As explained above, this is the standard for hostile environment — not the definition of sexual harassment. Pg. 22 While the Supreme Court in Davis v. Monroe Cnty. Bd. of Educ., 526 U.S. 629 (1999), requires deliberate indifference by the recipient to "severe and pervasive" harassment of which a		

		recipient had actual knowledge to establish liability for damages under Title IX, shortly after those decisions were issued, OCR clarified in its 2001 Guidance that a recipient's failure to respond promptly and effectively to severe, persistent, or pervasive harassment of which it knew or should have known could violate Title IX for purposes of administrative enforcement. See Davis, 526 U.S. at, 633, 650; Revised Sexual Harassment Guidance i–vi (2001); see also U.S. Compl.-inIntervention in Doe v. Anoka-Hennepin Sch. Dist. No. 11, No. 11-cv-01999, at 2, 5, 18, 21, 22 (Mar. 5, 2012) (alleging severe, pervasive, or persistent harassment in complaint asserting Title IX and Title IV claims). Pg. 5 As described above, when sexual harassment that results in a hostile environment is found, universities must take immediate and effective action tailored to the specific situation to stop the harassment, eliminate the hostile environment, and remedy its effects. Pg. 24		
Title IX Protection	Title IX protects students from sexual harassment in a school's education programs and activities. This means that Title IX protects students in connection with all the academic, educational,	Fourth, the SCC does not fully satisfy the University's Title IX obligation to address off-campus sexual assaults. The University has an obligation to respond to student-on-student sexual harassment that initially occurred		

	extracurricular, athletic, and other programs of the school, whether those programs take place in a school's facilities, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere. For example, Title IX protects a student who is sexually assaulted by a fellow student during a school-sponsored field trip. Pg. 3-4 Title IX also protects third parties from sexual harassment or violence in a school's education programs and activities. For example, Title IX protects a high school student participating in a college's recruitment program, a visiting student athlete, and a visitor in a school's on-campus residence hall. Title IX also protects employees of a recipient from sexual harassment. For further information about harassment of employees, see 2001 Guidance at n.1. Pg. 4 Because students often experience the continuing effects of off-campus sexual harassment in the educational setting, schools should consider the effects of the off-campus conduct when evaluating whether there is a hostile environment on campus. For example, if a student alleges that he or she was sexually assaulted	off school grounds when students experience the continuing effects of off-campus sexual harassment in the educational setting. While the University has recently clarified that students may be subject to SCC proceedings if they engage in sexual assault off campus, these revisions to the SCC still leave somewhat unclear when the SCC will apply to off-campus sexual assaults.* The SCC also does not appear to reach off-campus conduct that constitutes sexual harassment but not sexual assault. The Agreement requires the University to further clarify when the SCC will apply to off-campus sexual harassment, including sexual assaults, and to ensure that, as appropriate, sexual harassment will be investigated for Title IX purposes regardless of whether it results in criminal charges. The University will also clarify when the SCC, DGP, or other process will apply to off-campus sexual harassment short of sexual assault to ensure the University meets its Title IX obligation by investigating and responding to all sexual harassment that has a continuing effect in the educational setting. Pg. 19 *While the revised SCC states that "alleged sexual and other assaults by students off campus will almost always subject the accused to [SCC] proceedings," id. at 15, it		

	by another student off school grounds, and that upon returning to school he or she was taunted and harassed by other students who are the alleged perpetrator's friends, the school should take the earlier sexual assault into account in determining whether there is a sexually hostile environment. The school also should take steps to protect a student who was assaulted off-campus from further sexual harassment or retaliation from the perpetrator and his or her associates. Pg. 4	does not explain when the SCC would not apply. None of the University policies, including the SCC, links the University's responsibility to address off-campus sexual assaults with Title IX. Moreover, the University's other policies do not address off-campus sexual assaults. See Memorandum from David Aronofsky, University Legal Counsel, to Royce Engstrom, University President 5, 8 (Feb. 28, 2012)		
Schools Notice of Nondiscrimination Requirement	Schools also are required to publish a notice of nondiscrimination and to adopt and publish grievance procedures. Pg. 4 The Title IX regulations require that each recipient publish a notice of nondiscrimination stating that the recipient does not discriminate on the basis of sex in its education programs and activities, and that Title IX requires it not to discriminate in such a manner. The notice must state that inquiries concerning the application of Title IX may be referred to the recipient's Title IX coordinator or to OCR. It should include the name or title, office address, telephone number, and e-mail address for the recipient's designated Title	Lastly, the Title IX regulation, 34 C.F.R. § 106.9, requires a university to notify all parties that, pursuant to Title IX, it does not discriminate on the basis of sex in the education programs or activities that it operates. The notice must state: that the requirement not to discriminate in the recipient's education programs and activities extends to employees and students; that inquiries concerning the application of Title IX may be referred to the Title IX Coordinator or employee designated pursuant to 34 C.F.R. § 106.8(a); and the name, office address, email address, and telephone number of the designated coordinator. Pg. 7 The University's notice of	Additionally, the University will publish a notice of nondiscrimination with the Title IX Coordinator's information consistent with the requirements of Title IX at 28 C.F.R. § 54.140 and 34 C.F.R. § 106.9. By August 22, 2013, the University will disseminate this notice through the University's website, student handbook, and any other means of notification the University deems effective to ensure that the information is widely disseminated. Pg. 6 **C. Title IX Coordinator/Notice of Nondiscrimination** o By July 15, 2013, the University will provide the United States with a draft of the notice to be published regarding the Title IX	

	IX coordinator. Pg. 6 The notice must be widely distributed to all students, parents of elementary and secondary students, employees, applicants for admission and employment, and other relevant persons. OCR recommends that the notice be prominently posted on school Web sites and at various locations throughout the school or campus and published in electronic and printed publications of general distribution that provide information to students and employees about the school's services and policies. The notice should be available and easily accessible on an ongoing basis. Pg. 6-7	nondiscrimination does not fully meet the requirements of the Title IX regulation, 34 C.F.R. § 106.9. The Title IX regulation requires universities to implement specific and continuing steps to inform students and others of the protections against discrimination on the basis of sex. The notification must state that the requirement of non-discrimination in educational programs and activities extends to employment and admission. It also must say that questions about Title IX may be referred to the employee designated to coordinate Title IX compliance or to the Assistant Secretary for Civil Rights at the Department of Education. Pg. 27 The University's Equal Opportunity Policy/Non-Discrimination Policy No. 406.4 states that the University provides equal opportunity for education, employment, and participation in University activities without regard to sex, and indicates that this includes the administration of benefits to students and employees. If this Policy is intended to constitute the notice of nondiscrimination, it does not make clear what conduct falls within "University activities," (e.g., discrimination in athletics, instruction, grading, university housing, and university	Coordinator and notice of nondiscrimination pursuant to Section IV above. o Within 30 calendar days of the United States' approval of the draft publication pursuant to Section IV, the University will provide the United States with documentation that it has implemented Section IV, including copies of any printed publications, and web links to any electronic publications containing the notice. Pg. 12	

		employment); that conduct such as sexual harassment and sexual assault are forms of sex discrimination in University programs and activities that are prohibited under Title IX; and that when such conduct occurs off campus, it can come within Title IX's purview. Policy No. 406.4 also does not adequately inform students that inquiries concerning the application of Title IX may be referred to the Title IX Coordinator or designated employee, as required by 34 C.F.R. § 106.9. Although this online Policy provides a link to Procedures that direct persons alleging discrimination to contact "the Director of Equal Opportunity/Affirmative Action" and provides the Director's contact information, neither the Policy nor the Procedures reference Title IX or the Title IX Coordinator. The electronic version of Policy 406.4 is located on the University's website under the Human Resources label and is not distributed to students. In addition, while the University's Sexual Harassment Policy No. 406.5.1 references Title IX, none of the University's policies indicates that the University is required by Title IX not to discriminate on the basis of sex in its educational programs or activities. Under the Agreement, the University will revise its		

		policies and procedures to clarify what activities are covered in the non-discrimination notice and ensure that students know where and how to report Title IX complaints. Pg. 27-28 On May 8, 2013, the University provided the United States with the signed Resolution Agreement to resolve the compliance review and investigation (copy enclosed). The Agreement between the University and the United States, executed on May 9, identifies measures that will assist the University with its Title IX and Title IV compliance and its ongoing efforts to ensure a campus that is free from sexual harassment that could deprive students of an equal opportunity to benefit from or participate in the University's education programs and activities. Pg. 28 Below we explain in detail each area in which the University's compliance with Title IX and Title IV fell short and how the Agreement will build on the University's proactive efforts to address these areas and bring it into full compliance with these legal obligations. Pg. 7		
Schools Training Requirements	Because of these requirements, which are discussed in greater detail in the following section, schools need to ensure that their employees are trained so that they know to report harassment	The Agreement further requires training for all University employees, including those who are statutorily barred from reporting, on informing complainants of their right to file	C. By December 20, 2013, the University will provide Title IX training to all University staff and faculty. The training will be designed to provide an understanding of the University's	

	to appropriate school officials, and so that employees with the authority to address harassment know how to respond properly. Training for employees should include practical information about how to identify and report sexual harassment and violence. OCR recommends that this training be provided to any employees likely to witness or receive reports of sexual harassment and violence, including teachers, school law enforcement unit employees, school administrators, school counselors, general counsels, health personnel, and resident advisors. Pg. 4	Title IX and criminal complaints and how to do so. Pg. 12 The Agreement requires the University to take additional steps to clarify its policies and procedures and provide training for employees and students so that they understand what processes follow from reporting sexual assault to particular University employees and how those processes differ depending on who receives the report (e.g., clarify how the processes differ if a report is made to SARC, the Title IX Coordinator, OPS, etc.). Pg. 15 Therefore, in addition to ensuring that students receive sufficient training, the Agreement requires the University to make sure that all faculty and staff, particularly those to whom students will report sexual assault, receive training on how to discuss sexual assault with students, the discrimination prohibitions of Title IX, the University's Title IX obligations, its Title IX complaint process, and how to clarify the criminal and non-criminal (e.g., Title IX and SCC) consequences of reporting to various campus and community resources. The training aims to ensure that those who will be directly involved in processing, investigating, and/or resolving complaints will notify complainants of the right to file a	responsibilities under Title IX to address allegations of sex-based harassment, whether or not the actions are potentially criminal in nature. In addition, the training will cover the University's new policies and grievance procedures for Title IX complaints required by Section II above, and informing complainants of their right to file Title IX and criminal complaints and how to do so. The training also will cover the University reporting requirement in Section VI.A below for reports of sex discrimination, and the University's policies and practices regarding the confidentiality of such reports. The training will provide clear examples of what types of actions may constitute sex discrimination in the University's programs or activities, including but not limited to different types of sex-based harassment, and what may provide the basis for a complaint pursuant to the University's grievance and other procedures. As part of the training, the University will issue surveys to staff and faculty to assess their knowledge of how to complain about and respond to sex-based harassment, as well as the effectiveness of the training. Pg. 6-7 D. Beginning with the 2013-14 academic year, the University will	

		criminal complaint and share information permitted by law regarding sexual harassment and sexual assault allegations among University employees, including OPS employees, and other law enforcement officials. Pg. 25	ensure that all new employees complete the training required of them pursuant to Sections V.A-C above within one year of their employment start date. Pg. 7 **D. Training and Professional Development** o The University will provide the United States with the training materials and agendas to be used in the trainings conducted pursuant to Sections V.A by May 30, 2013, and Sections V.B and V.C by July 15, 2013. The University will also provide information describing the expertise and experience with regard to Title IX of the person or persons conducting the training pursuant to Sections V.B and V.C of this Agreement. If the United States chooses to provide comments on the proposed training or trainers, it will do so within 45 days of receipt of the materials. o By December 31, 2013, May 31, 2014, May 31, 2015, and December 31, 2015, the University will provide the United States with the sign-in sheets of each employee by name and job title for each training required by Sections V.A, V.B, and V.C. of this Agreement, and a list of any University employee who failed to participate in such training by name and title. Pg. 13	

Schools Obligation to Respond	Schools may have an obligation to respond to student-on-student sexual harassment that initially occurred off school grounds, outside a school's education program or activity. Pg. 4			
Schools Processing Complaints	If a student files a complaint with the school, regardless of where the conduct occurred, the school must process the complaint in accordance with its established procedures. Pg. 4	According to the DGP, any University employee, University student, or applicant for employment or admission to the University "who claims to have been unlawfully discriminated against due to any University regulation or policy or the official action of any University employee may, within sixty (60) calendar days of the alleged discriminatory occurrence, initiate informal complaint proceedings by submitting a written summary of complaint to the University's Equal Opportunity Officer."* Pg. 20-21 * University of Montana, Discrimination Grievance Procedure 4 (2011), http://www.umt.edu/policies/400-HumanResources/discrimination greivance.aspx		
Overview of School Investigation	Regardless of whether a harassed student, his or her parent, or a third party files a complaint under the school's grievance	Under Title IX and its regulations, as well as under Title IV, once a university has actual or constructive notice of possible	By May 21, 2013, the University, in consultation with the Equity Consultant, will develop to the satisfaction of the United States	

	procedures or otherwise requests action on the student's behalf, a school that knows, or reasonably should know, about possible harassment must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. As discussed later in this letter, the school's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve the school of its independent Title IX obligation to investigate the conduct. The specific steps in a school's investigation will vary depending upon the nature of the allegations, the age of the student or students involved (particularly in elementary and secondary schools), the size and administrative structure of the school, and other factors. Yet as discussed in more detail below, the school's inquiry must in all cases be prompt, thorough, and impartial. In cases involving potential criminal conduct, school personnel must determine, consistent with State and local law, whether appropriate law enforcement or other authorities should be notified. Pg. 4-5 In states with mandatory reporting laws, schools may be required to report certain	sexual harassment of students, it is responsible for determining what occurred and responding appropriately. When a university fails to take adequate steps to address harassment, it is held liable under Title IX and Title IV for its own conduct. Pg. 4-5 The United States evaluates the appropriateness of the responsive action by assessing whether it was prompt and effective. What constitutes an appropriate response to harassment will differ depending upon the circumstances. In all cases, however, the college or university must conduct a prompt, thorough, and impartial inquiry designed to reliably determine what occurred. Pg. 5 "Thus, the DGP process begins with an investigation by the University's Equal Opportunity Officer, who is also the Title IX Coordinator. Based on the investigation, the Officer provides a written determination of whether discrimination occurred." Pg. 21	and institute a system for tracking and reviewing reports (including reports that do not result in the filing of a discrimination complaint), investigations, interim measures, and resolutions of student and employee conduct that may constitute sex-based harassment to ensure that such reports are adequately, reliably, promptly, and impartially investigated and resolved. The system will require, at minimum, that: Pg. 8 . . .an assurance that the University will keep the complaint and investigation confidential to the extent possible; Pg. 4	

	incidents to local law enforcement or child protection agencies. Pg. 5			
Consent for Investigation	Schools also should inform and obtain consent from the complainant(or the complainant's parents if the complainant is under 18 and does not attend a postsecondary institution) before beginning an investigation. Pg. 5			
Confidential Reporting		The Agreement also requires the University to make clear when students should invoke the SCC or the DGP and the interaction between the two processes, and to clarify what reporting is confidential and what reporting will initiate a Title IX investigation. Pg. 13	an explanation of how to file complaints pursuant to the grievance procedures and clarification of other types of complaints that may be filed and with whom those complaints should be filed (e.g., providing more and clearer notice to students of the availability of anonymous reporting and how to report a crime to law enforcement); Pg. 3	
Complainant Requests Some Information Not be Disclosed	If the complainant requests confidentiality or asks that the complaint not be pursued, the school should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. Pg. 5 If a complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the school should inform the complainant that its ability to respond may be limited. Pg. 5	Even if the complainant students did not want to continue to participate in the investigation, the University was nonetheless obligated to conduct and conclude an adequate, reliable investigation and, as appropriate, take steps to remedy the effects of any harassment, and prevent it from recurring. Pg. 15 Such steps could have included, for example, offering counseling services and implementing other measures, independent of disciplinary action, that could assist the		

	Schools should refer to the 2001 Guidance for additional information on confidentiality and the alleged perpetrator's due process rights. Pg. 5 As discussed in the 2001 Guidance, if the complainant continues to ask that his or her name or other identifiable information not be revealed, the school should evaluate that request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. Thus, the school may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the complainant's age; whether there have been other harassment complaints about the same individual; and the alleged harasser's rights to receive information about the allegations if the information is maintained by the school as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99. The school should inform the complainant if it cannot ensure confidentiality. Even if the school cannot take disciplinary action against the alleged harasser because the complainant insists on confidentiality, it should pursue	complainants and/or address sexual assaults on the campus at large. Pg. 15		

	other steps to limit the effects of the alleged harassment and prevent its recurrence. Examples of such steps are discussed later in this letter. Pg. 5 For example, the alleged harasser may have a right under FERPA to inspect and review portions of the complaint that directly relate to him or her. In that case, the school must redact the complainant's name and other identifying information before allowing the alleged harasser to inspect and review the sections of the complaint that relate to him or her. In some cases, such as those where the school is required to report the incident to local law enforcement or other officials, the school may not be able to maintain the complainant's confidentiality. Pg. 5			
Retaliation	The school also should tell the complainant that Title IX prohibits retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. Pg. 5 Schools should be aware that complaints of sexual harassment or violence may be followed by retaliation by the alleged perpetrator or his or her associates. For instance, friends of the alleged perpetrator may subject the complainant to	To ensure individuals can invoke these grievance procedures without fear of reprisal, Title IX also prohibits the university and others, including students, from retaliating against any individual "for the purpose of interfering with any right or privilege secured by [Title IX]," or because that individual "has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing" under Title IX. Prohibited retaliatory acts include intimidation, threats, coercion, or		

	name-calling and taunting. As part of their Title IX obligations, schools must have policies and procedures in place to protect against retaliatory harassment. At a minimum, schools must ensure that complainants and their parents, if appropriate, know how to report any subsequent problems, and should follow-up with complainants to determine whether any retaliation or new incidents of harassment have occurred. Pg. 16	discrimination against any such individual. Universities therefore should take steps to prevent any retaliation against a student who makes a complaint or any student who provides information regarding the complaint. At a minimum, under Title IX and Title IV, the university must ensure that complainants and their parents, if appropriate, know how to report any subsequent problems, and should follow up with complainants to determine whether any retaliation or new incidents of harassment have occurred. Pg. 6. The United States also reviewed the University's policies prohibiting retaliation and found its response to allegations of retaliation by those who participated in the complaint process inadequate. Pg. 7 As explained below in the section regarding retaliation, the student left the University largely because of subsequent retaliation for reporting the assault, which the University did not investigate, and the assault itself. Pg. 16. Consistent with the Title IX regulations, retaliation is prohibited in the University's SCC, the Sexual Harassment Policy, and the Equal Opportunity/Non-Discrimination Policy. Nevertheless, the		

		University did not address effectively at least three allegations of retaliation. For example, in her statement to the Dean of Students for an SCC investigation, one student wrote that a friend of the student who she reported sexually assaulted her called her on the phone yelling and telling her that she "better not file charges." Even though the student reported the retaliation to the University through her statement, the University did not meet its Title IX obligation to investigate or address the retaliation. After another student was sexually assaulted, she found anonymous notes on her door that said, "Watch your back." The student reported the notes to the Dean of Students, who informed her that she could get a Temporary Restraining Order. The University did not investigate to discover the source of the notes and prevent individuals from continuing to post them. The primary reasons the student left the University were because of the assault and the subsequent retaliation. A third student reported to the University that she had been assaulted by University students. After she reported the assault, the accused students began intimidating and harassing her and		

		her sister. They came to her dorm room and loitered in the lobby in a manner she perceived as intimidating. They also threw objects at her sister when she was in a dining hall. The student reported the harassment to the Dean of Students, who said that he would keep the harassing students away from them. However, the students continued to harass her and her sister. Both the student-complainant and her sister left the University. In all three incidents, the students reported the retaliation to University officials, but the University did not adequately address any of the reports. We also are concerned that although the SCC prohibits retaliation, none of these incidents resulted in an SCC proceeding. The Agreement requires the University to ensure its policies include an explicit prohibition against retaliation that clarifies that allegations of retaliation should be brought to the individual(s) designated to receive such complaints and will be investigated by the University under the same processes and standards outlined in the Title IX grievance procedures. Pg. 22-23 As explained above, there were times when the University had notice of harassment and related retaliation,		

		and while it started investigations of reported sexual assault and harassment allegations over time, it did not respond promptly or adequately to certain complaints and allegations of retaliation. Pg. 23 Despite notice in the SCC that sexual assault and retaliation are prohibited, some students at the University who have been assaulted expressed concern about coming forward because they fear retaliation, lack of a response by the University, or a negative response by the University. Pg. 24 This latter information will make clear how to file a Title IX complaint of sexual assault, harassment, or retaliation with the University; the name and contact information for the University's Title IX Coordinator(s); Pg. 29		
Preventative Measures	Compliance with Title IX, such as publishing a notice of nondiscrimination, designating an employee to coordinate Title IX compliance, and adopting and publishing grievance procedures, can serve as preventive measures against harassment. Pg. 5			
Effect of Preventative Measure and Education and Training	Combined with education and training programs, these measures can help ensure that all students and employees recognize the nature of sexual	With respect to students, the Agreement requires the University to take the following actions: To provide regular mandatory training to students to ensure that:		

Programs	harassment and violence, and understand that the school will not tolerate such conduct. Indeed, these measures may bring potentially problematic conduct to the school's attention before it becomes serious enough to create a hostile environment. Training for administrators, teachers, staff, and students also can help ensure that they understand what types of conduct constitute sexual harassment or violence, can identify warning signals that may need attention, and know how to respond. More detailed information and examples of education and other preventive measures are provided later in this letter. Pg. 5-6 In addition to ensuring full compliance with Title IX, schools should take proactive measures to prevent sexual harassment and violence. OCR recommends that all schools implement preventive education programs and make victim resources, including comprehensive victim services, available. Schools may want to include these education programs in their (1) orientation programs for new students, faculty, staff, and employees; (2) training for students who serve as advisors in residence halls; (3) training for student athletes and	(1) students are aware of the University's prohibition against sex discrimination (including sexual harassment, sexual assault, and retaliation); (2) students can recognize such forms of sex discrimination when they occur; and (3) students understand how and with whom to report any incidents of sex discrimination, including the options for filing complaints with the University and with local law enforcement. In addition, the sessions will cover: the University's new policies and grievance procedures for Title IX complaints, as well as a general overview of what Title IX and Title IV are, the rights these laws confer on students, the resources available to students who believe they have been victims of sex discrimination, the existence of OCR and DOJ, their shared authority to enforce Title IX, and DOJ's authority to enforce Title IV. These sessions will emphasize: issues around consent in sexual interactions; the criminal, athletic, academic, housing, and student record-related consequences that flow from committing sexual assault, sexual harassment, and retaliation; the role of alcohol and drug use in such misconduct, including how such use does not excuse the perpetrator's conduct and how such use relates to consent; how bystanders can help; when off-campus misconduct is covered by		

	coaches; and (4) school assemblies and "back to school nights." These programs should include a discussion of what constitutes sexual harassment and sexual violence, the school's policies and disciplinary procedures, and the consequences of violating these policies. Pg. .14-15	the University's policies and grievance procedures; and the potential consequences of lying during an investigation of such misconduct. At a minimum, these sessions will be provided as part of the annual student orientation for new students (including visiting and International students), the class registration process for returning students, and annual residence life orientation for students residing in campus housing. The University also will provide additional mandatory training to all athletes, their coaches, and directors on the revised Student Athlete Conduct Code and how it applies to sexual assault, sexual harassment, and retaliation. Pg. 29-20		
Overview of Procedural Requirement Pertaining to Sexual Harassment and Sexual Violence	Recipients of Federal financial assistance must comply with the procedural requirements outlined in the Title IX implementing regulations. Specifically, a recipient must:(A) Disseminate a notice of nondiscrimination; (B) Designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX; and (C) Adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee sex discrimination complaints. Pg. 6			

	These requirements apply to all forms of sexual harassment, including sexual violence, and are important for preventing and effectively responding to sex discrimination. They are discussed in greater detail below. Pg. 6 Citations Footnotes 16-17 – 4 C.F.R. § 106.9. Id. § 106.8(a). Id. § 106.8(b)			
Examine Policies	OCR advises recipients to examine their current policies and procedures on sexual harassment and sexual violence to determine whether those policies comply with the requirements articulated in this letter and the 2001 Guidance. Recipients should then implement changes as needed. Pg. 6	Despite the University's positive reforms to some policies, the United States found that the University's sexual harassment and assault policies require revision to provide clearer notice of the conduct prohibited by the University. Pg. 7		
Policy Recommendations	Title IX does not require a recipient to adopt a policy specifically prohibiting sexual harassment or sexual violence. As noted in the 2001 Guidance, however, a recipient's general policy prohibiting sex discrimination will not be considered effective and would violate Title IX if, because of the lack of a specific policy, students are unaware of what kind of conduct constitutes sexual harassment, including sexual violence, or that such conduct is prohibited sex discrimination.	Although the University has eight policies and procedures that explicitly or implicitly cover sexual harassment and sexual assault, their sheer number and the lack of clear cross references among them leaves unclear which should be used to report sexual harassment or sexual assault and when circumstances support using one policy or procedure over another. The investigation by the United States revealed that the University has three policies explicitly prohibiting sexual harassment or sexual assault: the	In order for the University to ensure it meets its obligation to explain clearly to students where and how to file complaints of various types of sex-based harassment, by July 15, 2013, the University will develop and submit to the United States for approval a resource guide on sex-based harassment that is accessible to students and written in easily understandable language. The guide will contain information on: what constitutes sexual harassment and sexual assault; clear examples of what	

	OCR therefore recommends that a recipient's nondiscrimination policy state that prohibited sex discrimination covers sexual harassment, including sexual violence, and that the policy include examples of the types of conduct that it covers. Pg. 7	Sexual Harassment Policy ("Policy 406.5.1"); the Sexual Misconduct, Sexual and Relationship Violence, and Stalking Policy ("Policy 406.5"); and the Student Conduct Code (SCC), which prohibits "rape," "sexual assault," and "malicious intimidation or harassment." All three are on the University's website, but only Policy 406.5 links to the Sexual Misconduct, Sexual and Relationship Violence, and Stalking Procedures, which give students four reporting options: (1) a criminal report to OPS; (2) an SCC complaint to pursue disciplinary action against a student; (3) a confidential or anonymous report to alert the University to the threat of violence; and (4) a "sexual harassment policy violation complaint" with the University Discrimination Office. The Sexual Harassment Policy links to the Discrimination Grievance Procedures ("DGP"), implying that the DGP should be used for violations of that Policy. The SCC does not reference the DGP, the Sexual Harassment Policy, or the Sexual Misconduct Policy or Procedures. To add to the confusion about how to report sexual harassment and sexual assault, the University has four other policies and procedures that cover sex discrimination, but do not explicitly discuss sexual harassment or sexual assault: (1)	types of actions may constitute sex discrimination in the University's programs or activities, including but not limited to different types of sex based harassment, and what may provide the basis for a complaint pursuant to the University's grievance and other procedures; what to do if a student has been the victim of sexual assault or sexual harassment; contact information for all on- and off-campus resources for victims of sexual assault; information on how to obtain counseling, medical attention, and academic assistance; and where complaints can be directed, with clear explanations of the criminal and non-criminal consequences that flow from complaints directed to particular entities. The guide will prominently state that the victim of sexual assault or sexual harassment has the option to pursue a criminal complaint with the appropriate law enforcement agency, to pursue the University's grievance and disciplinary process, or to pursue these processes simultaneously. The guide will: make clear how to file a Title IX complaint of sex-based harassment (including clarifying any distinctions for sexual assault and sexual harassment if such distinctions continue to exist) or retaliation with the University; provide the name and contact	

		the DGP, which covers complaints of "discrimination" under Title IX and other laws; (2) the Discrimination Grievance Policy (Policy 407.1), which links to the DGP on the website; (3) the University's Equal Opportunity Policy/Non-Discrimination Policy (Policy No. 406.4), which requires "equal opportunity for education, employment, and participation in University activities without regard to . . . sex" and other factors; and (4) the Equal Opportunity Policy/NonDiscrimination Procedures, which identifies the DGP as the way to report discrimination that violates the Equal Opportunity Policy Pg. 7-8 In conducting its Title IX compliance review and Title IV investigation, the United States examined the University's multiple policies prohibiting sex discrimination, sexual harassment, and/or sexual assault (described in more detail below) and whether they provide adequate and clear notice to students and employees of conduct prohibited by the law. Pg. 7	information for the University's Title IX Coordinator(s); include a description of the Title IX Coordinator's role; cite links to the new policies and grievance procedures required by Section II.A-D; and identify interim measures the University can implement, including measures that can be taken if the accused lives on campus and/or attends classes with the complainant. Pg. 9 Within 30 calendar days of the United States approving the guide, the University will provide the United States with documentation that it has published the guide, including a link to where the guide is posted on the University's website, and information about the locations and personnel on campus who have the guide available to students, including but not limited to all first responders (e.g., SARC employees, resident assistants, the Title IX coordinator(s), and OPS employees) who are required to offer this guide to all persons raising allegations of sex-based discrimination and to offer to send them the link to the guide by email or text message, as required by Section V.B above. Pg. 9 **NOTICE OF REVISED POLICIES AND**	

			<u>PROCEDURES</u> By the start of the 2013-14 academic year, the University will provide all students and employees with written notice regarding the revised policies prohibiting sex discrimination and the grievance procedures for resolving sex discrimination complaints required by Sections II.A-E, as well as information on how to obtain a copy of the policies and grievance procedures. The University, at a minimum, will make this notification available through the University's website, electronic mail messages to employees and students, any regularly issued newsletters (in print or online), and any other means of notification the University can use to ensure that the information is widely disseminated. Pg. 5-6 **A. Title IX Policies and Procedures** o The University will provide the United States all documents and information identified in provisions II.A- F in accordance with the timelines set forth above. Pg. 12 **B. Notice of Revised Policies and Procedures** o Within 45 calendar days after notice is provided to students and employees of the new grievance	

			procedures, the University will provide the United States with documentation that it has implemented provision III of this Agreement, including copies of the written notices issued to students and employees regarding the new Title IX procedures; a description of how the notices were distributed; copies of its revised student and employee handbooks; and a link to its webpage where the revised Title IX procedures are located. Pg. 12 **F. Resource Guide Development** o The University will provide the United States with the proposed resource guide in accordance with the timelines set forth in Section VII above. The United States will notify the University in writing if it has any objections to the guide. Pg. 13 To clarify, and dispel any confusion about, where and how students should report various types of sex discrimination, by May 30, 2013, the University, in consultation with the Equity Consultant, will draft revisions to its policies and procedures related to sex-based harassment. The University policies and procedures to be revised include, but are not limited to: the Sexual Misconduct, Sexual and Relationship Violence,	

			and Stalking Policy (Policy 406.5); the Sexual Harassment Policy (Policy 406.5.1); the Discrimination Grievance Policy (Policy 407.1); the Discrimination Grievance Procedures; the University's Equal Opportunity Policy/Non-Discrimination Policy (Policy No. 406.4); the Appeals Policy (Policy 203.5.2); and the Student Conduct Code. The University will ensure that these policies and procedures provide an easily accessible and user-friendly system for the prompt and equitable resolution of complaints alleging sex discrimination, use consistently defined terms and reporting options, and include, at a minimum, the following: Pg. 3 accurate definitions of various types of sex discrimination, including sexual harassment and sexual assault that may provide the basis for a complaint pursuant to the University's grievance and other procedures (including but not limited to when off-campus misconduct is covered); Pg. 3 If the University continues to use the Student Conduct Code to investigate or remedy complaints of sex discrimination, the University will draft revisions to the Student Conduct Code that will provide	

			for the same type of prompt and equitable grievance process required by Section II.A above. Pg. 5 If the University decides to use the Student Athlete Conduct Code to address allegations of sex discrimination involving student athletes, the University will draft revisions to this Code that will ensure that this part of the grievance procedures is consistent with the prompt and equitable grievance process required by Section II.A above. Pg. 5 On or before May 30, 2013, the University will submit proposed revisions to the United States of all of its policies, procedures, and conduct codes related to sex discrimination. If the United States chooses to provide comments on the University's proposed revisions, the University will incorporate the United States' comments unless there is disagreement, in which case the University and the United States will work together in good faith to resolve the disagreement. If the parties are unable to agree on the revisions within 30 days of the United States providing notice of any concerns, the United States may pursue relief under the enforcement provisions of Section X.C below. Pg. 5 The University will adopt the	

			revised policies and procedures in Sections II.A-D within fourteen (14) calendar days of approval from the United States. It is the intent of the parties that the revised policies, procedures, and internal guidance be adopted no later than July 15, 2013. Pg. 5 Once the University adopts policies and procedures related to sex discrimination pursuant to the terms above, the University will not substantively modify those policies and procedures during the period of the Agreement without the approval of the United States. Such approval will not be unreasonably withheld. All requests to modify such policies and regulations must be made in writing at least thirty days before the University intends to adopt the modification. The United States may reject proposed modifications that are not consistent with the terms of this Agreement or applicable federal laws. Pg. 5	
Title IX Coordinator Notice	The Title IX regulations require a recipient to notify all students and employees of the name or title and contact information of the person designated to coordinate the recipient's compliance with Title IX. Pg. 7 If a recipient designates more than one Title IX coordinator, the notice should describe each coordinator's responsibilities	Further, the Title IX regulation, 34 C.F.R. § 106.8(a), requires that a university designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX. All students and employees must be notified of the name (or title), office address, email address, and telephone number of the designated Title IX Coordinator(s). Pg. 6	The University will publish its notice of the Title IX Coordinator's name or title, office address, email address, and telephone number consistent with the requirements of Title IX at 28 C.F.R. § 54.135(a) and 34 C.F.R. § 106.8(a), within fourteen (14) calendar days of the United States' approval of the notice. Pg. 6	

	(e.g., who will handle complaints by students, faculty, and other employees). Pg. 7	During interviews with the United States, even the University officials who coordinate the University's Title IX compliance efforts were unsure whether the University's policies and procedures provide notice to students of where they should file sexual harassment complaints. Because the policies and procedures have the "human resources" label and the University does not distribute them to every student, students lack sufficient notice that there is a Title IX coordinator to whom they can bring student-on-student sexual harassment complaints. Pg. 11	If the University chooses to designate one or more persons to assist the Title IX Coordinator, the publication will make clear the scope of each person's responsibilities (e.g., who will handle complaints of sex discrimination and who will handle complaints by students, employees, student employees, and faculty), . . . Pg. 6 the name or title, office address, email address, and telephone number of the individual(s) with whom to file a complaint and those responsible for taking action on sex discrimination, including investigating complaints of sex-based harassment under the grievance procedures, taking appropriate interim measures during the grievance process, seeking disciplinary action against the accused (where appropriate), and handling appeals; Pg. 3-4 clarification of any differences in the role of the individuals with responsibility to take action on sex discrimination (e.g., if the University continues to have separate policies or grievance procedures for sexual assault and sexual harassment or for employees, it must clarify who receives complaints of sexual assault, sexual	

			harassment, and retaliation, and who receives complaints by students, employees, and student employees); Pg. 3	
Title IX Coordinator Responsibilities	The coordinator's responsibilities include overseeing all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints. Pg. 7 The Title IX coordinator or designee should be available to meet with students as needed. Pg. 7	After other University officials learned of this incident and before the United States initiated its review, the University took the appropriate and positive step to adopt a policy requiring all employees, except those who are statutorily barred from reporting, to report incidents of sexual assault to the Title IX Coordinator. Pg. 15 The United States is concerned that the University's numerous policies and procedures may create uncertainty and confusion among students, University staff and officials, and members of the public regarding who investigates Title IX complaints. Various employees investigate allegations of sexual assault and sexual harassment. The Title IX Coordinator investigates sexual harassment complaints, particularly those involving professors. Individual offices such as Residence Life and Dining Services also investigate sexual harassment complaints. The Dean of Students uses the SCC process to investigate most complaints of sexual assault involving students and present them to the University Court when students choose to appeal. Although the	A. all University offices, with the exception of health-care professionals and any other individuals who are statutorily prohibited from reporting, will notify the Title IX Coordinator within 24 hours of receiving information about sex discrimination, regardless of whether a formal complaint was filed, for the purpose of ensuring that individuals subject to discrimination are consistently and promptly receiving necessary services and information; B. the Title IX Coordinator will enter into an electronic, confidential database or spreadsheet at least the following fields of information: the date and nature of the complaint or other report (e.g., bystander or mandatory employee report); the name of the complainant or that the complaint was anonymous; the name of the person(s) who received the complaint or made the report; the name(s) of the accused; the name(s) of the person(s) assigned to investigate the complaint, take any interim measures, and bring disciplinary charges (where relevant); the interim measures taken, if any; the date of the findings; the date of	

		Title IX Coordinator participated in investigating a few sexual assault complaints involving students, the SCC states that the Vice President for Student Affairs "is responsible for the procedural administration of the SCC for all general conduct." The University's policies do not specify that offices such as Residence Life and Dining Services will conduct Title IX investigations. The policies do indicate that the Vice President for Student Affairs designates an officer who investigates complaints in the SCC process, and that sexual assault and attempted sexual assault violate the SCC. None of the policies, however, indicates that the SCC serves as a Title IX complaint resolution process when there is a sexual assault complaint. It is crucial, particularly in sexual assault cases, that the appropriate University offices be notified so that the victim is offered appropriate assistance and the allegations can be promptly investigated. Under the Agreement, the University will clarify the roles of individuals involved in responding to complaints of sexual harassment or sexual assault. Pg. 26-27 In addition, we were concerned that the University had not designated a single person to oversee and review all Title IX	any hearing; the dates of any appeals; and a summary of the findings at the initial, hearing, and appeal stages, including any actions taken on behalf of the alleged victim and any disciplinary or other actions taken against the accused; and C. the Title IX Coordinator will maintain records of all complaints, investigations, findings, the basis for those findings, and appeals, including, but not limited to: the complaint; the names of the complainant (if available), the accused, and witnesses; any statements or other evidence submitted or collected; interview notes; correspondence relating to the investigation; actions taken on behalf of the alleged victim(s) of sex discrimination; actions taken against the accused, including any temporary measures (e.g., temporary eviction from University housing); records of any discipline or proposed discipline; records of findings communicated to the parties; and records of any appeals. Pg. 8-9 a requirement that all employees who are aware of sex-based harassment, except for health-care professionals and any other individuals who are statutorily prohibited from reporting, report it to the Title IX coordinator regardless of	

		complaints. We recognize that the University has addressed this in response to our concern. Previously, some offices notified the Title IX Coordinator when they received a sexual harassment complaint, but complaints of sexual assault were handled by the Dean of Students and were not always discussed with the Title IX Coordinator. For example, a University student who was also a Dining Services employee filed a sexual harassment complaint against another student employee. Dining Services investigated the complaint in consultation with the Title IX Coordinator. Dining Services fired the student. A year and a half later, the Dean of Students investigated the same student for violating the SCC prohibition on sexual assault. The Title IX Coordinator was not involved in this second investigation. Neither the Title IX Coordinator nor the Dean of Students recognized that this student had been accused of engaging in discriminatory conduct on two separate occasions. When interviewed by the United States, the Dean of Students said that had he known about this previous incident, he would have imposed different sanctions. To address this issue, the Agreement requires all University employees to notify the Title IX Coordinator when they receive a report of sexual assault	whether a formal complaint was filed; Pg. 4	

		or sexual harassment and a system for tracking and reviewing these reports. Pg. 27 Finally, we evaluated the University's compliance with its duty to designate a person(s) to coordinate its Title IX efforts, to train those responsible for its coordination and enforcement, and to provide a notice of nondiscrimination. We found that the University needs to coordinate its Title IX enforcement better, provide more training to those tasked with enforcing and coordinating Title IX, devise a system to track Title IX complaints, and revise its notice of nondiscrimination. Pg. 7		
Title IX Coordinator Hierarchy	The recipient should designate one coordinator as having ultimate oversight responsibility, and the other coordinators should have titles clearly showing that they are in a deputy or supporting role to the senior coordinator. Pg. 7		. . . and will designate the University's Title IX Coordinator to have ultimate oversight responsibility with regard to Title IX matters. Pg. 6	
Title IX Coordinator Conflict of Interests	The Title IX coordinators should not have other job responsibilities that may create a conflict of interest. For example, serving as the Title IX coordinator and a disciplinary hearing board member or general counsel may create a conflict of interest. Pg. 7			
Coordination between Law	In addition, these employees should receive copies of the	In another situation, the student reported an assault to the police.		

Enforcement and Title IX Coordinator	school's Title IX policies. Schools should instruct law enforcement unit employees both to notify complainants of their right to file a Title IX sex discrimination complaint with the school in addition to filing a criminal complaint, and to report incidents of sexual violence to the Title IX coordinator if the complainant consents. The school's Title IX coordinator or designee should be available to provide assistance to school law enforcement unit employees regarding how to respond appropriately to reports of sexual violence. The Title IX coordinator also should be given access to school law enforcement unit investigation notes and findings as necessary for the Title IX investigation, so long as it does not compromise the criminal investigation. Pg. 7-8 A school may not absolve itself of its Title IX obligations to investigate and resolve complaints of sexual harassment or violence by delegating, whether through express contractual agreement or other less formal arrangement, the responsibility to administer school discipline to school resource officers or "contract" law enforcement officers. See 34 C.F.R. § 106.4. Pg. 8	Although the police informed a University employee about the report shortly thereafter, the employee did not tell the Title IX Coordinator or the Dean of Students. The University did not begin investigating the assault through the SCC process until approximately a year later when those involved in the Title IX grievance process learned of the incident through the media. Pg. 15		
Coordination				To improve the reporting and

with Law Enforcement and Community Partners				participation experience for victims of sexual assault, OPS shall increase and improve its communication, coordination, and collaboration with community and law enforcement partners, including the University, MPD, prosecutors, and University, community, and systems advocates. OPS shall: a. Take affirmative steps to clarify, through policies, procedures, and/or training, the respective roles and responsibilities of MPD and OPS pursuant to the MOU between those two agencies. These steps shall clarify OPS' responsibilities between the time a sexual assault report is received and the time MPD assumes responsibility for a referred sexual assault investigation. b. Take affirmative steps to ensure effective communication and coordination between OPS and UM and MPD; c. Increase coordination and communication with medical staff and forensic examiners interacting with individuals reporting sexual assault to improve sexual assault investigations and reduce unnecessary burdens on individuals reporting sexual assault. Increased coordination shall include: i. briefing the medical staff about the reported assault prior to the

				exam; ii. where OPS remains the investigative agency, receiving a briefing following the exam from the medical staff regarding their findings, including the results of the forensic examination; and iii. where OPS remains the investigative agency, including a summary of the findings of the forensic examinations, including findings related to all injuries, in the case report; and d. Further strengthen the partnership and improve the cooperation between OPS and agencies involved in the First Step Resource Center Multidisciplinary Team and other community and systems advocates by facilitating opportunities for officers to meet with and learn about these agencies and advocates; and soliciting feedback from the agencies and advocates, identifying barriers, and implementing remedies in order to increase victim participation in sexual assault investigations and prosecutions; improve the experience for victims who participate in sexual assault investigations and prosecutions; and otherwise improve sexual assault investigations. Pg. 8-9
Encourage Individuals to Report		For example, the DGP provides that the investigation will include convening meetings including the complainant and respondent, if	reasonable timeframes for individuals to report sex-based harassment and reasonable timeframes for the major stages	

		necessary. Although, in practice, the University does not convene joint meetings including the complainant and respondent for a sexual harassment complaint, the statement in the DGP that it does could deter individuals from filing a harassment complaint. The DGP also requires individuals to file complaints within sixty days of the incident. Even though the University accepts complaints outside of this window, because this very short timeframe is written into the policy, individuals might be deterred from making reports outside of this window, even though the University can still investigate the complaints. The Agreement requires that the University adopt reasonable timeframes for filing a complaint and the major stages of the investigation, hearing, and appeal. Pg. 22	of the investigation, hearing, and appeal; Pg. 4	
Adopt and Publish Grievance Procedures	The Title IX regulations require all recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of sex discrimination complaints. Pg. 8 *Id.* § 106.8(b). Title IX also requires recipients to adopt and publish grievance procedures for employee complaints of sex discrimination. Pg. 8	Title IX also requires universities to adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX, including sexual harassment and sexual assault. 34 C.F.R. § 106.8(b). Pg. 6 We also carefully reviewed: the adequacy of the University's Title IX grievance procedures; whether students have adequate notice of		

		these procedures and how to file complaints; and how the University has used these procedures to respond to sexual assault and sexual harassment complaints since the 2009-2010 school year. Pg. 7 . . . that the University's grievance procedures must be improved in several respects because they have not ensured prompt and equitable resolutions of sexual harassment and assault complaints. Pg. 7 In addition, the resource guide will provide clear examples of what types of actions may constitute sex discrimination in the University's programs or activities, including but not limited to different types of sex-based harassment, and what may provide the basis for a complaint pursuant to the University's grievance and other procedures. Pg. 13		
Grievance Procedures Applicable	The grievance procedures must apply to sex discrimination complaints filed by students against school employees, other students, or third parties. Pg. 8 These procedures must apply to all students, including athletes. If a complaint of sexual violence involves a student athlete, the school must follow its standard procedures for resolving sexual			

	violence complaints. Such complaints must not be addressed solely by athletics department procedures. Additionally, if an alleged perpetrator is an elementary or secondary student with a disability, schools must follow the procedural safeguards in the Individuals with Disabilities Education Act (at 20 U.S.C. § 1415 and 34 C.F.R. §§ 300.500-300.519, 300.530-300.537) as well as the requirements of Section 504 of the Rehabilitation Act of 1973 (at 34 C.F.R. §§ 104.35-104.36) when conducting the investigation and hearing. Pg. 8.			
Separate Grievance Procedures	Title IX does not require a recipient to provide separate grievance procedures for sexual harassment and sexual violence complaints. Therefore, a recipient may use student disciplinary procedures or other separate procedures to resolve such complaints. Pg. 8	Title IX does not require a university to provide separate grievance procedures for sexual harassment complaints; however, a university's grievance procedures for handling discrimination complaints must comply with the prompt and equitable requirements of Title IX. Pg.6 As noted above, the University has two published grievance procedures that address complaints involving sexual assault and sexual harassment: the SCC disciplinary process and the DGP. For the reasons detailed below, neither the SCC process nor the DGP, as written and implemented by the University,		

		has individually or collectively ensured prompt and equitable resolution of student complaints alleging sexual assault and sexual harassment. See 34 C.F.R. §§ 106.8(b), 106.31. Pg. 9		
Grievance Procedure voluntary informal mechanisms	Grievance procedures generally may include voluntary informal mechanisms (e.g., mediation) for resolving some types of sexual harassment complaints. OCR has frequently advised recipients, however, that it is improper for a student who complains of harassment to be required to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the school (e.g., participation by a trained counselor, a trained mediator, or, if appropriate, a teacher or administrator). In addition, as stated in the 2001 Guidance, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. Pg. 8			
Inappropriate Informal Grievance Cases	Moreover, in cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis. OCR recommends that recipients clarify in their grievance procedures that mediation will not be used to resolve sexual assault complaints. Pg. 8			
Overview of Prompt and	As stated in the 2001 Guidance, OCR has identified a number of	In evaluating whether a recipient's Title IX grievance procedures are	procedures for adequate, reliable, prompt, and impartial	

Equitable Grievance Requirements	elements in evaluating whether a school's grievance procedures provide for prompt and equitable resolution of sexual harassment complaints. These elements also apply to sexual violence complaints because, as explained above, sexual violence is a form of sexual harassment. OCR will review all aspects of a school's grievance procedures, including the following elements that are critical to achieve compliance with Title IX: • Notice to students, parents of elementary and secondary students, and employees of the grievance procedures, including where complaints may be filed; • Application of the procedures to complaints alleging harassment carried out by employees, other students, or third parties; • Adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence; • Designated and reasonably prompt time frames for the major stages of the complaint process; • Notice to parties of the outcome of the complaint;* • An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory	prompt and equitable, the United States considers whether each of the following elements are included: • notice to students and employees of the procedures, including where complaints may be filed; • application of the procedures to complaints alleging harassment carried out by employees, other students, or third parties; • adequate, reliable, and impartial investigations of complaints, including the opportunity to present witnesses and other evidence; • designated and reasonably prompt timeframes for the resolution of the complaint process; • written notice to the parties of the outcome of the complaint; and • an assurance that the college or university will take steps to prevent recurrence of any harassment and to correct its discriminatory	investigation, hearing (where appropriate), and appeal (where appropriate) of all complaints, including the equal opportunity for the parties to access, review, and present witnesses and other evidence; Pg. 4 an assurance that the University will take steps to prevent recurrence of any sex discrimination, with examples of the range of possible disciplinary sanctions, and will remedy the effects of the discrimination on the victim(s) and others, with examples of the types of remedies available to victims; and Pg. 5	

	effects on the complainant and others, if appropriate. Pg. 9 * "Outcome" does not refer to information about disciplinary sanctions unless otherwise noted. Notice of the outcome is discussed in greater detail in Section D below. Pg. 9 Although OCR examines whether all applicable elements are addressed when investigating sexual harassment complaints, this letter focuses on those elements where our work indicates that more clarification and explanation are needed, including: Pg. 9 Any procedures used to adjudicate complaints of sexual harassment or sexual violence, including disciplinary procedures, however, must meet the Title IX requirement of affording a complainant a prompt and equitable resolution. These requirements are discussed in greater detail below. If the recipient relies on disciplinary procedures for Title IX compliance, the Title IX coordinator should review the recipient's disciplinary procedures to ensure that the procedures comply with the prompt and equitable requirements of Title IX. Pg. 8 As noted above, the Title IX	effects on the complainant and others, if appropriate. The United States reviewed the University's SCC and DGP grievance procedures and the sexual assault and harassment complaints that the University received between the 2009-2010 and 2011-2012 school years. The United States determined that, over the three-year period, the University applied the SCC disciplinary process to sexual assault complaints and a few severe sexual harassment complaints. The University applied the DGP, which on its face covers all complaints under Title IX and other nondiscrimination laws, to only two of ten sexual harassment complaints and no sexual assault complaints. Other sexual harassment complaints were resolved using procedures implemented by specific offices within the University.* The wide variation in who investigated and resolved complaints of sexual assault and harassment highlights the need for clearer procedures, as discussed in the next section. Pg. 10 * Of the twenty-three sexual assault complaints received by the University, seventeen were funneled through the SCC		

	regulation requires schools to provide equitable grievance procedures. As part of these procedures, schools generally conduct investigations and hearings to determine whether sexual harassment or violence occurred. Pg. 10	process. For the other six allegations, the University determined either that there was insufficient information to initiate the SCC process or that the complainant declined to initiate or continue the SCC process. The University received ten sexual harassment complaints: one sexual harassment complaint from a student in the employment context and nine complaints from students outside of the employment context. The one complaint from the student employee was handled by the office that employed the complainant and accused student. Four complaints of non-employment-based sexual harassment were handled using the SCC process. Only two of the nine sexual harassment allegations outside of the employment context were handled by the DGP, and these two involved professor-on-student sexual harassment allegations. Three complaints of non-employment-based sexual harassment were handled by different University offices using different procedures. Pg. 10 As noted above, although Title IX does not require a recipient to provide separate grievance procedures for sexual harassment or sexual assault complaints, any procedures used to adjudicate such complaints, including		

		disciplinary procedures such as the SCC, must meet the Title IX requirements of affording complainants prompt and equitable resolutions of their complaints. Based on its investigation, the United States determined that the University's SCC process does not constitute an adequate grievance procedure for Title IX complaints because, as implemented, it has not ensured a prompt and effective means for responding to sexual harassment, including sexual assault. The SCC is a disciplinary code that prohibits and punishes acts of misconduct, including rape, sexual assault, and "malicious harassment." As currently written and implemented, the SCC process is inadequate as a Title IX grievance procedure in five key respects: (1) the lengthy SCC process has delayed the resolution of some Title IX complaints; . . . (3) the SCC does not adequately cover all forms of sexual harassment; (4) the SCC does not fully satisfy the University's Title IX obligations to address off-campus sexual assaults; and (5) the SCC lacks other procedural elements that help ensure a prompt and equitable grievance procedure. As the Agreement requires, if the University chooses to continue to use the SCC to address sexual assault and harassment complaints, it must cure these		

		inadequacies. The Agreement requires that the University adopt reasonable timeframes for filing a complaint and the major stages of the investigation, hearing, and appeal. Pg. 22		
Differences in Procedures	As noted in the 2001 Guidance, procedures adopted by schools will vary in detail, specificity, and components, reflecting differences in the age of students, school sizes and administrative structures, State or local legal requirements, and past experiences. Pg. 7			
Notice of the Grievance Procedures	The procedures for resolving complaints of sex discrimination, including sexual harassment, should be written in language appropriate to the age of the school's students, easily understood, easily located, and widely distributed. OCR recommends that the grievance procedures be prominently posted on school Web sites; sent electronically to all members of the school community; available at various locations throughout the school or campus; and summarized in or attached to major publications issued by the school, such as handbooks, codes of conduct, and catalogs for students, parents of elementary and secondary	Although the University has grievance procedures, it does not provide students with sufficient notice so that they know where and how to report sex discrimination under these procedures. As described above, Title IX requires the University to provide students and employees with notice of its Title IX grievance procedures, including where complaints may be filed. The procedures for resolving complaints of sex discrimination, including sexual harassment, should be easily understood, easily located, and widely distributed. Although the University's DGP and Equal Opportunity Policy/Non-Discrimination Procedure inform individuals	notice to all members of the University community of the grievance procedures that apply to different types of complaints of sex discrimination by employees, students, or third parties; Pg. 3	

	students, faculty, and staff. Pg. 9	alleging discrimination to contact the Equal Opportunity/Affirmative Action Officer ("Officer") and provide the Officer's physical address and phone number, the University must do more to ensure that the content, distribution, and location of these procedures inform students effectively regarding where and how they can bring sexual harassment complaints. The Sexual Harassment Policy 406.5.1 directs students to "report sexual harassment to the EEO/Affirmative Action Office in accordance with the [DGP]," but does not provide the Office's contact information. The procedures for the Sexual Misconduct, Sexual and Relationship Violence, Stalking Policy 406.5 state that "a sexual harassment policy violation complaint [may be filed] with the University Discrimination Office," but provide no contact information, location, or individual identified with this office, and leave unclear whether this is the same Office as the EEO/Affirmative Action Office. Pg. 10 The DGP and other policies and procedures used to address sexual harassment are also not readily accessible to students. Except for the SCC, all of the policies and procedures related to discrimination on the basis of sex,		

		sexual assault, and sexual harassment are labeled as "Human Resources" policies on the University's website, suggesting that the policies and procedures apply to the employment context and not necessarily the education context. Justice Barz also noted that the University's website is difficult to navigate to find information and resources on sexual assault.* The United States acknowledges that the University has created a new sexual misconduct website, which is easier to navigate and find resources and information on sexual assault. Pg. 10 * Justice Diane G. Barz, Investigation Report 4 (2012) In addition, students do not receive copies of the DGP or other policies and procedures used to address sexual harassment complaints. In contrast, students receive information about the SCC in information packets provided by Residence Life and during orientation. Though each school within the University provides a student handbook, very few refer to sexual harassment, sexual assault, or grievance procedures for this misconduct. Some school handbooks list the University's Student Assault Resource Center ("SARC") as a reference or refer to the SCC, but not specifically		

		with respect to this misconduct. Pg. 11 Although the SCC is distributed and easier to find on the website, it also does not provide students who have been sexually assaulted and/or retaliated against with sufficient information on where and how to file a complaint. The SCC does not direct students with sexual assault complaints to file them with a specific University official or provide the official's contact information. Instead, it states that "[w]hen a complaint is filed with appropriate University officials charging a student with violating the University's Student Conduct Code, the University is responsible for conducting an investigation, initiating charges, and adjudicating those charges."* Although the SCC does state that the Vice President for Student Affairs is responsible for the administration of the SCC,** it does not state that students should bring complaints to the Vice President or the official the Vice President designates to conduct investigations; moreover, the SCC directs students to file with this Vice President only for off-campus offenses. The procedures for the Sexual Misconduct, Sexual and Relationship Violence, Stalking Policy 406.5 state that "[a] survivor wishing to pursue University disciplinary sanctions		

		against any student must file a Student Conduct Code complaint with the Dean of Students (243-6413);" but, as noted above, this policy is not distributed to students and not easy to find given its location under "Human Resources" on the website. Pg. 10-11 * Id. at 1. ** Id. at 15. Students' experiences further indicate that the University's notice of its grievance procedures and where and how to file complaints causes confusion. Current students indicated that they do not recall the University ever explaining sexual harassment and how to report it. Some of these students indicated that they knew students who have experienced sexual harassment and did not report it to the University. Some students were unclear about where they need to report incidents of sexual assault to trigger a University investigation. One student who reported being sexually assaulted mistakenly thought her interactions with the University's health center and SARC constituted reporting to the University for Title IX investigative purposes. But presently and under the Agreement, if a student reports an assault to SARC or the		

		University's Curry Health Center, this is a confidential report that will not initiate a Title IX investigation. Another student told the United States that she thought the University would investigate her sexual assault complaint because the police told her that they had informed a University coach about the police report she filed accusing student athletes on the coach's team. The student assumed that she did not need to file an additional complaint with the University because the police had notified a University employee. During the period we reviewed, if a student reported an assault to the Missoula Police Department ("MPD") or OPS to initiate a criminal investigation, this did not necessarily trigger a Title IX investigation. Pg. 12 * The University of Montana SCC 2. ** Id. at 1.		
Adequate, Reliable, and Impartial Investigation of Complaints	OCR's work indicates that a number of issues related to an adequate, reliable, and impartial investigation arise in sexual harassment and violence complaints. Pg. 9	(2) the SCC did not provide some complainants an adequate, reliable, and impartial investigation or an equitable resolution Pg. 13 Second, the University's use of the SCC process to address allegations of sexual assault has not provided some complainants an adequate, reliable, and impartial investigation or equitable		

		resolution. Pg. 15		
Police Investigations and Sexual Harassment	In some cases, the conduct may constitute both sexual harassment under Title IX and criminal activity. Police investigations may be useful for fact-gathering; but because the standards for criminal investigations are different, police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX. Conduct may constitute unlawful sexual harassment under Title IX even if the police do not have sufficient evidence of a criminal violation. Pg. 9-10	In addition, if there is an incident involving potential criminal conduct, the university must determine, consistent with state and local law, whether appropriate law enforcement or other authorities should be notified. Pg. 5 Under the Agreement, the University will also develop a resource guide for students with clear explanations of the criminal and non-criminal processes that flow from filing complaints with particular entities. Pg. 13 [The] Agreement requires that the University provide training . . . including the appropriate legal standards to apply in a Title IX investigation and how they differ from those in a criminal investigation. Pg. 17-18		
Complainant's Right to File a Criminal Complaint and School's Response	In addition, a criminal investigation into allegations of sexual violence does not relieve the school of its duty under Title IX to resolve complaints promptly and equitably. A school should notify a complainant of the right to file a criminal complaint, and should not dissuade a victim from doing so either during or after the	But a university's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve the university of its independent Title IX obligation to investigate the conduct. A university therefore should not wait for the conclusion of a criminal investigation or criminal proceeding to begin its own Title		

	school's internal Title IX investigation. For instance, if a complainant wants to file a police report, the school should not tell the complainant that it is working toward a solution and instruct, or ask, the complainant to wait to file the report. Schools should not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own Title IX investigation and, if needed, must take immediate steps to protect the student in the educational setting. For example, a school should not delay conducting its own investigation or taking steps to protect the complainant because it wants to see whether the alleged perpetrator will be found guilty of a crime. Any agreement or Memorandum of Understanding (MOU) with a local police department must allow the school to meet its Title IX obligation to resolve complaints promptly and equitably. Although a school may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, once notified that the police department has completed its gathering of evidence (not the ultimate outcome of the investigation or the filing of any charges), the school must	IX investigation and, if needed, must take immediate steps to protect the complainant in the educational setting. These duties are a university's responsibility, regardless of whether a student has complained, asked the university to take action, or identified the harassment as a form of discrimination. Pg. 5 Finally, the Agreement provides that the University will coordinate with OPS and local law enforcement to: (1) ensure that in instances where a complaint involves conduct of a criminal nature, the University will be able to meet its obligations under Title IX by, at a minimum, providing witnesses with information about their Title IX rights or resources for victims, facilitating the filing of Title IX complaints, or taking such independent interim actions as may be necessary to ensure the safety of any victims and the campus community; (2) notify complainants of the right to file a criminal complaint; and (3) share information permitted by law regarding sexual harassment and sexual assault allegations among University employees, including OPS employees, and other law enforcement officials. DOJ has concluded its investigation of OPS and local law enforcement under 42 U.S.C. § 14141 and the Safe Streets Act, and has additional findings that it has		

	promptly resume and complete its fact-finding for the Title IX investigation. Moreover, nothing in an MOU or the criminal investigation itself should prevent a school from notifying complainants of their Title IX rights and the school's grievance procedures, or from taking interim steps to ensure the safety and well-being of the complainant and the school community while the law enforcement agency's fact-gathering is in progress. OCR also recommends that a school's MOU include clear policies on when a school will refer a matter to local law enforcement. Pg. 10 In one recent OCR sexual violence case, the prosecutor's office informed OCR that the police department's evidence gathering stage typically takes three to ten calendar days, although the delay in the school's investigation may be longer in certain instances. Pg. 10	shared with the University regarding OPS that necessitate additional remedies, some of which relate to those required by the enclosed Agreement. Pg. 30		
Case Evaluation Standard	In addressing complaints filed with OCR under Title IX, OCR reviews a school's procedures to determine whether the school is using a preponderance of the evidence standard to evaluate complaints. The Supreme Court has applied a preponderance of the evidence standard in civil litigation involving	Another complaint did not result in an equitable resolution because a University official, upon reinvestigation of the complaint, used the "clear and convincing evidence" standard in contravention of the Dear Colleague Letter's directive to use the "preponderance of the evidence" standard to evaluate the		

	discrimination under Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e et seq. Like Title IX, Title VII prohibits discrimination on the basis of sex. OCR also uses a preponderance of the evidence standard when it resolves complaints against recipients. For instance, OCR's Case Processing Manual requires that a noncompliance determination be supported by the preponderance of the evidence when resolving allegations of discrimination under all the statutes enforced by OCR, including Title IX. OCR also uses a preponderance of the evidence standard in its fund termination administrative hearings. Pg. 10-11 Thus, in order for a school's grievance procedures to be consistent with Title IX standards, the school must use a preponderance of the evidence standard (i.e., it is more likely than not that sexual harassment or violence occurred). The "clear and convincing" standard (i.e., it is highly probable or reasonably certain that the sexual harassment or violence occurred), currently used by some schools, is a higher standard of proof. Grievance procedures that use this higher standard are inconsistent with the standard of proof established	complaint.* The official's analysis of the evidence found both the complainant and accused student to be credible and expressed a belief that this was "a case of differing perceptions and interpretations of the events in question." However, other parts of the analysis questioned the complainant's credibility. For example, some of the complainant's statements began with "I think" or "I don't think," and the official believed that the use of the word "think" denoted a "hesitant and equivocal response." The official concluded that there was not clear and convincing evidence to find that the accused committed sexual misconduct in violation of the SCC. The official's conclusion was in contrast to an earlier report by an outside consultant finding only the complainant to be credible and clear and convincing evidence that the accused sexually assaulted the complainant. Under the preponderance of the evidence standard, other University officials and the University Court who had previously considered the complaint, found the complainant credible and determined that the accused had committed sexual assault. Pg. 17 * The handling of this complaint also resulted in serious delay, as discussed supra Part II.B.1. 33		

	for violations of the civil rights laws, and are thus not equitable under Title IX. Therefore, preponderance of the evidence is the appropriate standard for investigating allegations of sexual harassment or violence. Pg. 11 See, e.g., Desert Palace, Inc. v. Costa, 539 U.S. 90, 99 (2003) (noting that under the "conventional rule of civil litigation," the preponderance of the evidence standard generally applies in cases under Title VII); Price Waterhouse v. Hopkins, 490 U.S. 228, 252-55 (1989) (approving preponderance standard in Title VII sex discrimination case) (plurality opinion); id. at 260 (White, J., concurring in the judgment); id. at 261 (O'Connor, J., concurring in the judgment). The 2001 Guidance noted (on page vi) that "[w]hile Gebser and Davismade clear that Title VII agency principles do not apply in determining liability for money damages under Title IX, the Davis Court also indicated, through its specific references to Title VII caselaw, that Title VII remains relevant in determining what constitutes hostile environment sexual harassment under Title IX." See also Jennings v. Univ. of N.C., 482 F.3d 686, 695 (4th Cir. 2007) ("We look to case law	Lastly, the SCC lacks procedural elements that help ensure a prompt and equitable grievance procedure. Until recently, the University used the "clear and convincing evidence" standard for investigating sexual assault complaints, contrary to OCR's 2011 Dear Colleague Letter on Sexual Violence, which states that the preponderance of the evidence is the appropriate standard for investigating allegations of sexual harassment or violence under Title IX. The University changed portions of the SCC during spring 2012 to clarify that rape, sexual assault, and retaliation complaints will be analyzed using the "preponderance of the evidence" standard.* However, the revised SCC does not reflect the appropriate standard throughout the Code; it does not use the "preponderance of the evidence" standard for investigating allegations of "malicious intimidation or harassment" that constitutes sexual harassment. Pg. 19 *See id. at 8, 9. The University's failure to promptly revise all of its policies to use the correct evidentiary standard for investigating alleged sexual harassment has resulted in		

	interpreting Title VII of the Civil Rights Act of 1964 for guidance in evaluating a claim brought under Title IX.") OCR's Case Processing Manual is available on the Department's Web site, at http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html. The Title IX regulations adopt the procedural provisions applicable to Title VI of the Civil Rights Act of 1964. See 34 C.F.R. § 106.71 ("The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference."). The Title VI regulations apply the Administrative Procedure Act to administrative hearings required prior to termination of Federal financial assistance and require that termination decisions be "supported by and in accordance with the reliable, probative and substantial evidence." 5 U.S.C. § 556(d). The Supreme Court has interpreted "reliable, probative and substantial evidence" as a direction to use the preponderance standard. See Steadman v. SEC, 450 U.S. 91, 98-102 (1981).	an inequitable resolution and delayed the resolution of at least one complaint.* When that complaint was on appeal, the reviewing official instructed the University to use the "clear and convincing evidence" standard as opposed to the "preponderance of the evidence" standard because the former was the standard described in the SCC when the complainant claimed the sexual assault occurred. Under the "preponderance of the evidence" standard, the University had decided that there was sufficient evidence to conclude that the accused student committed sexual assault. When the University recently reinvestigated the complaint using the "clear and convincing evidence" standard, it decided that there was insufficient evidence to conclude that the accused student committed the assault. The Dear Colleague Letter, however, put schools on notice in April 2011 that the standard for investigating allegations of sexual harassment is the preponderance of the evidence. The University should not continue to use the inappropriate "clear and convincing evidence" standard simply because it failed to adopt the appropriate standard in its SCC when the letter was released. In this complaint, the use of this standard resulted in a different outcome. Under the Agreement		

		with the United States, the University will ensure that its grievance procedures use the "preponderance of the evidence" standard for investigating all allegations of sexual harassment, including sexual assault. Pg. 19-20 Part of the President's review includes ensuring that each finding of discrimination and recommendation for redress received a majority vote from the Committee members "based on a preponderance of substantial, credible evidence." The President's decision specifies "(1) the actions that have been or will be taken regarding each recommendation; and (2) the time frame in which these actions will be accomplished." Pg. 21		
Hearing Equal Opportunity	Throughout a school's Title IX investigation, including at any hearing, the parties must have an equal opportunity to present relevant witnesses and other evidence. Pg. 11 For example, a school should not conduct a pre-hearing meeting during which only the alleged perpetrator is present and given an opportunity to present his or her side of the story, unless a similar meeting takes place with the complainant; a hearing officer or disciplinary board should not allow only the alleged	On its face, moreover, the SCC does not ensure the accused student and the complainant have equal rights throughout the process. Throughout a university's Title IX investigation, including at any hearing, the parties must have an equal opportunity to present relevant witnesses and other evidence. The complainant and the alleged perpetrator must be afforded similar and timely access to any information that will be used at the hearing. If a school provides for appeal of the findings or remedy, it must do so for both parties. The SCC gives		

	perpetrator to present character witnesses at a hearing; and a school should not allow the alleged perpetrator to review the complainant's statement without also allowing the complainant to review the alleged perpetrator's statement. Pg. 11-12 The complainant and the alleged perpetrator must be afforded similar and timely access to any information that will be used at the hearing. Pg. 11	the accused a right to review the evidence and the right to hear and question relevant evidence and witnesses. The complainant does not have corresponding rights. In addition, when students do bring complaints, they do not receive a written determination that the University found that the harassment occurred unless the complaint goes to a University Court hearing. The University has agreed to revise its policies and procedures to provide written notification to both parties of the outcome of the investigation, hearing, and appeal, and to ensure the parties have an equal opportunity to access, review, and present witnesses and other evidence. Pg. 20 If the University continues to use the SCC process to respond to sexual assault, harassment and/or retaliation, the University has agreed to revise that process to address the five issues identified above in order to meet its Title IX and Title IV obligations. Pg. 20		
Unnecessary Burden on Complainant		In addition, the current procedures place an unnecessary burden on the student reporting the complaint. Students who file complaints with the University are required to prepare new written statements, even if another entity such as OPS, the Missoula Police Department, or a hospital has written a report containing the student's statement. The		

		University should seek to minimize the reporting burden on students filing complaints by permitting them to use their existing statements. The Agreement requires University employees who respond to such complaints to coordinate with law enforcement, such as OPS and the local police, regarding such complaints, and to be trained on the information they can share. Pg. 20		
Hearing Information FERPA Considerations	Access to this information must be provided consistent with FERPA. For example, if a school introduces an alleged perpetrator's prior disciplinary records to support a tougher disciplinary penalty, the complainant would not be allowed access to those records. Additionally, access should not be given to privileged or confidential information. For example, the alleged perpetrator should not be given access to communications between the complainant and a counselor or information regarding the complainant's sexual history. Pg. 11			
Lawyers Attending Hearings	While OCR does not require schools to permit parties to have lawyers at any stage of the proceedings, if a school chooses to allow the parties to have their lawyers participate in the proceedings, it must do so equally for both parties.			

	Additionally, any school-imposed restrictions on the ability of lawyers to speak or otherwise participate in the proceedings should apply equally. Pg. 12			
Sexual Harassment Hearings that do Not Constitute Sexual Assault		First, although the University provides the DGP to address sexual harassment that does not constitute sexual assault, the DGP has not ensured a prompt and equitable grievance procedure for resolving student complaints of peer sexual harassment. The DGP, which is supposed to cover sexual harassment complaints,* does not cover peer sexual harassment complaints in practice. The DGP does not indicate that it applies to student-on-student harassment, and the language "official action of any University employee" in the DGP implies that sexual harassment by a University employee is not covered because such misconduct presumably would never be authorized official employee action. Students do not receive copies of the DGP, and it is posted with human resource policies on a portion of the website where students are not likely to search. It is notable that, in the last three school years, the University received only seven student-on-student sexual harassment complaints outside of the employment context, but received twenty three sexual assault complaints involving		

		students. None of the peer sexual harassment complaints was handled by the DGP; they were handled by a range of offices. The DGP handled only two sexual harassment complaints, both involving professor-on-student harassment. If the University intends for the DGP to be the primary grievance procedure for sexual harassment complaints, it needs to clarify this for students, particularly with respect to student-on-student sexual harassment, and more effectively publicize the DGP to students. Pg. 21 *The Sexual Harassment Policy 406.5.1 directs students to "report sexual harassment to the EEO/Affirmative Action Office in accordance with the DGP." However, as discussed infra, the DGP handled only two of the ten sexual harassment complaints, and these alleged professor-on-student harassment. See infra Part II.C. One sexual harassment complaint handled by the DGP did not result in an equitable resolution. The Equal Opportunity Officer found that: the professor made unwelcome sexual advances towards the student; the professor's advances "went too far" and frightened the student; the professor was exerting power over her; and a reasonable woman		

		under the same circumstances would have felt uncomfortable. The student could no longer attend the class and the academic department arranged for a different professor to grade her work. Despite these findings, the Officer concluded that the conduct was not severe or pervasive and therefore did not constitute sexual harassment. However, the Officer's findings and conclusions strongly suggest that there was a hostile environment; the student could no longer attend class and was therefore deprived of benefits and opportunities of the University. Because the University did not identify the Professor's conduct as sexual harassment, the University's response was merely to retain the Officer's report on file with the professor's Department Chair in the event that another similar complaint arises. Pg. 21		
Hearing Questioning /Cross Examination Process	OCR strongly discourages schools from allowing the parties personally to question or cross-examine each other during the hearing. Allowing an alleged perpetrator to question an alleged victim directly may be traumatic or intimidating, thereby possibly escalating or perpetuating a hostile environment. Pg. 12			
Appeals Process	OCR also recommends that schools provide an appeals	The SCC also indicates that the accused student has a right to	a requirement that parties be given notice of the opportunity to	

	process. If a school provides for appeal of the findings or remedy, it must do so for both parties. Pg. 12	appeal at each stage of the investigation. However, it does not state that a complainant has a right to appeal a decision at any level. Pg. 20 If the Officer determines that discrimination did not occur, the complainant can appeal the decision to the Discrimination Grievance Committee; the DGP is silent regarding the appeal rights of the respondent. Pg. 21 If a complainant disagrees with the President's decision, he or she can appeal to the Commissioner of Higher Education and then the Board of Regents. Pg. 21	appeal the findings; Pg. 4	
Hearing Documentation	Schools must maintain documentation of all proceedings, which may include written findings of facts, transcripts, or audio recordings. Pg. 12	After the Discrimination Grievance Committee hearing, the Committee makes a decision in writing, which is reviewed by the University President. Pg. 21		
Training for Individuals Involved in Implementing Grievance Procedures	Recipients must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the recipient's grievance procedures operate. Pg. 7 Because sexual violence complaints often are filed with the school's law enforcement unit, all school law enforcement	The Title IX Coordinator(s) must have adequate training on what constitutes sexual harassment, including sexual violence, and understand how the grievance procedures operate. Pg. 6 The Agreement further requires training for all University employees, including those who are statutorily barred from reporting, on informing complainants of their right to file Title IX and criminal complaints	By August 22, 2013, the University, in consultation with the Equity Consultant, will develop Title IX training, and the Equity Consultant will provide the Title IX training to its Title IX Coordinator, members of the University Court, and any other University employees (e.g., OPS employees) who will be directly involved in processing, investigating, and/or resolving complaints of sex discrimination or who will	<u>B. Sexual Assault Response Training</u> 3. OPS shall provide initial and ongoing annual in-service training to all OPS officers and detectives, and recruits about law enforcement response to sexual assault. This initial and annual in-service training shall ensure that all OPS officers and detectives understand and can perform their duties pursuant to this Agreement, and shall reflect and incorporate any developments

	unit employees should receive training on the school's Title IX grievance procedures and any other procedures used for investigating reports of sexual violence. Pg. 7 All persons involved in implementing a recipient's grievance procedures (e.g., Title IX coordinators, investigators, and adjudicators) must have training or experience in handling complaints of sexual harassment and sexual violence, and in the recipient's grievance procedures. Pg. 12 In sexual violence cases, the fact-finder and decision-maker also should have adequate training or knowledge regarding sexual violence. Pg. 12 For instance, if an investigation or hearing involves forensic evidence, that evidence should be reviewed by a trained forensic examiner. Pg. 12	and how to do so. The Agreement requires additional training on how to coordinate and cooperate with law enforcement during parallel criminal and Title IX proceedings for the Title IX Coordinator, members of the University Court, and any other University employees (e.g., OPS employees) who will be directly involved in processing, investigating, and/or resolving complaints of sex discrimination or who will otherwise assist in the coordination of the University's compliance with Title IX, and to ensure that OPS knows how to facilitate the filing of a Title IX complaint upon a student's request. Given that OPS is often the "first responder" to reports of sexual assault, this training will also clarify that the University has responsibilities under Title IX to respond to sexual assault and sexual harassment short of assault, even when OPS has responded to the same report of harassment in a criminal capacity. Pg. 12 Although MPD does not have Title IX obligations, contacting the University in such instances would help to promote Title IX compliance. Pg. 12 The University's handling of this complaint and disparate interpretations of the evidence demonstrate a serious need for	otherwise assist in the coordination of the University's compliance with Title IX. This training will be in person and cover: 1. the University's new policies and grievance procedures for Title IX complaints required by Section II above; 2. sex discrimination and the University's responsibilities under Title IX and Title IV to address allegations of sex-based harassment, whether or not the actions are potentially criminal in nature; 3. recognizing and appropriately responding to allegations and complaints pursuant to Title IX and Title IV, including conducting interviews of victims of sexual assault and communicating in a fair, non-biased, and objective manner that does not discourage victims from reporting or continuing with their complaints (such training shall include role-playing and other practice activities); 4. how to conduct and document adequate, prompt, reliable, and impartial Title IX investigations, including the appropriate legal standards to apply in a Title IX investigation and how they differ from those in a criminal investigation; 5. how to notify complainants of the right to file a criminal complaint and how to file one; 6. what information regarding	in applicable law, best practices, and professional standards. Annual in-service training shall address also any training needs identified throughout the previous year. The initial and in-service training shall be of sufficient length and scope to include the following topics: a. OPS' new sexual assault policy, developed pursuant to this Agreement; b. Effective law enforcement response to reports of sexual assault; c. Effective law enforcement response to non-stranger sexual assault; drug and alcohol facilitated sexual assault; and sexual assault where the victim is incapacitated or otherwise unwilling or unable to clearly describe the assault; d. The dynamics of and relevant core scientific concepts related to sexual assault including counterintuitive behavior, tonic immobility, and the effects of trauma on memory; e. Crime scene preservation; f. Taking statements from individuals reporting sexual assault; g. The impact of officers' and detectives' attitudes towards victims on investigative outcomes; and h. The impact of bias in law enforcement agencies' response to sexual assault and strategies to ensure that bias does not undermine investigations,

		training specific to matters that are common in sexual assault cases and that come before the University through grievances or alleged violations of the SCC. This includes matters relating to consent, the use of force, the handling of forensic evidence, how to assess victim responses to sexual assault, and how to assess credibility.* In addition, the official's reinvestigation of the complaint highlights a need for more training on how to evaluate evidence and the appropriate evidentiary standard to assess it. This analysis, in particular, reflects an incomplete understanding of how to assess credibility, how to assess victim responses to sexual assault, and how to analyze force and consent. Thus, as discussed later, the Agreement requires that the University provide training to all individuals who will be directly involved in processing, investigating, and/or resolving complaints of sex discrimination or who will otherwise assist in the coordination of the University's compliance with Title IX on the following: recognizing and appropriately responding to allegations and complaints pursuant to Title IX, including conducting interviews of victims of sexual assault and communicating in a fair, non-biased, and objective manner that does not discourage victims from reporting or following through on	sex-based harassment allegations may be shared among University employees, including OPS employees, and other law enforcement officials; 7. how to coordinate and cooperate with law enforcement during parallel criminal and Title IX proceedings; 8. the link between alcohol and drug use and sex-based harassment; 9. best practices to address that link, including, but not limited to: a. how to address the challenges of investigating incidents involving alcohol or drug use; and b. how to encourage victims and witnesses of sex-based harassment to cooperate with investigations if they have concerns about possible conduct implications of their own alcohol and drug use; and 10. a written assessment requiring participants to demonstrate that they have learned the material in the Title IX and Title IV training. Pg. 6-7 By October 15, 2013, the University will provide Title IX training to all resident assistants, members of the SARC, the Curry Student Health Center, OPS, Academic Advisors, and other University employees who are likely to be the first to receive complaints of sex discrimination.	damage rapport with victims reporting sexual assault, or re-traumatize victims. 4. This training shall include presentations by victims of sexual assault, if available, or presentations which adequately convey victims' experiences and shall include victims' advocates in order to provide officers with the unique perspectives of those who have been victimized by sexual assault and/or those who work with sexual assault survivors. 5. OPS shall provide additional in-depth training in sexual assault investigations to all OPS detectives who conduct such investigations. This training shall include the following topics: a. The elements of sexual assault offenses under Montana law; b. Forensic and investigative steps to be taken in response to sexual assault allegations, including focused training on the forensic and investigative steps specific to nonstranger sexual assault, alcohol and drug-facilitated sexual assault, and sexual assault involving victims who are incapacitated or otherwise unable or unwilling to clearly describe the assault; c. Taking statements from and interviewing individuals reporting sexual assault; and d. Taking statements from, interviewing, and interrogating

		their reports; and understanding how to conduct and document adequate . . Pg. 17-18 * OCR's 2011 Dear Colleague Letter on Sexual Violence notes that "if an investigation or hearing involves forensic evidence, that evidence should be reviewed by a trained forensic examiner." Id. at 12 n.30 Throughout the time period we reviewed, the University had designated a Title IX Coordinator to coordinate its efforts to comply with Title IX and had delegated authority to investigate and decide Title IX complaints to other individuals, such as the Dean of Students and the University Court members. However, additional steps must be taken to ensure that these employees have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the grievance procedures operate. Pg. 25 Prior to 2011, the Title IX Coordinator's training consisted only of a bias-prevention training by the National Coalition Building Institute in 2009. In 2011, the Coordinator received training on internal discrimination investigations by the National Association of College and University Attorneys (NACUA),	The training will be in person and provide attendees with essential guidance and instruction on recognizing and appropriately responding to initial allegations and complaints of sex discrimination including fair and objective communication that does not discourage victims from reporting. The training also will instruct attendees on: 1. how students may invoke the Title IX complaint and grievance procedures required by Sections II.A-D above, as well as any related procedures (e.g., the SCC and Student Athlete Conduct Code procedures), and the first responder's responsibility to facilitate the filing of such complaints; 2. clear examples of what types of actions may constitute sex discrimination in the University's programs or activities, including but not limited to different types of sex-based harassment, and what may provide the basis for a complaint pursuant to the University's grievance and other procedures; 3. how the Title IX process differs from the criminal one, how to notify complainants of the right to file a criminal complaint, and how to file one; 4. how to contact the Title IX coordinator; and 5. how to provide students with this information verbally and	suspects in non-stranger and alcohol and drug-facilitated sexual assault. 6. OPS personnel who provide direct supervision of officers who respond to reports of sexual assault and detectives who investigate sexual assault allegations shall receive training on how to review sexual assault response and investigations for comprehensiveness and to detect indications of bias, including how to implement the supervisory reviews and responsibilities contained in this Agreement. 7. Training pursuant to this Agreement shall be provided in accordance with best practices and include adult-learning methods that incorporate role-playing scenarios and interactive exercises, as well as traditional lecture formats. Training shall also include testing and/or writings that indicate that OPS personnel taking the training comprehend the material taught. Pg. 4-5 <u>C. Review of Policies and Training</u> 8. Each of the requirements of this Agreement shall be incorporated into OPS policy, and all applicable OPS officers and employees shall be trained on how to meet the requirements of this Agreement. OPS shall submit new and revised policies and protocols related to sexual assault and/or the terms of this

		and in 2012, the coordinator received training on campus assault, the role of the Title IX Coordinator, providing training, and model policies and grievance procedures by NACUA. The Dean of Students who investigated complaints under the SCC during the three year period had not received training regarding Title IX until spring 2012, and had not attended training on University judicial proceedings and investigations during the time period of the United States' investigation. The University Court received training during the 2009-2010 school year on sexual violence and the role of the Court, but has not received this training in subsequent years. During the 2011-2012 school year, the year during which the University received the most sexual assault complaints, no members of the University Court had received training. With respect to other employees who periodically investigate sexual harassment complaints, the University provides in-person training to all new employees about sexual harassment in the workplace. However, they do not receive training on peer-on-peer sexual harassment and how to conduct a Title IX investigation. While the Title IX Coordinator sometimes provides advice to employees on how to conduct an investigation, this cannot develop	through the resource guide required by Section VII below (i.e., in hard copy and/or electronic form) whenever attendees respond to such complaints. Pg. 7 provisions ensuring that individuals who play a role in receiving, investigating, and otherwise processing student complaints of sex-based harassment (including, but not limited, to OPS employees, Title IX coordinator(s), Student Assault Resource Center (SARC) employees, resident assistants, deans, and University Court members) are accessible and do not have any actual or perceived conflicts of interest in the process; in the rare situation that such conflicts arise between the fact-finder or decision-maker and the accused or the accuser in a particular case, the actual or perceived conflict will be disclosed to the parties; Pg. 4	Agreement, and all curricula for trainings developed pursuant to this Agreement, to the Independent Reviewer and DOJ for review and comment prior to implementation and/or training delivery. OPS will seek to address all reasonable concerns raised by the Independent Reviewer or DOJ. If these concerns cannot be resolved, either Party may seek resolution by the Court. Upon resolution, OPS shall publish and/or implement the policies, protocols, and/or curricula within 30 days. Pg. 5-6 <u>E. Victim-Centered Response to Sexual Assault</u> 11. OPS shall enhance and improve policy, training, and oversight to ensure victim centered practices in the areas of sexual assault response, interviews, and investigations in order to increase the likelihood of victims' continued participation with law enforcement; improve the experience for victims; and strengthen sexual assault investigations. These practices shall include the following: a. Inviting and encouraging advocates to be present during interviews, if consistent with the victim's wishes; b. Conducting interviews at times and locations considerate to the victim, wherever

		the same level of skill and promote as much consistency as in-person training for all individuals who conduct these investigations. Pg. 25-26 Under the Agreement, the University will provide more detailed training on sex discrimination, including sexual assault and sexual harassment, and the University's obligations under Title IV and Title IX. This training will be mandatory for all individuals who play a role in coordinating the University's response to Title IX complaints, which includes the Title IX Coordinator, the Dean of Students, the Vice President for Student Affairs, Residence Life and Dining Services employees, the University Court, OPS, any other offices or departments that conduct sexual harassment investigations (e.g., those involved in the DGP process), and the administrators who will be part of the President's team convened to address all sexual assault reports. The training aims to ensure that these individuals will provide notice to students about the option to file a complaint with the University and/or a criminal complaint with law enforcement, and will coordinate their Title IX response with law enforcement regarding such complaints, as appropriate. Pg. 26		possible; c. Introducing particularly sensitive lines of questioning by first explaining why those questions are important to the investigation; d. Instructing detectives and officers not to ask victims whether they wish the assailant to be prosecuted; e. Ensuring that officers describe the process of taking forensic exams and working with law enforcement and the courts in a manner that is both sensitive to the needs of victims and supports their participation in the criminal justice process; f. Documenting reports of sexual assault using the language of non-consensual sex, as appropriate, and using the victim's own language as much as possible; and g. Transporting the victim or obtaining appropriate transport for the victim to the designated medical facility for a forensic exam where such an examination is warranted and the victim consents. Pg. 6-7

Confidentiality Training Requirement	The training also should include applicable confidentiality requirements. Pg. 12.			
Conflicts of Interest between the Fact-finder or Decision-maker	Additionally, a school's investigation and hearing processes cannot be equitable unless they are impartial. Therefore, any real or perceived conflicts of interest between the fact-finder or decision-maker and the parties should be disclosed. Pg. 12	In addition, the dual role of the Dean in investigating SCC complaints and presenting the case on behalf of the University to the University Court creates a potential conflict that can deprive complainants of an adequate, reliable, and impartial investigation. In one sexual assault case, though the Dean investigating the complaint believed that there had been an SCC violation, he did not go forward because of the possibility that the student would not testify at a University Court hearing, during which he would have had to present the case. Having the same official play these dual roles of investigator and "prosecutor" appears to have discouraged the official from making a finding of discrimination even though he believed discrimination occurred. Therefore, under the Agreement, the University will ensure that individuals who play a role in receiving, investigating, and processing student complaints of sex-based harassment do not have any actual or perceived conflicts of interest in the process. Pg. 18		
Due Process	Public and state-supported schools must provide due	The focus of the SCC process is on the perpetrator, his or her due		

	process to the alleged perpetrator. However, schools should ensure that steps taken to accord due process rights to the alleged perpetrator do not restrict or unnecessarily delay the Title IX protections for the complainant. Pg. 12	process rights, and resolving possible violations of the SCC, and it does not adequately address the Title IX rights of the victim. Pg. 13		
Designated and Reasonably Prompt Time Frames	OCR will evaluate whether a school's grievance procedures specify the time frames for all major stages of the procedures, as well as the process for extending timelines. Grievance procedures should specify the time frame within which: (1) the school will conduct a full investigation of the complaint; (2) both parties receive a response regarding the outcome of the complaint; and (3) the parties may file an appeal, if applicable. Both parties should be given periodic status updates. Based on OCR experience, a typical investigation takes approximately 60 calendar days following receipt of the complaint. Whether OCR considers complaint resolutions to be timely, however, will vary depending on the complexity of the investigation and the severity and extent of the harassment. For example, the resolution of a complaint involving multiple incidents with multiple complainants likely would take longer than one involving a single incident that occurred in a classroom during school hours	First, the University's use of the SCC process has significantly delayed the resolution of some Title IX complaints because the process has multiple stages, including five appeals. The process begins with an investigation by a University official designated by the Vice President for Student Affairs.* For the 2009-2010, 2010-2011, and 2011-2012 school years, the designated official was the Dean of Students. The SCC requires the investigating official to take certain steps, including: determining the facts through interviews, reports, and other evidence; informing the accused student of the findings; allowing the accused student the opportunity to respond to evidence and potential charges; and making an impartial judgment as to whether any misconduct occurred and proposing appropriate sanctions. Upon making a determination that a student violated the SCC, the Dean proposes sanctions such as a disciplinary warning or probation, mandatory programs or counseling targeted at drug and		

	with a single complainant. Pg. 12-13	alcohol abuse or sexual offenses, a prohibition on attending campus events or participating in activities, eviction from University housing, and suspension or expulsion. Although the SCC does not require the Dean to provide the determination in writing, during the time period reviewed by the United States, the Dean provided the written determination to the accused but not the complainant. Pg. 13-14 * The University of Montana SCC 18. If the Dean determines a student has violated the SCC and proposes sanctions, the accused student can appeal the decision by requesting an administrative conference before an administrative officer or committee designated by the Vice President for Student Affairs. The Dean must create a report that details the allegations and sanctions and provide it to the administrative officer within five working days of meeting with the student. The administrative officer reviews the report produced by the Dean and then meets with the accused student. If, based on the report and the meeting, this administrative officer finds a probable violation of the SCC, the officer sends written notice of the charges to the accused student, but not the		

		complainant, specifying the alleged misconduct, a summary of the facts, and the proposed sanctions. Pg. 14 If the accused student disagrees with the decisions made at the administrative conference, he or she can request a hearing before the University Court, which consists of students, faculty, and staff. During the time period reviewed by the United States, the Dean of Students presented the case for the University to the University Court. Within ten working days of the University Court hearing, the Court makes a decision and recommends sanctions in writing and provides it to the accused student. During the time period reviewed by the United States, the Court provided its decision to complainants as well. The University President then has ten working days to review the Court's decision. If a student disagrees with the President's decision, he or she can appeal to the Commissioner of Higher Education and then the Board of Regents. Given the numerous levels of review in the SCC process, some Title IX complaints have taken many months to resolve. For example, one student filed a sexual assault complaint that took over eleven months to resolve. For that complaint, the accused student availed himself of five levels of		

		review, the fifth level of review did not occur until six months after the complaint was filed, and the remand proceedings took over four months to complete and resulted in a reversal. Because of this reversal, the length of the process, and the possibility that she would continue to see the accused student, the complainant seriously contemplated not returning to campus. Pg. 14 Because the police notified a University employee who was not statutorily barred from reporting, the University had notice of the harassment that should have triggered a prompt Title IX investigation.* Pg. 15 * This notice constituted "actual notice" under the damages standard in Gebser and Davis, but recipients must also respond in cases of "constructive notice" under the administrative enforcement and injunctive standard. Revised Sexual Harassment Guidance iii–iv. Once the University initiated the SCC process, it took approximately four more months to resolve the complaint. The University's failure to promptly investigate and resolve this complaint revealed shortcomings in the University's grievance procedures. Pg. 15		

		For another sexual assault complaint involving multiple alleged perpetrators, the University did not get to the stage of notifying any of the accused students of the SCC complaint. The University could not determine which accused student(s) assaulted the student and thus did not make a finding that discrimination had occurred or take further action, thereby failing to provide the student who complained of being assaulted with any resolution to her sexual assault complaint. Pg. 16 Another student left the University in February 2011 shortly after she made a complaint of sexual assault. In late March 2011, the Dean of Students found sufficient evidence that the accused student had sexually assaulted the complainant in violation of the SCC, and the Dean recommended expulsion. The accused student denied the charges and could have appealed the expulsion through the next five levels of the SCC review process. Instead of going to the next step of the process, the University and the accused student's lawyer agreed that the student could stay on campus approximately six more weeks until the end of the spring semester, but was not permitted to re-enroll at the University or to access the property or sponsored		

		activities thereafter. In effect, the accused agreed to the expulsion provided he could finish the semester on campus. This particular complainant was comfortable with this resolution because she was no longer on campus and relieved not to have to go through additional stages of the SCC appeals process. Pg. 16 In addition, there are procedural elements of the DGP that undermine its use to resolve complaints promptly and equitably. Although the DGP states that the initial investigation is generally conducted within ten days, the process can take up to seventy days until the President of the University makes a determination, and there is still an opportunity to appeal to the Commissioner of Education and the Board of Regents, which can take additional time. In addition, the DGP has procedural elements that could deter reporting. Pg. 22		
Notice of Outcome	Both parties must be notified, in writing, about the outcome* of both the complaint and any appeal, i.e., whether harassment was found to have occurred. OCR recommends that schools provide the written determination of the final outcome to the complainant and the alleged perpetrator concurrently. Title IX does not require the school to notify the		a requirement for written notification to the parties of the outcome of the investigation, hearing and appeal; Pg. 4	

	alleged perpetrator of the outcome before it notifies the complainant. Pg. 13 * As noted previously, "outcome" does not refer to information about disciplinary sanctions unless otherwise noted. Pg. 13			
Notice of Outcome FERPA Considerations	Due to the intersection of Title IX and FERPA requirements, OCR recognizes that there may be confusion regarding what information a school may disclose to the complainant. FERPA generally prohibits the nonconsensual disclosure of personally identifiable information from a student's "education record." However, as stated in the 2001 Guidance, FERPA permits a school to disclose to the harassed student information about the sanction imposed upon a student who was found to have engaged in harassment when the sanction directly relates to the harassed student. This includes an order that the harasser stay away from the harassed student, or that the harasser is prohibited from attending school for a period of time, or transferred to other classes or another residence hall. Disclosure of other information in the student's "education record," including information about sanctions that do not relate to the harassed student, may result in a violation of			

	FERPA. Pg. 13 In 1994, Congress amended the General Education Provisions Act (GEPA), of which FERPA is a part, to state that nothing in GEPA "shall be construed to affect the applicability of title VI of the Civil Rights Act of 1964, title IX of Education Amendments of 1972, title V of the Rehabilitation Act of 1973, the Age Discrimination Act, or other statutes prohibiting discrimination, to any applicable program." 20 U.S.C. § 1221(d). The department interprets this provision to mean that FERPA continues to apply in the context of Title IX enforcement, but if there is a direct conflict between the requirements of FERPA and the requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions. See 2001 Guidance at vii. Pg. 13 This information directly relates to the complainant and is particularly important in sexual harassment cases because it affects whether a hostile environment has been eliminated. Because seeing the perpetrator may be traumatic, a			

	complainant in a sexual harassment case may continue to be subject to a hostile environment if he or she does not know when the perpetrator will return to school or whether he or she will continue to share classes or a residence hall with the perpetrator. This information also directly affects a complainant's decision regarding how to work with the school to eliminate the hostile environment and prevent its recurrence. For instance, if a complainant knows that the perpetrator will not be at school or will be transferred to other classes or another residence hall for the rest of the year, the complainant may be less likely to want to transfer to another school or change classes, but if the perpetrator will be returning to school after a few days or weeks, or remaining in the complainant's classes or residence hall, the complainant may want to transfer schools or change classes to avoid contact. Thus, the complainant cannot make an informed decision about how best to respond without this information. Pg. 13 Further, when the conduct involves a crime of violence or a non-forcible sex offense, FERPA permits a postsecondary institution to disclose to the alleged victim the final results of			

	a disciplinary proceeding against the alleged perpetrator, regardless of whether the institution concluded that a violation was committed. Additionally, a postsecondary institution may disclose to anyone—not just the alleged victim—the final results of a disciplinary proceeding if it determines that the student is an alleged perpetrator of a crime of violence or a non-forcible sex offense, and, with respect to the allegation made, the student has committed a violation of the institution's rules or policies. Pg. 13-14 Under the FERPA regulations, crimes of violence include arson; assault offenses (aggravated assault, simple assault, intimidation); burglary; criminal homicide (manslaughter by negligence); criminal homicide (murder and non-negligent manslaughter); destruction, damage or vandalism of property; kidnapping/abduction; robbery; and forcible sex offenses. Pg. 13-14			
Notice of Outcome Clery Considerations	Postsecondary institutions also are subject to additional rules under the Clery Act. This law, which applies to postsecondary institutions that participate in Federal student financial aid programs, requires that "both the accuser and the accused must be informed of the			

	outcome of any institutional disciplinary proceeding brought alleging a sex offense." Compliance with this requirement does not constitute a violation of FERPA. Furthermore, the FERPA limitations on redisclosure of information do not apply to information that postsecondary institutions are required to disclose under the Clery Act. Accordingly, postsecondary institutions may not require a complainant to abide by a nondisclosure agreement, in writing or otherwise, that would prevent the redisclosure of this information. Pg. 14 For purposes of the Clery Act, "outcome" means the institution's final determination with respect to the alleged sex offense and any sanctions imposed against the accused. 34 C.F.R. § 668.46(b)(11)(vi)(B). 34 C.F.R. § 99.33(c)			
Forcible Sex Offense Definition	Under the Clery Act, forcible sex offenses are defined as any sexual act directed against another person forcibly or against that person's will, or not forcibly or against the person's will where the person is incapable of giving consent. Forcible sex offenses include forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. 34 C.F.R. §			

	668.46(b)(11)(vi)(B). Pg. 2 and 13-14			
Non-forcible Sex Offenses	Non-forcible sex offenses include incest and statutory rape. 34 C.F.R. Part 668, Subpt. D, App. A. Pg. 13-14			
Encouraging Reporting	The education programs also should include information aimed at encouraging students to report incidents of sexual violence to the appropriate school and law enforcement authorities. Schools should be aware that victims or third parties may be deterred from reporting incidents if alcohol, drugs, or other violations of school or campus rules were involved. As a result, schools should consider whether their disciplinary policies have a chilling effect on victims' or other students' reporting of sexual violence offenses. For example, OCR recommends that schools inform students that the schools' primary concern is student safety, that any other rules violations will be addressed separately from the sexual violence allegation, and that use of alcohol or drugs never makes the victim at fault for sexual violence. Pg. 15 The Department's Higher Education Center for Alcohol,			<u>D. Investigating Alcohol- or Drug-Facilitated and Non-Stranger Sexual Assault</u> 10. OPS shall enhance and improve policy, training, and oversight to ensure that officers : 1) recognize the prevalence of non-stranger and alcohol- or drug-facilitated sexual assault, and the relative infrequency of false reporting, and 2) accordingly take all appropriate investigative steps when investigating non-stranger sexual assault, sexual assault facilitated by alcohol or drugs, and sexual assault involving victims who were incapacitated at the time of the assault or otherwise unable or unwilling to clearly describe the assault. Pg. 6

	Drug Abuse, and Violence Prevention (HEC) helps campuses and communities address problems of alcohol, other drugs, and violence by identifying effective strategies and programs based upon the best prevention science. Information on HEC resources and technical assistance can be found at www.higheredcenter.org Pg. 15			
Sexual Violence Materials	OCR also recommends that schools develop specific sexual violence materials that include the schools' policies, rules, and resources for students, faculty, coaches, and administrators. Schools also should include such information in their employee handbook and any handbooks that student athletes and members of student activity groups receive. These materials should include where and to whom students should go if they are victims of sexual violence. These materials also should tell students and school employees what to do if they learn of an incident of sexual violence. Pg. 15			
Monitoring Student Activities	Schools also should assess student activities regularly to ensure that the practices and behavior of students do not violate the schools' policies against sexual harassment and sexual violence. Pg. 15			
Remedies and	As discussed above, if a school	A university violates Title IX and		

Enforcement Overview	determines that sexual harassment that creates a hostile environment has occurred, it must take immediate action to eliminate the hostile environment, prevent its recurrence, and address its effects. In addition to counseling or taking disciplinary action against the harasser, effective corrective action may require remedies for the complainant, as well as changes to the school's overall services or policies. Examples of these actions are discussed in greater detail below. Pg. 15	Title IV if: (1) a student is sexually harassed and the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the program (i.e., the harassment creates a hostile environment); (2) the university knew or reasonably should have known about the harassment; and (3) the university fails to take immediate effective action to eliminate the hostile environment, prevent its recurrence, and address its effects. Pg. 4		
Interim Steps	Title IX requires a school to take steps to protect the complainant as necessary, including taking interim steps before the final outcome of the investigation. The school should undertake these steps promptly once it has notice of a sexual harassment or violence allegation. The school should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow students to change academic or living situations as appropriate. For instance, the school may prohibit the alleged perpetrator from having any contact with the complainant pending the results of the school's investigation. When taking steps to separate the complainant and alleged perpetrator, a school should minimize the burden on	In addition, a university must take immediate steps to protect the complainant from further harassment prior to the completion of the Title IX and Title IV investigation/resolution. Appropriate steps may include separating the accused harasser and the complainant, providing counseling for the complainant and/or harasser, and/or taking disciplinary action against the harasser. These steps should minimize the burden on the complainant and should not be delayed until the outcome of a criminal proceeding. Pg. 6 During the year prior to the SCC investigation, the University did not put any interim measures in place to remedy the effects of the harassment on the complainant. Pg. 15	guidance on interim measures to assist or protect the complaining party during the grievance process, as necessary and with the complainant's consent (e.g., arranging for changes in class schedules and/or living arrangements, counseling, modifying class requirements or testing schedules as needed); Pg. 4	

	the complainant, and thus should not, as a matter of course, remove complainants from classes or housing while allowing alleged perpetrators to remain. In addition, schools should ensure that complainants are aware of their Title IX rights and any available resources, such as counseling, health, and mental health services, and their right to file a complaint with local law enforcement. Pg. 15-16 The Clery Act requires postsecondary institutions to develop and distribute a statement of policy that informs students of their options to notify proper law enforcement authorities, including campus and local police, and the option to be assisted by campus personnel in notifying such authorities. The policy also must notify students of existing counseling, mental health, or other student services for victims of sexual assault, both on campus and in the community. 20 U.S.C. §§ 1092(f)(8)(B)(v)-(vi). Pg. 16 *See also Remedies for Complaints*	While students who are accused of SCC violations are entitled to due process, the University needs to ensure that it adopts sufficient interim measures to protect the student who brings the harassment complaint, remedy the impact of the harassment, and take steps to prevent the harassment from recurring. Pg. 15 In two situations where students filed SCC complaints regarding sexual assault, the University assumed the victims had stopped cooperating, consequently stopped the investigations prior to making a finding regarding whether sexual assault occurred, and/or failed to consider or implement sufficient interim measures to protect the complainant. Pg. 15 In some instances, the University did not implement sufficient measures to prevent sexual harassment from recurring and correct its discriminatory effects, such as considering and, as appropriate, imposing interim measures consistently to protect the students who reported sexual assault. For example, one student was upset by repeatedly seeing the student who she reported sexually assaulted her on campus. The University official investigating the SCC complaint was notified		

		of this, but took no further action. He did not consider or discuss with the complainant any options for her to avoid contact with the other student. For example, interim measures of this type could have included changing the academic or living situations and taking other steps to separate the complainant and accused student on campus, or providing the victim with a student escort while on campus. Pg. 16 In another instance, after a student reported to the University that another student sexually assaulted her, she began expressing suicidal ideation. The student's roommate reported this to a Resident Assistant, who reported it to the Residence Life Office. The Residence Life Office, in turn, shared the information with the University official investigating the SCC complaint. Although this official said that the Residence Life Office would have responded to this concern, he did not know how the office responded, did not take any action himself, and the University did not produce any record of a response by the office. The University should have coordinated its response to ensure that it immediately offered this student interim measures to ensure her safety. Pg. 16		

		Even in situations where a complainant seems comfortable with such a resolution, however, once a university determines that a student has committed sexual assault or harassment, it should carefully assess the facts to determine if leaving the student on campus while expulsion is pursued will fail to eliminate the hostile environment for the complainant and/or leave other students at risk of assault or harassment. The SCC allows the University to immediately suspend a student from the University or evict him or her from University Housing without prior notice "whenever there is evidence that the student's continued presence on the campus constitutes a threat to the student or others or to the continuance of normal University operations."* Under the Agreement, the University will provide guidance to those charged with the application of interim measures to ensure they are used consistently and effectively for Title IX purposes. The University should further clarify to the Title IX Coordinator(s) when temporary suspension or eviction is appropriate in the sexual assault and harassment context. Pg. 16-17 *The University of Montana SCC 17.		

		With respect to students, the Agreement requires the University to take the following actions: … and information on what interim measures the University can implement if the alleged perpetrator lives on campus and/or attends classes with the victim. Pg. 29 Finally, the Agreement provides that the University will coordinate with OPS and local law enforcement to: …, or taking such independent interim actions as may be necessary to ensure the safety of any victims and the campus community. Pg. 30		
OCR Enforcement Actions	When OCR finds that a school has not taken prompt and effective steps to respond to sexual harassment or violence, OCR will seek appropriate remedies for both the complainant and the broader student population. When conducting Title IX enforcement activities, OCR seeks to obtain voluntary compliance from recipients. When a recipient does not come into compliance voluntarily, OCR may initiate proceedings to withdraw Federal funding by the Department or refer the case to the U.S. Department of Justice for litigation.			
Remedies for Complaints	Depending on the specific nature of the problem, remedies for the complainant might			

	include, but are not limited to: • providing an escort to ensure that the complainant can move safely between classesand activities; • ensuring that the complainant and alleged perpetrator do not attend the same classes; • moving the complainant or alleged perpetrator to a different residence hall or, in the case of an elementary or secondary school student, to another school within the district; • providing counseling services; • providing medical services; • providing academic support services, such as tutoring; • arranging for the complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant's academic record; and • reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the complainant being disciplined.** *Some of these remedies also can be used as interim measures before the school's investigation is complete. **For example, if the			

	complainant was disciplined for skipping a class in which the harasser was enrolled, the school should review the incident to determine if the complainant skipped the class to avoid contact with the harasser.			
Remedies for the Broader Student Population – Counseling and Training	Remedies for the broader student population might include, but are not limited to: • offering counseling, health, mental health, or other holistic and comprehensive victim services to all students affected by sexual harassment or sexual violence, and notifying students of campus and community counseling, health, mental health, and other student services; • designating an individual from the school's counseling center to be "on call" to assist victims of sexual harassment or violence whenever needed; • training the Title IX coordinator and any other employees who are involved in processing, investigating, or resolving complaints of sexual harassment or sexual violence, including providing training on: o the school's Title IX responsibilities to address allegations of sexual harassment or violence o how to conduct Title IX investigations			

	o information on the link between alcohol and drug abuse and sexual harassment or violence and best practices to address that link; • training all school law enforcement unit personnel on the school's Title IX responsibilities and handling of sexual harassment or violence complaints; • training all employees who interact with students regularly on recognizing and appropriately addressing allegations of sexual harassment or violence under Title IX; and • informing students of their options to notify proper law enforcement authorities, including school and local police, and the option to be assisted by school employees in notifying those authorities.			
Remedies for the Broader Student Population - Development of Materials and Implementation of Policies and Procedures	Remedies for the broader student population might include, but are not limited to: • developing materials on sexual harassment and violence, which should be distributed to students during orientation and upon receipt of complaints, as well as widely posted throughout school buildings and residence halls, and which should include: o what constitutes sexual harassment or violence o what to do if a student	Other actions may also be necessary to address the educational environment, including special training, the dissemination of information about how to report sexual harassment, new policies, and other steps designed to clearly communicate the message that the college or university does not tolerate, and will be responsive to any reports of, sexual harassment. Pg. 6 To improve the campus climate,	The University will consult with the Equity Consultant to develop one or more annual climate surveys for all students to: 1) assess students' attitudes and knowledge regarding various types of sex-based harassment, including (i) sexual harassment, (ii) sexual assault, and (iii) retaliation; 2) gather information regarding students' experience with sex discrimination while attending the University; 3) determine whether students know when and how to	

	has been the victim of sexual harassment or violence o contact information for counseling and victim services on and off school grounds o how to file a complaint with the school o how to contact the school's Title IX coordinator o what the school will do to respond to allegations of sexual harassment or violence, including the interim measures that can be taken • requiring the Title IX coordinator to communicate regularly with the school's law enforcement unit investigating cases and to provide information to law enforcement unit personnel regarding Title IX requirements; • requiring the Title IX coordinator to review all evidence in a sexual harassment or sexual violence case brought before the school's disciplinary committee to determine whether the complainant is entitled to a remedy under Title IX that was not available through the disciplinary committee*; • requiring the school to create a committee of students and school officials to identify strategies for ensuring that students:	the University is providing more training for students that defines sexual harassment, including sexual assault, and makes clear it is unacceptable. This 20-minute online mandatory training, PETSA, is a positive start. Under the terms of the Agreement, the University will supplement this training with in-person training to ensure that students have opportunities to ask questions and learn from the feedback of their trainers and student peers. The training will also ensure students receive adequate notice of conduct prohibited by Title IX, how to report such conduct, the different processes that flow from reporting such conduct to various campus and community resources (e.g., SARC, Title IX Coordinator, OPS, a faculty member), the revised Title IX policies and grievance procedures, and the link between alcohol and drug use and sexual assault. The training will provide clear examples of what types of actions may constitute sex discrimination in the University's programs or activities, including but not limited to different types of sex-based harassment, and what may provide the basis for a complaint pursuant to the University's grievance and other procedures. The University will also conduct climate surveys of students each school year to ensure that the remedies required by the	report such misconduct; 4) gauge students' comfort level with reporting such misconduct; 5) identify any barriers to reporting; 6) assess students' familiarity with the University's outreach, education, and prevention efforts to identify which strategies are effective; and 7) solicit student input on how the University can encourage reporting of sexual harassment, sexual assault, and retaliation, and better respond to such reports. 1. By the end of the 2012-13 academic year, the University will conduct student focus groups and other means of gathering student input regarding the topics in Section VIII.B that will be the subject of the annual climate surveys. The University will use the focus group data and other student input to inform its development of the surveys and the training required under this Agreement. 2. The annual climate surveys will be administered in the fall semesters of 2013, 2014, and 2015 to all students, and will allow for respondents to answer the survey anonymously. 3. The University will analyze the results of the survey within sixty (60) calendar days of the date the surveys are administered for each year. The analysis will include recommendations for the climate issues identified through the surveys.	

	o know the school's prohibition against sex discrimination, including sexual harassment and violence o recognize sex discrimination, sexual harassment, and sexual violence when they occur o understand how and to whom to report any incidents o know the connection between alcohol and drug abuse and sexual harassment or violence o feel comfortable that school officials will respond promptly and equitably to reports of sexual harassment or violence; • issuing new policy statements or other steps that clearly communicate that the school does not tolerate sexual harassment and violence and will respond to any incidents and to any student who reports such incidents; and • revising grievance procedures used to handle sexual harassment and violence complaints to ensure that they are prompt and equitable, as required by Title IX. Any personally identifiable information from a student's education record that the Title IX coordinator provides to the	Agreement achieve their intended goal of ensuring a nondiscriminatory educational environment. Pg. 25 In addition, to further improve the campus climate, under the Agreement, the University will ensure that all offices within the University convey the same message that sexual assault is unacceptable and inform students how and where to file Title IX complaints and of their right to file criminal complaints. Pg. 25 To develop a resource guide on sexual harassment, including sexual assault, to be posted on the University's website and distributed to students in hard copy and/or electronically upon receipt of complaints of sexual harassment and sexual assault. The guide will contain information on what constitutes sexual harassment and sexual assault; clear examples of what types of actions may constitute sex discrimination in the University's programs or activities, including but not limited to different types of sex-based harassment, and what may provide the basis for a complaint pursuant to the University's grievance and other procedures; what to do if students have been the victim of sexual harassment or sexual assault; contact information for all on and off-	4. Based on a review of each climate survey's results and the recommendations of the Equity Consultant, the University will work together in good faith with the Equity Consultant to agree on appropriate and responsive actions to be taken by the University. Pg. 10 D. By July 15, 2013, the University will update its program to provide regular mandatory training to all students to ensure that it covers the University's new policies and grievance procedures for Title IX complaints. The training also will: 1) make students aware of the University's prohibition against sexual harassment, sexual assault, and retaliation; 2) educate students on how to recognize such forms of sex discrimination when they occur; 3) inform students regarding how and to whom any incidents of sexual harassment, sexual assault, and retaliation should be reported; and 4) provide a general overview of Title IX and Title IV, the rights these laws confer on students, the resources available to students who have experienced sexual assault, sexual harassment, and retaliation, and the role and authority of the United States to enforce Title IX, and DOJ's authority to enforce Title IV. 1. These sessions will emphasize:	

	school's law enforcement unit is subject to FERPA's nondisclosure requirements. *For example, the disciplinary committee may lack the power to implement changes to the complainant's class schedule or living situation so that he or she does not come in contact with the alleged perpetrator.	campus resources for victims of sexual assault; information on how to obtain counseling, medical attention, and academic assistance in the event of a sexual assault; and where complaints can be directed, with clear explanations of the criminal and non-criminal consequences that flow from complaining to particular entities. This latter information will make clear how to file a Title IX complaint of sexual assault, harassment, or retaliation with the University; the name and contact information for the University's Title IX Coordinator(s); a description of the Title IX Coordinator's role; links to the new policies and grievance procedures; and information on what interim measures the University can implement if the alleged perpetrator lives on campus and/or attends classes with the victim. The guide will ensure that any student who reports sexual harassment or assault will be given information needed to make informed decisions in writing and all in one place that can be referenced easily in the future. To develop one or more annual climate surveys for all students to (1) assess students' attitudes and knowledge regarding sexual harassment, sexual assault, and retaliation; (2) gather information regarding students' experience	issues around consent in sexual interactions; the criminal, academic, housing, athletic, and student-record-related consequences related to committing sexual assault, sexual harassment, and retaliation; the role of alcohol and drug use in incidents of sex-based harassment, including how such use does not excuse the perpetrator's conduct and how such use relates to consent; clear examples of what types of actions may constitute sex discrimination in the University's programs or activities, including but not limited to different types of sex-based harassment, and what may provide the basis for a complaint pursuant to the University's grievance and other procedures; how bystanders can help; when off-campus misconduct is covered by the University's policies and grievance procedures; and the potential consequences of lying during an investigation. 2. At a minimum, these sessions will be provided as part of the annual student orientation for new students (including visiting and International students), the class registration process for returning students, and annual residence life orientation for students residing in campus housing. The University also will provide additional mandatory	

		with sex discrimination while attending the University; (3) determine whether students know when and how to report such misconduct; (4) gauge students' comfort level with reporting such misconduct; (5) identify any barriers to reporting; (6) assess students' familiarity with the University's outreach, education, and prevention efforts to identify which strategies are effective; and (7) solicit student input on how the University can encourage students to report sexual harassment, sexual assault, and retaliation, and better respond to such reports. Based on a review of the results of the climate surveys, the University will take appropriate action to address climate issues related to sex-based harassment identified through the surveys.	training to all athletes and their coaches on the revised Student Athlete Conduct Code and how it applies to sexual assault, sexual harassment, and retaliation. The University's Athletic Director will assist the designated trainer in providing this training. 3. During the course of this agreement, training will be provided online and inperson during each year of the agreement. Each student will be required to complete both online and in-person training at the earliest opportunity (e.g., new student orientation or class registration), and to renew such training every three years. The University will develop a system for recording the name or identifier of each student who participated in each training required by this Section and the date that each training was completed. Pg. 11-12 **G. Educational Climate** <u>Follow-up with Complainants</u> o By December 31, 2013, May 31, 2014, December 31, 2014, May 31, 2015, and December 31, 2015, the University will provide the United States with a report documenting its follow-up efforts with complainants as required by Section VIII.A. Pg. 13	

			Survey o By December 31, 2013, 2014, 2015, the University will provide the United States with a report documenting that the annual climate survey has been conducted, and including the cumulative results of the survey questions, summaries of comments provided in the survey, the University and/or Equity Consultant's analysis of the survey results, and proposed actions based on that analysis and the survey information. Pg. 13-14 Student Training o By December 31, 2013, May 31, 2014, May 31, 2015, and December 31, 2015, the University will provide the date and duration of each student training session required by this Agreement; copies of all agendas for such training sessions; copies of the training materials distributed at student trainings; electronic access to any training provided through other media; and a list of any students who have yet to participate in the online or in-person training required by Section VIII.D. an explicit prohibition against retaliation that clarifies that allegations of retaliation should be brought to the individual(s) designated to receive such complaints and will be investigated by the University	

			under the same processes and standards outlined in the Title IX grievance procedures. Pg. 4	
Remedies for the Broader Student Population – School Investigations and Reports to OCR	Remedies for the broader student population might include, but are not limited to: • conducting periodic assessments of student activities to ensure that the practices and behavior of students do not violate the school's policies against sexual harassment and violence; • investigating whether any other students also may have been subjected to sexual harassment or violence; • investigating whether school employees with knowledge of allegations of sexual harassment or violence failed to carry out their duties in responding to those allegations; • conducting, 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 using the resulting information to inform future proactive steps that will be taken by the school; and • submitting to OCR copies of all grievances filed by students alleging sexual harassment or violence, and providing OCR with documentation related to the investigation of each		By June 15, 2013, the University will develop a monitoring program to assess the effectiveness of its efforts to prevent and address sex-based harassment and retaliation and to promote a non-discriminatory school climate. At the conclusion of each school year, the University will conduct an annual assessment of the effectiveness of its antiharassment efforts and submit the assessment to the United States, as required by Section IX. Such assessment will include: 1. A review of student climate surveys (see Section VIII.B) to determine: where and when sex-based harassment occurs; deficits in students' knowledge of what sexbased harassment is, where to report it, and the results of reporting to different resources (e.g., the police, SARC, OPS, the Title IX Coordinator, and a faculty member); barriers to reporting sex discrimination; and recommendations for how the University can better encourage reporting of and improve its response to complaints; 2. A review of all reports of sex discrimination and the University's responses to such reports, particularly with respect to: whether such reports were	

	complaint, such as witness interviews, investigator notes, evidence submitted by the parties, investigative reports and summaries, any final disposition letters, disciplinary records, and documentation regarding any appeals.		adequately, reliably, promptly, and impartially investigated and resolved; how many resulted in disciplinary action; the University's actions to remedy the effects of any sex-based harassment and retaliation that occurred (i.e., tracking interim and permanent measures); how many involved particular groups of students (e.g., first-year students, athletes, residents of Greek houses, and off-campus residents); whether any individuals engaged in repeat misconduct; and if so, the University's actions to prevent the repeated misconduct and remedy its effects; 3. Evaluation and analysis of the data collected, including an assessment of any changes in the number or severity of reported incidents of sexual harassment and sexual assault, particularly among subgroups of students (e.g., first-year students, athletes, residents of Greek houses, and off-campus residents); 4. Evaluation of all measures designed to prevent or address sex-based harassment; 5. Any recommendations elicited from community members, parents, or OPS and other law enforcement officials upon sharing information gathered for the annual assessment (as permitted by federal and state law); and	

			6. Any other proposed recommendations for improvement of the University's antiharassment program and timelines for the implementation of the recommendations. Pg. 10-11 **E. Tracking of Sex-Based Harassment Complaints** o By July 15, 2013, and thereafter by May 31, 2014, May 31, 2015, and December 31, 2015, the University will provide the United States with documentation demonstrating implementation of Section VI above, including a summary of all sexual harassment, sexual assault, and retaliation allegations reported to the University's Title IX Coordinator during the preceding school year and information about the individual(s) who received and processed the initial complaints, the outcome of the Title IX investigations, as well as the outcome of any Student Conduct Code matters related to the allegations reported to the Title IX Coordinator. The University also will provide an electronic database or spreadsheet of all the data required by Section VI.B above. Pg. 13 <u>Monitoring Program</u> o By July 15, 2013, May 31, 2014, and May 31, 2015, the University will provide the United States with a copy of its annual	

			assessment of the effectiveness of its anti- sex harassment efforts, including any proposed recommendations for improving the University's anti-harassment program. The United States will notify the University in writing if it has any objections to the assessment's proposed recommendations. If at any other time the University seeks to improve its anti-harassment program in ways that contradict a term of this Agreement, it will provide the United States with written notice of the proposed improvement(s) and need not wait until it submits its annual assessment. o Within thirty (30) days of providing the Office on Violence Against Women (OVW) with reports regarding the University's OVW grant, the University will submit this report to the United States so that the United States has a full understanding of the steps the University is taking to address sex discrimination.	
Conclusion	The Department is committed to ensuring that all students feel safe and have the opportunity to benefit fully from their schools' education programs and activities. As part of this commitment, OCR provides technical assistance to assist recipients in achieving voluntary compliance with Title IX.	The United States has determined that, when implemented, the Agreement will resolve the United States' findings under Title IX and Title IV detailed above. Therefore, the United States is closing this Title IX compliance review and Title IV investigation as of the date this letter. The United States will closely monitor the University's implementation		

	If you need additional information about Title IX, have questions regarding OCR's policies, or seek technical assistance, please contact the OCR enforcement office that serves your state or territory. The list of offices is available at http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm. Additional information about addressing sexual violence, including victim resources and information for schools, is available from the U.S. Department of Justice's Office on Violence Against Women (OVW) at http://www.ovw.usdoj.gov/.* Thank you for your prompt attention to this matter. I look forward to continuing our work together to ensure that all students have an equal opportunity to learn in a safe and respectful school climate. *OVW also administers the Grants to Reduce Domestic Violence, Dating Violence, Sexual Assault, and Stalking on Campus Program. This Federal funding is designed to encourage institutions of higher education to adopt comprehensive, coordinated responses to domestic violence, dating violence, sexual assault, and stalking. Under this competitive grant program,	of the enclosed Agreement and may initiate civil enforcement proceedings in federal court and administrative compliance procedures if the University not comply with the Agreement. The United States sincerely appreciates your cooperation and that of University staff throughout the course of this compliance review and investigation and looks forward to continued cooperation during the implementation of the Agreement. If you have any questions regarding this letter, please contact DOJ Deputy Chief Emily McCarthy or DOJ Trial Attorney Tamica Daniel at (202) 514-4092 or OCR Deputy Chief Attorney Monique Malson OCR Investigator Mark Farr at (206) 607-J600.		

	campuses, in partnership with community-based nonprofit victim advocacy organizations and local criminal justice or civil legal agencies, must adopt protocols and policies to treat these crimes as serious offenses and develop victim service programs and campus policies that ensure victim safety, offender accountability, and the prevention of such crimes. OVW recently released the first solicitation for the Services, Training, Education, and Policies to Reduce Domestic Violence, Dating Violence, Sexual Assault and Stalking in Secondary Schools Grant Program. This innovative grant program will support a broad range of activities, including training for school administrators, faculty, and staff; development of policies and procedures for responding to these crimes; holistic and appropriate victim services; development of effective prevention strategies; and collaborations with mentoring organizations to support middle and high school student victims.			
Campus Climate		Based on the United States' analysis of twenty-three sexual assault and ten sexual harassment complaints to the University in the past three school years, interviews and emailed responses, some of which included older allegations of sexual assault, the		

		United States determined that the University had not fully eliminated the hostile educational environment based on sex. The evidence established that substantial numbers of female students at the University reported incidents of rape or sexual assault, which were sufficiently serious that they interfered with or limited their ability to participate in or benefit from the school's program. These incidents resulted in the harassed students suspending their academic work; feeling uneasy being in certain areas of campus; experiencing negative mental health consequences, including suicidal ideation; or leaving the University altogether. Several of the assaults were well known to other female students, as they were highlighted in the media. Pg. 23 To the University's credit, beginning in December 2011, it proactively implemented a number of campus-wide steps to address the hostile environment created by the sexual assaults, prevent further harassment, and remedy the effects of the harassment on the affected students. For example, the University hired Justice Barz to do an independent investigation and issued a memo in March 2012 identifying steps it had started or intended to take to address sexual		

		assaults, including revising the Student Athlete Conduct Code. Though the University implemented several individual remedies over the three-year period and initiated some campus-wide remedial measures in 2012, these steps had not fully eliminated the effects of the hostile environment by the end of our investigation. Although the University responded to many of the reported incidents of sexual assault, Title IX and Title IV require the University to take additional actions to effectively address the hostile educational environment and provide a nondiscriminatory learning environment for its students. These additional actions, which are set forth in the Agreement, include special training, improved notice and dissemination of information on how to report sex discrimination and whether the remedies in the Agreement are effective. Pg. 24 One student indicated to investigators that she did not want to go forward with the SCC process initially because she had negative experiences with individuals at the University making statements that suggested that they did not believe she had been assaulted. And once she filed a complaint, she felt that University officials did not respond supportively and		

		indicated that they did not believe her. A former University student informed the University that she had not reported being assaulted when she was a student because the person who assaulted her was a football player, football players could get away with whatever they wanted, and everyone would think she was bringing a false report. Several community members, current students, and faculty members similarly indicated that football players are seen as being given undue favoritism and allowed to get away with anything, including sexual assault. For example, some people stated that the University and the community treat football players as if they are "Gods." From spring 2009 to spring 2012, six football players were accused of aiding, attempting, or committing sexual assault through the University's complaint procedures. Three of these players were involved in an assault where the University did not initiate SCC proceedings until almost a year after the coach had notice that the victim had filed a report with the Missoula Police Department. Pg. 24 Several students told investigators that, in the wake of the discussion of the sexual assaults in the media in 2011, the University placed too much emphasis on personal safety and responsibility, and not		

		enough emphasis on addressing the behavior of sexual assault. Students did note that the University bringing in "Men Can Stop Rape" was a positive step to focus on addressing the behavior of those engaging in sexual assault. Pg. 24		
Background Information on the University of Montana		The University of Montana is the largest public university in Montana with a total 2012-2013 enrollment of 14,964 students on the Missoula campus. During fall 2011, the University received reports that two female students had been sexually assaulted on campus by male students. There were allegations that some of the male students involved were football players. In an effort to fulfill its Title IX obligations, the University hired former Montana Supreme Court Justice Diane Barz to conduct an independent investigation of these reports. During Justice Barz's investigation, the University received seven additional reports of student-on-student sexual assault that had occurred between September 2010 and December 2011. In a final report submitted to the University on January 31, 2012, Justice Barz concluded that the University "has a problem with sexual assault on and off campus and needs to take steps to address it to insure the safety of all students as well as faculty, staff and guests." Her recommendations included:		

		redesigning the University website to make information and resources about sexual assault more accessible; training all University personnel, student leaders, residence hall assistants, student athletes, and freshman; revising policies and procedures to ensure compliance with Title IX and encourage students to report sexual assault; and participating more actively in local multidisciplinary boards and councils designed to coordinate a community response to sexual assault. Pg. 2 The University has taken several positive steps to address sexual assault and harassment since December 2011. In January 2012, the University began holding community forums on and off campus to discuss sexual assault. On March 1, 2012, the University hosted Men Can Stop Rape (a national organization focused on mobilizing men to stop rape) to talk about the role of men in creating a climate free of sexual violence. On March 22, 2012, the University President issued a report summarizing Justice Barz's conclusions, describing policy and procedural reforms initiated by the University to address sexual assault, and identifying other constructive steps that the University planned to take. For example, one of the University's subsequent reforms requires all		

		University employees, except for those who are statutorily barred from reporting, to report to the University official designated to oversee compliance with Title IX all incidents of sexual assault of which they are aware. The University also developed a 20-minute mandatory online training for students, Personal Empowerment Through Self Awareness ("PETSA"), which started in August 2012. This training aims to define sexual assault, explain what constitutes consent, and provide information on resources for targets of sexual assault and how bystanders can help prevent it. Pg. 3. Concurrent with the University's investigation and initial reforms, DOJ conducted a preliminary investigation into the University's and local law enforcement agencies' response to sexual assault. On May 1, 2012, DOJ launched a formal investigation of the University's handling of sexual assault and harassment involving students under Title IV and a compliance review under Title IX.5 On May 4, 2012, the Assistant Secretary of the Department of Education's Office for Civil Rights mailed notification to the University indicating that OCR was opening a Title IX compliance review to assess whether the University's policies and procedures and the		

		University's implementation of such policies and procedures ensure the elimination of sexual harassment and sexual violence, appropriately respond to such harassment and violence, prevent future harassment, and eliminate the hostile environment and its effects that result from such harassment. The United States combined the Title IV investigation and Title IX compliance reviews of the University.Pg. 3 Justice Diane G. Barz, Investigation Report 4 (2012). Id. at 4-5. The Special Litigation Section of DOJ also initiated an investigation of the response to sexual assault by the University's OPS, the Missoula Police Department, and the Missoula County Attorney's Office under 42 U.S.C. § 14141 and the Safe Streets Act.		
Investigative Approach, Background, Jurisdiction, Terms of the Agreement, and Recitals		The United State's investigation and compliance review included a comprehensive examination of the University's policies, grievance procedures, responses to reports of sex discrimination and retaliation, coordination of Title IX enforcement, training of those responsible for coordinating Title IX enforcement, and notice of nondiscrimination. Specifically, in conducting this review, the United States reviewed thousands	The U.S. Department of Justice, Civil Rights Division, Educational Opportunities Section ("DOJ"), has completed the above-referenced investigation and compliance review of the handling by the University of Montana – Missoula ("University") of allegations of sexual assault and harassment under Title IX of the Education Amendments of 1972 ("Title IX") and Title IV of the Civil Rights	The United States Department of Justice initiated a public investigation of the University of Montana's Office of Public Safety ("OPS"), pursuant to its authority under the Violent Crime and Control Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141"), on May 1, 2012. The United States has provided the University of Montana (the "University") with preliminary feedback indicating

		of pages of documents and conducted site visits to the University and the Missoula community. The United States requested and reviewed voluminous information, including, inter alia, the University's sexual harassment, sexual assault, and sex discrimination policies; the Student Conduct Code ("SCC") and the Discrimination Grievance Procedure ("DGP"); and information regarding training on Title IX, sexual harassment, and sexual assault that was provided to members of the campus community. The United States also reviewed copies of all complaints filed with the University alleging sexual harassment or sexual assault for the 2009-2010, 2010-2011, and 2011-2012 school years. The complaints included, but were not limited to, incidents alleging student-on-student sexual assault, student-on-student sexual harassment, and professor-on-student sexual harassment. In addition, the United States analyzed how the University responded to each of these complaints and how its policies, training, and grievance procedures affected the filing and processing of these complaints. The United States also conducted over 40 interviews with current and former students and/or their parents, current and former	Act of 1964, 42 U.S.C. 2000c, et seq. ("Title IV"). The U.S. Department of Education, Office for Civil Rights ("OCR") has joined DOJ in the Title IX compliance review. * Pg. 1 Based on DOJ's investigation and compliance review, DOJ and OCR (jointly referred to as the "United States") identified concerns regarding the University's handling of sex-based harassment and its implementation of Title IX's regulatory requirements. The United States recognizes that, prior to and during the course of the investigation, the University appointed a Title IX Coordinator, adopted policies and procedures regarding sex-based harassment, responded to complaints, and developed and provided training to employees and students. By taking these and other steps to address sex-based harassment, the University has demonstrated its commitment to meeting its obligations under Title IX and Title IV. Through this Resolution Agreement, the University has indicated its willingness to further implement actions that remedy the United States' concerns identified in the attached Letter of Findings and to ensure the University's compliance with Title IX and Title IV. Pg. 1 * The Special Litigation Section	areas of concern. The University has engaged with the United States in open dialogue about concerns raised by the United States regarding OPS' response to sexual assault. The University of Montana and the United States (collectively, the "Parties") acknowledge that by entering into this Agreement, the University does not admit to the truth or validity of any claim made against it by the United States. DOJ agrees to forego the filing of any claim relating to OPS' response to sexual assault under Section 14141. The Parties acknowledge that nothing in this Agreement shall preclude DOJ from filing any other claims, including claims under Section 14141. The Parties recognize that the University's Office of Public Safety ("OPS") plays an integral part in the University response to reports of sexual assault as well as in the overall Missoula community response to reports of sexual assault. The Parties recognize that public safety, even-handed and well-trained policing, and the community's trust in law enforcement are interdependent. The Parties recognize that OPS must respond to reports of sexual assault in accordance with applicable non-discrimination laws and University policies. The Parties' mutual intent

		faculty and staff, community members, and University officials. From the start of our compliance review and investigation, the University President pledged his cooperation and that of his staff. Once the United States began communicating to the University areas where compliance required improvement, the University committed to implementing remedies to address these areas and continued its collaboration through the negotiation process. The Agreement reached today expands on the reforms initiated by the University President and is carefully designed to keep students safe and resolve the United States' findings set forth below. Pg. 3-4	(SPL) of the Civil Rights Division at the Department of Justice has conducted a related but separate investigation of the University's Office of Public Safety (OPS) among other law enforcement entities. That investigation's findings, which are based on independent assessments of compliance with the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d, are set out in a separate report and are not addressed in this letter; however, because OPS is covered by and must comply with the University's Title IX obligations, OPS is referenced in this letter and required to participate in certain remedies required by the enclosed Agreement, such as training for first responders. To the extent that SPL's findings regarding OPS under 42 U.S.C. § 14141 and 42 U.S.C. § 3789d also implicate Title IX in ways not addressed by the remedies in this Agreement, those findings will be addressed by any remedies sought from the University by SPL. To resolve the concerns identified in the Letter of Findings, the University will take effective steps designed to: prevent sex-based harassment in its education programs and activities, including	is to ensure adherence to the Constitution and laws of the United States; improve the safety and security of victims of sexual assault on the University of Montana's campus and in Missoula; and increase public confidence in OPS's response to sexual assault. The United States acknowledges that, by already taking proactive steps to help effectuate the intent of this Agreement, the University and OPS have demonstrated their commitment to improving OPS' response to reports of sexual assault within OPS' jurisdiction,. The Parties intend that OPS will continue to implement improved policies, provide increased training, and modify practices, in order to further improve its response to sexual assault and ensure that there is no gender bias. The Parties recognize the benefit of collecting and analyzing data regarding the incidence and outcomes of reports of sexual assault; of working with an Independent Reviewer, community-based organizations, and other stakeholders to develop and implement the improvements described in this Agreement; and of evaluating the effect of OPS' efforts described in this Agreement. The Parties acknowledge that this Agreement is intended to ensure the success of the University's efforts to improve its response to

			clarifying its policies and procedures applicable to various types of sex-based harassment; fully investigate conduct that may constitute sex-based harassment; appropriately respond to all conduct that may constitute sex-based harassment; and mitigate the effects of sex based harassment, including by eliminating any hostile environment that may arise from or contribute to sex-based harassment. The University also will obtain the services of a third-party consultant mutually agreed upon by the parties (the "Equity Consultant") to consult with the University in its efforts to comply with the terms of this Agreement as outlined below. In turn, OCR will not initiate an enforcement action and DOJ will not initiate litigation regarding the United States' Title IX and Title IV findings raised as of the date of this Agreement provided the University implements the provisions of this Agreement in good faith and subject to the terms in Section X below. Pg. 1-2 This Agreement will remain in force for at least three (3) academic years, and will not terminate until at least 60 days after the United States has received all of the reporting required through the first semester of the 2015-2016 school year. The United States will	sexual assault, and that entry of this Agreement does not constitute an admission that the University has committed any wrongdoing. Based on the intent described in the above Recitals, the University of Montana agrees to undertake the measures set forth below. Pg. 1-2

			monitor the implementation of the Agreement until it determines that the University has fulfilled the terms of this Agreement and is in compliance with Title IV, Title IX, and the implementing regulations at 28 C.F.R. Part 54 and 34 C.F.R. Part 106, which were at issue in this case. Pg. 2	
Equity Consultant			The University will retain an Equity Consultant with expertise in the area of sex-based harassment prevention and training in higher education to: A. Evaluate and recommend revisions to the University's policies, procedures, and practices for preventing, investigating, and remediating sex-based harassment, as required by Section II.A below; B. Develop and provide the mandatory Title IX training required by Section V.A below; and C. Develop one or more annual climate surveys in consultation with the University, as required by Section VIII.B below, and make recommendations to the University regarding its sex-based harassment policies, procedures, and practices based on the surveys. Within thirty (30) calendar days from the entry date of this Agreement, the University will retain an individual with expertise	

			in the area of sexual assault and harassment prevention and training in the context of higher education who will serve as the Equity Consultant. If the United States objects to any such individuals on the basis of their qualifications, it will let the University know, and the parties will seek agreement on the Equity Consultant, subject to the enforcement terms in Section X.C. The University will pay all the fees and costs of the Equity Consultant. Pg. 2-3	
Voluntary Resolution Agreement Summary		The Agreement contemplates that its implementation will be completed by no later than 60 days after the United States has received all reporting required by the Agreement, which is anticipated to be during the second semester of the 2015-2016 school year. The United States will monitor this Agreement until it determines that the University has fulfilled its terms and is in compliance with Title IV, Title IX, and the implementing regulations at issue in this review and investigation. In summary, the Agreement requires remedial measures through the revision and implementation of policies and procedures, improved notice to students about Title IX and where and how to report sex discrimination, increased training for employees and students, a		

		new system for complaint tracking, and education climate assessments—all of which are designed to ensure that the University is taking steps to prevent sexual harassment and effectively responding to and thoroughly remedying sexual harassment when it occurs. For instance, the Agreement requires the University to: revise its policies and procedures that address complaints of sex discrimination, including sexual harassment, revise its nondiscrimination notice, and to publish these materials effectively; designate one or more Title IX Coordinators to oversee its compliance with Title IX and ensure that they and other appropriate administrators receive appropriate training on Title IX and know how to investigate sexual harassment complaints; and develop an appropriate Title IX training program that will be completed by the University's administrators, professors, instructors, resident assistants, coaches, members of SARC, the Curry Student Health Center, OPS, Academic Advisors, and other University employees who are likely to be the first to receive complaints of sex discrimination and/or interact with students on a regular basis.		
Agreement Enforcement			X. ENFORCEMENT A. The United States may enforce the terms of this Agreement, Title	<u>Modification and Enforcement of the Agreement</u> DOJ reserves its right to seek

			IX, Title IV, and all other applicable federal laws. B. If the University, despite its good faith efforts, anticipates that it will be unable to meet any timeline set forth in this Agreement, it will immediately notify the United States of the delay and the reason for it. The United States may provide a reasonable extension of the agreed timeline. C. If OCR or DOJ determines that the University has failed to comply with the terms of this Agreement or has failed to comply in a timely manner with any requirement of this Agreement, one or both agencies will so notify the University in writing and will attempt to resolve the issue(s) in good faith with the University. If OCR or DOJ is unable to reach a satisfactory resolution of the issue(s) within thirty (60) days of providing notice to the University, OCR may initiate administrative compliance proceedings3 and DOJ may initiate civil enforcement proceedings in federal court. D. The University understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or	enforcement of the provisions of this Agreement, through specific performance in the United States District Court for the District of Montana, if it determines that the University has failed to fully comply with any provision of this Agreement. Prior to initiating any court proceeding, DOJ agrees to provide written notice of the failure to the University. The University shall have 30 days from receipt of such notice to cure the failure. During the 30-day period, the Parties shall meet and confer to resolve any disputes regarding the failure or to otherwise explore a joint resolution. The Independent Reviewer shall assist the Parties in reaching a mutually agreeable resolution to the compliance failure or dispute, including by facilitating discussions and providing relevant factual assessments. If the Parties are not able to reach a mutually agreeable resolution to the compliance failure or dispute within the 30-day period, DOJ may, without further notice to the University, file an action in the United States District Court for the District of Montana (the "Federal Court Action") against the University for breach of contract and may seek specific performance and any other appropriate form of relief.

			judicial proceedings to enforce this agreement, CR shall give the University written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach. E. The University understands that the United States will monitor this Agreement until it determines that the University has fulfilled the terms of this Agreement and is in compliance with Title IV, Title IX, and the implementing regulations at 28 C.F.R. Part 54 and 34 C.F.R. Part 106, which were at issue in this case. F. The University further understands that the United States retains the right to evaluate the University's compliance with this Agreement, including the right to conduct site visits, observe trainings, interview University staff and students (including ex parte communications with students and employees other than University administrators), and request such additional reports or data as are necessary for the United States to determine whether the University has fulfilled the terms of this Agreement and is in compliance with federal law. G. By signing this Agreement, the University agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this	In connection with the Federal Court Action: a. The University shall stipulate to in personam jurisdiction and venue in the United States District Court for the District of Montana (the "Court"). b. The University agrees that service by hand delivery of the summons, complaint, and any other documents required to be filed in connection with the initiation of the Federal Court Action upon the Legal Counsel for the University, with a copy to OPS, will be deemed good and sufficient service upon the University; c. The Parties agree to an expedited trial of the Federal Court Action. In the event the Court finds that the University has engaged in a material breach of the Agreement, the parties hereby stipulate that they will move jointly for the Court to enter the Agreement and any modifications as an order of the Court and to retain jurisdiction over the Agreement to resolve any and all disputes arising out of the Agreement. Should the Independent Reviewer determine that any portion of the Agreement is ineffective at

			Agreement. To ensure compliance with this Agreement, OCR and DOJ may require additional monitoring reports or the ability to inspect data or other information maintained by the University as determined necessary by OCR and DOJ.	achieving the desired outcomes, or causing unintended negative consequences, he or she may recommend modifications to the Agreement. Where the Parties agree with the Independent Reviewer's recommendations, the Parties shall modify the Agreement accordingly. The Parties agree to defend the provisions of this Agreement. The Parties shall notify each other of any court or administrative challenge to this Agreement. In the event any provision of this Agreement is challenged in any state, county, or municipal court, the Parties shall seek removal to federal court. If any provision of this Agreement is declared invalid for any reason by a court of competent jurisdiction, that finding shall not affect the remaining provisions of this Agreement. This Agreement constitutes the entire integrated agreement of the Parties. No prior drafts or prior or contemporaneous communications, oral or written, will be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or other proceeding.

				The University shall require compliance with this Agreement by the University's respective officers, employees, agencies, assigns, or successors. The Agreement is enforceable only by the Parties. No person or entity is intended to be a third-party beneficiary of the provisions of the Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under the Agreement. Nothing in this Agreement shall be construed as an acknowledgement, an admission, or evidence of liability for violations of any legal responsibility by the University, and this Agreement may not be used as evidence of liability in this or any other civil or criminal proceeding. The University agrees to promptly notify DOJ if any term of this Agreement becomes subject to collective bargaining consultation and to consult with DOJ in a timely manner regarding the position the University and OPS take in any collective bargaining consultation connected with this Agreement.

				All Parties agree that, as of the date of entry of this Agreement, litigation is not "reasonably foreseeable" concerning the matters described in this Agreement. To the extent that either Party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described in this Agreement, the Party is no longer required to maintain such a litigation hold. Pg.17 - 19
Miscellaneous/ Termination of the Agreement			This Agreement is for the purpose of resolving a disputed claim and is not, and will not be construed as, an admission of liability, fault, or wrongdoing of any kind by the University. B. This Agreement will remain in force for at least three (3) school years, and will not terminate until at least 60 days after the United States has received all reporting required by this Agreement through the first semester of the 2015-2016 school year. C. This Agreement shall not bar any individual from pursuing a complaint under Title IX or Title IV against the University. D. This Agreement has binding effect on the parties, including all principals, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, assigns, and legal representatives thereof.	The Parties anticipate that the University will have complied with all provisions of this Agreement by June 30, 2015. The Agreement shall remain in effect until June 30, 2015 unless any of the following occur: a. The Parties jointly agree, in writing, to terminate the Agreement before June 30, 2015, on the grounds that the University has complied with this Agreement and maintained compliance for one year; or b. The United States disputes that the University is in compliance with the Agreement by June 30, 2015 and has maintained compliance for one year. Such a dispute will be addressed through negotiation between the Parties or, if the Parties are unable to reach a mutually agreeable resolution, through civil enforcement

				proceedings, as described in above ¶ 47. Pg. 19 "Compliance" shall be defined to require both sustained compliance with all material requirements of this Agreement and sustained and continuing improvement in the response to and investigation of reports of sexual assault, as demonstrated pursuant to the outcome measures determined by the Independent Reviewer. Compliance shall be achieved where any violations of the Agreement are minor or incidental and not systemic. Noncompliance with mere technicalities, or temporary or isolated failure to comply during a period of otherwise sustained compliance, will not constitute failure to maintain compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance will not constitute compliance. Pg. 19
Sexual Assault Policies and Protocols				**III. IMPROVING OPS' RESPONSE TO SEXUAL ASSAULT** In accordance with the Recitals set forth above, OPS shall develop and implement the following measures: <u>A. Sexual Assault Policies and Protocols</u> 2. In consultation with an expert in police response to sexual assault, OPS shall develop a

				detailed and victim-centered sexual assault response policy that incorporates the requirements of this Agreement and comports with best practices and current professional standards. OPS' sexual assault policy should include guidance on responding to sexual assault and incorporate the requirements of the International Association of Chiefs of Police Model Policy (see Attachment A) on Investigating Sexual Assaults on at least the following topics: a. Initial officer response to a report of sexual assault, including requirements specific to assisting the victim, evidence collection, and the identification and location of witnesses; b. Response to stranger and non-stranger sexual assault; c. The preliminary victim interview, including the development of a victim-interview protocol, and the comprehensive, follow-up victim interview; d. Contacting and interviewing suspects; e. Medical forensic examinations and coordination with the forensic examiner; f. Participation of victim advocates; g. Investigative considerations regarding alcohol and drug-facilitated sexual assault, including requirements specific to evidence collection and the forensic examination of victims; h. The role of the supervisor; and i. Procedures for blind-reporting of sexual assault. Pg. 3-4

Close Supervision and Internal Oversight				OPS shall establish and implement measures to ensure close supervision and internal oversight of all sexual assault investigations. These measures shall include: a. Developing and implementing measures, including a survey designed and administered consistent with best practices, to obtain feedback on the treatment of victims from victims and advocates; b. The treatment of sexual assault victims, especially the treatment of victims of nonstranger sexual assaults, shall be included as a factor in evaluating OPS officers; c. Non-stranger and alcohol or drug-facilitated sexual assault investigations shall be assigned only to those officers with the demonstrated skills, interest, and training to conduct those investigations effectively and without bias. d. Supervisors shall approve in writing the decision not to refer for prosecution any sexual assault investigation conducted by OPS; e. A supervisor shall review all sexual assault reports within 24 hours of the report being taken to ensure consistency with OPS policy for initial officer response and documentation; f. A supervisor shall review all sexual assault investigations undertaken by OPS to ensure that a comprehensive investigation has been conducted and all indicated

				follow up has been completed or the case has been referred to MPD, as appropriate, before they are closed or referred to the prosecutor; and g. OPS supervisors shall conduct a periodic review of closed cases and cases where victims declined to participate in the investigation to identify any systemic problems. Periodic reviews shall include a review of case files, recorded interviews, and victim and advocate feedback for investigative comprehensiveness and indications of bias. Pg. 7-8
Data Collecting and Reporting				To identify shortcomings, assess improvement, and increase community confidence in the University's response to sexual assault, OPS shall enhance its data collection, analysis, and reporting. Data collection shall include the following: a. Collect and record information about rates of reports of sexual assault on campus and track reports of sexual assault received by OPS through their outcomes in the court system, where applicable. OPS shall collect and record the number of cases reported to OPS; the number of cases referred by OPS to MPD; and the number of cases in which OPS assisted in transporting or obtaining transport for a victim to a medical facility equipped to perform a

				medical forensic exam. To the extent that OPS can reasonably obtain this information, it shall collect and record the number of reported sexual assaults on campus, regardless of the entity to whom the sexual assault was reported; and the number of cases referred to OPS by Missoula 911 or the YWCA Rape Crisis Hotline. b. To the extent permissible by applicable law, OPS shall share this information with the public, and with its University, community, and law enforcement partners to allow them to increase public safety and respond to and support the needs of sexual assault survivors; and c. The use of a database to collect crime-specific information in order to identify similarities between reported sexual assaults and previous, unsolved cases.
External Review of Sexual Assault Cases				The Parties shall jointly select and establish a group of qualified representatives, including experienced sexual assault prosecutors, legal providers, experienced sexual assault investigators, and/or advocates, to serve as an external review group for sexual assault cases. Beginning three months after the Effective Date, the external review group shall review, on a semi-annual basis, all reports of sexual assault received by OPS,

				and all investigations of those reports opened by OPS, since the Effective Date. Thereafter, this external review group shall review all reports of sexual assault received by OPS and investigations of those reports opened by OPS, since the external review group's last such review. Pg. 9-10 The external review group shall, in conjunction with OPS, develop a protocol to guide their review and ensure consistency. This protocol shall set out a methodology and outcome measures for examining sexual assault investigations for comprehensiveness and indications of bias through a review of written reports and recorded interviews, where they exist, and to review feedback collected by OPS from advocates and victims. The protocol shall include appropriate safeguards to protect ongoing investigations, confidential or privileged information, and personal information protected from disclosure by applicable laws. This protocol shall be approved by DOJ and the Independent Reviewer. Pg. 10 OPS shall develop a protocol to ensure that feedback and recommendations from this external review group are shared with OPS supervisors and

				command staff and incorporated into policies, general training, and targeted training for specific officers or detectives; the decision to reopen, reexamine, or re-categorize cases; and the decision to pursue additional avenues of investigation, where warranted. Pg. 10
Community-Conducted Sexual Assault Response Safety and Accountability Audit				The University shall participate in and cooperate with any effort by the City of Missoula to organize and lead a sexual assault safety and accountability audit ("Audit") designed to assess how Missoula City, Missoula County, and the University of Montana respond to and collaborate to address sexual assault, with a focus on enhancing victim safety, support, and participation in the law enforcement process. Pg. 10
Independent Oversight				<u>Selection of the Independent Reviewer</u> The parties have jointly selected Thomas R. Tremblay to serve as the Independent Reviewer to oversee the terms of this Agreement. The Independent Reviewer shall continue in the role as described in this Agreement until the University demonstrates compliance with the entire Agreement. The Parties anticipate that compliance can be demonstrated no later than June 30, 2015.

				The University shall bear all fees and costs of the Independent Reviewer. In selecting the Independent Reviewer, DOJ and the University recognize the importance of ensuring that the fees and costs borne by the University are reasonable, and accordingly fees and costs shall be one factor considered in selecting the Independent Reviewer. In the event that any dispute arises regarding the reasonableness or payment of the Independent Reviewer's fees and costs, the University, DOJ, and the Independent Reviewer shall attempt to resolve such dispute cooperatively. The University shall provide the Independent Reviewer with office space and reasonable office support such as office furniture, secure internet access, telephones, secure document storage, and photocopying, faxing, and scanning equipment, that the Independent Reviewer may use while on-site in Missoula. Pg. 10-11 <u>Role of the Independent Reviewer</u> During the term of this Agreement, the Independent Reviewer shall not have duties, responsibilities, or authority for either Party other than those conferred by this Agreement.

				The Independent Reviewer will assess and report whether the requirements of this Agreement have been implemented. The Independent Reviewer will also analyze the data collected pursuant to this Agreement and report on all measurable changes in OPS' response to, and investigation of, reports of sexual assault. The Independent Reviewer shall conduct regular compliance reviews, outcome assessments, and investigation reviews specified by this Agreement, and such additional reviews and assessments as the Independent Reviewer or the Parties deem appropriate to assess and report whether this Agreement has been implemented and is having the intended effect. If the Independent Reviewer ends his or her position as Independent Reviewer, the former Independent Reviewer may not enter into any contract with DOJ or the University on a matter related to the Agreement without the written consent of the other Party while the Agreement remains in effect. Pg. 10 <u>Compliance Reviews and Outcome Assessments</u>

				The Independent Reviewer shall conduct compliance reviews to determine whether OPS has implemented and continues to comply with the material requirements of this Agreement. Compliance with a material requirement of this Agreement requires that OPS has: (a) incorporated the requirement into policy; (b)trained all relevant personnel as necessary to fulfill their responsibilities pursuant to the requirement; (c) ensured comprehension of all training received; and (d) ensured that the requirement is being carried out in actual practice. Compliance reviews shall contain both qualitative and quantitative elements as necessary for reliability and comprehensiveness. In addition to compliance reviews, the Independent Reviewer shall conduct periodic outcome assessments with the intent of determining whether OPS' implementation of this Agreement is having its intended effect, and whether the implementation of this Agreement has had any unintended negative impacts. Individual outcome assessments shall not be determinative of whether this Agreement is having its intended effect, as each outcome measure is not designed to be considered in isolation. These outcome

				assessments shall include collection and analysis, both quantitative and qualitative, of the following outcome data: a. Number of sexual assault reports made to OPS; b. Rate of victim participation in OPS sexual assault investigations; c. Sexual assault victims' experience with OPS, including those victims who declined to participate in an investigation; d. OPS detectives' perceptions of their own sexual assault investigations, including whether those investigations result in: a higher rate of victim participation, improved evidence collection, more frequent discovery of similar acts by the same perpetrator, and more information elicited from interviews; e. Clearance codes assigned to closed sexual assault cases; f. To the extent that OPS can reasonably obtain such information, prosecutors' stated reasons for declining to charge sexual assault cases referred by UM/OPS for prosecution; g. To the extent that OPS can reasonably obtain such information, rate of declination of sexual assault cases referred by UM/OPS for prosecution; h. First Step multi-disciplinary team experience with OPS; i. UM's Student Assault Resource Center's experience with OPS; j. UM'S Title IX Coordinator's

				experience with OPS; k. Residence Life Assistants' experience with OPS; l. Outcome measures developed by the external review group and/or any resulting from any Missoula City Safety and Accountability Audit. In conducting these compliance reviews and outcome assessments, the Independent Reviewer may use any relevant data collected and maintained by the University that the Independent Reviewer and DOJ deem reliable and sufficiently complete. Pg. 11-13 <u>Access and Confidentiality</u> The Independent Reviewer shall have timely, full, and direct access to all individuals, facilities, data, and documents, including both open and closed sexual assault investigative files, the Independent Reviewer reasonably deems necessary to carry out the duties assigned to the Independent Reviewer by the Agreement. To facilitate his or her work, the Independent Reviewer may conduct on-site visits and assessments without prior notice to the University. The Independent Reviewer will cooperate with the University to access personnel, facilities, and documents in a reasonable manner that, consistent with the Independent Reviewer's

				responsibilities, minimizes interference with daily operations, and will not compromise the integrity of any ongoing criminal investigation. DOJ and its consultants, experts, and agents will have full and direct access to all University staff, employees, facilities, data, and documents, including both open and closed sexual assault investigative files, reasonably necessary to review OPS' compliance with and enforce this Agreement. DOJ and its consultants, experts, and agents will cooperate with the University to access involved personnel, facilities, and documents in a reasonable manner that, consistent with DOJ's responsibilities to enforce the Agreement, minimizes interference with daily operations. Pg. 13 <u>Independent Reviewer Plan and Review Methodology</u> Within 45 days of the Independent Reviewer's appointment, the Independent Reviewer will develop a review plan, including proposed interim deadlines for OPS' implementation of the requirements of this Agreement. The review plan will set out a schedule for conducting the compliance reviews and

				outcome assessments that is consistent with the interim deadlines for implementation of this Agreement. The Independent Reviewer shall submit the plan to the Parties for review and comment. At least 45 days prior to the initiation of any outcome measure or compliance review, the Independent Reviewer shall submit a proposed methodology for the assessment or review to the Parties. The Parties shall submit any comments or concerns regarding the proposed methodology to the Independent Reviewer within 15 days of the proposed date of the assessment or review. The Independent Reviewer shall modify the methodology as necessary to address any concerns or shall inform the Parties in writing of the reasons s/he is not modifying the methodology as proposed. Where the Independent Reviewer recommends and the Parties agree, the Independent Reviewer may refrain from conducting a compliance review of a requirement previously found to be in compliance by the Independent Reviewer, or where outcome assessments indicate that the outcome intended by the requirement has been achieved. Pg. 13-14

				Independent Reviewer Recommendations and Technical Assistance The Independent Reviewer may make recommendations to the Parties regarding measures necessary to ensure timely, full, and effective implementation of this Agreement and its underlying objectives. Such recommendations may include a recommendation to change, modify, or amend a provision of the Agreement, a recommendation for additional training in any area related to this Agreement, or a recommendation to seek technical assistance. In addition to such recommendations, the Independent Reviewer may also, at the request of the University or DOJ, provide technical assistance consistent with the Independent Reviewer's responsibilities under this Agreement. Pg. 14 Comprehensive Assessment Upon the Independent Reviewer's determination that the University has attained compliance with this Agreement, the Independent Reviewer shall conduct a comprehensive assessment to determine whether and to what extent: (1)the outcomes intended by this Agreement have been achieved, and (2) any modifications to the strategies set forth in this Agreement are necessary for

				continued achievement in light of changed circumstances or unanticipated impact (or lack of impact) of a requirement. This assessment shall also address areas of greatest achievement and the requirements that appear to have contributed to this success, as well as areas of greatest concern, including strategies for maintaining achievement. Based upon this comprehensive assessment, the Independent Reviewer shall make recommendations for achieving and sustaining intended outcomes. Pg. 14 <u>Independent Reviewer Reports</u> The Independent Reviewer shall produce quarterly written, public reports covering the reporting period that shall include: a. A description of the work conducted by the Independent Reviewer during the reporting period; b. A listing of each Agreement requirement indicating which requirements have been: (1) incorporated into implemented policy; (2)the subject of adequate and appropriate training for all relevant OPS personnel; (3)reviewed by the Independent Reviewer to determine whether they have been fully implemented in actual practice, including the date of the review; and 4)found by the Independent Reviewer to have been fully implemented in

				practice; c. The methodology and specific findings for each review conducted. An unredacted version of the report shall be provided to the Parties. The underlying data for each review shall not be publicly available but shall be retained by the University for at least three years after the Independent Reviewer's Comprehensive Assessment Report and provided to either or both Parties upon request; d. For any requirements that were reviewed and found not to have been fully implemented in practice, the Independent Reviewer's recommendations regarding necessary steps to achieve compliance; e. The methodology and specific findings for each outcome assessment conducted; f. A qualitative assessment of OPS' progress in achieving the desired outcomes for each area covered by the Agreement, noting issues of concern or particular achievement; and g. A projection of the work to be completed during the upcoming reporting period and any anticipated challenges or concerns related to implementation of the Agreement. The Independent Reviewer shall provide a copy of each report to the Parties in draft form at least ten business days

				prior to finalizing the report and releasing it publicly, to allow the Parties to informally comment on the report. The Independent Reviewer shall consider the Parties' responses and make appropriate changes before issuing the report. The reports shall be public with the exception of material covered by applicable privacy laws, and, to facilitate public access to the reports, the University shall post the reports to the University's public website. The Independent Reviewer will not issue statements or make findings with regard to any act or omission of any Party, or their agents or representatives, except as required by the terms of this Agreement. The Independent Reviewer may testify in any enforcement proceedings regarding provisions of the Agreement and the Parties' compliance. The Independent Reviewer will not testify in any other litigation or proceeding with regard to any act or omission of any Party, or any of their agents, representatives, or employees, related to the Agreement or regarding any matter or subject that the Independent Reviewer may have learned of as a result of his/her performance under the Agreement. This restriction does not apply to any proceeding

				before a court related to performance of contracts or subcontracts for Independent Review of the Agreement. Unless such conflict is waived by the Parties, the Independent Reviewer shall not accept employment or provide consulting services that would present a conflict of interest with the Independent Reviewer's responsibilities under the Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the University or its departments, officers, agents, or employees. Pg. 15-16 <u>Independent Reviewer Budget</u> Within 30 days of appointment, the Independent Reviewer shall submit to the Parties a proposed budget for University Fiscal Year 2014. Using the proposed budget for University Fiscal Year 2014, the Independent Reviewer shall also propose an equivalent amount prorated through the remainder of the University Fiscal Year 2013. The Parties shall raise with the Independent Reviewer any objections they may have to the proposed budget within 10

				business days of receipt. Thereafter, the Independent Reviewer shall submit annually a proposed budget to the Parties for their review by April 1 in accordance with the process set forth above. At any time, the Independent Reviewer may submit to the Parties for approval proposed revisions to the budget, along with an explanation of the reasons for the proposed revisions. The Independent Reviewer will submit monthly statements to the Parties, detailing all expenses the Independent Reviewer incurred during the prior month. The Parties will review such statements for reasonableness. Upon completion of the Parties' review, but in no case more than 10 days after submission of the statements by the Independent Reviewer, the Parties will notify the Independent Reviewer of their approval of the statement. The University shall pay the full amount of the statement to the Independent Reviewer within 30 days of the Parties' approval of the statement. Pg. 16-17

The PowerPoint Presentation(s) for this session are available at the following link(s):

Gina Maisto Smith, Lisa Rutherford, and Howard Kallem: 2013 Annual Conference: Sexual Misconduct and Compliance with Title IX: Managing Risk with Integrated and Coordinated Sexual Misconduct Policies and Procedures