

Summary of the Resolution of the Directed Investigation by the U.S. Department of Education’s Office for Civil Rights

On May 24, 2018, the U.S. Department of Education’s Office for Civil Rights (OCR) opened a directed investigation into the University’s handling of Title IX matters based on information related to Dr. George Tyndall reported publicly by the *L.A. Times*. OCR investigated whether the University received notice of allegations of sexual harassment by Dr. Tyndall, a gynecologist in the Student Health Center from 1989 to 2016, whether the University failed to respond promptly and equitably to notice of harassment, and whether any failure by the University allowed any female student to be subjected to sex discrimination.

Summary of Resolution Letter

The Resolution Letter, which provides a detailed discussion of OCR’s findings and the concepts identified in this summary, can be found [here](#).

OCR found that the University violated the Title IX regulations by failing to promptly and effectively respond to notice of nine complaints by patients of potential sexual harassment by Dr. Tyndall, which may have allowed female students to be subjected to continuing sex discrimination. OCR found that the University “systemically failed at multiple points in time and at multiple levels of responsibility to respond promptly and effectively to notice of the alleged misconduct during gynecological examinations; its failure may have allowed female students to be subjected to such discrimination for more than a decade.” OCR found that allegations of possible sexual harassment by a medical professional in a medical setting required an initial determination of whether or not the alleged conduct was medically appropriate, and in each instance where the conduct was not medically appropriate, the University should have further investigated whether or not the conduct constituted physical sexual harassment. With respect to the nine instances of notice of potential sexual harassment, OCR did not reach a determination as to whether the underlying conduct constituted sexual harassment or discrimination.

OCR stated that complaints were made not only by students, but also by medical chaperones, which should have alerted the University of potential Title IX implications, including that Dr. Tyndall was using a privacy curtain to exclude chaperones from observing examinations, that he was photographing patients’ genitals and conducting full body skin checks during examinations, that he was making potentially sexually harassing comments while conducting the examinations, and that his manner of conducting pelvic examinations was different from other practitioners. Further OCR found that the University lacked a centralized recordkeeping system or an infrastructure to identify and monitor incidents of possible sexual harassment by its employees, and in particular, repeated or multiple complaints against the same employee, and that the University failed to institute a sufficient and centralized system for ensuring accountability for reporting and responding to Title IX complaints.

With respect to the nine patient complaints, OCR found that the University had notice of possible sexual harassment of five patients from 2000 to 2009. For those five patients, the complaints about Dr. Tyndall were raised within the Student Health Center. Although OCR described responsive action by the University to three of the five complaints, including steps taken by the former Executive Director of the Student Health Center to meet with the patient, review medical records,

and counsel Dr. Tyndall, OCR found that the University's efforts were insufficient to satisfy the University's Title IX obligations to conduct a prompt and equitable investigation, to assess whether interim measures were needed, to provide a written notice of outcome, or to ensure that steps were taken to prevent recurrence of the conduct and correct its effects for patients who complained and/or other patients. With respect to these five patients, OCR found that the University's failure to respond promptly and effectively to notice of possible sexual harassment may have allowed them to be subjected to continuing sex discrimination.

With respect to the remaining four patient complaints, OCR found that the University failed to respond effectively to complaints between 2010 and 2016, finding that there was no investigation in 2010, an insufficient investigation in 2013, and a flawed investigation in 2016. Although the 2016 Office of Equity and Diversity (OED) investigation concluded that Dr. Tyndall had violated University policy against racial and sexual harassment, which led to his subsequent separation in 2017, OCR identified a number of deficiencies in the 2016 investigation, including that the University did not fully investigate or determine whether certain of Dr. Tyndall's reported actions constituted sexual harassment, including digital penetration, other forms of physical contact and the taking and possession of photographs of patients' genitals. OCR also found that the University did not provide a timely response to Dr. Tyndall's appeal of the 2016 OED determination of responsibility.

In regards to photographs discovered in Dr. Tyndall's office in June 2016, OCR found that the University failed to take reasonable steps to locate photographs Dr. Tyndall said he retained, and that the University did not move quickly enough to suspend Dr. Tyndall, allowing him to see patients for a day and a half after the discovery of the photographs.

OCR found that a lack of training in the Student Health Center and OED about how to address complaints of potential sexual harassment arising in a clinical setting contributed to the University's failure to respond promptly and effectively to complaints about Dr. Tyndall.

OCR expressed two compliance concerns. "Compliance concern" is a term of art used by OCR to indicate that it does not have sufficient evidence to reach a violation finding under OCR's Case Processing Manual. First, OCR observed that the University did not complete an investigation into whether Student Health Center employees who worked with Dr. Tyndall may have been subjected to sex discrimination, did not assess whether any interim measures were needed by those employees, and did not identify remedies for those employees to address any sex discrimination, if found. The second compliance concern raised was in the context of the 2016 OED investigation. OCR expressed a concern that "the Office of General Counsel may have exceeded its advisory role to the point of undermining the autonomy and independence of the Title IX Coordinator and OED which may have impacted the scope of the investigation as well as fidelity to OED's policies and procedures."

In sum, OCR found that the University also failed to take steps to effectively prevent recurrence of misconduct, or to provide remedial measures to protect and restore complaining students' equal access to University programs. OCR found that the University's failure to respond promptly and effectively to notice of possible sexual harassment allegations may have allowed female students to be subjected to continuing sex discrimination.

Summary of Resolution Agreement

As part of the resolution of the directed investigation, the University and OCR signed a Resolution Agreement that requires the University to take action in nine key areas. The Resolution Agreement, which provides a detailed discussion of the actions the University will take to remedy the concerns raised by the findings, can be found [here](#).

Title IX Structure/Centralized Title IX Compliance

The University agreed to amend the current Title IX structure, to the extent the structure is not already in place, to have the Title IX function moved from the Office of Legal Affairs and Professionalism to the newly hired Senior Vice President for Human Resources and to ensure that the newly created Office of Equity, Equal Opportunity and Title IX (Title IX Office) has the proper authority and independence, sufficient resources, training, support, and responsibility to carry out its duties. To better coordinate Title IX with the University's healthcare programs, the University will designate a Deputy Title IX Coordinator to work within the Keck Medical Enterprise and one or more Title IX Office employee(s) or external professionals as the Health Care Title IX Investigator(s) to focus on possible sex discrimination by Keck Medical Enterprise employees against students and employees and ensure that reports within Keck are reviewed within the Title IX Office.

Tracking of Title IX Reports/Complaints

To ensure that the Title IX Office is able to track multiple or repeated complaints, the University will review and revise all employee performance evaluation forms, including supervisors and faculty supervisors, to include information about the employee's compliance with Title IX reporting and training requirements, and include all final Title IX letters of finding and remedial measures in the employee's personnel file and the Title IX data system.

The University will also issue a written directive that all designated employees must promptly forward all Title IX reports of which it is aware to the Title IX Office; maintain and publish policies and procedures regarding reporting responsibilities; and, direct all University supervisors, including faculty supervisors, and human resources staff, to review personnel files and records for current employees and forward to the Title IX Office prior reports of sexual harassment received from January 1, 2016 to February 21, 2020.

In addition, the University will enhance the current data system in the Title IX Office to ensure that it has the capacity to search for prior or concurrent reports involving the same parties and ensure the accuracy and completeness of documentation. Internal Title IX Office protocols will ensure that the Title IX Office reviews all relevant personnel, department, school, or unit records to identify any prior complaints or reports alleging Title IX violations.

OCR Review and Self-Monitoring

For three years or nine academic terms, the University will provide to OCR: a spreadsheet listing all reports and complaints of sexual harassment/violence that are pending as of the last day of the academic term; a spreadsheet listing all reports and complaints of sexual harassment/violence that

were closed during the academic term; and a self-monitoring assessment report identifying any concerns or issues with respect to the provision of a prompt and effective response to and any areas of University service or program with multiple or repeated reports.

The University will also provide a written report to the President, Provost, Senior Vice President for Human Resources, Vice President, Culture, Ethics and Compliance/Chief Compliance Officer, and Chair of the Audit Committee with a summary of the written self-monitoring assessments and Title IX statistics for reports received during the academic year.

Employee Review

OCR required that the University conduct a Title IX self-assessment of current and former employees who had supervisory responsibilities over Dr. Tyndall, who were reported to have received notice, prior to Dr. Tyndall being placed on leave in June 2016, of complaints about Tyndall, or who were responsible for implementing the University's Title IX policy in response to concerns about Dr. Tyndall. The self-assessment will evaluate whether the current or former employee took action consistent with their role and authority, Title IX, and University policies at the time, as well as whether there were any policy or practice considerations that may have impacted effective implementation, and determine what further remedial actions, if any, are appropriate to remedy the issues identified in this remedial self-assessment.

Review and Revision of Title IX Procedures

The University agreed to revise its written Title IX procedures, to the extent the content was not already included, to include written notice of grievance procedures, identification of witnesses who may be complainants, written notice of decision whether to proceed with an investigation, ability to seek review of a decision to not proceed to an investigation, written notice of outcome, and the prohibition against retaliation.

Notice to University Community

The University agreed to post a notice of nondiscrimination on the basis of sex, of the revisions to the Title IX procedures, and of the prohibition against retaliation on appropriate University web pages, including the University's Title IX web page, the Keck School of Medicine web page, the Keck Medical Enterprises internal web page, the Integrated Risk Management system computer interface, in visible locations throughout the main and health sciences campuses, and distribute to all employees and students at its adoption and at the beginning of each following academic year.

The University also agreed to notify students, staff, faculty, and alumni, that OCR's investigation has been completed, and provide a summary and link to OCR's findings and the Resolution Agreement.

Training and Guidance

The University agreed to expand and enhance mandatory training for all students, faculty, staff and trustees on sexual harassment and sexual violence, with a focus on sexual harassment in the health care setting; provide annual training for employees whose primary job responsibilities are

in the University's Student Health Centers; provide training for supervisors about enhanced performance appraisal and reporting processes; and, require the Title IX Coordinator and Title IX investigators to complete an annual Title IX training.

Repair of University and Student Health Center Climate

The University agreed to take steps to assess the impact of Dr. Tyndall's conduct on access to University programs and activities by current and former students and continue efforts to equitably remedy the impact on climate and the effects of any discrimination in order to prevent recurrence. The University will continue to offer an opportunity to its community to provide input through various forums, including those that protect the confidentiality of the students, former students, and employees such as on-line reporting, surveys, individual meetings, or other means.

The University will provide an annual written report to the President, Provost, and Chair of the Board of Trustees and an annual letter to the community about its efforts to address culture and climate, an assessment of effectiveness, and proposals for the next academic year.

Individual Remedies

With respect to the availability of remedies, the University will notify: (1) students and former students who may have experienced sex discrimination in the form of sexual harassment engaged in by Dr. Tyndall about counseling and academic remedies; and (2) employees and former employees who worked with Dr. Tyndall in the Student Health Center about counseling and workplace remedies. The University will evaluate requests for remedies related to Dr. Tyndall, excluding any requests that have been raised through the state civil litigation or resolved through the federal class action settlement, and restore, if warranted and as necessary, access to the University's programs and activities.

The University will also make reasonable efforts to contact Patients 1-9 identified in the Resolution Letter to offer to remedy any sex discrimination caused by Dr. Tyndall that denied the Patient the ability to participate in or benefit from the University's program or activities. The outreach will take into account the legal posture of each Patient in the state and federal litigation.

The University will provide the Nurse Supervisor identified in the Resolution Letter with access to the University's January 31, 2017 letter of findings regarding Dr. Tyndall, and offer to complete an investigation of her complaint that she was subjected to retaliation for reporting sexual harassment of students by Dr. Tyndall. With her consent, the University will conduct a prompt and effective investigation of her complaint and, if retaliation is found to have occurred, provide appropriate remedies.