



I. INTRODUCTION

This report is the result of an external, independent review of the administrative response by the University of Alaska (UA) statewide office and by the University of Alaska – Fairbanks (UAF) to issues involving UAF’s compliance with Title IX requirements governing investigation and imposition of discipline for instances of sexual harassment and sexual assault on campus.

Unquestionably, the issues raised are important and sensitive. The problem of sexual misconduct on campus rightfully has become the focus of attention by academic communities across the country and by the U.S. Department of Education. Expectations and standards of performance for complying with Title IX have evolved and expanded over the past five years. UAF, like many other universities, encountered difficulty in making the changes in policies, procedures, personnel, resource allocation, and discipline enforcement that are required to ensure a robust response to the problem of sexual misconduct on campus and compliance with Title IX requirements.

This report identifies and examines the reasons for the difficulties UAF experienced with its student discipline and Title IX programs. The report also assesses the administrative response to those difficulties by leadership both at UA and UAF.

I. DESCRIPTION OF RETENTION AND ASSIGNMENT

Jeffrey M. Feldman of the Summit Law Group was contacted in September, 2015 by University of Alaska President James Johnsen. President Johnsen, acting at the direction of the University's Board of Regents, sought assistance in conducting an external review of several issues relating to compliance by the University of Alaska – Fairbanks with Title IX¹ requirements governing investigation of and imposition of discipline in connection with incidents of sexual assault and sexual harassment occurring on the UAF campus or in connection with UAF sanctioned activities. Upon confirming that Mr. Feldman and his firm did not have a conflict of interest in taking on this assignment, a formal letter of engagement dated September 24, 2015 was signed.

To focus the investigation and ensure that the issues that were of principal concern to the Board of Regents were addressed, after consultation with General Counsel for the University, the assignment was defined as investigating and assessing the following three issues:

1. Focusing on root causes, why was the major sanctions student discipline process not initiated for sexual assault allegations arising at UAF between 2011 and 2014?
2. Once this failure was discovered, did UA leadership (UAF, System, & Board) take appropriate steps in a timely manner to assess and remedy the problem?
3. Have steps taken to date adequately and effectively addressed the systemic or other failures that occurred, ensuring appropriate administrative investigation of serious student misconduct, including Title IX violations, and initiation of appropriate disciplinary procedures?

¹ 20 U.S.C. §1681 et seq.

II. DESCRIPTION OF INVESTIGATIVE PROCESS

Creation of Chronology. To better understand the history of the issues under review, the collected documents were used to create a chronology of significant events, covering the period from February 2011 to January 2016.

Witness Interviews. With assistance from the General Counsel, and following an initial review of the documents, eighteen individuals were identified who either had primary knowledge of relevant events; or had participated in the investigation, processing, or supervision of student discipline cases; or had knowledge or responsibility for Title IX compliance at UAF, UAA or within the UA statewide office. With one exception,² interviews were scheduled and conducted with each of those individuals. They included the following:

Kari Burrell

Amber Cagwin

Patrick Gamble

Anita Hartmann

Susan Henrichs

Michael Hostina

James Johnsen

² One individual, former UAF Dean of Students Donald Foley, retired from University employment in May 2015 and declined to be interviewed. Dean Foley had responsibility for administering UAF's student discipline program during a portion of the period of time under review. Unquestionably, it would have been helpful to have been able to talk with

Mae Marsh

Laura McCullough

III. FINDINGS

1. Over the last decade, Title IX increasingly has been relied upon to combat sexual harassment and sexual violence on college campuses across the country. The United States Department of Education (DOE) has initiated active enforcement of Title IX in this area through investigations, audits, and the issuance of detailed guidance documents advising colleges and universities of the preventive and corrective steps they should take to effect Title IX compliance.

2. One of the most significant developments in Title IX enforcement was issuance of a “Dear Colleague Letter” (DCL) on April 4, 2011, by the U.S. Department of Education’s Office of Civil Rights (“OCR”). The DCL spelled out a number of specific requirements and expectations that would necessitate policy and procedural changes for many educational institutions.

3. Approximately three years later, on April 29, 2014, OCR supplemented the Dear Colleague Letter with a follow up guidance document titled “Questions and Answers on Title IX and Sexual Violence.” This 46-page document provided detailed guidance on a range of compliance issues, including incident reporting, confidentiality, investigations, hearings, interim measures and remedies, appeals, training and education and the impact of other statutes and constitutional protections.

4. When OCR issued the April 2011 DCL, the University of Alaska (UA) General Counsel’s office forwarded it to administrators at the various campuses.

5. Responses to the DCL varied by campus. The University of Alaska - Anchorage
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of Alaska - Fairbanks (UAF) was less proactive, which may have been attributable in part to staffing issues during the relevant time period

6. UAF appointed a new Director of Diversity and Equal Opportunity in March 2012, approximately one year after the DCL was issued in 2011. That individual researched Title IX requirements and reorganized the Diversity/EEO office.

7. Although UAF began taking some initial steps toward Title IX compliance in 2012, there was an overall lack of coordination and communication between UAF's Diversity/EEO personnel and those individuals who were responsible for investigating and imposing discipline for instances of student misconduct falling within Title IX.

8. In May 2014, the University received written notice that OCR would be conducting a Title IX compliance review of the UA system. The OCR notice included extensive documents requests to which the UA system and individuals campuses would be required to respond, and further advised that OCR staff would schedule site visits and staff interviews.

9. In the months following the issuance of the OCR Question and Answer guidance and the OCR notice that the UA system would be subjected to a Title IX compliance review, UA learned of several student discipline cases that raised significant concerns about how UAF had been responding to sexual misconduct allegations.

10. In each of the cases, once steps were taken to provide safety for the victim, and once the offending student was removed from the environment (either voluntarily, or by being trespassed from the University or a dormitory, or by being incarcerated), the student discipline process either was not completed or in some instance, was not initiated.

11. After learning of these problems, UA conducted a formal audit of UAF's student discipline procedures in 2015. The audit report was completed in April 2015 and was thorough

time frame. The General Counsel's office had regular contact with UAA and with University of Alaska - Southeast (UAS

(f) Change in Leadership. Both UA and UAF underwent a change in leadership during 2015. The new UA President and Interim UAF Chancellor have pursued and reinforced a change in focus and emphasis on Title IX compliance, and in remediating the organizational, systemic, and policy weakness that led to the compliance problems that came to light in 2014. For example, a new statewide coordinator for Title IX issues has been appointed and UAF has established its own campus Title IX Task Force to engage with UAF leadership on issues related to Title IX.

(g) Actions and Initiatives Pursued by UAF. UAF has made significant progress in addressing the organizational, personnel, and policy changes necessary to ensure compliance with Title IX requirements, including:

- € Update of policies and procedures for responding to sexual harassment, including sexual assault
- € Appointment and training of coordinators and professionals
- € Training for faculty, staff and students
- € Increased awareness, outreach, and prevention measures
- € Establishment by ()-100rdi ha10C2Q 1 Tf7.5Aff

(a) Increasing tension in the relationship between the General Counsel and UAF administration.

(b) There were occasions when conflicts of views and opinions surfaced among UA and UAF personnel on how to address Title IX issues. Once the differences in views became apparent, the UA President sometimes did not quickly or decisively step in and resolve them.

(c) UAF upper leadership did not act swiftly to correct the problems with UAF's student discipline efforts once they were discovered. UAF leadership failed to fully appreciate the scope and nature of the problems presented.

(d) A further factor that interfered to some extent with University leadership's ability to swiftly remedy the failures at UAF was the natural tension between the independence of individual campuses and the control sometimes exerted at the statewide level.

18. Based on interviews with UAF personnel and a review of the relevant documents, it is apparent that UAF is committed to Title IX compliance and has implemented numerous operational, procedural, and staffing changes to ensure that the University will respond effectively to serious student misconduct, including sexual misconduct, going forward.

19. The past cases in which UAF failed to take appropriate disciplinary action have been reviewed. Most of the cases have been reopened to evaluate sanctions. In coordination with the General Counsel's office, some of those cases have been transferred to other UA campuses for adjudication so as to avoid any perceived conflicts of interest.

20. UAF's compliance efforts include:

(a) Appointment of a new Dean of Students.

(b) Establishment of a functioning Title IX office.

- (c) Structural changes that ensure transparency in the discipline process and knowledge of the status of pending cases by all stakeholders.
- (d) Acquisition of case tracking software, enabling centralized tracking of student conduct cases across departments.
- (e) Employee training on Title IX requirements.
- (f) Establishment of a Title IX Task Force.
- (g) More robust engagement in Title IX matters by UAF upper administration.
- (h) Closer coordination with the office of the General Counsel.

changes to meet Title IX requirements and prevent future lapses in addressing student misconduct. These collective efforts should ensure that the past failures at UAF will not be repeated. UAF witnesses detailed the range of actions taken to fulfill Title IX requirements. Equally important, UAF personnel described a fundamental change in culture that encompasses far greater awareness of Title IX obligations and a commitment to compliance. At the statewide level, the Board of Regents and President have declared a firm commitment to Title IX compliance through words and action, and there is far greater statewide oversight and system-wide coordination regarding Title IX compliance.

Further efforts will be needed to sustain and advance the University of Alaska's commitment to Title IX compliance. As noted, amending Board of Regents policies and procedures related to employees is still necessary to achieve Title IX compliance. Ensuring adequate resources – both in terms of staffing and funding – at the statewide and campus levels will also be critical. It will also be important to ensure that the next UAF Chancellor understands the need to make Title IX compliance a priority. It would also be advisable for UAF to evaluate the allocation of staffing and oversight given to student discipline. While UAF's removal of responsibilities other than student discipline from the plate of the UAF Dean of Students should be beneficial, that office is still perceived to be understaffed. And because the Vice Chancellor to which the Dean of Students reports has a very broad scope of responsibility, concerns about adequate oversight persist.