

## RESOLUTION AGREEMENT

Harvard Law School  
Complaint No. 01-11-2002

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The U.S. Department of Education, Office for Civil Rights (OCR) investigated the above-referenced complaint, filed against Harvard Law School, 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). In order to resolve the compliance concerns identified by OCR through its investigation, Harvard Law School (the Law School) and the University voluntarily agree to take the actions detailed below.

For purposes of this Agreement and the Law School's Title IX grievance procedures, "complaints" include all complaints, grievances, reports, or other instances of sex discrimination of which the Law School knows or should have known about.

### **Action Steps**

#### **I. Title IX Sexual Harassment Policies and Procedures**

In 2014, Harvard University issued University-wide Title IX grievance procedures and policy, entitled "Procedures for Handling Complaints Involving Students Pursuant to the Sexual and Gender-Based Harassment Policy" and "Sexual and Gender-Based Harassment Policy" (University Policy and Procedures). Effective the 2014-2015 academic year, the Law School adopted "Interim Sexual Harassment Policy and Procedures" (Interim Law School Policy and Procedures).<sup>1</sup> Effective December 18, 2014, the Law School adopted revised "Sexual Harassment Resources and Procedures for Students" (New Law School Procedures).

- A. The University has submitted to OCR supplemental guidance relating to the University Policy and Procedures that will be posted and provided with the University Policy and Procedures. By January 15, 2015, to comply with applicable Title IX regulation and OCR policy, the University will revise its supplemental guidance and submit it to OCR for review and approval; the revised supplemental guidance will incorporate the following:
  1. A statement or statements to the effect that that University has an obligation to address incidents of sexual harassment that it knows or should know about, even when a complaint or report is not filed, and to respond to all complaints, reports and other incidents of sexual harassment it knows or should know about;
  2. Language clarifying that no School or unit-based policy, procedure or process can reverse or alter a factual finding, remedy, or other decision made through the University's Policy and Procedures;

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<sup>1</sup> <http://hls.harvard.edu/content/uploads/2014/09/hls-titleix-interimpolicy1.pdf>

3. Language clarifying that the University has an obligation to consider the effects of off-campus conduct when evaluating whether there is a hostile environment in a University program or activity;
  4. A statement that complainants have a right to proceed simultaneously with a criminal investigation and a Title IX investigation, and that the University may defer its investigation for a limited time for fact gathering but then will promptly resume its investigation;
  5. Maintenance of detailed records of each informal and formal complaint, including individuals involved, investigative steps taken, documentation received, individuals interviewed, decisions reached, and reason(s) for decision(s) reached;
  6. A statement that mediation will not be used in sexual assault and sexual violence cases; and students who report sexual harassment will not be required to resolve the problem directly with the alleged harasser; and
  7. To the extent that the discipline process is part of the Title IX review and/or appeal process, ensure that both parties are provided an equal opportunity to participate in the process.
- B. The Law School has engaged in a process of developing New Law School Procedures, which it has submitted to OCR. OCR will notify the Law School of any objections to the New Law School Procedures, or of OCR's approval of the New Law School Procedures, within 45 calendar days of the date of this Agreement, if not sooner. OCR will approve the New Law School Procedures if and when it determines they comply with the applicable Title IX regulations and OCR policy; are consistent with the University's OCR-approved supplemental guidance, as detailed in Section I.A., above; and incorporate all the elements detailed in Section I.C., below.
- C. The Law School has also submitted to OCR revised Interim Policy and Procedures, which will continue to apply until such time as the Law School implements the New Law School Procedures. By January 15, 2015, the Law School will submit to OCR, for review and approval, revised Interim Policy and Procedures that comply with the applicable Title IX regulations and OCR policy, are consistent with the University Policy and Procedures, the University's OCR-approved supplemental guidance, as detailed in Section I.A., above, and incorporate all of the following:
- a. Clarification of which Law School policy and procedures will be used to address sexual harassment and sexual violence, including clarification that the applicable policy and procedures supersede prior Law School-specific policies and guidelines relating to sexual harassment, and that the Law School's generally applicable Administrative Board Procedures will not apply to reports of sexual harassment, including sexual violence;

- b. A clear explanation, prominently placed at the beginning of the published document, that the University Policy applies to the Law School and supersedes any Law School-specific policies, guidelines and procedures, and clear direction as to how complaints by and against law students will be processed under the University Policy, including in what circumstances, if any, the University Procedures will be used;
- c. A statement of assurance that the Law School will take steps to prevent recurrence of harassment and to correct its discriminatory effects on the complainant and others, if appropriate;
- d. A statement that written notice will be provided to both parties about the outcome of any Law School investigation and/or disciplinary proceeding, and as permitted, to the complaining student about the sanction imposed on a student who was found to have engaged in harassment when the sanction directly relates to the harassed student, including 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;
- e. The designation of reasonably prompt timeframes for each stage of the proceedings, including a description of factors that may extend the timeframes, such as the complexity of the investigation, and/or the severity and extent of the alleged conduct;
- f. The email addresses for each designated Title IX Coordinator;
- g. Any investigation conducted by the Law School under this Policy will be conducted in an adequate, reliable, and impartial manner, including providing the parties an equal opportunity to present witnesses and relevant evidence;
- h. A requirement that the Law School inform the students at regular intervals of the status of the proceeding;
- i. Explicit prohibition of public hearings in cases involving sexual assault or sexual violence; and
- j. Consistent with the University Policy and Procedures, which the Law School's revised Interim Policy and Procedures indicate are outlined therein, the following will be included:
  - i. An explicit statement that the preponderance of the evidence standard will be used for investigating allegations of sexual harassment or violence;
  - ii. A statement that mediation is prohibited in sexual assault and sexual violence cases; and students who report sexual harassment will not be required to resolve the problem directly with the alleged harasser;

- iii. A statement that complainants have a right to proceed simultaneously with a criminal investigation and a Title IX investigation, and that the University or Law School, as applicable, may defer its investigation for a limited time for fact gathering but then will promptly resume its investigation; and
  - iv. A statement that an appeal of the findings and/or remedy will be provided to both parties and that both parties will be provided an equal opportunity to participate in the process.
- D. Within 30 calendar days of OCR's approval of the revised supplemental guidance, the University will adopt and implement the revised supplemental guidance, including by posting the revised supplemental guidance on its website, and will provide all students with electronic or written notice regarding the revised supplemental guidance. The University, at a minimum, will make this notification through the University's website and student handbook revisions, as well as by any other additional means of notification the University deems effective to ensure that the information is widely disseminated.
- E. Within 30 calendar days of OCR's approval of the New Law School Procedures and/or its Interim Policy and Procedures, the Law School will implement the procedures, including by posting the procedures on its website and will provide all HLS students with electronic or written notice regarding the new Law School procedures. The Law School, at a minimum, will make this notification through the Law School's website, electronic mail messages to HLS students, and student handbook revisions, as well as by any other additional means of notification the Law School deems effective to ensure that the information is widely disseminated.

### **Reporting Requirements**

- 1. Within 60 calendar days of OCR's approval of the revised supplemental guidance, the University will provide OCR with documentation of its implementation of Item I.D.
- 2. Within 60 calendar days of OCR's approval of the New Law School Procedures and/or its Interim Policies and Procedures, the Law School will provide OCR with documentation of its implementation of Item I.E.

## **II. Title IX Coordinators**

- A. By January 15, 2015, the Law School will take specific steps as necessary to ensure continued coordination with any/all Title IX Coordinators and appropriate student services within the Law School and the University, including the Harvard University Police Department (HUPD).

- B. The Law School's Title IX Coordinator will annually review all formal and informal complaints of discrimination on the basis of sex (including sexual harassment, sexual assault, and sexual violence), as well as the information collected pursuant to Section VI, below, in order to identify any patterns or systemic problems, and will recommend appropriate action to address any patterns or problems identified.
- C. Effective immediately, the Law School's Title IX Coordinator will be responsible for the following, including ensuring coordination of these tasks if delegated to Title IX deputy coordinators or designees:
1. Continuing to provide information to students and employees regarding their Title IX rights and responsibilities, including information about the resources available on and off campus, the Law School's formal and informal complaint processes, the availability of interim steps, and the ability to file a complaint with the Law School and local law enforcement. The Coordinator, or a designee, shall coordinate the Law School's response to these individuals' concerns and shall follow up with these individuals to solicit feedback on the efficacy of the entire process;
  2. Overseeing the implementation of appropriate interim steps to provide for the safety of the complainant and the campus community during an investigation, regardless of whether a formal or informal complaint has been filed with the Law School. The Title IX Coordinator, or a designee, shall coordinate the Law School's response to these individuals' cases with the appropriate offices on campus, including the University Title IX Office. The Title IX Coordinator, or a designee, shall follow-up with these individuals and the offices involved to solicit feedback on the efficacy of the interim steps;
  3. In collaboration with the University Title IX Office, communicating with HUPD regarding the Law School's obligations under Title IX and serving as a resource on Title IX issues. The Title IX Coordinator will be given access to HUPD records regarding Title IX investigations, so long as it does not compromise the criminal investigation or is otherwise prohibited by or inconsistent with law; provided, however, that any such law is not determined to be inconsistent with Title IX; and
  4. In collaboration with the University Title IX Office, ensuring that the HUPD continues to notify complainants in potential criminal sexual violence/assault cases of their right to file a Title IX complaint with the Law School in addition to pursuing a criminal process. The Law School will also 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.

### **Reporting Requirements**

1. By January 15, 2015, the Law School will provide documentation to OCR of the steps taken to ensure coordination with any/all Title IX Coordinators and appropriate student services within the Law School and the University, including the HUPD.
2. By June 30, 2015, and again by the same date annually during the monitoring of this Agreement, the Law School will provide documentation to OCR of the specific steps taken by the Title IX Coordinator or designee in completing the annual review described above, including any patterns or systemic problems identified, any recommendations to address any patterns or problems identified, and specific steps taken by the Law School to address the patterns or problems identified; and documentation or information demonstrating the specific steps taken by the Title IX Coordinator to carry out or coordinate the responsibilities described above.

### **III. Notice of Nondiscrimination**

- A. The Law School will continue to publish a notice of nondiscrimination stating that the Law School does not discriminate on the basis of sex in the educational programs or activities which it operates or in employment (and may include other bases such as race, color, national origin, disability and age),<sup>2</sup> which will include a statement that inquiries concerning the application of Title IX and its implementing regulation may be referred to the designated Title IX Coordinators or to OCR, and will provide accurate contact information for each, including an email address.

### **Reporting Requirement**

1. No later than January 15, 2015, the Law School will provide documentation to OCR indicating that a notice of nondiscrimination that complies with Item III.A. has been published broadly, including on its website, in catalogues, in handbooks, and in employment materials.

### **IV. Title IX Training**

- A. The Law School will continue to provide regular in-person or online training to all staff responsible for recognizing and reporting incidents of sex discrimination (including sexual harassment, sexual assault, and sexual violence) and staff who will be involved in processing, investigating, resolving and/or reviewing complaints of sex discrimination or who will otherwise coordinate the Law School's compliance with Title IX. This will include Title IX Coordinators and deputy coordinators. This will also include Law School faculty if faculty participate in any adjudication or review of

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<sup>2</sup> <http://www.law.harvard.edu/academics/handbook/legal/2013-14/2013-14-i.-notice-of-non-discrimination.html>

complaint decisions. The content of this training will include, at a minimum: the handling of complaints or other reports of sexual harassment, sexual assault and sexual violence, the University's grievance procedures, and confidentiality requirements. The University will provide training to HUPD consistent with the requirements of this section.

- B. By May 1, 2015, the Law School will schedule and provide training for all administrators, professors, instructors, residential staff, and other staff who interact with students on a regular basis. The training will provide attendees with essential guidance and instruction on recognizing, appropriately addressing and reporting allegations and complaints of sex discrimination, including the differences between sex discrimination, sexual harassment, sexual assault, and sexual violence, the University's responsibilities under Title IX to address allegations of sexually inappropriate behaviors, including the availability of interim steps and confidentiality. In addition, the training will cover the New Law School Procedures, and/or, as applicable, the Interim Policy and Procedures, and information about the Title IX Coordinator and resources available to survivors and complainants.
- C. By October 1, 2015, and by the same date annually thereafter, the Law School will provide a Title IX training program for new staff who interact with students on a regular basis that addresses the training information covered above. This training shall be provided to all such new staff within 90 days of being hired for any such position.

#### **Reporting Requirement**

- 1. By June 30, 2015, and by the same date annually thereafter, the Law School and the University will provide documentation to OCR demonstrating that training was provided in accordance with Section IV above. The documentation will include, at a minimum, the name(s) and credentials of the trainer(s); the date(s) and time(s) of the training(s); the type of audience and estimated number of attendees; and copies of any training materials distributed.

#### **V. Information Sessions**

- A. By May 1, 2015, and by October 1, 2015 and annually thereafter during the course of the monitoring, the Law School will continue to offer a series of information sessions to all students so that they are aware of the Law School's prohibition against sex discrimination (including sexual harassment, sexual assault, and sexual violence); how to recognize such sex discrimination when it occurs; and how and with whom to report any incidents of sex discrimination. In addition, the sessions will cover the New Law School Procedures and/or, as applicable, the Interim Policy and Procedures, as well as a general overview of Title IX, the rights it confers on students, the resources available to students who believe that they have been subjected to sexual harassment, sexual assault, and sexual violence, and the existence of OCR and its

authority to enforce Title IX. These sessions may be provided as part of existing annual orientation programs for new or returning students.

### **Reporting Requirement**

1. By June 30, 2015, and by the same date annually while OCR is monitoring this Agreement, the Law School will provide to OCR documentation demonstrating implementation of Item V.A. above, including a description of each information session and the dates the information sessions were held.

## **VI. Climate Checks**

- A. No later than the 2014-15 academic year, and by no later than the same date annually throughout the monitoring period, the Law School will conduct an assessment of the campus climate to assess the effectiveness of steps taken pursuant to this Resolution Agreement, or otherwise by the Law School, to provide for a campus free of sex discrimination (including sexual harassment, sexual assault, and sexual violence). In conducting such assessment, the Law School will seek input from Law School students and other members of the Law School community (including any complainants and witnesses to sex discrimination), and its annual assessment will include feedback from students regarding incidents of, attitudes toward, and effectiveness of responses to sexual assault and sexual violence. As such, the assessment will include an OCR- approved annual student survey or instrument. The University has established a task force that is charged with considering how the University may improve its efforts at preventing sexual assault and other unwelcome sexual conduct and how the institution can best evaluate the effectiveness of its approach to sexual misconduct, with a particular sensitivity to a holistic approach that focuses on prevention as well as on responsiveness. As part of its work, the task force, in cooperation with several dozen other colleges and universities and a team including methodologists and subject matter experts, is developing a survey that will be used to assess the campus climate at the University, including at the Law School, as well as at other colleges and universities across the nation. By April 15, 2015, the Law School will submit to OCR the survey or instrument it intends to use, and OCR will evaluate whether that survey or instrument satisfies the requirements of this section. The Law School, as necessary and in consultation with OCR, will supplement the survey or instrument during the monitoring period, such as by organizing an open forum information session for students and employees, and designated, publicized walk-in hours for campus community input. The Law School will use the information it gathers to inform future proactive steps taken to provide for a safe educational environment and compliance with Title IX. The Law School will share information gathered and recommendations with the Law School's Title IX Coordinator.



### **Reporting Requirement**

1. By June 30, 2015, and by no later than the same date annually throughout the monitoring period, the Law School will provide documentation to OCR, for its review and approval, demonstrating implementation of Section VI, including any resulting summaries of the information obtained and any proposed and/or completed actions based on that information.

## **VII. Individual Complaint Reviews**

- A. By March 1, 2015, the Law School will review any complaints alleging sexual harassment, including allegations of sexual assault and sexual violence, filed during the 2012-2013 and 2013-2014 academic years to determine whether each complaint was handled consistent with the requirements of Title IX, and with OCR policy regarding sexual harassment and sexual violence. These reviews will carefully scrutinize whether the Law School investigated all complaints, reports or other incidents of sexual assault and sexual violence of which it had notice; promptly and adequately investigated the complaint or report of harassment; provided interim relief to protect the complainant during the pendency of the investigation; provided notice of the outcome of the complaint investigation to the alleged victim and the alleged harasser; took steps to prevent the recurrence of harassment and to address any hostile environment created by the harassment. By the same date, the Law School will submit to OCR for review and approval the results of its review and any actions it proposes to take to ensure that harassment does not recur, and to provide appropriate remedies that may still be available for the complainants in these cases, such as counseling or academic adjustments.
- B. By June 30, 2015, and again by the same date annually during the monitoring of this Agreement, the Law School will submit to OCR copies of all Title IX complaints alleging sexual harassment, including allegations of sexual assault and sexual violence, during the prior academic year. The Law School will provide OCR with documentation related to the investigation of each 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 or supplemental hearings. If no Title IX complaint was filed during the year in question, the Law School will so notify OCR in writing.

### **Reporting Requirements**

1. Within 30 days of OCR's approval of the results of the Law School's review and actions proposed by the Law School pursuant to Item VII.A, the Law School will submit documentation to OCR of the implementation of the approved actions.
2. By June 30, 2015, and by the same date annually thereafter, the Law School will provide documentation to OCR demonstrating implementation of Item VII.B,

including any resulting summaries of the information obtained and any proposed and/or completed actions based on that information.

The University and the Law School understand that by signing this Agreement, they agree to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the University and the Law School understand that during the monitoring of this Agreement, if necessary, OCR may visit the campus, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the University and the Law School have fulfilled the terms of this Agreement and whether the Law School is in compliance with the regulation implementing Title IX, at 34 C.F.R. §§ 106.8, 106.9, and 106.31, which was at issue in this case. The University and the Law School understand that the monitoring period of this Agreement will extend for three years, or until, if later, such time as OCR determines that they have fulfilled the terms of this Agreement and the Law School is in compliance with the regulation implementing Title IX, at 34 C.F.R. §§ 106.8, 106.9 and 106.31.

The University and the Law School understand and acknowledge 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 judicial proceedings to enforce this Agreement, OCR shall give the University and the Law School written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

Harvard University

By:  \_\_\_\_\_

Date: December 23, 2014

Harvard Law School

By:  \_\_\_\_\_

Date: December 23, 2014