

National Association of College and University Attorneys

December 2

Upon concluding its investigation, OCR made several findings. First, it found that at the time the sexual assault was reported (January 2010) and through late 2011, the university was without a permanent Title IX Coordinator. [8] Second, OCR found that Tufts' Notice of Non-discrimination included inaccurate language about the applicable time period for filing a complaint with OCR. [9] Third, and perhaps most significantly, OCR found that the university "failed to respond in a prompt and equitable manner to complaints, reports, and other incidents of sexual harassment/violence of which it had notice, including the student's complaints of sexual violence and sexual harassment and at least one other complaint filed in the 2011-2012 and 2012-2013 academic years." [10] With respect to the complainant's allegations about her own perceived mistreatment, OCR faulted Tufts for failing to initiate an investigation within the first six months of the reported misconduct due to certain officials' beliefs that no action was necessary in the absence of a written complaint. [11] OCR also faulted the university for the length of time that transpired before it was able to reach a determination (18 months), for its delay in order to consolidate the accused's claims of fraud and misrepresentation against the complainant, and for allowing prejudicial evidence to be considered by the fact finder. [12]

In addition, although the university provided some interim relief to the student, OCR found that the measures were insufficient and that the university failed to do enough to protect the complainant. [13] OCR found shortcomings with the provision of safety escorts as well as with scheduling arrangements the university had implemented for the leadership program in which both students participated. [14]

Finally, as to harassment, OCR found that the university acted inappropriately by failing to conduct an investigation of and respond to the student's allegations that the accused's friends harassed her. [15] More broadly, OCR concluded that, "as a result of the University's actions and inactions in

B. Virginia Military Institute (April 30, 2014)

Within days of the Tufts agreement, Virginia Military Institute executed its Title IX agreement. [28] Of the several issues raised by the complainant, two are discussed in this Note: (1) whether VMI's marriage and parenthood policy discriminated against female cadets [29]; and (2) whether VMI's Title IX procedures provided for the prompt and equitable resolution of cadet and employee complaints. [30]

OCR determined that VMI's policy discriminated against female cadets by requiring any cadet who married or became a parent to resign voluntarily or otherwise be deemed ineligible for enrollment. [31] OCR advised VMI that cadet pregnancy must be treated like other temporary medical conditions. [32] In response, VMI revised its policy to clarify that pregnant cadets are permitted to remain enrolled and participate in the VMI program as long as they are able to perform cadet duties and meet cadet standards. VMI further clarified that if it is determined a female cadet cannot participate safely in the military program, she will be granted leave in the same way as cadets with other temporary medical conditions. [33]

The resolution agreement then turned to the question of whether VMI's Title IX procedures provided for the prompt and equitable resolution of cadet and employee complaints. In finding that the grievance procedures failed to meet the prompt and equitable requirements, OCR examined the four VMI policies that addressed Title IX grievances—the sexual harassment policy, the sexual assault policy, the

Finally, although VMI's resolution agreement, like the Tufts agreement, requires that VMI undertake various remedial actions, such as revising its policies and grievance procedures, [\[41\]](#)

D. Princeton University (October 12, 2014)

A little more than a month after the Ohio State agreement, Princeton University executed the fourth Title IX resolution agreement of the year, which resolved three complaints. [\[54\]](#) The three complaints [\[55\]](#) alleged that the university discriminated against Students 1, 2, and 3 on the basis of sex by failing to adopt and publish grievance procedures that provide for the

E. Southern Methodist University (November 16, 2014)

Nearly two months after Princeton's agreement, OCR released its resolution letter and agreement with Southern Methodist University on December 11, 2014. [70] The agreement resolved three complaints, the oldest of which dated to June 2011. [71]

The complaints involved three distinctly different fact patterns and allegations. In the first complaint, a student alleged that certain comments of an adjunct law professor during a criminal law clinic class in spring 2010 constituted sex and gender-based harassment, that the university did not take prompt and effective action to address the alleged harassment, and that the comments constituted a hostile environment. [72] Filed by a former SMU employee in March 2013, the second complainant alleged that the university had a "pattern and practice of condoning sexual harassment of and therefore sex discrimination against its female students and of retaliating against anyone who attempts to rectify the situation." [73] According to the resolution letter, Complainant 2 stated that she believed the university had a pattern of not responding appropriately to complaints of sexual harassment, citing to anecdotal and Clery Act data, and news reports. [74] Among other things, the third complainant (Complainant 3) [75] alleged that the university discriminated against him on the basis of sex when the university failed to appropriately respond after he notified the university he had been sexually assaulted. [76]

In conducting its investigations, OCR demonstrated its attention to the particularity of the institution's Notice of Nondiscrimination, finding the school's Notice insufficient for not including detailed contact information for the Title IX Coordinator. [77] This finding underscores an institution's obligation to weigh every word of a school's Notice against the requirements of 34 C.F.R. § 106.9; as well as the OCR's April 2011 Dear Colleague Letter.

In the resolution agreement, OCR also commented on the parameters of presidential discretion in student conduct matters. During the course of the OCR investigation, SMU initiated and submitted to OCR changes to its Title IX policies and procedures. [78] Because the revised procedures gave the president of the university unrestricted authority to review all student conduct decisions without further stating expressly that the review would comply with Title IX, the procedures were found to be insufficient. [79] OCR required the university to revise its policies and procedures to clarify that the president's review will be in accordance with Title IX. [80]

As with other cases in 2014, OCR found that the SMU procedures did not set forth sufficiently concrete timeframes (specifically for the appeals process), [81] and it determined that the university should have provided specific notice to the parties of their right to end the informal process and begin the formal process at any time. [82] Finally, OCR determined that the procedures did not specifically address conflicts of interest or specifically disallow evidence of past relationships. [83]

Turning to the merits of the individual complaints, OCR found that the university did not provide prompt and equitable responses to the first complainant's claims of gender harassment. [84] Underlying that conclusion, OCR determined that the grievance procedures did not make reference to gender-based harassment and that the process took too long to reach a final resolution. [85] On the complainant's hostile environment claim, OCR found the evidence insufficient to support any such conclusion. [86]

In resolving the second complaint, OCR concluded that "the sexual harassment reported by Complainant 2 did not substantiate that the harassment occurred." [87] Notwithstanding that Complainant 2 withdrew her complaint against SMU, OCR refused to close the case and instead included it in the final resolution agreement. [88] Thus, counsel should be aware that even though a complaint filed with OCR against a school may have been withdrawn, OCR may nevertheless determine not to administratively

close the case, and instead hold it open for disposition in a final resolution agreement. It appears that the only realistic means of raising a concern about such an untoward action by OCR is through a civil action under the Administrative Procedures Act. [\[89\]](#)

With respect to the third complaint, which alleged sexual assault, OCR determined that the SMU police promptly investigated the alleged assault and arrested a student for the alleged offense. [\[90\]](#) In its letter to SMU, OCR noted that the university removed and suspended the student, issued the accused a no-contact letter within three days, offered counseling and a housing change to the complainant, notified the complainant's professors and requested flexibility on his academic work, and granted the complainant's request for a withdrawal from the university. [\[91\]](#) Despite the foregoing, OCR determined that the university "did not provide a prompt and equitable response to Complainant 3's complaint . . . and that there was sufficient evidence to support a conclusion that Complainant 3 was subjected to a sexually hostile environment." [\[92\]](#) In making its determination, OCR pointed to concerns raised by Complainant 3 about phone calls, text messages, and other comments that did not receive a full investigation or sufficient response. [\[93\]](#)

Turning now to SMU's resolution agreement, two features not seen in previous agreements are SMU's longer than usual preamble, [\[94\]](#) and a lengthy itemization of the recommendations of the

OCR investigated the complaint allegations, but also examined “*more generally* whether the Law School provided for prompt and equitable responses to complaints of sexual harassment, about which it knew or reasonably should have known, and whether any failure to respond appropriately allowed for the creation and continuation of a sexually hostile environment.” [106] Among its findings, OCR determined that the law school’s prior policies and procedures in effect at the time of the filing of the complaint used the wrong evidentiary standard, [107] did not provide a specific timeframe for resolution of complaints, did not address complaints against third parties, and did not specifically provide in the grievance procedures for written notification of the outcome of the complaint (though in practice notification was given). [108] OCR also determined that the law school failed to provide an equal opportunity for both parties to participate in a post-hearing review of recommended sanctions in the two sexual assault cases at issue, both of which were decided under the prior policies and procedures. [109]

In July 2014, Harvard University adopted university-wide Title IX policies and procedures for all members of the Harvard community, including the law school. [110] Despite the university’s efforts, OCR found the policies and procedures to be unclear as to the right of a party to end the informal process and institute the formal process at any time and unclear that mediation is prohibited in sexual assault and sexual violence matters. [111] OCR also determined that the policies and procedures did not include “a statement ensuring that students know that the University is committed to responding to incidents of sexual harassment that the University knows or should know about, even if a complaint or report has not been filed.” [112]

Two months later, in September 2014, the law school adopted its “Interim Harvard Law School Sexual Harassment Policy and Procedures” in place of its former policy. [113] While OCR reviewed the newest policy and the associated procedures and noted that “a majority of [its] . . . Title IX concerns . . . have been addressed,” it still found that specific timeframes were lacking, that the policy and procedures did not clearly provide that the interim procedures “supersede all prior Law School-specific policies and guidelines relating to sexual harassment, including any Ad[ministrative] Board Procedures,” and that the “interplay between the Law School’s Interim Procedures and the University-wide Title IX Policy and Procedures may not be clear for a student seeking to file a complaint.” [114] Despite the extensive efforts of the law school and the university, OCR concluded that “the previous and current sexual harassment policies and procedures, as written and as applied to the two sexual assault complaints . . . have not provided for a prompt and equitable resolution of complaints of sexual assault and violence” as required by the Title IX regulations. [115]

“will be given access to HUPD [Harvard University Police Department] records regarding Title IX investigations” and the law school “will . . . instruct the HUPD to report incidents of sexual violence directly to the Title IX Coordinator, if the complainant consents, after an explanation of the Law School’s confidentiality policy.” [\[126\]](#)

II. Common Themes

Several common themes emerge from the 2014 resolution letters and agreements discussed above:

Use of Preamble in Resolution Agreement. The preamble to a resolution agreement provides a great opportunity for a university to put its best foot forward, including statements of proactive actions such as establishment of a Task Force, and statements about no admission of error, omission, wrongdoing, discrimination, or failure to otherwise comply with Title IX. OCR has generally demonstrated latitude by permitting such statements in the preamble.

Multiple Policies and Procedures

be vacant, and the level of detail regarding the coordinator's contact information (name, title, office address, email address, and phone number).

Student Membership on Sexual Violence Hearing Panels. OCR can be expected to continue to insist upon inclusion of terms in a resolution agreement prohibiting students from serving on sexual misconduct hearing panels. However, such terms were not included in all agreements in 2014.

Both Parties Notified of Outcome and Opportunity to Appeal. Institutions should ensure the Complainant and Respondent are both notified of the outcome of a Title IX disciplinary proceeding, and that where appeals are provided under the grievance procedures, both parties (including the prevailing party) may appeal.

Climate Checks. Annual climate surveys have become a standard part of resolution agreements. OCR can be expected to continue to insist upon surveys as a condition for a resolution agreement.

Monetary Payments. As observed in 2014, OCR can be expected to demand an institution pay for medical and counseling expenses incurred by a complainant where OCR has found noncompliance with Title IX.

Informal/Formal Process. Policies and procedures should provide detailed descriptions of informal and formal complaint processes and specify that a complainant may end an informal process at any time and begin a formal complaint process. It is improper to mandate that a complainant seek to work out a problem directly with the alleged perpetrator. Finally, institutions should include an express statement that mediation or other informal processes cannot be used in cases of sexual assault.

Institutions can anticipate these themes and fashion compliance initiatives that proactively addresses these issues, while keeping in mind that the extent to which OCR has the authority to require all of the remedial content detailed above is a matter of much debate.

CONCLUSION:

Title IX resolution agreements continue to be the common means for resolving Title IX sexual harassment and sexual violence investigations. The six resolution letters and agreements reached in 2014 demonstrate the multiple challenges universities face in meeting the requirements of the Title IX statute, regulations, and the Department's sub-regulatory guidance.

As a general rule, a university will be well-positioned for any investigation if it has developed up-to-date Title IX policies and grievance procedures, followed the policies and procedures in practice, provided appropriate Title IX training to students and staff, taken prompt and equitable steps to investigate and respond to complaints and reports of sexual harassment and sexual violence, and made determinations, as appropriate, about interim relief.

RESOURCES:

Tufts University Resolution Agreement, Complaint No. 01-10-2089, 5-10 (April 17, 2014), available at <http://www2.ed.gov/documents/press-releases/tufts-university-agreement.pdf>

OCR Letter to Tufts University, Complaint No. 01-10-2089, 1 (April 28, 2014), available at <http://www2.ed.gov/documents/press-releases/tufts-university-letter.doc>

Virginia Military Institute Resolution Agreement, Complaint No. 11-08-2079, 1-3 (April 30, 2014), available at <http://www2.ed.gov/documents/press-releases/vmi-agreement.doc>

OCR Letter to Virginia Military Institute, Complaint No. 11-08-2079, 1 (May 9, 2014), available at <http://www2.ed.gov/documents/press-releases/vmi-letter.doc>

Ohio State University Resolution Agreement, OCR Docket No. 15-10-6002, 13-16 (Sept. 8, 2014), available at <http://www2.ed.gov/documents/press-releases/ohio-state-agreement.pdf>

OCR Letter to Ohio State University, OCR Docket No. 15-10-6002, 1 (Sept. 14, 2014), available at <http://www2.ed.gov/documents/press-releases/ohio-state-letter.pdf>

Princeton University Resolution Agreement, Case No. 02-11-2015, 6 (Oct. 12, 2014), available at <http://www2.ed.gov/documents/press-releases/princeton-agreement.pdf>

OCR Letter to Princeton University, Case No. 02-11-2025, 1 n.1 (Nov. 5, 2014) consolidating Case Nos. 02-11-2025 (Complainant 1), 02-11-2167 (Complainant 2), and 02-11-2166 (Complainant 3), available at <http://www2.ed.gov/documents/press-releases/princeton-letter.pdf>

Southern Methodist University Resolution Agreement ("SMU Resolution Agreement), Case Nos. 06-11-2126, 06-13-2081, and 06-13-2088 (Nov. 16, 2014). <http://www2.ed.gov/documents/press-releases/southern-methodist-university-agreement.pdf>

OCR Letter to Southern Methodist University, Case Nos. 06-11-2126, 06-13-2081, and 06-13-2088 (Dec. 11, 2014), available at <http://www2.ed.gov/documents/press-releases/southern-methodist-university-letter.pdf>

Harvard Law School Resolution Agreement, Complaint No. 01-11-2002, 1-4 (Dec. 23, 2014), available at <http://www2.ed.gov/documents/press-releases/harvard-law-agreement.pdf>

OCR Letter to Harvard Law School, Complaint No. 01-11-2002, 1-2 (Dec. 30, 2014), available at <http://www2.ed.gov/documents/press-releases/harvard-law-letter.pdf>

U.S. Department of Education, Office for Civil Rights Case Processing Manual (Revised Feb. 2015), available at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>

ENDNOTES:

[1] Matt Fossen, *Feds Slow and Struggling to Keep up with Growing List of College Sexual Assault Investigations*, FoxNews.com (August 11, 2015), <http://www.foxnews.com/politics/2015/08/11/feds-slow-and-struggling-to-keep-up-with-growing-list-college-sexual-assault>. Though the author of the article refers to “sexual violence,” this NACUANOTE encompasses all forms of sex discrimination prohibited by Title IX, including sexual assault and sexual harassment. A review of the U.S. Department of Education’s web site finds an initial list of 55 schools as of May 1, 2014 labeled “ARCHIVED INFORMATION.” <http://www.ed.gov/news/press-releases/us-department-education-releases-list-higher-education-institutions-open-title-ix-sexual-violence-investigations> (last visited October 27, 2015). No further updated list of the Department could be located.

[2] 20 U.S.C. §§ 1681-1688.

[3] Representatives of both the law school and the university signed the Harvard Law School Resolution Agreement, though the complaint under investigation was filed only against the law school. In a footnote, OCR stated that a Title IX investigation of Harvard College is pending, and that the law school resolution agreement did not resolve the Harvard College complaint. OCR Letter to Harvard Law School (“OCR Letter to Harvard”), Complaint No. 01-11-2002, 1 n.1 (Dec. 30, 2014).

[4] While space limitations do not permit a discussion of the Title IX agreements reached in 2012 (Xavier University; Yale University) or 2013 (State University of New York; University of Montana), the reader may wish also to review those agreements prior to entering any negotiations with OCR. For purposes of this Note, the term “sexual violence” encompasses all forms of sexual violence including “sexual misconduct” and “sexual assault,” unless otherwise indicated. Links to the respective resolution agreements and letters of findings may be found under “Additional Resources” at the end of this Note.

[5] In September 2015, OCR announced the completion of Title IX resolution agreements with Michigan State University and the University of Virginia. See Michigan State University Resolution Agreement, Case Nos. 15-11-2098 and 15-14-2113 (Aug. 28, 2015), available at <http://www2.ed.gov/documents/press-releases/michigan-state-agreement.pdf> (Michigan State University agreement); Letter from OCR to Michigan State University, Case Nos. 5-11-2098 and 15-14-2113 (Sept. 1, 2015), available at <http://www2.ed.gov/documents/press-releases/michigan-state-letter.pdf> (Michigan State University letter); University of Virginia Resolution Agreement, Case No. 11-11-6001 (Sept. 17, 2015), available at <http://www2.ed.gov/documents/press-releases/university-virginia-agreement.pdf> (University of Virginia agreement); OCR Letter to University of Virginia, Case No. 11-11-6001 (Sept. 21, 2015), available at <http://www2.ed.gov/documents/press-releases/university-virginia-letter.pdf> (University of Virginia letter). This Note does not include an analysis of agreements announced in 2015. Most resolution agreements are reached with OCR after an investigative determination pursuant to § 303 of the OCR Case Processing Manual (“OCR Manual”). U.S. Department of Education, Office for Civil Rights, Case Processing Manual (“OCR Case Processing Manual”) § 303 at 21-22 (Revised Feb, 2015, V 1.1), available at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrspm.pdf> (last visited Dec. 1, 2015). Under § 303, OCR typically prepares a resolution agreement for negotiation with a school, and after execution of the agreement by a school, OCR releases a letter of findings. *Id.* § 303(b). OCR’s Manual also provides a process for reaching a resolution agreement prior to completion of an investigation and without a letter of findings. See *id.* at § 302.

[6] OCR Letter to Tufts University (“OCR Letter to Tufts”), Complaint No. 01-10-2089, 1 (April 28, 2014). “Any person who believes himself or any specific class of individuals to be subjected to discrimination

prohibited by this part may by himself or by a representative file with the responsible Department official or his designee a written complaint.” 34 C.F.R. § 100.7(b) (See 34 C.F.R. § 106.71 for applicability of § 100.7 to Title IX.) A “complaint” is a “written statement to the Department alleging that the rights of one or more persons have been violated and requesting that the Department take action.” § 101 of OCR Case Processing Manual, Office for Civil Rights, U.S. Department of Education, 5 (Revised Feb. 2015), <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf> (last visited Oct. 27, 2015). Five of the resolution agreements reached in 2014—Tufts University, Virginia Military Institute, Princeton University, Southern Methodist University, and Harvard Law School—arose from complaints filed with OCR. The Ohio State University agreement arose from an OCR-initiated compliance review. Section 100.7(a) of title 34 of the Code of Federal Regulations authorizes periodic compliance reviews of funding recipients. 34 C.F.R. § 100.7(a) (“The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.”). See also § 401 of OCR Case Processing Manual, 25 (“The compliance review regulations afford OCR broad discretion to determine the substantive issues for investigation and the number and frequency of the investigations. To address issues of strategic significance in civil rights areas facing educational institutions, OCR will identify, plan and implement a docket of compliance reviews.”).

[7] OCR Letter to Tufts at 10. OCR found insufficient evidence for retaliation. See *id.* at 2.

[8] *Id.* at 19, 24. See also 34 C.F.R. § 106.8(a) (requirement to “designate at least one employee to coordinate its [a school’s] efforts to comply with and carry out its responsibilities under this part [Title IX].”).

[9] OCR Letter to Tufts at 20.

[10] *Id.* at 23.

[11] *Id.* at 20.

[12] *Id.* at 21. The prejudice consisted of allowing consideration of the student’s medical history contrary to applicable policies, and even after the accused was found to have obtained the student’s confidential medical information by misrepresenting himself as a university medical student.

[13] *Id.* at 20-21.

[14] *Id.*

(4) date the complainant was interviewed; (5) date the accused was interviewed; (6) names of all persons alleged to have committed alleged sexual misconduct; (7) names of all known witnesses to alleged incidents; (8) dates that any relevant documentary evidence was obtained; (9) any written statements of the complainant and any written statements of the respondent; (10) if applicable, date on which the university temporarily suspended fact-finding while a law enforcement agency was in process of gathering evidence, and date on which the university resumed its investigation process; (11) outcome of the investigation and if any, disciplinary process; (12) response of university or campus personnel, including any interim or permanent steps taken with respect to the complainant and the accused; and (13) a narrative of all action taken to prevent recurrence of any harassing incidents, including any related written documents. *Id.*

[20] *Id.* at 13.

[21] *Id.*

[22] *Id.* at 14-15.

[23] *Id.* at 15.

[24] *Id.* at 15-16.

[25] *Id.* at 1.

[26] *Id.* at 1-3.

[27] *Id.* at 4-5.

[28] VMI executed its resolution agreement on April 30, 2014.

[29] Though nearly all of OCR's Title IX investigations and agreements have focused upon sexual assault or sexual harassment, one should be aware that the Title IX regulations also prohibit discrimination on the basis of actual or potential parental status, pregnancy, and related conditions. 34 C.F.R. § 106.40 (a-b). Section 106.40(a) of Title 34 prohibits a university recipient from "apply[ing] any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex," while § 106.40(b) prohibits discrimination "on the basis of [a] . . . student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient." *Id.* § 106.40(a). Further, a federal funding recipient "shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability." *Id.* §106.4(b)(4).

[30] OCR Letter to Virginia Military Institute ("OCR Letter to VMI"), Complaint No. 11-08-2079, 1 (May 9, 2014).

[31] *Id.* at 20; *see also* 34 C.F.R. § 106.40(b) (prohibiting discrimination on the basis of pregnancy).

[32] OCR Letter to VMI at 21.

[33] *Id.*

[34] *Id.* at 8.

[35] *Id.* at 9.

[36] *Id.* Similarly, neither the sex discrimination policy for employees nor the sex discrimination policy for cadets designated reasonably prompt timeframes for the major stages of the complaint process. *Id.* at 12-13. While the separate sexual assault policy did provide a reasonably prompt timeframe for the investigation (30-60 days), it did not designate reasonably prompt timeframes for other major stages, such as the time within which VMI officials who receive a sexual assault report will notify the Title IX Coordinator or when the parties will be apprised of the outcome of the investigation. *Id.* at 11. Whether a university maintains four Title IX-related policies and procedures or one unified policy such as VMI submitted to OCR, prompt, numerical timeframes are a very important part of a university's policies. See *id.* at 8. See also Virginia Military Institute Resolution Agreement ("VMI Resolution Agreement"), Complaint No. 11-08-2079, 1-3 (April 30, 2014).

[37] OCR Letter to VMI at 9.

[38] *Id.* at 10.

[39] Question and Answers on Title IX and Sexual Violence, Office for Civil Rights, U.S. Department of Education, 30 n.30 (April 29, 2014).

[40] OCR Letter to VMI at 13.

[41] The agreement acknowledges VMI's submission to OCR of a unified Title IX policy and grievance procedure three weeks prior to execution of the agreement. See VMI Resolution Agreement at 1.

[42] *Id.* at 1-7.

[43] OCR Letter to Ohio State University ("OCR Letter to OSU"), OCR Docket No. 15-10-6002, 1 (Sept. 14, 2014). The compliance review was initiated in June 2010. For a discussion of OCR's compliance review procedures, see Article V of the then OCR Case Processing Manual. OCR modified its Case Processing Manual in February 2015, revising the Article V and re-designating it as § 401. *Id.* at 1.

[44] *Id.* at 20.

[45]

[55] OCR Letter to Princeton University (“OCR Letter to Princeton”), Case No. 02-11-2025, 1 n.1 (Nov. 5, 2014) consolidating Case Nos. 02-11-2025 (Complainant 1), 02-11-2167 (Complainant 2), and 02-11-2166 (Complainant 3).

[56] *Id.*

[57] *Id.* at 15.

[58] *Id.* at 16.

[59] *Id.*

[60] *Id.*

[61] *Id.* at 17.

[62] *Id.*

[63] *Id.* at 18.

[64] Princeton University Resolution Agreement (“Princeton Resolution Agreement”), Case No. 02-11-2015, 6 (Oct. 12, 2014).

[65] *Id.* at 11.

[66] “The letter will state: (1) that in instances where conduct of a sexual nature is involved, the University is required to investigate in accordance with Title IX but will temporarily delay the fact-finding portion of its Title IX investigation during external local law enforcement’s evidence gathering process; (2) that upon notification from the Mercer County Prosecutor’s Office or a local law enforcement agency that the Prosecutor’s Office has completed its evidence gathering process, the University must promptly resume its fact-finding portion of its Title IX investigation; and (3) that during the pendency of the initial evidence gathering by the police, the University will not be precluded from providing witnesses with information about their Title IX rights or resources for students who experience sexual misconduct or taking such interim actions as may be necessary to ensure the safety and support of any students who experience sexual misconduct and the safety of the campus community. *Id.* at 11.

[73] *Id.* at 12.

[74] *Id.*

[75] Though designated “Complainant 3” by OCR, and so characterized here for ease of reference, no Title IX complaint was filed with SMU by the student.

[76] *Id.*

[77] *Id.* at 7.

[78] *Id.* at 17.

[79] *Id.* at 17, 21.

[80] *Id.* at 8.

[81] *Id.* at 21.

[82] *Id.*

[83] *Id.*

[84] *Id.* at 19.

[85] *Id.* at 20.

[86] *Id.*

[87] *Id.* at 12.

[88] See SMU Resolution Agreement at 1 (“On November 6, 2014, the Complainant [Complainant 2] in Case No. 06132081 notified OCR of the Complainant’s [Complainant 2] withdrawal of all complaints against SMU.”).

[89] See *generally*, 5 U.S.C. §§ 701-706 (review of agency action).

[90] OCR Letter to SMU at 20.

[91] *Id.*

[92] *Id.*

[93] *Id.*

[94] SMU Resolution Agreement at 1-2.

[95] *Id.* at 1-8.

[96] *Id.* at 1-2.

[97] *Id.* at 2-8.

[98] Report of the President’s Task Force on Sexual Misconduct Policies and Procedures, Southern Methodist University, Recommendations 22 and 23, 14-15 (April 22, 2013).

[99] OCR Letter to Harvard Law School (“OCR Letter to Harvard”), Complaint No. 01-11-2002, 1-2 (Dec. 30, 2014).

[100] *See generally id.*

[101] *Id.* at 1.

[102] *Id.*

[103] *Id.* at 2.

[104] *Id.* at 2, 12-13.

[105] *Id.* at 2; *see also* OCR Letter to Tufts at 7 (2010-2013), OCR Letter to VMI at 15 (2007-2013), OCR Letter to OSU at 2 (2008-Jan 2014), OCR Letter to Princeton at 1-2 (2009-2013), and OCR Letter to SMU at 1-2, 14 (2009-2013).

[106] OCR Letter to Harvard at 1-2 (emphasis added).

[107] The school used the “clear and convincing” standard instead of the “preponderance of the evidence.”

[108] *Id.* at 10-12.

[109] *Id.* at 12.

[110] *Id.* at 13.

[111] *Id.* at 13.

[112] *Id.* at 14.

[113] *Id.* at 15.

[114] *Id.* at 16.

[115] *Id.* at 16-17.

[116] *Id.* at 17.

[117] *Id.*

[118] *Id.*

[119] Harvard Law School Resolution Agreement (“Harvard Resolution Agreement”), Complaint No. 01-11-2002, 1-4 (Dec. 23, 2014).

[120] *Id.* at 6-7.

[121] *Id.* at 8.

[122] *Id.* at 9.

[123] *Id.* at 1.

[\[124\]](#) *Id.*

[\[125\]](#) *Id.* at 5.

[\[126\]](#) *Id.*

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