

March 23, 2017

Oregon House Judiciary Committee  
Oregon State Capitol  
900 Court St. NE  
Salem, OR 97302

Dear Chair Barker, Vice Chair Olson, Vice Chair Williamson, and Members of the Committee,

The University of Oregon (UO) is committed to ensuring that all of its students are able to fully and equally access their education free from sexual harassment, including acts of sexual violence, domestic violence and gender based stalking. UO is also committed to ensuring that its process designed to implement this policy is neutral, fair, compassionate and consistent with Office for Civil Rights guidance and best practices. Based on those principles, it has never issued sanctions against a survivor for refusing to participate in the university's process relating to an underlying incident of sexual violence or nonconsensual sexual activity and further, when at all possible, it honors a survivor's request for confidentiality.<sup>1</sup> Although the UO has never engaged in that practice, the Department of Justice (DOJ) reached out to UO several months ago and indicated that UO's current sexual misconduct standard operating procedures (SOPs)<sup>2</sup> were unclear on this point and asked UO to make certain clarifications.

UO was happy to respond quickly to this request and this memorandum is being provided to explain those changes. Again, however, it is important to reiterate that UO has never issued sanctions against a survivor who does not want to participate in the university's process nor is it planning to do so in the future. Therefore, while it was happy to provide additional clarity in its procedures regarding this point, these changes did not represent a substantive change in practice for the UO. As UO's Title IX Coordinator stated at the time UO implemented these clarifications: "I would like to reiterate, however, that this does not change our practice which has not included seeking any disciplinary action against complainants or respondents based on a refusal to participate."

As of February 2017, UO's SOPs stated the following:

Section 4:

A complainant may request that personally identifying information not be shared with the Accused Student, that no investigation be pursued, and/or that no disciplinary action be taken. The Title IX

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<sup>1</sup> It should be noted, however, that if a survivor decides to move forward with the university's process, he or she is expected to cooperate with the decision-maker. However, both parties always retain the right to remain silent during meetings and/or conferences.

<sup>2</sup> A full link to UO's SOPs is available here: [https://dos.uoregon.edu/sexual-misconduct#\\_Toc446399862](https://dos.uoregon.edu/sexual-misconduct#_Toc446399862)

Coordinator and other persons that the Title IX Coordinator identifies as possessing relevant knowledge or skills will consider the following factors in evaluating such request(s): (1) the totality of the known circumstances; (2) the potential impact of such action(s) on the complainant and/or other members of the university community; (3) any information showing that the accused student made statements of admission or otherwise accepted responsibility for the underlying conduct; (4) the existence of any independent or potentially exculpatory information regarding the underlying conduct; (5) any other available and relevant information including the interests of the University community; and (6) the presence of any risk factors, described below.

[Risk factors omitted]

In instances where a Complainant requests confidentiality, the university will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation, and where the university cannot pursue further investigation because of a Complainant's insistence on confidentiality, it will pursue other steps to limit the effects of the alleged harassment or misconduct and prevent its recurrence.

#### Section 8:

Witnesses: To the extent the parties have witnesses they want the Decision-maker to speak with, the parties should provide a list of witnesses to the Decision-maker within ten days of receiving the Notice of Allegations. For all witnesses, parties must provide the Decision-maker with contact information for the witness and a brief summary of the relevant information they expect the witness to provide. Parties should provide the Decision-maker with a list of witnesses they intend to have appear at the Administrative Conference at least 2 days prior to the date of the Administrative Conference.

The role of witnesses within this process is to provide information relevant to the underlying allegations. Witnesses should, for example, have direct knowledge of the allegations by having personally observed the incident or behaviors, or being someone in whom the party confided at the time or near the time of the incident or behaviors. Witnesses should not be suggested simply to provide information as to either party's good/bad character or overall truthfulness. In addition, witnesses may not be called to the administrative conference simply to restate what is already in the Record, or to provide new information (unless a petition to submit new information has been granted or a party is planning to file such a petition at the conference).

Witnesses named by the parties are expected to participate in interviews with the Decision-maker upon request of the Decision-maker, and are expected to be forthcoming with requested information. Witnesses are also expected to attend the administrative conference when requested by the Decision-maker. If a witness chooses not to participate and therefore denies the Decision-maker

and the parties the opportunity to understand the information that they may have relevant to the allegations, the witness may be subject to disciplinary action for a failure to comply.

In response to the DOJ's request for clarifications, UO made the following changes (changes are highlighted yellow).

#### Section 4

A complainant may request that personally identifying information not be shared with the Accused Student, that no investigation be pursued, and/or that no disciplinary action be taken. The Title IX Coordinator and other persons that the Title IX Coordinator identifies as possessing relevant knowledge or skills will consider the following factors in evaluating such request(s): (1) the totality of the known circumstances; (2) the potential impact of such action(s) on the complainant and/or other members of the university community; (3) any information showing that the accused student made statements of admission or otherwise accepted responsibility for the underlying conduct; (4) the existence of any independent or potentially exculpatory information regarding the underlying conduct; (5) any other available and relevant information including the interests of the University community; and (6) the presence of any risk factors, described below.

[Risk factors omitted]

The Title IX Coordinator or designee will seek to honor the complainant's request(s) if it is possible to do so while also protecting the health and safety of the complainant and the university community. If it is not possible to honor a complainant's request for no action, the UO will move forward with the process and the student will be treated as Non-Participating Complainant, meaning that the student does not have to participate in the process. While a Non-Participating Complainant does not have to participate in the process, a Non-Participating Complainant can still exercise certain rights. For example, a Non-Participating Complainant has the right to access the Notice of Findings and may file an appeal, as provided for in Section 14. UO will not take disciplinary action against Non-Participating Complainant for refusing to participate in the process.

In instances where a Complainant requests confidentiality, the university will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation, and where the university cannot pursue further investigation because of a Complainant's insistence on confidentiality, it will pursue other steps to limit the effects of the alleged harassment or misconduct and prevent its recurrence.

#### Section 8:

Witnesses: To the extent the parties have witnesses they want the Decision-maker to speak with, the parties should provide a list of witnesses to the Decision-maker within ten days of receiving the Notice of Allegations. For all witnesses, parties must provide the Decision-maker with contact

information for the witness and brief summary of the relevant information they expect the witness to provide. Parties should provide the Decision-maker with a list of witnesses they intend to have appear at the Administrative Conference at least 2 days prior to the date of the Administrative Conference.

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Witnesses named by the parties are expected to participate in interviews with the Decision-maker upon request of the Decision-maker, and are expected to be forthcoming with requested information. Witnesses are also expected to attend the administrative conference when requested by the Decision-maker. If a witness chooses not to participate and therefore denies the Decision-maker and the parties the opportunity to understand the information that they may have relevant to the allegations, the witness may be subject to disciplinary action for a failure to comply. **Please note that as stated above, UO will not take disciplinary action against a complainant (including a Non-Participating Complainant) or a respondent for refusing to participate in the process.**

Thank you and please let UO know if you have any questions or comments regarding these changes or the University's process.

Sincerely,



Missy Matella  
Assistant General Counsel  
University of Oregon