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# Report of the Task Force on Sexual Misconduct

Swarthmore College

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August 2014

We invite you to join us in expressing sorrow and regret for the pain many have had to endure as a result of sexual misconduct in our community, and for the many stresses, both direct and indirect, caused by its aftermath. We seek, too, your engagement with our collective and personal efforts to make this a safer and healthier place for all of us to live, learn, and work.

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## INTRODUCTION

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Here at Swarthmore and elsewhere, sexual misconduct happens. Although it happens most frequently by men against women, it also occurs across and between all gender identities and across and between students, faculty, and staff. Sexual misconduct may also be exacerbated by ideologies of social supremacy and fear, which target members of subdominant groups. While it often involves the abuse of formal and informal power and status, misconduct need not follow a familiar script.

It is clear that Swarthmore College has begun a time of sincere and critical self-examination. The College has made substantial efforts to rectify previous shortcomings in its handling of sexual misconduct on campus; such action on the College's part demonstrates a willingness not only to comply with federal recommendations and accepted norms/standards, but also demonstrates our desire to go beyond mere compliance.

Our federal civil rights laws demand that all students – women and men; gay and straight; transgender or not; citizens and foreign students – be allowed to learn and participate in all parts of college life without sexual assault and harassment limiting their opportunities. The Office for Civil Rights stands ready to enforce this core principle to ensure all students' safety in schools.<sup>1</sup>

Catherine E. Lhamon, assistant secretary for civil rights

If we have been behind the curve at Swarthmore, we want to emerge ahead of the curve, standing as a model for other institutions. The College has already accomplished needed changes in existing policies, and it continues working toward the goal of a clear, comprehensive, and up to date policy that will replace the College's interim sexual misconduct policy. In addition, personnel have been added in several key positions. (Appendix A1.) The College's response in the above areas, largely assisted by the external review and report of Margolis Healy and Associates (MHA) in January of 2014, needs now to be matched with a proportionate internal response by members of and leaders within the Swarthmore community. (The origins of this Task Force are described in Appendix A2.)

*As a Task Force, we heard student frustration about at least two things: first, that sexual misconduct happens here with more frequency than many people believe, and second, that when it happens, the response to it is uneven, often confused, and does not always reflect community values. Such serious complaints point to the reality that our challenges are interpersonal (our treatment of each other), structural (what narratives and systems of privilege organize our expectations at the College), and organizational (how faculty and staff respond readily, honestly, appropriately, and compassionately to violations of both formal and informal codes of conduct).*

Student expressions of frustration, especially about the lack of swift, appropriate, honest and compassionate responses to such violations have shaken many members of the College community.

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<sup>1</sup> From the U.S. Department of Education letter of April 29, 2014. For a full transcript, see <http://www.ed.gov/news/press-releases/guidance-issued-responsibilities-schools-address-sexual-violence-other-forms-sex>

At the same time, motivated by student action, the campus has begun to redefine itself and take action on these issues.

We have repeatedly heard accounts that suggest a connection between the management of the Dean's Office and the complaints raised in the spring of 2013. It is clear that there has been, and, for some, continues to be, a loss of trust and a breakdown of effective, open communication between students and administrative decision makers at the College. There is a continuing pattern of role confusion followed by silence around which individuals have the deciding power, and how they will carry out their decisions.

We were deeply troubled by an apparent lack of ready-responsiveness, authenticity, transparency, and accountability in some recent sexual misconduct cases. It is our sense that no individual staff member acted with malice. We have been struck, however, that even when we interviewed some members of the staff, we heard complex issues discussed with less authenticity, accountability, and candor than we had hoped.

A combination of lack of clarity in the protocol, lack of oversight, personnel changes without letting students involved in active cases know, mistakes in the sharing of private information, and an approach that has sometimes treated complainants with suspicion or hostility have, combined with more general concerns about safety, led to a situation in the Spring of 2013 in which the Swarthmore community was fractured. More than a year later, some members of the community remain wary and untrusting.

If we do not seriously—and with the utmost sincerity—attend to this larger breakdown of trust by addressing the components that we can fix, we will be unable to mend, heal, and move forward. We believe that the ability to mend, heal and move forward is possible and already happening, and we use the mandate we have been given to raise some of our most trenchant remaining concerns:

Many students expressed (to us and in public forums) a sense of disconnect between the rhetoric of inclusion and social justice versus an overriding concern about the College's image and public relations. They perceive a concerted effort to avoid talking frankly with each other about sexual misconduct.

Many believe that the College must be committed to shared governance, mutual respect, and ideals of community, but complainants in particular experienced dramatic miscommunication with members of the staff, and stated clearly that they did not feel the inclusion, mutual respect and ideals of community.

Such experiences are what members of the community, well beyond complainants, characterize as a deeply troubling sense of inauthenticity. We are compelled to mention that some members of staff also experienced this lack of trust and mutuality, particularly those whose direct job is to serve students. Until we can find a way to restore trust and confidence, it will be difficult to foster the communal culture of mutual respect and safety that we all yearn to experience and that we know can be achieved.

The Task Force highlights these concerns with the realization that addressing them requires a sustained commitment over time from all levels of the community. We state unequivocally that it will require a reaffirmation from all levels of the community that actions taken now will impact the future of the College. This must be given primacy over public image or personal agendas.

Finally, we acknowledge the positive elements of the environment at Swarthmore, especially those persons who are living up to what we all expect of one another. The positive energy of so many members of this community is a necessary ingredient of our ability to move forward in the ways we suggest. We must ensure that every member of this community feels welcome and invited to support this endeavor.

## STRONG POINTS

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In lieu of an executive summary, we provide our strongest suggestions that members of the College community come together to accomplish the following:

- Clearer guidelines of what constitutes sexual misconduct while integrating them into administrative and curricular policies;
- Clear, concise statements—ubiquitous across campus—of Swarthmore’s commitment to address sexual misconduct;
- Clearly delineated—and easily remembered—procedures available to students, faculty and staff when sexual misconduct occurs;
- Clear understanding by faculty, staff and counseling services of a single, uniform, consistent chain of command when handling sexual misconduct. Staff roles, too, will be clearly delineated with each staff member understanding what their professional charge is when a complaint is filed;
- Absolute clarity that every person who makes a complaint will be treated respectfully, taken seriously, and the interactions with authority figures will be private, and, where legally possible, confidential and anonymous;
- Absolute clarity that complaints will be addressed in a timely manner, where a timetable is established whenever possible and presented to the complainant;
- Efforts throughout the Swarthmore community to challenge particular cultures that may be responsible for a disproportionate share of sexual assaults;
- Sex education—including healthy relationships, consent, and bystander—classes across the curriculum from first year student orientation to physical education programming that reaches all students, as a prerequisite at the start of the year for all fraternity members, and as aspects of the academic curriculum in so far as faculty are able to teach about human sexuality, mutuality, and respect as well as sexuality, coercion and violence, and the various ways academic disciplines can help all of us to understand them;
- More community-building activities, like the reinstatement of a regular Collection as well as alcohol free activities that can provide students with party options other than those focused on alcohol; and finally

- We extend an explicit invitation to men on campus to lead in the examination of, and challenge to, privilege, violence and intimidation in romantic and sexual relationships.

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## OBSERVATIONS, RECOMMENDATIONS, AND STRATEGIES

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In this report, we offer observations, recommendations, and strategies that we as a task force have discussed and believe could help Swarthmore emerge as a more just and safe space for all members of our community. (Information about our evidence-based approach is detailed in Appendix B.) While we have done our best to offer suggestions from the pieces of the issue that we have put together over the course of the year, we recognize that we have only begun to uncover Swarthmore’s subcultures, each of which will have to wrestle with the implications of its habits and values in relation to those of the larger community. Although we focus more on students in this document, we appreciate that more work needs to be done on ensuring that as individuals and as members of groups we offer each other a communal space in which to be respected and to experience confidence.

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## GENERAL FINDINGS

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While Swarthmore is distinctive in many ways, it is similar to other colleges in that many incidents of sexual misconduct are unlikely to be reported. Thus we do not know the breadth or scale of the problem at Swarthmore. Indeed, as we heard accounts of situations, we suspect that we do not always agree on what constitutes sexual misconduct. This is particularly challenging because remedies for degrees of misconduct should be appropriate and because it brings us back to the need for immediate conversations followed by efficient action in appropriate arenas as to what we can be in agreement about regarding what constitutes healthy, appropriate, and mutually respectful behavior.

We hope that we share with most of the campus community the recognition that even if our administrative procedures can achieve the most just of possible outcomes in each case, with attention to the details that make the process as humane and compassionate as possible, individuals may walk away with deep wounds.

As a community we have to find better ways to prevent terrible incidents. We must also strive to confront incidents that reveal dramatic misunderstandings around sexual communication and interaction.

When such incidents occur, we must meet the legal requirements to investigate and adjudicate them with the humanity and compassion with which the laws were written, support those who have experienced sexual assault, and work to help them benefit fully from their experiences at Swarthmore going forward.

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## CULTURE

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We would be remiss if we did not share the sense we have that the College’s focus has been on public relations and legal issues rather than on genuine communication, particularly in our conversations with each other. We appreciate that with an active complaint before the federal

government and several complaints midway through their adjudication processes, people may be more cautious about discussing sexual misconduct. We look to the College's chief administrators to model engagement in the difficult conversations that need to become a more central part of our collegiate culture.

While there is not one singular Swarthmore culture, intensity and rigor are deeply embedded attributes of our shared self-image. At our best, this intensity helps to foster intellectual engagement and concern for social justice. Nevertheless, we worry that misery poker ("I have the winning hand because I am busier and more exhausted than anyone else") is a game in which too many are invested. Although we discuss alcohol at length later, alcohol is not the only thing that can impair judgment—so, too, can exhaustion or overextension. Comments from students suggest that feeling under pressure has a dark side: sometimes fueling abuse of alcohol and other drugs. We may need to ask ourselves if this is an aspect of Swarthmore culture that contributes to students sometimes making unhealthy choices, and if so, how we can address it.

We have heard from several students that they have experienced a disconnect between the social justice aspect of how they understood Swarthmore before arriving and the sense that this social justice was not always carried forward interpersonally among students, between students and faculty, or between students and those they look to for advice, care, and protection.

We understand that the Dean's Office plans to conduct a campus climate survey this year. We endorse that plan; at the same time, we want to caution that the survey not be so broad as to be overwhelming in its data. While we are unsure about the best ways to measure the issues around sexual misconduct, we suggest that our Violence Prevention Educators, together with students working in these areas, participate in framing questions on this topic in the survey.

If there are more ways for us to look out for each other, we invite those suggestions and look for the modeling of that behavior to inspire us. This is a moment when the social benefits of weekly Collection, wellness initiatives, and other forms of intentional reflection may serve each and all of us better.

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## EXPRESSIONS OF OUR VALUES

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One of the comments that we heard several times was the importance of letting students who are applying to Swarthmore know that we are a community that takes mutual respect seriously.

Ideas of re-establishing regular Collection, instituting an Honor Code, creating a Statement of Ethics, or using Queries (a series of questions to reflect collectively on who we are and challenge us to live toward our aspirations) were all suggested as changes that might improve campus culture.

We encourage a community-wide return to regular Collection and the use of Queries for strengthening collective reflection and community engagement. We suggest the establishment of a Collection Committee to define the framework, structure, and process for regularly scheduled collections. A group charged with organizing Collection could take query submissions, encourage groups or individuals to restate a query or to submit a query for reflection, or program the time in a productive, intentional, and reflective manner. There is already a block of time set aside built into the weekly schedule; this might prove to be an optimal time for Collection.



We are not in unison at this moment of suggesting that Collection be mandatory, but it is an idea that has strength among us. In considering these ideas, we acknowledge that the degree of culture change we all seek will take time and authentic engagement among and between us to be realized. It will become our collective responsibility to assure that Collection is conducive to helping people feel safe, welcome, and free to be their best selves.

We encourage Swarthmore students, therefore, to consider adopting a social Honor Code. We appreciate that a movement that does not come organically from the ground up will not flourish. While there has been genuine excitement about a possible Honor Code by many members of the community, we are all cautious in our appreciation that a code imposed on students will not endure.

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## ALCOHOL

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Sexual misconduct is significantly correlated with the consumption of alcohol at colleges and universities across the country and at Swarthmore. At the same time, sexual misconduct is not only a product of alcohol abuse. While alcohol is neither the cause nor the excuse for sexual misconduct, the correlative relationship between alcohol and sexual misconduct is very high nationally and there is no reason to suspect that it is any different at Swarthmore. The legal drinking age in Pennsylvania is 21; it is clear to us that underage students have been served alcohol by students who are 21 and older. Alcohol consumption impairs judgment and one's ability to consent to sexual activity. Alcohol is the most commonly used date rape drug. Alcohol can serve as a screen, making it more difficult to interpret the behavior of someone who is sexually compulsive, violent, or both.

There is plenty of hearsay that the places on campus where alcohol is served are problematic: they are poorly lit and feel neither clean nor inviting. Furthermore there is a sense that there are particular parties, particular places and particular events in or at which having sex (or hooking up) with persons that one does not know well is expected. We were cautioned against the assumption that sexual assault happens in only one place on campus. Indeed, the Director of Public Safety shared that it happens in multiple places here. At the same time, it's important to admit that there are spikes in misconduct, and those are associated with particular events and parties.

We learned that the two remaining all-male fraternities on campus control the two largest party spaces that allow alcohol; we see this as an impediment both to challenging the privilege of fraternities and to addressing underage and excessive drinking.

We did not call for interviews with groups that have a reputation for such interactions, but there are athletic teams, particular parties like Genderfuck, Crunkfest, and Halloween, as well as particular groups, such as fraternities and sports teams, that each have reputations for having sexual misconduct associated with them. No group on campus should shy away from frank discussions of this within the group or fear reaching out for advice from professionals. *Indeed, we call on student leaders of all genders in such groups—but particularly men—to be at the forefront of such group self-evaluation.* Furthermore, we call on the men who are considered leaders, formally or informally, to take every opportunity to lead others in knowledge about gendered violence and in taking responsibility for ending it.

Some students may drink to excess in order to escape the pressures of curricular and extracurricular responsibilities. It has further come to our attention that binge drinking is normative for some sets of students and some individuals at the College. It has also come to our

attention that a small group of students enter Swarthmore already in recovery from substance abuse. While Narcotics Anonymous and Alcoholics Anonymous have meetings in the local area and the latter also holds meetings on campus, we all need to take responsibility for helping those students (and faculty and staff) maintain sobriety without singling them out. Indeed, there are a number of students, faculty and staff who do not drink alcohol for reasons that are primarily about health or religion. In short, excessive alcohol consumption among certain segments of the college community raises a number of safety issues, creating higher risk for everyone on campus. This leads us to conclude that as a community, we must foster a social life that is diverse. A community where alcohol does not accompany every event is, quite simply, more inclusive.

We suggest that a greater number of events exclude alcohol. Holding events without alcohol and increasing wellness might be two ways to help all members of the community, but particularly students, see that there are other ways to seek and practice release that are less harmful to one's health and potentially to the health of others. Rather than interpreting concerns expressed here as thoughtless finger pointing, we suggest that coaches, faculty advisors, and other adults associated with spaces, groups, or events, work intentionally with current students to think about the health of individuals and groups.

Where alcohol continues to be present on campus, the College clearly has a responsibility in maintaining general safety for community members and guests to campus alike. However, we call on all students to accept a greater sense of shared responsibility to each other. Once alcohol or other drugs have been introduced into a social setting, risks of injury rise, including by sexual violence. By choosing to be present in such a setting, we believe that students should accept a corresponding sense of responsibility to moderate their own behaviors and look out for the wellbeing of others. Bystanders play an important role on working against sexual misconduct, and that is doubly true in spaces where alcohol is present.

All of this said, we did not complete a comprehensive review of alcohol on campus. Frankly, we are unsure about the scope of its use and abuse, though anecdotal evidence suggests a need for serious attention. We suggest that this be one of the targeted questions on which next year's climate survey focus. Although beyond the scope of this report, we believe that the College must put in place a policy that privileges the health and wellbeing of students, and conforms to state law. This issue is serious, complicated, and ongoing. We advise the President and the Dean to keep it high on their list of institutional priorities.

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## PREVENTION AND EDUCATION

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It has become clear to us that students arrive here with varying degrees of education about sex. Having experienced some level of sexual activity does not necessarily mean being an expert at sex. Similarly, having had little or no sexual activity does not necessarily mean one has little or no knowledge of how to treat a partner in a mutually respectful way.

As a residential college that supports young people intellectually, we cannot ignore what it means to support them with adequate information about a range of aspects central to their lives. In addition, important information about sexual interaction and consent, legal ramifications of sexual engagement, support for smart choices, understanding and becoming used to engaging in clear communication, respect for a diversity of choices including abstinence, and information about

where to turn in the event of sexual misconduct should all be issues covered during Orientation to the College for first year and transfer students.

It is particularly important to have robust participation by men in addressing and redressing issues in this arena. By saying this we are not saying that sex is a men's issue. We are saying that there is a range of masculinities, that men continue to be privileged in this society, and that we are a society that has inherited the values of patriarchy. An examination of male privilege may become an effective way for men to wrestle with the effects of the ideology of male supremacy and to interrupt and challenge that ideology.

To this end, we support a variety of comprehensive sex education endeavors that should take place: in the Department of Physical Education and Athletics, as non-credit bearing courses that do not show up on the transcript, and across the curriculum, as they are appropriate in each of the academic divisions.

We support the decision to shift Orientation from a weeklong event to one that is spaced over students' entire first year at the College. In fact, we support expanding the variety and frequency of non-classroom educational experiences to engage students over the course of their college careers. Particularly, workshops on bystander intervention and what it means to give and receive consent are fundamental to interrupting negative interactions that happen in public and semi-public spaces and private spaces, respectively.

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## PEER SUPPORT

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Support groups, many of which are led by students, and in recent history by individuals and groups of faculty and staff women, have been resources in combating sexual misconduct and its harmful effects. In this section, we provide an overview of these groups and offer recommendations to strengthen and enhance such support.

Students who work with ASAP (Abuse and Sexual Assault Prevention) and who have in the past volunteered with SMART (Sexual Misconduct and Resource Team)<sup>2</sup> were often given a brief training by the head of Health Services. Today, ASAP is supervised by the Violence Prevention Educator and Advocate, and may be transitioning from volunteers to paid staff. All of these students have been considered SHCs (Sexual Health Counselors). As central components of a College-wide team to support and respond to issues and events on campus, we suggest that their volunteers receive additional administrative support including a mechanism to become confidential peer supporters.

In addition there have been several individuals on the faculty and the staff who have volunteered their time on these issues. We suggest considering how to involve volunteers—students, faculty,

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<sup>2</sup> SMART was disbanded under the Interim Sexual Harassment Policy because of confidentiality issues with students. The definitions of who is a mandatory reporter and who is not as well as the difference between confidential and private are still under discussion at the level of the federal government. Please seek the counsel of the Title IX Coordinator for clarity. The goal of mandatory reporting is to get the word to college administrators if there are individuals who pose a threat to the campus; the challenge is that prioritizing that goal may have a chilling effect on complaints.

and staff—who are interested and engaged in creating a more organized (and perhaps mandatory) curriculum for comprehensive sex education guided by a professional sex education teacher. A curriculum for such a program would reflect a variety of experiences, from celibacy and asexuality to sexual activity.

While the College has moved away from the days when it acted in lieu of parents, we also appreciate that students are often faced with challenging situations in the residence halls. We know that residential coordinators will be available to RAs (resident advisors) beginning in 2014-15. We think this is a step in the right direction. Moreover, we also want to ensure that there is a proper support system for those students living off campus.

SAMs (Student Academic Mentors) are in every residence hall. Making SAMs reporting agents may be an overcorrection that has a chilling effect on reporting. We encourage the President and the Dean of Students to revisit this issue with College Counsel.

Many RAs and SAMs were concerned that they were not informed when students had been expelled from campus. This meant that when students who had been asked to leave the campus or stay out of a residence hall returned to a party in a residence hall, RAs and SAMs who lived and worked there did not know this was the case or upon such a discovery that they should call security. We are pleased to learn that over the course of the 2013-14 year, the Dean's Office made this adjustment to inform RAs and SAMs 1) when a student is placed on social probation (no parties), 2) when a student has been expelled or suspended and should not be on campus, 3) when no-contact orders are put in place, and 4) when there is any sort of security concern (individuals on campus suspected of being banned from campus.) Students in such responsible positions are obligated to consider this information private and only to use it to be aware and to keep their residents safe.

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## POLICIES AND PERSONNEL

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We recognize the speed that was needed to craft an Interim Policy on Sexual Harassment and Assault.<sup>3</sup> The permanent policy (which we recommend be reaffirmed and re-publicized annually) must clearly delineate the process by which harassment and/or assault complaints are brought before representatives of the College, the adjudication of conflicts, the standards for imposing consequences, and whether involvement of local law enforcement ought to be part of the process. The Interim Policy, which is dominated by legalese, must use language that is as clear as possible to the widest number of readers.

While there are a number of new staff members who play crucial roles in the College's ability to respond to acts of sexual misconduct (Appendix A1), it strikes us that additional staff at this point will not improve the situation substantially. It is essential that individuals are clear about their roles and supported to carry them out to the best of their abilities. It is likewise essential for employees to have a sense that they are encouraged to act in ways that are as attentive to compassion as to legality, offering those who seek them out more confidence in the process. We

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<sup>3</sup> For those who would like to read the Department of Education's most recent "Dear Colleague Letter" of July 14, 2014, see: [http://www.margolishealy.com/resources/featured\\_archive/july\\_14\\_2014\\_dear\\_colleague\\_letter\\_from\\_office\\_of\\_financial\\_aid/](http://www.margolishealy.com/resources/featured_archive/july_14_2014_dear_colleague_letter_from_office_of_financial_aid/)

affirm the importance of an unambiguous place on the college website for students, faculty, and staff to go to know steps to take and to whom to turn regarding prevention or response to misconduct of a sexual nature.

We appreciate that Counseling and Psychological Services (CAPS) has greatly expanded its support services for students over the past few years. We're grateful for that and its attention to a more diverse student body through greater diversity of its staff. In that same vein, we want to encourage even more training and/or recruitment of counselors who are experienced with students who are queer and trans\* [we use the designation *trans\** here to include persons who identify as transgender and transsexual and/or those individuals whose identities differ from the one they were assigned at birth], first generation college attenders, and students of color. In addition, we wonder if there might be support for students who travel outside of the country for mental health support that is often lacking abroad.

We recognize the challenge that some students and some Public Safety officers do not always share the same language, assumptions, and experiences. This makes it hard for officers, who struggle to fulfill both the roles of building trust and calling students on bad behavior, and it makes it difficult for students who may expect officers to be more familiar with their expectations than they are. In fact, students have had very different senses of Public Safety officers. Some are beloved, others mistrusted. We received some reports of individual officers acting in wonderfully compassionate ways and other reports of officers apparently acting obtuse or judgmental around students. When officers had more information, they acted in more humane ways.

There need to be multiple paths for students to communicate productively with Public Safety. Ideally, the relationship between students and officers should feel comfortable enough that students could raise concerns and receive responses through generative, face-to-face dialog. Even so, there remains a need for an anonymous way that people can use to communicate compliments, suggestions, and frustrations with public safety without having face-to-face interactions with officers or other members of the Public Safety staff.

While it would be ideal if Title IX deputies reflect the diversity of the institution in all its dimensions, we are in consensus that it is more important for such deputies to be well trained, knowledgeable and approachable in dealing with the variety of complaints that might come their way. Nevertheless, we note that there are currently no men serving as Title IX deputies.

We are divided about recommending the establishment of a standing committee similarly comprised as ours that would serve to review Title IX and Clery commitments and also gauge our overall health as a community with regard to sexual misconduct, sexual education, relationships education, sexuality studies, and programming. Some of us think such a committee is very important while others of us think that this oversight should rest with the President of the College. In either case, we urge an annual or bi-annual review to assess the College's progress over time. At this time, it makes the most sense to the majority of us on the Task Force that the Title IX coordinator check in regularly with the President of the College to offer updates and voice her concerns. This feedback should be confirmed by input from community members through a variety of channels.

## JUDICIAL PROCESSES

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### REPORTING

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In the fall of 2013, we learned from Public Safety and the Interim Title IX Coordinator that more incidents of sexual misconduct were being reported than in previous years. Based on the general trends explained to us, it is unlikely that there has been an increase in acts of sexual misconduct. Rather, it appears that complainants or campus reporters are more likely to inform College personnel of (past or present) incidents.

To further facilitate reporting by those who have been harmed by acts of sexual misconduct, we recommend an abbreviated handbook or pamphlet that clarifies what to do, whom to call, and what to expect if one makes a complaint of sexual misconduct. Potential complainants deserve access to clear, concise information. Such a handbook or pamphlet should also be annually updated.

All communication with affected parties must be clear, efficient, and timely. Ensuring effective communication requires staff members who are charged with handling sexual misconduct allegations be well trained with clear processes to follow. The law requires this of us. Beyond the law, we are led to be as fair and as compassionate as possible to students involved, who may feel at further risk with regard to their educational, social, and emotional condition while such processes are underway.

During the information gathering processes conducted by Public Safety and the Title IX Coordinator, it is crucial that private information about complainants not be shared with respondents and private information about respondents not be shared with complainants. We appreciate that everyone is probably on the same page about this, but having heard of oversights in three cases leads us to warn that such mistakes do happen, and stronger steps should be taken to protect against them.

One issue that was raised with us was that neither complainants nor respondents appear to have the ability to ensure that their words are recorded properly in a report unless they take formal issue with the report. We suggest that involved parties be given the opportunity to make sure that individuals are quoted correctly, names are spelled correctly, and addresses and class years are recorded correctly. Most importantly, investigations need to be done by investigators who are trained and sensitive to issues of sexual and gendered violence. Professionalism is essential, and we are pleased that recent excellent hires have been made. We understand that this training has begun and encourage its continuation.

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### HEARINGS

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Many people we heard from question why colleges and universities are even involved in hearings of sexual misconduct cases. Despite the complications, members of the College community should accept that the College does need to have processes for determining responsibility and applying sanctions in cases where a student is found to have committed an act of sexual misconduct. Title IX requires us to have such procedures. Furthermore, a residential community needs to have a way of sorting out conduct violations and safety concerns on a quick timeline, regardless of what might happen in the judicial system at large over time.

Resolving sexual misconduct cases through traditional campus judicial processes risks putting community members into situations with huge consequences for which they are insufficiently prepared. Deciding such cases properly requires that panelists know applicable laws and college policies thoroughly. It also requires that they know which questions are relevant and appropriate, and how to apply the “preponderance of evidence” standard consistently. Without preparation, even panel members with the best intentions run the risk of making poor decisions and causing further harm to students who are already emotionally vulnerable.

The intimacy of a small campus further complicates the relationships of complainants, respondents, and hearing panel members. The College would have to retain a large pool of qualified individuals to fill panels that didn’t have prior or ongoing contact with any or all parties involved. We are skeptical that our small campus could maintain a sufficiently large and knowledgeable pool of panel members for sexual misconduct hearings. Consequently, it is our strong hope and recommendation that the College continue the practice of referring sexual misconduct cases to a retired judge or a similarly qualified professional who is distanced from campus interactions. It is our sense that the process works more quickly and fairly. We note, however, that should the College need to proceed with hearings conducted by college personnel, several student complainants from whom we heard would favor using the Tri-college Consortium as a source for panel members.

Whatever process is used for deciding sexual misconduct cases, it should be designed to limit the number of times that complainants must re-tell their stories. Thorough and well-documented initial investigations by the Title IX coordinator and Public Safety are essential in reducing the number of emotionally exhausting re-tellings. We learned that complainants sometimes are left feeling re-traumatized by having to relive painful experiences multiple times. If the process itself is traumatic, it undermines the goals of Title IX.

Finally, we support the publication of anonymous abstracts—in the tradition of Haverford College’s Honor Council Abstracts—to share the kinds of judicial issues that arose during the previous term and their resolutions. The additional transparency provided by such abstracts would help the community to understand fully the scale and scope of sexual misconduct. It would also give greater confidence to those who are considering reporting an incident that has happened to them.

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## SANCTIONS

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We heard a variety of concerns about sanctions for those found responsible of sexual misconduct. There is a widespread perception among many that the College has been too lenient on those who perpetrate acts of violence. Meanwhile, others raise concerns about how consistently sanctions might be applied, especially with respect to bias. (Scholarly studies have shown that there is an unfair application of punishment in U.S., throughout criminal justice, school discipline, access to behavioral health support, etc.)

In consultation with outside experts, an examination of the literature, and the experiential reality of Swarthmore students, we discovered that many sexual assaults are at the hands of students who are repeat offenders. While a public prosecutor may refer to such individuals as predators, they are clearly students who repeatedly attack fellow students and need to be, at a minimum, separated from this community.

We need to have a system of sanctions that both demonstrates the College’s commitment to reject violent transgressions, and also is consistent and fair in determining consequences. Even so, we

have discomfort with the rhetoric of “Zero Tolerance,” knowing the history of how it has been applied. In some cases, complicating or mitigating issues will be inevitable and will cause us to benefit from some flexibility in the application of sanctions. At this time, sanctions are levied by a member of the Dean’s staff, trained in this regard after having reached consensus with Dean’s staff about guidelines, and under the supervision of the Dean.

What we can say with certainty is that the system of sanctions prescribed for various charges should be defined. The range of possible sanctions should be rational and explainable. If, for instance, there continue to be transgressions for which expulsion or suspension are both possible sanctions, there should be a clear reason why both outcomes should exist, and an explanation of the principles that guide those involved in applying them.

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## CONCLUSION

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In some ways, Swarthmore College reflects the larger society in that people bring to the campus ways of dealing with others that they have learned elsewhere. Yet Swarthmore is different from the larger society in its clearly articulated purpose: “[T]o help its students realize their full intellectual and personal potential combined with a deep sense of ethical and social concern” (Introduction to *The College Catalog*, 2014).

*Out of the courage of sharing their experiences, a handful of students have given this campus the chance to proclaim more vigorously and broadly that deep ethical and social concern is not an empty phrase but values that will guide both individual and collective behavior.*

A campus whose members are infused with ethical and social concern does not provide a place for the utter disregard of the health and well being of our bodies or those of others; it does not provide a place for harassment, unwanted touching, forced sex, humiliation in public or private, stalking, or cruelty. And it does not excuse these acts because of privilege, status, or misunderstanding.

If we are a campus on which mutual respect is one of our most important values, then we must also articulate our seriousness more clearly than we have in the past. We must be willing to sanction those of us who utterly disregard this value. Ethical and social concern must guide our behavior, regardless of the role we play at the College.

We must be open to the process of educating ourselves about what mutual respect looks and feels like, appreciating that as we become a more diverse and welcoming community we may have old habits to unlearn even as we acquire and celebrate new ones. And we must be willing to engage each other—in difficult conversations, compromise, changes to policy, and even expressions of sorrow, comfort, congratulation, and compassion—as we work our way towards greater justice.



## APPENDIX A1:

### Swarthmore Staff Hired with Roles Relevant to Student Life and Sexual Misconduct, 2013-14

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These names are arranged in order of start date. Not all positions are full time positions; not all positions are newly created. Several were already in existence and others had budget neutral ramifications. Where appropriate, we encourage certain positions that have already been serving in a full time capacity to be made full time so that we are serving our students effectively and treating our employees fairly. We have also included the College's description of the Title IX coordinator.

| <b>Name</b>       | <b>Title</b>                                                                                | <b>Start Date</b> |
|-------------------|---------------------------------------------------------------------------------------------|-------------------|
| Michael Elias     | Assistant Director of Student Activities and Leadership                                     | 07/15/2013        |
| Nathan Miller     | Dean of the Senior Class and Director of Student Conduct                                    | 07/08/2013        |
| Liz Derickson     | Assistant Dean, Academic Affairs                                                            | 08/01/2013        |
| Liliana Rodriguez | Associate Dean of Diversity, Inclusion, and Community Development                           | 08/05/2013        |
| Nina Harris       | Violence Prevention Educator and Advocate                                                   | 10/01/2013        |
| Elizabeth Pitts   | Associate Director for Investigations and Title IX Investigator and Educator, Public Safety | 10/07/2013        |
| Joshua Ellow      | Alcohol and Other Drugs Educator and Counselor                                              | 11/24/2013        |
| TBD               | Grievance Advisor and Community Educator (search underway)                                  | 01-07/2014        |
| TBD               | Dean of Junior Class and Director of the Black Cultural Center (search underway)            |                   |
| Kaaren Williamsen | Title IX Coordinator*                                                                       | 07/07/2014        |
| Amir Ahmed        | Dean of the Sophomore Class and Director of the Intercultural Center                        | 07/02/2014        |
| Isaiah Thomas     | Assistant Director of Residential Communities                                               | 07/14/2014        |
| Karina Beras      | Residential Community Coordinator                                                           | 08/05/2014        |

#### \*TITLE IX COORDINATOR

The Title IX Coordinator will report to the President of the College and has primary responsibility for overseeing the College's Title IX efforts. The core requirements of the position include the following:

- Leading efforts across all divisions of the College to ensure compliance with statutory and regulatory requirements as it relates to Title IX laws and regulations;
- Oversight of college--wide education, training, and outreach programming related to Title IX as provided both by colleagues at Swarthmore and by outside experts, and;
- Coordinating and executing in a timely manner the College's response and investigation of complaints pursuant to Title IX, including sexual harassment and sexual misconduct as well as other forms of gender--based harassment and inequity

In addition to the above responsibilities, Swarthmore's Title IX Coordinator will serve as a central resource for all constituencies on a broad set of issues related to Title IX. This person will play a key role in the College's collective efforts to build and maintain an even safer and more gender-equitable campus climate for all members of the community. Developing and implementing a long-term vision for Swarthmore around issues related to Title IX – including but not limited to sexual harassment and sexual violence ---- will be another key responsibility for the Coordinator.

Four Deputy Title IX Coordinators (affiliated with the following areas: Student Affairs, Office of the Provost, Human Resources, and Athletics) will report directly to the Title IX Coordinator. In addition, Swarthmore has committed significant resources to building a team of professionals who will complement the work of the Title IX Coordinator by providing education, training, and support for all members of the campus community around questions related to sexual violence and harassment as well as alcohol and drug use. These positions include:

- Violence Prevention Educator and Advocate (Worth Health Center) ·
- Senior Class Dean and Judicial Affairs Coordinator (Student Affairs)
- Grievance Counselor (Student Affairs)
- Alcohol and Drug Education Advisor (Worth Health Center)
- Associate Director for Investigations (Public Safety)

Other specific responsibilities of the Title IX Coordinator will include the following:

- Oversee the College's centralized review, investigation, and resolution of reports of sexual assault and harassment and gender--based inequity;
- Be available to advise any individual, including a complainant, a respondent or a third party, about the courses of action available at the College, both informally and formally;
- Be available to provide assistance to any College community member regarding how to respond appropriately to reports of sexual assault and harassment;
- Be responsible for monitoring full compliance with all requirements and timelines specified in the compliant procedures;
- Work collaboratively with the Deputy Title IX Coordinators and others across the College to ensure informed and consistent communication around policy implementation;
- Oversee, in partnership with colleagues across campus, the quality and consistency of training, education, and outreach programming regarding Title IX including gender--based inequity for the campus community;
- Provide vision and leadership around Title IX issues over the long--term, emphasizing both compliance and education as key priorities; and,
- Work collaboratively and proactively with campus and community partners to ensure the campus climate is equitable, safe, and welcoming for all members of the Swarthmore community.

## **QUALIFICATIONS & CHARACTERISTICS**

The ideal candidate will have a master's degree in a relevant discipline or a juris doctorate from an accredited law school. Experience working within higher education is strongly preferred. An understanding of the residential liberal arts college experience and a willingness to work collaboratively within a highly consultative campus culture is required.

Additional desired qualifications and characteristics for the Title IX Coordinator include:

- A minimum of five years of progressively responsible experience in a relevant field;
- Demonstrated knowledge of and ability to interpret federal and state equal opportunity and non--discrimination laws and regulations, including Title IX;
  
- Broad--based knowledge of the many facets of Title IX, including the relevance of its prohibition of gender--based discrimination including that related to student athletes and members of the LGBT community;
  
- Deep sensitivity to and a thorough understanding of the many experiences and expressions of trauma caused by sexual violence and harassment;
  
- A proven track record of support for students and a willingness to work collaboratively with them;
  - Excellent communication skills, both verbal and written;
  - Strong organizational, planning, and administrative skills;
  - A compassionate nature, a talent for listening, and a history of working with confidential and sensitive information;
  
- The ability to build trust and work collaboratively with students, faculty, staff, administrators, and community partners;
  
- The courage, boldness, and integrity to pursue the right course of action for the community as a whole, even in the face of vocal or powerful opposition;
  
- A clear understanding of the ways in which recent Title IX developments are changing the conversation on campuses across the nation; and,
  
- The vision to imagine how the Swarthmore community can best work collaboratively over the long--term to further enhance the health and safety of all of its members.

## APPENDIX A2:

### Origin of the Sexual Misconduct Task Force

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The spring of 2013 was a challenging one for many people on campus at Swarthmore College. Several student-led groups voiced frustration about a range of issues. One of the frustrations students articulated was the College's response to complaints of sexual misconduct. A group of students with this particular concern sent a letter to the U.S. Department of Education, stating that the College did not respond to their complaints in a manner that was appropriate or legal. Later during the summer, the College learned that the federal government had taken up the complaint that had been filed.

During the spring, the President Rebecca Chopp announced that an external review of all of the College's policies, procedures, and sanctions related to sexual misconduct would take place. The firm hired to conduct this review, Margolis Healy and Associates (MHA), is nationally recognized with expertise in Title IX and the Clery Amendments to the Violence Against Women Act. With Gil Kemp, chair of Swarthmore's Board of Managers, President Chopp also appointed an independent Task Force on Sexual Misconduct with representatives from the student and alumni bodies, the faculty, staff, and Board of Managers.

The Task Force was charged initially with supporting the work of MHA as it undertook its investigations of past and current procedures and policies and offered recommendations to ensure the College fulfills its obligations. MHA presented the College with interim and final reports during the summer of 2013 and the winter of 2014. (See [http://www.swarthmore.edu/sites/default/files/assets/documents/sexual-assault-and-harassment-resources/Swarthmore\\_College\\_TitleIX\\_Clery\\_Act\\_Assessment.pdf](http://www.swarthmore.edu/sites/default/files/assets/documents/sexual-assault-and-harassment-resources/Swarthmore_College_TitleIX_Clery_Act_Assessment.pdf))

President Chopp further mandated the Task Force to ask questions and offer to her and to the campus community suggestions for cultural changes at all levels: improving how we relate to each other, ideas for fostering greater mutual respect, and ideas for achieving the conditions necessary to insure a safer space for everyone who lives and works here.

## APPENDIX B: Methodology

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Our focus in this report is on students rather than faculty and staff. Although our report is focused on student life, we appreciate that sexual misconduct is not only a challenge for students but for faculty and staff as well.

We met with different groups and representatives of groups on campus and off; we consulted documents (including but not limited to a dissertation on campus date rape, national reports on sexual misconduct, a study on the mental and emotional health of sexual misconduct survivors, the task force reports completed by other similar schools, and popular newspaper and magazine articles on the issue of sexual misconduct).

We engaged each other in a range of conversations that continually moved beyond the boundaries of the topic at hand to ways to foster better mutual respect and good conduct, sexual and otherwise.

We often asked the same questions of different individuals we interviewed, giving us the opportunity to cross-reference and check one person's experience or perception against another's.

We held many meetings in confidence and do not report the names of individuals who spoke to us, nor do we cite the names of particular individuals whom we quote.

We met with many members of Swarthmore's campus community. Some of our members attended webinars on the topic of sexual misconduct, Title IX, and Clery.

We held three open meetings with the purpose of hearing questions and concerns from faculty, students, and staff and introducing them to members of the MHA team and our Interim Title IX Coordinator, Patricia Flaherty Fischette.

Several of us attended the two open lunches that Liz Braun, Patricia Flaherty Fischette and Sarah Willie-LeBreton held for getting feedback on issues related to sexual misconduct. We met with the Dean's Advisory Council, a clinician/faculty member from another university's psychology department who specializes in human sexuality and sexual violence, the Student Affairs Committee of the Board of Managers, and representatives from several departments across campus, including but not limited to the Health Services staff, the Dean's staff, the Department of Public Safety, the President's Office, the Margolis Healy team, the Department of Physical Education and Athletics, and individual students.

We received emails from faculty, staff, and alumni, and emeritus staff, and had dozens of individual conversations with faculty, staff and students.

We also consulted with individuals in the offices of the Dean and Provost at similar colleges.

We learned that no set of behaviors occurs in isolation and that context—from food and drinks served, to spaces where people congregate, to scripts that allow us to intervene in situations or draw our own boundaries, to models of behavior in different circumstances—play a significant role in whether misconduct is likely to occur.

The Task Force was not charged with examining procedures for investigation of complaints, adjudication, or punishment. In our conversations with students and members of the Dean's staff,

we did, however, learn a great deal about our current policies and how aspects of those policies are perceived to be working. Thus we have lifted up suggestions that arise from conclusions we reached during our interviews.

## APPENDIX C:

### National Landscape of Campus Sexual Misconduct

The following brief history was compiled by the Office of General Counsel, Princeton University, and is reprinted here with permission.

| Date             | Activity                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| April 4, 2011    | The U.S. Department of Education’s Office for Civil Rights (“OCR”) issued a <i>Dear Colleague Letter</i> that addressed the application of Title IX in the context of student-on-student sexual violence, one form of sexual harassment.                                                                                                                                                                                                                               |
| March 7, 2013    | The <i>Campus Sexual Violence Elimination Act</i> (“Campus SaVE Act”) was signed into law as part of the <i>Violence Against Women Reauthorization Act of 2013</i> . Among other things, the Campus SaVE Act expands reporting of campus crimes and requires changes to institutional policies as well as additional prevention and awareness programs and campaigns aimed at preventing dating/relationship violence, domestic violence, sexual assault and stalking. |
| January 22, 2014 | President Obama announced the formation of a White House Task Force to Protect Students From Sexual Assault. (On April 29, 2014, the Task Force issued its first Report – discussed below.)                                                                                                                                                                                                                                                                            |
| January 29, 2014 | Congresswomen Jackie Speier and Carolyn Maloney sent a letter to the U.S. Department of Education asking OCR to crack down on colleges that are failing to adequately handle sexual assault cases.                                                                                                                                                                                                                                                                     |
| April 1, 2014    | The U.S. Department of Education rulemaking committee reached consensus on language implementing the Campus SaVE Act. The Department will use the consensus language in its Notice of Proposed Rulemaking, which it intends to publish this summer for public comment. According to the timeline outlined by the Department, the regulations are expected to be finalized by November 1, 2014 and to take effect July 1, 2015.                                         |
| April 4, 2014    | Senators Claire McCaskill and Kirsten Gillibrand sent a letter to Senate committees requesting an increase in funding at the U.S. Department of Education to improve enforcement of campus crime laws.                                                                                                                                                                                                                                                                 |
| April 9, 2014    | Congresswoman Jackie Speier authored a letter to <i>U.S. News &amp; World Report</i> , urging it to update its influential college rankings to include information about how well colleges handle sexual assault reports.                                                                                                                                                                                                                                              |

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|------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| April 15, 2014         | Senator McCaskill launched a survey of colleges and universities seeking information about the current systems in place for handling rapes and sexual assaults on campuses. The survey, which is being conducted through McCaskill's Subcommittee on Financial & Contracting Oversight, is being sent to 450 colleges and universities nationwide.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| April 21, 2014         | Senator Gillibrand and a bipartisan group of senators sent a letter to the White House Task Force to Protect Students from Sexual Assault urging that anonymous campus surveys become mandatory; streamlined processes within the Department of Education; and creation of a user-friendly database of all pending and resolved Title IX and Clery Act investigations.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| April 23 – May 1, 2014 | Senior officials from the U.S. Department of Education and the DOJ visited campuses across the country to raise awareness of campus sexual assault and to hold conversations about how best practices and lessons learned are playing out in areas such as prevention, public awareness and peer support.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| April 29, 2014         | The White House Task Force to Protect Students from Sexual Assault issued its first report. Among the items addressed are campus climate surveys; prevention; responding effectively; and improving enforcement and transparency.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| April 29, 2014         | OCR issued "Questions and Answers on Title IX and Sexual Violence," a 46-page document offering clarification about the requirements in the April 4, 2011 Dear Colleague Letter and the 2001 Revised Sexual Harassment Guidance.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| April-May 2014         | Activist group UltraViolet targets prospective students at several colleges and universities with online advertisements warning them that the schools have a "rape problem." Known targets include Dartmouth, Harvard, University of California-Berkeley, the University of Michigan, Occidental College, Florida State University, Brandeis University and American University.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| May 2014               | Publicity surrounding cases brought by students found responsible for sexual misconduct against their universities. (E.g., a federal district court in Pennsylvania allowed a former St. Joseph's University student found responsible of sexual assault by the student disciplinary process to move forward with claims of defamation and intentional interference with contractual relations against the institution and the accuser; a federal district court judge in Ohio allowed a former Xavier University student found responsible of sexual assault by the student disciplinary process to move forward with his claim that Xavier "made him into a scapegoat so as to demonstrate a better response to sexual assault." There, the court noted, "[the disciplinary board] may have been over its head with relation to an alleged false accusation of sexual assault."). A lawsuit was also brought by a Columbia University student found responsible of sexual misconduct, alleging that Columbia had flawed procedures and failed to provide the student with "an expected standard of due process, concerning wrongful allegations of sexual misconduct." |



|                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| May 1, 2014      | OCR released publicly a list of 55 colleges and universities under investigation by OCR for possible violations of federal law regarding the handling of sexual misconduct complaints.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| May 7, 2014      | A list titled "Sexual assault violators on campus" and including the names of four male undergraduates first appeared on the wall of a women's bathroom at Columbia University. While this list was quickly removed, similar lists appeared on other bathroom walls and flyers. (On April 24, 2014, twenty-three Columbia and Barnard students signed on to complaints with OCR alleging violations of Title IX, Title II and the Clery Act.)                                                                                                                                                                                                                                                                              |
| May 8, 2014      | Connecticut Governor Dannel Malloy signed a campus sexual assault bill into law. Public Act 14-11 mandates that colleges provide services to victims, institute sexual assault policies and report incidents to the Connecticut General Assembly. (New Jersey has a Crime Victim's Bill of Rights, N.J.S.A. 52:4B-36.)                                                                                                                                                                                                                                                                                                                                                                                                     |
| May 19, 2014     | The first of three Capitol Hill roundtable discussions on campus sexual assault (set up by Senator McCaskill through her Subcommittee on Financial & Contracting Oversight) was held. Senator McCaskill mentioned legislation she is drafting with Senators Gillibrand and Blumenthal aiming to simplify the rules that govern campus sexual assault; take a harder line against colleges that violate federal rules; incentivize states to change their rules regarding consent; and require that colleges conduct anonymous climate surveys. Senator McCaskill also said that she wanted the "preponderance of evidence" standard to be written into law. The next two roundtables are scheduled for June 2 and June 16. |
| November 1, 2014 | According to the timeline outlined by the Department of Education, regulations implementing the Campus SaVE Act are expected to be finalized by November 1, 2014 and to take effect July 1, 2015.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

**WHAT THE FEDERAL GOVERNMENT EXPECTS FROM COLLEGES & UNIVERSITIES IN ADDRESSING SEXUAL MISCONDUCT**

The chart below summarizes the expectations of the U.S. Department of Education’s Office for Civil Rights (“OCR”) with respect to the handling of sexual misconduct complaints by colleges and universities. The chart includes information referenced in the following laws, regulations and guidance:

- I. Title IX statute;
- II. OCR Revised Sexual Harassment Guidance (2001);
- III. OCR Dear Colleague Letter (2011);
- IV. The Campus Sexual Violence Elimination Act (2013);
- V. OCR Questions and Answers on Title IX and Sexual Violence (2014);
- VI. The First Report of the White House Task Force to Protect Students from Sexual Assault (2014);
- VII. Recent OCR/DOJ Resolution Agreements (2011-2014); and
- VIII. The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (revised 2013).

|                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                | <b>I. Title IX of the Education Amendments of 1972 (“Title IX”), 20 U.S.C. §§ 1681 et seq. (implementing regulations, 34 C.F.R. Part 106)</b>                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Background</b>                              | Title IX prohibits discrimination on the basis of sex in education programs and activities and employment. Title IX applies to all colleges and universities that receive federal financial assistance, either directly or indirectly.<br><br>Title IX applies to all forms of sexual discrimination (including sexual harassment, sexual misconduct, and sexual violence) and it applies equally to students, staff and faculty. It protects students and employees from sexual harassment by any school employee, student, or nonemployee third party. |
| <b>Information to be Published/Distributed</b> | Identify Title IX Coordinator and provide contact information to campus community.<br><br>Adopt and publish notice of non-discrimination.<br><br>Adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints.                                                                                                                                                                                                                                                                                |
|                                                | <b>II. OCR Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, 66 Fed. Reg. 5512 (January 19, 2001)</b>                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Background</b>                              | OCR issued this 2001 guidance after publication in the Federal Register and consideration of comments. In the 48-page document, OCR reaffirmed the Title IX guidance on sexual harassment that it had originally promulgated in 1997.                                                                                                                                                                                                                                                                                                                    |

|                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Information to be Published/Distributed</b>        | Designate Title IX Coordinator and provide contact information to campus community.<br>Adopt and widely publish clear, easily understood grievance procedures.                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>General Obligations/On Notice</b>                  | A school has notice of harassment if a responsible employee knew, or in the exercise of reasonable care, should have known about the harassment.<br><br>A school can receive notice of harassment not only from filed grievances, but also from complaints to responsible employees, reports from parents and other students, eyewitness reports, indirect sources such as community members or the media, etc. Pervasive, well-known sexual violence may lead OCR to determine the institution “should have known.”<br><br>OCR considers a variety of related factors to determine if a hostile environment has been created. |
| <b>Responsible Employee</b>                           | A responsible employee is an employee who has the authority to take action to redress the harassment; who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees; or an individual who a student could reasonably believe has this authority or responsibility.                                                                                                                                                                                                                                                                                             |
| <b>Confidentiality</b>                                | Discuss confidentiality standards and concerns with complainants and make it clear that retaliation will not be permitted.<br><br>Balance requests for confidentiality with school’s responsibility to provide a safe and nondiscriminatory environment.<br><br>Even if a request for confidentiality limits the school’s ability to respond fully, other means may be available to address the harassment (e.g., trainings, surveys).                                                                                                                                                                                         |
| <b>Elements of Grievance Procedures</b>               | Prompt and equitable procedures should clarify where complaints may be filed; apply to alleged harassment carried out by employees, other students, or third parties; provide opportunities to present witnesses and evidence; provide for interim measures if necessary; designate reasonably prompt timeframes for the major stages of the complaint process; provide notice to the parties of the outcome of the complaint; and ensure that the school will take steps to prevent recurrence of any harassment.                                                                                                             |
| <b>III. OCR Dear Colleague Letter (April 4, 2011)</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Background</b>                                     | In April 2011, OCR issued a nineteen-page Dear Colleague Letter on the obligations of educational institutions with regard to sexual discrimination in the form of sexual harassment and violence.                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Information to be Published/Distributed</b>        | Designate Title IX Coordinator and provide contact information to campus community.<br>Publish notice of non-discrimination to campus community.<br>Adopt and publish grievance procedures.                                                                                                                                                                                                                                                                                                                                                                                                                                    |

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|-----------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Confidentiality</b></p>                                                     | <p>Inform and obtain consent from the complainant before beginning an investigation.</p> <p>If the complainant requests confidentiality, attempt to investigate and respond consistently but explain that the school’s ability to respond may be limited and clarify that retaliation will not be permitted.</p> <p>Balance requests for confidentiality with school’s responsibility to provide a safe and nondiscriminatory environment and notify the complainant if the school cannot ensure confidentiality.</p> <p>Even if a school cannot take disciplinary action due to insistence on confidentiality, the school should pursue other steps to limit the effects of the alleged harassment and prevent it recurrence.</p>                                                           |
| <p><b>Elements of Grievance Procedures</b></p>                                    | <p>The 2011 Dear Colleague Letter restates the 2001 OCR Revised Sexual Harassment Guidance regarding essential elements of prompt and equitable procedures and directs schools to:</p> <ul style="list-style-type: none"> <li>- Use a preponderance of the evidence standard;</li> <li>- Make clear that the school will not wait for the conclusion of a criminal investigation/proceeding to begin its own investigation;</li> <li>- Investigate allegations regardless of where the conduct occurred;</li> <li>- Complete investigations (including hearings) in sixty days;</li> <li>- Avoid mediation in sexual assault cases;</li> <li>- Afford both parties equal rights with respect to the proceedings;</li> <li>- Provide interim protective steps for the complainant.</li> </ul> |
| <p><b>Training/Education/Awareness Programs</b></p>                               | <p>Train individuals responsible for handling complaints and managing the institutional procedures and proceedings; all those likely to witness or receive reports of sexual harassment and violence; campus law enforcement.</p> <p>Implement preventive education programs for the campus community.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p><b>IV. VAWA’s Campus Sexual Violence Elimination Act (Campus SaVE Act)</b></p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p><b>Background</b></p>                                                          | <p>On March 7, 2013, President Barack Obama signed a bill reauthorizing the Violence Against Women Act. Included in the bill was the Campus Sexual Violence Elimination Act (“Campus SaVe Act”). Regulations implementing the Campus SaVE Act are expected to be finalized by November 1, 2014 and to take effect July 1, 2015. Under the Campus SaVE Act, each institution must develop and distribute in its annual security report policies and statements that cover the items discussed below.</p>                                                                                                                                                                                                                                                                                      |
| <p><b>Reporting Requirements</b></p>                                              | <p>The SaVE Act adds domestic violence, dating violence and stalking to the categories that must be reported under the Clery Act.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

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| <p><b>Institutional Policies</b></p>                                                      | <p>Institutional policies must include information on:</p> <ul style="list-style-type: none"> <li>- Procedures victims should follow;</li> <li>- Procedures for institutional disciplinary action (including that the accuser and accused will have the same opportunity to be accompanied by an advisor of their choice[1]);</li> <li>- The standard of evidence used;</li> <li>- How the institution will protect the confidentiality of victims;</li> <li>- Existing counseling, health, mental health; advocacy and legal resources;</li> <li>- Victims’ options for and available assistance in changing academic, living, transportation and working situations;</li> <li>- Possible sanctions or protective measures the institution may impose following a final determination.</li> </ul> <p>Students and employees who report victimization must be provided with written information about the items above.</p> |
| <p><b>Requirement to Educate Students and Employees</b></p>                               | <p>Primary prevention and awareness programs for students and employees must include:</p> <ul style="list-style-type: none"> <li>- the definitions of domestic violence, dating violence, stalking, sexual assault and consent;</li> <li>- a statement that the institution prohibits these offenses;</li> <li>- safe and positive options for bystander intervention;</li> <li>- information on risk reduction and how to avoid attacks;</li> <li>- ongoing prevention and awareness campaigns.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p><b>V. April 29, 2014 OCR Questions and Answers on Title IX and Sexual Violence</b></p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p><b>Background</b></p>                                                                  | <p>On April 29, 2014, OCR issued “Questions and Answers on Title IX and Sexual Violence,” a 46-page document offering clarification about the requirements in the April 4, 2011 Dear Colleague Letter and the 2001 Revised Sexual Harassment Guidance.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p><b>General Obligations/ On Notice</b></p>                                              | <p>If alleged conduct is sufficiently serious to limit or deny a student’s ability to participate or benefit from an education program (creates a hostile environment), and the school, upon notice, fails to take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and as appropriate, remedy its effects, the school violates the student’s Title IX rights.</p> <p>OCR deems a school to have notice of student-on-student sexual violence if a responsible employee knew, or in the exercise of reasonable care should have known, about the sexual violence.</p>                                                                                                                                                                                                                                                               |
| <p><b>Title IX Coordinator</b></p>                                                        | <p>Title IX Coordinator should oversee the response to Title IX reports and complaints and identify and address patterns or systemic problems.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

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| <p><b>Responsible Employees</b></p>            | <p>Responsible employees are those who have the authority to take action to redress sexual violence; who have been given the duty of reporting incidents to the Title IX coordinator or designee; or who a student could reasonably believe have this authority or duty.</p> <p>Responsible employees must report all known relevant details about the alleged sexual violence to the Title IX coordinator or designee.</p> <p>Make clear to the campus community which staff members are responsible employees.</p> <p>Institutions must individually make the determination about whether resident assistant/advisors are responsible employees under Title IX, because the duties and responsibilities vary among schools. OCR outlines factors schools should consider.</p>                                                                                                                                                                                                                                                             |
| <p><b>Confidentiality</b></p>                  | <p>A complainant’s confidentiality requests will only be overridden to meet Title IX obligations.</p> <p>Information should be maintained securely and only shared with a limited number of necessary individuals responsible for handling the school’s response.</p> <p>If the complainant requests confidentiality, attempt to investigate and respond consistently but explain that the school’s ability to respond may be limited and clarify that retaliation will not be permitted. Notify an alleged victim if a school must disclose his or her identity to the accused.</p> <p>If the alleged victim requests that the school inform the alleged perpetrator that the alleged victim asked the school not to investigate or seek discipline, the school should honor this request and inform the alleged perpetrator that the school made the decision to go forward.</p>                                                                                                                                                          |
| <p><b>Advocates/Counselors</b></p>             | <p>OCR refers to advocates or counselors who do not have a professional license mandating confidentiality as “non-professional counselors.” These individuals are not required to report a victim’s name and information to the Title IX coordinator but should report aggregate data (with no personally-identifiable data) in order to identify patterns or systemic problems.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p><b>Elements of Grievance Procedures</b></p> | <p>The Q&amp;As restate the OCR’s 2001 Revised Sexual Harassment Guidance regarding essential elements of prompt and equitable procedures and direct schools to:</p> <ul style="list-style-type: none"> <li>- Include adequate definitions of key terms (e.g. sexual harassment)</li> <li>- Identify the employee(s) responsible for evaluating confidentiality requests;</li> <li>- Provide information about sources of counseling, advocacy and support;</li> <li>- Provide information about potential remedies, sanctions, and interim measures;</li> <li>- Process all complaints, including those that occur off-campus and those involving an alleged perpetrator not affiliated with the school;</li> <li>- Coordinate with local law enforcement (but don’t delay the school’s processes until a criminal proceeding’s final outcome);</li> <li>- Notify complainants of their right to file a criminal complaint;</li> <li>- Minimize the burden on the complainant while respecting the accused individual’s rights;</li> </ul> |

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|                                                            | <ul style="list-style-type: none"> <li>- Use a preponderance of the evidence standard;</li> <li>- Give parties equal opportunities to present witnesses and other evidence; be present for the entire hearing (if the school holds a hearing); cross examine third-party witnesses; have and use advisors at each stage of the process[2]; appeal (if the school provides for appeals)[3]; and be notified in writing of the outcome of both the complaint and any appeal;</li> <li>- Not permit questions about a complainant’s sexual history with anyone other than the accused;</li> <li>- Consider remedies for both the complainant and the broader student population (OCR provides examples for both);</li> <li>- Generally complete cases (including investigations through sanctions and remedies but not appeals) in sixty days;</li> <li>- Notify the complainant of the outcome, remedies, sanctions and any other steps the school has taken to eliminate harassment. Do not notify the accused individual of remedies offered to the complainant.</li> </ul> |
| <b>Training, Education and Prevention</b>                  | OCR delineates specific components of training that should be provided to Title IX coordinators; responsible employees; those involved in implementing grievance procedures; employees likely to witness or receive reports; school officials responsible for discussing safety and confidentiality with students; students; etc.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|                                                            | <b>VI. <i>Not Alone</i>- The First Report of the White House Task Force Report to Protect Students from Sexual Assault (April 2014)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Background</b>                                          | On January 22, 2014, President Obama announced the formation of a White House Task Force to Protect Students from Sexual Assault. On April 29, the task force issued its first report.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Campus Climate Surveys</b>                              | The Report provides a toolkit for developing and conducting a campus climate survey; encourages schools to voluntarily conduct a survey next year; and indicates that the government will be exploring legislative or administrative options to require institutions to conduct a survey in 2016.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Prevention Strategies</b>                               | The Report recognizes the importance of prevention and suggests guidance and tools including best practices for better prevention; bystander intervention (including enlisting men as allies, release of a public service announcement, and a factsheet on bystander intervention); and information about efforts underway to develop new prevention strategies.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Elements of an Effective Response to Sexual Assault</b> | <p>The Report discusses components of a school’s effective response when a student is sexually assaulted including:</p> <ul style="list-style-type: none"> <li>- Identifying trained, confidential victim advocates;</li> <li>- Having comprehensive sexual misconduct policies (the Report provides a checklist</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

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|                                                                                                                                                      | <p>for sexual misconduct policies);</p> <ul style="list-style-type: none"> <li>- Providing specialized training to school officials and law enforcement;</li> <li>- Identifying and using the investigative and adjudicative systems that work best;</li> </ul> <p>and</p> <ul style="list-style-type: none"> <li>- Providing comprehensive support by partnering with the community.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Increasing Transparency</b>                                                                                                                       | <p>The Report calls for increased transparency in enforcement efforts (including introduction of a new website, NotAlone.gov; making datasets relevant to sexual assault readily available; posting of recent OCR resolution letters and agreements; and making public the schools that are under OCR investigation).</p> <p>The Report also indicates that OCR is strengthening its enforcement procedures in a number of ways.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>VII. Recent OCR/Department of Justice (“DOJ”) Resolution Agreements</b>                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Background</b>                                                                                                                                    | <p>OCR has entered into a series of Resolution Agreements[4] that further delineate directives, recommendations, and “open issues” regarding the management of sexual violence issues. These agreements are institution specific and a result of the facts that prompted the OCR complaint inquiry/audit.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|                                                                                                                                                      | <p>Collectively, however, the agreements have resulted in requiring institutions to address clearly a number of aspects their Title IX programs and procedures including:</p> <ul style="list-style-type: none"> <li>- Definitions of sex discrimination;</li> <li>- Measures to provide students and employees with notice of policies and procedures; emphasizing multiple and periodic means of notification;</li> <li>- Reporting requirements for employees;</li> <li>- Procedures for investigation and adjudication of complaints;</li> <li>- Interim measures pending outcome of investigations;</li> <li>- Appeal rights;</li> <li>- Prohibition of retaliation;</li> <li>- Title IX Coordinator structure and implementation;</li> <li>- Training and education on policies and procedures;</li> <li>- Programs and approaches to enhance Title IX visibility;</li> <li>- Investigatory timeline including resolution of complaints within sixty days and ensuring that any investigation delays to allow law enforcement to investigate are only temporary.</li> </ul> |
| <b>VIII. The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092(f) (“Clery Act”) (Revised 2013)</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |



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| <b>Background</b>                                 | The Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092(f), is a federal statute, enacted in 1990, that requires all schools that receive federal financial assistance—either directly or indirectly—to maintain and publish information about crimes on or near their campus. The purpose of the Clery Act is to provide students, their families, and employees with accurate, complete, and timely information about campus safety to better inform future decisions. |
| <b>Collection of Campus Crime Statistics</b>      | Disclose crime statistics that are reported to local police or to a campus security authority (CSA) that occur (1) on campus; (2) in or on non-campus buildings or property that is owned or controlled by the university; and (3) on public property that is within or immediately adjacent to the campus.                                                                                                                                                                                                                   |
| <b>Annual Security Report</b>                     | By October 1, publish and distribute an annual security report that outlines crime statistics for the preceding three years as well as various policies and procedures.                                                                                                                                                                                                                                                                                                                                                       |
| <b>Emergency Notification and Timely Warnings</b> | Keep members of the campus community informed about ongoing threats to their safety. An emergency notification is required “[i]f there is an immediate threat to the health or safety of students or employees occurring on campus.” A university must issue a “timely” warning to the entire campus community of crimes in a manner that will help prevent similar incidents.                                                                                                                                                |
| <b>Daily Crime Log</b>                            | Maintain a public daily crime log of crimes that includes the nature, date, time and general location of each crime and the disposition of the complaint.                                                                                                                                                                                                                                                                                                                                                                     |

[1] The consensus language of the proposed regulations indicates that, in campus disciplinary proceedings involving sexual misconduct, both the alleged victim and alleged perpetrator have the right to select any person as an advisor, including an attorney.

[2] OCR requires that use of advisors be equal for both parties (“If the school permits one party to have lawyers or other advisors at any stage of the proceedings, it must do so equally for both parties. Any school-imposed restrictions on the ability of lawyers or other advisors to speak or otherwise participate in the proceedings must also apply equally.”) The Campus SaVE Act rulemaking committee will be implementing regulations later this year providing that both the alleged victim and alleged perpetrator have the right to select any person as an advisor, including an attorney.

[3] OCR says that “[w]hile Title IX does not require that a school provide an appeals process, OCR does recommend that the school do so where procedural error or previously unavailable relevant evidence could significantly impact the outcome of a case or where a sanction is substantially disproportionate to the findings. If a school chooses to provide for an appeal of the findings or remedy or both, it must do so equally for both parties.” If one party can appeal for a sanction being too severe, the other party can appeal for a sanction being too light.

[4] Recent agreements include: Tufts University (April 2014); Virginia Military Institute (April 2014); State University of New York (October 2013); University of Montana-Missoula (May 2013); Xavier University (July 2012); Yale University (June 2012); University of Notre Dame (July 2011); Eastern Michigan University (November 2010); and Notre Dame College (September 2010).