



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION II

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October 31, 2013

Dr. Nancy L. Zimpher  
Chancellor  
Office of the Chancellor  
State University of New York  
State University Plaza  
353 Broadway  
Albany, New York 12246

Re: Case No. 02-11-6001  
State University of New York

Dear Dr. Zimpher:

This is to advise you of the resolution of the above-referenced compliance review that was initiated by the U.S. Department of Education (Department), Office for Civil Rights (OCR) on December 23, 2010. The compliance review examined the State University of New York's (SUNY) handling of complaints of sexual assault/violence and sexual harassment under its various procedures, including those used systemwide and at individual campuses. The compliance review sought to determine if SUNY had responded promptly and effectively to those complaints, especially with regard to complaints of sexual assault/violence. OCR initiated this compliance review under Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. §1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the Department. SUNY is a recipient of financial assistance from the Department. Therefore, OCR had jurisdictional authority to conduct this compliance review under Title IX. OCR appreciates SUNY's full cooperation from the outset, its proactive efforts to date, and its commitment to address the findings of the investigation and ensure safe campuses across the SUNY system.

SUNY is the largest comprehensive system of public higher education in the United States. The twenty-nine state-operated campuses of SUNY established by New York State legislature are Albany, Alfred State, Binghamton, Brockport, University at Buffalo, Buffalo State, Canton, Cobleskill, Cortland, Delhi, Downstate Medical, Empire State, Environmental Science and Forestry, Farmingdale, Fredonia, Geneseo, SUNYIT, Maritime, Morrisville, New Paltz, Old Westbury, Oneonta, Optometry, Oswego, Plattsburgh, Potsdam, Purchase, Stony Brook, and Upstate Medical. Together, these institutions enrolled 218,867 students during academic year 2012-2013.

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Although the review concerned all state-operated campuses of SUNY, OCR conducted on-sites at four campuses in particular: SUNY at Albany, SUNY-Buffalo State College, SUNY-Morrisville State College, and SUNY at New Paltz.<sup>1</sup> In its investigation, OCR reviewed documentation submitted from the SUNY System administrative office and from each of the four SUNY campuses mentioned above; including copies of policies, notices, and grievance procedures. OCR also reviewed individual complaints of sexual harassment received at each of the four campuses between academic years 2007-2008 and 2010-2011. Additionally, OCR interviewed system officials and campus administrators, and conducted focus groups of students on each of the four campuses in order to learn more about sexual assault/violence and harassment issues and concerns at each campus. OCR also sought information regarding the relationship between each of the four campuses and local police departments and rape crisis centers.

Based on the investigation, OCR identified compliance concerns relating to the designation of a Title IX coordinator, nondiscrimination notice, and/or grievance procedures at SUNY and the individual campuses reviewed. Additionally, OCR identified compliance concerns regarding the manner in which the individual campuses responded to some complaints or reports of sexual harassment and assault/violence. OCR's investigative findings are detailed below.

### **Legal Authority**

The regulation implementing Title IX, 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 education program or activity operated by a recipient. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX.<sup>2</sup> 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 creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the recipient's program.

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,

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<sup>1</sup> When OCR initiated this compliance review, the most recent information from the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. §1092(f) (Clery Act) indicated that these four colleges reported a total of 23 "sexual offenses-forcible" in 2008. Currently, the most recent Clery Act data available, from 2011, indicates that these four colleges reported a total of 24 "sexual offenses-forcible".

<sup>2</sup> 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/offices/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).

the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. For example, a single instance of rape is sufficiently severe to create a hostile environment.

If a recipient knows or reasonably should have known about sexual harassment that creates a hostile environment, Title IX requires the recipient to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects. When responding to alleged sexual harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that discriminatory harassment has occurred, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. These duties are a recipient's responsibility regardless of whether a student has complained, asked the recipient to take action, or identified the harassment as a form of discrimination. A law enforcement investigation does not relieve the recipient of its independent Title IX obligation to investigate the conduct. A recipient should not wait for the conclusion of a criminal investigation or criminal proceeding to conduct its own Title IX investigation; and if needed, must take immediate steps to protect the complainant from further harassment prior to the completion of the Title IX investigation/resolution.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires that each recipient designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX (the Title IX Coordinator), and to notify all students and employees of the name or title, office address, and telephone number of the designated coordinator. In addition, OCR's 2011 Dear Colleague Letter on Sexual Violence states that recipients should notify all students and employees of the electronic mail (email) address of the Title IX Coordinator.

The regulation implementing Title IX, at 34 C.F.R. § 106.9(a), requires that a recipient implement specific and continuing steps to notify applicants for employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in the education programs or activities it operates; that the prohibition against discrimination extends to employment; and that inquiries to recipients concerning the application of Title IX and its implementing regulation may be referred to the Title IX coordinator or to OCR. The regulation implementing Title IX, at 34 C.F.R. § 106.9(b), requires recipients to include the notice of nondiscrimination in each announcement, bulletin, catalog, or application form that it makes available to the persons described above, or which is otherwise used in the recruitment of students or employees.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires that each recipient adopt and publish grievance procedures providing for prompt and equitable resolution of student, employee, and third party complaints that allege any action which would be prohibited by the regulation, including sexual harassment and sexual assault/violence. OCR has identified a number of elements in determining if grievance procedures are prompt and equitable, including whether the procedures provide for: (a) notice to students and employees of the procedures, including where complaints may be filed; (b) application of the procedures to complaints

alleging discrimination or harassment carried out by employees, students, and third parties; (c) adequate, reliable, and impartial investigation, including an opportunity to present witnesses and evidence; (d) designated and reasonably prompt timeframes for major stages of the grievance process; (e) written notice to parties of the outcome and any appeal; and (f) an assurance that the institution will take steps to prevent further harassment and to correct its discriminatory effects on the complainant if appropriate. 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. 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.<sup>3</sup> Prohibited retaliatory acts include intimidation, threats, coercion, or 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, 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.

Pending the outcome of an investigation, Title IX requires a recipient to take steps to protect the complainant from further harassment as necessary, including taking interim steps before the final outcome of the investigation. The recipient should undertake these steps promptly once it has notice of a sexual harassment allegation. It 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 recipient may prohibit the alleged perpetrator from having contact with the complainant pending the results of the investigation. When taking steps to separate the complainant and the alleged perpetrator, a recipient should minimize the burden on the complainant and thus should not, as a matter of course, remove the complainant from classes or housing while allowing the alleged perpetrator to remain. In addition, recipients should ensure that complainants are aware of their Title IX rights and any available resources, such as counseling services, and their right to file a complaint with local law enforcement.

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. But a university's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve a 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 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.

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<sup>3</sup> 34 C.F.R. §§ 106.8(b), 106.71, incorporating by reference 34 C.F.R. § 100.7(e).

If the complainant requests confidentiality or asks that the complaint not be pursued, a university 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. If the complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, a university should inform the complainant that its ability to respond may be limited. A university also should tell the complainant that Title IX prohibits retaliation, and that university officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs.

Grievance procedures generally may include voluntary informal mechanisms (e.g., mediation) for resolving some types of sexual harassment complaints; however, it is improper for a complainant to be required to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the recipient (e.g., participation by a trained counselor, a trained mediator, or, if appropriate, a faculty member or administrator). 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. Moreover, in cases involving allegations of sexual assault/violence, 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/violence complaints.

Throughout the recipient's investigation and in any hearing, both parties must have equal opportunity to present relevant witnesses and other evidence. Also, in order for a recipient's grievance procedures to be consistent with the Title IX evidentiary standard, the recipient must use a preponderance of the evidence standard for investigating allegations of sexual harassment or violence. If a recipient provides for appeal of the findings or remedy, it must do so for both parties. The recipient must maintain documentation of all proceedings.

In addition, recipients should provide training to employees about its grievance procedures and their implementation. Recipients should provide such training to any employees likely to witness or receive reports of sexual harassment and violence; including teachers, university law enforcement unit employees, university administrators, university counselors, general counsels, health personnel, and resident advisors. Recipients need to ensure that their employees are trained so that they know to report harassment to appropriate officials, and so that employees with the authority to address harassment know how to respond properly.

In analyzing the information obtained, OCR reviewed whether the SUNY System and each of the four SUNY campuses named above had: (a) designated and provided notice of a Title IX Coordinator; (b) provided notice that it does not discriminate on the basis of sex; and (c) adopted and published grievance procedures providing for the prompt and equitable resolution of student and employee complaints of discrimination/harassment on the basis of sex. In addition, OCR reviewed the four campus's handling of individual complaints of sexual harassment made between academic years 2007-2008 and 2010-2011.

*SUNY System*

SUNY had not designated a Title IX Coordinator at the system-level when OCR initiated this investigation. During the course of the investigation, SUNY hired an Affirmative Action Officer who serves as the Title IX Coordinator at the system-level; however, SUNY had not notified students and employees of the name or title, office address, and telephone number of the designated coordinator.

There were no notices of non-discrimination required by Title IX in any of the reports or publications posted on-line for the SUNY System; nor did SUNY provide any information to support that non-discrimination notices appeared in any system-wide printed publications or applications.

On March 14, 2003, SUNY adopted grievance procedures governing allegations of unlawful discrimination and harassment, including allegations of discrimination or harassment asserted on the basis of sex.<sup>4</sup> This procedure, entitled “Discrimination Complaint Procedure,” (the SUNY System procedures), applies to all state-operated campuses within the SUNY System, unless the campus has made application for an exception.<sup>5</sup> OCR reviewed the SUNY System procedures to determine whether these provide for the prompt and equitable resolution of complaints of discrimination and harassment on the basis of sex.

The SUNY System procedures define sexual harassment in the educational setting as:

...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. Sexual harassment of a student denies or limits, on the basis of sex, the student’s ability to participate in or to receive benefits, services, or opportunities in the educational institution’s program.

The SUNY System procedures define sexual harassment in the employment setting as:

...unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature when any of the following occurs:

- Submission to such conduct is made a term or condition of an individual’s continued employment, promotion, or other condition of employment.
- Submission to or rejection of such conduct is used as a basis for employment decisions affecting an employee or job applicant.
- Such conduct is intended to interfere, or results in interference, with an employee’s work performance, or creates an intimidating, hostile, or offensive work environment.

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<sup>4</sup> SUNY advised OCR that it has revised its procedures and submitted draft procedures to OCR for review and approval as part of the resolution of this compliance review. OCR’s review focused only on the procedures currently in effect.

<sup>5</sup> This document is published on SUNY’s website at [http://www.suny.edu/sunypp/documents.cfm?doc\\_id=451](http://www.suny.edu/sunypp/documents.cfm?doc_id=451).

OCR determined that while the SUNY System procedures state that a responsible employee must immediately report a complaint of sexual harassment<sup>6</sup> after receiving such a complaint, it does not state that the employee must report sexual harassment if observed first-hand, or learned about in some other way. OCR also determined that the SUNY System procedures do not address third party complaints; state that the use of mediation is prohibited in sexual assault/violence complaints; address interim measures; or state that SUNY will take steps to prevent further harassment and remedy its effects, as appropriate. Additionally, OCR noted that the SUNY System procedures do not include any protections against retaliation; discuss whether the parties can have representation, and if this applies equally to both parties; provide any examples of harassing conduct; include any definition of sexual assault/violence (although the procedures include a definition of sexual harassment); or ensure that SUNY will advise complainants of their Title IX rights and available resources.

### **SUNY at Albany**

SUNY at Albany (hereinafter SUNY Albany) has a designated Title IX Coordinator; however, not all of publications that identify the Title IX Coordinator included the Title IX Coordinator's email or office address.

SUNY Albany has nondiscrimination notices that appear in several publications; however, the nondiscrimination notice was not sufficient in some of these publications. For example, the nondiscrimination notice located in SUNY Albany's *President's Statement* did not state that the prohibition against discrimination extended to employment; and another statement in its *Employment Policy* did not state that inquiries to recipients concerning the application of Title IX and its implementing regulation could be referred to the Title IX Coordinator or to OCR. Moreover, SUNY Albany's Undergraduate and Graduate Bulletins did not contain an adequate nondiscrimination notice, because these did not contain an explicit statement that: (1) SUNY Albany does not discriminate on the basis of sex in the education programs or activities it operates; (2) that the prohibition against discrimination extends to employment; and (3) that inquiries to recipients concerning the application of Title IX and its implementing regulation may be referred to the Title IX coordinator or to OCR.

SUNY, on behalf of SUNY Albany, has a "Memorandum of Understanding" with the City of Albany, on behalf of its Police Department, and the Town of Guilderland, on behalf of its Police Department, that outlines the relationship between the University Police Department and the City and Town Police Departments. The University Police Department advised OCR that it provides notice to the University when it receives a complaint of sexual assault/violence involving a University student. SUNY Albany informed OCR, and OCR confirmed in its file reviews, that it will still investigate a sexual assault/violence complaint even if the City or Town Police department is also investigating the incident.

The Director also informed OCR that the Office of Conflict Resolution typically receives complaints from the University Police Department, which the University Police Department has

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<sup>6</sup> References to "sexual harassment" described in the SUNY System procedures hereafter refer to "sexual harassment that creates a hostile environment."

already investigated.<sup>7</sup> The Director stated that in such cases, he does not conduct his own investigation of complaints; rather, he will present the University Police Department's investigation to the Judicial Board for its review. The Chief of the University Police Department advised OCR, however, that if a student does not want to move forward with a criminal complaint, the University Police Department will not conduct an investigation for the purposes of a Judicial Board hearing. Moreover, the University Policy Department Chief stated that even if the student wishes to file a criminal complaint, the University Police Department may not forward the evidence gathered in its investigation to Office of Conflict Resolution if it believes that doing so could otherwise compromise prosecution by the District Attorney. Accordingly, OCR determined that in most circumstances, the Office of Conflict Resolution will not conduct a full, independent investigation of a complaint; and the obligation remains with the complainant and the accused to complete the investigation by providing evidence and witnesses, and otherwise presenting their case to the Judicial Board. During the hearing, the Judicial Board reviews statements and testimony from the parties and witnesses.

SUNY Albany did not utilize the SUNY System grievance procedures. Instead, SUNY Albany has adopted its own grievance procedures; although there was no evidence to support that SUNY Albany applied for an exception. SUNY Albany's Complaint Procedures outline the method by which a member of the SUNY Albany community may file a complaint of discrimination on the basis of sex against an employee, or in limited circumstances,<sup>8</sup> a student. In practice, SUNY Albany's Procedures did not apply to complaints of sexual harassment or assault/violence against students; rather such complaints were governed by SUNY Albany's disciplinary procedures, which were outlined in a document entitled "Community Rights and Responsibilities" (the CRR). SUNY Albany's Complaint Procedures did not explicitly state this, nor did the procedures reference the CRR. Accordingly, individuals seeking to file a complaint against a student did not have adequate notice of where to file a complaint of sexual harassment or assault/violence.

For sexual harassment or assault/violence complaints against students under the CRR: (1) the CRR did not always require that SUNY Albany conduct a full, independent investigation of a complaint; (2) only the accused student received written notice of a hearing at least five calendar days prior to the hearing; (3) only the complainant received notice of the outcome of a hearing in a timely fashion; (4) the CRR did not provide timeframes for the disciplinary process or a notice of outcome; and (5) the CRR did not state that SUNY Albany would take steps to prevent further harassment and remedy its effects, as appropriate. Additionally, OCR determined that SUNY Albany did not have procedures to address complaints against third parties.

With respect to other complaints of discrimination on the basis of sex filed against employees (or complaints of different treatment on the basis of sex filed against students), OCR determined that: (1) SUNY Albany's Complaint Procedures did not discuss interim measures with the complainant; (2) as written, the designated timeframes for investigating a complaint were not

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<sup>7</sup> The Director noted that in theory, if a complaint of sexual harassment, including sexual assault, came to his office first, he would conduct the investigation. He noted, however, that in his six years as Director, he has never received such a complaint first; instead, these are usually referred by the University Police Department.

<sup>8</sup> OCR determined that the Complaint Procedures apply to complaints of different treatment on the basis of sex filed against students.



prompt; and (3) the procedures did not state that SUNY Albany would take steps to prevent further harassment and remedy its effects, as appropriate.

OCR reviewed 58 complaints of sexual harassment, including allegations of sexual assault/violence, which were filed against students or staff at SUNY Albany between academic years 2007-2008 and 2010-2011. OCR had concerns with SUNY Albany's failure to: (1) respond promptly to allegations of sexual harassment; (2) promptly provide written notice of the outcome of an investigation to the parties; (3) allow a complainant to attend a pre-hearing conference, while providing this right to the accused; (4) give the parties the opportunity to present evidence and witnesses; (5) assume responsibility for conducting an independent investigation without placing the burden solely on the parties to provide such evidence and witnesses; (6) provide written notice of the outcome to the complainant; (7) inform the accused of appeal rights even though the complainant was so informed; and, (8) conduct an investigation and appeal promptly.

OCR held focus groups for students on the SUNY Albany campus. Students informed OCR that they were aware that they had several options available should there be an incident of sexual harassment, including sexual assault/violence. This included making a referral to their Resident Assistant, or contacting a hotline called Middle Earth<sup>9</sup>, the sexual assault resources center (SARC)<sup>10</sup>; the Office of Conflict Resolution; or the University Police Department. Participants noted that sometimes students did not want to report allegations of sexual assault/violence because they were afraid of retaliation by the other student, and were concerned about the length and the intrusiveness of the process. Participants stated that students were hesitant to report sexual assault/violence due to the nature of the allegations, not because SUNY Albany or its policies discouraged students. Most students stated that they believed that SUNY Albany went out of its way to encourage students to file complaints of sexual harassment, including sexual assault/violence. Several students stated that the University could improve its outreach on this subject. They noted that while SUNY Albany does an excellent job of promoting awareness during freshman orientation week, it does not necessarily follow-up over the course of the following years. They stated that refresher training could be helpful. Moreover, they noted that SUNY Albany sends out a multitude of emails (known as email blasts) regarding sexual assault/violence and harassment awareness on campus; however, they stated that such emails were not particularly effective, since students are inundated with other emails from the University and often ignore them. Lastly, some students noted that training for athletes was particularly effective. Members of each team are required to attend an annual sexual harassment

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<sup>9</sup> SUNY Albany's Middle Earth Peer Assistance Program provides a confidential peer assistance hotline, online peer assistance, outreach programs, and a peer theater program called the Middle Earth Players, which educates students about incidents of sexual assault/violence. SUNY Albany has a full time Coordinator for Sexual Assault Prevention who trains and works with the Office of the Vice President for Student Success, campus committees, and local community constituents to prevent sexual assault/violence and provide victim assistance. Staff members at the University's Chapel House are also available to provide confidential support to victims of sexual assault/violence.

<sup>10</sup> SUNY Albany's Counseling Center and Sexual Assault Prevention Office, formerly the SARC, is a confidential resource for University students who are victims of sexual assault/violence and harassment. Staff members in the Counseling Center and Sexual Assault Prevention Office provide counseling and advocacy services; information regarding reporting options and medical options; and academic and housing accommodations to any student who is affected by sexual misconduct.

training that is tailored to their specific circumstances. Students suggested expanding this type of individualized training to other groups at SUNY Albany.

SUNY Albany's University Health Center offers confidential services to students who are victims of sexual assault/violence, including referral to the Albany Medical Center Hospital's Sexual Assault Forensic Examiner (SAFE) Program<sup>11</sup> or other local hospitals for medical care and a rape examination, as well as referral to Albany County's Crime Victim and Sexual Violence Center (CVSVC).<sup>12</sup> The University Health Center will also provide referral for counseling services at the University Counseling Center or the CVSVC. In addition, it will provide referral to or notify the University Police Department at the student's request.

SUNY Albany provides annual training to University staff, including students, regarding the University's "Coordinated Response to the Sexual Assault of Students" protocol, and the "Coordinated Response to Stalking and Intimate Partner Abuse" protocol, which includes an overview of the Sexual Assault Prevention Office. During orientation, incoming freshman students are provided with information regarding sexual assault and harassment; including information about who to contact to report and/or obtain assistance concerning an incident of sexual assault/violence.

### **Buffalo State College**

Buffalo State College (hereinafter Buffalo State) had a designated Title IX Coordinator; however, notice regarding the Title IX Coordinator did not state that the Interim Senior Advisor served as the Title IX Coordinator or provide his email address.

Buffalo State's nondiscrimination notice did not state that inquiries to recipients concerning the application of Title IX and its implementing regulation could be referred to the Title IX Coordinator or to OCR. The nondiscrimination notice was not available in the Undergraduate or Graduate Catalogues, nor was it available in the Undergraduate Viewbook.

Buffalo State has a "Memorandum of Understanding" with the Buffalo City Police Department that outlines the relationship between Buffalo State and the Buffalo City Police Department. The College informed OCR that if a sexual assault/violence complaint is being investigated by University Police, the Buffalo City Police Department will not investigate the incident. If the Buffalo City District Attorney's Office is involved, the University Police forwards the results of its investigation to that office. OCR determined that the Office of Judicial Affairs, EDCO, and HRMD refer complaints of sexual assault filed with their respective offices to the University Police for investigation. The University Police conducts an investigation of each such complaint and forwards the results to the referring entity. That entity then considers the University Police's

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<sup>11</sup> The SAFE Program at the Albany Medical Center Hospital works with the University to offer assistance to sexual assault victims and training to the University's Counseling Center and University Health Center staff members regarding its programs and services. Physicians and registered nurses who have advanced education and clinical preparation in forensic examination of sexual assault/violence victims staff the SAFE Program. They offer victims of sexual assault/violence medical care and comprehensive forensic evidence collection.

<sup>12</sup> The CVSVC is an off-campus resource that provides advocacy and counseling services, including a 24 hour sexual assault/violence hotline. It serves as a resource for University students and other campus community members who are victims of sexual assault and violent crimes.

investigation when making its findings. If the Buffalo City District Attorney's Office is also investigating a criminal complaint filed by the complainant regarding the same matter, then the University Police forwards the results of its investigation to that office. University Police refers the complainant to counseling and medical services, and also issues email alerts to the Buffalo State community to alert them of sexual assaults and attempted sexual assaults.

Despite the assertions in many of its published materials, Buffalo State did not follow the SUNY System procedures in practice regarding complaints of sexual harassment or assault/violence against students or employees. Students and employees were not informed of where to file such complaints.

In practice, Buffalo State's Equity and Campus Diversity Office (ECDO) or the Human Resources Management Department (HRMD) handled complaints filed against employees or filed by employees generally alleging discrimination on the basis of sex or alleging sexual harassment. Even though ECDO's brochure and Buffalo State's "Policy on Sexual Harassment," state that Buffalo State follows the SUNY System procedures, ECDO and HRMD follow different procedures. The grievance procedures followed by the ECDO and HRMD do not specify whether the arbitrator should use the preponderance of the evidence standard in investigating allegations of sexual harassment. The procedures lacked timeframes, and the complainant was not a party to the disciplinary grievance procedure under the procedures; therefore, although the respondent is permitted to appeal the arbitrator's award, present evidence,<sup>13</sup> or be notified of the determination in writing, the complainant did not have such rights.

In practice, the published procedures of the Office of Judicial Affairs (Judicial Affairs Procedures) are used when complaints of discrimination on the basis of sex or complaints of sexual harassment were filed against students, even though the ECDO's brochure and Buffalo State's "Policy on Sexual Harassment" refer to the SUNY System procedures.

The Judicial Affairs procedures: (1) lacked timeframes regarding the investigation of a complaint; (2) provided appeal rights only to the accused; (3) indicated that the parties, rather than Buffalo State, had the burden of providing evidence and witnesses for an investigation; and (4) did not address third-party complaints. Additionally, the Judicial Affairs procedures required complaints to be filed no later than the end of the semester after the incident occurred.

OCR reviewed the 34 sexual assault/violence and harassment complaints filed with Buffalo State between academic years 2007-2008 and 2010-2011. These complaints were filed with ECDO, HRMD, the Office of Judicial Affairs, or University Police.<sup>14</sup> OCR had concerns with Buffalo State's failure to: (1) provide written notice of the outcome of an investigation to both parties; (2) take interim measures as appropriate in response to sexual assault/violence and harassment complaints pending investigation; (3) respond promptly and effectively to sexual harassment

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<sup>13</sup> While the complainant could be called to testify as a witness, the parties in the arbitration proceeding would be making the decision whether the complainant should be called to testify and his/her version of the incident should be heard, and not the complainant.

<sup>14</sup> Five complaints were jointly filed with ECDO and HRMD; eight complaints were filed with Judicial Affairs; and 21 complaints were filed with University Police.

complaints that were otherwise time-barred by Buffalo State's procedures; and (4) take steps to prevent the recurrence of harassment stemming from an allegation by a third party complainant.

Further, on September 2, 2011, OCR accepted for investigation a complaint in which a student at Buffalo State (the complainant) alleged that Buffalo State failed to respond appropriately to her complaints of sexual harassment during academic year 2010-2011 (OCR Case No. 02-11-2168). By letter, dated January 31, 2012, OCR informed the complainant that it would address her allegation in the instant compliance review. OCR determined that the complainant filed two separate complaints of sexual harassment with Buffalo State. Based on its investigation, OCR determined that: (1) the Interim Senior Advisor failed to respond appropriately after being placed on notice of the complainant's allegation of sexual harassment; (2) Buffalo State failed to proceed with its investigation of alleged harassment involving the two students after those students did not respond to its attempts to schedule a meeting regarding the complaints; and, (3) Buffalo State did not notify the complainant of the outcome of her complaints until over a year after she filed the complaints.

OCR conducted two focus groups of students and employees on Buffalo State's campus to provide members of the Buffalo State community an opportunity to discuss sexual assault/violence and harassment issues at Buffalo State. Some students stated that Buffalo State responded appropriately to these issues, while others stated that Buffalo State should make greater efforts to spread awareness about these issues, train students, and improve on its response to sexual assault/violence and sexual harassment complaints. These participants were generally aware of Buffalo State's policy on sexual assault/violence and harassment issues, and knew to contact ECDO, VIVA<sup>15</sup>, or Buffalo State's Counseling Center if they had concerns. Some participants stated that they had a positive experience with the University Police, while others reported having a negative experience with University Police; finding its staff insensitive and noting that it did not provide assistance. Another student stated that it would be helpful to have refresher training on sexual assault and harassment issues after freshman year.

Buffalo State's Counseling Center provides individual and group counseling and psychiatric consultations to any student who is affected by sexual misconduct. Counselors will provide information on rights and reporting options, and will assist students with arranging academic, housing, and other accommodations as needed. The College's Weigel Health Center provides health and wellness services to all students, including students who are affected by sexual assault/violence. Clinicians at the Weigel Health Center will provide support and information on medical treatment and referral for evidence collection, if appropriate. They will also link students with on-campus support, information, and advocacy services.

OCR determined that first-year and transfer students are required to complete a mandatory on-line training program about sexual assault/violence and harassment, relationship violence, and

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<sup>15</sup> VIVA serves as a support center for victims of sexual assault/violence and harassment; providing counseling, advocacy services, and referrals to off-campus support resources. For complainants who wish to file a complaint with Buffalo State, VIVA will direct the complainant to the appropriate College office to handle the complaint. VIVA is also responsible for providing training on the subject of sexual harassment, including sexual assault and violence, and for reviewing Buffalo State's policies regarding those matters. The Coordinator of VIVA serves as the on-call contact to assist complainants.

stalking during their first semester at Buffalo State. University Police, VIVA, and the Counseling Center sponsor a training session for graduate students regarding sexual assault/violence and harassment. Employees are trained during a new faculty orientation. OCR determined that in addition to the trainings described above, between 2007 and 2011, various College staff and students attended approximately 28 trainings regarding sexual assault/violence and/or harassment.

### *Morrisville State College*

OCR determined that Morrisville State College (hereinafter Morrisville) has designated its Director of Human Resources and Affirmative Action Officer as its Title IX Coordinator. OCR determined that not all of Morrisville's publications that identify its Title IX Coordinator included the Title IX Coordinator's email address. OCR also determined that Morrisville's nondiscrimination notice in the Student Handbook did not state that inquiries to recipients concerning the application of Title IX and its implementing regulation could be referred to the Title IX Coordinator or to OCR.

OCR determined that Morrisville maintains a "Memorandum of Understanding" with the Madison County Sheriff's Office (Sheriff's Office) that delineates the relationship between the University Police Department and the Sheriff's Office. Morrisville informed OCR that the University Police act as the local police for Morrisville and conduct investigations of sexual assault/violence incidents. If criminal charges are pursued, the University Police may forward investigative reports to the Office of the District Attorney for possible prosecution. If University Police are involved, the Dean will defer to them for the initial investigation. Following the initial investigation, University Police provide the investigative report to the Dean, who reviews it and conducts additional investigation as necessary. If University Police become aware of an off-campus incident, they will pass the information along to the Dean and he will take judicial action; and if it is a criminal matter, the Dean follows the College's published policies.

Morrisville officials informed OCR that it has adopted the SUNY System procedures for complaints of discrimination filed by students and employees, including discrimination based on sex and sexual harassment.<sup>16</sup> OCR determined, however, that in practice Morrisville does not follow the SUNY System procedures for complaints of sexual harassment or sexual assault/violence filed against students.<sup>17</sup> OCR determined that Morrisville uses its "Judicial Affairs Policies" set forth in its Student Handbook to resolve formal complaints filed against students regarding any violations of the Student Code of Conduct, which includes charges alleging sexual misconduct.<sup>18</sup>

OCR further determined that Morrisville's Judicial Affairs Policies: (1) lacked timeframes regarding the investigation and appeal process; (2) provided appeal rights only to the accused;

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<sup>16</sup> OCR determined that Morrisville maintains additional policies regarding "sexual harassment" in the College's Faculty and Staff Handbook, and "sexual misconduct" in the Student Handbook, which contain definitions and information about sexual harassment and misconduct, but no grievance procedures.

<sup>17</sup> OCR determined that Morrisville follows the SUNY System procedures for employee complaints of sexual harassment; complaints of sexual assault/violence are reported to the local police department.

<sup>18</sup> Sexual misconduct is defined as forcible rape, acquaintance/date rape, sexual abuse, sexual harassment, and sodomy.

and (3) did not state that Morrisville would take steps to prevent further harassment and remedy its effects, as appropriate. None of the published procedures contained information stating where or how students or employees may file complaints against employees alleging discrimination based on sex, including sexual harassment. Additionally, Morrisville did not have procedures to address complaints against third parties.

OCR reviewed 34 complaints of sexual harassment that were filed with Morrisville between academic years 2007-2008 and 2010-2011. OCR had concerns with Morrisville's failure to: (1) respond promptly and effectively when placed on notice of allegations of sexual harassment after learning that the complainant did not wish to move forward on the complaint, including taking interim measures to address the alleged harassment and/or determining whether these allegations were part of a broader pattern of harassment; (2) promptly investigate allegations of sexual harassment; (3) use the preponderance of the evidence standard to investigate allegations of sexual harassment; and (4) provide written notice of the outcome of an investigation to the complainant.

OCR conducted an on-site visit to Morrisville, at which time it held publicized walk-in hours and conducted a focus group with students to provide students and others in the campus community with an opportunity to share their experiences pertaining to sexual harassment and assault/violence and Morrisville's complaint process. A member of the student government described his experience with filing a complaint of "male-on-male" harassment, which he believed was handled quickly and well. The focus group participants did not identify any climate issues with respect to sexual harassment and/or assault/violence. Students informed OCR that Morrisville publicizes additional information regarding sexual harassment and/or assault/violence by means of "flow charts" posted around the campus about Morrisville's procedures.

OCR determined that Morrisville's Student Health Center provides medical and counseling services to students affected by sexual misconduct and/or assault/violence.<sup>19</sup> Additionally, the counselors may serve as advocates for students during the Judicial Board process. OCR also determined that the University Police serve as a referral source to and from the Student Health Center for complaints of sexual misconduct and/or assault/violence.

OCR determined that during orientation for first-year students, Morrisville students perform skits entitled "Life on Campus" to educate incoming students about sexual harassment and/or assault/violence. At orientation, students also receive literature about the College's procedures, emergency contacts on campus, and information about community resources and the New York State Crime Victim's Board. OCR further determined that prior to the start of each academic year, Judicial Affairs staff provide training to residential directors and advisors on responding to incidents of sexual harassment and/or assault/violence; including training on Morrisville's procedures and on and off-campus resources. OCR also determined that the Dean of Students and Chief of Police speak periodically with groups of student athletes. OCR determined that

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<sup>19</sup> Morrisville staff informed OCR that while the counselors at the Health Center were primarily for students, they also provide employees with referrals to counseling. Additionally, Morrisville's Employee Assistance Program refers employees to local community resources.

Morrisville provided sexual harassment training to employees in March 2008, February 2009, and June 2011.

Morrisville partners with the local rape crisis center, Liberty Resources Victims of Violence Program (Liberty Resources), located in Oneida. Liberty Resources provides dwelling, crisis, and short-term counseling to those who complain of sexual assault/violence; including students or employees of Morrisville. The University Police will contact Liberty Resources if counselors at the Student Health Center are unavailable or away, since Liberty Resources is open 24-hours a day, 7 days a week. The University Police and counselors at the Student Health Center provide those who complain of sexual assault/violence with emergency contact information for support agencies including Liberty Resources. On an ongoing basis, Liberty Resources also provides on-campus training to Morrisville staff and students about sexual assault/violence, sets up a table at Morrisville, and distributes literature.

### *SUNY at New Paltz*

Before the commencement of OCR's investigation, SUNY at New Paltz (hereinafter New Paltz) had three designated Title IX Coordinators: the Dean of Students (the Dean); the Affirmative Action Officer; and the Chief of Campus Police. In fall 2011, during the course of OCR's investigation, New Paltz's Associate Vice President for Student Affairs took over for the aforementioned individuals and served as the Interim Title IX Coordinator. On or around June 18, 2012, New Paltz hired a permanent Title IX Coordinator; however, not all of New Paltz's publications that identify its Title IX Coordinator included the new Title IX Coordinator's name or title.

New Paltz did not use a consistent nondiscrimination notice across its publications; its Workplace Violence Prevention and Procedure did not include a nondiscrimination notice prohibiting discrimination on the basis of sex; and none of New Paltz's nondiscrimination notices stated that inquiries to recipients concerning the application of Title IX and its implementing regulation could be referred to the Title IX Coordinator or to OCR.

New Paltz has a "Memorandum of Understanding" with the Town of New Paltz Police Department (NPPD) that outlines the relationship between New Paltz and the NPPD. New Paltz informed OCR that if a sexual assault/violence complaint is being investigated by University police, the NPPD will not investigate the incident. If the local District Attorney's Office is involved, the University police would forward the results of its investigation to that office. New Paltz informed OCR that it also has a memorandum of understanding with Kingston Hospital, located in Ulster, New York, where those complaining of sexual assault/violence can be brought immediately by University police or others to be examined by a SANE or SAFE staff member.

New Paltz does not utilize the SUNY System procedures for sexual harassment complaints against students<sup>20</sup>, including sexual assault/violence; rather, New Paltz uses procedures outlined in the Campus Regulations (the Regulations).<sup>21</sup>

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<sup>20</sup> OCR determined that under the Regulations, complaints against employees are handled under the SUNY System procedures.

The Regulations: (1) only afforded the complainant the right “to question the accused and all witnesses,” while the accused was also expressly afforded the right to “present evidence;” (2) indicated that the parties, rather than New Paltz, had the burden of providing evidence and witnesses for an investigation; (3) required that only the accused receive *written* notice of the outcome of an investigation; (4) provided only the accused with a timeframe within which he/she must be provided with notice of the outcome of a complaint; (5) required notice of outcome to the complainant only in cases involving violence and/or sexual assault; (6) lacked timeframes regarding the investigation and appeal process; and (7) stated that the accused may request a copy of the hearing transcript, but were silent as to whether the complainant may request a copy. OCR further determined that the Regulations include a 90-day time limit on filing a complaint. Additionally, OCR determined that none of New Paltz’s procedures addressed complaints against third parties.

OCR reviewed 33 complaints of sexual harassment, including sexual assault/violence, made between academic years 2007-2008 and 2010-2011. OCR had concerns with New Paltz’s failure to: (1) provide notice of or the opportunity for a complainant to appeal a determination, while providing that right to the accused; (2) respond promptly and effectively when placed on notice of allegations of sexual harassment after learning that the complainant wished to have the complaint remain confidential, including determining whether these allegations were part of a broader pattern of harassment; (3) generally respond promptly and effectively to allegations of sexual harassment; (4) indicate that mediation is not an appropriate forum for allegations of sexual assault/violence; and (5) take steps to prevent the recurrence of harassment, including providing the accused with appropriate training.

While visiting the New Paltz campus, OCR conducted multiple focus group meetings with groups of students. OCR also held publicized office hour sessions to provide students and other community members with an opportunity to comment on the University’s implementation of its sexual harassment policies and procedures. The students generally expressed satisfaction with how New Paltz responds to complaints of, and educates students about, sexual harassment and sexual assault/violence. Some students reported that they felt that New Paltz could do more to educate upper class students and/or male students, in particular, regarding sexual assault/violence while drinking off-campus.

New Paltz’s Psychological Counseling Center provides individual and group counseling and psychiatric consultations to any student who is affected by sexual misconduct. The Psychological Counseling Center also oversees Oasis (a student-staffed counseling and crisis intervention center and telephone hotline) and Haven (a peer counseling program that offers confidential telephone and walk-in counseling and education to students who complain of, or who are concerned about, rape and other unwanted sexual experiences). OCR determined that both Oasis and Haven are open daily for walk-ins from 8:00 p.m. until 1:00 a.m.; in addition, Haven operates a 24-hour hotline. Counselors and student staff at the Psychological Counseling Center, Oasis, and Haven provide information on rights and reporting options; and will assist students with arranging academic, housing, medical, and other accommodations as needed. They also routinely refer students to the University police and the Dean of Students so the students can

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<sup>21</sup> During the course of OCR’s investigation, New Paltz revised the Regulations, effective August 2011; the identified compliance concerns occurred even after the revisions.



discuss criminal and/or campus judicial charges. Moreover, the University police staff includes a female officer who is the primary contact whenever a complaint of sexual assault/violence is received. The female officer is also available to accompany a complainant to the local hospital where a “SANE” (sexual assault nurse examiner) or “SAFE” (sexual assault friendly examiner) is available to conduct a medical examination.

OCR determined that during summer orientation, all first-year students complete a training program about sexual assault/violence and harassment, relationship violence, and stalking. OCR found that the Director of Residence Life and other administrators lead numerous programs focused on preventing sexual assault/violence; including the Rape Aggression Defense (RAD) program, where female students are trained in self-defense techniques. Moreover, a group called Safe Campus Outreach Prevention and Education (SCOPE) engages in outreach by distributing pens, pins, and pocket cards containing information about sexual assault/violence. In addition, OCR found that the Psychological Counseling Center puts out posters and other materials to make students aware of support services available at Oasis and Haven. OCR determined that employees receive sexual harassment training during a new faculty orientation. OCR also found that the Human Resources Department conducts specific employee-focused trainings in sexual harassment and assault/violence throughout the academic year. In addition, New Paltz sponsors an event each year entitled “Take Back the Night” that raises awareness about sexual assault/violence issues. The Psychological Counseling Center leads an event for students called the “Tunnel of Oppression,” consisting of a series of interactive representations of multiple forms of oppression and social injustice, including sexual assault/violence, and which students described as “emotionally intense”.

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Based on the information described above, OCR found the following compliance concerns:

**Title IX Coordinators and Notices of Nondiscrimination**

OCR determined that SUNY and the individual campuses investigated by OCR did not adequately notify students and employees of how to contact the employees designated to coordinate their efforts to comply with Title IX, as required by the regulation implementing Title IX, at 34 C.F.R. §106.8(a). OCR’s investigation revealed that although SUNY hired and designated an employee to serve as its Title IX Coordinator at the system-level after the start of OCR’s investigation, it did not notify students and employees of the name or title, office address, and telephone number of the designated Title IX Coordinator. With respect to the designated Title IX Coordinators at the four campuses OCR reviewed: not all of SUNY Albany’s publications that identified its Title IX Coordinator identified the Title IX Coordinator’s office address; the Buffalo State procedures, as written, did not state that the Interim Senior Advisor served as the Title IX Coordinator; and not all of New Paltz’s publications that identified its Title IX Coordinator included the Title IX Coordinator’s name or title.

OCR also determined that SUNY and the four individual campuses investigated by OCR did not fully comply with the Title IX requirement, at 34 C.F.R. § 106.9, relating to the publication of notices of nondiscrimination in announcements, bulletins, catalogs, and application forms made

available or used to recruit students or employees. These notices must state that the recipient does not discriminate on the basis of sex in the education programs or activities it operates; that the prohibition against discrimination extends to employment; and that inquiries to recipients concerning the application of Title IX and its implementing regulation may be referred to the Title IX coordinator or to OCR. OCR's investigation revealed that there were no notices of non-discrimination required by Title IX in any of the reports or publications posted on-line for the SUNY System, nor did SUNY provide any information to OCR to support that non-discrimination notices appeared in any system-wide printed publications or applications. The nondiscrimination notice in Morrisville's Student Handbook, and Buffalo's and New Paltz's nondiscrimination notices, did not state that inquiries to recipients concerning the application of Title IX and its implementing regulation may be referred to the Title IX Coordinator or to OCR. The nondiscrimination notice located in SUNY Albany's *President's Statement* did not state that the prohibition against discrimination extended to employment; SUNY Albany's Undergraduate and Graduate Bulletins did not contain an explicit statement that SUNY Albany does not discriminate on the basis of sex in the education programs or activities it operates; New Paltz' Workplace Violence Prevention Procedure did not include a nondiscrimination notice prohibiting discrimination on the basis of sex; and, the nondiscrimination notice was not available in Buffalo State's Undergraduate or Graduate Catalogues, nor was it available in the Undergraduate Viewbook.

### **Grievance Procedures**

OCR determined that SUNY and the four individual campuses investigated by OCR did not fully comply with Title IX's requirement, at 34 C.F.R. § 106.9(a), that universities adopt grievance procedures that provide for the prompt and equitable resolution of complaints of sexual harassment, including sexual assault/violence. SUNY has committed to revising the SUNY System grievance procedures, as well as the individual campus procedures, addressing complaints alleging discrimination on the basis of sex (including sexual harassment and sexual assault/violence) to ensure that these comply with the requirements of Title IX. These will include complaints alleging sex discrimination by students, employees and third parties.

SUNY System Procedures. OCR determined that the current SUNY System Procedures, as written, do not provide for a prompt and equitable resolution of complaints of sex discrimination, as required by Title IX. These procedures apply to all campuses within the SUNY System, unless the campus has made application for an exception, and apply to complaints of discrimination by students and employees. The current procedures: (1) do not provide for the application of the procedures to complaints of discrimination or harassment carried out by third parties; and (2) do not include an assurance that SUNY will take steps to prevent further harassment and correct its discriminatory effects, as appropriate. Additionally, OCR noted that the SUNY System procedures do not: (1) include any protections against retaliation; (2) provide any examples of harassing conduct; (3) include any definition of sexual assault/violence (although the procedures include a definition of sexual harassment); (4) state that mediation of sexual assault complaints is prohibited, as recommended by OCR's Dear Colleague Letter on Sexual Violence; (5) address interim measures; or (6) include an assurance that the recipient will ensure that complainants are aware of their Title IX rights and available resources. OCR further determined that while the SUNY System procedures state that a

responsible employee must immediately report a complaint of sexual harassment after receiving such a complaint, the procedures do not state that the employee must report sexual harassment if observed first-hand, or learned about in some other way.

SUNY Albany. SUNY Albany does not utilize the SUNY System grievance procedures. OCR determined that in practice, SUNY Albany's Complaint Procedures apply mainly to complaints against employees and not to complaints against students. Complaints of sexual harassment or assault/violence against students are governed by SUNY Albany's disciplinary procedures, which are outlined in a document entitled "Community Rights and Responsibilities" (the CRR). SUNY Albany's Complaint Procedures do not explicitly state this, nor do they reference the CRR. Accordingly, SUNY Albany does not provide adequate notice for students of the applicable procedures for student complaints, including where CRR complaints may be filed. With respect to complaints of discrimination on the basis of sex filed against employees (or complaints of different treatment on the basis of sex filed against students), OCR determined that SUNY Albany's Complaint Procedures (1) did not discuss interim measures with the complainant; (2) as written, the designated timeframes for investigating a complaint were not prompt; and (3) the procedures did not state that SUNY Albany would take steps to prevent further harassment and remedy its effects, as appropriate. Further, OCR determined that the CRR procedures for complaints of sexual harassment or assault/violence against students do not provide for the prompt and equitable resolution of complaints because: (1) the CRR does not always require SUNY Albany to conduct a full, independent investigation of a complaint; (2) only the accused student receives written notice of a hearing at least five calendar days prior to the hearing; (3) only the complainant receives notice of the outcome of a hearing in a timely fashion; (4) the CRR does not provide timeframes for the disciplinary process; and, (5) the CRR does not state that SUNY Albany will take steps to prevent further harassment and remedy its effects, as appropriate. Additionally, OCR determined that SUNY Albany does not have procedures to address complaints against third parties.

Buffalo State. OCR determined that despite the assertions in many of its published materials, Buffalo State does not follow the SUNY System procedures in practice regarding complaints against students and employees. Instead, OCR determined that Buffalo State has developed its own procedures. Because Buffalo State's published materials regarding sexual harassment do not include this information, OCR determined that students and employees are not properly informed of where to file such complaints. Buffalo State's Equity and Campus Diversity Office (ECDO) or the Human Resources Management Department (HRMD) handled complaints filed against employees or filed by employees generally alleging discrimination on the basis of sex or alleging sexual harassment. The grievance procedures followed by the ECDO and HRMD do not specify whether the arbitrator should use the preponderance of the evidence standard in investigating allegations of sexual harassment. The procedures lacked timeframes, and the complainant was not a party to the disciplinary grievance procedure under the procedures; therefore, although the respondent is permitted to appeal the arbitrator's award, present evidence, or be notified of the determination in writing, the complainant did not have such rights. OCR determined that Buffalo State's procedures do not provide for the prompt and equitable resolution of complaints of peer sexual harassment because: (1) the procedures used by the Office of Judicial Affairs lack timeframes regarding the investigation of a complaint; (2) provide appeal rights only to the accused; (3) indicate that the parties, rather than Buffalo State,

have the burden of providing evidence and witnesses for an investigation; and (4) do not address third-party complaints. Additionally, OCR determined that the Office of Judicial Affairs procedures require complaints to be filed no later than the end of the semester after the incident occurred. Buffalo State's failure to respond to complaints filed after this time period may violate its obligations to take immediate and effective corrective action reasonably calculated to stop the harassment, prevent its recurrence and, as appropriate, remedy its effects.

Morrisville. OCR determined that Morrisville's Judicial Affairs Policies, which govern complaints against students, do not provide for the prompt and equitable resolution of student complaints of sexual harassment because the procedures: (1) lack timeframes regarding the investigation and appeal process; (2) provide appeal rights only to the accused; (3) do not state that Morrisville will take steps to prevent further harassment and remedy its effects, as appropriate; and (4) do not address complaints against third parties.

New Paltz. OCR determined that New Paltz's Regulations, which govern complaints of sexual harassment against students, do not provide for the prompt and equitable resolution of student complaints of sexual harassment because the Regulations: (1) only afford the complainant the right to "question the accused and all witnesses," while the accused is also expressly afforded the right to "present evidence;" (2) indicate that the parties, rather than New Paltz, have the burden of providing evidence and witnesses for an investigation; (3) require that only the accused receive written notice of the outcome of an investigation in all cases, with notice of outcome to the complainant only in cases involving violence and/or sexual assault; (4) provide only the accused with a timeframe within which he/she must be provided with notice of the outcome of a complaint; (5) lack timeframes regarding the investigation and appeal process; and (6) do not address complaints against third parties. OCR further determined that the Regulations state that the accused may request a copy of the hearing transcript, but are silent as to whether the complainant may request a copy. The Regulations also include a 90-day time limit on filing a complaint; however, New Paltz's failure to respond to complaints filed after this time period may violate its obligations to take immediate and effective corrective action reasonably calculated to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects.

### **Campus Climate**

OCR reviewed 159 individual cases of alleged sexual harassment from the four individual campuses visited in this review. Most of these cases involved reports of sexual assault and violence sufficient to create a sexually hostile environment; and in a significant number of cases, the university investigations confirmed the reported allegations of sexual assault and violence. OCR found that deficiencies in the investigations of these complaints resulted in numerous complainants not receiving prompt, timely and/or adequate investigations of their complaints; not receiving notice of the outcomes of their complaints; and not being provided equal opportunities to attend prehearing conferences, to present evidence and witnesses at the hearing, and to file an appeal of the university's determination. OCR also found that the universities sometimes failed to consider providing complainants with interim relief during the pendency of their Title IX investigations.

On September 30, 2013, SUNY agreed to implement the enclosed Agreement, which addresses the above-mentioned compliance concerns.

Specifically, the Agreement requires that SUNY take the following actions:

- Ensure that SUNY's administrative office and each SUNY campus has designated a Title IX Coordinator, and that notice is provided to students and staff of the contact information for the Title IX Coordinator(s).
- The Title IX Coordinator or a qualified designee at each SUNY campus will annually review all formal and informal complaints of discrimination on the basis of sex (including sexual harassment and sexual assault/violence) received in order to identify any patterns or systemic problems; and, will take appropriate action to address any patterns or problems identified. OCR encourages SUNY to require that Title IX Coordinators share the information gathered from this review with Campus-Based Committees.
- Ensure that SUNY's administrative office and SUNY campuses continue to revise and publish notices of nondiscrimination to state that SUNY's administrative office and each SUNY campus, respectively, does not discriminate on the basis of sex in the educational programs or activities which it operates; and to provide contact information for the Title IX Coordinators(s).
- Revise the SUNY System grievance procedures, as well as the individual campus procedures, addressing complaints alleging discrimination on the basis of sex (including sexual harassment and sexual assault/violence) to ensure that these comply with the requirements of Title IX; including using the preponderance of the evidence standard to investigate allegations of sexual harassment.
- Ensure that individual campuses will not delay initiating a sex discrimination investigation waiting for the conclusion of a criminal investigation or criminal proceeding, but will take immediate steps to protect the student in the educational setting. SUNY may, however, temporarily suspend its Title IX fact finding while a law enforcement agency is gathering its evidence.
- Provide interim relief for the complainant, if needed.
- Provide in-person or online training to all staff responsible for recognizing and reporting incidents of sexual harassment, and to people with Title IX compliance and implementation responsibilities.
- Provide campus-wide training in the form of a series of information sessions at each campus to students to ensure that they are aware of the campus' prohibition against sex discrimination (including sexual harassment and sexual assault/violence); how to recognize such sex discrimination and sexual harassment when it occurs; and how and

with whom to report any incidents of sex discrimination (including sexual harassment and sexual assault/violence).

- Ensure that each SUNY campus has procedures to allow sexual assault/violence complaints to be reported 24 hours per day.
- Each SUNY campus will publish an invitation to those who have reported alleged sexual misconduct, or otherwise believe that they have been subjected to sexual misconduct on campus, to provide to the Title IX Coordinator any recommendations regarding ways to improve the effectiveness of the campus' implementation of its sexual harassment policies and procedures.
- Each SUNY campus will conduct annual climate checks to assess the effectiveness of its steps taken to provide for campuses free of sexual harassment and sexual assault/violence. SUNY will report on these checks to OCR in July 2014, 2015, and 2016.
- Seek input from the campus community and use the climate checks to: evaluate and improve the effectiveness of the campus' implementation of its sexual harassment policies and procedures; and inform its future proactive steps to provide a safe environment for students, free of sexual harassment and sexual assault/violence.
- SUNY Albany, New Paltz, Buffalo State, and Morrisville will reexamine all complaints filed during and since academic year 2011-2012, to determine whether each complaint was handled appropriately. SUNY must report to OCR the actions it will take to correct problems identified in the manner in which these four campuses handled those complaints, which may include providing individual remedies for students.

OCR will monitor implementation of the Agreement. If SUNY fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give SUNY written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and 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. This letter is not intended, nor should it be construed, to cover any other matters that may exist or were not specifically discussed herein.

Under the Freedom of Information Act, it may be necessary to release this letter and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, that if released, could constitute an unwarranted invasion of personal privacy.

Thank you for the cooperation extended by you and your staff to resolve the compliance review. Should you have any questions, please contact Coleen Chin, Senior Attorney, at (646) 428-3809 or [coleen.chin@ed.gov](mailto:coleen.chin@ed.gov); David Hensel, Compliance Team Attorney, at (646) 428-3778 or [david.hensel@ed.gov](mailto:david.hensel@ed.gov); or Erin Emery, Compliance Team Leader, at (646) 428-3815 or [erin.emery@ed.gov](mailto:erin.emery@ed.gov).

Sincerely,

/s/

Timothy C.J. Blanchard

Enc.

cc: Andrea Stagg, Esq., SUNY Office of the University Counsel