



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VI  
ARKANSAS  
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TEXAS

December 11, 2014

Dr. R. Gerald Turner, President  
Southern Methodist University  
P.O. Box 750100  
Dallas, TX 75275-0100

Re: OCR Case Nos. 06-11-2126, 06-13-2081, and 06-13-2088  
Southern Methodist University

Dear Dr. Turner:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas office, has completed its investigation of the above-referenced complaints filed against Southern Methodist University (SMU or the University). OCR investigated whether the University failed to promptly and equitably respond to complaints, reports and/or incidents of gender and sexual harassment of which it had notice, including the complainants' reports of gender and sexual harassment and sexual assault, and whether, as a result, students, including the complainants, were subjected to a sexually hostile environment.

OCR is responsible for determining whether recipients of Federal financial assistance from the Department are in compliance with Title IX of the Education Amendments of 1972 (Title IX), 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 education programs and activities. SMU is a recipient of Federal financial assistance from the Department. Therefore, OCR had jurisdictional authority to investigate these complaints pursuant to Title IX.

OCR received three complaints between June 2011 and March 2013 alleging gender harassment, sexual harassment, and/or sexual assault. The complainants alleged that the University failed to promptly and equitably respond to complaints of gender harassment, sexual harassment, and sexual violence of which it had notice, including the students' reports of gender harassment and sexual assault; and, as a result, students, including the students who filed two of the three complaints, were subjected to a hostile environment.

SMU is a private, four-year university. SMU's main campus is located in Dallas, Texas and the University has two smaller campuses located in Taos, New Mexico and Plano, Texas. In academic year 2013-2014, the University had a total student population of 10,929 students, comprising 6,357 undergraduate students and 4,572 graduate students. The student body was approximately 62% percent male and 38% percent female.<sup>1</sup>

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<sup>1</sup> See <http://www.smu.edu/AboutSMU/Facts/CampusProfile>.

OCR's investigation of the three complaints included interviewing all three complainants; interviewing relevant faculty and staff; reviewing all relevant University policies; and reviewing the University's responses to complaints of sexual harassment, sexual assault, and gender harassment from the 2009-2010 through 2011-2012 academic years. OCR conducted on-site visits in 2013. OCR also reviewed information contained in the Department's Office of Postsecondary Education's Campus Safety and Security Data Analysis Cutting Tool, including statistics collected pursuant to the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act ("Clery Act"), 20 U.S.C. § 1092(f); this information is located at <http://ope.ed.gov/security/GetOneInstitutionData.aspx>, and is discussed in more detail below.

OCR determined that the University's notice of nondiscrimination failed to adequately notify students and employees of the University's Title IX Coordinator. OCR also determined the University's prior and current grievance procedures failed to comply with the requirements of Title IX. OCR further concluded that the University did not provide prompt and equitable responses to Complainant 1's complaint of gender harassment or to Complainant 3's report of sexual assault. OCR further determined that for Complainant 3, this failure allowed for the continuation of a hostile environment that limited and denied his access to the education opportunities at the University. On November 16, 2014, the University provided OCR with a signed Resolution Agreement to resolve the complaints and address the identified compliance concerns.

### **Legal Authority**

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

Sexual harassment and gender-based harassment that create a hostile environment are forms 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. Gender-based harassment may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature. Sexual harassment and gender-based harassment of a student create a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the recipient's program.

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<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, which is available at: <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html> (Jan. 19, 2001).

In determining whether this denial or limitation has occurred, OCR 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., professor-student or student-student); the setting and context in which the harassment occurred; whether other incidents have occurred at the college or university; and other relevant factors. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. For example, a single instance of rape is sufficiently severe to create a hostile environment. Title IX protects all students at recipient institutions from sex harassment, including male and female students.

If a recipient knows or reasonably should have known about sexual or gender-based harassment that creates a hostile environment, Title IX requires the recipient to take immediate and appropriate action to investigate or otherwise determine what occurred. If a recipient delays responding to allegations of sexual harassment or responds inappropriately, the recipient's own action may subject the student to a hostile environment. If it does, the recipient will be required to remedy the effects of both the initial sexual harassment and the effects of the recipient's failure to respond promptly and appropriately. 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. If needed, the recipient must take immediate steps to protect the complainant from further harassment prior to the completion of the Title IX investigation/resolution.

Sexual harassment of a student by a faculty member or other recipient employee also violates Title IX. If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out these responsibilities over students engages in sexual or gender-based harassment, the recipient is responsible for the discriminatory conduct. The recipient is, therefore, also responsible for remedying any effects of the harassment on the victim, as well as for ending the harassment and preventing its recurrence.

Additionally, the Title IX regulation, at 34 C.F.R. Section 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX. Title IX does not require a recipient to provide separate grievance procedures for sexual harassment and gender harassment complaints. A recipient may use student disciplinary or other separate procedures for these complaints. However, any procedures used to adjudicate complaints of sexual harassment or gender harassment, including disciplinary proceedings, must afford the complainant a prompt and equitable resolution.

In evaluating whether a recipient's grievance procedures are prompt and equitable, OCR considers whether the procedures provide for:

1. notice to students and employees of the procedures, including where complaints may be filed;

2. application of the procedures to complaints alleging harassment carried out by employees, other students, or third parties;
3. adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
4. designated and reasonably prompt timeframes for the major stages of the complaint process;
5. written notice to the parties of the outcome of the complaint and any appeal; and
6. an assurance that the recipient will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

To ensure that students and employees have a clear understanding of what constitutes sexual violence, the potential consequences for such conduct, and how the recipient processes complaints, the recipient's Title IX grievance procedures should also include the following in writing:

1. a statement of the recipient's jurisdiction over Title IX complaints;
2. adequate definitions of sexual harassment (which includes sexual assault) and an explanation as to when such conduct creates a hostile environment;
3. reporting policies and protocols, including provisions for confidential reporting;
4. identification of the employee or employees responsible for evaluating requests for confidentiality;
5. notice that Title IX prohibits retaliation;
6. notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;
7. notice of available interim measures that may be taken to protect the student in the educational setting;
8. the evidentiary standard that must be used (preponderance of the evidence) in resolving a complaint;
9. notice of potential remedies for students;
10. notice of potential sanctions against perpetrators; and
11. sources of counseling, advocacy and support.

Pending the outcome of an investigation, Title IX requires a recipient to take steps to ensure equal access to its education programs and activities and 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 harassment allegation and should provide the complainant with periodic updates on the status of the investigation. 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. The specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. When taking steps to separate the complainant and the alleged perpetrator, a recipient should minimize the burden on the complainant. Recipients should also check with complainants to ensure that the interim measures are effective and, if ineffective, identify alternatives. 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 with local law enforcement.

To ensure individuals can invoke these grievance procedures without fear of reprisal, Title IX also prohibits the university and others, including students, from retaliating against any individual “for the purpose of interfering with any right or privilege secured by [Title IX],” or because that individual “has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing” under Title IX. Prohibited retaliatory acts include intimidation, threats, coercion, or 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.

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.

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. If the student still requests that his or her name not be disclosed to the accused or that the recipient not investigate or seek action against the accused, the recipient will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the student who reported the harassment. A recipient 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.

Grievance procedures generally may include voluntary informal mechanisms (e.g., mediation) for resolving some types of gender-based 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.

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 gender-based harassment. 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 their 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 professors, university law enforcement unit employees, university administrators, university counselors, general counsel, 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. All persons involved in implementing a recipient's grievance procedures (e.g., Title IX coordinators, investigators and adjudicators) must have training or experience in handling complaints of sexual harassment, and in the recipient's grievance procedures as well as applicable confidentiality requirements. In sexual assault cases in particular, the fact-finder and the decision-maker also should have adequate training or knowledge regarding sexual assault.

The Title IX regulation, at 34 C.F.R. § 106.8(a), specifically requires that each recipient designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under Title IX, including any investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX. This provision further requires that the recipient notify all of its students and employees of the name (or title), and office address and telephone number of the employee(s) so designated. 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 recipient must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sex discrimination (including gender-based harassment) and that they understand how the recipient's grievance procedures operate.

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. OCR policy provides that pursuant to the Title IX regulation, the notification must include the contact information for the Title IX coordinator.

## **Factual Information**

### *A. Title IX Coordinator and Notice of Nondiscrimination*

SMU designated the Associate Vice President for Access and Equity, and Executive Assistant to the President and Director of Institutional Access and Equity (Title IX Coordinator) as its Title IX Coordinator and published her contact information, including her name, title, email and office address, and telephone number on the website for the Office of Institutional Access and Equity. The Title IX Coordinator is responsible for implementing the University's sexual harassment policies and procedures and is charged with the oversight of all Title IX claims. The Title IX Coordinator indicated that she had ten years of experience in her position, was the liaison for the University with Federal enforcement agencies, including OCR and the EEOC, and state agencies, responded to all internal complaints, and was responsible for providing online and in-person training programs on discrimination laws.

SMU's notice of nondiscrimination, published on the University website,<sup>3</sup> identifies the Director of the Office of Institutional Access and Equity (Title IX Coordinator) as being designated, "to handle inquiries regarding the nondiscrimination policies." The notice does not include the office address, email address, or telephone number of the Title IX Coordinator. SMU's current student handbook, as well as earlier versions examined during OCR's investigation, do not include contact information for the Title IX Coordinator.<sup>4</sup>

### *B. Prior Grievance Procedures*

With respect to Title IX grievance procedures, during OCR's investigation, the University identified University Policy 2.5, entitled, "*Sexual Harassment and Consensual Relationships*," as the grievance procedure for students to raise allegations of gender-based or sexual harassment. University Policy 2.5 was in effect until the University adopted Interim Policy 2.5.1 on January 13, 2013 (the revised policy is discussed in more detail below).

University Policy 2.5 governed the University's responses to sexual harassment and consensual relationships and outlined the procedures for filing a complaint alleging sexual harassment, providing two levels of review—an informal proceeding and a formal proceeding. University Policy 2.5 applied to all administrators, faculty, staff, students and visitors at all of SMU's schools and campuses. University Policy 2.5 did not make any reference to gender-based harassment complaints or other types of sex discrimination complaints.

University Policy 2.5 included specific provisions concerning confidentiality. The policy stated: "SMU will investigate allegations of Title IX harassment and take corrective action, if

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<sup>3</sup> <http://www.smu.edu/~link.aspx?id=DCDFC2ABE69247499D9FA3F1E0AC9A8F&z=z>.

<sup>4</sup> The current handbook is posted on the SMU website at: <http://www.smu.edu/StudentAffairs/StudentLife/StudentHandbook>.

appropriate, in those circumstances where the complainant does not wish to pursue these procedures or corrective action. A complainant’s desire for anonymity or inaction may hinder SMU’s investigation of a Title IX harassment complaint.”

Under the informal proceeding, a complainant “may bring an allegation of violation of this policy to an appropriate Administrative Official, who may be any academic or administrative officer such as the Director of Institutional Access and Equity [Title IX Coordinator]; a Vice President; a Dean; the Dean of Student Life; or other director, supervisor, department chair, or head.” The Administrative Official would counsel the complainant regarding his or her rights and encourage, but not require, the complainant to seek first a direct resolution of any concerns by stating objections to the alleged behavior orally or in writing to the alleged offending party. If the “direct approach” referenced above was successful, the matter would be deemed closed and the Administrative Official would notify the Title IX Coordinator of the allegation and outcome. If the direct approach were unsatisfactory, the Administrative Official would direct the complainant to the “Appropriate Authority” to hear the complaint and handle the case. The Administrative Official would consult with the Title IX Coordinator to determine the Appropriate Authority. The Title IX Coordinator could then handle the investigation or select another Appropriate Authority to handle the investigation.

The Appropriate Authority was required to “conduct a preliminary investigation to determine whether there is a reasonable basis for believing that a violation of this Policy has occurred;” would meet separately with the complainant and the accused and obtain signed written statements from each, if possible; and could also meet with any other persons reasonably believed to have knowledge about the allegations and obtain signed written statements from them, if possible. If the Appropriate Authority found a reasonable basis for believing that the policy was violated during the preliminary investigation, the Appropriate Authority would inform the accused and conduct an “administrative review” of the complaint, including: (a) review of the allegations by the complainant; (b) review of the response of the accused to the allegations; (c) responses from others; and (d) negotiations to resolve the matter in a manner reasonably acceptable to both interested parties. If the Appropriate Authority concluded there has been a violation of the policy, the Appropriate Authority “may structure an agreed settlement which includes, but is not limited to, an oral or written warning, a promise not to commit such an abuse again, an oral or written apology, professional counseling for the individual who violated the policy, or any other sanction which appropriately reflects the severity of the violation.” The informal proceeding could be discontinued and formal proceedings initiated: (a) if, after the informal proceedings, the Appropriate Authority concluded that there was no reasonable basis for the complaint; or (b) the complainant wished to end the informal proceeding at any time and requested a formal proceeding. The University policy concerning informal proceedings also stated: “[T]he University reserves the right to act as deemed appropriate at any time with or without written statements and without the agreement of a party or parties.”

University Policy 2.5 stated that formal proceedings would take place in accordance with the following guidelines:

- (a) If a complaint is filed against either a full-time or part-time member of the faculty, a teaching assistant or a student teaching assistant in his/her teaching capacity, or any



- other instructional personnel, the matter shall be submitted to the Faculty Senate Ethics and Tenure Committee for its consideration and action in accordance with its then-current guidelines and procedures;
- (b) If a complaint is filed against a University staff member, the matter shall be submitted to the Vice President, or to the person designated by the Vice President, responsible for the unit employing the accused. A formal hearing may be convened in accordance with the University’s Grievance Policy and Procedures, Policy 2.8, if appropriate.
  - (c) If a complaint is filed against a student, the matter shall be submitted to the University Judicial System for adjudication in accordance with the judicial procedures for alleged violations of the Student Code of Conduct.

OCR examined the formal proceedings submitted to the Faculty Senate Ethics and Tenure Committee (Committee). At the time Complainant 1 filed her complaint with the University in 2010, the Committee did not have any hearing panel procedures in place. The “Southern Methodist University Faculty Senate Ethics and Tenure Committee Hearing Panel Procedures” (hearing procedures) were developed during the University’s response to Complainant 1. The hearing procedure provided for both parties to make a position statement and present witnesses, allowed both parties to have an advisor or counsel present during the hearing, established the evidentiary standard as preponderance of the evidence, ensured the confidentiality of the hearing, and required the committee chair to submit the hearing panel report to the Title IX Coordinator within 10 days of the hearing. While the hearing procedures provided that the panel submit the report to the Title IX Coordinator, as discussed below for Complainant 1, the University President served as the final decision maker for the complaint. Neither the hearing procedures nor University Policy 2.5 indicated that the President was the final decision maker for the complaint. The only mention of this comes in a memorandum from the Title IX Coordinator to the Committee relating to the complaint filed by Complainant 1.

University Policy 2.5 stated that a complainant alleging sexual violence may simultaneously pursue a criminal complaint with the appropriate law enforcement agency and file a complaint for Title IX harassment with the Title IX Coordinator. It went on to state that the University would pursue the Title IX complaint and not delay its handling of a complaint of sexual violence until the commencement or conclusion of a criminal investigation or proceeding; however, “notwithstanding the foregoing, at the request of law enforcement authorities, SMU may temporarily delay its processing of the complaint while law enforcement authorities gather evidence concerning the allegation of sexual assault.”

SMU maintains its own police department, which is a fully empowered law enforcement agency that is certified by the State of Texas. Campus police officers are state-commissioned peace officers with full police authority, duties and responsibilities. In addition to the SMU Police Department, the University Park Police Department has concurrent jurisdiction on the campus and assists the SMU Police Department if needed. OCR interviewed the SMU Chief of Police, who explained that he serves as the point of contact between the SMU Police Department and the University and shares information with Student Affairs concerning criminal investigations.

*C. University’s Responses to Gender Harassment and Sexual Harassment/Violence Complaints.*

University Policy 2.5 governed the University's responses to complaints filed by Complainant 1, Complainant 2 and Complainant 3, as well as other complaints filed during the 2009-2010, 2010-2011, and 2011-2012 academic years that were examined by OCR as part of its investigation.

### **OCR Complaint 06-11-2126**

Complainant 1 alleged that she was subjected to sex/gender-based harassment by an SMU law professor during the spring 2010 semester and that SMU failed to take prompt and effective action to address the harassment, which was sufficient to constitute a hostile environment. Complainant 1 expressed frustration with the process for complaining of gender-based harassment to SMU. She stated that SMU did not interview any of her witnesses or otherwise conduct a reasonable investigation of her allegations. She also stated that the Title IX Coordinator did not provide her clear information on how to appeal the result of the informal proceeding and that the University lacked procedures for a formal proceeding. Complainant 1 informed OCR that she was not informed of the result of actions taken against the professor by the Law School Dean.

Complainant 1 informed OCR that during the spring 2010 semester the Professor (Professor) made gender-based comments to and about her. Specifically, Complainant 1 informed OCR that at both the Professor's home and during class sessions, the Professor referred to her as "prom/beauty queen," "hired bimbo," "just one of those girls who thinks she's so pretty," "bitchy," "catty," "bitch," and "doody blonde," and lectured the class that not paying attention to details was "like looking at a beautiful woman only she's wearing dirty panties."

At the conclusion of the semester, Complainant 1 contacted the SMU Dedman School of Law (Law School) Assistant Dean for Student Affairs (Assistant Dean) about her grade (B-) in the course and language used by the Professor in class, and informed him of her intent to file a formal complaint alleging a violation SMU's sexual harassment policy after she graduated from SMU and completed the bar examination in August 2010. The Title IX Coordinator informed OCR that, prior to Complainant 1 filing her August 30, 2010, complaint, she conducted a preliminary investigation by interviewing the Assistant Dean, the Professor, another professor, and an Administrative Assistant, and as a result "urged [the Professor] to undertake a number of changes in his conduct," discussed SMU's sexual harassment policy with both professors, and provided both professors with a copy of the sexual harassment policy.

In August 2010, Complainant 1 filed a formal written complaint with SMU. The Title IX Coordinator informed OCR that her subsequent investigation into Complainant 1's August 2010 complaint was a continuation of the preliminary investigation, was conducted pursuant to University Policy 2.5, and involved interviewing the Professor a second time and requesting documents from Complainant 1. The Title IX Coordinator did not interview any students other than Complainant 1. In November 2010, the Title IX Coordinator notified Complainant 1 that the evidence did not support a finding that the Professor violated Policy 2.5 and directed Complainant 1 to consult Policy 2.5 for any additional rights of review available to her.

In November 2010, Complainant 1 contacted the Title IX Coordinator and inquired as to how to appeal the decision and in December 2010, the Title IX Coordinator informed Complainant 1

that she needed to submit a request for a formal proceeding to the Title IX Coordinator. Complainant 1 sent the Title IX Coordinator a request to initiate a formal proceeding and two weeks later, the Title IX Coordinator informed Complainant 1 that her complaint had been forwarded to the Chair of the Faculty Senate Ethics and Tenure Committee (Chair), who would notify Complainant 1 when the date of the review was set, and requested that Complainant 1 provide to the Title IX Coordinator all documents that she wanted the Committee to consider and the names of witnesses she wished to testify, their contact information, and a brief summary of their anticipated testimony. In January 2011, the Title IX Coordinator forwarded a memorandum to the Committee concerning the complaint, which set a meeting with the Title IX Coordinator and Associate General Counsel for late January 2011, requested the Committee schedule a date for the formal proceeding within two weeks of the meeting, informed the Committee that following its review it was to make a recommendation on the appropriate outcome to the SMU President, and explained the hearing should be conducted in accordance with Title IX and its regulations. The memorandum was not provided to Complainant 1 and the University did not provide OCR any documentation demonstrating that it informed Complainant 1 that the Committee's determination would only be a recommendation to the SMU President and not a final University determination.

In April 2011, nearly four months after receiving Complainant 1's appeal, the Committee convened a hearing pursuant to the new "Southern Methodist University Faculty Senate Ethics and Tenure Committee Hearing Panel Procedures" and issued its report 10 days later. The Committee concluded the Professor violated University Policy 2.5. Specifically, the Committee found that the Professor made the "prom/beauty queen," "hired bimbo," "bitch/bitchy," "dirty panties," "pretty girl," and "doody blonde" statements as alleged by Complainant 1 and concluded that these remarks "are either sexual or inappropriately sexist in nature" and "are consistent with an overall pattern of offensive, gender-specific statements." The Committee determined that "when the totality of the situation is considered, a reasonable adult female would find [the Professor's] remarks to be a source of discomfort and humiliation" and that the Professor "engaged in sexual harassment in violation of University Policy 2.5." The Committee recommended specific sanctions, including (1) a face-to-face meeting among the Professor, Title IX Coordinator and Law School Dean to "discuss the necessity of adhering to SMU policies;" (2) that the Professor no longer meet with students at his home; (3) a requirement that the Professor participate in a sexual harassment education program prior to the beginning of the fall 2011 semester; and (4) the placing of a copy of the sanctions letter in the Professor's personnel file. The Committee also recommended that the Professor issue a written apology to Complainant 1 and that the content of his class be monitored for three years.

In May 2011, the SMU President informed Complainant 1 that he was "not persuaded that the conduct of [the Professor] described in this report constitutes a violation of SMU Policy 2.5;" however, he stated that he found the conduct to be "objectionable and unprofessional" and directed the Dean of the Law School to take appropriate corrective action to remedy the situation. The President informed OCR that in making this decision, he reviewed the Committee's report and met with the Title IX Coordinator and Vice President of Legal Affairs to discuss the report and the applicable Title IX legal standard.

Later in May 2011, the Law School Dean informed the Professor that he was imposing the sanctions recommended by the Committee, with the exception of the having the Professor issue a formal written apology to Complainant 1 and monitoring the content of the Professor's class sessions for three years.<sup>5</sup> Complainant 1 was not informed of the steps taken by the Law School.

### **OCR Complaint 06-13-2081**

During the course of OCR's investigation of complaint 06-11-2126, OCR Dallas opened a second complaint against SMU (06-13-2081) in March 2013, in which a former SMU employee (Complainant 2) alleged that SMU has a pattern and practice of condoning sexual harassment of and therefore sex discrimination against its female students and of retaliating against anyone who attempts to rectify the situation.<sup>6</sup> Complainant 2 stated that she believed SMU had a pattern of not responding appropriately to complaints of sexual harassment, citing to Clery Act data, news reports about campus sexual assaults, and other anecdotal information about sexual harassment of colleagues and students by a co-worker that Complainant 2 reported to SMU and about a student not knowing how to report sexual assault to campus officials. OCR's investigation revealed that SMU's investigation of the sexual harassment reported by Complainant 2 did not substantiate that the harassment had occurred. OCR considered the other information provided by the Complainant as part of its investigation of the University's responses to sexual harassment and sexual assault complaints and reports.

### **OCR Complaint 06-13-2088**

OCR opened a third complaint against SMU (06-13-2088) in April 2013, in which an SMU student (Complainant 3) alleged that SMU discriminated against him on the basis of sex when the University failed to appropriately respond after he notified the University that he had been sexually assaulted and that the University also failed to protect him from the retaliatory actions of the alleged perpetrator's friends and associates. During the 2012-2013 school year, Complainant 3 was a freshman at SMU and a member of a University scholarship program. Complainant 3 alleged that in the early morning of September 23, 2012, he was sexually assaulted on SMU's campus by another male student (Student 2).

OCR's investigation revealed that on September 23, 2012, Complainant 3 reported the sexual assault to the SMU Police Department and also reported the sexual assault to an SMU staff member who encouraged him to report the sexual assault to the Associate Provost and also informed the Associate Provost (who oversees the scholarship program) of Complainant 3's report. OCR's investigation showed that after receiving notice of the alleged sexual assault, the Associate Provost informed the Dean of Student Life, the Chief of Police and the Provost. The Associate Provost stated that she did not inform the Title IX Coordinator and believed the Dean of Student Life was designated as an Assistant Title IX Coordinator. The evidence indicates that

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<sup>5</sup> OCR notes that when a recipient works to address sex harassment, it must respect the free-speech rights of faculty. Title IX does not regulate the content of speech protected under the U.S. Constitution.

<sup>6</sup> Complainant 2 also alleged to OCR that, as a result of her complaint to SMU about alleged sexual harassment, she was retaliated against when her employment with SMU was terminated. Complainant 2's retaliation allegation was included in a lawsuit she filed in April 2013. Accordingly, because OCR had not investigated or made any compliance determinations regarding the retaliation as of April 2013, OCR closed this allegation.

the Dean of Student Life also met with Complainant 3 after she was made aware of the alleged sexual assault.

SMU officials informed OCR that the SMU Police Department conducted the investigation into Complainant 3's sexual assault allegations and based on the evidence obtained, arrested Student 2 on September 24, 2012. Complainant 3 informed OCR that he was not provided information from the SMU Police Department concerning his Title IX rights and felt that he was encouraged by University officials to only use the student conduct process and not the criminal justice system.

The Chief of Police stated that during the investigation he worked with the Dean of Student Life's office because that office issues no-contact letters, moves housing, changes classes, etc. The Dean of Student Life informed OCR that she was not provided a copy of the police report but was provided a written summary. She also stated that she knew when the investigation started and ended but did not recall receiving any specifics from the police about the investigation. The Chief of Police further stated that the Title IX Coordinator receives the same briefing and that he would "eventually" share the investigation with the Title IX Coordinator if it does not interfere with the criminal investigation and the district attorney was not pursuing prosecution. However, evidence reveals that although the District Attorney dropped the charges, the Chief of Police did not give the Title IX Coordinator a copy of the police report.

The University responded to the initial report of the alleged sexual assault by issuing an interim suspension for Student 2 (three days after the incident) and by referring Complainant 3 to the University's counseling services, advising Complainant 3's roommate that he was not permitted to have any guests in their shared room, having the SMU Chaplain and Chief of Police speak to members of Student 2's fraternity, notifying Complainant 3's professors that he would be unable to take exams or complete coursework, issuing Student 2 a "No Contact Order," changing Complainant 3's housing as he requested and having follow-up meetings with the Associate Provost and Complainant 3 to verify that his professors were accommodating him and to check-in on Complainant 3's well-being. The University did not conduct its own investigation of Complainant 3's sexual assault allegation.

Complainant 3 informed OCR that after the September 23, 2012, incident he was subjected to retaliation by students other than Student 2. Complainant 3 stated that a group of male students asked him and his friends, "Did you know that [fraternity] rapes guys?", and stated that Student 2's fraternity knew who Complainant 3 was and that they wanted to "beat the shit out of" him. Complainant 3 stated that fraternity members would smile at him in the cafeteria, furrow their brows in an exaggerated way, yell across the cafeteria "Hey, [Complainant 3]" and "Look it's [Complainant 3]," and text him invitations to come to the fraternity. Complainant 3 stated that he overheard his roommate saying that he believed Complainant 3 was the victim in the crime alert, that his roommate said to him, "come here, you need a hug," and that his roommate also sent him a picture of a shirtless guy with the caption, "Hi, [Complainant 3]." Complainant 3 also stated that after he changed housing, he received phone calls late at night where someone would call and then hang up, and that someone would knock on his window or door and run away. Complainant 3 did not provide OCR with the names of any witnesses to these incidents; however he stated that he informed the Associate Provost and Officer 1 of these incidents.

SMU confirmed that Complainant 3 had reported these incidents and the Associate Provost and Officer 1 advised Complainant 3 to contact the police dispatch if he felt unsafe. The Associate Provost stated to OCR, that Student 2 was “well-liked” and “powerful in the Greek system” and that Complainant 3 “was not wrong to think that [Student 2] could cause people to dislike him.” Officer 1 said that Complainant 3 was unable to provide specific details about the incidents and that there were no direct threats to Complainant 3 but Complainant 3 “perceived a lot of threats.” The Title IX Coordinator informed OCR that she was aware that Complainant 3 was concerned about Student 2’s friends and fraternity members but she believed the police and the Associate Provost were providing Complainant 3 support. She further confirmed that the University Chaplain spoke with the fraternity involved. However, the University did not investigate any of Complainant 3’s concerns regarding retaliatory harassment by Student 2’s fraternity members or friends.

Both Complainant 3 and Student 2 withdrew from the University. Complainant 3 submitted his withdrawal to the University in November 2012. On November 2, 2012, Student 2 was indicted by a grand jury on sexual assault charges relating to the incident involving Complainant 3. On December 7, 2012, the Dean of Student Life sent a letter to Student 2 following his indictment and confirmed that the interim suspension and the terms of the Criminal Trespass Warning remained in effect until “the matter is resolved.” The District Attorney later dropped the charges against Student 2. The Dean of Student Life and Vice President of Student Affairs stated that Student 2 would be required to re-apply to return to the University and would be required to include a written statement and be interviewed by the Dean of Admissions, Dean of Student Life, and Chief of Police to determine his fitness to return to the University.

### **Additional Incidents of Sexual Harassment, Sexual Assault, and Gender Harassment**

According to the Clery Act statistics outlined in the Department of Education, Office of Postsecondary Education’s Campus Safety and Security Data Analysis Cutting Tool, SMU reported one sex offense - forcible in 2010, two sexual offenses - forcible in 2011 and five sexual offenses - forcible in 2012 on its Main Campus.

OCR reviewed the fifty complaint files SMU produced in response to OCR’s request for all sexual and gender harassment and sexual assault complaints or grievances filed by current or former students during the 2009-2010, 2010-2011, and 2011-2012 school years:

- 15 of the complaints involved allegations of sexual assault or sexual violence;
- 1 of the complaints involved an allegation of gender harassment;
- 22 of the complaints involved allegations of peer-on-peer harassment;
- 16 of the complaints involved allegations concerning harassment by faculty or staff;
- 22 of the complaints had some SMU police involvement; and
- 12 of the complaints resulted in a hearing through the University’s grievance procedure.

OCR observed that some of the files included a “Complaint/Inquiry Record Form,” which identified who filed the complaint, the basis, the individuals involved, and the disposition. Only twelve of the fifty files included these forms. When OCR inquired as to the purpose of this form,

the Associate General Counsel informed OCR that the Title IX Coordinator developed the form to be used in all complaint investigations; however, OCR found that the form was not consistently used. When the file included the form, it was often incomplete. In reviewing the complaints and grievances provided by SMU, OCR observed that the files generally did not include any written complaints or other documents initiating an investigation. In addition, several complaint files were incomplete (e.g., only a single document was included in the file).

The files further revealed that when SMU conducted an investigation, the University did not routinely issue specific findings or maintain witness statements or notes of conversations. Many files did not show that complainants were offered interim remedies in all cases. In several instances involving both complaints against students and against faculty/staff, the files did not indicate that the complaining party was notified of the disposition. In one case, when the University received a report from a student that she had a “quid pro quo” relationship with a male professor, the University took steps to remove the professor from campus; however, the investigative file did not provide any information to indicate whether the student was notified of the disposition or provided any individual remedies, such as counseling or academic support. Further, OCR observed that in several situations of student-on-student harassment, SMU’s response appeared to be limited to talking to the students, referring the students to counseling services, and/or issuing no-contact orders, unless the student filed a complaint with the University Conduct Board.

#### D. *SMU Task Force on Sexual Misconduct Policies and Procedures*

On September 28, 2012, the SMU President created the Task Force on Sexual Misconduct Policies and Procedures to “re-examine the University’s procedures and policies related to sexual misconduct.” The twenty members of the Task Force included the Title IX Coordinator, representatives from Student Affairs and Residence Life, the Director of Counseling, faculty members, undergraduate and graduate students, alumni, SMU trustees, community leaders, and representatives from the Dallas County District Attorney’s office. The Task Force invited feedback from sexual misconduct complainants and respondents who had cases reviewed through the University student conduct process, as well as from campus and external constituents, including law enforcement and community resource agencies. During meetings, the Task Force heard from a variety of students and alumni regarding their perspectives and concerns about the issues of sexual assault and harassment on campus.

The Task Force issued its report and recommendations on April 22, 2013. The Task Force found that SMU has a strong commitment to and procedures for helping students report sexual misconduct and obtain needed assistance and resources in dealing with issues of sexual misconduct. The Report included 41 recommendations concerning the following categories: *sexual misconduct reporting, marketing and communication, Title IX policies, the student conduct process and Student Code of Conduct, accountability, and education and training.*

The Task Force’s recommendations regarding *sexual misconduct reporting* asked the University to provide clear information about internal and external support services available to the campus community in the event of sexual misconduct. The Task Force further recommended that the University explicitly define confidential and non-confidential campus resources and inform students that any sexual misconduct reported to a non-confidential resource must be referred to

the Title IX Coordinator. The recommendations included permitting anonymous reporting of sexual misconduct and allowing students to request anonymity. In addition, the Task Force recommended encouraging complainants to undergo a health assessment by a Sexual Assault Nurse Examiner (SANE); encouraging students to report sexual misconduct to the SMU Police Department or other law enforcement agency; funding after-hours counselors and/or publicizing the Dallas Area Rape Crisis Center; ensuring that adequate resources are provided to the SMU Health Center for specially trained and dedicated sexual assault counselors and to the SMU Police Department for specialized training for police officers; creating a pocket-sized card for all SMU employees with information about how to support students who report sexual misconduct; and creating a checklist for staff members who may meet with a student to outline their rights and the resources available. Similarly, the Task Force's recommendations concerning *marketing and communication* recommended the University develop a comprehensive print and online publication that addresses sexual misconduct prevention and resources and develop an outreach/marketing team through the Health Education Office to coordinate further efforts to publicize information on campus resources and support.

The Task Force's recommendations regarding the University's *Title IX Policies* recommended that Interim University Policy 2.5.1 become permanent policy, the University enhance its efforts to educate students about the Title IX Coordinator's role, and the University ensure that neither the Title IX Coordinator nor the Deputy Title IX Coordinators directly oversee the student conduct process. With regard to the *student conduct process*, the Task Force recommended that the language in the Student Code of Conduct preamble be more accessible and conversational; the SMU sexual misconduct policy be a separate section of the Student Code of Conduct; the Student Code of Conduct indicate that amnesty for alcohol and drug violations may be extended to students in sexual misconduct cases; the policy affirm that the University may serve as the complainant in the conduct process; the University review the definition of consent in other conduct codes and make appropriate changes; and the sexual misconduct policy forbid retaliation against the complainant and others involved in the reporting. Further, the Task Force recommended the University take clear steps to address the possibility of retaliation and adjudicate any retaliatory behavior immediately. The Task Force recommended ensuring that students understand the difference between pursuing a sexual misconduct case through the University conduct process and through a criminal process and their option to pursue both or either process. With regard to hearing boards, the Task Force recommended that the University continue to use hearing boards, and the complainant and the respondent be treated fairly throughout the process. The Task Force further recommended that the University should continue to use the multidisciplinary teams currently in place to determine whether the respondent should be removed from campus and whether any temporary action should be taken to protect the complainant prior to the formal disciplinary hearing.

With regard to *accountability*, the Task Force recommended mobilizing its internal auditing department to monitor compliance with Title IX and OCR's *Dear Colleague* Letter and establishing regular communication between the University and the District Attorney's office, local law enforcement agencies, and local service providers. In *education and training*, the Task Force recommended the student body adopt a new SMU Values Statement; the Residential Commons leadership develop a mandatory citizenship program for first year students; the University review and evaluate all current sexual misconduct prevention education and training



programs; the student leaders' training emphasize their importance as role models in fostering positive values and developing a culture that does not tolerate sexual misconduct; the definitions of consent, sexual misconduct and sexual assault be reviewed with incoming students during orientation and during other training programs; the University initiate mentorship programs; the University develop a bystander intervention program; and the University educate parents of incoming students.

On May 6, 2013, the SMU President accepted all of the Task Force's recommendations. The Task Force Report and the President's acceptance of the recommendations are both published on the University's website.<sup>7</sup>

#### E. *Revised Grievance Procedures*

During the course of OCR's investigation, SMU revised its Title IX grievance procedures. University Policy 2.5.1, *Interim Title IX Harassment*, replaced the previous policy (Policy 2.5) and became effective January 13, 2013.

SMU provided notice to all students and employees of the revised grievance procedures by publishing University Policy 2.5.1 on its website.<sup>8</sup> The policy is also available on the Office of Institutional Access and Equity website, under the Policies and Procedures subheading.<sup>9</sup> In addition, SMU maintains a page on its website entitled, *Live Responsibly Health & Safety Information & Resources*, which includes specific information concerning sexual misconduct, such as a poster/handout about resources for victims of sexual assault, a link to the revised policies, and the contact information for the Title IX Coordinator.<sup>10</sup>

University Policy 2.5.1 addresses Title IX harassment complaints, including gender-based harassment and sexual assault/sexual violence complaints and applies to complaints alleging discrimination or harassment carried out by students, staff, faculty, applicants, all other members of the SMU community, and visitors participating in the educational activities or programs of the University. The policy provides notice concerning where to file a complaint, and identifies the Title IX Coordinator and four Deputy Title IX Coordinators, along with their names, titles, office addresses, telephone numbers, fax numbers, and email addresses.

University Policy 2.5.1 allows both the complainant and respondent timely access to information used and presented at the hearing; requires that all records of Title IX harassment complaints and the investigation and internal adjudication be maintained by the Office of Institutional Access and Equity; includes assurances that the University will take steps to prevent recurrence of harassment and to correct its discriminatory effects, if appropriate; and includes a range of potential remedies and sanctions. The procedures include definitions of "gender-based harassment," "sex discrimination," "sexual harassment," and "sexual violence," including a non-exhaustive list of examples of impermissible harassment. Further, the procedures address

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<sup>7</sup> <https://sites.smu.edu/dea/LiveResponsibly/PDFs/TaskForceReport.pdf>.

<sup>8</sup> <http://www.smu.edu/IAE/PoliciesandProcedures/2-5-1%20Interim%20Title%20IX%20Harassment>.

<sup>9</sup> <http://smu.edu/aa>.

<sup>10</sup> <http://smu.edu/smunews/liveresponsibly/default.asp>.

confidentiality and notify the complainant that the University will investigate allegations of sexual harassment but that a desire for anonymity may hinder the University's investigation of the complaint.

Pursuant to the revised grievance procedures, the complaint must be reported within 180 calendar days of the date of the act or if the person believes that he or she is being subjected to recurring instances or patterns of Title IX harassment, within 30 days of the date of the last incident. Further, the Title IX Coordinator must interview the complainant and respondent separately within 10 days of receipt of the complaint, conclude her investigation within 20 days of receipt of the complaint, and prepare a written report within 10 days of the conclusion of the investigation. For complaints filed against students, within 10 days of receiving this request, the Office of the Dean of Student Life must refer the complaint to the University Conduct Review Process. The procedures provide timeframes for providing information to the complainant and respondent throughout the hearing; however, the procedures do not indicate that the hearing will be concluded within a certain period of time.

The revised procedures also prohibit retaliation; offer the complainant and respondent equal opportunity to present witnesses and other evidence; use a preponderance of the evidence standard (i.e., it is more likely than not that sexual harassment or violence occurred); allow the investigation to continue even if a criminal investigation or proceeding is pending; provide that the University may take interim steps to protect the students involved; provide for Title IX training for all individuals involved in the hearing process; permit the presence of attorneys or representatives for the complainant and respondent at a hearing; provide for written notice of the outcome to the complainant and respondent; and include an appeal procedure for both parties. The procedures address the "sequencing of criminal investigations of allegations of sexual violence" and provide that the complainant may simultaneously pursue a criminal complaint with the appropriate law enforcement agency and file a complaint for Title IX harassment with the Title IX Coordinator.

The procedures provide that the final decision is subject to the discretionary review of the University President. The President's review includes the power to "take any action deemed appropriate, including reversing, amending, or remanding with instructions" and the power of review is "not limited in any way."

The procedures do not include specific notice that the parties may end the informal process and begin the formal process at any time, do not specifically address conflicts of interest, and do not specifically disallow evidence of past relationships.

#### *F. Training and Outreach*

The Office of Institutional Access and Equity offers two online training tutorials concerning sexual harassment: *Preventing Sexual Harassment Tutorial* and *Preventing Workplace Discrimination Tutorial*. Both trainings are available to faculty, staff, students and members of the public with separate links for individuals to select "faculty," "supervisory," "non-supervisory," "student," or "guest." The *Preventing Sexual Harassment Tutorial* includes training for first-time users and a refresher course. The Title IX Coordinator informed OCR that

she is responsible for the online and in-person training programs on discrimination laws. The University requires that all new employees complete this training.<sup>11</sup>

In addition, the University provides training on sexual misconduct to all incoming students during its new student orientation program. The University currently provides training on sexual misconduct for leaders of all student organizations and, following Complainant 3's notice of the alleged sexual assault during the fall 2012 semester, a staff member from legal affairs and a staff member from student affairs visited all of the fraternities and sororities on campus and discussed harassment and provided examples of prohibited conduct. The SMU Police Department developed a pamphlet to provide to individuals reporting sexual assault or sexual violence, which includes information about their rights under Title IX and resources for counseling and other services.

As noted above, the University established a website, *Live Responsibly, Health & Safety Information & Resources*, which provides a link to University Policy 2.5.1; contact information for campus resources, such as the SMU Police, the Title IX Coordinator, the Office of Psychological Services for Women and Gender Issues, Counseling and Psychiatric Services, the Chaplain's Office, the Office of Institutional Access and Equity, the Office of the Dean of Student Life, the Dallas Area Rape Crisis Center, and a description of the services each provides; contact information for "Giddy-Up," which offers free rides on campus from 9:00 p.m. – 3:00 a.m., and "SMU Rides," which provides service to campus with an SMU ID; information on SMU's Sexual Harassment Assault and Rape Prevention Program (SHARP), which is designed to help students, faculty and staff defend themselves against physical attacks and sexual assault; and multiple pamphlets and posters on what to do in case of sexual assault.

On February 21, 2014, SMU announced the creation of the Judge Elmo B. Hunter Legal Center for Victims of Crimes Against Women at the SMU Dedman School of Law, which will assist victims of domestic violence, sex trafficking, and other crimes against women.

On March 4, 2014, SMU Counsel informed OCR that the Student Senate recently initiated a "Not on My Campus" campaign against sexual assaults in the SMU Community. The student-led movement asks students to sign a pledge to uphold five statements: (1) drunken sex is not consensual; (2) students will step up; (3) students will speak out; (4) students will not be bystanders; and (5) students will not let friends become rape victims. In September 2014, SMU joined a national campaign called "It's On Us," which asks all members of the university community to take responsibility to prevent sexual assault and create an environment in which sexual assault is unacceptable. On October 27, 2014, the SMU Student Senate sponsored an "It's On Us" signing day.

### **ANALYSIS/CONCLUSION**

OCR concluded that the University did not provide a prompt and equitable response to Complainant 1's complaint of gender harassment. While SMU University Policy 2.5 was in place at the time for complaints of sexual harassment, the grievance procedures did not make any

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<sup>11</sup> See <https://www.smu.edu/BusinessFinance/HR/LearningAndDevelopment/TotalOrientationProcess>.

reference to gender-based harassment and were incomplete, as no policy was in place to conduct a formal proceeding at the time Complainant 1 filed her complaint. As a result, the complaint processing was delayed approximately four months while the Faculty Committee drafted the new procedures. Moreover, Complainant 1 was not provided a copy of these procedures or informed that the Committee's decision was only a recommendation to the University President and not a final University decision. OCR notes that SMU ultimately responded to Complainant 1's complaint, held a hearing where both parties were allowed to present evidence, and informed both Complainant 1 and the respondent in writing of the outcome of the hearing and the President's review. OCR also noted that the University took several remedial actions in response to Complainant 1's complaint, including requiring Title IX sexual harassment training for the Professor and placing a letter of reprimand in his employment file; however, Complainant 1 was not notified of the actions taken by the Law School. OCR further determined that the evidence did not support a conclusion that Complainant 1 was subjected to a gender-based hostile environment. The Professor's comments, while offensive to Complainant 1 and "objectionable and unprofessional" in the University's view, were not sufficiently serious to limit Complainant 1's ability to participate in or benefit from the University's education program.

For Complainant 3, the SMU police promptly investigated the assault and arrested Student 2, but the University did not conduct a separate investigation under Title IX and did not make any determination as to whether Complainant 3 was subjected to a sexually hostile environment. OCR found that the University removed and suspended Student 2 from campus and issued him a no-contact letter within three days of receiving notice of the alleged harassment; offered Complainant 3 counseling and a housing change as requested; notified Complainant 3's professors and requested leniency regarding his assignments; and later granted Complainant 3's request for a withdrawal. However, the evidence established that Complainant 3 reported to SMU on multiple occasions that other students were harassing him with threatening and taunting comments, text messages, phone calls and visits to his room, and that the University did not investigate these concerns and instead advised Complainant 3 to contact the police if he felt concerned for his safety. OCR determined that the University did not provide a prompt and equitable response to Complainant 3's complaint under Title IX and that there was sufficient evidence to support a conclusion that Complainant 3 was subjected to a sexually hostile environment as a result of the sexual assault and that he continued to be subjected to a sexually hostile environment as a result of the University's inadequate response to his reports of retaliatory harassment.

Additionally, in reviewing SMU's handling of other complaints filed under the former grievance procedure in the 2009-2010, 2010-2011 and 2011-2012 academic years, OCR observed that the file documentation did not support that the University provided prompt and equitable responses to the harassment complaints and reports. Many complaint files were incomplete, lacking information about whether and how the University responded to the complaints and reports. The files generally did not include the written complaint or other documents initiating an investigation. Files did not include the University's specific findings or indicate that the University provided notice of the outcome of its investigation to both parties or offered interim remedies to complainants. Files also lacked documentation of witness statements or interview notes.

OCR also determined that neither former University Policy 2.5 nor revised interim University Policy 2.5.1 conform to Title IX requirements. While SMU had grievance procedures for complaints of sexual harassment in University Policy 2.5, OCR found that the grievance procedures did not make any reference to gender-based harassment or other forms of sex discrimination. In addition, the procedures were incomplete, as no policy was in place to conduct a formal proceeding at the time Complainant 1 filed her complaint.

OCR concluded that the University's current grievance procedures (Policy 2.5.1) address Title IX harassment complaints, including gender-based harassment and sexual assault/sexual violence complaints. University Policy 2.5.1 provides for many of the procedures outlined in OCR's *Dear Colleague* Letter to ensure the grievance procedures are prompt and equitable. Specifically, the policy provides notice to students and employees of the procedures and where complaints may be filed, applies to harassment carried out by employees, students or third parties, provides for written notice to the parties of the outcome of the complaint and any appeal, provides adequate definitions of sexual harassment, prohibits retaliation, and sets the evidentiary standard as preponderance of the evidence. However, University Policy 2.5.1 gives the President unrestricted authority to review all student conduct decisions, without any reference to Title IX or assurances that the review will comply with Title IX. In addition, the procedures do not provide reasonably designated timeframes for the appeal process, which is a major stage in the complaint process, or include specific notice that the parties may end the informal process and begin the formal process at any time. The procedures also do not specifically address conflicts of interest or specifically disallow evidence of past relationships.

Based on the above, OCR concluded that that SMU did not provide prompt and equitable responses to gender-based harassment and sexual harassment/sexual violence complaints, reports and/or other incidents of which it had notice, and thereby SMU failed to comply with the Title IX regulation, at 34 C.F.R. §§ 106.9(a) and 106.31.

OCR also found that while SMU has designated an employee, the Associate Vice President for Access and Equity, as its Title IX Coordinator, the University's notice of nondiscrimination does not include contact information for its Title IX Coordinator. Thus, OCR concluded that the University failed to properly notify students and employees of the Title IX Coordinator pursuant to 34 C.F.R. § 106.9(a).

As noted above, the University requested to resolve these complaint investigations with a voluntary resolution agreement. The provisions of the resolution agreement are aligned with the complaint allegations, the information obtained during the investigation, and are consistent with applicable regulations.

Under the terms of the enclosed voluntary Agreement, the University will:

- Revise and, following OCR review and approval, implement and publicize its Title IX grievance procedures related to sex discrimination, including sexual harassment, gender harassment, and sexual violence, to comply with Title IX. The University's revisions will clearly state the applicable timeframes for investigation and appeal of sexual harassment complaints, require that the President's review of any decisions comply with Title IX and

make clear that parties are aware that they may end informal resolution and proceed to a formal proceeding at any time;

- Notify students and employees of the University’s Title IX Coordinators and their contact information in its nondiscrimination notice, as well as in other publications and notices;
- Develop and implement a comprehensive system for tracking reports, investigations, interim measures, and resolutions that may constitute sexual or gender-based harassment;
- Develop and implement a procedure for sharing information between the SMU Police Department and the Title IX Coordinator;
- Implement the Task Force Recommendations as specified and report to OCR on their ongoing implementation;<sup>12</sup>
- Train staff and students on the revised University policies and procedures to ensure that the University community understands the University’s obligations under Title IX and provide instruction on recognizing and appropriately addressing allegations and complaints of sex discrimination, including an explanation of the differences between sexual harassment, gender harassment, and sexual assault;
- Develop additional resources for students to advise them of their rights pursuant to Title IX, including a new brochure for students that will contain an explanation about what constitutes sex discrimination and gender discrimination, including harassment, and information regarding the University’s grievance procedures;
- Conduct annual climate assessments of the effectiveness of steps taken pursuant to this Agreement, including the Task Force Recommendations incorporated into the Agreement, and use the information gathered during these climate checks to inform future proactive steps to be taken by the University to provide for a safe and supportive educational environment;
- Review the sexual harassment/violence complaints filed and reports made of sexual harassment/violence during and since academic year 2012-2013 to determine whether the University investigated each complaint or report promptly and equitably and, following OCR review and approval of the University’s proposed response, take action to address any problems identified in the manner in which these complaints were handled; and,
- Provide to Complainant 3 reimbursement for all University-related expenses for the fall 2012 semester and counseling expenses incurred from September 23, 2012 through the date of execution of the Resolution Agreement.

The University entered into the Agreement on November 16, 2014. OCR will monitor implementation of the Agreement. If the University 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 the University written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

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<sup>12</sup> The Agreement does not require implementation of all of the Task Force Recommendations. For example, the Task Force recommended that students continue to serve on hearing boards, including for sexual misconduct cases. Although Title IX does not dictate the membership of a hearing board, OCR discourages schools from allowing students to serve on hearing boards in cases involving allegations of sexual violence. See <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

This concludes OCR's investigation of the complaint and should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The complainants may file a private suit in Federal court whether or not OCR finds a violation.

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.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the harmed individual may file a complaint alleging such treatment. A complainant may have the right to file a private suit in Federal court, whether or not OCR finds a violation.

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

We appreciate the University's cooperation during the preliminary investigation and resolution of the complaints. If you have any questions about this letter or OCR's resolution of this case, please contact Emily Babb, the attorney assigned to the complaint, at (214) 661-9677, or Justin T. Evans, Supervisory Attorney, at (214) 661-9600. We look forward to receiving the University's monitoring report by March 2, 2015.

Sincerely,

/s/

Taylor D. August  
Regional Director