

Agreement

between

The United States Department of Justice

and

The Board of Regents of the University of New Mexico

Introduction

The United States Department of Justice, Civil Rights Division, Educational Opportunities Section, and the United States Attorney's Office for the District of New Mexico (collectively, "DOJ" or the "Department"), received and investigated complaints that the University of New Mexico ("UNM" or the "University") failed to adequately respond to allegations of sexual assault of students. On April 22, 2016, DOJ issued a Letter of Findings on the University's compliance with Title IV of the Civil Rights Act of 1964 ("Title IV"), 42 U.S.C. § 2000c-6, which prohibits discrimination based on sex, among other bases, by public colleges and universities, and Title IX of the Education Amendments of 1972 ("Title IX"), as amended, 20 U.S.C. §§ 1681–1688, and its implementing regulations, 28 C.F.R. pt. 54, which prohibit sex discrimination by recipients of federal financial assistance. (See Exhibit A.)

The Department and the University enter into this Agreement to address the University's obligations under federal civil rights laws to address sexual harassment,¹ including sexual violence,² which creates a hostile environment for students affected by such harassment, and to provide clear and consistent procedures for reporting, investigating, and responding to such conduct.³

The Department recognizes that throughout its investigation into this matter, the University has taken significant and proactive steps to strengthen its prevention of and response to sexual harassment and assault on campus. (See Exhibit B, "UNM's June 2nd Letter to DOJ.")

The Department acknowledges that the University has, in good faith, initiated some of the actions described below prior to execution of this Agreement.⁴ The University agrees to comply with the requirements of this Agreement starting on the date signed and to maintain compliance for the duration of this Agreement.

¹ University Administrative Policy 2730 ("Sexual Harassment") defines sexual harassment as unwelcome conduct of a sexual nature. There are two typical types of sexual harassment which violate University policies: quid pro quo and hostile environment (examples of each are provided in Policy 2730).

² Sexual violence is defined in University Administrative Policy 2740 as physical sexual acts perpetrated against a person's will or when a person is incapable of giving consent (for example, due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, fellow students, students from other schools, or third parties.

³ See 20 U.S.C. §§ 1681–1688, and its implementing regulations, 28 C.F.R. pt. 54; and the legal standards discussed in the Department of Education's Office of Civil Rights in the Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (Jan. 19, 2001); and its subsequent interpretive documents: the Dear Colleague Letter on Sexual Violence (Apr. 4, 2011), and "Questions and Answers on Title IX and Sexual Violence" (Apr. 29, 2014).

⁴ DOJ's acknowledgement does not connote agreement that UNM's proactive measures, as implemented, meet the requirements of this Agreement or bring the University into complete compliance with Titles IV and IX.

Terms of the Agreement

To resolve the concerns identified by the Department in its Letter of Findings, the University will take action designed to eliminate and prevent sexual harassment, including sexual violence, that creates a hostile environment in its education programs and activities, and in compliance with Title IV, Title IX, and Title IX's implementing regulations. To that end, the University will make all necessary and appropriate revisions to its policies, procedures, and practices regarding campus sexual harassment, including sexual violence; take appropriate and immediate steps to investigate or otherwise determine what occurred when it has actual or constructive knowledge of sexual harassment; and mitigate the effects of sexual harassment of students that has created a hostile environment, including taking prompt and effective steps reasonably calculated to end the sexual harassment, eliminate any hostile environment that may arise, prevent its recurrence, and, as appropriate, remedy its effects.⁵ In return, DOJ will not initiate litigation regarding its Title IX and Title IV findings raised as of the date of this Agreement, provided the University continues its efforts and implements the provisions of this Agreement in good faith and subject to the terms in Section VII below.

I. DEFINITIONS

- A. "Student" means all students who have a regular physical presence on campus and are enrolled in a degree-granting program for six credit hours or more per semester. This definition does not include students taking all of their classes exclusively on-line,⁶ students taking classes in non-degree or non-credit status, or students taking classes in the University's Extended Learning or other community learning programs.
- B. "Sexual harassment" includes all forms of sexual harassment defined in University Administrative Policies 2730 and 2740.
- C. "Days" refers to calendar days. If a deadline falls on a weekend, holiday recognized by either the Department or the University, or during the University's Winter Break period, that deadline will be extended to the first regular business day following that weekend day, holiday, or the end of the Winter Break.

⁵ Title IV, Title IX, and Title IX's implementing regulations protect students from prohibited discrimination and do not restrict the exercise of any expressive activities or speech protected under the U.S. Constitution. When a school works to prevent and redress discrimination, it must respect the free-speech rights of students, faculty, and other speakers. Title IX and Title IV protect students from sex discrimination; they do not regulate the content of speech. The Department recognizes that the offensiveness of a particular expression as perceived by some students, standing alone, is not a legally sufficient basis to establish a hostile environment under Title IX and Title IV. While working to meet the requirements of this Agreement, UNM should also review the Department of Education's July 28, 2003, Dear Colleague Letter on the First Amendment, <http://www.ed.gov/ocr/firstamend.html>, and October 26, 2010, Dear Colleague Letter on harassment and bullying, <http://www.ed.gov/ocr/letters/colleague-201010.html>.

⁶ Should a student who takes all of their classes exclusively on-line change their status such that the student has a regular physical presence on campus, that student will then qualify as a "student" as defined in this Section.

- D. “Supportive measures” include interim supportive academic measures such as academic accommodations or changes in residential assignment, and appropriate supportive safety measures, such as no contact directives or temporary suspensions.
- E. “Attendant materials” help implement and disseminate information about University policies and include, but are not limited to, websites, brochures, handouts, and other materials designed with the purpose of informing the public about such policies.

II. POLICIES AND PROCEDURES

- A. To clarify what conduct constitutes sexual harassment prohibited by University policy and students’ options for reporting sexual harassment, including sexual violence, the University will review all relevant policies, procedures, and attendant materials for consistency and clarity, and will amend, rescind, or insert cross-references as necessary. The University will ensure its policies, procedures and related attendant materials consistently and accurately:
 - 1. Define sexual harassment and explain when such harassment rises to a level that violates University policy (e.g., hostile environment, quid pro quo); and
 - 2. Provide clear and detailed information on reporting, including: (a) a description of how, where and to whom to report sexual harassment; (b) an explanation of when reports are confidential, and when they constitute notice to the University, thereby triggering a requirement that the University respond; (c) how to report under each option; and (d) the consequences of each reporting option. The University will include details on anonymous and/or confidential reporting and on how to report a crime to law enforcement for criminal justice response.
- B. The University will ensure that its procedures provide for adequate, reliable, prompt, and impartial investigation, adjudication (where appropriate), and appeal (where applicable) of all complaints of sexual harassment, including an equal opportunity for the parties to present witnesses and other evidence. To this end, the University will review and revise its procedures and any attendant materials as follows:
 - 1. Revise its updated Office of Equal Opportunity (“OEO”) Discrimination Claims Procedure (“DCP”) to provide an explanation of what OEO considers in making a final determination of whether a complaint of sexual harassment violates University policies, including (a) a description of what types of evidence may be obtained by OEO or offered by witnesses, and (b) an explanation of how such evidence is considered in making the final determination;
 - 2. Revise the DCP to provide detailed information for complainants and respondents regarding their rights under OEO’s processes, including the rights of complainants and respondents as defined in University Administrative

Policy 2740;⁷ and expectations/options for complainants and respondents as the investigation proceeds;

3. Revise the DCP to provide a statement that OEO will independently and impartially investigate and adjudicate sexual harassment complaints without intervention or involvement by University administrators, unless such administrators are specifically tasked with responsibilities in the adjudication process;
 4. Revise the DCP to provide a prompt and reasonable timeframe for any appeals process allowed under University policy, to ensure that a finding of a violation of University policy is timely and effectively shared with the appropriate sanctioning body; and
 5. Review the Student Grievance Procedure against the DCP to ensure both clearly and consistently reflect each other's processes and procedures.
- C. To ensure that University procedures provide for adequate, reliable, prompt, and impartial investigation, adjudication (where appropriate), and appeal (where applicable) of all complaints of sexual harassment, the University will develop written internal protocols for the implementation of the DCP.⁸ These written protocols will:
1. Require OEO investigators to, where feasible, conduct in-person interviews with material witnesses to a complaint before providing any witness with another witness' written statement;
 2. Establish a timeframe after witness interviews for OEO investigators to follow up on collecting relevant evidence identified by witnesses, including statements, pictures and videos published through social media, and information from cell phones, including but not limited to text messages, photos, and videos;
 3. Define parameters for granting or denying an extension of time during any part of OEO's investigation procedure when such extension is requested by the complainant, the respondent, law enforcement or the OEO investigator, in a way that minimizes the negative impact of such delays on OEO investigators' ability to timely collect evidence or provide supportive measures;
 4. Establish when and how OEO must consider, as relevant evidence, additional complaints of sexual harassment against a single respondent that arise prior to

⁷ All policy number references in this Agreement refer to the text of policies in place as of the date this Agreement is signed.

⁸ See 28 CFR 54.135(b).

or during the course of an investigation, including complaints of additional harassment or violations of no-contact orders;

5. Establish how OEO will consider power dynamics in complaints by students against faculty and staff, including when a respondent is both a student and school employee;
 6. Require that investigators equally assess the credibility of all witnesses and explain the basis for their assessment in the letters of determination;
 7. Establish a process by which OEO will receive relevant information from the University of New Mexico Police Department (“UNMPD”), and seek to receive information from the Albuquerque Police Department, the Bernalillo County Sheriff, and the Bernalillo County District Attorney;
 8. Establish a procedure for OEO investigators to report, and an appropriate office to effectively respond to, any contact made by UNM administrators or other non-OEO employees during the pendency of the investigation and adjudication of a complaint that could be perceived as creating bias or partiality; and
 9. Establish a time frame for OEO investigators to communicate with the complainant and respondent to keep them timely informed as to the investigation, adjudication, and appeals processes.
- D. To ensure that the University effectively eliminates any hostile environment created by sexual harassment, prevents its recurrence, and remedies its effects, the University will establish written internal protocols regarding communications about its response to allegations of sexual harassment, including:
1. A process by which the OEO and Dean of Students Office (“DoS”) will share information regarding complaints of third party retaliation and respond as appropriate;
 2. Criteria for and a process by which the OEO and the DoS will determine appropriate supportive measures during the grievance investigation and adjudication process;⁹
 3. A process by which the OEO and the DoS will convey information regarding pending investigations, supportive measures, or findings of a violation of University policy to necessary campus entities, which may include but not be

⁹ The appropriateness of a supportive measure will be determined at the discretion of the OEO, DoS or other University body with jurisdiction over such issues.

limited to UNMPD, residential life, athletics, and any applicable academic departments.

- E. To ensure that the University consistently responds promptly and equitably to all allegations of sexual harassment of or by students of which it had actual or constructive knowledge, the University will:
1. Revise the University's procedures for tracking electronically all alleged sexual harassment incidents (including any written or verbal complaints) to produce a spreadsheet that includes: the date and nature of the complaint; the name of the complainant or that the complaint was anonymous; the name of the person(s) who received the complaint or made the report; the name(s) of the respondent; whether OEO opened an investigation or its reason for declining to investigate; the name(s) of the person(s) assigned to investigate the complaint, issue any supportive measures, and issue disciplinary action (where relevant); the supportive measures issued, if any; the date of every major step of the investigation and adjudication process, including interviews of material witnesses, extensions of time granted, and issuance of preliminary and final findings; communications regarding all major steps to complainant and respondent; the dates of any appeals and their findings; and a summary of the findings at the initial, hearing, and appeal stages, including any actions taken on behalf of the alleged victim and any disciplinary or other actions taken against the respondent;
 2. Ensure that OEO retains all records and supporting written documentation related to any incident of alleged sexual harassment for the duration of this Agreement, including but not limited to: any written report or complaint; any written statements of the student(s) alleging harassment and/or person(s) reporting the alleged harassment; interview notes; any evidence submitted or collected; any records of correspondence, whether written, in person or by phone, with the complainant and respondent, their representatives, or other potential witnesses in a matter; existing documentation of any prior incidents of discrimination or harassment involving the student(s) subject to harassment or the alleged harasser(s); actions taken on behalf of the alleged subject of harassment; actions taken with respect to the respondent, including any temporary measures; records of any discipline or proposed discipline; records of findings communicated to the parties; and records of any appeals;
 3. Establish a process for the Title IX Coordinator to regularly review (a) all reports of conduct that may constitute sexual harassment, including UNMPD police reports, to ensure that all alleged incidents that involved possible sexual harassment were properly identified as such; and (b) all files and reports related to the investigation, adjudication, appeal, and sanctions of allegations of sexual harassment to ensure they were responded to appropriately and in accordance with the requirements of University policies and procedures, Title IV, and Title IX and its implementing regulations. The Title IX Coordinator

will follow up as appropriate with any UNM employee(s) who could improve their identification of or response to sexual harassment.

- F. On or before December 1, 2016, the University will submit to the Department for review and approval any initial proposed revisions of its policies, procedures, and attendant materials related to sexual harassment (including identification of which policies, if any, will be rescinded), and (with respect to the University Administrative Policies), if necessary, review of any subsequent substantive changes after the policies and procedures have gone through UNM's notice and comment process. These revisions will reflect the requirements of the Agreement and relevant federal law. If the Department chooses to provide comments on the University's proposed revisions, the Department will do so within 30 days of receipt. The University will incorporate the Department's comments unless there is disagreement, in which case the University and the Department will work together in good faith to resolve the disagreement. If the parties are unable to agree on the revisions within 30 days of the Department providing notice of any concerns, the Department may pursue relief under the enforcement provisions of Section VIII below.
- G. Once the University revises its policies, procedures and attendant materials related to sexual harassment under the terms above, the University will not substantively modify those policies, procedures or protocols during the period of the Agreement without the approval of the Department under the process set forth in Section II.F.
- H. By August 1 of each year covered by this agreement, the University will submit the spreadsheet identified in section II.E.1 for review, and will maintain all other documents identified in II.E.2 to be produced to the Department for review within 30 days of a request.

III. NOTICE OF POLICIES AND PROCEDURES

- A. No later than 30 days after final execution of each revised or new policy or procedure, the University will provide all students and employees with written notice regarding the revised or new policy or procedure regarding sexual harassment and the procedures for resolving sexual harassment complaints required by Sections II.A-B. The University, at a minimum, will publish revisions of University Administrative Policies in the "News" section on the UNM Policy Office website and in the UNM News Minute. The University will also include links to all relevant policies and procedures in the Student Pathfinder Handbook, including but not limited to OEO's DCP.
- B. By the start of each academic year, the University will review and update the LoboRESPECT website to ensure it provides information consistent with any revised policies and procedures, and contains clear and consistent information identifying which policies and procedures govern the investigation, adjudication, appeal and sanctioning processes.

IV. TRAINING

A. Training for Students

1. The University currently provides in-person interactive training on sexual harassment to incoming students through its New Student Orientation program and offers it to the University community on an ad-hoc basis throughout the year.¹⁰

As part of this Agreement, the University will revise and enhance its training programming to provide in-person interactive training to all students by the close of the monitoring period described in this Agreement. Such programming will include information regarding prevention of sexual harassment and the University's policies and procedures regarding the reporting, investigation, and adjudication of Title IX complaints. The University will ensure that the training: (a) informs students of the University's prohibitions against sexual harassment as provided in University policy, the University's prohibition against retaliation, and the University's commitment to preventing and addressing sexual harassment; (b) educates students on what type of conduct constitutes sexual harassment that violates University policy; (c) informs students as to how and to whom they can report allegations of sexual harassment and retaliation; and (d) provides a general overview of Title IX, the rights it confers on students, the resources available to students who have experienced sexual harassment and retaliation, and the Department's role in enforcing Title IX and other laws prohibiting sex discrimination.

- a. The training will use evidence-based curricula and methodologies, which emphasize interaction with participants and use of fact patterns from Title IX claims generally publicly known through national media dissemination (but do not involve current or past students, faculty, or staff at the University of New Mexico) to generate discussion and disseminate facts about sexual harassment. The training will include opportunities for discussion and interaction.
- b. These sessions will emphasize: issues around consent in sexual interactions; the criminal, academic, housing, athletic, and student-record-related consequences related to committing sexual harassment and/or retaliation that violates University policy; the role of alcohol and drug use in incidents of sexual harassment, including how such use relates to consent and what constitutes incapacitation that prevents

¹⁰ The in-person interactive training that the University provides its incoming students in the New Student Orientation program is titled "the Gray Area." DOJ will determine whether the Gray Area complies with these requirements as part of the monitoring component of this Agreement.

consent from being given; clear examples of what types of actions may constitute prohibited sexual harassment under University policy, and what may provide the basis for a complaint under the DCP; how bystanders can help; and when off-campus misconduct falls within the University's policies and the DCP.

2. By February 1, 2017, the University will establish the necessary infrastructure to allow it to provide the in-person interactive training described in this Agreement on an ongoing basis.
3. Starting February 1, 2017, the University will issue notices to all current students that those who have not taken the in-person interactive training described in this Agreement through New Student Orientation or another campus opportunity will be required to take such training prior to the end of the Fall 2017 academic semester.
 - a. The University will ensure that all students currently enrolled in graduate programs at UNM have received training by December 31, 2017.
 - b. The University may exempt from this training requirement all students graduating from their degree granting programs at the end of the Spring 2017 semester. However, the University must ensure that those students graduating from their degree granting programs at the end of the Spring 2017 semester who will be starting a new University degree granting program for six credit hours or more at any point following the close of the Spring 2017 semester will be required to take the in-person interactive training prior to starting or at the beginning of their graduate program.
4. Starting in the 2017-2018 academic year, the University will provide the in-person interactive training described in IV.A.1 to all students who are new to the University. This training will be mandatory for all students new to the University starting in the 2017-2018 academic year (including freshmen, new graduate students, and incoming transfer students).
5. Starting in the 2017-2018 academic year and continuing through the end of this Agreement, the University will ensure that all continuing students who have already received the in-person interactive training then receive annual online training on sexual harassment pursuant to the requirements below.
 - a. The online training will emphasize: issues around consent in sexual interactions; the criminal, academic, housing, athletic, and student-record-related consequences related to committing sexual harassment that violates University policy, and retaliation; the role of alcohol and drug use in incidents of sexual harassment, including how such use

relates to consent and what constitutes incapacitation that prevents consent from being given; clear examples of what types of actions may constitute prohibited sexual harassment under the University policy, and what may provide the basis for a complaint under the University's grievance procedures; how bystanders can help; and when off-campus misconduct falls within the University's policies and grievance procedures.

- b. The online training will be interactive.¹¹
 - c. Individuals taking classes at the University exclusively online in a degree granting program will be required to take the online training in their first semester of enrollment and annually thereafter, so long as they are enrolled for one or more credits during the academic year.
- 6. The University may develop a system whereby individuals may request waiver of the training(s) requirement. The waiver system will be reviewed by the Department prior to implementation.
 - 7. All training will include participant evaluations, which UNM will analyze to determine ongoing effectiveness of training. The University will develop a system for monitoring training to ensure that every student required to do so as provided in this Section participated in the trainings described in this Section subject to allowance of waiver approved by the Department or reasonable limitations for which the University supplies an explanation.

B. Training for Responsible Employees

- 1. By December 31, 2016, the University will provide training to all University staff and faculty that it designates as responsible employees, including but not limited to members of the UNMPD. This training will explain the University's responsibilities under Title IX to address allegations of sexual harassment and how employees should respond to reports of sexual harassment. The training will include:
 - a. Clear examples of what types of actions may constitute sexual harassment, and what may provide the basis for a complaint under the University's grievance and other procedures;
 - b. Information regarding the University's policies and grievance procedures for Title IX complaints;

¹¹ The University has already purchased interactive online training modules. DOJ will determine whether the training complies with these requirements as part of the monitoring component of this agreement.

- c. Information relevant to informing complainants of their right to file a Title IX complaint with the school and a criminal complaint with campus and community law enforcement and how to do so;
 - d. Which employees are responsible employees under University policy, the reporting requirement of all responsible employees, where and to whom reports of sexual harassment should be made, and any consequences for failure to report;
 - e. Information as to where victims of sexual harassment may seek help and assistance on campus; and
 - f. Information regarding the University's Title IX Coordinator, including role, responsibilities, and contact information.
2. Each responsible employee will be required to complete the training annually. The University will maintain a system for monitoring training to ensure that every responsible employee of the University participated in the training required by this Section.
 3. The training will include participant evaluations, which UNM will analyze to determine ongoing effectiveness of the training.
 4. By December 1 of each year covered by this Agreement, the University will ensure that the Title IX Coordinator and all employees directly involved in processing, investigating, adjudicating, responding to appeals, and/or sanctioning complaints of violations of University policies through the DCP regarding allegations of sexual harassment have received Title IX training(s). The training(s) must be in-person and cover:
 - a. The University's policies and grievance procedures for Title IX complaints;
 - b. The University's responsibilities under Title IX and Title IV to address allegations of sexual harassment, including how to recognize and appropriately respond to allegations and complaints; and
 - c. For the Title IX Coordinator and all individuals who investigate complaints of sexual harassment prohibited by Title IX and Title IV: how to conduct and document adequate, prompt, reliable, and impartial Title IX investigations. Training should focus on a trauma-informed approach, and must also include how to identify, collect, weigh and analyze evidence, including witness statements and forensic evidence, such as SANE and medical reports, information on consent and the role drugs or alcohol can play in the ability to consent, and how to assess credibility. Training may be provided using a train-the

trainer model (e.g., at least one employee attends outside training by experts in the field and coordinates in-house training).

5. Beginning with the 2016-17 academic year, the University will ensure that all employees new to the University employed in positions identified by the University as “responsible employee” as provided in Sections IV.B.1 and 4 complete the training required in this Section III.B within thirty (30) days of their employment start date.
6. For all training provided to employees by the University, UNM will also develop a plan to evaluate and monitor the effectiveness of such training.

C. Training for UNMPD

1. By December 1, 2016, UNMPD will ensure that all UNMPD officers who respond to or investigate allegations of criminal sexual assault and domestic violence have received training on evidence-based, trauma-informed investigative techniques. Training will include the neurobiological effects of trauma on the brain, how to identify drug- and alcohol-facilitated criminal sexual assault, effective report writing and evidence gathering. Training should also include information on how to recognize and eliminate implicit and explicit gender bias in policing.
2. By December 1, 2016, UNMPD will also establish a written protocol for all UNMPD officers who respond to or investigate allegations of criminal sexual assault to receive training at least annually on investigating criminal sexual assault and domestic violence to ensure all officers are aware of current best practices.
3. All training will include participant evaluations, which UNM will analyze to determine ongoing effectiveness of trainings.

V. TITLE IX COORDINATOR

The University will review all policies, the DCP, and attendant materials to ensure they consistently identify the Title IX Coordinator’s name or title, office address, email address, and telephone number as required by Title IX at 28 C.F.R. § 54.135(a) in all places where that information is published. Additionally, the University will ensure that all published notices of nondiscrimination with the Title IX Coordinator’s information are consistent with the requirements of Title IX at 28 C.F.R. § 54.140.

VI. EDUCATIONAL CLIMATE

- A. The University will take steps to eliminate any hostile environment that it identifies for students reporting sexual harassment (e.g. by providing academic services, counseling, escort services, and changing housing assignments and scheduling for

classes, dining services, etc.). Each semester the University will document, on an internal spreadsheet, any steps it takes to address a student's environment, including the nature and duration of any such steps.

- B. The University, using evidence-based methodology and validated questions, will continue to conduct one or more annual climate surveys for all students to: 1) assess students' attitudes and knowledge regarding what constitutes prohibited sexual harassment and retaliation; 2) gather information regarding students' experience with sexual harassment while attending the University; 3) determine whether students know when and how to report such harassment; 4) gauge students' comfort level with reporting sexual harassment; 5) identify any barriers to reporting; 6) assess students' familiarity with the University's outreach, education, and prevention efforts to identify which strategies are effective; and 7) solicit student input on how the University can encourage reporting of prohibited sexual harassment and retaliation, and better respond to such reports.
1. The annual climate surveys will be administered in the Fall semesters of 2017 and 2018 to all students, and will allow for respondents to answer the survey anonymously.
 2. By December 1, 2016, the University will submit its proposed climate survey and assessment methodology to the Department for review, and if changes are proposed, shall resubmit for review before conducting.
- C. By February 1, 2017, the University will implement a monitoring program to assess the effectiveness of its efforts to prevent and address sexual harassment and retaliation and to promote a non-discriminatory school climate. The monitoring program should include an assessment of the effectiveness of its prevention and response efforts as they relate to the University's diverse population, e.g. Limited English Proficiency, LGBTQI, and Native American students. By February 1, 2017, the University will submit a monitoring plan to the Department for review. The monitoring program shall include an annual assessment of the effectiveness of its anti-harassment efforts and submission of the assessment to the Department as required by Section VII.E. The assessment will be completed by June 30, 2017, and then at the conclusion of each academic year for the life of this Agreement, and include:
1. A review of student climate surveys (see Section VI.B) to determine: where and when sex-based harassment occurs; deficits in students' knowledge of what constitutes sexual harassment that violates University policy, where to report it, and the results of reporting to different resources; barriers to reporting sexual harassment; and recommendations for how the University can better encourage reporting of and improve its response to complaints;
 2. A review of all reports of sexual harassment and the University's responses to such reports, particularly with respect to: whether such reports were

adequately, reliably, promptly, and impartially investigated and resolved; how many resulted in a finding of violation of University policy and (where applicable) the disciplinary action taken; the University's actions to remedy the effects of any hostile environment and retaliation that occurred; how many reports involved particular groups of students or staff (e.g., first-year students, athletes, members of fraternities or sororities, or academic advisors) or particular patterns of behavior (e.g., drug- or alcohol-facilitated assault); whether any individuals engaged in repeat misconduct; and if so, the University's actions to prevent the repeated misconduct and remedy its effects;

3. Detailed data on the number of sexual harassment reports received by the University, whether the University investigated each report, and, if investigated, the findings, the sanctions imposed (if applicable) and the dates of all relevant events in each report, including but not limited to the date of the complaint and the date findings were communicated to the complainant and respondent;
4. Evaluation and analysis of the data collected, including an assessment of any changes in the number or severity of reported incidents of sexual harassment, particularly among subgroups of students or staff (e.g., first-year students, athletes, members of fraternities or sororities, or academic advisors);
5. Conclusions derived from the monitoring program implemented under Section VI.C;
6. Any recommendations received from community members and stakeholders, including members of law enforcement, that are gathered for the annual assessment; and
7. Any recommendations by the University for improving its sexual harassment response and prevention programs, and timelines for the implementation of the recommendations.

VII. REPORTING PROVISIONS

A. Policies, Procedures and Protocols

The University will provide the Department all documents and information identified in provisions II.A-F in accordance with the timelines set forth above.

B. Notice of Revised Policies and Procedures

Within 45 calendar days after providing notice to students and employees of the newly amended or revised policies and the DCP, the University will provide the Department with documentation that it has implemented Section III of this

Agreement, including copies of any written notices issued to all students and employees regarding the new Title IX procedures; a description of how the notices were distributed; links to the webpages where the revised Pathfinder and University policies are located; and a link to its webpage(s) where the revised DCP is located.

C. Training

By December 1, 2016, the University will provide to the Department, for review and approval, the training materials and agendas to be used in the trainings conducted pursuant to Sections IV.A and B. The University will also provide information describing the expertise and experience with regard to Title IX of the person or persons conducting the training pursuant to Sections IV.B and C of this Agreement. If the Department chooses to provide comments on the proposed training or trainers, it will do so within 45 days of receipt of the materials.

By September 30, 2017, and by June 30th of each subsequent year covered by this Agreement, the University will provide information regarding the content and recipients of each student training provided pursuant to this Agreement. This information must include:

1. Copies of all agendas used at such training sessions;
2. Copies of the training materials distributed at student trainings;
3. Electronic access to any training provided through other media;
4. The dates and duration of each student training session held that was required by this Agreement; and
5. The number of students who have yet to participate in the online or in-person training required by Section III.A with an explanation for how the University will ensure that they receive the training, subject to the limitations and conditions approved by the Department as described in this Agreement.

By September 30, 2017, and by June 30th of each subsequent year covered by this Agreement, the University will provide the Department with a list of any University employee, by name and job title, who missed any training required by Sections IV.B and C of this Agreement during the past calendar year, and information as to how each employee will receive the training.

D. Title IX Coordinator/Notice of Nondiscrimination

By December 1, 2016, the University will provide the Department with a report documenting the actions it has taken to comply with the provisions of Section V above.

E. Educational Climate

By September 30, 2017, and by June 30th of each subsequent year covered by this Agreement, the University will provide the Department with a report documenting its follow-up efforts with complainants as required by Section VI.A.

By September 30, 2017, and by September 30th of each subsequent year covered by this Agreement during which a climate survey was conducted, the University will provide the Department with a report documenting that the annual climate survey has been conducted, and including the cumulative results of the survey questions, summaries of comments provided in the survey, the University's analysis of the survey results, and proposed actions based on that analysis and the survey information.

By September 30, 2017, the University will provide the Department with a copy of its annual assessment of the effectiveness of its sexual harassment response and prevention programs, including any proposed recommendations for improving said programs. The Department will notify the University in writing if it has any objections to the assessment's proposed recommendations.

On June 30th of each year covered by this Agreement, the University will provide the Department with a copy of its annual assessment of the effectiveness of its sexual harassment response and prevention programs, including any proposed recommendations for improving said programs. The Department will notify the University in writing if it has any objections to the assessment's proposed recommendations. If at any other time the University seeks to improve its sexual harassment response and prevention programs in ways that contradict a term of this Agreement, it will provide the Department with immediate written notice of the proposed improvement(s) and need not wait until it submits its annual assessment.

VIII. ENFORCEMENT

- A. The Department may enforce the terms of this Agreement, Title IX, Title IV, and all other applicable federal laws.
- B. If the University, despite its good faith efforts, anticipates that it will be unable to meet any timeline set forth in this Agreement, it will immediately notify the Department of the delay and the reason for it. The Department may provide a reasonable extension of the agreed timeline.
- C. If the Department determines that the University has failed to comply with the terms of this Agreement or has failed to comply in a timely manner with any requirement of this Agreement, it will so notify the University and will attempt to resolve the issue(s) in good faith with the University. If the Department and the University are unable to reach a satisfactory resolution of the issue(s) within 60 days of providing notice to the

University, the Department may initiate civil enforcement proceedings in federal court.

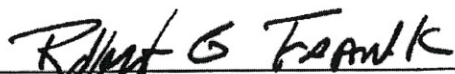
- D. The University understands that the Department will monitor this Agreement until it determines that the University has fulfilled the terms of this Agreement and is in compliance with Title IV, Title IX, and the implementing regulations at 28 C.F.R. Part 54, which were at issue in its investigation.
- E. The University further understands that the Department retains the right to evaluate the University's compliance with this Agreement, including the right to conduct site visits, observe trainings, interview University staff and students (including *ex parte* communications with students and University employees other than University administrators), and request any relevant additional reports or data, including the investigative reports and files of OEO and UNMPD, as are necessary for the Department to determine whether the University has fulfilled the terms of this Agreement and is in compliance with federal law.
- F. By signing this Agreement, the University agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. To ensure compliance with this Agreement, the Department may require additional monitoring reports or the ability to inspect data or other information maintained by the University as determined necessary by the Department.

IX. TERMS AND TERMINATION

- A. This Agreement will be in effect for three (3) full academic years and will not terminate until at least 60 days after the Department has received all reporting related to the 2018-2019 school year required by this Agreement.
- B. For the duration of this Agreement, the University, including OEO and UNMPD, is expected to preserve documents, including electronically stored information, used to compile the above-referenced reports, and agrees to make such documents available for inspection by the Department upon request.
- C. This Agreement has binding effect on the parties, including their principals, administrators, representatives, successors in interest, and their legal representatives.
- D. If any part of this Agreement is for any reason held to be invalid, unlawful, or otherwise unenforceable by a court of competent jurisdiction, such decision shall not affect the validity of any other part of the Agreement. Furthermore, the University and Department shall meet within fifteen (15) days of any such decision to determine whether the Agreement should be revised or supplemented in response to the court's decision.
- E. This Agreement is for the purpose of voluntarily resolving an issue and is not, and will not be construed as, an admission of liability, fault, or wrongdoing of any kind by the University.

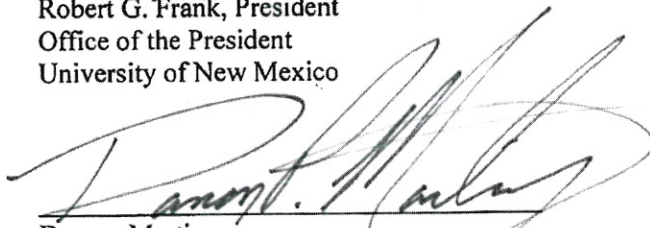
F. This Agreement will not bar any individual from pursuing a complaint under Title IX against the University.

Signatures of the Parties to the Agreement:



Robert G. Frank, President
Office of the President
University of New Mexico

Date: 10.17.16



Damon Martinez
United States Attorney
District of New Mexico
U.S. Department of Justice

Date: October 17, 2016



Shaheena Simons, Chief
Educational Opportunities Section
Civil Rights Division
U.S. Department of Justice

Date: 10-17-2016

Exhibit A



U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section

SAS:TBC:CMP:RS
169-49-69

*U.S. Mail: 950 Pennsylvania Avenue, NW
Patrick Henry Building, Suite 4300
Washington, D.C. 20530
Overnight: 601 D Street, NW, Suite 4300
Washington, D.C. 20004
Phone: (202) 514-4092
Fax: (202) 514-8337*

April 22, 2016

President Robert G. Frank
Office of the President
1 University of New Mexico
Albuquerque, NM 87131

Re: Title IX and Title IV Investigation of University of New Mexico

Dear President Frank:

The Department of Justice (the “Department” or “the United States”) has completed its investigation regarding the University of New Mexico’s (“the University” or “UNM”) handling of reports by students of sexual harassment, including sexual assault, at its Albuquerque campus. The United States conducted its investigation under Title IV of the Civil Rights Act of 1964 (“Title IV”), 42 U.S.C. § 2000c-6, which prohibits discrimination based on sex, among other bases, by public colleges and universities, and Title IX of the Education Amendments of 1972 (“Title IX”), as amended, 20 U.S.C. §§ 1681–1688, and its implementing regulations, 28 C.F.R. pt. 54, which prohibit sex discrimination by recipients of federal financial assistance. UNM is a recipient of financial assistance from the Department’s Office of Justice Program’s National Institute of Justice and Bureau of Justice Statistics.

The Department initiated its investigation in December 2014, after receiving complaints from multiple students alleging that UNM did not respond adequately to their reports of sexual assault. The complaints raised a range of issues, including confusion regarding where and how to report, lengthy delays in UNM’s investigative and resolution processes, insensitive and sometimes re-traumatizing investigative techniques by UNMPD and other UNM employees, failure to provide effective interim safety measures, supports and services, and a perception that the campus culture affords preferential treatment to certain students, particularly athletes or those affiliated with fraternities, while approaching reports of sexual assault with skepticism or indifference.

As part of the investigation, the Department reviewed the University’s policies and grievance procedures; training for staff, students and faculty, including training of those responsible for coordinating Title IX enforcement; responses to reports by students of sexual harassment, sexual assault, and retaliation; coordination of Title IX enforcement; and notice of nondiscrimination. During site visits to campus, we conducted dozens of interviews of campus administrators and

police officers, current and former students and their families, faculty members, and community partners who provide services and supports to UNM students who have been sexually assaulted. UNM cooperated from the outset and throughout the process.

Our investigation found that although UNM has strengthened its response to sexual harassment and sexual assault of students over the past year, it remains out of compliance with Title IX and Title IV in key respects. Based on our review, UNM must do more to address and respond to sexual harassment that creates a hostile environment, including sexual assault, by effectively stopping harassment, preventing its recurrence, eliminating the hostile environment, and remedying its harms. This letter constitutes notice of the Department's findings, and of the minimum steps that the University must take to bring policies, practices, and procedures into compliance with federal law, and to remedy past violations.

The United States appreciates the University's cooperation, its proactive efforts to date, and its stated commitment to addressing sexual harassment, including sexual assault, to ensure a safe campus and access to educational opportunities for all students. We also extend our thanks to each member of the UNM and greater Albuquerque community who met with us in the course of the investigation – especially the many current and former students who came forward to share their perspectives and personal experiences with sexual assault and campus response at UNM.

BACKGROUND

The University of New Mexico is a large public research university located in Albuquerque, with branch campuses in Gallup, Los Alamos, Taos and Valencia County. In the fall of 2015, 27,353 students were enrolled in undergraduate, graduate and professional degree programs at the main campus in Albuquerque, which also retains approximately 16,000 employees. Among these employees are the 40 sworn peace officers of the University of New Mexico Police Department (UNMPD). UNMPD officers hold the authority to enforce all applicable laws, ordinances, and campus traffic regulations, and to make arrests for criminal behavior that occurs on the UNM campus. The Chief of UNMPD reports directly to the University's Executive Vice-President for Administration Office.

On December 5, 2014, the Department notified UNM by phone and by letter that it was initiating an investigation and compliance review under Title IV and Title IX based on multiple complaints, and requested that UNM produce documents and other information for review. From the start of our investigation, the University President pledged his cooperation and that of his staff. The University responded promptly to all of the United States' requests for information and provided access to all University employees with whom the United States requested to meet.

In the course of the investigation, the United States reviewed thousands of pages of documents and conducted site visits to the University and the Albuquerque community in January, April and May of 2015. We reviewed the University's policies prohibiting sexual harassment, including sexual assault; the Student Conduct Code ("SCC"), the Discrimination Claims Procedure ("DCP"), and the Student Grievance Procedure ("SGP"); UNMPD policies, procedures and practices for responding to, and investigating incidents of, sexual assault; and training and

education materials on Title IX, sexual harassment, and sexual assault that UNM provided to members of the campus community.

We also reviewed copies of all complaints filed with the University and UNMPD alleging sexual harassment or sexual assault for six full academic years, from the 2009-2010 school year through the end of the 2014-15 school year.¹ The complaints included, but were not limited to, allegations involving student-on-student sexual harassment and sexual assault, and employee-on-student sexual harassment and sexual assault. In addition, the United States analyzed how the University and/or UNMPD responded to each of these complaints and how UNM policies, training, and grievance procedures affected how they were processed and resolved. In total, we, together with expert consultants in sexual assault response and campus law enforcement, reviewed UNM's administrative response to 173 complaints of sexual harassment, including sexual assault, domestic violence and stalking, and 55 campus police investigation reports. The United States also conducted more than 50 interviews with current and former students and their parents, current and former faculty and staff, community members, and University officials, and held six focus group meetings and multiple open office-hours sessions in Albuquerque to hear directly from students, staff and faculty.

At the outset of our investigation, the University had in place a labyrinth of 17 outdated policies and procedures related to sexual assault and sexual harassment, many in conflict with each other and with federal regulations and guidance on Title IX.² Faculty and staff did not understand when or how to report sexual harassment that they observed, learned about, or themselves experienced. The University provided virtually no training on sexual assault or sexual violence to students. Students told us they had no idea where or how to report or where to get help. Those who were able to report encountered a confusing process, rife with roadblocks and delays. Further, UNM officials responsible for addressing and remediating complaints of sexual harassment, including sexual assault, had received minimal and inconsistent training and demonstrated a lack of understanding of trauma-informed interviewing and investigative techniques.

Similarly, most UNMPD officers had not received adequate law enforcement training in how to respond to sexual assault incidents, including how to appropriately conduct victim and witness interviews and effectively gather evidence following a sexual assault. The various individuals and organizations handling different aspects of sexual assault response at the University did not communicate with each other, leading to fractured and incomplete service provision and failure to make appropriate referrals. Without appropriate supports in place, numerous students saw

¹ This letter of findings focuses on the policies, procedures and practices in place at the beginning of the 2009-10 school year through the 2014-2015 school year. We did not review complaints or investigations filed, processed, or completed after July 1, 2015. With respect to trainings, policies, and procedures, we requested and reviewed updates as of November 2015, as reflected throughout this letter.

² Title IX prohibits sex-based discrimination in all schools, colleges, and universities that receive federal financial assistance, while Title IV prohibits sex-based discrimination *only* in public schools, colleges and universities. As Title IX is the more expansive statute, the phrase "Title IX" has evolved as short hand for discussing a school's obligation to respond to, eliminate, prevent the recurrence of, and remedy the harm of sex-based discrimination in educational programs. All references to a school's Title IX obligations should be read to include its parallel Title IV obligations.

promising academic careers derailed – experiencing lasting and serious emotional and mental health consequences; suspending their academic coursework; dropping out of extracurricular activities; losing scholarships; and/or leaving the University altogether. And troublingly, in interview after interview, UNM students expressed reluctance to report sexual assault to UNM because they feared retaliation or because they lacked confidence in the University’s response.

From the start of our investigation, the University openly acknowledged gaps in its response to sexual assault and sexual harassment and, to its credit, engaged in an ongoing and major effort to begin addressing those gaps. UNM expanded the mandate and raised the profile of the University’s Presidential Task Force on Sexual Assault, which President Frank had first asked his staff to create in Spring 2014. As chair of the Presidential Task Force, UNM’s Dean of Students (“DoS”) reconvened UNM’s Sexual Assault Response Team (“SART”), which had first formed in 2013 but by the following year was no longer meeting regularly. In 2015, SART was renamed the Sexual Misconduct and Assault Response Team (“SMART”), and its focus broadened to also include sexual misconduct. SMART includes representatives from campus and community-based stakeholders and organizations, including medical, counseling, law enforcement, and the student conduct office.

In September 2014, UNM commissioned consultants from Pilgrim & Associates to review and evaluate the climate regarding sexual violence in UNM’s student housing and athletics programs. Pilgrim provided the University with a report on December 4, 2014, making recommendations for changes to UNM’s policies, climate, training, and security. UNM publicly released the report in January 2015. In May 2015, UNM adopted a new sexual violence policy, streamlining its existing assortment of inconsistent policies into a clearer document that better complies with federal requirements. UNM also expanded training for undergraduate students, with an initial focus on student athletes and members of campus fraternities and sororities. In June 2015, the University launched a website called LoboRESPECT to publicize and provide information about its sexual harassment policies and procedures, and in September 2015 UNM opened the LoboRESPECT campus advocacy center to consolidate services and resources under one roof.

The Department commends UNM for these significant and proactive efforts. And we note that these initial measures may already be lifting student confidence in UNM’s response: During the 2014-15 school year, the University received 109 administrative complaints of sexual harassment, sexual assault, domestic violence and stalking, in which at least one UNM student was party to the complaint.³ By contrast, UNM had received a total of 57 complaints for the same acts in the previous five years combined. Increased reporting is a positive signal that UNM’s efforts are improving students’ awareness of, and confidence in, the University’s procedures to address sexual harassment and sexual assault. Nonetheless, we found that UNM must take additional steps to ensure prompt and equitable resolutions of reports of sexual harassment and assault, protect and support students who have reported sexual harassment/assault, and improve campus climate and culture.

³ For purposes of this letter, the school year starts on July 1st. Of the 109 complaints, 36 were classified as sexual assault, 41 as sexual harassment, 15 as domestic violence, 14 as stalking, and one each of sexual exploitation, hazing, and battery.

LEGAL STANDARDS

The United States conducted this investigation and review of the University under its Title IX and Title IV authority. Title IX and its implementing regulations, 28 C.F.R. Part 54, prohibit discrimination on the basis of sex in education programs and activities operated by recipients of federal financial assistance. Title IV prohibits discrimination against students in public schools and colleges and universities based on sex, race, color, religion, and national origin. The University is a public school that receives federal financial assistance and therefore is subject to the requirements of both Title IX and Title IV. In the context of court actions for injunctive relief and administrative enforcement actions, the United States interprets Title IX and Title IV as applying the same standard to allegations of sex-based harassment. Thus, in the context of this investigation and compliance review of the University, the United States applied the same legal standards under Title IX and Title IV to conduct its legal analysis and reach its findings.⁴

Under Title IX and Title IV, colleges and universities that receive federal financial assistance are responsible for providing students with a nondiscriminatory educational environment. Sexual harassment is unwelcome conduct of a sexual nature and 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 that is sufficiently serious to interfere with or limit a student's ability to participate in or benefit from the school's program, i.e. creates a hostile environment, is a form of sex discrimination prohibited by Title IX and Title IV.

To determine whether a hostile environment exists, the United States considers whether there was harassing conduct based on sex that was sufficiently serious—that is, severe, persistent or pervasive—to deny or limit a student's ability to participate in or benefit from the school's program. The United States examines all the relevant circumstances from an objective and subjective perspective, including: the type of harassment (e.g., whether it was verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved (e.g., teacher-student or student-student); the setting and context in which the harassment occurred; whether other incidents have occurred at the college or university; and other relevant factors. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. Indeed, a single instance of rape is sufficiently severe to create a hostile environment.

When a school knows or reasonably should know of possible sexual harassment, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. If an investigation reveals that sexual harassment created a hostile environment, the school must then

⁴ For consistency in federal administrative compliance reviews, the Department follows the legal standards established by the Department of Education's Office of Civil Rights in the Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, *available at*: <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html> (Jan. 19, 2001); and its subsequent interpretive documents: the Dear Colleague Letter on Sexual Violence, *available at*: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html> (Apr. 4, 2011), and "Questions and Answers on Title IX and Sexual Violence" (Apr. 29, 2014), *available at*: <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

take prompt and effective steps reasonably calculated to end the sexual harassment, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects. A school should not wait to take steps to protect its students until students have already been deprived of educational opportunities. The school has responsibility to respond to allegations of sexual harassment of which they are or should have been aware, regardless of whether a student has complained, asked the school to take action, or identified the harassment as a form of discrimination.

The United States evaluates the appropriateness of a university's responsive action by assessing whether it was prompt and effective. What constitutes an appropriate response to harassment will differ depending upon the circumstances. In all cases, however, the college or university must conduct a prompt, thorough, and impartial inquiry designed to reliably determine what occurred. A school must protect the complainant and ensure his or her safety as necessary, including taking interim steps before the final outcome of any investigation.⁵ The school should take these steps promptly once it has notice of a sexual harassment allegation and should provide the complainant with periodic updates on the status of the investigation. The school should also ensure that the complainant is aware of any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance. If a school delays responding to allegations of sexual harassment or responds inappropriately, the school's own inaction may subject the student to a hostile environment. If it does, the school will also be required to remedy the effects of the sexual violence that could reasonably have been prevented had the school responded promptly and appropriately.

Sexual harassment of a student by a faculty member or other school employee also violates Title IX and Title IV. A school should take steps to protect its students from sexual abuse by its employees by developing policies prohibiting inappropriate conduct by school personnel and procedures for identifying and responding to such conduct. Whether a school had notice or not, a school is nonetheless responsible for remedying any effects of the sexual harassment on the student, as well as for ending the sexual harassment and preventing its recurrence, when an employee engaged in the sexual activity in the context of the employee's provision of aid, benefits, or services to students (*e.g.*, teaching, counseling, supervising, advising, or transporting students).

In addition, if there is an incident involving potential criminal conduct, a school should notify a complainant of the right to file a criminal complaint, and should not dissuade a complainant from doing so. While schools may honor law enforcement's request to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, schools should not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own Title IX investigation. A law enforcement investigation, whose purpose is to determine whether a person violated the state's penal code, differs from an administrative

⁵ For the purpose of this letter, complainant refers to the person allegedly subjected to the harassing conduct. However, as already noted, a school must respond to complaints of alleged sexual harassment whether it learns of the harassment from the person subjected to the harassment, a third party, or an alternative source of information, *e.g.* a news report.

complaint investigation under Title IX, the purpose of which is to ensure a student's access to education is not limited or denied due to discrimination. A law enforcement investigation (and any subsequent prosecution) is independent of and does not relieve a university of its Title IX and Title IV obligation to ensure that a student's access to the education program is not limited or denied. While universities are encouraged to enter into agreements coordinating campus and community law enforcement investigations, a university should not wait for the conclusion of a criminal investigation or criminal proceeding to begin its own Title IX investigation.

Title IX also requires universities to adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX, including sexual harassment and sexual assault. 28 C.F.R. § 54.135(b). Title IX does not require a university to provide separate grievance procedures for sexual harassment complaints than other disciplinary procedures; however, a university's grievance procedures for handling discrimination complaints through their administrative process must comply with the prompt and equitable requirements of Title IX. To ensure individuals can invoke these grievance procedures without fear of reprisal, Title IX also prohibits the university and others, including students, from retaliating against any individual "for the purpose of interfering with any right or privilege secured by [Title IX]," or because that individual "has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing" under Title IX.⁶ Prohibited retaliatory acts include intimidation, threats, coercion, or discrimination against any such individual. Universities therefore should take steps to prevent any retaliation against a student who makes a complaint or any student who provides information regarding the complaint. At a minimum, under Title IX and Title IV, a university must ensure that complainants and their parents, if appropriate, know how to report any incidents of retaliation or new incidents of harassment, and should follow up to determine whether those incidents occurred.

A university may also need to take steps to address campus climate and the educational environment for students, including: training; the dissemination of information about how to report sexual harassment; adoption of new policies; and other steps designed to clearly communicate that the university does not tolerate, and will be responsive to any reports of, sexual harassment.

Further, a university must designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX. 28 C.F.R. § 54.135(a). All students and employees must be notified of the name (or title), office address, email address, and telephone number of the designated Title IX Coordinator(s). The Title IX Coordinator(s) must have adequate training on what constitutes sexual harassment, including sexual violence, and understand how the grievance procedures operate.

⁶ 28 C.F.R. § 42.107(e); *see* 28 C.F.R. § 54.605 (adopting enforcement procedures of Title VI of the 1964 Civil Rights Act at 28 C.F.R. §§ 42.106-42.111 and applying them to the Title IX regulations).

Lastly, a university must notify all parties that, pursuant to Title IX, it does not discriminate on the basis of sex in the education programs or activities that it operates. 28 C.F.R. § 54.140. The notice must state: the requirement not to discriminate in the recipient's education programs and activities extends to employees and students; inquiries concerning the application of Title IX may be referred to the Title IX Coordinator or employee designated pursuant to 28 C.F.R. § 54.135(a); and the name, office address, email address, and telephone number of the designated coordinator.

DISCUSSION OF FINDINGS

Based on the standards above, the United States reviewed the University's policies on sexual harassment, including sexual assault, and trainings regarding those policies to determine whether they provide adequate and clear notice to students and employees of conduct prohibited by law. We also carefully reviewed the adequacy of the University's Title IX grievance procedures, whether students have sufficient notice of these procedures and how to file complaints, and how the University has used these procedures to respond to sexual assault and sexual harassment complaints since the 2009-2010 school year.

Additionally, we evaluated the University's compliance with its duties to designate coordinator(s) under Title IX, to train those responsible for Title IX coordination and enforcement, and to provide a notice of nondiscrimination.

Below we explain in detail each area in which the University's compliance with Title IX and Title IV fell short of its legal obligations.

I. University Policies Prohibiting Sexual Harassment and Sexual Assault

At the time the Department initiated its investigation, UNM had in place 17 overlapping, and often conflicting, policies related to sexual harassment and sexual assault. Most had not been updated in over 15 years, and as such did not reflect more recent federal interpretive guidance related to sexual harassment and sexual assault, such as the U.S. Department of Education's 2011 guidance on Title IX.⁷ Collectively, UNM's policies failed to provide members of the UNM community with a clear understanding of the parameters of prohibited conduct, where to report, options for confidential and non-confidential reporting, procedures for adjudication, and where to seek help and support. For example, the University's Sexual Assault Policy (which was in effect until May 2015) had not been updated since 1995, used inconsistent and confusing terminology, contained multiple cross-references to other policies, and provided incomplete information on reporting and adjudication procedures. A UNM student, particularly one seeking help and guidance after experiencing a traumatic assault, would likely have found the University's policies to be daunting and inscrutable.

UNM's adoption of the new Sexual Violence and Sexual Misconduct Policy ("SVSMP" or "Policy 2740") in May 2015 has alleviated many, but not all, of these deficiencies. Although the

⁷ See 2011 *Dear Colleague Letter on Sexual Violence*, U.S. Department of Education, Office for Civil Rights, (April 4, 2011) available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>.

University still has 17 policies that, at least in part, apply to incidents of sexual harassment, including sexual assault, the SVSMP consolidates much of the information, making it easier for users to find conduct requirements and procedures without navigating multiple disparate policies. UNM does not, however, explain how the policies interrelate, or which of the 17 policies, if any, have been withdrawn or are no longer in effect. For example, in addition to the SVSMP, three additional primary policies relate to Title IX: the Equal Opportunity, Non-Discrimination, and Affirmative Action (“Policy 2720”); Sexual Harassment (“SHP” or “Policy 2730”); and Whistleblower Protection and Reporting Suspected Misconduct and Retaliation (“Policy 2200”).⁸ Not only do the four policies contain various inconsistencies, but faculty, staff and students receive no guidance as to which policy governs when there are areas of conflict.

The policies, for example, still fail to define sexual harassment in a consistent manner, and conflate the definition of harassment with the definition of a hostile environment. Policy 2720 defines sex-based harassment as “unwelcome verbal or physical behavior, which is directed at persons because of their ... sex ... when these behaviors are sufficiently severe or pervasive to have the effect of unreasonably interfering with their educational experience, working conditions, or student housing by creating an intimidating, hostile, or offensive environment.” Policy 2730 and Policy 2740 define sexual harassment differently: “sexual harassment, a form of sex discrimination, is defined as unwelcome conduct of a sexual nature. There are two typical types of sexual harassment: quid pro quo and hostile environment.” Policy 2730 then goes on to note that sexual misconduct may be “offensive, but not sufficiently severe, pervasive or persistent as to constitute a hostile environment.” These definitions differ in multiple and significant respects: under Policy 2730, *persistent* sexual misconduct would constitute a hostile environment, whereas under Policy 2720, it would not. Policy 2720 suggests that an offensive environment is different from a hostile environment and can independently rise to the level of harassment, while Policy 2740 suggests that an offensive environment is just a lesser form of a hostile environment that does not independently constitute harassment. As a result, these policies fail to provide students, faculty, and staff with clear and consistent notice of prohibited conduct.

In addition, each of these policies mistakenly indicates that unwelcome conduct of a sexual nature does not constitute sexual harassment until it causes a hostile environment or unless it is quid pro quo. Unwelcome conduct of a sexual nature, however, constitutes sexual harassment regardless of whether it causes a hostile environment or is quid pro quo. Indeed, federal guidance defines sexual harassment as “unwelcome conduct of a sexual nature. It includes 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.”⁹

Hostile environment is not part of the definition of sexual harassment, nor is it required for “unwanted conduct of a sexual nature” to be deemed sexual harassment. Instead, hostile

⁸ Policy 2215: *Consensual Relationships and Conflicts of Interest*, which requires any UNM staff, faculty, or student engaged in a relationship with a subordinate to report said relationship to their supervisors, is also relevant to Title IX matters.

⁹ See 2011 *Dear Colleague Letter on Sexual Violence*, U.S. Department of Education, Office for Civil Rights, (April 4, 2011) available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>.

environment is the threshold for determining the school's obligation under Title IX: when a school knew or should have known about sexual harassment that is sufficiently severe, persistent or pervasive as to create a hostile environment, the school has an obligation to end the harassment, prevent its reoccurrence, and remedy its harm.¹⁰ The school, therefore, carries the responsibility to investigate complaints of sexual harassment to determine whether a hostile environment exists that requires further action. In conflating the definitions of sexual harassment and hostile environment, UNM shifts this responsibility to UNM staff, faculty, and students, by suggesting that a complainant must determine whether, and then specifically allege, a hostile environment exists for a report to constitute sexual harassment.

Compounding the confusion created by inconsistencies among the policies is the absence of any explanation regarding how the policies relate to one another and when each applies. For example, Policy 2200, which governs how employees should report suspected misconduct, including sexual harassment, provides no definition for sexual harassment and does not reference or link to any UNM policy that does define sexual harassment. Employees referencing this policy may fail to report allegations of sexual harassment as required, because they have no clear examples or explanation of prohibited behavior.

II. Campus Awareness of Sexual Harassment Policies

UNM posts all relevant policies on its website, and publishes some in the Student Handbook distributed at Orientation. However, based on our interviews and focus groups, we found that with those efforts UNM had not effectively publicized its policies on sexual harassment to students, faculty, staff, and the wider UNM community. First, most students had never heard of the Office of Equal Opportunity ("OEO"), the office tasked with processing sexual harassment complaints. Second, when asked where they would report a sexual assault, most students said they did not know where to report or that they would call Agora, a student-run, confidential telephone hotline that offers support and referral services. Contacting Agora, however, does not constitute a report to the University or initiate UNM's investigation procedures, as Agora volunteers are not responsible employees of the University with a duty to provide information about the reports it receives.¹¹ Third, students did not understand when a report of a sexual assault would be confidential and when it would not. Fourth, unless they had actually reported a sexual assault, students generally did not know that there are two reporting options: criminal and university administrative. While most students were only aware of the criminal option, those who were aware of the UNM reporting option didn't understand how the two processes differed. Students were also generally unfamiliar with UNM resources available to those who have been sexually assaulted, apart from Agora and the Student Health and Counseling Center ("SHAC").

In June 2015, UNM took a step toward addressing these gaps by launching a website called LoboRESPECT to publicize and provide information about its sexual harassment policies and procedures. We commend UNM for consolidating information in a central and easily accessible

¹⁰ *Id.*

¹¹ Agora is a highly visible service that provides students with an option for seeking confidential support. Confidential support options are important as many complainants need someone to speak to before they determine whether they wish to officially report their assaults.

location, and for continuing to review and strengthen the website for both content and clarity. The Reporting Options page, which provides important information regarding on campus and off campus reporting options for victims or bystanders, could be further enhanced to clarify the implications of using each of those options. For example, the Reporting Options page does not include a link to the DCP, which governs the OEO investigation and adjudication process, so students considering reporting to OEO have no readily clear explanation about what each step in the reporting process.

UNM policies compound the confusion as to where students should report sexual harassment, including sexual assault. For example, the first section of the new SVSMP, “Reporting Sexual Violence,” encourages students to report sexual violence or misconduct, but states that “**all** UNM staff and faculty...who receive information about a person who has experienced sexual violence or misconduct must report the information to OEO within 24 hours.” This section never states or encourages students themselves to report directly to OEO. A student looking to report sexual harassment may mistakenly interpret this section of the SVSMP to mean that they should tell a staff or faculty member first and cannot contact OEO directly.

UNM has acknowledged the need to expand training provided to undergraduate students to address gaps in students’ knowledge and understanding of its sexual harassment policies and reporting procedures, and as part of its general prevention efforts. Prior to 2015-16, UNM’s only training on sexual harassment, including sexual assault, for the general undergraduate body took place during first year orientation. In recent years, this training consisted of upper class students performing a skit that included a scenario of potential sexual assault and situations involving drugs, alcohol, and other behaviors common among college students. When asked, most students did not recall receiving any information about sexual harassment or sexual assault during freshman orientation. Those students that did remember receiving information on sexual assault described the skit as imparting the message that “girls shouldn’t drink.” Many students described their perception, based on these skits, that UNM’s focus was not on condemning sexual assault, but on blaming women for putting themselves in dangerous situations by choosing to drink alcohol. Such messaging can lead to self-blaming by students who may have been sexually assaulted, as well as reluctance to report out of fear of discipline for underage drinking.

In August 2014, UNM began to provide targeted sexual harassment prevention training to specific student groups, including athletes, fraternity and sorority members, and resident advisors.¹² These trainings were largely developed and presented by the Women’s Resource Center (“WRC”) on campus. In addition, UNM mandates that all employees complete a single, online module about sexual harassment in the work place at the beginning of each year. We, along with our experts in sexual assault prevention and training, reviewed the WRC trainings, other sexual harassment trainings developed by outside consultants or guest speakers and

¹² While all first-year students are required to attend orientation over the summer prior to the start of the school year, transfer students and those who enroll in the spring are not, so a significant number of UNM students have never received any training on sexual harassment or sexual assault. Unless students are part of other specific groups they would not receive any training from UNM on sexual harassment, including sexual assault, in the four or more additional years they attend UNM after freshman orientation.

provided to a few student groups, and information about Campus Clarity, which UNM has retained to provide future online trainings to the campus community. Our review included interviews of trainers and students, as well as focus group data. Based on this review, we found that much of UNM's trainings on sexual harassment, including sexual assault, were lacking in content and depth, and did not reflect current research or align with best practices in the field. Consequently, even after receiving training, students we spoke with lacked basic understandings about consent, reporting, and Title IX process and procedure.

First, UNM has not provided adequate resources to support the development and dissemination of sexual harassment prevention training. In 2014-15, the majority of the sexual harassment prevention training was administered through the WRC by a graduate student who works part-time. This graduate student trained all orientation leaders, handled mandatory training for resident assistants, and oversaw the delivery by administrators (or delivered) sexual assault prevention programs in groups of 10 to 400 for athletics, housing, fraternities and sororities, and international students (a total of 19,000 students). The graduate student is now employed by the Advocacy Center to provide the same services. The need for sexual harassment prevention training at a school the size of UNM is too great for a part-time position.

Second, we found UNM's sexual harassment prevention programs from 2014 to be dated in both content and delivery methodology, in ways that limited their effectiveness. The programs, for example, do not provide practical experiences to develop skills required for prevention. They also impart information on sexual harassment through "myths and facts," rather than through more current methodologies, which emphasize interaction with participants and use of current case examples to generate discussion and disseminate facts about sexual harassment.¹³ UNM's bystander intervention program materials are similarly lacking in content, specific instruction, and practice on bystander intervention strategies. Bystander intervention prevention requires a comprehensive program that teaches knowledge and skills and provides the target audience with opportunities to practice.¹⁴

Further, UNM does not consistently use evidence-based curricula, evaluation, or pilots for any of its sexual harassment prevention training. UNM told us that while they intend to pilot a new online sexual harassment prevention training, there is no current plan to evaluate the new online modules, or any of its other sexual harassment or misconduct training. Evaluation is key to determining the effectiveness of any training, and for providing guidance to the constituencies who are participating in the trainings (e.g., athletics, housing). Program evaluations provide important information on effectiveness and should be used to both enhance the content of the program and the training of the facilitators.

¹³ For more information, *see* the systematic review of primary prevention strategies for reducing campus sexual assault conducted by the Centers for Disease Control and Prevention, (April 2014), *available at* <https://www.notalone.gov/assets/preventing-sexual-violence-on-college-campuses-lessons-from-research-and-practice.pdf>.

¹⁴ For more information, *see* the description of effective programs and promising practices focused on bystander prevention efforts prepared by the Centers for Disease Control and Prevention, (April 2014), *available at* <https://www.notalone.gov/assets/bystander-summary.pdf>.

Finally, the sexual harassment prevention training and programming that we reviewed lacked sufficient information about to whom students should report and how UNM handles sexual harassment cases. As a result, students do not understand where to report or what will happen when they report. In particular, students said they did not know there were different ways to report a sexual assault (i.e., law enforcement and university) and they did not understand the implications around who they choose to report the incident (e.g., a university official with or without confidentiality). A number of students discussed filing reports with UNMPD and not being informed of their reporting options on campus. Others reported confusion as to whether a report made to UNMPD constituted a report to the University. Some assumed that any information provided to UNMPD would be shared with the University. Other students expressed frustrations to learn that information in UNMPD's possession would be shared with OEO. Last, numerous students reported confusion about the University's jurisdiction over sexual harassment or assault that occurs off-campus.¹⁵ This is important because the vast majority of UNM students live off campus.

In August 2015, UNM introduced a new small group participatory training for incoming first year students. This sexual harassment prevention training, called the Grey Area, addresses issues such as incapacitation and consent. Although we have reviewed the materials and found them to be much more aligned with best practices in the field, we have not fully assessed their implementation or effectiveness. UNM also contracted with education provider Campus Clarity to offer online trainings on sexual harassment for students, faculty, and staff. However, UNM had not provided these online trainings to students as of November 18, 2015.

III. Campus Administrative Investigations

The University's grievance procedures, both as written and as implemented, violate Title IX and Title IV. The grievance procedures do not ensure prompt and equitable resolution of students' complaints of sexual harassment, including sexual assault, and have impeded the University's ability to take remedial action against the discrimination. *See* 28 C.F.R. §§ 54.135(b), 54.110(a).

In evaluating whether a university's Title IX grievance procedures are prompt and equitable, the United States considers the following:

- notice to students and employees of the procedures, including where complaints may be filed;
- application of the procedures to complaints alleging harassment of students;
- adequate, reliable, and impartial investigations of complaints, including the opportunity for the complainant and respondent to present witnesses and other evidence;
- designated and prompt timeframes for the resolution of the complaint process;
- written notice to the parties of the outcome of the complaint; and

¹⁵ *See 2011 Dear Colleague Letter on Sexual Violence*, U.S. Department of Education, Office for Civil Rights, (April 4, 2011) available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>. ("Under Title IX, a school must process all complaints of sexual harassment, regardless of where it occurred, to determine if the conduct happened in the context of an educational program or activity or had continuing effects on campus or in an off-campus education program or activity.")

- evidence of prompt and effective steps taken to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

UNM has two grievance procedures that apply to sexual harassment, including sexual assault: the Discrimination Claims Procedure (“DCP”) and the Student Grievance Procedure (“SGP”).¹⁶ Prior to May 21, 2014, when a student was accused of sexual harassment, the SGP governed how the DoS handled adjudications and sanctioning. The SGP currently applies to student conduct matters that do not involve allegations of sexual harassment. The DCP governs the adjudication process of the OEO which, prior to May 21, 2014, held intermittent jurisdiction over allegations of sexual harassment.¹⁷ Since May 21, 2014, UNM has applied the procedures laid out in the DCP to all Title IX adjudication processes, e.g. investigation of and findings regarding sexual harassment allegations, whether they occur between students or in a work setting.¹⁸ After OEO makes a finding that an undergraduate student has engaged in sexual harassment that violates UNM policy, the Student Conduct Office in the DoS imposes discipline under the SGP.¹⁹ UNM’s policies provide for a spectrum of possible sanctions, from an educational conference to expulsion.

The DCP, which defines procedural requirements for all Title IX investigations and adjudications at UNM, does not constitute an adequate grievance procedure for Title IX complaints because it has not afforded a prompt and effective means for responding to sexual harassment, including sexual assault.

These conclusions were reinforced by our interviews with numerous students, parents, and faculty members who had contact with OEO as complainants, respondents and witnesses. Uniformly, these individuals complained of confusion, frustration and stress caused by the length of investigations and lack of communication by the institutional body conducting the investigation; the failure to provide accurate information about the OEO process, the appeals process, and academic accommodations and supports; and delays in investigations and discipline. Indeed, some complainants reported that OEO’s process was more upsetting and traumatizing than the initial sexual harassment that was the subject of their complaint. As a result, almost all complainants with whom the United States spoke said that they wished they had

¹⁶ While the SVSMP, published on May 15, 2015, provides information on UNM’s grievance procedures, the SVSMP is an Administrative Policy, not a grievance procedure, and it specifically states that the DCP governs the processing of allegations of sexual harassment, including sexual violence.

¹⁷ For example, prior to May 21, 2014, work-related allegations of sexual harassment, including incidents involving residents and interns at the Medical School, were to be “resolved in the workplace or with the aid of a second-level supervisor.” If complaints could not be resolved internally, they were referred to OEO. There is no evidence that the incidents handled internally followed any set procedures or guidelines, creating a risk of unreliable and potentially partial determinations.

¹⁸ UNM failed to provide adequate notice to students of policy changes. For example, although the Sexual Harassment Policy was updated on May 21, 2014, the New Student Orientation Handbook for the 2014-2015 school year still contained the pre-amended Sexual Harassment Policy.

¹⁹ According to interviews with the DoS and OEO offices, matters involving faculty, staff, and students in the professional schools, upon a finding of probable cause that sexual harassment has occurred, disciplinary matters are turned over to the Human Resources Department or the department/division in which the respondent is employed. Generally, we found that University officials do not follow up with these departments to ensure they take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.

never gone through the process and would not refer another student who had experienced sexual assault to OEO.

In the discussion below, we address overall support for and training for OEO, notice of the DCP, and how the DCP functions in practice when students report sexual harassment, including sexual assault, to UNM.

A. UNM's Office of Equal Opportunity (OEO)

Although UNM has expanded the role of OEO in addressing campus sexual harassment complaints in recent years, it has not adequately expanded the training and resources to that office to support OEO in carrying out its mandate effectively. OEO employs a Director, a Title IX Coordinator/manager, and three investigators assigned to Title IX matters, with each investigator handling between ten and twelve open matters. Turnover within OEO is exceedingly high. Since May 2014, OEO has had three different Directors, three investigators have resigned, and three new investigators have been hired. Such high turnover results in long delays during which cases are reassigned. One complainant's case was transferred three times as a result of OEO staff turnover. In addition, despite a nine-fold increase in the number of reports received, OEO has not increased its total staffing, but instead has eliminated administrative and data manager positions.

Throughout the time period we reviewed, OEO investigators received only intermittent and inconsistent training on how to conduct sexual harassment investigations and adjudications, resulting in inadequate, unreliable and potentially biased investigations and resolutions.²⁰ For example, UNM does not provide OEO investigators with sufficient training on making reliable findings of responsibility or non-responsibility. While OEO investigator training includes information on the Equal Employment Opportunity Commission's ("EEOC") five-factors to determine credibility (Inherent Plausibility, Past Record, Motive to Falsify, Corroboration, and Demeanor), investigators do not receive effective training on how to collect and analyze evidence, including witness statements, using these five factors, resulting in inconsistent and unreliable determinations of credibility.²¹

²⁰ UNM does not have a written policy or procedure on training requirements for investigators with the OEO, who since May 2014 are tasked with investigating all Title IX complaints. OEO orally stated that it trains its new investigators by giving them information on Title IX, having them review old case files, complete an online training, and shadowing an experienced instructor for 3-6 months. However, two OEO investigators stated that they received cases within three to six weeks of starting in the position and some had not yet completed the online trainings.

²¹ While Title IX does not require a specific type of training for individuals that handle sexual harassment, one OEO investigator independently chose to attend trauma-informed forensic interview training in their personal time to better understand how trauma affects the brain and how to not re-traumatize a witness. This training is considered best practice in the field of sexual harassment and sexual assault investigations. Another chose to sit in on LoboRESPECT task force meetings to develop a deeper understanding of UNM's policies and grievance procedures. These employees should be commended for their initiative to obtain a greater understanding of their work.

B. Notice of Grievance Procedures

UNM's policies fail to consistently provide clear information on where to report complaints of sexual harassment, including sexual assault, and how those complaints will be handled. Specifically, UNM does not readily bring the DCP, which directs members of the campus community to bring sexual harassment complaints to OEO, to students' attention in an obvious or accessible manner. For example, the DCP is not readily accessible in this year's "Pathfinder," the student handbook that contains the name and/or text of most University policies and which UNM provides to all incoming students. By contrast, almost all other UNM policies that, at least in part address sexual harassment, are individually identified and linked in Pathfinder. Students reported not being aware of the DCP until provided a copy by OEO after a complaint is made to the office.

The LoboRESPECT website similarly does not provide clear notice of UNM's grievance procedures. The Policies and Sanctions page of the LoboRESPECT website refers to the SGP, but fails to explain that students should refer to the DCP for information on the filing, investigation and adjudication of complaints. Further, while LoboRESPECT contains hyperlinks to the DCP, SHP, and SVSMP, it provides no information as to how the policies interrelate. Finally, many of the hyperlinks on the LoboRESPECT website did not work at the time of launch, potentially thwarting visitors to the site, especially students in crisis. While UNM is slowly fixing these issues as it become aware of them, more attention should be spent on making the website user-friendly at the time of initial publication.

We also note that while the SVSMP meets many of the requirements of Title IX, the SVSMP is classified as an Administrative Policy and specifically states that the DCP governs the processing of allegations of sexual harassment, including sexual violence. Consequently, UNM must also include all relevant information in the DCP itself as the procedural document that governs Title IX complaints. For example, while the SVSMP includes a section listing the rights of complainants and respondents during the OEO grievance process, that same section is not included in the DCP.²² In fact, the DCP does not contain any assurance of a prompt, equitable and impartial process.

C. Processing of Complaints

A school's Title IX investigation must be adequate, reliable, impartial, and prompt and include the opportunity for both parties to present witnesses and other evidence. Between May 2014 and June 20, 2015, OEO received 115 complaints of sexual harassment and sexual assault; 35 of which resulted in investigations.²³ In seven matters, the complainant requested an Educational Conference with the respondent instead of a formal investigation. As of June 20, 2015, OEO had

²² UNM issued a revised SGP on January 13, 2016, which we have not fully evaluated. We also understand there are plans to revise the DCP. UNM should be cognizant of the need to explain how the policies inter-relate and affect each other.

²³ In an internal report, OEO reported receiving 138 Title IX complaints in calendar year 2015, of which 81 were accepted for investigation. This reflects a substantial increase from calendar year 2014, during which OEO reported to receive a total of 46 Title IX complaints, of which they investigated 32.

made finding in 13 matters; seven of which resulted in determinations that sexual harassment that violated the SCC had occurred. Based on a review of the 35 investigations, we found that OEO's investigatory process does not meet the requirements of Title IX. The DCP's written procedures effectively prevent investigators from conducting a thorough investigation, collecting corroborating evidence or making effective determinations regarding credibility. Consequently, OEO cannot make accurate determinations as to whether sexual harassment creating a hostile environment has occurred and/or address the sexual harassment, as is required by Title IX. *See* 28 C.F.R. § 54.110(a). The DCP also lacks written procedures to ensure that UNM adequately investigates and responds to additional allegations of harassment that arise during an investigation.

Last, UNM fails to ensure impartial resolution of Title IX complaints, in contravention of Title IX. As a result, the DCP process often fails to eliminate, and sometimes exacerbates, the discrimination experienced by students.

1. Ineffective Initial Evidence-Gathering

The DCP does not require OEO to ask a respondent (1) any question about the incident(s) at issue, or (2) to explain his or her own version of events. Instead, during their initial meeting, the DCP requires OEO only to advise the respondent about the investigative process and provide him or her with a written copy of the complainant's specific allegations. The respondent then has seven working days to provide a written response to the allegations.

This default procedure – that respondents are asked only provide a written response to a complainant's statement – effectively prevents OEO from pursuing and collecting important additional evidence during the initial stages of an investigation. Because most incidents of sexual harassment, including sexual assault, occur in private with no witnesses, initial interviews of both complainants and respondents are important to determining what occurred. Witness accounts of events often diverge as to location, statements made, and/or actions taken. If one witness is not solicited to provide an independent account before being provided with a written copy of the other witness' statement, important physical evidence or potential additional witness testimony pertaining to the incident, or surrounding events, may be overlooked.

For example, in one case we reviewed, the respondent's written response to each paragraph of the complainant's statement contained assertions such as "I agree generally with the content of this paragraph." Occasionally, the respondent provided a "correction, clarification and elaboration." Not requiring investigators to request the respondent provide an independent account of the events prevents the OEO from getting a full picture of what occurred, may deprive the respondent of the opportunity to tell his or her version of events, if desired, and curtails OEO's ability to assess a respondent's account of the events, credibility and demeanor. Further, the wording of the DCP does not clearly inform the respondent that he or she can choose to offer an independent account of the events as part of the investigation.

Indeed, in-person interviews allow both complainants and respondents to provide their own accounts of what occurred and give investigators the opportunity to gather information, identify evidence that corroborates the different accounts, and assess each person's credibility and

reliability. Yet after OEO's initial in-person interview of a complainant and meeting with the respondent to explain the process and provide the complainant's written statement, OEO communicates to all parties almost exclusively in writing, rarely conducting follow-up interviews. Not only does that practice limit the information OEO receives, if inconsistent written information is provided, OEO has no means of ascertaining the reason for, or resolving, the inconsistency. For example, in one case OEO noted that the respondent provided inconsistent information in his written response to the complainant's statement, but determined that the existence of inconsistent statements alone was not evidence of lack of credibility; a follow-up interview would have given OEO an important opportunity to more fully and effectively assess the information provided by respondent and his credibility

2. Inconsistent Application of Credibility Assessment

OEO written policy requires a finding of "probable cause" based on a preponderance of the evidence that the alleged harassment occurred. However, OEO adheres to an unwritten policy that a finding of probable cause requires corroboration of the alleged incident by an eyewitness, tangible evidence, or admission by the respondent of the offending behavior, including a lack of consent. OEO rarely attempts to identify witnesses or obtain physical evidence on its own, and does not alert complainants to the need for, and value of, witness testimony. As a result, in cases where complainants did not suggest any potential witnesses, OEO appears not to credit the complainant's allegation. Even in matters where complainants do offer relevant witness testimony, OEO typically does not credit the information unless it is direct eyewitness information.

For example, a complainant expressed reservations about going through the OEO process because she did not have physical evidence to corroborate her allegation of sexual assault. The OEO investigator assured the complainant that corroborating physical evidence was only one factor considered in making a finding, and that OEO would consider factors such as the complainant immediately reporting the assault to a friend and a text message the complainant sent to the respondent within hours of the assault confronting him about his alleged actions. However, upon receipt of the OEO's findings, the complainant learned that OEO did not give weight to those factors, despite having corroborated them, and concluded that "because there were no witnesses or evidence to show one version was more likely to have occurred than the other, there is insufficient evidence to demonstrate that the sexual intercourse was nonconsensual."

In another case, OEO's letter of findings noted that a witness who spoke with the complainant the morning after an alleged assault described how the complainant was "shaking" as she relayed how the respondent initiating sex while she "told him 'no' over and over again." The witness also described the complainant as "so different" since the incident, "pushing people away" and "panicky." A separate internal OEO report described this respondent's use of his position as an academic advisor to contact "multiple female undergraduates who were not his advisees" and escalate the professional interactions to personal ones – including two incidents of sexual intercourse – as potentially "predatory" behavior that could lead to further allegations. Yet OEO did not consider this evidence in assessing either the complainant's or the respondent's credibility or in considering whether to make a finding of responsibility, instead making a determination that "because there were no witnesses or evidence to show one party's version is

more likely to have occurred than the other, it is determined that there is insufficient evidence to demonstrate that the sexual intercourse was non-consensual.”

Additionally, OEO investigators either fail to implement the five-factor credibility assessment, implement it inequitably as between the complainant or the respondent, or apply it inconsistently from case to case. In one case, the complainant reported inappropriate sexual contact by the respondent, and witnesses to whom complainant immediately reported the alleged assault corroborated complainant’s story. OEO found both the complainant and the witnesses credible with no motive to lie. However, OEO did not engage in a similar credibility assessment of the respondent, except to note that there were inconsistencies in his written response to the complainant’s statement and that his supervisor reported receiving a prior complaint against him. As a result, OEO determined that there was not enough information to make a finding of probable cause that a sexual assault had occurred, despite noting that “OEO has serious concerns regarding the investigation” and that “because Complainant had no clear reason to report something that did not occur, it can be reasonably determined that something happened in Respondent’s office which made her uncomfortable.”

In a second case involving an alleged sexual assault, OEO failed to adequately weigh all the known evidence in reaching its determination that there was “insufficient evidence to demonstrate” non-consensual sexual contact. OEO considered the respondent’s proffer of an alibi witness as credible “evidence that it is likely he was not with the complainant at the time.” However, OEO did not acknowledge other evidence in its possession including that: (1) respondent originally stated that he was not with and “never touched” the complainant - a statement contradicted by a number of eyewitnesses and physical evidence; (2) respondent then changed his statement and admitted being with the complainant but stated the sexual activity was consensual; (3) the alibi witness admitted that she was only with respondent for one hour and that was not the hour during which the alleged assault would likely have occurred. In addition, OEO did not give weight to evidence of the complainant’s credibility, despite the availability of substantial information to consider and assess, including the complainant’s demeanor immediately after the alleged assault, physical evidence and witness corroboration.

Similarly, in another case involving a respondent alleged to have engaged in a pattern of sexual harassment, OEO determined no civil rights violation had occurred because, while a number of incidents were corroborated, some of them were not. OEO made this finding despite the fact that at least four other students reported witnessing or being affected by the same or similar offending behavior by the respondent, and the respondent had been dismissed from his prior school for sexual harassment.

3. Inconsistent Collection and Consideration of Corroborating Evidence

Throughout a school’s Title IX investigation, the parties must have equal opportunity to present relevant witnesses and other evidence. Where parallel investigations of an incident are being conducted, a school should coordinate with the other ongoing school or criminal investigations, particularly where the investigations include or may include forensic evidence. However, OEO rarely attempts, and investigators are inadequately trained, to identify witnesses or obtain physical evidence of its own accord. For example, in one case, a respondent’s supervisor shared

with OEO that there had been a previous sexual harassment complaint made against the respondent. Without verifying or learning the facts of that complaint, OEO issued a finding of no probable cause in the matter before it. In doing so, OEO ignored the possibility that the prior complaint may have revealed additional witnesses or provided evidence of pattern behavior.

In addition, multiple witnesses stated that they informed OEO about the existence of text messages, social media messages, and recorded images that were relevant to investigations, but OEO did not follow through in requesting or viewing this evidence. One complainant reported being so frustrated by OEO's non-responsiveness that she contacted OEO asking how she could provide the information to them. In another case, the complainant, respondent and a number of witnesses informed UNM that videos of the incident had been shared with respondent's social circle through social media. At least one witness identified the videos as having come from the respondent's phone. Despite this knowledge, OEO did not attempt to conduct a wider investigation among respondent's classmates, friends and acquaintances to ascertain the contents or whether the distribution of said videos implicated a violation of the Student Code of Conduct.

OEO investigators are not effectively trained on how to identify and weigh evidence that corroborates allegations of sexual assault, including medical records. For example, in one case the complainant alleged that the respondent strangled her during a sexual assault; the respondent denied ever placing his hands on or around her neck. The medical records, which were made the same day as the assault, indicated that redness and bruising was observed on the complainant's neck. Despite having copies of the medical records, the OEO investigator misstated the medical record, writing, "Complainant herself reported strangulation, but the report did not demonstrate that evidence of such was found." Ultimately, the OEO investigator found that, due to a lack of "tangible evidence," there was insufficient evidence to make a finding of probable cause.

Finally, OEO and UNMPD do not have a written agreement regarding the sharing of information or evidence collected during parallel investigations. (*See infra* at Section IV.) While the United States' investigation revealed that OEO investigators and UNMPD officers occasionally call each other to discuss a case with parallel investigations, OEO rarely requests to view the evidence for their own investigatory purposes. Indeed, OEO reported that the prior Chief of UNMPD was reluctant to provide OEO with access to evidence. As a result, OEO occasionally makes a determination in a case knowing that potentially material evidence exists but without viewing or gathering that evidence.

4. Inconsistent Investigations and Poor Recordkeeping regarding Additional Complaints of Harassment

UNM fails to investigate or keep adequate records of all known allegations of sexual assault, which prevents the school from determining whether a violation of Title IX has occurred. This failure is partly attributable to the DCP's silence on how OEO should handle additional complaints of harassment against a single respondent by additional complainants that arise during the course of an investigation. As a result, OEO investigations of multiple allegations of sexual harassment against a single respondent result in inconsistent processes and conclusions.

For example, OEO became aware of six separate allegations of sexual harassment, including assault and retaliation, against a single respondent. OEO only fully investigated one complaint, despite the fact that UNMPD found probable cause to refer two additional complainants' case to the Bernalillo County (Albuquerque) District Attorney's Office. OEO also failed to adequately record the additional five allegations. Internal records include an entry regarding only one of the additional complainants – with the name of the respondent blank.

By contrast, in another case, OEO became aware of four additional complaints of sexual harassment against the same respondent. All five complaints were recorded in OEO's internal records, including one report where the complainant asked OEO not to initiate an investigation. One of the complainants had reported to the DoS the prior year and the investigation resulted in a finding of no probable cause. Once OEO received the new complaint against the same respondent, the report from the prior investigation and its findings were submitted to OEO. As the allegations of all five of the complaints against the respondent were virtually identical, OEO properly took account of the prior complaints in relation to each other.

Once a school knows about an alleged incident of unwanted sexual conduct, Title IX requires it to initiate an investigation to determine whether the harassment was sufficiently serious as to cause limitations or denial of educational benefits. This is true whether UNM becomes aware of harassment through a formal complaint or during an investigation. The lack of established guidelines and procedures regarding how to proceed upon receipt of additional complaints against a single respondent has impeded UNM's compliance with this requirement. UNM must keep full and accurate records of complaints to identify repeat offenders and examine patterns of sexual harassment. For every sexual harassment complaint, OEO should record the respondent's and complainant's names; and the time, location, and description of events, even when the complainant requests that an investigation not be conducted or a finding of no probable cause is made.

5. Inconsistent Consideration of Power Dynamics

Schools must consider the identity of and relationship between the harasser and subject when evaluating whether a hostile environment exists, especially in allegations of sexual harassment of a student by a school employee. OEO investigators do not consistently consider or assign value to power dynamics in relationships, an important consideration on a University campus where a number of complaints may involve faculty-on-student or staff-on-student harassment. In some cases, OEO ignored or completely dismissed the power differential. For example, in one case OEO noted that the respondent employee "is responsible for knowing UNM policy prohibiting sexual harassment," but in the letter of findings did not engage in analysis of the role of an employee's "authority" or "power" over students, or how knowledge of the UNM policy was evidence that the employee knew or should have known when conduct was unwelcome or non-consensual. After finding a lack of probable cause of sexual harassment, OEO internally recommended that respondent's staff and management receive training related to sexual harassment and Title IX in order to ensure that they are aware of and understand the importance of the policies and related procedures.

In another case where the respondent was a both a university employee and graduate student, in the letter of findings OEO ignored the respondent's role as an employee with authority over complainant and the fact that other students described the respondent as using his professional position to initiate contact and develop sexual relationships. OEO formally concluded that the facts of the case were insufficient to make a determination, but again internally noted that the respondent's "behavior could be viewed as 'predatory' and could lead to further allegations that [he] used his position as an advisor to engage female undergraduate students in sexual activity." OEO recommended that the respondent's supervisor and UNM Human Resources "follow up" and "take action as appropriate under University policy." There is no evidence of a follow-up response by either Human Resources or the respondent's supervisor.

6. Lack of Procedures to Ensure Impartiality

Title IX investigations and adjudications must be impartial and equitable. The United States learned that in at least two instances, high-level administrative offices pressured the OEO to get the investigation "done" – in one case, because it was in the media and in another, because the respondent in a case was "well positioned, politically, in the state." In another case, a UNM Dean requested an internal audit delay because a high profile guest was visiting the respondent (who was an employee), stating that, should the guest become aware of the investigation it would cause embarrassment to the University. Such intervention by university administrators is entirely improper. Further, the United States learned that students at UNM were aware of the pressure placed on OEO in one of the cases described above, undermining the confidence of students in the University's response to complainants that come forward to report sexual harassment, including sexual assault.

Additionally, we note that, until the current school year, OEO reported directly to the Office of University Counsel ("OUC"), which had final review authority over Title IX investigations.²⁴ This management structure created a conflict between OEO's stated goal of eliminating and redressing harassment and OUC's role in limiting the University's liability. For example, when a medical licensing board contacted UNM for information regarding a former UNM student who had been the subject of a sexual misconduct investigation, OUC noted that the respondent's lawyer had threatened legal action and therefore recommended that UNM limit its liability by not informing the medical board that the misconduct allegation involved harassment of a sexual nature.

7. Inadequate Procedures to Convey Information to Prevent Recurrence

Imposing sanctions against the respondent, without additional remedies, is often insufficient to eliminate the hostile environment and prevent recurrence as required by Title IX. To ensure that additional or continuing harassment does not occur, schools should develop specific materials that include the schools' policies, rules, and resources that explain protocol for steps that staff, faculty, and administrators should take when they learn of an allegation of sexual harassment.

²⁴ UNM informed the United States that OEO now reports directly to the Office of the President, a change we have not had the opportunity to assess.

The United States found that after UNM received an allegation of sexual harassment, effective follow-through procedures were largely absent, both during OEO's investigative period and after it issued findings. In addition, UNM does not have established protocols to ensure that information regarding investigations and findings are effectively conveyed to other departments and divisions on campus. For example, a respondent was suspended during the pendency of a sexual assault investigation, but applied for graduate school at UNM and was granted admission prior to the time OEO completed the investigation. The graduate school admissions office did not know about the respondent's sexual assault-related investigation or suspension, or the ultimate finding that a sexual assault had occurred, until an advocate for the complainant called and notified that office. In another matter, the department that employed the respondent attempted to remove him from his teaching position with access to students during the pendency of the investigation, but was unable to do so because the administrative head of the department was not aware of UNM's procedure to remove an employee. OEO ultimately found probable cause that the respondent in that matter sexually assaulted a student. In a third matter, OEO learned of additional complainants against a single respondent. Two of the complainants reported being harassed and threatened by other students in the respondent's department. OEO never conveyed this information to the administrators of the department so they could respond effectively, and UNM provided no immediate training on its prohibitions against sexual harassment and retaliation as a means to stop the behavior.

D. Inadequate Timeframes for Resolution of Complaints

School grievance procedures must provide for prompt and equitable resolution of sexual harassment complaints; and an unduly long appeals process may impact whether a school's response was prompt and equitable as required by Title IX. UNM's investigations of sexual harassment complaints often take far too many months, and occasionally years, to complete. Of the 13 investigations conducted by OEO for which findings had been issued as of June 30, 2015, the entire process, from receipt of complaint to issuing of the Final letter of Determination, took an average of 137 days.²⁵ Ten investigations took over 100 days; the longest took 266 days.

In addition, while investigations are pending, important information necessary for making a reliable final determination, such as physical evidence or witness statements, is often lost or overlooked. One reason for UNM's inappropriately long timeframes for investigations is that the DCP, as written, delays the evidence-collecting phase of an investigation until both a complainant and a respondent have reviewed and replied to a preliminary Investigative Issues Letter ("IIL"), which occurs one to two months after OEO receives an initial complaint.

First, the DCP states that OEO will not initiate an investigation until a minimum of 19 to 24 days after receiving a complaint, and OEO often extends that time upon a respondent's request. Such delay impedes OEO's ability to conduct a thorough investigation, as material evidence, such as security videos, social media content, or text messages identified in the complainants' and respondents' statements, may be recorded over and deleted in the intervening time. For example,

²⁵ Federal guidance recommends that a school's investigation and adjudication process take approximately 60 days. See "Questions and Answers on Title IX and Sexual Violence" (Apr. 29, 2014), *available at*: <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

in one case, by the time OEO initiated the investigation, potentially critical video evidence from UNM security cameras had long since been recorded over, even though the complainant's statement informed OEO of its existence. OEO could have easily obtained this type of evidence while granting the respondent a request for an extension of time and ensuring the respondent had the opportunity to provide evidence and testimony in support of their case.

Second, the DCP allows for either party to request extensions of time throughout the investigatory process, but does not establish how OEO should respond to a request for an extension of time. Further, there is no guidance as to what OEO should do when a party fails to meet a required deadline, causing further delays and creating the risk of unreliable determinations. In one case, the respondent requested an extension of time for a meeting with OEO and in providing a response to the IIL. Internal emails from OEO reflected confusion about how to respond and whether the investigation could proceed. Ultimately, when the investigation was initiated three months after Complainant reported to UNM and two months after OEO received the Complainant's verified IIL, OEO reached out to an important eyewitness only to discover the witness had left the country and would not return.²⁶

Even after the initial intake, UNM does not have a written protocol establishing internal timelines for promptly conducting, reviewing, issuing and communicating investigative progress and findings, and conducting appeals. Nor does OEO have a set protocol for communicating with complainants and respondents regarding the progress of or delays in investigations, which results in stress and uncertainty to both parties. First, the DCP states that the investigation will not commence until after the complainant and respondent have reviewed the IIL, which does not occur until between one and two months after the receipt of the complaint. The OEO investigation takes between two weeks and four months, after which OEO issues a Preliminary Letter of Determination ("PLOD"), and, approximately one month later, a Final Letter of Determination ("FLOD").

The United States' investigation revealed that, despite assurances that they would be informed of the progress of their matters, on multiple occasions both complainants and respondents inquired about the status of their cases due to a prolonged lack of communication from OEO. In one case, after receiving a final IIL to a complainant, three weeks passed without further communication from OEO. The lack of communication prompted the complainant to send an e-mail noting, "It's been a while since I've heard from you so I wanted to check in to see what's happening." The following month, the respondent also had to email OEO for an update. In another case, the complainant grew frustrated with the lengthy investigation and withdrew from the process, explaining that "this is taking too long and the emotional toll on me is too great." On occasion, OEO has authored internal memoranda documenting delays and the reasons for the delays, such as a respondent's health issues or scheduling conflicts with a respondent's attorney. However, more often OEO provides no explanation of or reason for the delays.

²⁶ OEO initially delayed reaching out to respondents for one month at the request of law enforcement who was conducting a simultaneous investigation. Such a delay is reasonable and allowed under Title IX. Universities and law enforcement are encouraged to have MOUs in place to govern accommodating investigatory delay requests and information sharing processes.

The lack of internal deadlines and communication protocols causes confusion and frustration for the greater University community. For example, in one case involving a UNM employee, OEO informed the employee's supervisor that it had completed the investigation approximately two months after opening it, and that a report would follow. The supervisor contacted OEO five times over seven months seeking the report and expressing concerns regarding "timely follow through," as OEO had asked the Department not to make personnel decisions while the report was pending. At one point OEO informed the supervisor that the report was being reviewed by OUC, but that office informed the supervisor that "no one in the OUC is reviewing anything for OEO at this time." The report was released eight months after the investigation opened.

In another case, the chair of the academic department brought allegations of misconduct, including sexual harassment, by a faculty member to UNM's Internal Audit Office. The Internal Audit Office turned the sexual harassment portion of the complaint over to OEO two weeks later without appearing to have informed the department chair who brought the complaint. One week after that, the chair emailed Internal Audit about the timeframe of the investigation, expressing concern about a delay in the ability of the department to address the faculty member.

Last, the DCP lacks timelines for the appellate process, which can lead to months of delay in submitting a determination to the DoS for disciplinary measures and leaves both complainants and respondents waiting without any communication regarding the final outcome of their case. For example, in one case, OEO released the FLOD 209 days after the complainant reported an assault. The appeals process took an additional 127 days, resulting in increased stress and anxiety for all parties.

The delays in UNM's adjudication and sanction process reinforce the perception that UNM does not take complaints of sexual harassment seriously. Of the seven investigations that resulted in a finding that sexual harassment had occurred, four had completed the appeals process by June 30, 2015. Three resulted in suspension, expulsion or denial of renewed employment. However, due to the length of the investigative and appeals process – an average 128 days for the three – disciplinary measures were so delayed that they had no effect. For example, the United States' investigation revealed that in one case, prior to any sanction announcement, the respondent employee completed his employment contract with the university and moved out of state. Thus, UNM's sanction on the respondent was of limited or no consequence.

E. Procedures to Prevent Further Harassment and Remedy its Effects

When a school knows or should have known of sexual harassment that causes a hostile environment and limits or denies educational opportunities, Title IX requires that the school remedy the harm and prevent its recurrence. UNM's SGP gives the DoS the authority to both ensure student safety by issuing interim suspensions and no-contact orders for complaints of student-on-student harassment, and providing interim measures to complainants by assisting students with academic and remedial accommodations. However, UNM's grievance procedures do not adequately ensure that the University complies with either requirement, and the procedures are not sufficiently transparent to explain the process, resulting in some students experiencing further harassment and denial of educational opportunities.

1. Inadequate Procedures for Issuing and Enforcing Safety Measures

UNM has no policy setting forth the factors the DoS should consider during the OEO investigatory process to determine whether a respondent is a safety threat and therefore should be suspended or have limited access to the campus during the investigation. This absence of policy results in inconsistent and confusing application of immediate measures to protect student safety. For example, in one matter involving an alleged sexual assault, the DoS contacted OEO after an alleged sexual assault asking whether “an interim suspension” was necessary. OEO responded that it was not because “there is so much attention on [the respondent] right now.” The DoS took no steps to determine whether the respondent posed an ongoing threat to the campus, even after additional complainants came forward to lodge complaints of sexual harassment against the same respondent. Unfortunately, after OEO and DoS were aware of the multiple allegations against him, the respondent remained on campus and allegedly continued to sexually harass students.

While UNM orally informed the United States that a respondent cannot ask for reconsideration of an immediate safety measure, the SGP states any student who has been banned from campus on an emergency basis may request an informal meeting requesting that the ban be reassessed. The SGP does not set out the factors it considers in lifting the ban; require the complainant to be notified of the informal hearing or be provided the opportunity to share information regarding why the respondent may remain a potential risk; or require the complainant be informed of any changes to the emergency ban.

The result can be confusion and frustration for the complainant as well as the respondent. In one example, a respondent was suspended from campus for the pendency of the investigation, but requested an informal hearing on the suspension. One month later, the DOS lifted the interim suspension, but failed to inform the complainant or explain the reason. When the complainant became aware of the respondent’s return to campus through third parties, she felt “powerless and destroyed.” In another matter, UNM suspended the respondent from campus during the pendency of the investigation, but told him that he could continue with his course work at home. However, no arrangement was made for him to take his tests off campus, and respondent did not know who to reach out to for assistance. As a result, he dropped all his classes and lost a semester of course work.

2. Inadequate Procedures to Enforce No-contact Orders

UNM lacks the proper procedures to adequately enforce no-contact orders. On several occasions, UNM did not provide notice of the no-contact orders to necessary enforcement parties. For example, in a matter of alleged student-on-student harassment, the DoS issued a no-contact order, but failed to inform UNMPD of the order. When the complainant approached UNMPD to complain that the respondent was violating the no-contact order, she was informed that UNMPD was not aware of the order and could do nothing in response to her complaint. In another matter, the complainant requested a no-contact order from OEO, who informed her that they would send her request to the DoS, which issues such orders. When a no-contact order was not issued, the Complainant went to the DoS and was informed that OEO never forwarded the request. Indeed, UNM employees in the DoS and OEO offices noted in internal communications

that “there were (potentially) multiple gaps in process and communication,” and a need to “revisit the conversation regarding the protocol of Title IX cases.”

UNM also lacks effective procedures to ensure that its no-contact orders are issued in a way that prevents harassment instead of encouraging it. For example, in a matter involving an alleged sexual assault where the complainant and respondent did not know each other’s names, the DoS Office automatically issued a no-contact order without informing the complainant that doing so would reveal her name to the respondent and that she had the choice not to have a no-contact order. As a result, the respondent and his friends found the complainant and allegedly harassed and threatened her for reporting the assault. In another case involving a non-student’s alleged stalking of a student on campus, the DoS did not issue a no-contact order because the complainant had requested that her name not be revealed. However, DOS failed to inform UNMPD of the stalking complaint or the request for anonymity, resulting in UNMPD revealing the complainant’s name to the respondent after it responded to a call of harassment.

3. Inadequate Procedures to Ensure Academic Accommodations

UNM’s DoS Office lacks adequate authority or procedures to institute appropriate academic accommodations for complainants, resulting in insensitive and inappropriate communications between the DoS and complainants. In one matter, the DoS staff stated they would email the complainant’s professors to inform them that she should receive accommodations following an incident, but the DoS failed to do so. When the complainant approached her professors to request the accommodations, they did not know what she was talking about, making the situation awkward and uncomfortable for all involved. In another matter, DoS told a complainant that she could take medical leave for the remainder of the current semester and the entire following semester, as a result of documented medical conditions resulting from a sexual assault. A month after completing the required paperwork, the complainant was informed she had been given a “leave of absence” and not a medical leave, which meant that she could only take part of the current semester off and had to return to campus for the following semester.

In a third matter, a complainant reported being sexually assaulted by another student with whom she had no prior relationship. The DoS staff member who was assisting her to obtain interim safety accommodations repeatedly referred to the respondent as her “ex-lover.” The complainant reported feeling humiliated and demeaned by this language.

IV. Campus Law Enforcement Investigations

Law enforcement agencies should recognize that explicit and implicit biases, including stereotypes about gender roles and sexual assault, can affect law enforcement officers’ perceptions of sexual assault incidents and prevent them from effectively handling allegations of these crimes. Eliminating gender bias in policing practices can have a real and immediate effect on the safety of individuals and communities as a whole, and foster victim confidence, which makes complainants more likely to report future incidents. In order to reduce potential gender bias, law enforcement agencies should have (1) clear, unequivocal policies about the proper handling of sexual assault crimes; (2) training for officers about these policies and about effective responses to sexual assault crimes more generally; and (3) supervision protocols and

systems of accountability to ensure that officers responding to sexual assault crimes act in accordance with these policies and trainings.²⁷ In addition, where a law enforcement agency is employed by and housed at a college or university, sexual violence complaints are often filed with the school's law enforcement unit. Therefore, all school law enforcement unit employees should receive training on the school's Title IX grievance procedures in addition to training on the law enforcement response to and investigation of sexual assault.

UNMPD has the authority to investigate complaints of sexual harassment and assault within their jurisdiction. OEO often received and sometimes relied on UNMPD investigations in making determinations in Title IX enforcement matters. On August 9, 2013, UNMPD issued policies and procedures for sexual assault investigations that encompass many of the principles for proper handling of sexual assault crimes.²⁸ However, UNMPD officers who handle sexual assault have received inconsistent and intermittent training on responding to sexual harassment, including sexual assault, resulting in incomplete investigations and leaving complainants and respondents feeling confused and alienated with respect to the UNM investigatory process. In addition, UNMPD does not have the means or training necessary to independently collect and manage evidence, which delays and impedes their ability to independently investigate these crimes.

Prior to the 2014-15 school year, UNMPD did not require training on sexual assault investigations for members of its SMART.²⁹ Commanding officers noted that most members of the then-SMART team were former Albuquerque Police Department ("APD") officers with experience investigating sexual assaults. However, prior experience is not analogous to nor a substitute for training in effective investigatory techniques in sexual assault cases. Such training assists officers to obtain evidence in an unbiased manner and helps officers recognize where assumptions and stereotypes influence their judgments as to the credibility of a complainant.

Notably, several individuals who reported sexual harassment to UNMPD told us they felt they were treated in an insensitive and humiliating manner. Complainants described being asked why they

²⁷ For additional guidance, see *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence* U.S. Department of Justice (December 2015); available at: <http://www.justice.gov/opa/file/799366/download>.

²⁸ As part of its practice, UNMPD referred a number of sexual assault cases to the Bernalillo County District Attorney's Office, but individuals in UNMPD command expressed frustration as they believed that the District Attorney rarely prosecuted sexual assault cases unless the assaults were committed by strangers and the cases were presented "in a neat little package tied up in a bow." This frustration was echoed by members of the community who had interacted with the District Attorney's Office on sexual assault matters. While not the focus of this investigation, the United States has concerns that this perceived unwillingness to prosecute sexual assault crimes involving victims known to the offenders may discourage some victims from reporting their assaults.

²⁹ In 2014-15, all five members of the team attended conferences on Investigating Strangulation/Sexual Assault or Sexual Assault Nurse Examiners ("SANE"), or both. However, it is unclear if this was a one-time occurrence or a mandated annual training. One of the detectives on the SMART team took it upon himself to attend the SANE conference in two previous years, and in 2015 attended three additional trainings: the New Mexico Sexual Assault Coalition's training on Effective Investigative strategies, including trauma-informed and forensic interview training; the Rape Crisis Center of Central New Mexico's sexual assault training; and the Crime Victims Reparations training. This detective was able to articulate a best practice, trauma-informed approach to investigating sexual assault cases, and illustrate how he and another SMART officer used the approach in a recent investigation. These officers should be commended for their proactive approach to pursuing best practice training in the field, which also reflected in their work. Complainants who interacted with this detective described him as caring and supportive.

didn't do more to fight off their attackers or being lectured on why young women should not drink in public; approaches that suggest either explicit or implicit gender bias on the part of the investigating officer.

Along with our experts in investigations of sexual assault by law enforcement, we reviewed UNMPD investigation reports for complaints of sexual assault and harassment. Many reports reflected relatively short and dismissive complainant interviews which focused the investigation on the complainant, not the accused, and claims of consent by the accused were taken on face-level and rarely challenged. Reports rarely reflected observations of demeanor or deduced or documented psycho-physiological evidence, all of which illustrates a deficiency in training and understanding of the complexities of sexual assault cases. The majority of the reports reflected a lack of understanding of the impact of trauma on complainants, or how such impact explains the challenges officers face in interviewing victims, such as memory gaps, inconsistent accounts, or delayed reporting, that can lead to inappropriate questioning. As a result, a review of UNMPD reports revealed that some officers were skeptical of victims' reports, and often UNMPD officers failed to conduct a follow-up investigation on information reported in the victim's initial report.

In addition, UNMPD officers, including some in command, exhibited a lack of understanding regarding the issues surrounding sexual, domestic and dating violence through their lack of familiarity with the parameters established by the FBI and International Association of Chiefs of Police on what constitutes an "unsubstantiated" case" versus an "unfounded" case.³⁰ For example, one officer described a domestic violence victim as a "liar" when she recanted her story after returning home, not recognizing that she may have done so under threat, duress, or fear for her safety. A criminal complaint should not be unfounded as a result of the initial complainant interview or perceived complainant reaction to the sexual assault, as complainants of sexual assault may recant or decline prosecution for various reasons (e.g. fear of retaliation by the offender, concern about not being believed, hesitancy regarding the criminal justice system, and loss of privacy). A complainant's reluctance to participate is neither indicative of a false report nor reason to forego a strong, evidence-based investigation. Only after a full investigation shows that an offense was not committed or attempted may cases be coded as unfounded, as either baseless, if the case did not meet the elements of a crime or was improperly coded as a sexual assault; or false, if the evidence obtained through an investigation shows that a crime was definitively not committed or attempted.

Lastly, UNMPD officers noted that they are not trained and do not have the tools to process a crime scene for evidence. Currently, UNMPD must notify the Albuquerque Police Department

³⁰ The FBI defines "unfounded" as "a complaint that is determined through investigation to be false or baseless. In other words, no crime occurred... the refusal of the victim to cooperate with prosecution or the failure to make an arrest does not unfound a legitimate offense. Also, the findings of a coroner, court, jury, or prosecutor do not unfound offenses or attempts that law enforcement investigations establish to be legitimate." See U. S. Department of Justice's Federal Bureau of Investigation's Criminal Justice Information Services Division's Uniform Crime Reporting Program Summary Reporting System User Manual (June 20, 2013), *available at*: <https://www.fbi.gov/about-us/cjis/ucr/nibrs/summary-reporting-system-srs-user-manual>. For additional information on classifying cases as unfounded, see the International Association of Chiefs of Police's Guidelines on Sexual Assault Incident Reports, available at <http://www.theiacp.org/portals/0/pdfs/SexualAssaultGuidelines.pdf>.

to have a crime scene processed, which can result in significant delay when that team is not immediately available.

V. Campus Climate

As described above, based on our analysis of sexual harassment complaints made to the University in the past six school years, focus group discussions, and interviews, the United States determined that incidents of sexual harassment, including sexual assault, created a hostile environment for affected students, as they were sufficiently serious that they interfered with or limited students' ability to participate in or benefit from the school's program. Affected students dropped classes; expressed fear of going to certain areas of campus; experienced negative mental health consequences, including post-traumatic stress disorder and suicidal ideation; lost scholarships; and in some cases withdrew from the University. Further, as explained above, gaps in procedures and training have prevented UNM from taking prompt and effective steps reasonably calculated to end the sexual harassment, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

More generally, many UNM students described significant concerns about campus climate, expressing unwillingness to report sexual harassment, including sexual assault, to UNM because they were afraid of retaliation, lack of a response by the University, or a negative response by the University. Students, faculty, staff, and community members expressed the view that the University approaches allegations of sexual assault with indifference or skepticism, and in some cases even levels blame upon the student experiencing the alleged assault. Indeed, in our interviews, University officials made several statements placing blame with students who are assaulted, reflecting a significant lack of understanding about the dynamics of sexual assault. One University official described "women putting themselves at risk [of sexual assault]." The same official specifically described a student who reported an assault as a "young woman who was very lonely, tended to be clingy, and would put herself in situations that led to her being victimized...she didn't have much insight into her behaviors." Community members told us they heard UNM administrators express similar sentiments at events in the community.

Some members of the campus community described a perception that UNM will not discipline alleged perpetrators, especially athletes, even after receiving multiple complaints about the same alleged perpetrator. One UNMPD officer stated that the administration did not respond when campus police presented evidence of a pattern of sexual harassment and retaliation by certain student athletes. A number of students reported being harassed by a group of student athletes after making a sexual harassment complaint to the University against one of their teammates, and that UNM did little to address their safety concerns. This view was also reflected in interviews conducted by Pilgrim & Associates at the request of the University. For example, one student who decided not to press charges against her ex-boyfriend told Pilgrim that "she was scared of retaliation because football is very petty with stuff like that. She thinks they would definitely 'do stuff like they did with the girl that reported the rape [by members of the football team]'.... She has seen retaliation occur against the alleged victim of the football rape accusations.... She saw on Instagram the football players posting pictures of the three guys saying something like 'that girl is going to get what's coming to her.'"

Students, faculty, staff, and community members also expressed a belief that UNM's approach to sexual assault is driven primarily by concerns about image-building and protecting high-profile students, rather than fostering a safe and healthy climate. In describing this perception, many pointed to the University's efforts to build its athletics program and to promote athletics in conjunction with a "party" culture; for example, the University has a partnership with "United We Rage" to host tailgates where students consume substantial amounts of alcohol prior to athletic events on campus. Students also expressed frustration about insufficient communication from the administration following high-profile alleged incidents of sexual assault, and attributed that lack of communication to concerns about image.

Prior to the launch of this investigation, UNM very rarely made public statements denouncing or expressing concern about student safety in response to sexual assault allegations against UNM students. During one high-profile case involving student athletes, UNM did not release a single media report or message from the administration affirming that it took allegations of sexual assault seriously or that it condemned the type of behavior alleged. The University's lack of public communication in response to these serious and widely-reported allegations of assault left students with the perception that UNM was indifferent to these allegations. One student told Pilgrim & Associates that UNM's response "was a slap on the wrist. The coaching staff and the athletic department acted like nothing happened...The week after the news broke out, the football player was on campus and was rolling around like nothing happened. The football player was on Twitter saying things like "I'm free, they'll never hold me down."

UNM was similarly silent after a high-profile case involving an alleged sexual assault at a fraternity. Ultimately, UNM suspended the fraternity for serving alcohol to minors, without referencing the allegations of sexual assault. Students, including members of fraternities and sororities, told us that UNM's response led them to believe that the school either condoned or was dismissive of the alleged sexual assault. In a different case, a UNM fraternity expelled a member after conducting its own extensive investigation into allegations of sexual assault. Fraternity members reported frustration at seeing the expelled member openly walking around campus, stating that the fraternity "did the right thing" despite fears of "being publicly labeled the rape frat." These students told us they perceived UNM as unwilling to hold the student accountable because it would tarnish the school's reputation.

By contrast, UNM has swiftly issued public statements responding to allegations against persons not affiliated with the school. For example, after a series of gropings on campus by a non-UNM student in 2013, the UNM President released a message stating that "recent attacks on two female students on campus are deeply disturbing to me. As the president of this university and as one who also lives on campus with my family, I am committed to doing everything in my power to ensure that safety continues to be a top priority. I understand that the frequency of these incidents over the past two weeks may be a source of anxiety and also may raise questions about what we are doing to try to prevent such events from happening. Your safety is of the utmost importance to the University."

Lastly, students and staff reported that the University does not adequately engage student groups to ensure that it is meeting the needs of its diverse campus community. Religion, race and ethnicity, sexual orientation, disability and gender identity – among other characteristics – can

affect how students address and respond to sexual harassment, including their willingness to make an official report. UNM's efforts to prevent, address and respond to sexual assault should take account of and include students from diverse backgrounds. For example, LGBTQ students report that the University's messaging around sexual harassment, including sexual assault, uses a heterosexist frame; UNM does not have a counselor trained or competent to help LGBTQ individuals at the faculty/staff counseling center; and LGBTQ students have been left out of some University efforts to improve responses to sexual harassment.³¹ Further, OEO has received very few complaints of sexual harassment from members of the LGBTQ community, even though LGBTQ Resource Center staff told us that some of the 3,000 visits they receive annually do involve complaints of sexual harassment, including sexual assault.³² LGBTQ staff are not required to report sexual assault to OEO and keep reports confidential unless a student requests otherwise. The relatively few reports received directly by OEO suggests that members of the LGBTQ community may be unaware of or uncomfortable reporting to OEO – an inference that was supported by our interviews with students.³³

When UNM created the SMART and the Presidential Task Force, only the Women's Resource Center ("WRC") was engaged in the original development of SMART, while the WRC and LGBTQ Resource Center were both invited to participate on the Presidential Task Force. Members of numerous other campus community groups – including African American Student Services, Indian American Student Services and El Centro de la Raza – said they were not able to engage with SMART or the Presidential Task Force to ensure that the sexual harassment policies, procedures and practices reflect the specific needs of these communities.

VI. Title IX Coordinator

While UNM has taken a number of steps to bring itself into compliance regarding its Title IX coordinator, further action is needed to notify all students and employees of the name or title and contact information of the coordinator and providing the Title IX Coordinator with adequate training. Further, as UNM has designated its Coordinator to coordinate the implementation and administration of procedures for resolving Title IX complaints, including educating the school community on responsible employees' obligations to report a complaint alleging sexual harassment, the coordinator must do more to clarify reporting responsibilities and ensure that responsible employees have a clear understanding of what constitutes sexual harassment, including sexual assault, and each employee's duties and obligations under the various policies.

³¹ Starting fall of 2015, UNM invited the LGBTQ Center to participate on UNM's Sexual Misconduct and Assault Response Team, and recognized the LGBTQ Center as a confidential reporting center in the new Sexual Violence and Sexual Misconduct Policy. However, the LGBTQ Center does not serve on the Title IX or LoboRESPECT Committee, so their voices will not be considered in development and assessment of Title IX policies and procedures.

³² Members of the LGBTQ community experience high rates of sexual, domestic and interpersonal violence. *See* Ctrs. for Disease Control and Prevention, Nat'l Ctr for Injury Prevention and Control, National Intimate Partner and Sexual Violence Survey: 2010 Findings on Victimization by Sexual Orientation 2 (2013), *available at*: http://www.cdc.gov/violenceprevention/pdf/nisvs_sofindings.pdf (noting that 44 percent of lesbian women, 61 percent of bisexual women, 26 percent of gay men and 37 percent of bisexual men have experienced rape, physical violence, and/or stalking by an intimate partner.)

³³ While not the focus of our investigation, multiple UNM personnel reported discrimination against LGBTQ faculty and staff members as well as harassment on the basis of sexual orientation.

UNM must also devise a system to effectively communicate information on its Title IX enforcement among the many components on the campus.

1. UNM Does Not Adequately Identify Its Title IX Coordinator

Through the duration of our investigation, the University designated the Director of OEO as the Title IX Coordinator.³⁴ However, contrary to federal law and guidance, some of UNM's various policies and procedures pertaining to sexual harassment, including UNM's adjudication policies, do not accurately identify the Title IX Coordinator. Some policies correctly identify the current Title IX Coordinator by name; others state that the Director of OEO is the Title IX Coordinator, which is not currently true. Further, the policies are inconsistent in describing the role and duties of the Coordinator, and some fail to provide the contact information required by regulations.³⁵ As a result, almost no students or faculty are even aware that UNM had a Title IX Coordinator because the information is not readily or clearly available. For example, the SHP does not mention the Title IX Coordinator in the introduction, instead only referencing the position as an aside in section 3.1: Reporting Responsibilities: "the University relies on its employees to notify the University's Title IX Coordinator of all disclosures of sex discrimination, sexual harassment, and sexual violence against students."³⁶ The words "Title IX Coordinator" are not hyperlinked to the webpage containing the current Coordinator's contact information. Persons seeking the Title IX Coordinator's information in the SHP cannot easily ascertain the identity, office affiliation or contact information of the Coordinator. By contrast, the SVSMP identifies the Title IX Coordinator by name and office affiliation and includes a hyperlink to a page of the OEO website that provides the Title IX Coordinator's name, contact information, and her duties and responsibilities. This Title IX Coordinator webpage on the OEO website meets all the requirements of Title IX. However, the information is only easily accessible from the SVSMP or for people who already know that the Title IX Coordinator information would be included on the OEO website. Moreover, relying on hyperlinks prevents anyone who may be accessing the policies in hard copy form from getting information about the Title IX coordinator.

2. UNM Does Not Adequately Train Its Title IX Coordinator Regarding Title IX Compliance Obligations

UNM does not require nor set forth a process for the Title IX Coordinator to engage in regular and timely review of federal law and guidance regarding Title IX. The Title IX Coordinator has not kept abreast of federal updates regarding Title IX compliance. Notably, the University's Sexual Assault Policy, which was in effect until May 2015, was not compliant with the US

³⁴ In August of 2015, UNM removed the Title IX Coordinator duties from the Director of OEO and assigned them to Heather Cowan, a compliance manager in the OEO who oversees Title IX investigations conducted by the OEO office. It is unclear whether this is a one-time event or formal change, and whether Title IX Coordinator will be an independent position. As the change was made after June 30, 2015, the United States does not have the information to assess whether any duties Ms. Cowan may still retain regarding the Title IX investigation process has or could create a potential conflict of interest.

³⁵ 28 C.F.R. § 54.135(a). As of September 15, 2015, the Office of Equal Opportunity Discrimination Claims Procedure still identifies the Director of OEO as the Title IX Coordinator. UNM will need to correct this inaccuracy.

³⁶ The Reporting Responsibility section was only added to the SHP on May 21, 2014. Prior to that date, the sexual harassment policy was devoid of any mention of the Title IX Coordinator.

Department of Education's 2011 guidance on Title IX. In fact, prior to April 19, 2015, UNM was unaware that a process existed for colleges and universities to be officially informed of new federal guidance. When the Department of Education released its 2011 Dear Colleague Letter a UNM employee outside OEO brought it to the Title IX Coordinator's attention. After learning of the 2011 Dear Colleague Letter, the Title IX Coordinator established a Title IX Compliance Committee, but did not call meetings for months at a time and did not undertake a compliance review or update of the University's sexual harassment policies. UNM did not update its sexual harassment policy to reflect federal guidance until 2015.

3. UNM Does Not Adequately Identify or Train Its Responsible Employees

UNM has designated its Title IX Coordinator to provide training on school policies related to sexual harassment to make sure that UNM employees are aware of their rights and obligations under Title IX. However, UNM's policies provide conflicting information regarding who constitutes a responsible employee with an obligation to inform the Title IX Coordinator or OEO of a report of sexual harassment, including sexual assault. Moreover, UNM has not effectively communicated the reporting requirements of those designated as responsible employees. The new SVSMP states that all UNM faculty and staff, except those individuals employed by or associated with SHAC, Counseling, Assistance & Referral Services, or the UNM Advocacy Center, as "responsible employees" who are required to inform OEO of any report of sexual harassment, sexual violence or sexual misconduct. By contrast, the SHP identifies not all staff, but only faculty, administrators, and supervisors as "required to engage in appropriate measures to prevent violations of this policy and promptly notify OEO."

While Title IX does not dictate which university employees have Title IX reporting obligations, guidance from the U.S. Department of Education's Office for Civil Rights ("OCR") defines responsible employee as "any employee: who has the authority to take action to redress sexual violence; *who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee*; or whom a student could reasonably believe has this authority or duty."³⁷ Once a university has designated responsible employees, the failure of an identified responsible employee to make such a report constitutes a violation of Title IX. The conflicting language of the SVSMP and SHP regarding responsible employees is likely to confuse employees attempting to determine whether they have reporting obligations. Individuals who consult the SHP may not understand that, under the SVSMP, staff members who do not have supervisory duties still have reporting obligations.

UNM does not provide sufficient notice of or training on sexual harassment policies and procedures to its faculty and staff. While the University requires faculty and staff to participate in annual online training, faculty and staff report that the focus of this training is on the importance of not sexually harassing others in the workplace. This type of training is also necessary, but faculty and staff reported that they receive no training on how to identify sexual harassment; what to do if a student reports a sexual assault; the designation and duties of

³⁷ See Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties at 13, available at: <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html> (Jan. 19, 2001).

responsible employees to report; how the University will investigate or respond to the report; or where the faculty or staff member can direct the student for help or support.

During the 2014-15 school year, OEO developed training regarding Title IX reporting obligations, which includes information on where responsible employees must direct reports. However, the United States' investigation revealed that a number of UNM employees, including those who have always been designated responsible employees, have never received training about – and are thus unaware of – their reporting obligations. Faculty and staff reported that they did not know whether they were responsible employees required to report incidents that were reported to them; would not know what to do if a student reported a sexual assault to them; and did not know who to call. A number of graduate students and staff members stated that they brought complaints of sexual harassment to their department chairs or supervisors, respectively, who appeared to have done nothing to report or remedy the situation, nor was the evidence that the information was passed on to OEO. Further, faculty and staff who themselves experienced alleged sexual harassment, including sexual assault, also report a great deal of confusion about UNM's sexual harassment policies and procedures. As of November 18, 2015, the only employees required to attend training on identifying and reporting sexual harassment, including sexual assault, are the 219 individuals employed as residential advisors, academic advisors and Athletics Department staff.

In addition, UNM provides no training for graduate students, who often serve dual roles as employees and students. Most graduate students indicated that they did not know they had the option of reporting to OEO, nor did they understand that in the context of their teaching role, they might have an obligation to report sexual harassment to OEO.

The lack of information regarding who constitutes a responsible employee has resulted in UNM not receiving information about sexual harassment, including sexual assault, on campus in a systematic and comprehensive manner. For example, prior to May 2014, UNMPD, members of whom are responsible employees, received a number of complaints of sexual assault of UNM students, including one complaint against a student accused of two additional sexual assaults against different complainants. Neither the DoS nor OEO appear to have received that report or to have conducted an investigation. Further, in 2013, there were four complaints of drug-facilitated sexual assaults affiliated with UNM sororities and fraternities. Students remember discussing all of the incidents with a UNM official who has reporting obligations, and a sorority sent out an email discussing a possible serial assaulter. However, there is no evidence that this information was passed on to OEO. As a result of these failures to report, UNM failed to adequately respond to known allegation of sexual harassment, prevent their recurrence, and provide sufficient supports and remedies to the complainants to redress the harm.

Further, while the United States focused its investigation on sexual harassment involving students, information we collected showed that UNM lacks understanding regarding the purpose and scope of Title IX. For example, in a report issued in October 2015, UNM incorrectly noted that claims of sex-based discrimination against employees are not covered by Title IX, as “Title

IX protections cover only students.”³⁸ During the course of its investigation, the United States heard from a number of current and former employees in academic and services departments who identified hostile environments due to sex-based discrimination and an indifferent response by the administration to complaints.

VII. Conclusion

We acknowledge and appreciate the commitment of the University to prevent and address sexual harassment, including sexual assault, and the steps UNM has taken to date in furtherance of that commitment. To fully comply with Title IX, the University must take additional specific steps to:

1. Provide comprehensive and effective training to all students, faculty, and staff that gives notice of the University’s prohibition on sexual harassment, including sexual assault; information about reporting options, duties and obligations; details on where to go for help or assistance; and information on grievance procedures and potential outcomes;
2. Revise the University’s policies, procedures, and investigative practices to provide a grievance procedure that ensures prompt and equitable resolution of sexual harassment and sexual assault allegations;
3. Adequately investigate or respond to all allegations by students who have alleged sexual harassment, including sexual assault, and/or allegations of retaliation for reporting sexual assault or sexual harassment;
4. Take prompt and effective steps to eliminate a hostile environment, prevent its recurrence, and address its effects; and
5. Ensure that the individuals designated to coordinate its Title IX efforts receive adequate training and coordinate these efforts effectively.

We hope to continue working with UNM in an amicable and cooperative fashion to resolve our outstanding concerns. We hope that you will give this information careful consideration and that it will assist in advancing productive discussions that have already been initiated with the University.

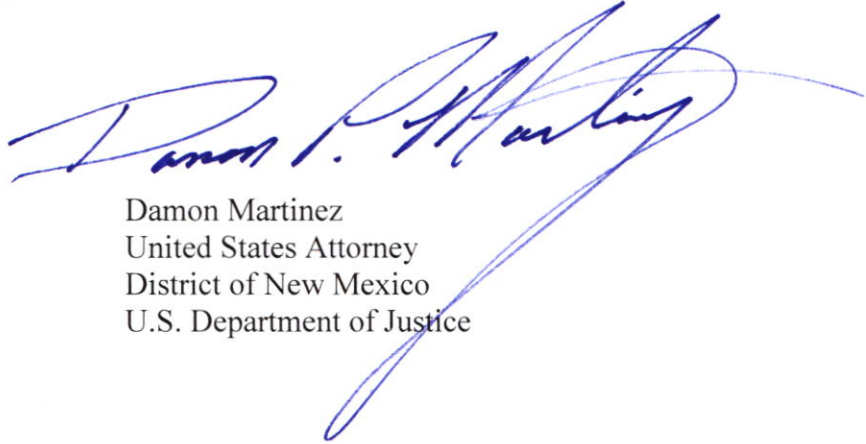
³⁸ UNM acknowledged to the United States that the report “incorrectly states that the protections of Title IX of the Educational Amendments of 1972 only cover students. The Office of Equal Opportunity does not share this view.” However, the fact that individuals tasked with internally reviewing sexual harassment investigations are not aware that Title IX covers employees is evidence of UNM’s lack of understanding and failure to train responsible parties as to the scope of the statute.

Please contact us to inform the United States whether the University is interested in working cooperatively to resolve this matter. We know that you will give this letter careful consideration and review, and we look forward to speaking with you in the very near future. If you have any questions regarding this letter, please contact Torey Cummings at (202) 305-4204 or Colleen Phillips at (202) 307-6548.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shaheena Simons".

Shaheena Simons, Chief
Educational Opportunities Section
Civil Rights Division
U.S. Department of Justice

A handwritten signature in blue ink, appearing to read "Damon P. Martinez".

Damon Martinez
United States Attorney
District of New Mexico
U.S. Department of Justice

Exhibit B

June 2, 2016

U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section

Attn: Shaheena Simons, Chief
Damon Martinez, United States Attorney, D.N.M.

950 Pennsylvania Ave. NW
Patrick Henry Building, Suite 4300
Washington, D.C. 20530

Re: Title IX and Title IV Investigation of University of New Mexico

Dear Chief Simons and U.S. Attorney Martinez:

The University of New Mexico (“the University” or “UNM”) appreciates the work by the Department of Justice (“Department” or “DOJ”) in its investigation of UNM’s handling of student reports of sexual harassment and sexual assault. Our regents, senior administration, and many other key stakeholders in the UNM community have carefully considered the Department’s letter report (“Report”) of April 22, 2016, and would like to provide this initial response.

The University is pleased that many of its more recent efforts to address sexual harassment and sexual assault have been commended as significant and proactive in the Department’s findings. A timeline attached to this letter outlines those achievements. The Department notes that these changes may already be lifting student confidence in UNM’s response to complaints by making students more willing to report instances of sexual assault and harassment.¹ Nevertheless, the University understands and acknowledges there is more work to do in improving its response to student complaints involving Title IV of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972. We welcome the Department’s assistance as UNM continues to strive to achieve its two goals: a safe campus and fair processes for all.

As I’m sure the Department knows, colleges and universities across the country have been struggling to achieve these same goals. While guidance from the Office of Civil Rights and the government’s “Not Alone” website provide informative resources and checklists, our final policies and practices must meet UNM’s particular needs and challenges. Even the best set of policies and procedures cannot unilaterally change the campus climate—as the Report noted, appropriate training and education for faculty, staff, and students should be targeted to encourage empathy and motivate the community to work to make a difference.

¹ See, e.g., Report at p. 16, FN 23.

The DOJ's investigation focused on the six academic years beginning with 2009-2010 and ending with the 2014-2015 school year,² nine months before the Report was provided to UNM in April, 2016. The Report notes in several places that DOJ did not have an opportunity to review changes UNM has made in the ensuing nine months, a very active period for UNM's efforts to address the DOJ concerns. As part of this initial response, we would like to highlight certain ongoing efforts that may address some of the Report's findings.

For ease of reference, each of the efforts described below will identify by number how it qualifies as one or more of the five additional specific steps the Department has identified for the University to take to be in full compliance with Title IX in its Conclusion to the Report.³

I. University Policies Prohibiting Sexual Harassment and Sexual Assault

In May 2015, UNM adopted a new Sexual Violence and Sexual Misconduct Policy ("SVSMP" or "Policy 2740"). This guiding policy is contained in the *University Administrative Policies and Procedures Manual*, referred to as "Big Red," that is the official reference for UNM's administrative functions. The new Policy 2740 is UNM's single, comprehensive reference for definitions, information, procedures, sanctions and rights regarding sexual violence and sexual misconduct, including sexual assault and sexual harassment.

The Report criticizes UNM for having a "labyrinth of 17 policies" related to sexual harassment and sexual assault at the time DOJ initiated its investigation, indicating that the policies were overlapping and often conflicting. The Report later acknowledges that UNM's adoption of the new Policy 2740 has alleviated many, but not all of these deficiencies. It directs UNM to explain how policies interrelate, identify those that have been withdrawn or are no longer in effect, and use consistent definitions of sexual harassment and sexual assault.

The 17 policies can be inferred from the policy list given to Jill Pilgrim & Associates for their climate assessment, which was released in February 2015. The list included UNM administrative

² See Report at p.3

³ See, Report at p. 36. The additional specific steps are:

1. Provide comprehensive and effective training to all students, faculty, and staff that gives notice of the University's prohibition on sexual harassment, including sexual assault; information about reporting options, duties and obligations; details on where to go for help or assistance; and information on grievance procedures and potential outcomes; ["DOJ Step 1"]
2. Revise the University's policies, procedures and investigative practices to provide a grievance procedure that ensures prompt and equitable resolution of sexual harassment and sexual assault allegations; ["DOJ Step 2"]
3. Adequately investigate or respond to all allegations by students who have alleged sexual harassment, including sexual assault, and/or allegations of retaliation for reporting sexual assault or sexual harassment; ["DOJ Step 3"]
4. Take prompt and effective steps to eliminate a hostile environment, prevent its recurrence, and address its effects; ["DOJ Step 4"]
5. Ensure that the individuals designated to coordinate its Title IX efforts receive adequate training and coordinate these efforts effectively. ["DOJ Step 5"]

policies (which contain procedural details), UNM Regents' policies (the overarching university policies that are carried out through the administrative policies), student policies contained in the Pathfinder (UNM's student handbook), and faculty policies contained in the Faculty Handbook (the UNM faculty's policy and procedure document).

To ensure that all these sources contain consistent and current information, the University is undertaking a thorough review of every policy that contains any reference to sexual harassment or sexual assault to ensure that they refer to the new Policy 2740 when appropriate, or are revised or eliminated if they are redundant with the new policy. Unless otherwise designated, these policy changes are expected to be in effect by September 1, 2016:

- The content of administrative Policy 2730: *Sexual Harassment* is now addressed in the new, comprehensive Policy 2740. Therefore, Policy 2730 will be eliminated. UNM will eliminate references to the old Policy 2730, and will add cross-references and/or links to the new Policy 2740 wherever appropriate.
- Regents' Policies 2.3, 2.4, and 2.5, which reference sexual harassment, will be updated to provide cross-references to the definition of sexual harassment and other related terms in the new administrative Policy 2740.
- All Pathfinder references to sexual harassment and violence now cross-link to the new administrative Policy 2740.
- The Pathfinder *Student Grievance Procedure* was updated May 13, 2014 to reflect the change in investigation from the Dean of Students Office ("DOS") to the Office of Equal Opportunity ("OEO"). It was further amended in January 13, 2016 to clarify the process used by DOS for adjudicating and sanctioning persons found by OEO to have committed sexual harassment, misconduct, or violence in violation of UNM policy, and also to streamline the adjudication, sanctioning, and appeal process for those so found in order to try to comply with Title IX's recommended timelines.
- The Pathfinder *Procedures for Redress of Sexual Harassment* now directs readers to OEO for administrative processing of all claims of sex discrimination, including sexual harassment, misconduct, and violence. The Pathfinder *Sexual Assault Policy* has been removed due to redundancy.
- Faculty Handbook Policy D175 currently mirrors outdated policies that were in the Pathfinder prior to January 2016. UNM has informed the Provost's Office and Faculty Senate President of this inconsistency, with the expectation that the faculty will take action to link the Faculty Handbook to the current version of the Pathfinder policy or the new Policy 2740, as appropriate.
(DOJ Step 2)

II. Campus Awareness of Sexual Harassment Policies

Since the DOJ's active investigation concluded in June 2015, UNM has undertaken many efforts to improve campus awareness of sexual harassment policies. A brief description of some of those additional specific efforts follows.

- A new Dean of Students, Nasha Torrez, was hired and began on June 1, 2016. Ms. Torrez is an education law specialist who worked in UNM's Office of University Counsel and previously represented school districts. She has strong familiarity with Title IX, sexual harassment, employment law, student confidentiality, and student due process rights. Ms. Torrez also brings to the job her experiences as an undergraduate and law student at UNM. She is exceptionally well qualified to oversee implementation of UNM's efforts to increase campus awareness of sexual harassment policies. (DOJ Steps 1, 4, 5)
- LoboRESPECT, a campus-wide sexual violence awareness initiative, was launched in fall 2014. In September 2015, the University opened the LoboRESPECT Advocacy Center as a "first stop" for students concerned about sexual assault and sexual harassment. It provides a safe and welcoming environment for students to receive support and advocacy services. It is one of four confidential and anonymous reporting sites on campus (the others are the Women's Resource Center, the Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Resource Center, and the Student Health and Counseling Center (SHAC). Since its opening nine months ago, the LoboRESPECT Advocacy Center has provided advocacy and support for 73 students on issues relating to sexual assault and/or other sexual misconduct. It has also provided 15 different workshops and trainings for 1,168 total participants. (DOJ Steps 1, 3, 4)
- The LoboRESPECT Advocacy Center is creating a guidance document for staff and faculty to assist them in helping students who report sexual harassment or sexual assault. This document will be finalized and sent to all faculty and staff members in August 2016, prior to the start of fall semester. (DOJ Steps 1, 4)
- The LoboRESPECT Marketing sub-committee was officially formed in September 2015 to professionalize publications and maximize awareness. They have partnered with a student group and created a print and social media campaign. The topics include:
 - a. Sexual Assault Prevention
 - b. Consent
 - c. Bystander Intervention
 - d. Dating Violence
 - e. Bullying
 - f. Hate/Bias
 - g. Disability Awareness (DOJ Steps 1, 4)
- The following trainings are underway:
 - Through LoboRESPECT, sexual violence education became part of New Student Orientation in summer 2015. All incoming students now receive interactive

- sessions on sexual assault, bystander intervention, consent, and safety. There have been approximately 3600 participants to date. (DOJ Steps 1, 4)
- UNM contracted with Campus Clarity (<https://home.campusclarity.com>) to provide online training on sexual assault and sexual violence for all students. A pilot program called “Think About It: Adult Learner” was offered to all undergraduate students with at least 80 credit hours in April 2016. Participation invitations were sent to 6,970 students and 524 have completed it to date. The pilot ends June 5, 2016. (DOJ Steps 1, 4)
 - Training provided through Campus Clarity and LoboRESPECT Marketing informs students about reporting options, identifies which reports are confidential and which are not, and explains the implications of each. The trainings include explanations of the differences in criminal and administrative reporting and disclosure paths. (DOJ Step1)
 - Beginning in fall 2016, all undergraduate and graduate students (approximately 24,880 students) will be required to complete Sexual Violence Education training by the spring 2017 registration deadline or holds will be placed on students’ accounts. (DOJ Steps 1, 4)
- In August 2014, the UNM Department of Athletics began annual mandatory training on sexual violence for all UNM athletes within the first two weeks of school. In 2014, 95% completed the training in that timeframe, and in 2015, 98% (438 athletes) completed the training in that timeframe. For both years, the few remaining student athletes completed the training during make-up sessions. (DOJ Steps 1, 4)
 - For the past 15 years, Janice Ruggiero, UNM Director of Athletic Affairs and Sports Programs, was the point person for any OEO/Title IX athletic concerns. In February 2016, Athletics created a specific point person, Kaley Espindola, to address student life issues for athletes. Ms. Espindola is a member of UNM’s Title IX Committee and works closely with the Title IX Coordinator. (DOJ Steps 3, 4, 5)
 - In fall 2014, Residence Life and Student Housing instituted mandatory Title IX trainings for all staff, including Resident Advisors (RAs) and professional staff. In fall 2015, Residence Life and Student Housing began mandatory annual training on sexual violence. During the academic year 2015-2016, the full staff of 50 RAs, five professional staff, and two student hall directors were trained. (DOJ Steps 1, 3, 4, 5)
 - Since August 2015, RAs have delivered 20 student-planned programs to resident students on campus, on the topics of preventing sexual harassment, healthy intimate relationships and consent. (DOJ Steps 1, 4)
 - OEO staff received specific sexual assault and sexual harassment training, including:
 - National Association of College and University Attorneys’ (“NACUA”) Title IX Coordinator: certification received by all OEO staff;
 - Essentials and Advanced Title IX workshops through the National Center for Student Life: completed by the OEO Director, Title IX Coordinator and all investigators;

- Association for Student Conduct Administration's Gehring Academy Advanced Title IX Investigations: completed by the Title IX Coordinator and one investigator.
(DOJ Step 5)
- The LoboRESPECT website was redesigned in September 2015 as part of UNM's branding efforts. At the time of this letter, all links are active and functioning. (DOJ Step 1)
- As of January 2016, UNM Employee Organizational Development (EOD) now provides mandatory staff and faculty training entitled, "Intersections: Preventing Sexual Discrimination and Harassment." To date, 1,058 staff and faculty members have taken the training. It replaces the previous training, "Preventing Sexual Harassment." EOD also provides educational classes on related issues, both online and in person. (DOJ Steps 1, 4)
- OEO staff members sit on multiple internal UNM committees in order to provide and receive relevant training and guidance. The committees and working groups include:
 - LoboRESPECT Steering Committee
 - Marketing, Compliance, Education, Advocacy sub-committees
 - Clery Compliance Committee
 - Facilities Access Committee
 - Division for Equity and Inclusion
 - Title IX Committee
 - SMART (Sexual Misconduct and Assault Response Team)
(DOJ Step 1)

III. Campus Administrative Investigations

UNM's Office of Equal Opportunity (OEO)

The Report raised concerns about stability and turnover at OEO. UNM shares this concern. In an effort to address it, since DOJ's active investigation ended in June 2015, OEO has been restructured to provide adequate staffing and clear oversight for civil rights, Title IX and Clery initiatives and tasks. Additional specific steps include:

- In August 2015, OEO began reporting directly to the Office of the President. Previously, it had reported through the Office of University Counsel. The new direct reporting relationship is intended to decrease any appearance or potential for conflicts of interest and increase access and attention to OEO's mission. (DOJ Step 5)
- In August 2015, OEO hired Francie Cordova as its full-time Director/ADA Coordinator for oversight of civil rights initiatives. Ms. Cordova is an attorney with previous public defender and Assistant Attorney General experience and more than 20 years of

management experience. She directed the New Mexico Human Rights Division for eight years, investigating all civil rights claims filed in the state. (DOJ Step 5)

- Previous directors of OEO simultaneously served as UNM's Title IX Coordinator. In August 2015, UNM created a dedicated Title IX Coordinator position filled by Heather Cowan, M.A. Ms. Cowan has been professionally employed in higher education civil rights compliance since 2009, at the University of New Mexico and the University of Michigan, where she focused solely on Title IX investigations and processes. While at the University of Michigan, she assisted in developing its sexual misconduct and Title IX investigations processes and procedures, in response to the 2011 OCR Dear Colleague Letter. She facilitates national Title IX compliance trainings via webinars to schools, colleges and universities. She does not generally investigate cases in order to provide appropriate oversight of investigations and eliminate potential conflicts. (DOJ Step 5)
- In August 2015, UNM created a dedicated, full-time Clery Compliance Officer position and hired Robert Burford to fill that position. The Clery Compliance Officer monitors and reports UNM safety data, in compliance with the 1980 federal law. Mr. Burford has been with UNM for over 20 years and has worked to increase safety on UNM's campus for the majority of that time. Among other duties, Mr. Burford managed student conduct issues in the Dean of Students' Office for more than 15 years and worked with Clery reporting and data during his entire tenure in that office. (DOJ Step 5)
- OEO has hired two additional Compliance Specialists (investigators) who will join the staff on June 6, 2016. The two new investigators join the three investigators currently employed at OEO, for a total of five. Two of the three current investigators are attorneys and one is a former Albuquerque Police Department lieutenant who also provided contracted EEOC investigations to the federal government. The two newest investigators both have Title IX and investigation experience. (DOJ Steps 3, 5)
- In September 2015, OEO hired a Compliance Assistant to provide intake assistance, record keeping and outreach assistance to the investigators. The Compliance Assistant also provides data management to OEO. (DOJ Step 3)
- OEO employs two students to provide administrative assistance to OEO. In addition, the student employees provide social media outreach to students and the campus community via Instagram and Twitter, and participate in student outreach. (DOJ Steps 1, 3)
- OEO has selected a law school extern who will provide research and writing support and will begin working with OEO in fall 2016. OEO will work with UNM Law School to offer externships to law students every semester going forward. (DOJ Steps 2, 3)
- From January 2016 to present, a doctoral intern has been working part-time at OEO conducting research of best practices regarding nationwide university sexual misconduct

policies. OEO seeks participation across multiple disciplines for internship opportunities annually. (DOJ Step 2)

The Report also commented on the training for OEO investigators. UNM has provided significant external and internal training and guidance to OEO investigators and staff members since August 2015. Specifically, the following training activities have been completed over the past 18 months:

- February 2015: Clear Law Institute Training – Investigations, interviewing, credibility webinar for all OEO staff
 - September 2015: Development of a new investigator handbook that contains the basics of claim analysis, process, and training for all OEO staff
 - September 2015: Development of a flowchart and internal process for consideration of Title IX and other civil rights matters for all OEO staff
 - September 2015: Development of template language to ensure consistency in outreach and process for all OEO staff
 - September 2015: Campus Security Authority (CLERY CSA): training for all OEO staff
 - September 2015: Academic Freedom and Title IX webinar for all OEO staff
 - November 2015: NACUA investigative report writing (sexual assault scenario) for all OEO staff
 - December 2015: Transgender 101, Transgender Resource Center of NM for all OEO staff
 - February 2016: Title IX essentials and advanced training, National Center of Student Life – Live seminar, Orlando, Florida for the Director, Title IX Coordinator, OEO investigators
 - April 2016: Forensics, Experiential Trauma Interviewing (FETI) for OEO investigators
 - NACUA Title IX Coordinator training: All modules completed by Director, Title IX Coordinator, OEO investigators
 - Ongoing: Regular training of staff by the Director and Title IX Coordinator on claims analysis, standards of proof, credibility considerations.
- (DOJ Step 5)

Notice of Grievance Procedures

The Report criticizes OEO's Discrimination Claims Procedure (DCP). It cites students' concerns that they did not receive adequate notice and updates regarding grievance procedures. OEO has revised the DCP with a target implementation date of June 17, 2016. The new DCP:

- Is modeled on state and federal civil rights investigative procedures
- Provides notice to the respondent earlier in the process (a procedure that had already been the practice)
- Establishes that the investigator will request a face-to-face meeting with the respondent (a procedure that had already been the practice)

- Shortens investigative timeframes by establishing a 60 business-day investigation completion standard from the time of a “perfected” complaint of allegations that UNM civil rights policies were violated.⁴
- Aligns procedures for investigating departments with those for individual investigations (DOJ Step 2)

Processing of Complaints

The Report was critical of OEO’s historic length of time for processing claims from complaint to close. However, it is important to note that OEO has shortened its time frame for investigating and processing claims even as the number of claims has continued to increase each year. (DOJ Step 3)

All Investigations		Title IX	
Year	Avg Time To Close	Year	Avg Time To Close
2014	166	2014	168
2015	104	2015	106

The Report was critical of specific elements of OEO’s investigatory process. UNM offers an update on the cited elements as follows:

- *“Ineffective Initial Evidence Gathering.”* OEO’s practice is to ask the respondent to provide a verbal explanation of the events and answer questions (this is clarified in the new DCP). However, the OEO process is voluntary and a respondent can provide a verbal and/or written statement, submit to questions from the investigator, or decline to meet with OEO. OEO’s practice is to follow-up with all participants as needed. OEO will continue to document these efforts in investigative files. (DOJ Steps 2, 3)
- *“Inconsistent Application of Credibility Assessment.”* OEO’s practice is to assess the credibility of all investigation participants based on the EEOC’s five factor credibility determination⁵ and trauma-informed practices. OEO will document credibility

⁴ A statement of allegations is considered “perfected” when the Complainant fully and finally verifies the specific civil rights allegations and issues the Complainant wants OEO to investigate. While investigations of civil rights policy violations typically take approximately 60 business days to complete, investigations may take additional time dependent upon on the complexity of the particular claim. When there are factors that extend this time frame, both Complainant and Respondent will be notified of the extension and OEO will document the reasons for the extension.

⁵ The EEOC’s “Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors” dated June 8, 1999, sets forth five factors to consider in determining credibility when there are conflicting versions of relevant events.

assessments more fully in its investigative reports and will continue to train investigators in this area. (DOJ Steps 2, 3)

- *“Inconsistent Collection of Evidence.”* A difficulty is that evidence may be anecdotal and not possible to corroborate. To collect evidence, OEO works with UNMPD, UNM’s Information Technology Office (to retrieve electronic information), and witnesses. OEO also collects potential evidence from various social media platforms. OEO has created a template email message that will be sent to UNMPD and Information Technology in all cases, to consistently request that relevant evidence and reports be preserved and provided to OEO. (DOJ Steps 2, 3)
- *“Inconsistent Investigations and Poor Record Keeping for Multiple Complaints.”* In March 2016, OEO purchased Navex-EthicsPoint case management system to enhance case tracking and trends. The system has reporting capabilities and has been modified for OEO to include Title IX and Title VII claims, facts and outcomes. (DOJ Step 3)
- *“Inconsistent Consideration of Power Dynamics.”* OEO has formalized its previous training of investigators regarding consideration of power dynamics in investigations, and will improve documentation of these efforts in investigative reports. In addition, investigators received training on power differentials at the above referenced Title IX training course in Orlando, Florida in February 2016. (DOJ Step 5)
- *“Lack of Procedures to Ensure Impartiality.”* In August 2015, OEO ceased to report to the Office of University Counsel and became a direct report to the UNM President in order to ensure impartiality. (DOJ Steps 2, 3)

Inadequate Timeframes

- The new DCP shortens the timeline for evidence collection. (DOJ Steps 2, 3)
- The new DCP has formalized the circumstances that allow extensions of time. (DOJ Steps 2, 3)
- The new DCP addresses timelines, deadlines, and communication responsibilities in the event of delays. This information will also be incorporated in the investigative checklist. (DOJ Steps 2, 3)

Procedures to Prevent Further Harassment and Remedy its Effects

The following additional specific steps will be taken to address the concerns brought forward by the Department.

- *“Inadequate Procedures for Issuing and Enforcing Safety Measures.”* By August 1, 2016 DOS, UNMPD, SMART and OEO will develop consistent criteria for determining if interim suspensions and/or interim bans from campus should go into effect for students

who are being investigated for incidents of sexual misconduct. Factors to be considered include:

- Safety of the complainant
- Safety of the campus
- Previous conduct of a similar nature

Once these criteria are determined, all decision makers will be trained by OEO, prior to Sept. 1, 2016, on the use of these criteria and how to enforce these measures. The training will include how to communicate these measures to the appropriate departments, the complainant and the respondent. (DOJ Steps 2, 3, 5)

- *“Inadequate Procedures to Enforce No-contact Orders.”* By July 1, 2016, DOS will produce a brochure for students, describing how No-Contact Orders/Directives are enforced and explains in detail what requesting a No-Contact Order/Directive means for both the complainant and the respondent. This brochure will be e-mailed to the requesting party and may also be printed out for the requesting party.

By August 1, 2016, DOS and UNMPD will formulate a standard operating procedure specifying how No-Contact Orders/Directives and Interim Suspension/Bans are communicated by DOS to UNMPD and by UNMPD to its officers. (DOJ Steps 2, 3, 5)

- *“Inadequate Procedures to Ensure Academic Accommodations.”* By July 1, 2016, the LoboRESPECT Advocacy Center will produce a brochure for students, identifying all the academic and residential accommodations that can be requested through DOS. Examples of possible accommodations include:
 - Advocacy for financial aid/scholarship retention with the Financial Aid & Scholarship Office, should a student have to take fewer classes or a leave of absence.
 - Absence notification assistance for classes missed as a result of the incident
 - Classroom adjustment assistance should a student need to change courses or take them from home
 - Residence hall assistance with living accommodations or with contract cancelations

This brochure will be e-mailed or printed out for the requesting party. Additionally, a list of possible interim measures will be available on both DOS and the LoboRESPECT Advocacy websites. (DOJ Steps 2, 3, 5)

VI. Campus Law Enforcement Investigations

The Report emphasized the role of law enforcement in the sexual violence context and was critical of what the DOJ saw as shortcomings in UNMPD officers’ training.

UNMPD has provided significant training and education:

- Over the last five years, all 41 UNMPD Officers have received training from the Albuquerque Police Department (APD) regarding proper response to sexual assault, domestic violence and hate crimes.
- All sworn officers take 40 hours of mandated and advanced training every two years as mandated by the State of New Mexico Law Enforcement Academy Board to maintain their law enforcement certification. Some of the topics covered in the mandated training are domestic abuse incident training, detection, investigation and reporting of Hate Crimes and interaction with persons with mental impairments. Starting with the 2016-17 training cycle, all officers will also receive training in the investigation of sexual assaults.
- All 41 UNMPD Officers received Title IX training in 2014.
- All 41 UNMPD Officers received Campus Security Authority (CSA) training in 2015.
- 34 UNMPD Officers received Crisis Intervention Training (CIT) training in 2015. This training instructs officers in how to better respond to people in crisis. The training equips officers with the tools to try resolve the conflict successfully.
- UNMPD has nine officers trained as Field Investigators to process crime scenes to gather evidence, collect fingerprints and photograph evidence. Officers respond to any incident where evidence needs to be processed. Training for Field Investigators is on-going and updates or changes in evidence collection is done through roll-call briefing.
- UNMPD contacts APD or New Mexico State Police (NMSP) via police communications for processing crime scenes when no UNMPD trained Field Investigator is available or in major crime scene where APD/NMSP has the expertise to process critical evidence. UNMPD has a solid relationship with APD, and by July 1, 2016 will have a new MOU with it describing expectations going forward.
(DOJ Steps 3, 5)

The five officers assigned to SMART received the following specialized training, in addition to Title IX, CSA, and CIT trainings described above:

- January 2015: Investigating Sexual Violence- Effective Strategies for Military and Civilian Law Enforcement
- March 2015: 20th Advocacy in Action Conference
- March 2015: Basic Fingerprint Collection
- March 2016: Strategies to Prosecute Sexual Assault Cases in New Mexico
- March 2016: Community Professional Sexual Assault Response Training
- April 2016: Forensic Experiential Trauma Interview and Neurobiology of Trauma: Strategies for Investigation of Sexual Assault Cases.
(DOJ Steps 3, 5)

UNM has additional specific long range plans to train and educate Officers:

- All new UNMPD Officers will be required to attend Title IX, CSA and CIT training.
- OEO will coordinate with UNMPD to train all officers annually on Title IX and sexual harassment issues. The annual training will help to strength the relationship between OEO and UNMPD and keep open lines of communication between both departments.

The training will also help to clarify each department's role in addressing sexual harassment and assault.

- Officers assigned to SMART who have advanced training and experience with sexual assault cases will share this training with all patrol officers through a training block, developed by SMART, regarding responding to sexual assault based on the current practices being taught nationwide. The training will include initial response by officers, avoiding re-victimizing the victim and understanding their concerns. (DOJ Steps 3, 5)

V. Campus Climate

UNM recognizes its responsibility to create and foster an environment where people feel safe to report acts of sexual assault, sexual harassment, and other types of misconduct. UNM sincerely desires to prevent any missteps that cause any student to experience further distress. UNM has taken the following additional specific steps to enhance safety and knowledge:

- Communication Campaigns
 - The LoboRESPECT Student Group will present weekly displays at New Student Orientation for fall 2016 to promote *Protect the Pack*⁶ and the *True Lobo Pledge*⁷ and encourage incoming students to get involved in these peer education and support initiatives. Students will receive information about the LoboRESPECT Advocacy Center, can sign the UNM pledge for a respectful campus, and can sign up to receive UNM's monthly *Protect the Pack* newsletter.
 - Orientation leaders and peer mentors will be trained to facilitate the small group participatory training for incoming students called *The Grey Area*⁸ and the presentation that will highlight this campaign.
 - The LoboRESPECT Marketing sub-committee will develop a monthly marketing plan for fall 2016 and spring 2017. This plan includes updated posters/fliers for each month (including Red Zone education, consent, and safe bystander intervention), a social media campaign, and giveaways for Welcome Back Days and other display opportunities.

⁶ **Protect the Pack** – University-wide marketing campaign to focus the community on sexual assault prevention, consent and by-stander intervention and raise awareness about the LoboRESPECT initiatives including the LoboRESPECT Advocacy Center and sexual misconduct reporting at UNM.

⁷ **True Lobo Pledge** – Pledge created by students to reinforce our community's commitment to a safer and more respectful campus. It reads: *As a True Lobo, I am taking the stand to promote a "Safe, Healthy, Respectful and Inclusive Environment for ALL students to academically and socially thrive while attending the University of New Mexico", and to be an "active bystander" in preventing situations that could lead to violence and "support our fellow lobos" in order to Protect The Pack!* The initiative began in March 2016.

⁸ **The Grey Area** – A presentation given at each freshman orientation program throughout the summer. It includes topics such as sexual assault definitions and statistics, prevention, consent, bystander intervention, and available support and resources both on and off campus. After the presentation students break up into smaller orientation groups with their orientation group leaders to continue the discussion of sexual assault awareness and prevention and healthy relationships.

- The LoboRESPECT Advocacy Center has worked with the LoboRESPECT Marketing sub-committee to create marketing materials featuring the *Protect the Pack* and the *Consent, Get It* campaigns. Since early fall 2015, posters and fliers have been situated in the SUB Plaza, Smith Plaza, the Women's Resource Center and Zimmerman Library. UNM has also placed electronic fliers that focus on sexual assault prevention, consent, and bullying on the electronic boards in the SUB, DOS, and Zimmerman Library. (DOJ Steps 1, 4)
- UNM's Lobo Alert system is an opt-out system that automatically enrolls all faculty, staff, registered UNM students, and UNMH employees. Alerts regarding sexual assault or safety concerns are sent via email and text message in order to quickly reach the community when there are safety concerns. (DOJ Step 4)
- University Communication and Marketing provides information as appropriate about high-profile matters while remaining sensitive to student confidentiality and privacy concerns. (DOJ Step 4)
- OEO held an open house the week before finals in spring 2016 offering free burritos, coffee and chair massages to strengthen relationships with the campus community and create a welcoming atmosphere for anyone to come to OEO with questions or concerns. OEO will host similar campus-wide events every semester. (DOJ Steps 1, 4)
- UNM partnered with the National Campus Climate Survey through SoundRocket, Inc. in spring 2016 (data collection launched April 4, 2016 and is ongoing). This survey will provide data to benchmark current efforts and information related to sexual misconduct occurrences on the UNM campus as well as gauge students' awareness of current policy and resources. There has been a 30% response rate and a 26% completion rate to date. UNM entered a contract with the same company to conduct the survey on UNM's branch campuses in spring 2017. (DOJ Steps 1, 4)
- In summer 2016 OEO will create materials to assess the efficacy and participation rate of all sexual misconduct related trainings, programming and events for academic year 2016-2017. (DOJ Steps 1, 4)
- OEO instructs all parties in an OEO investigation, including witnesses, that if they experience anything they perceive to be retaliatory to notify their investigator as soon as possible. (DOJ Steps 1, 4)
- OEO acts quickly when it receives reports of retaliation. In the context of an OEO investigation, its staff currently reviews these reports to determine what the appropriate next step should be. These include opening an additional investigation; putting the person who allegedly engaged in retaliation on notice that the behavior, if true, needs to stop immediately; and reminding persons alleged to have retaliated that the behavior could

warrant formal action by the University including all levels of discipline. OEO also works with the appropriate department or organization to assist in ensuring retaliatory behavior is not tolerated or permitted to recur. (DOJ Steps 3, 4)

- Beginning in summer 2016, OEO will distribute materials, including flyers and a brochure, that include specific examples of retaliatory behavior and a statement that this behavior is prohibited at UNM. The materials will describe who is protected from retaliation and where to report instances of retaliation. The materials will specifically state that even if an individual is unsure that a behavior is retaliation under policy or law, to report it as soon as possible so the university may address the behavior immediately. (DOJ Steps 1, 4)
- OEO will work with the LoboRESPECT Marketing sub-committee to produce materials that address retaliation prevention as one of its campaigns for fall 2016. (DOJ Steps 1, 4)
- In its Title IX trainings, OEO specifically addresses retaliation prohibitions. It includes specific information on what may qualify as retaliation, such as being treated badly or differently after making a complaint or participating in an investigation. It also addresses what behaviors and activities may result in re-victimizing a party, such as methods used during investigative interviews, as well as initial disclosures of sexual misconduct to responsible employees. (DOJ Steps 1, 4)
- In 2014, OEO created a flyer on ‘talking points’ for faculty, staff and administrators when a student discloses sexual misconduct. It outlines what to say, how to report and where to direct students. OEO has been using it consistently since that time. (DOJ Step 1)
- Semi-annual reminders are sent to faculty and staff to affirm and emphasize that Title IX and Clery training is mandatory for those employees identified as “responsible employees” under Title IX or “mandatory reporters” under Clery. (DOJ Steps 1, 4)
- OEO and DOS will continue to work closely to ensure that students who have been found to violate University civil rights policies are promptly and equitably sanctioned. It should be noted that in 2015, five cases of sexual assault resulted in expulsion. (DOJ Steps 3, 4)
- OEO recognizes that many students identify with multiple protected traits (intersectionalities) and works to tailor its trainings and information accordingly. (DOJ Steps 1, 4)
- OEO specifically recognizes that it is not receiving reports of sexual misconduct from all communities on campus, particularly in the LGBTQ community. To address this, OEO has partnered with the Transgender Resource Center of New Mexico to provide Transgender 101 trainings to OEO staff as well as the broader campus community. (DOJ Steps 1, 4, 5)

- The Director of the LGBTQ Resource Center and the Title IX Coordinator recently had a workshop proposal (Ride the Title IX Wave: LGBTQ inclusivity on a college campus) accepted by the National Organization of Women's 50th Anniversary Conference in June 2016. (DOJ Steps 1, 4, 5)
- The LoboRESPECT Marketing sub-committee has committed to ensuring that the LGBTQ community is represented in the marketing campaign planned for fall 2016. (DOJ Steps 1, 4, 5)
- Additionally, OEO has created more outreach materials related to gender identity and pregnancy. For example, UNM's "Know Your IX" flyer, created in 2013, has always made the point that Title IX protects LGBTQ students. (DOJ Steps 1, 4, 5)
- The LGBTQ Resource Center has been a member of the Title IX Committee since September 2015. (DOJ Steps 1, 4, 5)
- OEO will continue to work with the Directors of LGBTQ Resource Center, Accessibility Resource Center (ARC), African American Student Services (AASS), American Indian Student Services (AISS) and El Centro de la Raza (El Centro) to ensure their voices and perspectives are represented on various committees (LoboRESPECT, SMART, Title IX, etc.) throughout the University. It is noted that AISS, AASS, El Centro, ARC and LGBTQ Resource Center were included on the President's Task Force on Sexual Violence. (DOJ Steps 1, 4, 5)

VII. Title IX Coordinator

The Report recognizes UNM has already taken a number of steps to bring itself into compliance regarding its Title IX Coordinator. UNM has taken the following additional specific steps to address areas identified as needing further action.

- *"UNM Does Not Adequately Identify Its Title IX Coordinator."* By Sept. 1, 2016, OEO will complete a full review and continue ongoing monitoring of the University's multiple websites, policies and documents to ensure that they reflect the new organization of OEO and ensure that descriptions of the Title IX Coordinator are consistent and correct. This will include providing a footnote with contact information for those reading paper copies and ensuring that hyperlinks connect to the OEO website. (DOJ Step 2)
- *"UNM Does Not Adequately Train Its Title IX Coordinator Regarding Title IX Compliance Obligations."* UNM has committed resources to ensure regular and robust training for its Title IX Coordinator on federal law and guidance regarding Title IX, in addition to guidance on implementation of laws and regulations. See Section III: Office

of Equal Opportunity for a list of training completed by the Title IX Coordinator. (DOJ Step 5)

- *“UNM Does Not Adequately Identify or Train Its Responsible Employees.”* As mentioned above, OEO has a plan to identify responsible employees appropriately and ensure their training, as mandated by the university.
 - Training of staff and faculty in sexual harassment prevention has been mandatory at UNM since before 2009. In 2013, when the current Title IX Coordinator returned to the university, this online training was updated to include information on Title IX and how to report that a student disclosed concerns related to Title IX violations. (DOJ Steps 1, 4, 5)
 - In 2015, UNM purchased Campus Clarity (for students) and Law Room trainings (for staff and faculty, including student employees, graduate and teaching assistants). These instruments reflect best practices for training campus communities in sexual harassment and sexual violence prevention and response. As noted *supra*, Law Room has been implemented and is the mandatory online training for staff and faculty for 2016. Campus Clarity is currently being piloted and will be mandatory for all students as of fall 2016. Students who are also employed by the University will be required to take both Law Room and Campus Clarity trainings. (DOJ Steps 1, 4)

Conclusion

This letter is an early step in assuring the Department of Justice and the community that UNM is committed to fulfilling and, we hope, exceeding its obligations under Title IV and Title IX. The issues presented in this letter have been and continue to be a major focus for our University. We look forward to continuing to share information with you about the University's additional specific steps to comply with Title IX and ensure a safe campus and fair processes for all.

Sincerely,



Elsa Kircher Cole
University Counsel

EKC:mca
Attachment

cc: Robert G. Frank
Kevin Gick
Dianne Anderson
Amy Wohlert

TIMELINE FOR UNM RESPONSE TO CAMPUS SEXUAL ASSAULT ISSUE

2013

SUMMER

- SART (Sexual Assault Response Team)

FALL

- Discussions begin on updates to the Pathfinder and Sexual Harassment Policies to define and include sexual misconduct and violence as a severe form of sexual harassment

2014

SPRING

- 2 UNM football players and another man charged by UNMPD with sexual assault of a UNM student
- UNM Women's Resource Center offers trainings

SUMMER

- UNM Presidential Task Force on Sexual Violence established
- DA drops charges against UNM football players

FALL

- LoboGuardian app purchased
- LoboRESPECT is launched
- Campus climate review commissioned by UNM
- SART updated to SMART to include sexual misconduct
- Annual Safety Report Released (2013 statistics)
- U.S. Department of Justice (DOJ) announces review of UNM's policies and procedures on sexual assault
- LoboRESPECT student group established

2015

SPRING

- UNM sends requested information to DOJ
- Campus climate review findings (Pilgrim Report)
- LoboGuardian app launches
- "Protect the Pack" campaign established by LoboRESPECT student group
- DOJ makes several site visits to UNM
- New Bike Safety Patrol launches
- UNM approves new overarching sexual assault policy
- Budget approved for LoboRESPECT Advocacy Center

SUMMER

- UNM purchases Campus Clarity System (sexual assault prevention training)
- New Student Orientation updated to include additional education about sexual assault and alcohol
- Changes to and new positions in Office of Equal Opportunity (OEO)
- New lighting for Residence Life Pedestrian Walkway

FALL

- "Protect the Pack" digital and print campaign launched campus-wide
- LoboRESPECT Advocacy Center Opens
- Annual Safety Report Released (2014 statistics)
- UNM named 10th in 2016 nationwide "Top Safe Campus" list
- LoboRESPECT Peer Educator Program launched

2016

SPRING

- New lighting installed at UNM Law School parking lot
- ASUNM requests \$110,000 from NM Legislature to revamp/add lighting at "S" lot on South Campus
- UNM commissions Campus Climate Survey

