



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
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November 2, 2017

Katherine S. Conway-Turner
President
Buffalo State, State University of New York
Cleveland Hall 517
1300 Elmwood Avenue
Buffalo, New York 14222

Re: Case No. 02-15-2085
Buffalo State, State University of New York

Dear President Conway-Turner:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaint filed against Buffalo State, State University of New York (the College). The complainant alleged that the College discriminated against her, on the basis of her sex, by failing to respond promptly and equitably to the report of sexual assault that she made on [REDACTED (b)(7)(C)] and that as a result, she was subjected to a sexually hostile environment.

OCR is responsible for enforcing 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 U.S. Department of Education (the Department). The College is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title IX.

Applicable Legal Standards:

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. 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.

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. Pending the outcome of an investigation, Title IX requires a recipient to take steps to avoid 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. Interim measures are individualized services offered as appropriate to either or both parties involved in the alleged incident of sexual misconduct, prior to an investigation or while an investigation is pending. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations.

Under Title IX, a recipient must process all complaints of sexual violence, regardless of where the conduct occurred, to determine whether the conduct occurred in the context of an education program or activity or had continuing effects on campus or in an off-campus education program or activity. Further, once a school is on notice of off-campus sexual violence against a student, it must assess whether there are any continuing effects on campus or in an off-campus education program or activity that are creating or contributing to a hostile environment; and if so, address that hostile environment in the same manner in which it would address a hostile environment created by on-campus misconduct.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires that a recipient adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action prohibited by the regulation implementing Title IX. 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, that is easily understood, easily located, and widely distributed; (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 equal opportunity to present witnesses and evidence; (d) designated and reasonably prompt timeframes for major stages of the grievance process; (e) notice to parties of the outcome; and, (f) an assurance that the institution will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate. Title IX does not require a college to provide separate grievance procedures for sexual harassment complaints; however, a college's grievance procedures for handling discrimination complaints must comply with the prompt and equitable requirements of Title IX.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), also requires each recipient to designate at least one employee to coordinate its efforts to comply with and carry out its

responsibilities under the regulation implementing Title IX, including any investigation of any complaint communicated to the recipient alleging any actions that would be prohibited by the regulation implementing Title IX. It also requires each recipient to notify all of its students and employees of the name, office address and telephone number of the employee or employees so designated.

The regulation implementing Title IX, at 34 C.F.R. § 106.9(a), further requires each recipient to implement specific and continuing steps to notify applicants for admission and employment, students, employees, sources of referral of applicants for admission and employment, 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 educational program or activity which it operates, and that it is required by Title IX not to discriminate in such a manner. Such notification shall state at least that the requirement not to discriminate in the education program or activity extends to employment therein, and to admission thereto, unless Subpart C does not apply to the recipient; and, that inquiries concerning the application of Title IX to such recipient may be referred to the employee designated pursuant to 34 C.F.R. § 106.8, or to OCR's Assistant Secretary. The regulation implementing Title IX, at 34 C.F.R. § 106.9(b), requires each recipient to include the notice of non-discrimination in each announcement, bulletin, catalog, or application form which it makes available to the types of persons described in 34 C.F.R. § 106.9(a), or which is otherwise used in connection with the recruitment of students or employees.

Procedural Background:

The State University of New York (SUNY) System was established by the New York State legislature in 1948. It has the largest comprehensive system of universities, colleges and community colleges in the United States; with a total of approximately 1.3 million students enrolled during academic year 2015-2016, spanning 64 individual campuses across the state. SUNY's leadership structure consists of a Chancellor, Board of Trustees, System Administration Senior Staff, and individual Campus Presidents. SUNY's administrative offices are located in Albany, New York. Enrollment across the SUNY System is approximately 54% women and 46% men.

The College is part of the SUNY System, but is independently governed by the College's President, the Buffalo State College Foundation, and the College's Council. For academic year 2014-2015, the College had an enrollment of approximately 9,316 undergraduate and 1,176 graduate students, for a total of approximately 10,500 students. Women made up approximately 57% of the enrollment and men made up approximately 43% of the enrollment.

On December 23, 2010, OCR initiated a compliance review of the SUNY System (Case No. 02-11-6001). That compliance review examined SUNY's handling of complaints of sexual assault/violence and sexual harassment under its various procedures to determine if SUNY had responded promptly and equitably, especially with regard to complaints of sexual assault/violence. Although the review concerned the entire SUNY System, OCR focused on four campuses, including the College, where OCR conducted focus group meetings, interviewed

various staff, reviewed grievance procedures, and reviewed sexual assault and harassment complaints over a period of 4 years.

On October 31, 2013, after identifying several compliance issues, OCR reached an agreement with SUNY (the Agreement). SUNY agreed that it and each of its 29 state-operated campuses, including the College, would ensure that grievance procedures comply with Title IX requirements and provide Title IX training to appropriate staff and students. Additionally, SUNY agreed to ensure that students and staff at each campus are aware of Title IX's prohibition against sex discrimination, how to recognize sex discrimination when it occurs, and how to report incidents. Further, SUNY agreed to ensure that individuals were on-call to notify individuals of counseling and advocacy services, available medical assistance, the option to file criminal charges or a complaint with the individual college campus, or both, and safety services (escort services or safe housing). Pursuant to the Agreement, SUNY also agreed that the SUNY System, including the College, would seek input from each campus community, including from past complainants, and conduct periodic assessments of each campus's climate in order to evaluate and improve the effectiveness of the campus's implementation of its sexual harassment policies and procedures, and to inform its future proactive steps to provide a safe environment for students free of sexual harassment and sexual violence. SUNY agreed to provide certification that each campus has continued to revise relevant publications disseminated to students and employees to notify all students and employees of the name and/or title, office address, electronic mail (email) address and telephone number of the person(s) designated to coordinate its efforts to comply with Title IX. Further, SUNY agreed that the SUNY System, including the College, would review annually all formal and informal complaints of discrimination on the basis of sex (including sexual harassment, sexual assault, and sexual violence) in order to identify any patterns or systemic problems, and would take appropriate action to address any patterns or problems identified. The Agreement also required the SUNY System, including the College, to provide training to staff responsible for recognizing and reporting incidents of sexual harassment, and to staff with Title IX compliance and implementation responsibilities.

As one of the state-operated campuses within the SUNY system, the College is covered by the Agreement and subject to its reporting requirements described above. OCR continues to monitor the implementation of the Agreement reached with SUNY, which includes information from the College regarding the reporting requirements described above. Pursuant to the Agreement, the College has provided ongoing reports to OCR to demonstrate compliance. Relevant information from those reporting submissions is provided in the sections that follow, as appropriate.

Factual Information

OCR reviewed documentation that the complainant and the College submitted, including with respect to OCR's monitoring of the Agreement in the compliance review of the SUNY System. OCR also conducted interviews of College personnel.

1. Designation and Notice of the Title IX Coordinator

Pursuant to the Agreement, the College was required to provide certification that it has continued to revise relevant publications disseminated to students and employees to notify all students and employees of the name and/or title, office address, email address and telephone number of the person(s) designated to coordinate its efforts to comply with Title IX. The College submitted documentation to OCR demonstrating that the College has designated a Title IX Coordinator and provided appropriate notice of the College's designated Title IX Coordinator. The College's website contains a "Title IX Compliance Webpage,"¹ which includes the name and/or title, telephone number, office address, and email address for the Title IX Coordinator.²

2. Notice of Non-Discrimination

Pursuant to the Agreement, the College was required to revise and publish its notice of non-discrimination to state that the College does not discriminate on the basis of sex in the educational programs or activities which it operates or in employment (and the notice could include other bases such as race, color, national origin, disability and age). The Agreement required that the notice include a statement that inquiries concerning the application of Title IX and its implementing regulation may be referred to the designated Title IX Coordinator or to OCR, and that the College publish such notices broadly, including on its website, and in its College catalog, student handbook, and application form/website. The College submitted documentation to OCR demonstrating that it has revised and published a notice of non-discrimination. The "Equity and Diversity Webpage"³ on the College's website also contains a link to the notice of non-discrimination.⁴

3. Grievance Procedures

During the course of OCR's monitoring of the Agreement reached with the SUNY System, SUNY revised its grievance procedures and provided copies of the revised procedures to OCR for review and approval. OCR determined that the proposed grievance procedures, known as the "SUNY-Wide Discrimination Complaint Procedure," were prompt and equitable as written. OCR approved the procedures on April 29, 2015. The College adopted the SUNY-Wide Discrimination Complaint Procedure on November 6, 2015. The College's "Equity and Diversity Webpage" includes a link to the grievance procedures.⁵

¹ See <http://equity.buffalostate.edu/title-ix-compliance> (site last visited October 16, 2017).

² See <http://equity.buffalostate.edu/title-ix-compliance> (site last visited October 16, 2017).

³ See <http://equity.buffalostate.edu/> (site last visited October 16, 2017).

⁴ See <http://equity.buffalostate.edu/nondiscrimination-notice-0> (site last visited October 16, 2017).

⁵ See <https://equity.buffalostate.edu/sites/equity.buffalostate.edu/files/uploads/Documents/policies/DiscrimComplaPolfnl.pdf> (site last visited October 16, 2017).

4. Training

Pursuant to the Agreement, the College was required to continue to provide regular in-person or online training to all staff responsible for recognizing and reporting incidents of sexual harassment, and to staff with Title IX compliance and implementation responsibilities, which may include the Title IX Coordinator, any deputy coordinators, residential assistants, and the University Police Department (UPD). The College was required to demonstrate that training was provided by SUNY System Administration and/or by the College, and covered, at a minimum: (1) the grievance procedures; (2) how to recognize and appropriately address allegations and complaints pursuant to Title IX; (3) identifying sex discrimination, sexual harassment, sexual assault, and sexual violence; (4) the College's responsibilities under Title IX to address such allegations; and, (5) the relevant resources available. The training for Title IX Coordinators and designees was also to include instruction on how to conduct and document adequate, reliable, and impartial Title IX investigations. During the training, the College was required to provide copies of a revised notice of non-discrimination and Title IX grievance procedures to all attendees as these became available, or refer them to their location within the publications they already possessed.

Pursuant to the Agreement, the College submitted reports to OCR for a three year period documenting the trainings held at the College during calendar years 2013, 2014 and 2015. OCR determined that as of 2015, the College provided training on addressing allegations of sex discrimination, sexual harassment, sexual assault, and sexual violence; how to recognize and appropriately address allegations and complaints pursuant to Title IX; available resources; and, the College's revised grievance procedures. Additionally, the College provided the required training to the Title IX Coordinator on how to conduct and document adequate, reliable, and impartial Title IX investigations.

5. Complainant's Allegation

During the course of the investigation, OCR reviewed documentation that the complainant, the complainant's advocate from an off-campus crisis services center (the Advocate), and the College submitted. OCR also interviewed College personnel, including the Interim Dean of Students who served as the Director of Campus Judicial Affairs (the Judicial Officer); the Head Coach of the women's athletics team on which the complainant participated (Coach 1); the Head Coach of the men's athletics team of the similar sport (Coach 2); the Athletic Director; UPD officers; and, the Title IX Coordinator.

The complainant alleged that the College failed to respond promptly and equitably to the report of sexual assault that she made on (b)(7)(C); and that as a result, she was subjected to a sexually hostile environment. Specifically, the complainant alleged that the College failed to provide her with an explanation of its Title IX grievance procedures or how to file a complaint; failed to provide her with the interim remedial measures she requested; failed to conduct any investigation or otherwise respond to her report of sexual assault; and, violated her confidentiality when Coach 1 disclosed her reported sexual assault to her team members, as well as to Coach 2.

During academic year 2014-2015, the complainant was enrolled as a (b)(7)(C) at the College and was a member of a women's athletics team. At approximately 1:15 a.m. on (b)(7)(C), the College's Department of Residence Life contacted the UPD to inform them that a student (Student 1) wished to report an incident of alleged sexual assault on behalf of another student [the complainant]. According to the police report, a UPD Officer (Officer 1) arrived at the complainant's dormitory, where he interviewed the complainant and Student 1. The complainant reported that she had been sexually assaulted by another College student who participated on a similar men's athletics team (the respondent) while attending a (b)(7)(C). The complainant reported the details of the incident to Officer 1, including that during the alleged sexual assault, she had sustained (b)(7)(C) (b)(7)(C) which Officer 1 photographed. The complainant and Student 1 also provided the names and other identifying details of several College students who may have witnessed the incident.⁶ Upon the complainant's request, Officer 1 requested an ambulance, which transported the complainant to a local hospital for medical attention. The UPD reported the alleged sexual assault to the Buffalo Police Department (BPD), including the identities of the complainant and the respondent⁷, as the incident had occurred off-campus and was within the BPD's jurisdiction. The BPD interviewed the complainant at the hospital. Shortly thereafter, the complainant left the hospital, and then the College's campus, to stay at her parents' residence.

During the morning of (b)(7)(C), the complainant's mother informed Coach 1 via text message that the complainant had been sexually assaulted, and that the complainant would be at home for several days. The complainant's mother also advised Coach 1 that she and the complainant were concerned that her absences might affect her academics. In response, Coach 1 assured the complainant's mother that "the College would take care of any issues with her classes." After speaking with the complainant's mother on the telephone, Coach 1 immediately notified his supervisor, the Athletic Director, about the complainant's alleged sexual assault, who in turn notified the College's Vice President of Student Affairs (the Vice President).

On or about (b)(7)(C), the Athletic Director called the complainant's mother to express his concern and offer his assistance to the complainant. According to the complainant's mother, during that telephone conversation, she and the complainant requested two interim measures; namely, to excuse the absences the complainant would accrue while at home recovering from the alleged sexual assault, and that the respondent be removed from a course in which the complainant was also enrolled. The Athletic Director stated that he would share this information with relevant College personnel.

In an email message sent on (b)(7)(C) UPD's Chief of Police (the UPD Chief) notified several members of the College's administration of the complainant's report of sexual assault, including the College's Chief Diversity Officer, who also served as the College's designated Title IX Coordinator.⁸ In his email, the UPD Chief explained that the BPD was

⁶ The complainant stated that one witness whom she identified by nickname only (b)(7)(C)
(b)(7)(C)

⁷ The College stated that the UPD was able to ascertain the respondent's identity based upon information that the complainant provided, including the respondent's first name and that they shared a course together.

assisting the complainant, and that the complainant had requested that the College not contact the respondent.

Thereafter, during a meeting on (b)(7)(C) with the Vice President, his direct reports, and the Athletic Director, the UPD notified the Judicial Officer⁹ of the complainant's report of sexual assault. The Athletic Director stated that he informed the Judicial Officer of the interim measures that the complainant's mother had requested on (b)(7)(C) with respect to the complainant's absences and the removal of the respondent from the course. The Judicial Officer stated that she would inform the complainant's professors about her absences, but did not propose any action regarding the complainant's request to remove the respondent from the course. OCR determined that the Judicial Officer did not contact any of the complainant's professors until approximately (b)(7)(C).

On or about (b)(7)(C) another UPD Officer (Officer 2) telephoned the complainant, who stated that she would return to the College's campus within the next few days. Officer 2 informed the complainant of the availability of counseling services at the College; however, the complainant stated that she had already enlisted such services from an off-campus local crisis services center. Officer 2 also informed the complainant that she could contact the Judicial Officer for information about the judicial hearing process, one of the avenues for pursuing a complaint of sexual assault; however, Officer 2 did not specifically inform the complainant that she could alternatively file a complaint with the Title IX Coordinator. The complainant reiterated her concerns about interim measures, namely her absences and the removal of the respondent from the course; however, she told Officer 2 that Coach 1 and the Athletic Director were assisting her with these issues. Officer 2 informed OCR that she did not follow up with any other College personnel regarding these interim measures.

On (b)(7)(C) Coach 1 and the Athletic Director (b)(7)(C) with the (b)(7)(C) to inform the (b)(7)(C) that she (b)(7)(C) (b)(7)(C) as a result of an alleged sexual assault. The complainant asserted that she (b)(7)(C) Coach 1 (b)(7)(C) to (b)(7)(C) that (b)(7)(C) (b)(7)(C) in an (b)(7)(C) and was not (b)(7)(C) as a result, but she did not want (b)(7)(C) that she had allegedly been sexually assaulted. Coach 1 asserted to OCR, however, that during a telephone conversation with the complainant, (b)(7)(C) to generally (b)(7)(C) (b)(7)(C) of the alleged sexual assault. Coach 1 acknowledged that after the (b)(7)(C) several (b)(7)(C) who were present at the (b)(7)(C) during which the alleged sexual assault took place approached him to further discuss what had happened, including (b)(7)(C) that they (b)(7)(C) at the (b)(7)(C). The complainant alleged that Coach 1's continued (b)(7)(C) with (b)(7)(C) of (b)(7)(C) after the (b)(7)(C) on (b)(7)(C) violated her confidentiality.¹⁰ Coach 1 informed OCR that he continued to (b)(7)(C) to (b)(7)(C).

⁸ The College President, Vice President, and the Judicial Officer were among the recipients copied on the email.

⁹ The Dean of Students regularly served as the Deputy Title IX Officer for students; however, because the Dean of Students was on leave at the time that the complainant made her report, the Judicial Officer was serving as the interim Deputy Title IX Officer.

(b)(7)(C) about the details of the incident in response to subsequent questions and concerns from the complainant's mother about the incident.¹¹ Coach 1 additionally asserted that several (b)(7)(C) approached him to discuss their concerns about what had occurred, and that he responded to their concerns by discussing issues related to their safety at the (b)(7)(C).

The complainant also alleged that, without her permission, Coach 1 notified Coach 2 that the complainant had been allegedly sexually assaulted by a member of Coach 2's team. The complainant further asserted that, also without her permission, on or about (b)(7)(C) (b)(7)(C) Coach 2 spoke with (b)(7)(C) (Student 2) who was present at the (b)(7)(C) where the alleged sexual assault occurred. Coach 1 acknowledged telling Coach 2 that there had been an incident of alleged sexual assault involving one of his team members, but denied identifying the complainant. He stated that he notified Coach 2 because the other (b)(7)(C) (b)(7)(C) informed him that members of the men's team, including Student 2, may have been present during the incident. Coach 2 stated that Student 2, and not Coach 1, identified the complainant as the student who had reported the alleged sexual assault. Coach 2 denied speaking with (b)(7)(C).

On (b)(7)(C) the BPD informed the UPD Chief that it had interviewed the complainant (along with her parents) and the respondent, but the BPD determined that there was not sufficient probable cause for an arrest. In an email sent on that same day, the UPD Chief notified College personnel, including the Title IX Coordinator and the Judicial Officer, of the BPD's determination. The UPD did not take any further steps to investigate or otherwise respond to the complainant's report of sexual assault.

The Advocate called the Title IX Coordinator on (b)(7)(C) after not having received a response to a call she and the complainant made to the Title IX Coordinator on (b)(7)(C). The Advocate stated that she introduced herself as the complainant's representative, and informed the Title IX Coordinator of the complainant's concerns regarding her absences and the removal of the respondent from the course, as interim measures. The Title IX Coordinator informed the Advocate that she did not know of the complainant, and that she could not assist her because these issues were the responsibility of the Judicial Officer.¹² On that same day, the Advocate also called the Judicial Officer and introduced herself as the complainant's representative. The Advocate informed the Judicial Officer of the complainant's request for interim measures, including her understanding that Coach 1 and the Athletic Director had agreed to handle those concerns. The Judicial Officer informed the Advocate that she was

¹⁰ The complainant stated that sometime between (b)(7)(C) and (b)(7)(C) another (b)(7)(C) informed her that Coach 1 had (b)(7)(C) every (b)(7)(C) who had (b)(7)(C) the (b)(7)(C) on (b)(7)(C) where the complainant was allegedly sexually assaulted.

¹¹ Beginning on (b)(7)(C) the complainant and her mother remained in frequent contact via telephone and text messages with Coach 1. Coach 1 also met the complainant, her mother, and the Advocate on or about (b)(7)(C).

¹² As previously discussed, the UPD Chief notified College personnel, including the Title IX Coordinator, of the complainant's report of sexual assault in an email sent on (b)(7)(C). The Title IX Coordinator asserted that she had not been provided with the complainant's full name at that time, but acknowledged that she also did not take any steps to identify the complainant.

unaware of the complainant, or of any assurances made by Coach 1 or the Athletic Director regarding obtaining any interim measures for the complainant.¹³ The Advocate then scheduled an in-person meeting for herself, the complainant, the complainant's mother, and the Judicial Officer for (b)(7)(C).

On (b)(7)(C) the complainant, complainant's mother, and the Advocate met with the Judicial Officer and Officer 2. During the meeting, Officer 2 provided the complainant with the College's "Notice to Victims of Sexual Assault" form (hereinafter, "Sexual Assault Notice"), which included a checklist of services, as well as contact information for Safety Services and the Title IX Coordinator. The complainant acknowledged that during the course of the meeting, the Judicial Officer attempted to explain one of the mechanisms to file a formal Title IX complaint through the College's Office of Judicial Affairs, but stated that she found the explanation confusing and was not provided with any additional information such as a brochure or pamphlet. The complainant asserted that as a result, she elected not to file a formal complaint. OCR determined that neither Officer 2 nor the Judicial Officer provided the complainant with a copy of the College's Title IX grievance procedures, and they did not inform the complainant that, in the alternative, she could file a complaint with the College's Title IX Coordinator.¹⁴

During the course of the meeting held on (b)(7)(C) the complainant again requested interim measures with respect to her absences and the removal of the respondent from the course. The complainant asserted that the Judicial Officer agreed to contact her professors, but stated that the Judicial Officer was unsure how to handle the request for interim measures because she was only serving as the "Acting Dean." The complainant asserted that the Judicial Officer also informed her that "it was up to the complainant to speak with [her professors] as they all may require different documentation and an e-mail may not be enough." Further, the complainant stated that in response to her request for individual tutoring in the event that the respondent could not be removed from the course, the Judicial Officer advised the complainant to speak directly with the professor. The complainant stated that she also requested that the College issue a "no contact order" prohibiting the respondent from contacting her, and the Judicial Officer informed the complainant that the College would not issue a "no contact order" unless she filed a complaint through the College's Office of Judicial Affairs.¹⁵ The complainant declined to file a complaint through the College's Office of Judicial Affairs, and the College did not otherwise issue a "no contact order."

On (b)(7)(C) the Judicial Officer met with the respondent regarding the complainant's request that he be removed from the course. The respondent agreed to remove

¹³ As previously discussed, the UPD notified the Judicial Officer of the complainant's report of sexual assault on (b)(7)(C). According to the complainant, the Judicial Officer later informed the complainant that the Judicial Officer had spoken with the Athletic Director at some point prior to (b)(7)(C) but could not take any action with respect to the complainant's concerns because the Athletic Director had not revealed the complainant's identity. OCR determined that the Judicial Officer did not otherwise take any steps to ascertain the complainant's identity or address her concerns at that time.

¹⁴ At the meeting on (b)(7)(C) the Judicial Officer informed the complainant that she did not have any written documentation available. The complainant stated that Officer 2 suggested that the complainant photograph a poster outside the office that provided information about Title IX.

¹⁵ On February 9, 2015, the UPD Chief also notified several members of the College's administration via email, including the Title IX Coordinator, of the complainant's request for a "no contact order."

himself from the course as long as he could attend an alternative course. In an email later that day, the respondent also agreed that he would not otherwise contact the complainant. The Judicial Officer stated that she did not interview or question the respondent about the alleged sexual assault, as the complainant had not filed a formal complaint with the Office of Judicial Affairs as of that date.

Also on (b)(7)(C) the Judicial Officer contacted the professor of the course (the Professor) to explore what options were available to separate the complainant and the respondent. The Professor explained that the options to reassign the respondent to another class were limited because the College only offered (b)(7)(C) during the spring 2015 semester. Consequently, the Professor proposed that the complainant and the respondent might be able to “continue attending if they agree[d] to sit in different regions of the class.” On or about (b)(7)(C) the Judicial Officer communicated this information to the complainant during a telephone conversation, but the complainant did not consider this a viable option. OCR determined that in response to the complainant’s renewed request that the College provide her with individual tutoring as an alternative to attending the course, the Judicial Officer again informed the complainant that she would need to consult with the Professor regarding such a request. Ultimately, the Judicial Officer and the Professor arranged for the respondent to enroll in another course. The Judicial Officer and the Professor confirmed that the respondent ceased attending the course on (b)(7)(C). Although the Judicial Officer asserted that she advised the complainant that the respondent was no longer enrolled in the course, the complainant disputed that assertion, and stated that because she believed the respondent was still enrolled in the course, she felt unsafe attending the course. In an email sent to the Professor on (b)(7)(C) the complainant stated that she felt uncomfortable attending the course because she was “extremely nervous of [sic] seeing [the respondent] (b)(7)(C)”

The complainant stated that when she returned to the College’s campus and began attending some of her classes on (b)(7)(C) her (b)(7)(C) and College professors informed her that the absences and missing classwork that had accrued while the complainant was recovering from the alleged sexual assault would not be excused. Although both the Judicial Officer and Title IX Coordinator asserted that it is the College’s practice to excuse student absences under such circumstances, the College did not provide to OCR any evidence that it had contacted the complainant’s professors and arranged for her absences to be excused, or that such absences had in fact been excused.

The complainant submitted a request for a medical withdrawal from the College on (b)(7)(C) and she did not return to the College after that date. The College formally approved her request on (b)(7)(C). The complainant asserted that she withdrew from the College because College personnel “made [her] feel unsafe, like the assault was [her] fault, and that [she] should just get over the fact that [she] was sexually assaulted and move on.” She also informed OCR that she does not intend to return to the College. The Judicial Officer and the Title IX Coordinator did not attempt to contact the complainant after learning that she had withdrawn from the College.

College personnel, including the Judicial Officer and the Title IX Coordinator acknowledged to OCR that after the complainant withdrew from the College, they did not take any action to investigate or otherwise respond to the complainant's report of sexual assault. The Judicial Officer informed OCR that she did not take any steps to investigate or otherwise respond to the complainant's report of sexual assault because the complainant did not file and sign a formal complaint form with the Office of Judicial Affairs. The Judicial Officer asserted to OCR that she is "unable" to conduct an investigation unless a student submits a formal complaint to the Office of Judicial Affairs, and she does not have the authority to independently initiate an investigation in the absence of a formal complaint by a student. She stated that to do otherwise would preclude the provision of "due process" to all students involved.

The complainant asserted to OCR that she did not feel comfortable filing a judicial complaint against the respondent for several reasons. According to the complainant, the Judicial Officer's explanation of the judicial process was confusing, and the complainant did not understand the process after their in-person meeting on (b)(7)(C). Additionally, the complainant alleged that the Judicial Officer informed her that because a result of any hearing was uncertain, and she and the respondent (b)(7)(C) the complainant could continue seeing the respondent in her classes in the event that he received only a "warning." The complainant asserted that during the meeting on (b)(7)(C) she felt as though the Judicial Officer was attempting to convince her not to file a complaint.

Similarly, the Title IX Coordinator informed OCR that she did not take any steps to investigate or otherwise respond to the complainant's report of sexual assault, such as interviewing the complainant, the respondent, or any of the student witnesses, because the complainant never filed a Title IX complaint through her office, the Office of Equity and Campus Diversity.¹⁶ Although the Title IX Coordinator acknowledged receiving the names of the complainant and the respondent, and the location of the alleged sexual assault, she maintained that she did not have sufficient information to initiate an investigation. The Title IX Coordinator also asserted that an investigation was not necessary because the alleged sexual assault took place off-campus. Moreover, the Title IX Coordinator informed OCR that absent a formal complaint filed by a student, she will only conduct a Title IX investigation when the facts suggest a "pattern of behavior," such as a repeat offender or a location where more than one sexual assault was alleged to have occurred.¹⁷ The Title IX Coordinator stated that if she received a report of a singular instance of sexual assault (such as the complainant's report), without a formal complaint from the complaining party, she would not initiate a Title IX investigation as it would be based on "gossip and rumors." With respect to the complainant's report of sexual assault, the Title IX Coordinator stated that she looked at the address where the party occurred and found no other complaints originating from that location. Similarly, she had not received a previous complaint regarding the respondent. Based on the foregoing, the Title IX Coordinator concluded that absent a "pattern of behavior" there was no need to investigate.¹⁸ The Title IX Coordinator

¹⁶ The Title IX Coordinator asserted that the Advocate contacted her on (b)(7)(C) to request information about how to file a complaint through the Office of Judicial Affairs; and, that she volunteered to meet with the complainant and the Advocate to discuss this information. According to the Title IX Coordinator, the Advocate agreed to follow up after discussing this offer with the complainant. The Advocate and complainant did not corroborate this assertion.

¹⁷ Under such circumstances, she would conduct a "soft review" of the circumstances to determine whether to initiate an investigation.

informed OCR that she only became aware of the specific details of the complainant's report of sexual assault in or around (b)(7)(C) when she began an inquiry solely in preparation for responding to OCR's data request for the instant OCR complaint. The Title IX Coordinator's inquiry entailed speaking to College personnel and compiling correspondence and other materials; the Title IX Coordinator did not interview the complainant, the respondent, or any student witnesses, and she did not make any determinations or take any action in response to any information compiled during her limited inquiry.

Conclusion:

OCR determined that the College had notice of the complainant's report of sexual assault as of (b)(7)(C) when the complainant reported the alleged assault to the UPD. OCR determined that through the UPD, the College had detailed information about the alleged sexual assault, including the time, date, and location of the alleged sexual assault; a description of the alleged sexual assault; the name of the respondent; and, the names/identities of student witnesses. OCR further determined that once on notice of the complainant's report to the UPD, the College had an obligation to take immediate and appropriate action to investigate or otherwise determine what occurred regardless of whether the complainant complained directly to the College or otherwise asked the College to take action; however, the College failed to investigate.

With respect to interim measures, OCR determined that the College failed to provide the complainant with all of the appropriate interim measures that she requested. Officer 2 offered an interim measure in the form of counseling services to the complainant on (b)(7)(C) and the College obtained the respondent's agreement to remove himself from the course and to not contact the complainant; however, the College failed to provide any evidence to support that it had notified the complainant once the respondent was removed from the course, and as a result, the complainant did not feel safe to attend the course. Additionally, although the complainant requested that the College issue a no-contact order to the respondent, it did not do so. Furthermore, the College failed to assist the complainant in obtaining excused absences for her courses; and as a result, the complainant withdrew from the College. OCR determined that the College did not offer to provide other appropriate alternatives to the complainant. Moreover, the College failed to provide OCR with any reasonable explanation regarding its failure to excuse the complainant's absences. The documentation provided to OCR by the College indicates that it not only failed to investigate the complainant's allegation of sexual assault, the College failed to conduct any assessment of whether the complainant was subjected to, or continued to be subjected to, a hostile environment.

Based on all of the above, OCR determined that there was sufficient evidence to substantiate the complainant's allegation that the College failed to respond promptly and equitably to her report of sexual assault, in violation of 34 C.F.R. § 106.8(b). Further, OCR had concerns regarding the

¹⁸ OCR notes that at the time that the Title IX Coordinator made this decision, on or about (b)(7)(C) the Title IX Coordinator had not yet received the training required by the Agreement signed by SUNY, including training on how to conduct and document adequate, reliable, and impartial Title IX investigations, which was ultimately provided to the Title IX Coordinator in June 2015. Additionally, the College had not yet adopted revised grievance procedures; the revised grievance procedures were adopted in November 2015.

College's failure to provide the complainant with adequate notice of its grievance procedures when she reported the sexual assault to the College. The complainant denied receiving notice of the grievance procedures at any time after she reported the sexual assault and the College otherwise provided only a limited explanation of one of the available complaint mechanisms when the complainant met with the Judicial Officer on (b)(7)(C). The College provided documentation indicating that Officer 2 provided the Sexual Assault Notice to the complainant on (b)(7)(C) however, the Sexual Assault Notice did not contain information about how to locate the grievance procedures, and Officer 2 informed OCR that although she discussed the Sexual Assault Notice with the complainant, she did not discuss the grievance procedures with the complainant. The complainant informed OCR that following her meeting with the Judicial Officer and Officer 2, she did not have a clear understanding of the College's Title IX grievance procedures.

With respect to the complainant's assertion that the College failed to respond appropriately to her complaint of sexual assault when Coach 1 and Coach 2 violated her confidentiality during its investigation, OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the assertion. The complainant alleged that Coach 1 and Coach 2 disclosed her reported sexual assault to (b)(7)(C) of (b)(7)(C) and (b)(7)(C) without her consent; however, OCR did not find sufficient evidence to corroborate that Coach 1 (b)(7)(C) the (b)(7)(C) granted by the complainant to (b)(7)(C) (b)(7)(C) with the (b)(7)(C) of (b)(7)(C) or that Coach 1 disclosed the complainant's name to Coach 2. Similarly, OCR did not find sufficient evidence to corroborate that Coach 2 (b)(7)(C) the complainant's name to (b)(7)(C) of (b)(7) men's team.

During the course of OCR's investigation, OCR determined that multiple College staff involved in the instant complaint, including the Title IX Coordinator, lacked a clear understanding of the College's obligations pursuant to Title IX. The College provided documentation to OCR indicating that the Title IX Coordinator and various staff in the Athletic Department and UPD had received training regarding the College's obligations pursuant to Title IX at the time that the complainant reported being sexually assaulted (b)(7)(C); however, OCR was unable to confirm whether any of the specific staff involved in the instant complaint attended such trainings. Nevertheless, OCR was able to conclude that even if they had attended such trainings, the College staff involved in the instant complaint failed to understand their obligations to investigate the complainant's report of sexual assault made on (b)(7)(C); therefore, further training is needed to ensure that College staff understand the College's obligations to respond promptly and equitably to complaints of sexual harassment, including sexual assault/violence.

On October 6, 2017, the College signed the enclosed resolution agreement to remedy the compliance issues identified above. OCR will monitor the implementation of the enclosed resolution agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an

released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding OCR's determination, please contact Joy M. Purcell, Senior Compliance Team Attorney, at (646) 428-3766 or joy.purcell@ed.gov or Félíce Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,



Timothy C.J. Blanchard

Encl.

cc:

(b)(7)(C)

Esq.

(b)(7)(C)

Esq.



BUFFALO STATE
The State University of New York

Buffalo State College
Buffalo, New York 14260

Buffalo State College
For School Year 2015-2016
Buffalo State College
Buffalo, New York 14260
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Fax: 716-875-3100

RESOLUTION AGREEMENT

**Buffalo State College,
State University of New York
OCR Case No. 02-15-2085**

The U.S. Department of Education, Office for Civil Rights (OCR) and Buffalo State College, State University of New York (the College), enter into this agreement to resolve the above-referenced complaint. The College assures OCR that it will take the following actions to comply with the requirements of 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.

Action Item 1: Individual Relief for the Complainant

The College has advised OCR that it has already reimbursed the complainant for tuition she paid for the spring 2015 semester. By October 31, 2017, the College will extend to the complainant a written offer of reimbursement for College expenses (including fees, housing, books, and supplies) for the spring 2015 semester. The written offer will also include an offer to reimburse the complainant, if appropriate, for expenses for counseling that the complainant may have incurred during the spring 2015 semester, or afterward, as a result of the alleged sexual assault. The written offer to the complainant will provide the complainant with a minimum of 30 calendar days to respond and provide documentation of her counseling and other expenses to the College.

Reporting Requirements:

- a) By November 30, 2017, the College will provide to OCR a copy of the written offer made to the complainant, as well as the complainant's response, if any.
- b) By December 15, 2017, the College will provide documentation to OCR demonstrating that the College has reimbursed the complainant, if appropriate, for expenses, as specified in Action Item 1 above.

Action Item 2: Investigation of Complainant's Report of Sexual Assault

By November 30, 2017, the College will retain a qualified investigator(s), not employed by the College¹, to complete an investigation of the complainant's report of sexual assault, made on (b)(7)(C) and ensure that the investigation complies with Title IX. The investigation of the complainant's report of sexual assault will involve, at a minimum, the following: providing the complainant and/or her representative with an opportunity to provide additional information or identify any other witnesses relevant to her report; conducting a detailed review of all information previously provided by the complainant, and/or on her behalf, to the College in general, the Buffalo

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¹ The individual may be affiliated with the State University of New York system.

State College/University Police Department (UPD), the College's Athletic Department, the College's Director of Judicial Affairs, and the College's Title IX Coordinator; interviewing the respondent and all witnesses, as appropriate; and, making a determination of whether the evidence presented, together with such additional information and witnesses as may be identified or presented, supports by a preponderance of the evidence a finding that a sexual assault occurred. The investigation will be completed within 60 days, and the outcome of the investigation will be communicated to the complainant and the respondent in writing. If the complainant fails to respond or indicates an unwillingness to proceed with further investigation, the College will note this information in its reporting requirement; however, the College will attempt to conduct an investigation with the information available to the College from the complainant's (b)(7)(C) report of sexual assault.

Reporting Requirements:

- a) By October 31, 2017, the College will submit to OCR, for review and approval, the name(s) of the individual(s) it proposes to retain to complete the investigation, along with the individual's relevant education, training, and work or professional experience. OCR will respond within 15 calendar days.
- b) By December 30, 2017, the College will submit to OCR, for review and approval, a report documenting the procedures used to conduct its investigation, as well as the outcome of the investigation; proof that written notice of the outcome was provided to the complainant and the respondent; any corrective actions deemed necessary; and, a timeline for implementation of the corrective actions, if necessary. The College will also provide all documentation obtained relevant to the investigation.

Action Item 3: Consulting for the Title IX Coordinator

By November 15, 2017, the College will retain a qualified individual (the Consultant) to provide monthly consulting to the Title IX Coordinator regarding processing, investigating, adjudicating and/or resolving allegations of sexual harassment, including sexual assault/violence. On a monthly basis, the Title IX Coordinator will inform the Consultant of any complaints/reports of incidents of sexual harassment and sexual assault/violence she received in the last 30 days, and how she has processed those complaints/reports. The Consultant will provide feedback to the Title IX Coordinator regarding her investigation of any such complaints and any related prevention efforts that may be effective.

Reporting Requirements:

- a) By October 31, 2017, the College will submit to OCR, for review and approval, the name(s) of the individual(s) it proposes to retain as the Consultant for the Title IX Coordinator, along with the individual's relevant education, training, and work or professional experience. OCR will respond within 15 calendar days.
- b) By December 31, 2017, and again by June 30, 2018, the College will provide documentation to OCR demonstrating that consulting was provided to the Title IX Coordinator consistent with Action Item 3, including the dates on which consulting sessions were held.

Action Item 4: Title IX Training for College Staff

By November 30, 2017, the College will retain a qualified individual(s), not employed by the College², to provide training to all staff who are responsible employees for recognizing and reporting incidents of sexual harassment. The training will cover, at a minimum: the College's current grievance procedures; the obligation of responsible employees to report sexual harassment, how to recognize and identify sexual harassment, including sexual assault/violence and behaviors that may lead to and result in sexual violence; the College's responsibilities under Title IX to address such allegations; and the relevant resources available. The training should also include information on the reporting obligations of College staff; the student's option to request confidentiality and available confidential advocacy, counseling, or other support services; the student's right to both file a sexual harassment complaint with the College and report a crime to campus or local law enforcement; the attitudes of bystanders that may allow conduct to continue; the potential for victimization of students who may have experienced sexual violence and its effects on students; appropriate methods for responding to a student who may have experienced sexual violence; and, the impact of trauma on students who experience sexual violence. During the training, the College will provide copies of its current Title IX grievance procedures to all attendees, or refer them to their location within the publications they already possess.

Reporting Requirement:

By December 30, 2017, the College will provide documentation to OCR demonstrating that training was provided by the College in accordance with Action Item 4 above. The documentation will include, at a minimum, the name(s) and credentials of the trainer(s); the date(s) and time(s) of the training(s); a copy of any training materials used or distributed during the training; and, the names and titles of the individuals who attended the training. Documentation regarding training provided to College staff before the date of this Agreement may be submitted in response to Action Item 4.

Action Item 5: Handling of New Complaints:

By July 31, 2018, and by the same date in 2019, the College will provide documentation to OCR demonstrating that the College has responded promptly and equitably to complaints or reports of sexual harassment, including sexual assault/violence, received during academic years 2017-2018 and 2018-2019, respectively. This documentation will include at a minimum, for each complaint, the names of complainants and respondents; the conduct alleged; information about the individual(s) who received and processed the complaints; the date the College received the complaint; a description of the allegation and/or conduct; a description of how the investigation was conducted (including whether and how many witnesses were interviewed, and other evidence obtained); a description of any interim measures provided to the parties (e.g., no contact order, changes in academic or living situations, counseling, health and mental health services, escort services, academic support); the date on which the investigation was completed or the status of the case (e.g. investigation is ongoing, the investigation is suspended due to a request from law enforcement, the College is assessing discipline to be imposed, etc.); the outcome of the complaints (e.g., referred for a disciplinary hearing or to human resources, accused found responsible, accused found not responsible); the date on which any disciplinary hearings or other proceedings were completed; the outcome of any disciplinary matters related to the investigation; the date on which

² The individual may be affiliated with the State University of New York system.

any appeals were completed; a description of any other remedies provided to the complainant; and, a description of any trends or patterns identified from the complaints, and any actions taken in response to trends or patterns identified. If the College submits any files before the case is complete, the College will flag those files as incomplete, and upon request, re-submit those files once the case is completed.

Reporting Requirement:

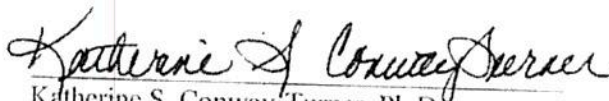
By July 31, 2018, and by the same date in 2019, the College will provide the documentation required in Action Item 5 to OCR.

The College understands that by signing this agreement, it agrees to provide the foregoing information in a timely manner in accordance with the reporting requirements of this agreement. Further the College understands that during the monitoring of this agreement, if necessary, OCR may visit the College, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the College has fulfilled the terms of this agreement and is in compliance with the regulation implementing Title IX, at 34 C.F.R. §§106.8(b) and 106.31. Upon completion of the obligations under this agreement, OCR shall close and dismiss this case.


The College understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings to enforce this agreement, OCR shall give the College written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This Agreement will become effective immediately upon the signature of the University's representative below.

10-5-2017
Date


Katherine S. Conway-Turner, Ph.D.
President (or designee)
State University of New York
Buffalo State College

10/12/17
Date


Timothy C.J. Blanchard
Director – Region II
U.S. Department of Education
Office for Civil Rights