

Gloria A. Hage, Esq.  
General Counsel  
Eastern Michigan University  
11 Welch Hall  
Ypsilanti, Michigan 48197

Re: OCR Docket #15-09-6002

Dear Ms. Hage:

I am pleased to confirm the resolution of the proactive compliance review of Eastern Michigan University (the University) that the U.S. Department of Education (the Department), Office for Civil Rights (OCR), initiated on December 22, 2008. The review was conducted under Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the University is subject to the provisions of Title IX.

#### Background

The University is a comprehensive, co-educational public university located in Ypsilanti, Michigan. The University also has sites in Livonia, Jackson, Traverse City, Flint, Detroit, and Monroe, Michigan. The University offers over 200 majors and minors in five colleges: Arts & Sciences, Business, Education, Health & Human Services, Technology. The University also has a Graduate School. The University serves nearly 23,000 students, including 17,000 undergraduates and 5,000 graduate students. Sixty percent of the University's undergraduate students are women.

Key to OCR's initiation of this review were reports that in 2006, a female student attending the University was found dead in her dorm room after being sexually assaulted. According to media reports, a fellow student sneaked into the victim's dorm room, raped her, and smothered her with a pillow. As a result of this incident, in 2008, the University received a significant fine for violating the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act), 20 U.S.C. § 1092f, a law enforced by the U.S. Department of Education that requires colleges and universities to track certain crimes, including sexual offenses, reported on and around campus and to issue an annual security report to students and employees providing area crime statistics as well as security policies and procedures. The Department found that the University failed to issue a warning about the homicide to students in accordance with the Clery Act, nor did it have a policy in place to do so. Instead, the University issued a statement that no foul play was suspected in the student's death.

### Applicable Regulatory and Policy Standards

The Title IX implementing regulation, at 34 C.F.R. § 106.31 (a), provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal Financial assistance. Specific obligations are set forth at, 34 C.F.R. § 106.31(b), including a recipient's obligation to ensure that its students are not denied or limited in their ability to participate in or benefit from the recipient's programs or activities on the basis of sex.

Sexual harassment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Sexual harassment of a student can deny or limit, on the basis of sex, the student's ability to participate in or to receive benefits, services, or opportunities in the school's program.

In addition to the nondiscrimination provisions, Title IX's implementing regulation also contains a requirement that recipients establish procedural requirements that are important for the prevention or correction of sex discrimination, including sexual harassment. These requirements include issuance of a policy against sex discrimination and adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination. The regulation also requires that recipients designate at least one employee to coordinate compliance with the regulation, including coordination of investigations of complaints alleging noncompliance. To comply with these regulatory requirements, recipients need to recognize and respond to sexual harassment of students by teachers and other employees, by other students, and by third parties.<sup>1</sup>

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<sup>1</sup> U.S. Department of Education, Office for Civil Rights, Revised Sexual Harassment Guidance (2001).

The Title IX regulation, at 34 C.F.R. § 106.8(a), specifically requires that each recipient of Federal financial assistance designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under Title IX. The recipient is further required to notify all students and employees of the name (or title), office address, and telephone number of the designated employee or employees. Additionally, the Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX, including sexual harassment and sexual assaults. Further, the Title IX regulation, at 34 C.F.R. § 106.9, requires recipients to notify all parties that it does not discriminate on the basis of sex in the educational programs or activities that it operates and that it is required by Title IX not to discriminate in such a manner. The notice should further state that the requirement not to discriminate in the recipient's education programs and activities extends to employees as well as students and 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).

To comply with these regulatory requirements, a recipient's sex discrimination grievance procedures must apply to complaints of sex discrimination in the recipient's education programs and activities filed by students against employees, other students, or third parties. Title IX does not require a recipient to provide separate grievance procedures for sexual harassment complaints. However, a recipient's grievance procedures for handling discrimination complaints must provide effective means for preventing and responding to sexual harassment.

In evaluating whether a recipient's grievance procedures are prompt and equitable, OCR considers whether the procedures provide for: notice to students and employees of the procedure, including where complaints may be filed; application of the procedure to complaints alleging harassment carried out by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for the major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that the college will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

#### Summary of OCR's Investigation to Date

OCR sets forth below a summary of the data gathered during the initial part of our investigation. Prior to the completion of OCR's investigation, however, the College asked OCR to voluntarily resolve this compliance review. Under OCR's procedures, a compliance review may be resolved before the conclusion of OCR's investigation if a recipient asks to resolve the review and signs a resolution agreement that addresses the review issues. The provisions of the agreement must be aligned with the issues addressed by the review and the information obtained during the investigation and must be

consistent with applicable regulations. Such a request does not constitute an admission of liability on the part of the College, nor does it constitute a determination by OCR that the College has violated any of the laws that OCR enforces.

During our initial investigation, OCR staff reviewed the University's sexual harassment, sexual assault, and sex discrimination policies and its Student Code of Conduct. In addition, OCR obtained and reviewed copies of all written complaints filed with the University alleging sexual harassment or sexual assault for the 2006-2007, 2007-2008, and 2008-2009 school years. The complaints included, but were not limited to, incidents of professor-on-student sexual harassment, student-on-student sexual harassment, and student-on-student sexual assault. Some of these incidents appeared to be drug or alcohol related.

Further, OCR staff interviewed University officials who play a role in coordinating the University's compliance with Title IX, including the President, who at the time this review was initiated was the University's overall Title IX Coordinator; the Director of the Office of Diversity and Affirmative Action, who is in charge of handling complaints of sex discrimination involving employees; the Director of the Student Judicial Services Office, who is in charge of handling sex discrimination claims against students; the Executive Director and Associate Director of the Department of Public Safety, who handle complaints of sexual assault; the Associate Athletic Director, who is responsible for directing claims of sexual discrimination involving the athletic department to the appropriate University staff member; and the Associate Director of Campus Housing, who informed OCR after this review was initiated that he handles certain complaints of sex discrimination involving University housing on an informal basis.

OCR also reviewed the online sexual harassment training that all University employees are required to complete.

- Policies and Procedures

OCR's initial investigation revealed the following concerns regarding the University's Title IX policies and procedures. The University's notice of nondiscrimination does not fully meet the requirements of 34 C.F.R. § 106.9. For instance, it does not mention Title IX specifically and does not provide the name and contact information for the University's Title IX Coordinator. Further, the University does not have a prompt and equitable grievance procedure for addressing student and employee complaints alleging any action prohibited by Title IX, as is required by Title IX's implementing regulation, at 34 C.F.R. § 106.8(b). While the University has a policy against sexual harassment entitled "Sexual Harassment and other Prohibited Conduct," it only covers sexual harassment and not other types of discrimination prohibited by Title IX; it does not provide the name/title, address, and phone number of the person with whom to file a complaint; it does not provide appropriate procedures for the processing of any complaint, (e.g., timeframes for the completion of the major stages of an investigation), it appears to only be applied to complaints of sexual harassment against faculty or staff, and it otherwise raises Title IX compliance concerns.

In addition, although the University contends that its Code of Student Conduct is used to address complaints of sexual harassment against students, the policy does not constitute a grievance procedure for Title IX complaints. Instead, it is a disciplinary code that prohibits acts of sexual misconduct and sexual harassment, and the focus of the policy is on the perpetrator and his or her rights, and resolving possible violations of the Student Conduct Code, and not on the rights of the victim. It also lacks contact information for the individual with whom to file a complaint, does not contain prompt and equitable procedures for the processing of a complaint, and otherwise raises Title IX compliance concerns.

With respect to complaints of sexual assault, we noted that the University's Annual Security Report prohibits sexual assaults and provides information regarding how to file a complaint with the Department of Public Safety in the event of a sexual assault; however, it does not provide information on how to file a separate complaint of sexual harassment with the University and does not contain the name and contact information for the University's Title IX Coordinator. Further, the information on sexual assaults is located toward the back of the University's lengthy Annual Security Report, which realistically does not provide ready access to someone who has been the subject of a sexual assault.

- Title IX Coordinators

In addition to our concerns about the University's policies and procedures, the University has provided only very limited Title IX training to the employees charged with handling Title IX complaints, and OCR believes that the training that was provided was insufficient. For instance, while the University required all of its employees to participate in an online sexual harassment training, witnesses informed OCR that this training only covered sexual harassment in the workplace, and did not instruct the Title IX Coordinators how to conduct a Title IX investigation or otherwise fulfill their duties as Title IX Coordinators. OCR reviewed the online training and found that it only covered sexual harassment in the workplace generally and contained no discussion of the University's Title IX policies and procedures, no information on how to file a complaint, and did not contain the identities and contact information for the University's Title IX Coordinators.

In addition to a lack of training, we also had concerns that there was no one overseeing the different Title IX Coordinators and the University's overall compliance with Title IX. While the University's President had this responsibility at the time we initiated this review, her involvement was largely limited to receiving updates on certain types of sexual harassment complaints, and she did not otherwise coordinate the University's compliance with Title IX, as evidenced by the University's inadequate policies and failure to take appropriate action with respect to certain complaint investigations.

With respect to the University's handling of sexual harassment complaints, OCR identified four complaint files that were incomplete, had no follow up action taken, or otherwise raised potential Title IX compliance concerns. The first complaint involved allegations that an acting professor was assigning students sexually-related scenarios to

act out and was making inappropriate comments during class. The Director of the Office of Diversity and Affirmative Action stated that she referred the matter to the academic department head, who agreed to speak with the student. She stated that the student subsequently dropped the class, and she learned from the department head that the student's contact information was invalid. She stated that she did not follow up with the professor or take any other action regarding this matter.

Another complaint involved a student complaining that the men's locker room door was being left propped open while the men showered. The Director of the Office of Diversity and Affirmative Action stated that she addressed the matter initially, but information in the file revealed that the same complainant later informed her that the door continued to be propped open. The Director of the Office of Diversity and Affirmative Action stated that she spoke with the University's vice president in charge of recreation and asked him to address the matter again, but that she did not follow up with him or with the complainant to see that the issue was resolved.

Another complaint involved a professor who was allegedly making inappropriate comments to students in class. However, the Director of the Office of Diversity and Affirmative Action stated that she did not take further action because the student told her that she did not want to file a formal complaint, that her primary concern about the professor was academic, and that she would address the matter with the department head. Even so, based on the complaint, it appeared that the professor was making comments to other students as well, but the Director of the Office of Diversity and Affirmative Action acknowledged that she took no further action to address the issue.

Finally, there was a complaint that alleged that a student resident advisor was sexually harassed by her supervisor, a University Housing employee. While OCR concluded that the allegations were addressed appropriately, we noted that the Director of the Office of Diversity and Affirmative Action, who was in charge of handling Title IX complaints involving employees had no knowledge of this complaint, stated that it would have been handled by University Housing, and noted that she is not notified when a complaint of sexual harassment is handled within the Housing Department. However, we noted that in its data response, the University did not identify anyone in Housing responsible for handling complaints pursuant to the University's sexual harassment policies.

We interviewed the current Associate Director of Housing, who stated that while Housing handles certain matters informally, if a student wishes to file a sexual harassment complaint against an employee, that complaint is handled by the Office of Diversity and Affirmative Action, as provided in the University's "Sexual Harassment and Other Prohibited Conduct" policy. Thus, it is unclear why the Director of the Office of Diversity and Affirmative Action had no knowledge of this complaint.

OCR noted that, with so many different offices handling different kinds of sexual harassment complaints, the University did not have anything in writing that explained each of the Title IX Coordinator's roles, and that made clear what types of complaints must be referred to what office. It is crucial, particularly in cases involving sexual

assault, that the appropriate University offices be notified of a complaint so that the victim is offered appropriate assistance, including counseling and assistance with academics. University offices also need to coordinate to provide appropriate interim measures such as, where applicable, removing the alleged perpetrator from the victim's classes and housing. OCR saw the potential for problems in these areas due to a lack of written procedures and a lack of oversight. In addition, the lack of training and the manner in which sexual harassment complaints generally appeared to be handled gave rise to concerns that students were unaware of their rights under Title IX.

### Voluntary Resolution Agreement

On November 15, 2010, the University provided OCR with a signed agreement (Agreement) to resolve the compliance review. The Agreement is the result of collaborative efforts between the University and OCR to identify measures that will assist the University with its Title IX compliance and its ongoing efforts to ensure a campus that is free from sexual harassment that can deprive students of an equal opportunity to benefit from or participate in the University's education programs and activities. In entering into the Agreement, the University makes no admission of liability under Title IX or of any wrongdoing. OCR wishes to thank the University for its cooperation in reaching an agreement that will have a long-lasting, positive impact for its University community, serving to enhance and build upon many actions the University already was taking.

In summary, the Agreement provides for remedial measures in a few primary categories: Title IX procedural requirements; training; student-focused remedies; and reporting/implementation. For instance, the agreement requires the University to revise its Title IX grievance procedures that address complaints of sex discrimination, including sexual harassment, and its nondiscrimination notice and to effectively publish these materials; designate one or more Title IX coordinators and ensure that they, and other appropriate administrators, receive appropriate training on Title IX and how to investigate complaints of sexual harassment; and develop, with the assistance of OCR, an online Title IX training program that will to be completed by its administrators, professors, instructors, residential assistants, coaches, and other staff who interact with students on a regular basis. The University has agreed to update this training annually as needed to reflect changes in the law and University policy regarding Title IX. Further, the University has agreed to notify its staff regarding any updates in the law or the University's policies within 30 days. OCR and the University agreed that the online training program is a creative solution to help an institution of this size effectively and accurately train a very large number of people.

With respect to students, the Agreement requires the University to take the following actions:

- to establish a committee of students, with representation from various student groups, including women's groups, student athletes and others; the University's Title IX Coordinators; and others, as appropriate, to identify strategies for

ensuring that students understand their rights under Title IX and strategies for the prevention of sexual harassment/sexual assault incidents, including outreach and educational activities;

- to include in its existing freshman orientation program a series of informational topic(s) to ensure that students are aware of the University's prohibition against sex discrimination (including sexual harassment and sexual assault); can recognize such sex discrimination and sexual harassment when they occur; and understand how and with whom to report any incidents of sex discrimination (including sexual harassment and sexual assault). At least one required topic will specifically address the connection between alcohol abuse and sexual harassment and sexual assault, and at least one of the topics shall inform students that they may speak with a University counselor if they are concerned about issues of sexual harassment and/or sexual assault. In addition, the topics will cover the University's updated grievance procedures for Title IX complaints, as well as a general overview of what Title IX is, the rights it confers on students, the resources available to students who believe they have been victims of sexual harassment/assault, and the existence of OCR and its authority to enforce Title IX.
- to include in any residential life orientation program a topic that covers to ensure that students are aware of the University's prohibition against sex discrimination (including sexual harassment and sexual assault); can recognize such sex discrimination and sexual harassment; are aware of Title IX and the rights it confers on students; understand how and with whom to report any incidents of sex discrimination (including sexual harassment and sexual assault), including where to find the University's grievance procedures for Title IX complaints on the University's website and the resources available to students who believe they have been victims of sexual harassment/assault.
- to develop procedures that designate an individual(s) to be on call to assist victims of sexual assault. The procedures will require the Department of Public Safety to provide the "on call" contact information to each victim of sexual assault. The "on call" person's duties will include: being available at the victim's request to come to the victim's assistance when a report of sexual assault has been made to the Department of Public Safety. The procedures will provide that the "on-call" person will meet with the victim at the victim's request. Either the on-call person or the Department of Public Safety will explain to the victim the various assistance options the University provides, such as counseling services and academic support, and to notify the victim of the University's Title IX obligations, whether or not the student opts to file a sexual harassment complaint pursuant to the University's Title IX grievance process. The procedures will also provide for University officials, at least one of whom is knowledgeable about Title IX, to explore and, as deemed appropriate, promptly implement a range of interim measures regarding the victim's housing and educational options while the victim's complaint is investigated.



- to develop and distribute two informational publications, one on sexual harassment and one on sexual assault. These publications are meant to inform students and staff of the definitions of sexual discrimination, sexual harassment, and sexual assault, the different complaint procedures available at the University for addressing such matters, an explanation of the different offices that handle such matters, the names and contact information for the University's Title IX Coordinators, and the various forms of assistance available.

In addition to the aforementioned provisions, the Agreement provides that at the end of the 2011-2012, 2012-2013, and 2013-2014 school years, the University will conduct climate checks with students on campus to assess the effectiveness of steps the University has taken pursuant to the Agreement, which may include sending a survey to each University student that contains questions about the student's knowledge of sex discrimination (including sexual harassment and sexual assault) and any experiences he or she has had with sex discrimination while attending the University, and the student's awareness of the University's Title IX policies and procedures.

The Agreement also requires the University to review its campus police records for the 2009-2010 school year and, for any complaint of sexual assault that was treated solely as a criminal matter and/or where the Title IX Coordinator was not involved, the University's Title IX Coordinator is required to review the matter to determine whether sexual harassment occurred in violation of Title IX and whether the remedies provided were effective in making the victim whole. If not, the Agreement requires the University to promptly take measures, should the victim or the perpetrator still be enrolled as a student, to ensure the sexual harassment was fully and effectively addressed.

### Conclusion

In light of the foregoing, OCR finds that the issues OCR examined as part of this compliance review have been resolved. We are therefore closing this compliance review as of the date of this letter. As is its standard practice, OCR will continue to monitor the University's implementation of each item of this agreement until such time as OCR has obtained sufficient evidence to demonstrate that the University is in compliance with the provisions of Title IX applicable to this compliance review, 34 C.F.R. §§ 106.8, 106.9, and 106.31(a). OCR will not close the monitoring of this compliance review until it determines that the University is in full compliance with the provisions of Title IX that are applicable to this review. In addition to the monitoring provisions set forth herein, during its monitoring of this agreement OCR may visit the University, interview University staff and students, and request such additional reports or data as are necessary for OCR to determine whether the University has complied with the terms of this agreement and the Title IX issues that are applicable to this review.

This letter is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

We look forward to receiving your first monitoring report, which is due on January 15, 2011. Thank you again for your cooperation and that of University officials during the course of this review. If you have any questions, please contact Ms. Brenda Redmond, Senior Attorney, by telephone at (216) 522-2667 or by e-mail at [Brenda.Redmond@ed.gov](mailto:Brenda.Redmond@ed.gov).

Sincerely,

Catherine D. Criswell  
Director

Enclosure