

# **Agreement**

**between**

**The United States Department of Justice**

**and**

**The Board of Regents of the University of New Mexico**

## Introduction

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

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

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

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

---

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

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

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

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

## Terms of the Agreement

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

### **I. DEFINITIONS**

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

---

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

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

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

## **II. POLICIES AND PROCEDURES**

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

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

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

---

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

<sup>8</sup> See 28 CFR 54.135(b).

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

5. Establish how OEO will consider power dynamics in complaints by students against faculty and staff, including when a respondent is both a student and school employee;
6. Require that investigators equally assess the credibility of all witnesses and explain the basis for their assessment in the letters of determination;
7. Establish a process by which OEO will receive relevant information from the University of New Mexico Police Department (“UNMPD”), and seek to receive information from the Albuquerque Police Department, the Bernalillo County Sheriff, and the Bernalillo County District Attorney;
8. Establish a procedure for OEO investigators to report, and an appropriate office to effectively respond to, any contact made by UNM administrators or other non-OEO employees during the pendency of the investigation and adjudication of a complaint that could be perceived as creating bias or partiality; and
9. Establish a time frame for OEO investigators to communicate with the complainant and respondent to keep them timely informed as to the investigation, adjudication, and appeals processes.

D. To ensure that the University effectively eliminates any hostile environment created by sexual harassment, prevents its recurrence, and remedies its effects, the University will establish written internal protocols regarding communications about its response to allegations of sexual harassment, including:

1. A process by which the OEO and Dean of Students Office (“DoS”) will share information regarding complaints of third party retaliation and respond as appropriate;
2. Criteria for and a process by which the OEO and the DoS will determine appropriate supportive measures during the grievance investigation and adjudication process;<sup>9</sup>
3. A process by which the OEO and the DoS will convey information regarding pending investigations, supportive measures, or findings of a violation of University policy to necessary campus entities, which may include but not be

---

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

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

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

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

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

### **III. NOTICE OF POLICIES AND PROCEDURES**

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



## IV. TRAINING

### A. Training for Students

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

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

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

---

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

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

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

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

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

#### B. Training for Responsible Employees

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

---

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

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

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

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

#### C. Training for UNMPD

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

### **V. TITLE IX COORDINATOR**

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

### **VI. EDUCATIONAL CLIMATE**

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

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

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

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

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

## **VII. REPORTING PROVISIONS**

### **A. Policies, Procedures and Protocols**

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

### **B. Notice of Revised Policies and Procedures**

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

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

### C. Training

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

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

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

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

### D. Title IX Coordinator/Notice of Nondiscrimination

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



#### E. Educational Climate

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

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

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

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

### **VIII. ENFORCEMENT**

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

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

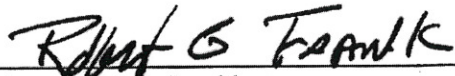
- D. The University understands that the Department will monitor this Agreement until it determines that the University has fulfilled the terms of this Agreement and is in compliance with Title IV, Title IX, and the implementing regulations at 28 C.F.R. Part 54, which were at issue in its investigation.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

## **IX. TERMS AND TERMINATION**

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

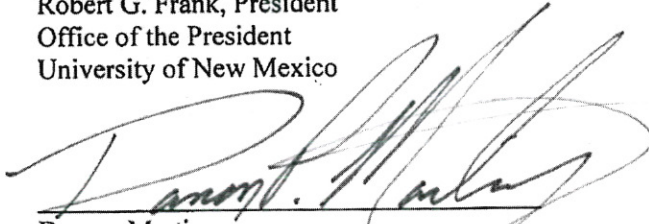
F. This Agreement will not bar any individual from pursuing a complaint under Title IX against the University.

Signatures of the Parties to the Agreement:



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

Date: 10.17.16



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

Date: October 17, 2016



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

Date: 10-17-2016