



April 29, 2020

(b)(6)

Sent via electronic mail

Senior Counsel  
Office of the Vice President and General Counsel  
University of Florida

Dear Ms. Smith, I hope and trust that all is well with you and yours during these challenging times. Thank you for discussing the University of Florida's (UF; the University) general approach to sexual assault prevention and response and the specific policies and procedures that are used to investigate and adjudicate such claims. As you know, the Florida Council Against Sexual Violence (FCASV) filed a complaint with the U.S. Department of Education (the Department) alleging that UF violated key provisions of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (*Clery Act*). The complaint was filed by (b)(6) of (b)(6) on behalf of M (b)(6) who reported that a UF student sexually assaulted her at a property controlled by a recognized student organization. Among other claims, the complaint alleged that UF improperly altered the policies and procedures that applied to the investigation and adjudication of her case. (b)(6) also claimed that she was assured by an official from the University's Office of Student Conduct and Conflict Resolution that her case would proceed in accordance with the policies and procedures that were included in UF's 2017 Annual Security Report. This purpose of this letter is to notify the University that the assessment is now complete and to advise you of the outcome.

When the Department receives a complaint of this type, we carefully consider the allegations, gather documentary evidence, conduct interviews, and utilize other research methods to evaluate case facts and determine an appropriate course of action. In this case, we reviewed the police report filed by the complainant with the UF Police Department, the University's policies and procedures (both from before and after June 7, 2018), and correspondence between the complainant, her attorney/advisor, and the institution, primarily the former Assistant Director of SCCR. We also considered information gleaned from interviews. Based on that review and after careful consideration, the Department has determined that the University's decision to change the procedures that applied to the complainant's case while it was in progress violated the *Clery Act*. In reaching this conclusion, the Department notes that the differences between the Student Honor Code and Student Conduct Code that was in place when the complaint was filed and the new version of the policy that was implemented on June 7, 2018 are significant, both in terms of substance and procedure. For example, the new policy imposes strict deadlines for students to file complaints and to seek redress through the conduct system. The new system also emphasizes restorative justice and other informal resolution models, and importantly, eliminated a prior requirement that respondents actively participate in the restorative dialogue. Most importantly, the record clearly shows that the University advised the complainant that the pre-June 2018 procedures would remain in place until her case was resolved. This point was reiterated by (b)(6) via electronic mail as late as October 5, 2018. It was only after the complainant informed the University that she was not willing to resolve the case informally that she was advised that the case would be closed in accordance with the new policy.

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The Department also considered the points that you raised on behalf of the University. We acknowledge that this matter was complicated and raised difficult jurisdictional issues. We also note that the University was in the process of promulgating new regulations in response to important changes in the law and in response to recent court decisions. Although this was a time of transition, our assessment also showed that neither the University's 2017 nor 2018 ASR included information about its new disciplinary procedures as required by 34 C.F.R. § 668.46(k). Additionally, the content of neither report was revised to reflect these changes. Moreover, neither report referenced any "transition period" that might result in any changes to the rules that would pertain to any aspect of an open case. Relatedly, and as you conceded when we spoke on March 19, 2020, some of the records examined during our assessment show that the University's investigator and other institutional officials mishandled certain aspects of the case in the early stages of the investigation. Those missteps adversely affected the University's ability to work effectively with the complainant and her attorney/advisor.

Notwithstanding these areas of concern, UF has taken recent action to enhance its staff in key areas. The Department also acknowledges the University's efforts to effectively implement its new student conduct policies and to improve its compliance with the provisions of the *Clery Act* related to sexual assault prevention and response. Going forward, it is imperative that the University ensures that all aspects of the disciplinary processes are carried out in a prompt, fair, and impartial manner. Doing so will eliminate unnecessary delays in the process and will help to ensure that the rights of parties are not compromised by the process itself or as a result of the actions of advisors or witnesses that are beyond a party's control. Additionally, we urge UF to build protections into the system to ensure that students are not disadvantaged if they choose not to participate in informal resolution processes. As required of all institutions, UF must also implement safeguards to prevent the use of its disciplinary systems as a means to retaliate against original complainants. Moreover, the Department reminds UF that all current and future student and employee conduct investigations and hearings must be conducted in full compliance with the *Clery Act* and in accordance with the policies, procedures, programs, and the other terms and conditions set forth in the University's ASR.

During our March 19, 2020 phone conference, I stated that the Department would recommend certain actions to facilitate UF's compliance efforts going forward. We offer the following recommendations for the University's consideration:

- 1) Take all complaints seriously and observe published timelines to ensure that cases proceed in a timely and orderly manner from initial report to final resolution;
- 2) Take steps to ensure that appropriate accommodations, protective measures, and other services are available to parties, especially survivors of sexual violence, and that parties know how to access such resources;
- 3) Be intentional about establishing policies and procedures that provide for equitable treatment of all parties;
- 4) Ensure that parties are notified of the policies, procedures, and practices that will govern all aspects of their case from initial report to final resolution;
- 5) Establish systems that provide for the custody and control of all case records in a manner that will facilitate the timely production of such records to the parties in advance of all meetings and proceedings and that will enable parties to file substantive appeals and/or file well-documented complaints with external oversight agencies;
- 6) Maintain the integrity of the disciplinary process by ensuring consistent application of the rules and procedures and ensure that such processes are not altered or misapplied during an open case; and,



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- 7) Actively communicate all changes to policies and procedures to the campus community by revising the ASR and actively distributing the revised report to enrolled students and current employees. Also, make sure that parties who are not UF students or employees are provided with a copy of the applicable policies and procedures at the time a complaint is filed.

In light of the current COVID-19 crisis, and the shift to online learning, UF will not be required to make additional changes to its 2019 ASR or any prior versions of the report. Instead, UF must provide a copy of the current conduct code and associated policies and procedures to complainants at the time a complaint is filed, and to the respondent at the time that notice of the charges is provided. The University must also take all necessary action to ensure that accurate and complete information about the University's policies, procedures, and programs related to the investigation and adjudication of alleged acts of sexual violence are included in the 2020 ASR. Please send a copy of the final 2020 ASR to me at [james.moore@ed.gov](mailto:james.moore@ed.gov) by the close of business on October 1, 2020.

The Department considers this complaint to now be closed, subject to UF's submission of its 2020 ASR once it is published. The Department will continue to monitor the University's progress and stands ready to provide technical assistance to the institution as it works to enhance its campus safety, crime prevention, and Clery compliance programs.

Because of the consequences of a serious compliance failure, the Department strongly recommends that UF officials re-examine the University's campus safety and general Title IV policies and procedures on an annual basis to ensure that they continue to reflect current institutional practices and are compliant with Federal law. During these periodic assessments, UF officials are encouraged to review the Department's "Handbook for Campus Safety and Security Reporting" (2016) as a reference guide on *Clery Act* compliance. The Handbook is online at <http://www2.ed.gov/admins/lead/safety/handbook.pdf>. The Department also provides a number of other *Clery Act* training resources. UF officials can access these materials at <http://www2.ed.gov/admins/lead/safety/campus.html>. The *Clery Act* regulations can be found at 34 C.F.R. §§ 668.14, 668.41, and 668.46.

In closing, we remind UF that Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA) amended the *Clery Act* to require institutions to compile and disclose statistics for incidents of domestic violence, dating violence, sexual assault, and stalking and to include information about their policies, procedures, and programs to prevent and respond to sexual violence in their ASRs. In light of the specific issues raised by this complaint, the University is advised to ensure that it is in full compliance with the VAWA provisions, which went into effect on July 1, 2015. UF officials may view the text of the Final Rule at: <http://ifap.ed.gov/fregisters/attachments/FR102014FinalRuleViolenceAgainstWomenAct.pdf>

On behalf of the U.S. Department of Education, thank you for your assistance in this matter and for the University's service to its students and the cause of campus safety.

Sincerely,

(b)(6)

James L. Moore, III

Senior Advisor, Clery Act Compliance and Campus Safety Operations

U.S. Department of Education