



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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February 26, 2018

Dr. Joe Schaffer, President
Laramie County Community College
1400 E. College Drive, Room 138
Cheyenne, Wyoming 82007

Sent by Email only to: jschaffer@lccc.wy.edu

Re: Laramie County Community College
OCR Case Number: 08-16-2031

Dear President Schaffer:

This is to notify you of the disposition of the above-referenced complaint filed against the Laramie County Community College (College) on November 2, 2015, alleging that the College discriminated on the basis of sex.

Specifically, the complaint alleges that the College fails to equitably resolve or respond to complaints, reports and/or incidents of sexual violence of which it has notice.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681-1688, and its implementing regulation, which prohibits discrimination on the basis of sex by recipients of federal financial assistance from the U.S. Department of Education. As a recipient of federal financial assistance from the Department, the College is subject to Title IX.

During the complaint investigation, OCR reviewed documentation provided by the Complainant and the College and interviewed a representative of the Complainant and College staff.

OCR determined that there was insufficient evidence to conclude that the College discriminated as alleged and that any concerns regarding the College's policies and procedures have been resolved by the College's amendments to its policies during the course of OCR's investigation. The basis for this determination is set forth in this letter.

Legal Standards

The Title IX regulation at 34 C.F.R. § 106.31 provides generally that, except as provided elsewhere in the regulation, no person shall on the basis of sex be excluded from participation in,

denied the benefits of, or subjected to discrimination in education programs or activities operated by recipients of Federal financial assistance.

- *Title IX Coordinator*

The Title IX implementing regulation, at 34 C.F.R. § 106.8(a), requires that a recipient designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under that law. The recipient is further required, by the Title IX implementing regulation at 34 C.F.R. § 106.8(a), to notify all students and employees of the name (or title), office address, and telephone number of the designated employee(s). The School must make sure that all designated employees have adequate training as to what conduct constitutes sexual harassment and are able to explain how the grievance procedure operates.

- *Notice of Non-discrimination*

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires a recipient to implement specific and continuing steps to notify all applicants for admission and employment, students and parents, 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 its education programs or activities, and that it is required by Title IX not to discriminate in such a manner. The notice must also state that questions regarding Title IX may be referred to the recipient's Title IX coordinator or to OCR.

- *Grievance Procedures*

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX, including sexual harassment and sexual assault. Title IX does not require a recipient to provide separate grievance procedures for sexual harassment complaints, including sexual assault 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 sexual assault, 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 reviews many aspects of a recipient's policies and practices, including the following elements that are critical to achieve compliance with Title IX:

- 1) notice to students and employees of the procedures, including where complaints may be filed;
- 2) application of the procedure to complaints alleging discrimination and harassment carried out by employees, other students, or third parties;

- 3) provision for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and respondent to present witnesses and other evidence;
- 4) designated and reasonably prompt timeframes for the major stages of the complaint process;¹
- 5) notice to both parties of the outcome of the complaint and any appeal; and
- 6) assurance that the recipient will take steps to prevent recurrence of any sex discrimination or harassment found to have occurred, and to correct its discriminatory effects on the complainant and others, if appropriate.

- *Sexually Hostile Environment*

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 of Federal financial assistance. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. 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. It should notify the complainant of his or her options to avoid contact with the alleged perpetrator, and allow the parties to change academic or living situations as appropriate. For instance, the recipient may issue a no contact order pending the results of the investigation. In addition, recipients should ensure that the parties are aware of their Title IX rights and any available resources, such as counseling services, and their right to file a complaint with local law enforcement.

¹ OCR evaluates on a case-by-case basis whether the resolution of sexual violence complaints is prompt and equitable. OCR has noted that, based on its experience in typical cases, there is a 60-calendar day timeframe for investigations. Whether OCR considers an investigation to be prompt as required by Title IX will vary depending on the complexity of the investigation and the severity and extent of the alleged conduct. OCR recognizes that the investigation process may take longer if there is a parallel criminal investigation or if it occurs partially during school breaks. A school may need to stop an investigation during school breaks or between school years, although a school should make every effort to try to conduct an investigation during these breaks unless so doing would sacrifice witness availability or otherwise compromise the process." See F-8, in "Questions and Answers on Title IX and Sexual Violence."

Factual Background

The College, a community college in Wyoming with campuses in Laramie and Cheyenne, enrolled 6,467 students (58.7% female, 41.3% male) College-wide for the 2015-16 academic year.² Approximately 2,293 of the students were enrolled full-time.

For the Clery Act reporting years of 2012, 2013, 2014, the College reported a total of 1 forcible sex offense, which occurred on campus in the year 2013.

A. Notice of Nondiscrimination

The College posts a nondiscrimination notice on its website, in its Catalog,³ and in its Student Handbook.⁴ In addition, the notice requires that the statement must appear in HR and admissions materials.

The nondiscrimination notice on the website and in the Catalog advises the College community that the College does not discriminate on the basis of sex (among other bases) and that Title IX requires that it does not discriminate on the basis of sex. In addition, the nondiscrimination statement provides the College community with contact information for its Title IX Coordinator and states that Title IX complaints can be brought to the Title IX Coordinator.

At the outset of OCR's investigation, the College's nondiscrimination notice did not provide OCR's contact information. However, during the course of OCR's investigation, the College revised its notice and the nondiscrimination notice currently published on the College's website provides the College community with OCR's contact information. In addition, the notice of nondiscrimination in the Student Handbook also provides OCR's contact information.

B. Title IX Coordinator

The College's website states that the Title IX Coordinator "is responsible for tracking and monitoring incidents of gender based discrimination, including misconduct, to ensure the college responds effectively to each complaint, and where necessary, for conducting investigations of particular situations." In addition, the Sexual Misconduct Policy, described in greater detail below, states that the Title IX Coordinator is responsible for overseeing the College's Title IX compliance efforts, and describes multiple responsibilities including outreach to the College community, investigation of reports of Title IX violations, review of policies, and training College staff who investigate or respond to Title IX complaints. The College website and 2016-17 Catalog provides appropriate contact information for the Title IX Coordinator.

In addition, between the 2013-14 school year and the 2015-16 school year, the College had two deputy Title IX Coordinators – the Director of Student Services and the Dean of Students. During the 2013-14 school year, the College utilized three Title IX investigators – an

² <http://www.lccc.wy.edu/Documents/About/IR/2015-2016%20Annual%20Unduplicated%2020160708.pdf>

³ <http://www.lccc.wy.edu/about/compliance/nondiscrimination.aspx>;

http://www.lccc.wy.edu/Documents/Academics/schedule/2016/06_June/16-17Catalog_Web.pdf

⁴ http://www.lccc.wy.edu/Documents/Life/Handbooks_Policies/2015-16-Handbook-Content-Ed-3.pdf

administrative assistant in the Athletics and Recreation Department, the Coordinator of the Disability Resource Center, and the Director of Residential Living and Judicial Affairs.

Beginning in June 2014, the Title IX Coordinator developed a team of 11 Title IX investigators⁵, so that two investigators could be assigned to each case and that the appearance of any conflict of interest could be eliminated. In addition, in June 2014, the College established, but did not publish on its website, role descriptions for the deputy coordinators and investigators.

The College provided training to all of the Title IX Coordinators, Deputy Coordinators, and investigators in October 2014 through ATIXA, which is described in Section E below.

C. Sexual Harassment Complaint Investigation Process and Procedures

Old Policies

Prior to May 2014, the College had two policies that addressed sexual harassment: (1) Policy 4133 (Sexual Harassment Policy) and (2) Equal Opportunity/Nondiscrimination Policy (EO Policy).

The Sexual Harassment Policy prohibited sexual harassment and retaliation for reporting harassment. The Sexual Harassment Policy provided a definition of sexual harassment, which included a non-exhaustive list of examples. However, neither the definition nor examples mentioned sexual violence. The Sexual Harassment Policy provided that the College's Human Resources department would coordinate the investigation of reports of sexual harassment, with determinations being made by an unspecified vice president. The Policy did not describe the investigator or grievance process or refer to any other College policy.

The EO Policy stated that Title IX prohibited all forms of sex discrimination, including acts of sexual violence. The EO Policy identified the College's Title IX Coordinator, though did not provide her contact information. The EO Policy directed students and employees to file complaints of discrimination under Title IX to the Title IX Coordinator, but did not reference a complaint form or describe any grievance procedure.

Revised and Current Policies

In May 2014, the College revised its Title IX policies and procedures and there are currently four policies that concern sexual harassment and sexual violence: (1) Policy 6.2 (Nondiscrimination and Anti-Harassment Policy); (2) Policy 6.3 (Sexual Misconduct Policy); (3) Policy 3.16P (Student Discipline Adjudication Procedure or SDAP); and (4) Policy 6.10P (Employee Discipline Procedure or EDP).⁶ The College made additional revisions to its policies on November 28, 2017.

⁵ There were only 10 Title IX investigators for the 2015-16 school year.

⁶ All of the policies are available on the College's website at <http://policies.lccc.wy.edu>. In addition, all versions of the College's Catalog reference the Nondiscrimination and Sexual Misconduct Policies' online availability, but do not provide an abridged description of the policies or specific url at which the policies can be accessed. The [Student Handbook](#) publishes an abridged version of the Discipline Procedure.

1. Nondiscrimination and Anti-Harassment Policy

The Nondiscrimination and Anti-Harassment Policy applies to all forms of discrimination and harassment, including race, color sex, religion, gender identity, national origin, age, disability, veteran status, sexual orientation, or any other protected category as determined by local, state or federal statute or law. It requires all members of the College community, including students, staff, faculty, and visitors to report acts of discrimination or harassment to the College's Human Resources Office (HR) or the Title IX Coordinator. The policy provides appropriate definitions of discrimination and harassment. The Policy provides for the processing and resolution of anonymous complaints and describes a formal resolution procedure that includes an investigation to be completed within 30 business days of a formal complaint. It contains provisions for confidentiality and states that it will protect the identities of the complainant and the accused to the extent it can do so consistent with its obligation to protect the rights and security of the College community. Finally, the Policy prohibits retaliation.

The Policy makes clear that reports of sexual misconduct will be addressed through the Sexual Misconduct Policy.

2. Post 2014 Policies

On May 21, 2014, the College adopted its Sexual Misconduct Policy. The Sexual Misconduct Policy sets forth the procedures the College follows to respond to reports of sexual misconduct and operates in conjunction with the SDAP and EDP, which outline the College's disciplinary procedures (collectively 'the College's policies and procedures'). In addition, information about the Sexual Misconduct Policy is provided in lay terms in the Student Handbook.

The Sexual Misconduct Policy states that the College is committed to "maintaining a community in which students, faculty and staff can work and learn together in an atmosphere free from all forms of discrimination" and that sexual misconduct will not be tolerated or condoned. The Sexual Misconduct Policy states that it is the purpose of the policy to eliminate discrimination on the basis of sex. The Student Handbook, in a section for sexual harassment and sexual assault, states that the College will take action to prevent the recurrence of harassment or assault and correct its effects.

The Sexual Misconduct Policy provides contact information for the College's Title IX Coordinator and HR Director. Further, the Sexual Misconduct Policy requires responsible employees to report sexual misconduct to the Title IX Coordinator within 24 hours of receiving notice of a report, regardless of whether a formal complaint is made. It defines responsible employees as all employees except health professionals (including licensed mental health counselors) or those exempted by statute (e.g., clergy). The SDAP provides that there is no statute of limitations on reports of sexual misconduct, which may be raised any time. The Sexual Misconduct Policy and the SDAP outline the major timeframes of the College's adjudication

process, including time frames for the completion of the investigation, sanctioning phase, and appeals.⁷

The College's policies and procedures also set forth its adjudicatory process. At the outset, all reports implicating Title IX, whether formal or informal, are reviewed by the Title IX Coordinator, who conducts a preliminary assessment of the report and may dismiss a report without further process or review if the Title IX Coordinator determines that "the complaint on its face is frivolous, not credible, clearly without merit, or outside the scope of [the Sexual Misconduct Policy]." The College's policies and procedures give the Title IX Coordinator the authority to investigate allegations of sex discrimination and sexual misconduct even absent the filing of a formal complaint or its subsequent withdrawal, including anonymous complaints and complaints from or about third parties. In practice, OCR observed that the College processed all reports of sexual harassment or sexual assault.

If the Title IX Coordinator does not dismiss the Complaint, the Title IX Coordinator assigns two investigators, who are charged with reviewing records, conducting interviews, and preparing a written report with a recommendation for corrective action or dismissal of the complaint due within 30 days. The College's policies and procedures provide that after the investigation the parties may accept or reject the investigatory findings. If the findings are accepted, the case moves to the sanctions phase. If the findings are rejected, the case proceeds to a hearing board. The hearing board is charged with preparing a written report that includes the investigatory report, the nature of the alleged misconduct, the date, time and location of the hearing, a summary of the hearing including a review of the evidence, and the rationale for the hearing board's decision regarding the accused's responsibility. The hearing must be convened within 10 business days. If applicable, sanctions must be issued within 5 business days of the conclusion of a hearing.

If the hearing board recommends sanctions, the Dean of Students or, in the case of an employee, the employee's supervisor, determines what sanctions should be imposed and notifies the parties of the sanctions imposed, rationale for the sanction, the College's expectations for "future success within the College community," and the appeal procedures.

Parties may appeal the decision or sanction of the hearing board within 5 days after receiving notice of the outcome. Both parties have limited opportunities to appeal a decision or sanction based on either a failure to follow the College's policies and procedures or based on new evidence. Appeals are determined by the Vice President with authority over the respondent (which for students is the Vice President of Student Affairs) within 10 business days of the filing of an appeal.

In addition, the College's Policies and procedures provide the following.

a. Notice to students and employees of the procedures, including where complaints may be filed, that is easily understood, easily located, and widely distributed.

⁷ During its investigation, OCR observed that the 2014 Policies and Procedures lacked time frames for all stages of the investigation. The College amended its policies on November 28, 2017 to include time frames for all major stages of its response to reports of sexual harassment. See [Revised SDAP: Revised Sexual Misconduct Policy](#).

Information about filing sexual misconduct complaints is easily identifiable online and available in the Student Handbook. Reporting options are listed; victims may contact the Title IX Coordinator, Dean of Students, Campus Safety, or Counseling and Student Wellness. In addition, the Student Handbook provides contact information for off campus resources, including local law enforcement, rape crisis centers, and counseling centers. These guidance documents also include clear, detailed information about medical, legal, and counseling services among other resources, both on- and off-campus.

Moreover, the Sexual Misconduct Policy charges the Title IX Coordinator with communicating with the College community regarding Title IX and how to gain access to rights under Title IX.

b. Application of the procedures to complaints alleging discrimination or harassment carried out by employees, other students, and third parties.

The policy applies to students, employees, contractors, and visitors to the College. In practice, OCR observed that the College processed reports of sexual harassment regardless of whether the alleged incident occurred on- or off-campus. In addition, OCR observed that the College processed reports of sexual harassment where either the complainant or accused was not affiliated with the College (i.e. a third party).

c. Adequate, reliable, and impartial investigation, including an equal opportunity to present witnesses and relevant evidence.

The policy requires that all members of the College community (including students, employees, contractors, and visitors), except for mental health professionals and clergy, are required to report incidents of sexual harassment to the Title IX Coordinator. The Title IX Coordinator is charged with taking all reasonable steps to investigate and remediate the matter, and may proceed even absent the filing of a formal complaint or in the even the complainant requests that the matter not be pursued. The Title IX Coordinator may dismiss a complaint if, on its face, it appears “frivolous, not credible, clearly without merit, or outside the scope of the complaint procedures.”

If the Title IX Coordinator determines that the report merits an investigation, the Title IX Coordinator assigns two Title IX investigators to conduct an investigation.⁸ The Title IX Coordinator and Title IX investigators told OCR that the College avoids conflicts of interest when assigning investigators, though the College’s policies do not have any express provision regarding conflicts of interest. Although the College’s procedures requires formal written notice of that conduct proceedings have been initiated, and, in practice, OCR did not observe that the College consistently provided both the complainant and accused notice of the commencement of an investigation.

The College’s Title IX investigators told OCR that they work together to develop an investigative strategy, which includes interviews of both the complainant and accused,

⁸ As discussed more fully below in Section E, all Title IX Investigators at the College have attended a two-day ATIXA training regarding Title IX investigations and participate in monthly meetings with the College’s Title IX team.

interviews of any witnesses identified by the parties or other witnesses, gathering of documentation such as email correspondence, text messages, and review of any security footage that is available. The College's Title IX investigators further told OCR that the College utilizes Maxient, an online tracking system, to upload and store written notes of interviews, correspondence with the parties, and other documentary evidence. At the conclusion of an investigation, Title IX investigators prepare a written report summarizing the factual findings of the investigation and making a recommendation as to the disposition of the report.

d. Designated and reasonably prompt timeframes for major stages of the grievance process, as well as the process for extending timelines.

The College's policies state that Title IX investigators should complete their investigation and report within 30 days of receipt of the report from the Title IX Coordinator. In addition, the College's policies and procedures outline the time frame for other major stages of the grievance process, including the time frame for the sanctioning phase and the appeals phase. As noted above in section C.2, the policies provide that hearings regarding the investigation and report must be convened within 10 business days and sanctions determined within 5 days of the conclusion of a hearing, if applicable, or 10 business days after the investigation and report, if no hearing is requested. Finally, the College's policies state that a decision on an appeal, made by the College Vice President with authority over the respondent shall be resolved within 10 business days of the filing of an appeal.

e. Written notice to the parties of the outcome of the complaint: Both parties are provided written notice of the outcome, including sanctions.

The SDAP requires both parties to be provided written notice of the outcome of the complaint, including any disciplinary sanctions.

f. An assurance that the institution will take steps to prevent recurrence of harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

The College's policies require the Title IX Coordinator will take all reasonable steps to investigate and remediate the matter. The policy itemizes a list of twelve possible sanctions, but the Executive Director or designee has the discretion to impose additional sanctions. In addition, the Student Handbook provides for non-sanction remedies for the complainant, stating that the Title IX Coordinator may make any necessary adjustments to housing, class schedules, etc. needed during the investigation and adjudication of the incident(s). In addition, as noted below in subsection (j), the policies prohibit retaliation. Finally, the Student Handbook states that the Title IX Coordinator will "work to ensure the harassment stop."

Coordination with Law Enforcement

The College has no written protocol coordinating investigator responsibility between the Title IX team and local law enforcement. The College stated that the Laramie County Sheriff's Department (LCSD) has provided a contact to work with the College when either entity receives a report of sexual assault. Further, the College provided OCR with a draft memorandum of

understanding (MOU) with the LCSD. The MOU states that the College and LCSD recognize that they “need to cooperate and coordinate their activities to prevent, investigate, respond to, and prosecute domestic violence, dating violence, sexual assault, and stalking.” The MOU calls for each entity to provide training, as needed, to the employees of the other entity on its respective policies, practices and procedures. The MOU specifies that the College and LCSD will cooperate and coordinate their activities under this MOU to the maximum extent allowable under the relevant privacy laws.

D. Response to Sexual Harassment/Violence Reports

OCR reviewed 33 reports of sexual harassment, or sexual assault that the College received during the 2013-14, 2014-15, and 2015-16 academic years.⁹ OCR’s review demonstrated that the College processed all reports that it received regardless of whether the report occurred on- or off-campus, involved College students, staff, or faculty, or third-parties. The College also processed reports and provided interim services when an incident occurred off-campus and did not involve a College-affiliated (even as a third party invitee or agent) respondent. In such cases, the College generally issued no-trespass orders to the respondent or alerted Campus Safety to the respondent’s identity.

The charts below summarize the types of reports received by the College and the College’s responses to the reports.

Types of Reports

Sexual Harassment		Sexual Assault		Domestic Violence/ Stalking	Threatened Assault	Not Title IX
By employees/Faculty	By Students/3 rd Parties	On Campus	Off Campus			
5	10	2	3	8	3	2

College Response

Investigation/Informal Resolution/Other Response within 60 days	Investigation Longer than 60 Days	Incomplete File
24	7	2 ¹⁰

Promptness

⁹ OCR’s review of the College’s files indicated that the College broadly applied its definition of sexual harassment, erring on the side of overinclusion. In other words, if an allegation might have raised an issue related to Title IX the College processed the report under its Title IX Policies and Procedures until further information indicated that the allegation did not raise an issue related to Title IX.

¹⁰ In these two reports, OCR could not determine whether the investigation was completed within 60 days because the file was not complete. In one instance, the file did not indicate when the report was first made to the College. In the second instance, the investigation was not complete when the College produced information to OCR.

The College completed 77.1% of its investigations within sixty days. Further, it completed four of the seven investigations that took more than 60 days between 61-73 days. Thus, it completed 90.3% of its investigations within 73 days. The other three reports were completed in 83, 99, and 184 days.

Frequently, OCR observed the College was attentive to the promptness of the investigation. For example, in one instance, the College alerted the parties that the notice of finding would be a few days late. In a second report, the College attempted for 69 days to identify the respondent based on the complainant's description of an assault that occurred off-campus by a non-College student and ended its investigation when it determined it could not identify the respondent. In the investigation that was completed in 184 days, the College obtained a mediated resolution between the parties within the sixty day period, but neglected to send out formal notice of the resolution at the time. Finally, the Title IX Coordinator told OCR that, frequently, reports involving staff or faculty took longer to complete because the disciplinary process was more lengthy when following the EDP, and three of the seven investigations that took longer than 60 days to complete involved staff or faculty respondents.

Documentation

OCR's file review noted that the College did not always maintain documentation of its investigation. For example, several cases, noted below, lacked notes of interviews. Further, the College frequently did not send notice of its findings to the complainant. In 16 cases, the College did not send a notice of its findings to the complainant, the respondent or both. In 10 cases, the College sent a notice of its findings to both parties. In 7 cases, a notice of findings was not appropriate (1 case was not yet complete, two cases did not raise Title IX issues, and in 4 cases the College could not identify the respondent but nonetheless provided the complainant with interim measures). However, in these cases, the Title IX Coordinator confirmed to OCR that the parties were provided with written or verbal notice of the outcome of its investigation and was able to describe the steps taken during the College's investigation.

In addition, OCR observed that seven case files lacked documentation of interview notes or other documentation supporting the College's conclusions and two case files lacked documentation supporting the parties' voluntary participation in a mediation process or information about the outcome of a mediation.

Interim Measures

The College regularly provided interim measures to both parties based on the particular facts of the cases, such as issuing no-contact orders, offering counseling, providing academic assistance, when parties requested it. In addition, the College regularly documented its provision of interim measures in the files that OCR reviewed.

Individual Reports

OCR received this complaint from local law enforcement, which believed that the College had not promptly and equitably responded to a report of sexual harassment that occurred in spring

2015. OCR reviewed the College's response to the report. In that report, a student alleged that another student had been harassing her – once kissing her without permission, soliciting her for dates, and making her feel as if he would follow or stalk her. The College opened the complaint for investigation on March 25, 2015, the day on which it received it. The Title IX Coordinator told OCR that the student wanted the respondent to stop approaching her, and agreed to an informal resolution process. The Title IX Coordinator told OCR that she informed the respondent to stop approaching the complainant and that he complied. A September 2015 letter to both parties indicates that the respondent complied with the request and the complainant had told the Title IX Coordinator in spring 2015 that further mediation was not necessary. OCR's investigation did not reveal that the complainant contacted the Title IX Coordinator after either the informal resolution or the September 2015 letter formally closing the report.

The College's processing of a sample of individual cases below illustrates its prompt and equitable response to reports of sexual harassment.

Report 1

On March 24, 2014, an employee of the University of Wyoming's "Stop Violence" program reported to the College that Student A, a student on the College's Albany County campus, had been raped at gunpoint off campus. After receiving the report, the College took steps to determine: (1) that Student A felt safe on campus; (2) connected Student A to counseling services; (3) met with Student A to discuss academic assistance the College would provide (and later provided it, in the form of requests for additional time on assignments; and (4) confirmed that the perpetrator was not an LCCC student and was in jail pending bond. The College completed these steps in two days.

Report 2

On September 21, 2015, a Student B reported that her husband, a non-student, had beaten her over the previous weekend. The complainant asked for counseling. The Title IX Coordinator told OCR that she spoke to Student B, provided her with counseling, helped her obtain a protective order from the police, issued a no-trespass order to the husband barring him from campus, and helped Student B relocate to safe house.

Report 3

On October 4, 2015, a student told his RA that Student C had alleged that she had "almost been raped" at an off-campus party. The Title IX Coordinator told OCR that she met with Student C who told her that the attempted sexual assault had occurred at a local air force base, but that she only knew participants at the party by first names. The Title IX Coordinator told OCR that she contacted the air force base to attempt to determine the host of the party to continue the investigation but was unable to get any further information.

Report 4

Student D made three reports to the College – on January 29, 2015, October 8, 2015, and November 5, 2015. The reports were similar in nature. In each instance, Student D approached an instructor to apologize for missing class or turning in an assignment late, explaining that she had previously been raped by a non-College student who now was stalking her off campus at the University of Wyoming. In each instance, the instructor relayed Student D’s report to the Deputy Title IX Coordinator for the Albany Campus (where Student D attended). The College obtained a photograph of the respondent and circulated it to Campus Safety officers, ensured that Student D felt safe, and connected her to other resources such as counseling and the “SAFE Project.”¹¹ In addition, the College confirmed that the respondent was not enrolled at the University of Wyoming and had, in fact, had a hold placed on any attempt to register there. The Title IX Coordinator told OCR that the College had also worked with the University of Wyoming to locate the respondent but had not been able to locate him.

Report 5

On January 23, 2015, Instructor A reported to the Title IX Coordinator that Student E had told her that she had received a text message threatening to sexually assault her. Instructor A told the Title IX Coordinator that she had tried to call the number, but it was a number for an anonymous text messaging app, located in New York. Instructor A told the Title IX Coordinator that Student F had told the class at the beginning of the semester that he had recently moved from New York.

The Title IX Coordinator interviewed Student F and Student G, another student from the class who was identified by Student E as a potential suspect. The Title IX Coordinator told OCR that after conducting the interviews, she did not believe that either of the two students she had interviewed sent the text. In addition, the Title IX Coordinator instructed Instructor A to discontinue her practice of having students exchange phone numbers at the beginning of the semester.

Report 6

On May 8, 2015, Student H reported that Coach A, a coach for the College’s equine team, made numerous derogatory comments about women during practice. For example Student H reported that Coach A referred to female students as “bitches, heifers, dirt legs, or sluts,” asked female members of the team if they had “found a rich cowboy,” told a female student that she would end up “barefoot and pregnant,” and speculated about which students would become pregnant first. Student S also asserted that Coach A would touch female students’ cheeks or touch female students’ butt with whips/ropes used in horse training and ask about their sex lives.

The College hired an outside investigator to conduct an investigation. The investigator interviewed multiple students and Coach A. According to the investigative report, several neutral parties corroborated Student S’s allegations. However, the College’s records do not contain any notes of interviews or witness statements. The investigative report concludes that Coach A had referred to female students as bitches, asked students if they had “found a rich

¹¹ SAFE Project is an advocacy organization, not affiliated with the College, for victims of sexual assault and domestic violence.

cowboy” and inappropriately touched female students on their cheeks and butts. The investigative report concluded that he had not called students sluts or dirt legs or talked about students’ becoming pregnant.

The Title IX Coordinator adopted the investigator’s report, though warned Coach A that his conduct was “unacceptable” and notified his supervisor of his conduct for potential disciplinary action, which included the placing of the investigatory report in his file and required training regarding sexual harassment.

E. Training/Outreach and Student/Climate Information

The College provided training to the Title IX team and College employees during the three years that OCR reviewed. Further, the College increased the amount of training it provided to its employees after the April 29, 2014 Questions and Answers on Title IX and Sexual Violence (2014 FAQ) was published.

1. Training of Title IX Team

During the 2013-14 school year, four members of the Title IX team, including the Title IX Coordinator and the Dean of Students, and two Title IX investigators, attended ATIXA Title IX Coordinator training. In addition, four members of the team, including the Dean of Students, the Director of Residential Living and Judicial Affairs, and two investigators, attended training provided by the Association of Student Conduct Administrators.

At the conclusion of the 2013-14 academic year, members of the Title IX team (the Title IX Coordinator, Dean of Students and two investigators) presented to the LCCC Cabinet steps that the College should take to fulfill its obligations under Title IX. The presentation included recommendations to: (1) conduct a climate survey; (2) increase training to faculty and students; (3) evaluate its response to Title IX complaints; (4) evaluate its Title IX policies; (5) increase training for the Title IX team; (6) revise its investigatory practices and procedures; (7) strengthen ties to law enforcement and community support (e.g. counseling and rape crisis centers); and (8) increase on campus support services. As reflected throughout Section E, the College implemented many of the recommendations.

Prior to the start of the 2014-15 school year, the College increased the size of the Title IX team, increasing the number of Title IX investigators from 3 to 11. The Title IX Coordinator emailed potential members of the team to inform them about Title IX team training, which would focus on investigatory and hearing practices, to occur in October 2014. On October 23-24, 2014, the College hosted training provided by ATIXA.¹² All sixteen members (at the time) of the College’s Title IX team attended the ATIXA Level 1 Title IX Investigator Training and Certification, which included, among other things, training related to model Title IX policies, investigation and hearing procedures, sample materials (e.g. no contact letters, notice of charge

¹² OCR notes that in hosting the training, the College arranged not only for training for its Title IX team, but also for members of eight other nearby colleges and universities, including the University of Northern Colorado, University of Wyoming, Northern Wyoming Community College, Central Wyoming College, Northwest College, Western Wyoming Community College, Casper College, and Eastern Wyoming College.

letters, notice of hearing letters), issue spotting, assessing credibility, OCR's Dear Colleague Letters, and Resolution Letters obtained by OCR in sexual violence investigations.

The College again hosted ATIXA training, similar to the training provided during the 2014-15 school year (and again providing opportunities for other nearby colleges to receive training). Members of the College's Title IX team attended the ATIXA Level 2 Investigator Training and Certification in October 2015. In addition, the College provided training to its Title IX team regarding the "Interpretation of Medical and Forensic Evidence." The training was provided by Stetson University and utilized a Pennsylvania state prosecutors' resource on sexual violence. The training provided an overview of the College's responsibilities under Title IX, statistics on sexual violence (both on and off college campuses), information regarding myths about victim behavior, the impact of alcohol on sexual assault, appropriate first responder response and other victim-sensitive training, and techniques to gather and assess evidence.

2. Training of Employees

During the 2013-14 school year, the College provided training, conducted by an outside attorney, to its employees about harassment, including sexual harassment. The training included review of the College's sexual harassment policies and information about how and when to report sexual harassment. However, the training focused primarily on workplace discrimination and not sexual harassment or sexual violence that affects students.

Before the start of the 2014-15 school year, the College provided training related to its Title IX obligations and its Title IX policies and procedures to College employees as part of fall in-service activities.

During the 2015-16 school year, the College provided Title IX-specific training to faculty, Campus Safety officers and student services employees. The training covered OCR's Dear Colleague Letters related to sexual violence, pregnant and parenting students, and retaliation. The training informed employees of the duties of responsible employees to report sexual harassment to the Title IX team and the obligation of the College to take prompt and effective action in response to reports of sexual harassment. The training also addressed issues of confidentiality, advising employees that only licensed professional counselors may keep reports confidential. The training advised employees of the Title IX prohibition against retaliation. Finally, the training provided an overview of the College's investigatory process.

3. Training and Outreach to Students

During the 2013-14 academic year the College provided training to new students during orientation regarding the College's Title IX policies, practices, and procedures. The training included explanations of Title IX's protections, campus resources, and information about how to file reports (including anonymous reports). In addition, new students were required to complete an online training program called "Think About It," which is a substance and sexual abuse training program.

The College increased the training provided to students during the 2014-15 academic years. In addition to the orientation training and Think About It, the College conducted “Sexual Assault Awareness Activities” in the spring 2015 (which were optional to students), including participation in the Clothesline Project (that invites students to discuss the impact of domestic and sexual violence), community speakers from a Rape Crisis Center, the local police department and a health care provider who works with persons who experience sexual assault, and a presentation by the Title IX team. In addition, the College sent invitations to participate in “Think About It” to all enrolled students, though it was mandatory only for new students. Finally, the College created reference cards, with Title IX contact information that were distributed at student workshops, counseling centers, student centers, and other locations around campus.

The College conducted similar activities for Students in the 2015-16 academic year.

4. College Assessment of Climate

In June 2014, the College conducted a climate survey. 216 students responded (64% female, 32% male, 4% declined to answer). The College conducted an additional climate survey in June 2015. 230 students responded (65% female, 32% male, 3% declined to answer). Some survey questions allowed multiple responses. The survey results show that student perception of campus climate remained relatively unchanged, but that student perception of the campus policies and procedures improved over the survey years.

Climate and Hotspots

In the 2014 survey, 39% of responding students do not believe that sexual misconduct occurs on campus, but 23% of the responding students believe that it occurs every day. Students believe that sexual misconduct occurs at parties, residence halls, dating situations and other campus locations such as classrooms or cafeteria.

In the 2015 survey, 44% of responding students do not believe that sexual misconduct occurs on campus, but 21% of the responding students believe that it occurs every day. Students believe that sexual misconduct occurs at parties, residence halls, dating situations and other campus locations such as classrooms or cafeteria.

Reporting

In the 2014 survey, 66% of responding students reported that they have not been informed of the College’s Title IX procedures, 11% reported that they did not understand the procedures, and 8% reported that they believed the procedures were inadequate. 14% reported that they understand the procedures and believe them to be adequate. In addition 66% stated that they would report sexual misconduct to faculty or staff, 43% stated they would report to the police, and only 25% stated they would report sexual misconduct to the Title IX coordinator. 19% stated that they would not know how to report.

In the 2015 survey, 41% of responding students reported that they have not been informed of the College's Title IX procedures, 6% reported that they did not understand the procedures, and 8% reported that they believed the procedures were inadequate. 37% reported that they understand the procedures and believe them to be adequate. In addition 76% stated that they would report sexual misconduct to faculty or staff, 49% stated they would report to the police, and 41% stated they would report sexual misconduct to the Title IX coordinator. Only 9% stated that they would not know how to report.

5. *Student Assessment of Climate*

During its September 13-14, 2016 two-day onsite, OCR scheduled 2 focus group sessions and two office hours. The College advertised OCR's focus groups and office hours with postings throughout both campuses (the off-site campus had a video feed to the room where focus groups/office hours were conducted) and emails to the student community. One student attended the focus groups and two students attended the office hours.

Analysis and Conclusion

Notice of nondiscrimination

At the outset of OCR's investigation, the College's notice of nondiscrimination did not comply with the Title IX regulation at 34 C.F.R. § 106.9. Although the notice was adequately distributed to all members of the College community, contains language alerting the College community that the College prohibits sex discrimination, and identifies the College's Title IX Coordinator, the notice on the College's website does not advise the College community that Title IX complaints can be brought to OCR. During the course of OCR's investigation, the College revised its notice of non-discrimination to include OCR's contact information. OCR determined that to the extent the College's notice of non-discrimination did not comply with the Title IX regulation that concern has been resolved.

Therefore, OCR has determined that there is insufficient evidence to conclude that the College's notice of nondiscrimination violates the Title IX regulation at 34 C.F.R. § 106.9.

Title IX Coordinator

The College has a Title IX Coordinator. The Title IX Coordinator's contact information is widely disseminated on the College's web pages and in its publications, such as the student handbook. In addition, the College's policies and procedures identify the Title IX Coordinator's job responsibilities. Finally, the College has provided appropriate training to the Title IX Coordinator.

Therefore, OCR has determined that there is insufficient evidence to conclude that the College's notice of nondiscrimination violates the Title IX regulation at 34 C.F.R. §§ 106.8(a) and 106.9(a).

Grievance Procedures

As stated above, OCR has identified criteria to determine whether grievance procedures are prompt and equitable, including the following:

- 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 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 any appeal;
- f) An assurance that the institution will take steps to prevent further harassment and to correct its discriminatory effects on the complainant if appropriate.

The College uses several integrated policies to address complaints of sexual harassment, including sexual assault/violence. All the policies are easily located online and distributed to students and employees.

A. Notice to the Parties of the Procedures

Students, employees and third parties may file complaints of sexual harassment, including sexual assault/violence against students, employees, and third parties. The College's policies and procedures provide options for reporting, including a phone number, an email address, and direct contact information for the Title IX Coordinator. They also provide a website link where a complaint may be submitted online.

B. Application to Complaints of Discrimination or Harassment by Staff, Students, or Third-Parties

The College's policies and procedures make clear which laws and regulations they are designed to comply with, and it states that it is written to encompass the College's policy with regard to sexual misconduct and discrimination and harassment. In addition, the College's policies and procedures make clear that they apply to acts of discrimination or harassment carried out by staff, students, or third parties.

C. Adequate, Reliable and Impartial Investigations

The College's policies and procedures describe the formal and informal resolution processes. The policies and procedures charge the Title IX Coordinator with ensuring adequate investigations. The College has hired additional investigators to ensure that investigations can be completed without conflicts of interest and to ensure that two investigators can work together on any case. The Title IX Coordinator is charged with ensuring the investigative staff have adequate training.

The College's policies and procedures contain detailed definitions about sexual harassment, sexual assault, and consent. The policies and procedures also explain the College's confidentiality policies, and advise students that the College may need to proceed with an investigation even against a student's wishes in order to protect the health and welfare of the College Community.

The description of the formal resolution process includes information about interim remedial and protective measures, major stages and timelines of the investigation, the investigative process, the notice of finding, and sanctions. All of these sections are described in detail, and they include necessary information about parties' responsibilities, the standard of review, and what the parties should expect and prepare for during the investigation. In addition, the College's policies and procedures describe the informal resolution process, including the limitations on its use (i.e. not available in sexual misconduct complaints) and the fact that parties may terminate the informal process at any time.

Finally, the policies and procedures ensure that both parties have the same right to participate in the investigative and disciplinary process (e.g. review or submit evidence, submit an appeal, or rely on a representative).

D. Designated and Reasonably Prompt Timeframes

Although the College's policies and procedures specify that investigations should be completed in a timely manner, they do not outline timeframes for all of the major stages of the investigative and disciplinary process. The policies and procedures state that the initial investigative report is due to the Title IX Coordinator or Dean of Students 30 days after the Title IX Coordinator assigns the complaint to the investigators.

In addition, during the course of OCR's investigation, the College revised its grievance procedures, as described in this letter, to ensure that the procedures specify applicable timeframes of each major stage of the grievance process. OCR concludes that any concern that the College's grievance procedures did not adequately set forth designated and reasonably prompt time frames has been resolved.

E. Notice of Outcome and Sanctions

The College's policies and procedures provide that both parties shall be notified in writing of the outcome of the College's investigation, including notice of any sanctions imposed.

F. Preventive Steps

The College's policies and procedures contain an assurance that the institution will take steps to prevent further harassment and to correct its discriminatory effects on the complainant if appropriate.

The College's policies require the Title IX Coordinator to take all reasonable steps to investigate and remediate the matter. To this end, the policies identify potential sanctions, for both staff and

students that will be taken to prevent further harassment. In addition, the Student Handbook provides for non-sanction interim remedies for the complainant, stating that the Title IX Coordinator may make any necessary adjustments to housing, class schedules, etc. needed during the investigation and adjudication of the incident(s). Finally, the policies prohibit retaliation.

The College's commitment to taking steps to ensure the cessation of any harassment is further publicized in the Student Handbook, which states that the Title IX Coordinator will "work to ensure the harassment stop."

OCR concludes that the College's policy takes sufficient preventive steps to satisfy Title IX and its regulations.

Conclusion

With respect to the College's policies and procedures, as they are written, OCR's investigation identified only one area of concern – that the policies and procedures do not establish a timeline beginning on the date the complaint is received and identifying the timeframe for each major step of the adjudicatory process. The College's revision of its grievance procedures during the course of the investigation resolved that concern. Therefore, OCR determined that there is insufficient evidence to conclude that the College's grievance procedures violate the Title IX regulation at 34 C.F.R. § 106.8(b).

Prompt and Equitable Response to Reports of Sexual Harassment

The College completed 77.4% of its response to complaints within 60 days and 90.3% of its response to complaints within 73 days. Further, some issues related to the timeliness of the College's response were related to the College's efforts to locate a respondent or follow due process to discipline staff members. Finally, in an effort to increase its responsiveness, the College has also trained additional Title IX investigators.

OCR observed some record-keeping deficiencies, namely that case files often lacked documentation such as notice of findings to the parties, witness notes or other documentation supporting the College's determination, and documentation related to participation in and resolution of mediation. However, the Title IX Coordinator confirmed to OCR that parties were notified of the outcome of cases and was able to explain the steps taken during the investigative process. In addition, OCR did not observe any record-keeping deficiencies that resulted in a failure to provide a prompt and equitable response to a report of sexual harassment to either a complainant or a respondent.

Therefore, OCR concludes that there is insufficient evidence to conclude that the College failed to provide prompt and equitable responses to reports of sexual harassment and sexual assault as required by 34 C.F.R. §§ 106.8 & 106.31.

Hostile environment

The College had only 33 Title IX reports in the three-year period that OCR examined. Of these 33 reports, only 15 concerned allegations of sexual harassment and only 5 concerned allegations of sexual assault. The College has taken active steps to assess and improve the campus climate, conducting climate surveys, increasing its Title IX resources and staff, performing outreach to students, and conducting training for its Title IX staff and the Title IX staffs of several other colleges and universities.

It regularly processes every report that it receives, regardless of where it occurs or who engages in the alleged misconduct. It also regularly provides interim remedies to students affected by sexual misconduct.

The College has deliberate, detailed, well-publicized policies and procedures in place to reduce sexual misconduct on campus. OCR concludes that there is insufficient evidence to support a finding that the College created a hostile environment on campus in violation of the Title IX regulation at 34 C.F.R. §§106.8(b) and 106.31.

This concludes OCR's investigation of this complaint and 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 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 College 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 individual may file a complaint alleging such treatment. The Complainant may also 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 wish to thank you for the cooperation extended to OCR during our investigation. If you have any questions, please do not hesitate to contact Patrick Alexander, Attorney, at 303-844-3473 or by email at Patrick.Alexander@ed.gov.

Sincerely,

Sandra J. Roesti
Supervising General Attorney

cc: Tara Nethercott, Counsel, by email to Tara@wrnlawfirm.com