

PUBLIC REPORT
ON
ADMINISTRATIVE RESPONSE TO
UAF TITLE IX ISSUES

March 31, 2016



UNIVERSITY
of ALASKA

Many Traditions One Alaska

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I. INTRODUCTION

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

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

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

I. DESCRIPTION OF RETENTION AND ASSIGNMENT

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

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

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

¹ 20 U.S.C. §1681 et seq.

II. DESCRIPTION OF INVESTIGATIVE PROCESS

To address the three questions presented by the Board of Regents, the relevant facts and information were gathered, organized, and reviewed as follows:

Collection and Review of Documents. With the assistance of the office of the General Counsel, a large quantity of documentary material was collected, including:

- University of Alaska policies;
- Correspondence and emails generated or received by individuals responsible for investigation, processing, or supervising major discipline cases and Title IX compliance since approximately 2011;
- The report of the University of Alaska auditor prepared in April 2015, and the auditor's update report prepared in June 2015;
- Correspondence and guidance received from or sent to the U.S. Department of Education, Office of Civil Rights, in connection with its enforcement of Title IX and its review and audit of Title IX compliance by the University;
- Memoranda and chronologies relating to Title IX compliance and student discipline cases generated by University of Alaska and UAF personnel;
- Portions of case files generated in connection with investigation and processing of UAF student discipline cases; and
- Summaries of changes and steps taken by UAF to enhance Title IX compliance.

Collected documents were Bates numbered, scanned, and loaded into a database for review.

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

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

Kari Burrell	<i>UAF Vice Chancellor</i>
Amber Cagwin	<i>UAF Dean of Students Office, Coordinator</i>
Patrick Gamble	<i>Former UA President</i>
Anita Hartmann	<i>UAF Human Resources</i>
Susan Henrichs	<i>UAF Provost</i>
Michael Hostina	<i>UA General Counsel</i>
James Johnsen	<i>UA President</i>

² One individual, former UAF Dean of Students Donald Foley, retired from University employment in May 2015 and declined to be interviewed. Dean Foley had responsibility for administering UAF's student discipline program during a portion of the period of time under review. Unquestionably, it would have been helpful to have been able to talk with him and obtain his recollections, views, and impressions. But substantial information relating to Dean Foley's tenure and actions was available from other individuals who either worked below, above, or with him, and by the written record. In the aggregate, it is believed that the critical facts and information relevant to the issues under review were obtained, notwithstanding the absence of a witness interview with Dean Foley.

Mae Marsh	<i>UAF Diversity Director</i>
Laura McCullough	<i>Former UAF Residence Life Director, current UAF Dean of Students</i>
Michael O'Brien	<i>UA Associate General Counsel</i>
Nikki Pittman	<i>UA Auditor</i>
Michael Powers	<i>Interim Chancellor at UAF</i>
Kris Racina	<i>Former UAF Associate Vice Chancellor, Interim Dean of Students</i>
Ana Richards	<i>UAF Diversity Office</i>
Brian Rogers	<i>Former Chancellor UAF</i>
Michael Sfraga	<i>UAF Vice Chancellor</i>
Marva Watson	<i>Former UAA Diversity Director</i>

All of the individuals interviewed were helpful and cooperative, and each responded to questions with a high level of professionalism, candor, and directness. Each appeared to be genuinely dedicated to openness and compliance on the part of the University with its Title IX obligations.

Final Document Review. Once the witness interviews were completed, a second review of a small sub-set of documents was conducted to confirm some information and details, and ensure an accurate and complete understanding of the facts and events.

III. FINDINGS

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

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

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

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

5. Responses to the DCL varied by campus. The University of Alaska - Anchorage (UAA) moved quickly in 2011 to form a “Title IX Implementation Team” to analyze what steps were necessary to achieve Title IX compliance. By comparison, the response by the University

of Alaska - Fairbanks (UAF) was less proactive, which may have been attributable in part to staffing issues during the relevant time period

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

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

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

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

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

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

and well documented. The report indicated that UAF's failure to handle major discipline cases properly was not limited to sexual misconduct cases.

12. As to the specific discipline cases that had triggered the audit, the report found that UAF had not initiated a major sanctions process in five sexual assault cases between July 2011 and July 2014 despite having concluded that the sexual assaults had occurred, and further had failed to adequately document reasons for not taking further action in nine other cases.

13. Notwithstanding the failure to initiate a major sanctions process for these cases, the audit found that UAF had taken immediate steps to ensure that reported victims were safe and supported, such as trespassing parties from residence halls and campus facilities and/or offering counseling to the reported victims.

14. The following major root causes explain why the major sanctions process was not initiated for sexual assault allegations arising at UAF between 2011 and 2014:

(a) The discipline philosophy of UAF's Dean of Students. The discipline philosophy of the Dean of Students focused on ensuring victim safety and rehabilitation. Once victim safety was ensured, the required disciplinary process was not engaged or completed as it was not perceived as necessary. This practice did not comply with Regents' policy and university regulations, or with the expanding regulation of sexual misconduct on college campuses, and the increasing scrutiny of how universities were responding to sexual assault.

(b) UAF lacked qualified and capable personnel to guide UAF's response to the 2011 DCL. The UAF EEO Director would retire at the end of that year without taking any apparent action in response to the DCL. Likewise, there is no indication of any awareness of or response to the DCL by UAF's Dean of Students. The April 2011 DCL could have been a catalyst through which UAF discovered the lapse in its student discipline process, especially in

the context of sexual misconduct. But because UAF's response to Title IX developments was slow and initially ineffective, the failure to initiate the major sanctions process in sexual assault cases remained under the radar.

(c) A lack of oversight and resources at UAF. Top administrators at UAF incorrectly assumed that appropriate action had been taken or deferred to the Dean of Students' determinations. Top administrators did not understand the implications of Title IX on such cases until much later, noting a lack of guidance on compliance in that area prior to 2014.

15. The following secondary root causes also account for why the major sanctions process was not initiated for sexual assault allegations arising at UAF between 2011 and 2014:

(a) Lack of a system to monitor and track cases. During the period under review, UAF had no process or system in place by which staff in one department would automatically be alerted to, or able to monitor or track, misconduct cases as they were opened and processed. This sometimes left individuals who had Title IX responsibilities in the dark about allegations and the status of pending cases.

(b) Lack of monitoring and guidance by UAF administration and the absence of a Title IX compliance function at the UA statewide office. A further contributing factor to the disciplinary failure at UAF was the lack of oversight and support by upper administration personnel at UAF. In addition, and as is the case with other university-based compliance functions, prior to 2014 there was no student discipline or Title IX compliance function at UA statewide, leaving student discipline and compliance in the hands of campus personnel.

(c) UAF's failure to request guidance and direction. A further factor contributing to the breakdown in UAF's handling of sexual misconduct cases was UAF's failure to seek guidance from the General Counsel's office as these cases arose during the 2011-2014

time frame. The General Counsel's office had regular contact with UAA and with University of Alaska - Southeast (UAS) personnel during this period about processing sexual misconduct cases on those campuses, and it provided guidance about addressing those cases in accordance with Title IX requirements. The approach was markedly different at UAF. Had UAF sought direction from the General Counsel's office regarding its handling of sexual assault cases between 2011 and 2013, there would have been an opportunity for UA system oversight of UAF's handling of these cases.

16. Once the systemic, policy, and performance failures associated with UAF's Title IX program were identified in 2014, leadership at UAF and at UA began to marshal resources and take steps to remedy the problem and begin to correct the deficiencies. Among the steps taken were the following:

(a) Recognition of the Problem by the General Counsel. The recognition by the General Counsel of the condition of UAF's Title IX program and compliance, particularly with respect to the several serious and unresolved student discipline cases, was the single most significant aspect of the University's response. Most of the remedial steps and actions that ultimately were taken grew from inquiries and requests for information and documents that the General Counsel made of UAF leadership.

(b) Internal audit. In December 2014, the General Counsel made a formal request that the University's audit office conduct an audit of UAF's student discipline cases and Title IX compliance. The audit was thorough and provided a comprehensive assessment of how student discipline had been administered at UAF and the status of cases that arose between 2011 and 2014.

(c) Engagement by Board of Regents. Starting in February 2015, the University Board of Regents sought and received regular updates on the Title IX and student discipline issues. These increased reporting demands and efforts helped maintain focus on these issues and highlighted places where progress was not being made quickly enough or, in some instances, was absent. The Board's engagement on these issues conveyed that Title IX compliance was a priority for the University system, and that administration would be held accountable for lack of progress toward compliance.

(d) General Counsel's initiation of internal information requests and follow-up on past cases. In addition to the information requests made by and in connection with the audit by the U.S. Department of Education's Office of Civil Rights, and the information requests made in connection with the audit conducted by the University's audit department, the General Counsel also transmitted information requests to UAF. Up to that point the focus had been on identifying individual cases where follow-up may be needed to effect Title IX compliance. In March 2015 the General Counsel sought information regarding UAF's handling of specific matters.

(e) Increased Coordination Among Campuses Facilitated by Title IX Task Force. In May 2014, after UA received notice that OCR would be conducting a Title IX compliance review, an Associate General Counsel was directed to take the lead at the statewide level to oversee Title IX issues. A statewide task force comprised of individuals throughout the University of Alaska organization with responsibility for Title IX compliance was assembled. Members participate in weekly telephone conferences to evaluate and share best practices for Title IX compliance.

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

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

- Update of policies and procedures for responding to sexual harassment, including sexual assault
- Appointment and training of coordinators and professionals
- Training for faculty, staff and students
- Increased awareness, outreach, and prevention measures
- Establishment by UAF of its own internal Title IX Task Force to ensure that its senior administrators are actively engaged in and apprised of Title IX compliance issues.

17. While substantial steps have been taken to address and remedy the Title IX and student discipline issues at UAF, for periods of time several factors served to undermine the process of assessing and remedying the problems, or slowed progress in resolving them. Those factors include the following:

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

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

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

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

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

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

20. UAF's compliance efforts include:

(a) Appointment of a new Dean of Students.

(b) Establishment of a functioning Title IX office.

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

III. CONCLUSION

UAF's failures with regard to student discipline and Title IX compliance from 2011 to 2014 are well documented. During that time frame, the record reflects a complete lapse in UAF's student discipline process based on its failure to impose major sanctions for sexual assault or other serious misconduct. UAF's compliance with Title IX requirements also lagged behind other institutions, both in terms of responding to specific incidents of sexual misconduct and in adopting an infrastructure to meet Title IX's range of training, policy and procedural requirements.

UAF's failures can be attributed to multiple factors, including the lack of an informed and capable staff for a period of time, insufficient allocation of resources to student discipline and Title IX compliance, a lack of oversight by UAF administration, a lack of early guidance and oversight at the statewide level, and UAF's tendency to handle matters internally. These were organizational – institutional and systemic – failures; but they were not the result of an intentional disregard of legal requirements.

Once the problems at UAF were identified, the record reflects that the University of Alaska took extensive and effective action to assess and remedy the problems. The General Counsel's office, in particular, has spearheaded efforts to identify the facts, evaluate deficiencies in procedures and the handling of particular cases, and pursue corrective action. UA leadership, including the Board of Regents and President Johnsen, have demonstrated the University's commitment to remedying past failures and ensuring compliance going forward through active oversight of compliance efforts, creating a new role at the statewide level to oversee compliance, and action to ensure administrators will be held accountable for a lack of Title IX compliance. And UAF itself has taken significant steps to implement procedural, staffing and structural

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

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