



# University of California Berkeley Department of Astronomy

## NASA Title IX Compliance Report

August 2018



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# NASA Title IX Compliance Report

## I. INTRODUCTION

NASA conducted a compliance review of the Department of Astronomy at the University of California, Berkeley (UC Berkeley) to ensure that beneficiaries of NASA grants have equal opportunity, without regard to sex, to pursue, participate in, and benefit from academic research, career development opportunities, and extracurricular and other educational activities. The review was conducted under Title IX of the Education Amendments of 1972, and NASA's implementing regulations and policy, which prohibit discrimination on the basis of sex in educational programs and activities receiving Federal financial assistance.<sup>1</sup>

### A. Background

NASA Title IX regulations provide for periodic review of NASA grant recipients.<sup>2</sup> These regulations, effective in November 2000, were reinforced by the July 2004 report of the Government Accountability Office (GAO), which recommended that Federal agencies conduct onsite compliance reviews.<sup>3</sup> In addition, NASA's 2005 authorizing legislation requires the Agency to conduct at least two Title IX compliance reviews annually.<sup>4</sup>

In September 2013, NASA conducted an onsite review of Berkeley's Physics Department. In late 2015, it was widely reported in the media that a Berkeley astronomer receiving some of his grant funding through NASA was found to have violated the University's sexual harassment policy.<sup>5</sup> The initial handling of the case caused concern across the Berkeley campus and within the Astronomy Department itself, adding to the media interest.<sup>6</sup> Consequently, in 2016, NASA expanded its earlier review due to concerns of sexual harassment, as reported in the media.<sup>7</sup>

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<sup>1</sup> Title IX of the Education Amendments, as amended (20 U.S.C. §§ 1681-1688); Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 14 C.F.R. Part 1253; NASA Policy Directive 2081.1A, Subject: Nondiscrimination in Federally Assisted and Federally Conducted Programs of NASA - Delegation of Authority.

<sup>2</sup> See 65 Fed. Reg. 52,859 (Aug. 30, 2000). Enforcement Procedures, 14 C.F.R. § 1253.605 (incorporating compliance requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d)).

<sup>3</sup> Government Accountability Office, *Gender Issues: Women's Participation in the Sciences Has Increased, but Agencies Need to Do More to Ensure Compliance with Title IX*, July 2004 (July 2004 GAO Report). Included in the Report's recommendations was that "the Administrator of NASA continue to implement its compliance review program to ensure that compliance reviews of grantees are periodically conducted" (p. 28).

<sup>4</sup> See NASA Authorization Act of 2005, 42 U.S.C. § 16798(b), reenacted as 51 USC § 40909 (2011).

<sup>5</sup> Azeen Ghorayshi, "Famous Berkeley Astronomer Violated Sexual Harassment Policies Over Many Years," *BuzzFeed*, October 9, 2015, accessed at <[https://www.buzzfeed.com/azeenghorayshi/famous-astronomer-allegedly-sexually-harassed-students?utm\\_term=.sed54wj8a#.mu0m0BxLd](https://www.buzzfeed.com/azeenghorayshi/famous-astronomer-allegedly-sexually-harassed-students?utm_term=.sed54wj8a#.mu0m0BxLd)>. *BuzzFeed* was the first to report the story; other news outlets then reported on it.

<sup>6</sup> In October 2015, Departmental faculty, postdoctoral researchers, graduate students, and undergraduate students made statements regarding the University's handling of the sexual harassment case involving a professor in the Astronomy Department. These statements are posted on the Department's Web site with additional information on diversity and climate within the Department. UC Berkeley, Department of Astronomy, "About," accessed at <<https://astro.berkeley.edu/about/diversity-and-climate>>.

<sup>7</sup> NASA report of its compliance review of the UC Berkeley Physics Department is accessible at <[https://missionstem.nasa.gov/docs/ODEO%20Civil%20Rights%20Reports/Title%20IX-Ed%20Amend%20Act/UC%20Berkeley/TIX%20UC%20Berkeley%20Rpt%203-31-16\\_tagged.pdf](https://missionstem.nasa.gov/docs/ODEO%20Civil%20Rights%20Reports/Title%20IX-Ed%20Amend%20Act/UC%20Berkeley/TIX%20UC%20Berkeley%20Rpt%203-31-16_tagged.pdf)>.

## **B. Objectives and Scope**

NASA key objectives in conducting this review are as follows:

Objective 1: Evaluate the University's compliance with NASA Title IX regulations, specifically to:

- Assess the Title IX Coordinator's role and functioning; confirm the existence of Title IX policy and procedures and the quality of their dissemination; evaluate Title IX grievance procedures and the effectiveness of their implementation; and review Title IX self-evaluation efforts, specifically regarding the program under review; and
- Evaluate the Department's provision of equal opportunity regardless of sex in the following areas of program administration: student and faculty recruitment, outreach, admissions, enrollment, retention, academic advising, research participation, classroom and lab experiences, student experiences relating to parental/marital status ("family friendly" policies and practices), and physical safety of the program environment.

Objective 2: Identify promising practices of the Berkeley Astronomy Department designed to promote gender equity, specifically to describe efforts consistent with the recommendations and focus of the July 2004 GAO report; and determination of the extent to which promising practices are actually helping to create greater gender equity and diversity in the program for both students and faculty.

NASA's standard methodology for conducting Title IX compliance reviews is provided in Appendix B.

## **II. COMPLIANCE REVIEW ANALYSIS**

The compliance review analysis provides an assessment of issues within the two focus areas of procedural compliance requirements and methods of program administration. Regulatory requirements and findings of fact are set forth as part of the compliance assessment under each main topic. In the charts used for each section, a positive answer means that compliance is generally sound on a given area. A negative answer does not necessarily mean noncompliance, but does indicate a compliance issue or concern. However, the greater the number of negative responses, or the seriousness of a single negative response, the more likely NASA will find noncompliance in a given area. Note that in some sections of the report a "positive response" may be a "No" rather than a "Yes." For example, in Section E, Program Administration and Environment, a response of "No" to a statement such as "NASA heard about instances of harassing conduct," would be a positive response. The associated recommendations are intended to strengthen existing compliance. Promising practices of the University are also discussed.

The U.S. Department of Education Office for Civil Rights ("OCR") completed its Title IX investigation of UC Berkeley in February 2018, issuing a Letter of Findings and a Resolution Agreement between OCR and Berkeley on February 26, 2018. OCR's investigation did not involve the Berkeley Astronomy and Physics Departments, which were the focal points of NASA's reviews. Nonetheless, to the extent that OCR's and NASA's investigations cover some of the same ground (e.g., review of Berkeley's Title IX grievance policy and procedures), this report and its compliance recommendations align with OCR's findings.

## A. Designation of Official for Title IX Coordination and Enforcement

### 1. Compliance Assessment

The NASA Title IX regulations state that a recipient of NASA grant funds must designate an official responsible for Title IX coordination and enforcement – i.e., a “Title IX Coordinator.”<sup>8</sup> The recipient must notify all students and employees of the Title IX Coordinator’s name, office address, and telephone number. NASA reviewed the University’s dissemination of contact information for its Title IX Coordinator and the extent to which faculty, staff, and students are aware of her role on campus. In addition, NASA focused on the following key aspects of Title IX coordination: (1) effective functioning, including skills and competencies, regarding the key responsibilities of administering and implementing the University’s Title IX grievance process; (2) the authority and access of the Title IX Coordinator to university senior leadership needed to effectively perform roles and responsibilities; and (3) appropriate training of faculty, staff, and students.<sup>9</sup>

<i>Review Criteria: Designation of Title IX Coordinator, Dissemination of Contact Information, and Authority and Access</i>	Yes	No
1. The University has designated a Title IX Coordinator.	X	
2. The Title IX Coordinator has notified faculty, staff, and students regarding his or her contact information (including name, office address, and telephone number).	X	
3. Departmental faculty, students, and staff are familiar with the office that processes discrimination and harassment complaints.		X
4. The Title IX Coordinator has the appropriate skills and competencies regarding the key responsibilities of administering the University’s Title IX grievance process.	X	
5. Title IX Coordinator has the authority and access to university senior leadership needed to effectively perform roles and responsibilities.	X	

<i>Review Criteria: Provision of Title IX Training to the Department</i>	Yes	No
1. Title IX Coordinator provides appropriate training to faculty, staff, and students.	X	
2. Students interviewed recall having had education and awareness opportunities on:		
a. Sex discrimination	X	
b. Sexual harassment	X	
c. Sexual assault awareness	X	
d. Best practice: Implicit (unconscious) bias <sup>10</sup>		X
3. If training is provided, is it mandatory?	X	

<sup>8</sup> Designation of responsible employee and adoption of grievance procedures, 14 C.F.R. § 1253.135(a).

<sup>9</sup> The U.S. Department of Justice (DOJ), which has oversight responsibility for all Federal Title IX compliance and enforcement activities, has provided additional considerations for Federal agencies evaluating recipient compliance with the Title IX Coordinator regulatory provision (DOJ, “Questions and Answers Regarding Title IX Procedural Requirements” (Title IX Q&A), accessed at <http://www.justice.gov/crt/about/cor/coord/TitleIXQandA.php>). More recently, in April 2015, the U.S. Department of Education Office for Civil Rights (OCR) offered a Dear Colleague Letter and Resource Guide specifically addressing Title IX coordination, focusing on the authority, responsibilities, and training of Title IX Coordinators (accessible at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf> and <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>). With regard to authority of the Title IX Coordinator the guide states: “Title IX coordinators can be effective agents for ensuring gender equity within their institutions only when they are provided with the appropriate authority and support necessary to coordinate their institution’s Title IX compliance, including access to all of their institution’s relevant information and resources.” (Title IX Resource Guide, p. 6).

<sup>10</sup> NASA views training incorporating learning on implicit bias as a best practice.

4. Were departmental faculty and students aware of or was there any indication that they had been exposed to education and awareness modules designed to resonate with STEM students and faculty, e.g., using hypothetical examples of inappropriate conduct or actions that might occur in a STEM setting such as a lab?		X
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**Observations:** The Berkeley Title IX Coordinator formally serves in the role of Title IX Officer and Director of the Office for the Prevention of Harassment and Discrimination (OPHD). OPHD is one of several offices under the umbrella of Berkeley’s Office of Risk, Ethics and Compliance Services, which resides in the Office of the Chancellor and whose head reports directly to the Chancellor. NASA finds that the Title IX Coordinator, as the head of the OPHD, has the appropriate access, authority, and support needed to effectively fulfill the functions of her role.

NASA’s regulations require that the Title IX Coordinator publish and disseminate her contact information, including name, address and telephone number. Berkeley is in compliance with this requirement as this information is posted on the OPHD website. Further, NASA asked faculty and students if they were familiar with the name of the office or the process by which Title IX complaints may be raised. Many stated that, because of the publicity surrounding the sexual harassment case in 2015, they were aware of which office on campus is responsible for the University’s Title IX policies. Although most were unfamiliar with the process of filing a discrimination complaint, they did know which office to contact. Overall, knowledge of the existence of OPHD and its basic role is positive.

An area for further exploration for the Astronomy Department is greater focus on sexual harassment education and awareness for the entire departmental academic community. In this regard, we note that the University has a vast apparatus for providing training related to diversity, inclusion, and equal opportunity compliance. For example, in addition to OPHD, there is also the PATH to Care Center, which coordinates Berkeley’s sexual harassment and prevention education programs. The University of California Office of the President disseminates the biannual sexual harassment/violence prevention and awareness and modules for employees. Berkeley also has an annual training requirement that emanates from a California state audit. Finally, Berkeley has another division on campus, the office of the Vice Chancellor for Equity and Inclusion that also provides training and guidance on diversity and related issues, such as unconscious bias.

In addition, California State law mandates that faculty and supervisors complete a 2-hour training course on sexual harassment, violence prevention, and response education every other year and that non-supervisory staff complete a 1-hour course every other year. In addition, all incoming students (undergraduate, graduate, and professional) and new employees (faculty and staff) must complete training within their first six weeks at the University.<sup>11</sup> The University noted in its response to NASA’s pre-onsite data request that, as of January 2016, the Astronomy faculty and the first-year Astronomy graduate students were 100 percent compliant with online sexual harassment training.

However, many of those interviewed stated that they either do not recall or only vaguely recall the training. Some interviewees stated that the mandatory training was not memorable, others called it “generic.” Several individuals mentioned that graduate students can participate in the “Respect is Part of Research” training, which was developed by graduate students in Physics Department at Berkeley

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<sup>11</sup> UC Berkeley, Office for the Prevention of Harassment & Discrimination, “Education and Prevention,” accessed at <<https://ophd.berkeley.edu/education-and-prevention>>; UC Berkeley, Prevention, Response, & Support: Sexual Violence & Sexual Harassment, “Learn More About ... Education & Training,” accessed at <<http://survivorsupport.berkeley.edu/learn-more>>.

in partnership with OPHD. The training is presented by graduate students for graduate students and includes case studies and information on Title IX and related campus resources.<sup>12</sup> However, it is not clear how many students have participated in the program or whether the Astronomy Department has benefitted from it. OPHD also worked with the Physics Department on a key campus initiative focused on sexual violence and sexual harassment policy/practice and education and awareness. The centerpiece of this initiative is a Berkeley Coordinated Community Review Team (CCRT), a campus-wide committee of which Physics is a part.

We note that at the Astronomy Department's request, OPHD provided a 3-hour training for faculty in partnership with other stakeholder organizations such as the Ombuds Office, the Students of Concern Committee, and the Confidential Care Advocate. According to the Chair of Astronomy, it was a very comprehensive and helpful presentation. In addition, the Division of Mathematical and Physical Sciences provided training for all faculty in its departments. This training was presented by an interactive theater group and focused on race, power dynamics, and sexual harassment. Several Astronomy faculty members noted that the training was very useful. Greater focus on the Astronomy Department's education and awareness needs beyond faculty can serve to assist in ensuring that Berkeley's anti-harassment policy is fully disseminated throughout the department (see Recommendations below).

## **2. Recommendations**

**a. Tailored Title IX Training.** NASA recommends that Berkeley campus leadership, including the UC Office of the President and OPHD, work more closely with the Astronomy Department on education and awareness opportunities to ensure that all faculty and students in the Department, especially those performing teaching or teaching assistant duties, receive tailored training on Title IX and related requirements. This training should be designed to resonate with the Astronomy audience by using specific examples, case studies, or scenarios in settings recognizable to a STEM faculty (e.g., in classrooms and labs, and at professional conferences). Such training should focus both on subtler forms of gender bias that can pervade STEM program environments, as well as on more egregious examples of sexual harassment. NASA also recommends utilization of its "Unconscious Bias in STEM" learning tool for the Department, accessible at: <http://missionstem.nasa.gov/eLearn.html>.

**b. Role of the Title IX Office.** NASA recommends that the Title IX Coordinator work in partnership with Berkeley and the UC systemwide leadership to secure the resources and expertise to expand tailored offerings for STEM departments such as Astronomy. In addition, due to the many different organizations across Berkeley with a stake in Title IX and gender equity related issues, OPHD should continue to be the focal point and lead coordinating office for all matters pertaining to Title IX compliance, and should continue to seek ways to enhance campus compliance and coordination efforts.

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<sup>12</sup> Respect is Part of Research, "About," accessed at <<http://www.respectispartofresearch.com/about/>>.

**c. CCRT Outreach Efforts to STEM Departments.** In order to ensure that STEM points of view in the development of campus practices and programs are fully reflected, the Berkeley CCRT should undertake efforts to recruit student, faculty or staff membership specifically from STEM departments, such as Astronomy.

### **3. Promising Practice**

**Role-Specific Training.** The sexual assault awareness, prevention, and response training provided by the University of California system is designed for different audiences: faculty and supervisory staff; non-supervisory staff; graduate students; and undergraduate students. As recommended above, NASA suggests training should be further tailored for STEM environments.

## **B. Adoption of Grievance Procedures and Policy Dissemination**

### **1. Compliance Assessment**

The NASA Title IX regulations require that recipient educational institutions adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX.<sup>13</sup> NASA's Title IX regulations also require grant recipients to take specific and continuing steps to notify students, employees, applicants for admission and employment, and unions or professional organizations having collective bargaining or professional agreements with the recipient, that the recipient does not discriminate based on gender in the educational programs or activities that it operates, and that it is required by Title IX not to discriminate in such a manner.<sup>14</sup> The University's compliance with regard to (a) the content of the grievance procedures and how they are implemented, and (b) policy dissemination, is discussed below.

OCR's guidance emphasizes the need for recipient institutions to have "well-publicized" grievance procedures.<sup>15</sup> In addition, OCR states, "without a disseminated [sexual harassment] policy and procedure, a student does not know either of the school's policy against and obligation to address this form of discrimination, or how to report harassment so that it can be remedied."<sup>16</sup> Importantly, OCR stated in its Revised Sexual Harassment Guidance (2001) that distributing the procedures to administrators, or including them in the school's administrative or policy manual, may not by itself be an effective way of providing notice, as these publications are usually not widely circulated to and understood by all members of the school community. Many schools ensure adequate notice to students by having copies of the procedures available at various locations throughout the school or campus; publishing the procedures as a separate document; including a summary of the procedures in major publications issued by the school, such as handbooks and catalogs; and identifying individuals who can explain how the procedures work.<sup>17</sup> DOJ regulations also make Federal funding agencies and recipient institutions responsible for

<sup>13</sup> Designation of responsible employee and adoption of grievance procedures, 14 C.F.R. § 1253.135(b).

<sup>14</sup> Dissemination of policy, 14 C.F.R. § 1253.140.

<sup>15</sup> See OCR Revised Sexual Harassment Guidance, Preamble, and "Enduring Principles from the 1997 Guidance."

<sup>16</sup> *Ibid.*, § V(D), "The Role of Grievance Procedures."

<sup>17</sup> *Ibid.*, § IX. Prompt and Equitable Grievance Procedures.

disseminating information materials, e.g., handbooks, manuals, and pamphlets, to ensure program beneficiaries are aware of their rights pursuant to civil rights laws.<sup>18</sup>

NASA’s compliance assessment seeks to ensure that the University has developed and is implementing procedures that afford a grievant “prompt and equitable” resolution of student and employee complaints alleging any action that would be prohibited by the Title IX regulations.<sup>19</sup> As the regulations do not provide any further specificity regarding the procedures, NASA looked to key guidance documents from DOJ and OCR. These guidance documents provide additional considerations on the basic components of effective (i.e., prompt and equitable) grievance procedures in the discrimination and harassment contexts.<sup>20</sup> In addition, NASA assesses how well the procedures are implemented in the department under review. NASA’s review of Berkeley’s formal written policies and procedures is summarized in the tables below.

*a. Grievance Procedures – As Written and Disseminated*

<i>Review Criteria: Grievance Procedures As Written – Required by OCR</i>	<i>Complaints Against Faculty/Staff<sup>21</sup></i>		<i>Complaints Against Students<sup>22</sup></i>	
	<i>Yes</i>	<i>No</i>	<i>Yes</i>	<i>No</i>
<i>In evaluating whether a school's grievance procedures are prompt and equitable, thus satisfying the Title IX requirement, NASA looks to applicable DOJ and OCR guidance to determine whether the procedures provide for:</i>				
1. Notice of right to file with appropriate Federal agency, either simultaneously or after unsatisfactory resolution of internal grievance. <sup>23</sup>		X <sup>24</sup>		X <sup>25</sup>
2. Notice to students and employees of procedure, including where complaints may be filed.	X		X	
3. Application of procedure to complaints alleging harassment carried out by employees, other students, or third parties.	X		X	
4. Provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence.	X		X	

<sup>18</sup> Public dissemination of Title VI information, 28 C.F.R. § 42.405(c).

<sup>19</sup> 14 C.F.R. § 1253.135(b).

<sup>20</sup> See generally, OCR Revised Sexual Harassment Guidance; DOJ, Title IX Q&A, “Grievance Procedures.” DOJ states that recipient grievance procedures are a mechanism used to determine whether a particular act, policy, or practice of a recipient complies with Title IX regulations. See DOJ, Title IX Q&A, “Grievance Procedures.”

<sup>21</sup> University of California, Policy on Sexual Violence and Sexual Harassment, accessed at <<http://policy.ucop.edu/doc/4000385/SVSH>>.

<sup>22</sup> UC Berkeley, Procedures for Implementation of the Student Adjudication Model which resides within the Sexual Violence/Sexual Assault Investigation Common Elements, accessed at <<http://sa.berkeley.edu/sites/default/files/UCSystemwideFrameworkSVSA.pdf?dialogFeatures=protocol=http>>.

<sup>23</sup> DOJ, Title IX Q&A, “Grievance Procedures.” It should be noted that a “No” answer in this regard refers to the fact that the procedures do not include notice of the right to file with a federal agency.

<sup>24</sup> OPHD informed NASA in February 2018 that Berkeley is addressing this concern as part of its Resolution Agreement with ED OCR, based on OCR’s recent Title IX investigation.

<sup>25</sup> See footnote 23 above.

<i>Review Criteria: Grievance Procedures As Written – Required by OCR</i>	<i>Complaints Against Faculty/Staff<sup>26</sup></i>		<i>Complaints Against Students<sup>27</sup></i>	
5. Designated and reasonably prompt timeframes for the major stages of the complaint process.		X <sup>28</sup>		X <sup>29</sup>
6. Written notice to complainant and alleged perpetrator of the outcome of complaint.	X		X	
7. Assurance that the school will take steps to prevent recurrence of any harassment and correct its discriminatory effects on the complainant and others, if appropriate. <sup>30</sup>	X		X	
8. Clear definitions of key terms, such as harassment and hostile environment.	X		X	
9. Clear prohibition against retaliation.	X		X	
10. Appeals, if included, must be accorded to both parties.	X		X	

<i>Review Criteria: Grievance Procedures As Written – Recommended Best Practices</i>	<i>Complaints Against Faculty/Staff</i>		<i>Complaints Against Students</i>	
	<i>Yes</i>	<i>No</i>	<i>Yes</i>	<i>No</i>
<i>Although not required by OCR, NASA recommends that grievance procedures include the following:</i>				
1. Identification of employee(s) responsible for evaluating requests for confidentiality.	X		X	
2. Notice of:				
• Title IX prohibition against retaliation.	X		X	
• Individual’s right to file a criminal complaint and Title IX complaint simultaneously.	X		X	
• Available interim measures that may be taken to protect the individual in the educational setting pending resolution of the complaint.	X		X	
• Appropriate remedies for individuals found to have been treated improperly.	X		X	
• Appropriate sanctions against individuals found to have behaved inappropriately.	X		X	
3. Sources of counseling, advocacy, and support.	X		X	

<sup>26</sup> University of California, Policy on Sexual Violence and Sexual Harassment, accessed at <<http://policy.ucop.edu/doc/4000385/SVSH>>.

<sup>27</sup> UC Berkeley, Procedures for Implementation of the Student Adjudication Model which resides within the Sexual Violence/Sexual Assault Investigation Common Elements, accessed at <<http://sa.berkeley.edu/sites/default/files/UCSystemwideFrameworkSVSA.pdf?dialogFeatures=protocol=http>>.

<sup>28</sup> OPHD informed NASA in February 2018 that Berkeley is addressing this concern as part of its Resolution Agreement with ED OCR, based on OCR’s recent Title IX investigation.

<sup>29</sup> See footnote 25 above.

<sup>30</sup> See OCR Revised Sexual Harassment Guidance, § IX. Prompt and Equitable Grievance Procedures (citations omitted).

<i>Review Criteria: Dissemination of Title IX Policies and Grievance Procedures</i>	<i>Complaints Against Faculty/Staff</i>		<i>Complaints Against Students</i>	
	<i>Yes</i>	<i>No</i>	<i>Yes</i>	<i>No</i>
1. The University’s grievance procedures have been appropriately disseminated and efforts have been made to ensure ease of access and understanding. <sup>31</sup>		X		X
2. Title IX policies and procedures are posted in the following locations:				
a. On University Web site for Title IX Coordinator	X		X	
b. On University Web site for Student Affairs or other office	X		X	
c. In University handbook and/or catalog		X		X
d. In the Department under review (i.e., on a poster or other notice)		X		X
e. Other: various Web sites	X		X	
3. The Title IX procedures are easily found through a search on the University Web site.	X		X	
4. Students are regularly reminded of Title IX policies and procedures via email or letter (e.g., at the start of each semester).		X		X
5. Students interviewed seem to understand the process for filing a Title IX complaint.		X		X
6. Faculty members interviewed seem to understand the process for filing a Title IX complaint.		X		X

**Observations:**

*Procedures as Written*

According to UC Berkeley’s Title IX Coordinator, the basic Title IX grievance procedures required under NASA’s Title IX regulations are embodied in the University of California System-wide Policy on Sexual Violence and Sexual Harassment, section V.<sup>32</sup>

There are a couple of concerns here that relate to OCR requirements (see the chart “Grievance Procedures As Written – Required by OCR,” above), in that NASA was not able to verify that the procedures or informational materials on the procedures provide (1) written notice of the right to file directly with a Federal agency, and (2) with the exception of investigation, timeframes for process elements are not provided. However, OPHD reported to NASA in February 2018 that these concerns are being addressed, consistent with the Resolution Agreement Berkeley entered into with OCR based on OCR’s February 26, 2018 Letter of Findings.<sup>33</sup>

We also have concerns regarding sex discrimination not involving harassment or violence. Title IX’s intent and purview is not limited to sexual harassment, but extends to all forms of sex discrimination in education, both intentional discrimination based on sex as well as facially neutral policies that disadvantage a group based on sex. As NASA wrote in its Title IX compliance report of the Berkeley Physics

<sup>31</sup> OCR states: “[a] grievance procedure . . . cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint. Thus, the procedures should be written in language appropriate to the age of the school’s students, easily understood, and widely disseminated.” Revised Sexual Harassment Guidance, § IX. Prompt and Equitable Grievance Procedures.

<sup>32</sup> This policy is accessible at <https://policy.ucop.edu/doc/4000385/SVSH>.

<sup>33</sup> See footnotes 23-26 above.

program in March 2016: “Disparate treatment discrimination based on sex can occur absent any harassment.”<sup>34</sup>

In response to this recommendation, the Title IX Coordinator informed NASA that: “[O]ther forms of discrimination on the basis of gender were and continue to be covered under separate policies, namely the UC nondiscrimination policies covering students, and staff and faculty employees. While these policies do not have accompanying system-wide implementing procedures, OPHD can and will develop local implementing guidelines for addressing allegations of discrimination on the basis of other forms of protected category discrimination, like gender, gender expression, and gender identity.”<sup>35</sup> Consistent with NASA’s March 2016 recommendation, the University should develop and publish guidelines specifically designed to address sex discrimination absent sexual harassment, including discrimination based on gender expression or gender identity (see Recommendations, below).

### *Policy Dissemination*

We note that Berkeley has an intricate web of policies and procedures enabling students and faculty to file allegations of discrimination or harassment under Title IX and related civil rights laws. The complicated nature of the different policies and procedures is at odds with Title IX regulatory requirement to offer students and other members of the academic community an easy and understandable rendering of the process.<sup>36</sup> In addition, the documents are written in “legalese” and “bureaucratese” which makes them difficult to understand. Consistent with OCR’s requirement that grantees provide an easy-to-understand rendering of the general process, UC Berkeley has a simply laid-out flowchart of the process, accessible from a link on the OPHD page called “Complaint Resolution Process.” This flowchart is an excellent example of an easily understood and simplified rendering of the process; however, NASA previously identified deficiencies in the flowchart because it did not explain that a complainant has the right to file directly with a Federal agency, and applicable timeframes for each step of the process were not provided. As with the procedures themselves, OPHD reported to NASA in February 2018 that these concerns are being addressed, consistent with the Resolution Agreement Berkeley entered into with ED OCR based on OCR’s February 26, 2018, Letter of Findings.

A search for “sexual harassment” on the Berkeley Web site appropriately provides a link to Berkeley’s “Prevention, Response, & Support” webpage,<sup>37</sup> which offers information on how to report an incidence of sexual harassment, dating and intimate partner violence, sexual assault, stalking, and sexual exploitation. This Web site also includes a link to the code of student conduct and ten documents concerning the University of California system-wide policies on sexual, racial, and other forms of harassment.

A search for the term “discrimination” provides links to both the Office for the Prevention of Harassment and Discrimination (OPHD) and the Division of Student Affairs web page – the latter of which includes a laundry list of student policies and procedures.<sup>38</sup> Of the three Web sites (OPHD, Student Affairs, and

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<sup>34</sup> See NASA Title IX Compliance Report: University of California at Berkeley Physics Department, p. 11, accessible at <[https://missionstem.nasa.gov/docs/ODEO%20Civil%20Rights%20Reports/Title%20IX-Ed%20Amend%20Act/UC%20Berkeley/TIX%20UC%20Berkeley%20Rpt%203-31-16\\_tagged.pdf](https://missionstem.nasa.gov/docs/ODEO%20Civil%20Rights%20Reports/Title%20IX-Ed%20Amend%20Act/UC%20Berkeley/TIX%20UC%20Berkeley%20Rpt%203-31-16_tagged.pdf)>.

<sup>35</sup> Ibid.

<sup>36</sup> See footnote 23 above.

<sup>37</sup> UC Berkeley, “Prevention, Response, & Support: Sexual Violence & Sexual Harassment,” accessed at <<http://survivorsupport.berkeley.edu/>>.

<sup>38</sup> UC Berkeley, Office for the Prevention of Harassment and Discrimination, accessed at <<https://ophd.berkeley.edu/>>; UC Berkeley, Division of Student Affairs, “Student Policies and Procedures,” accessed at <<http://sa.berkeley.edu/sa/student-policies-and-procedures>>.

“Prevention, Response, & Support”), relevant information is best accessible from the OPHD Web site, where there are links to policies and procedures for students, staff, and faculty.

The information regarding the complaint process involving allegations against a student is less clear than the information regarding the process when a faculty member is the alleged harasser. In cases in which the faculty member is the alleged harasser, it is hard to understand the flowchart process element “Opportunity to Meet and Comment,” referring presumably to the findings and recommendations based on investigation. This begs the questions: Meet with whom? What kinds of comments? To what end? The lack of detail or clarity in the flowchart is mitigated by the reporting page itself, which lays out the process more clearly using a “Who? What? Where?” format. This page does an excellent job of explaining the process, although some attention to applicable timeframes is needed (e.g., identifying time ranges for each step in the process).

*b. Grievance Procedures – As Implemented by the University and Department*

<b>Review Criteria: Grievance Procedures As Implemented by the Department</b>	<b>Yes</b>	<b>No</b>
1. In the Department in the past 5 years, there have been formal complaints of:		
• Sex discrimination absent sex harassment or assault allegations		<b>X</b>
• Sexual harassment	<b>X</b>	
• Sexual assault	<b>X</b>	
2. If yes, did the University follow the written Title IX procedures in addressing the incident(s)?	<b>X</b>	
3. Faculty, staff, and/or students reported other (outside the 5 year timeframe of the review) or potential incidents of:		
• Sex discrimination		<b>X</b>
• Sexual harassment	<b>X</b>	
• Sexual assault		<b>X</b>

**Observations:** In its response to NASA’s first information request for this review, Berkeley stated that there have been six cases of sexual harassment or sexual assault reported in Astronomy in the 5-year time period of NASA’s review. Berkeley stated that, of these six, two were handled through alternative resolution, and one was handled through investigation with a formal finding. The other three were third-party inquiries with no named respondent or complainant, and were handled by providing resources (e.g., policies and procedures), for anyone whom the third party believed could benefit. Based on this information, the cases were properly handled according to legal requirements and Berkeley’s procedures.

**2. Recommendations**

**a. Clarification of Complaint Resolution Process.** NASA advises Berkeley to incorporate the following clarifications into its procedures and related materials: (1) notice of the right to file directly with a Federal agency, and (2) applicable timeframes for process elements (aside from investigation, for which a reasonable time frame is provided). Berkeley informed NASA these concerns are being addressed as part of its February 2018 resolution agreement with OCR.

**b. Establishment of Local Guidelines Relating to Sex Discrimination Absent Sexual Harassment or Violence.** Berkeley should clarify through “local guidelines” – or a similar guidance vehicle – its processes and procedures for handling sex discrimination absent sexual harassment or violence. The UC System is to be commended for its focus on the critical issues of campus sexual harassment and violence, which can be forms of sex discrimination; however, additional forms of sex discrimination exist, and Berkeley should provide written guidance on the processing of sex discrimination complaints without harassment or violence as issues.<sup>39</sup>

**c. Dissemination of Information About the Title IX Complaint Process.** Berkeley needs to improve its process for disseminating information to academic departments relating to the Title IX complaint process. For example, the Astronomy Department could establish a link from its homepage to OPHD on reporting concerns around discrimination or harassment. In addition, the Astronomy Department, and all other NASA-funded programs at Berkeley, should consider posting on their websites the Agency’s brochure on nondiscrimination under the grant-related civil rights laws, including Title IX (accessible at: [https://www.hq.nasa.gov/office/odeo/documents/2016\\_TVITIX\\_Brochure\\_TAGGED.pdf](https://www.hq.nasa.gov/office/odeo/documents/2016_TVITIX_Brochure_TAGGED.pdf)). Astronomy and other NASA-funded programs are also advised to establish a link to NASA’s MissionSTEM webpage on “How to File a Complaint” of discrimination or harassment (<https://missionstem.nasa.gov/filing-a-complaint.html>) directly with NASA.

### **3. Promising Practice**

**Process Flowchart.** Berkeley’s Complaint Process Flowchart does a very good job of providing all the necessary process elements in a single visual pictorial that is easy to understand. It thereby enables potential complainants to become conversant with the process they will be participating in, from start to finish, if they decide to file a complaint, enhancing transparency and eliminating some of the anxiety from the process that prevents people from filing complaints.

## **C. Self-Evaluation**

### **1. Compliance Assessment**

The NASA Title IX regulations required recipient institutions to conduct a Title IX Self-Evaluation regarding admissions and treatment of students by September 29, 2001, and to keep the Self-Evaluation on file for three years.<sup>40</sup> While grantees are not obligated to conduct a further Title IX Self-Evaluation, such evaluations are very helpful to ensure, for example, that selection criteria and academic practices do not adversely impact students on the basis of sex. They also provide an opportunity to evaluate trends over time and to develop mechanisms for proactively addressing emerging issues.

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<sup>39</sup> OPHD has informed NASA that local procedures for sex and gender discrimination, in the context of the UC Nondiscrimination policy (systemwide), are in the queue for development in 2018.

<sup>40</sup> Self-evaluation, 14 C.F.R. § 1253.110(c).

NASA’s guide for conducting Title IX self-evaluations provides suggestions for areas to review. These include:<sup>41</sup>

- Applications, admissions, matriculations, retention, and degrees earned rates (for men and women);
- The availability of mentoring relationships;
- The standards and practices used for faculty hiring and promotion decisions;
- Criteria for assignment of graduate students to researchers and advisors;
- Funding of students through assistantships, fellowships, and scholarships; and
- Allocation of lab space and experiences in the lab and classroom.

Berkeley’s participation in this Title IX review and its review of the data requested by the NASA Office of Diversity and Equal Opportunity for conducting this review are good initial steps for towards a self-evaluation. Continued efforts should be made to comprehensively review data regarding participation in STEM programs, by gender.

<i>Review Criteria: Title IX Self-Evaluation</i>	<i>Yes</i>	<i>No</i>
1. The University has responded fully to NASA’s Title IX compliance information request.	X	
2. The University has conducted a Title IX Self-Evaluation within the last 5 years in at least one of its STEM departments.		X
3. The University has conducted a climate survey or other survey relevant to Title IX within the last 5 years (e.g., sexual assault awareness survey, campus safety survey, etc.).	X	
4. The University and/or Department regularly evaluate application and admissions data to ensure admissions decisions are gender-neutral.		X

**Observations:** UC Berkeley’s responses to NASA information and data requests during this review constitute a solid beginning to a Title IX self-evaluation in the key areas of admissions and enrollments of students. UC Berkeley Astronomy is to be commended for the significant amount of data it has marshalled, which can be used as a point-of-departure for a future Title IX self-evaluation of the Department. The Department conducted its own climate surveys in 2015 and 2016. Thirty percent of the respondents to the 2015 survey disagreed with the statement that the Department’s climate with regard to sexual harassment and sexual assault was “healthy.” Further, 40 percent of females and 10 percent of males reported “some form of sexual/gendered discomfort” within the Department.<sup>42</sup> In the 2016 departmental climate survey, 22 percent reported having experienced some form of gendered discrimination in the previous year, including 48 percent of the women respondents.<sup>43</sup> The Department’s report discussed the types of gendered discrimination experienced:

Several people pointed to the undergraduate culture being a “boys club” (e.g., students telling inappropriate jokes that made others uncomfortable, defaulting to female peers for “soft” tasks like organizing snacks, and male undergraduates being condescending to female peers or interrupting them more often). Sometimes, faculty purportedly called on

<sup>41</sup> NASA, Office of Diversity and Equal Opportunity, *Title IX and STEM: A Guide for Conducting Title IX Self-Evaluations in Science, Technology, Engineering, and Mathematics Programs*, June 2012, accessible at: <<http://odeo.hq.nasa.gov/>>.

<sup>42</sup> UC Berkeley, Department of Astronomy, “Climate Survey: Summary and Initial Response,” accessed at <<https://astro.berkeley.edu/about/diversity-and-climate>>.

<sup>43</sup> UC Berkeley, Department of Astronomy, letter to departmental colleagues, re: 2016 Astronomy Climate Survey, October 11, 2016, accessed at <<https://astro.berkeley.edu/about/diversity-and-climate>>.

male students more often and/or let them interrupt and talk over female students. This behavior was usually described as unintentional but nonetheless unwelcome. On the positive side, some undergraduate students explicitly commented that interactions with graduate students, post-docs, and faculty were free from such discrimination.

For graduate students and researchers, a more common form of complaint involved alleged inappropriate or dismissive behavior toward women by particular members of a research group or lab. Sometimes these problems were purportedly addressed successfully by the principal investigator (PI), and other times they went unresolved.<sup>44</sup>

In addition, the University of California launched a system-wide campus climate survey in 2013 that found that 76 percent of all respondents were “comfortable” or “very comfortable” with the climate at Berkeley. Specifically, 69 percent of undergraduate students, 77 percent of graduate/professional students, and 70 percent of faculty and post-doctoral researchers who responded stated they were “comfortable” or “very comfortable” with the climate in their classes. However, more than one-quarter of respondents (26 percent) believed that they had personally experienced exclusionary, intimidating, offensive, and/or hostile conduct, and 10 percent indicated that the conduct interfered with their ability to work or learn. In addition, “A small but meaningful percentage of respondents experienced unwanted sexual contact,” and 7 percent of undergraduates and 2 percent of graduate students who responded to the survey stated that had experienced unwanted sexual contact in the past five years. The survey reported that the findings are consistent with the results from other colleges and universities in the United States,<sup>45</sup> but, nonetheless, should serve as a warning that more needs to be done to create a safe environment for all students.

## 2. Recommendation

**Regular Departmental Title IX Self-Evaluations.** The Astronomy Department, as well as other UC Berkeley STEM departments, should conduct robust self-evaluations on a regular basis (a suggested frequency would be every three to five years). Departments should refer to NASA’s guide, *Title IX and STEM: A Guide for Conducting Title IX Self Evaluations in STEM Programs* (accessible at [https://odeo.hq.nasa.gov/documents/TITLE\\_IX\\_STEM\\_Self-Evaluation\\_Fillable.pdf](https://odeo.hq.nasa.gov/documents/TITLE_IX_STEM_Self-Evaluation_Fillable.pdf)). As part of the self-evaluation effort, the University may wish to conduct more targeted focus groups to determine if there are any areas of concern with regard to gender equity. NASA will check back with the Astronomy Department six months from the issuance of this report to learn about the results of the Astronomy Title IX self-evaluation effort.

## 3. Promising Practice

**Evaluation of Climate:** The Astronomy Department has created a Climate Advisory group, which includes students, staff, faculty, and researchers, whose mission is to educate on issues of sexual harassment and discrimination, to promote campus resources, and to help devise and implement solutions to climate problems. According to the Department Chair, the Climate Advisory group has met, in pairs and as a group, roughly once every two months since 2015, to address climate problems as they have arisen. They

<sup>44</sup> Ibid., p. 8.

<sup>45</sup> Rankin & Associates, *University of California Berkeley: Campus Climate Project Final Report*, March 2014, accessed at [http://campusclimate.ucop.edu/\\_common/files/pdf-climate/ucb-full-report.pdf](http://campusclimate.ucop.edu/_common/files/pdf-climate/ucb-full-report.pdf).

have also authored two Department-wide surveys on climate whose results have been posted on the Department Web site. The last survey has been used to inform campus-wide initiatives. These initiatives reflect impressive efforts to bolster diverse voices in order to promote a healthier Department environment.

## D. Recruitment, Admissions, Enrollment, Degrees Earned, and Faculty Recruitment<sup>46</sup>

### 1. Compliance Assessment

The NASA Title IX regulations state that recipients may not discriminate on the basis of sex in admissions and recruitment. Specifically, the regulations prohibit educational institutions from such activities as:<sup>47</sup>

- Giving preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;
- Applying numerical limitations upon the number or proportion of persons of either sex who may be admitted;
- Administering or operating any test or other criterion for admission that has a disproportionately adverse effect on persons on the basis of sex;
- Making pre-admission inquiries as to the marital status of applicants for admission (including whether such applicant is “Miss” or “Mrs.”); and
- Applying rules concerning actual or potential parental, family, or marital status of an applicant that treats persons differently on the basis of sex when determining whether a person satisfies admission criteria.

In addition, NASA’s regulations regarding the prohibition of discrimination on the basis of sex in employment in educational programs also apply to the recruiting, advertising, and processing applications for employment.<sup>48</sup>

Consistent with these requirements, NASA reviewed the Astronomy Department’s student recruitment and admissions practices, as well as data on student departures and degrees earned. For graduate students, NASA also examined financial assistance awarded to students and success on comprehensive and qualifying exams. The review was based on five academic years: 2012-13 through 2016-17.

#### a. Outreach and Recruitment

<i>Review Criteria: Outreach and Recruitment</i>	<i>Yes</i>	<i>No</i>
1. The Department participates in programs to provide outreach to high school students (particularly for female students).		<b>X</b>
2. The Department has undertaken recruitment efforts to attract more female applicants.	<b>X</b>	
3. The Department’s website and outreach materials reflect gender diversity through images and other information.	<b>X</b>	

<sup>46</sup> All data in this section pertaining to UC Berkeley students was provided by the University in response to NASA’s information request.

<sup>47</sup> 14 C.F.R. §1253.300–1253.455.

<sup>48</sup> 14 C.F.R. §1253.500.

**Observations:** In response to NASA’s information request, Berkeley stated that the Department has a dedicated faculty diversity officer who also serves on the graduate recruitment committee. The diversity officer, as well as the entire committee, pays close attention to gender as admissions decisions are made. In addition, the Department offers the Cota-Robles Fellowship, the purpose of which is to recruit exceptional students of outstanding to doctoral programs and to enhance diversity in the graduate student populations at Berkeley.

Several individuals noted that during and after the 2015 sexual harassment case discussed above, applications for graduate school by women decreased dramatically. Efforts have been made by the Department to encourage applications from women. For example, the admissions committee recently decided to not take Physics GRE scores into account during the initial review of applicants because studies have shown that it may not be a valid predictor of success in graduate school and tends to have a negative impact on admissions of women and minorities to graduate programs.<sup>49</sup>

*b. Graduate Admissions, Enrollment, and Degree Progress*

<i>Review Criteria: Graduate Admissions, Enrollment, and Financial Aid</i>	<i>Yes</i>	<i>No</i>
1. Graduate admissions criteria appear to be neutral, valid predictors of success; are fairly applied; and have no adverse impact based on gender.	<b>X</b>	
2. There is no evidence of a gender-based differential between those accepted and those enrolling.	<b>X</b>	
3. Admissions processes and policies are set forth in writing and clearly described.	<b>X</b>	
4. Procedures for selecting students for fellowships, research assistantships, teaching assistantships, and other types of funding are set forth in writing and clearly described.	<b>X</b>	

**Observations:** In making admissions decisions, the Department looks for strong letters of recommendation and reads the "Statement of Purpose" and "Personal History Statement" carefully. According to University officials, a research background in astrophysics is helpful, but research experience in any field is valued. The University stated: “The goal is to identify enthusiastic students who are well-prepared to thrive in an exciting research environment, and who will make the best use of the particular strengths and opportunities in our department.”

UC Berkeley has made concerted efforts to ensure diversity among its graduate students. In the past five years, although the Department’s graduate school applications from females have declined, the Department has accepted a larger percentage of female than male students; two-thirds of those offered admission during this time have been women (see Table 1). Overall, women account for approximately one-third of graduate students in the Department of Astronomy, which is consistent with graduate enrollment in Astronomy nationwide.<sup>50</sup>

<sup>49</sup> Scott Jaschik, “An Unlikely Campaign to Move Beyond GRE Scores,” *Inside Higher Ed*, June 6, 2016, accessed at <<https://www.insidehighered.com/news/2016/06/06/ets-plans-encourage-graduate-departments-de-emphasize-gre>>.

<sup>50</sup> National Science Foundation, National Center for Science and Engineering Statistics, *Science and Engineering Indicators 2016*, Arlington, VA, January 2016, Appendix Table 2-24, accessed at: <<http://www.nsf.gov/statistics/indicators/>>.

**Table 1. Applicants, Acceptances, and Matriculations, by Sex, 2012-2016**

Year	Applicants				Accepted				Matriculated			
	Female	Male	% Female	% Male	Female	Male	% Female	% Male	Female	Male	% Female	% Male
2012-13	55	121	31%	69%	6	6	50%	50%	3	3	50%	50%
2013-14	46	96	32%	68%	4	1	80%	20%	7	2	78%	22%
2014-15	63	104	38%	62%	4	1	80%	20%	5	2	71%	29%
2015-16	46	87	35%	65%	7	3	70%	30%	10	4	71%	29%
2016-17	30	95	24%	76%	6	3	67%	33%	8	3	73%	27%
<b>5-year total</b>	<b>503</b>	<b>240</b>	<b>32%</b>	<b>68%</b>	<b>27</b>	<b>14</b>	<b>66%</b>	<b>34%</b>	<b>33</b>	<b>14</b>	<b>70%</b>	<b>30%</b>

*c. Undergraduate Admissions, Enrollments, and Degree Progress*

<i>Review Criteria: Undergraduate Admissions, Enrollment, and Financial Aid</i>	Yes	No
1. Undergraduate admissions criteria are neutral, valid predictors of success; are fairly applied; and have no adverse impact based on gender.	X	
2. There is no evidence of a gender-based differential between those accepted and those enrolling.	X	
3. Admissions processes and policies are set forth in writing and clearly described.	X	

**Observations:** The Admissions Web site notes: “UC Berkeley pioneered the holistic review process at UC (now adapted by most UC campuses), enabling us to admit a diverse undergraduate class . . . ‘Holistic review’ refers to the process of evaluating freshman applications where no one piece of information is weighted more heavily over another. ‘Comprehensive review’ refers to the process of evaluating transfer applications where all academic and personal attributes are considered, but more emphasis is put on academic preparedness for the major.”<sup>51</sup>

*d. Faculty Hires*

<i>Review Criteria: Faculty Hires</i>	Yes	No
1. Search committees receive training/education regarding diversity, unconscious bias, or implicit gender bias.	X	
2. Gender diversity a requirement for search committees.	X	
3. The University or Department tracks gender diversity of applicant pools.	X	
4. The University or Department takes steps to ensure the gender diversity of applicant pools.	X	

<sup>51</sup> University of California Berkeley, Office of Undergraduate Admissions, “How Berkeley Selects Students,” accessed at <<http://admissions.berkeley.edu/selectsstudents>>.

**Observations:** UC Berkeley appears to take steps to ensure the diversity of search committees and that such committees consider the diversity of its applicant pools for faculty positions and receive training that incorporates education and awareness on key topics such as implicit bias. In its response to NASA's information request, the University noted that Faculty Equity Advisors perform the following functions: consult with Department chairs on the diversity of the search committee members; attend search committee meetings and discuss proactive search procedures and applicable affirmative action and labor laws; provide advice to ensure the search advertisement is posted in multiple venues that attract a diverse pool of applicants; and provide advice to the Chair and to the search committee to ensure that contributions to diversity are being considered and proactive search practices are being used for recruiting and selecting new faculty, including logged, targeted phone calls and other outreach efforts. Search Equity Advisors also review and approve the search plans and compare the applicant pool to availability and affirmative action goals, the short list, and the search report.

## 2. Recommendation

**Outreach to High School Students.** The Department currently does not participate in programs to provide outreach to high school students but may wish to consider doing so going forward. These may be programs both on and off-campus; efforts should be made to ensure that both male and female students participate in the outreach efforts.

## 3. Promising Practices

**a. Search Committee Training.** UC Berkeley provides training for academic search committee members that incorporates material addressing diversity, unconscious bias, and implicit gender bias that can be present in this context. The training provides both a number of specific examples of what such bias can look like in the search committee context (e.g., "She has done amazing work given that she just had a baby") as well as research literature and campus resources for more information.

**b. Faculty Equity Advisors.** Every department at UC has a Faculty Equity Advisor whose role is to help "ensure that diversity and equity are considered in all aspects of the academic mission." Faculty Equity Advisors work provide support for faculty searches, consult with graduate admissions committees, and promote a positive department climate.<sup>52</sup>

## E. Program Administration and Environment

### 1. Compliance Assessment

The NASA Title IX regulations provide that a recipient shall not, on the basis of sex, exclude from participation in, deny the benefits of, or otherwise limit any person in any advantage or opportunity pertaining to academic, extracurricular, research, occupational training, or other education program or

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<sup>52</sup> University of California Berkeley, Campus Climate, Community Engagement & Transformation, "Faculty Equity Advisors," accessed at <<https://campusclimate.berkeley.edu/faculty/our-programs-and-services/faculty-equity-advisors>>.

activity operated by the recipient.<sup>53</sup> NASA looks to the following to assess compliance in the program administration context:

- Denial of benefits/limitation on program participation: denying the benefits of its programs or services, or otherwise limiting program participation based on sex, including sexual harassment and sexual violence.<sup>54</sup>
- Discriminatory effects: the Title IX regulations incorporate by reference the NASA Title VI regulatory provision prohibiting a recipient from utilizing methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program for an individual based on sex.<sup>55</sup>

To reinforce these requirements, in January 2016, then-NASA Administrator Charles F. Bolden, Jr., sent a letter to all NASA grant recipients reminding them of their responsibilities under Title IX and the importance of ensuring equal opportunity to all participants (see Appendix). Administrator Bolden stated, in part:

NASA takes very seriously our obligations, both legal and ethical, to make sure that when we provide Federal dollars to a STEM education program that the program is extending equal opportunity to all of its participants. We seek to help STEM programs nationwide in their efforts to achieve educational environments in which equality of opportunity and inclusion are not just buzzwords, but are internalized by all members of the community and institutionalized in fair and equitable policies and practices . . . No grantee institution that allows impermissible harassment to go unaddressed can be deemed to be in compliance with civil rights law.<sup>56</sup>

The NASA Administrator's reinforcement of Title IX's prohibition against sexual harassment in academic programs reflects a key element of the compliance review team's assessment of the program environment – i.e., the existence of or extent to which there are concerns among students regarding sexual harassment or sex discrimination in the program. NASA's compliance review team also examined the Astronomy Department's program administration in a variety of specific arenas, including academic advising,<sup>57</sup> research participation, classroom and lab experiences, "family friendly" policies, and physical safety of the program environment. These program aspects were examined to determine whether there was evidence of students being treated differently or otherwise limited in program participation, on the basis of gender. NASA's Title IX student survey provided insight into several of these areas and supported the findings from the student interviews.<sup>58</sup>

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<sup>53</sup> Education programs or activities, 14 C.F.R. § 400(a), (b)(7).

<sup>54</sup> *Id.*

<sup>55</sup> Enforcement procedures, 14 C.F.R. § 605.

<sup>56</sup> Charles F. Bolden, Jr, Administrator, NASA, letter to NASA grant recipients, January 15, 2016, accessible at [http://www.nasa.gov/sites/default/files/atoms/files/bolden\\_letter\\_20160115.pdf](http://www.nasa.gov/sites/default/files/atoms/files/bolden_letter_20160115.pdf). Also see Appendix A.

<sup>57</sup> The Title IX regulations explicitly state that a recipient may not discriminate on the basis of sex with regard to career counseling or guidance. Counseling and use of appraisal and counseling materials, 14 C.F.R. § 1253.425.

<sup>58</sup> Information on NASA's Title IX Compliance survey and response rates is in Appendix B.

a. Academic Environment (Advising, Classroom, and Lab Experiences)

<i>Review Criteria: Advising</i>	<i>Yes</i>	<i>No</i>
1. The program has a written process for matching students to advisors.	X	
2. There is a standard process for changing advisors, and students are able to do so without repercussions.	X	
3. NASA heard gender-related concerns regarding one or more faculty advisors.		X
4. Overall, students believe that faculty advising is fair and equitable regardless of gender.	X	

<i>Review Criteria: Classroom/Lab Experiences</i>	<i>Yes</i>	<i>No</i>
1. The program has incorporated methods to improve female undergraduate representation, such as providing dedicated resources or modified curricula to better engage women in STEM, especially early in the program.	X	
2. There is equal access to lab equipment and participation in labs.	X	
3. Students perceive gender bias in high-stakes exams.		X
4. Statistical data suggests differential outcomes based on gender in high-stakes exams.		X
5. Students of both genders feel as though interactions in the classroom and lab are generally appropriate and respectful.		X
6. Students feel professors or teaching assistants (TAs) doubt their abilities because of gender.	X	
7. Students have been “warned” to stay away from certain professors because of their treatment of or interactions with students (e.g., rumors of sexual harassment, etc.).		X
8. NASA heard concerns regarding the following:		
<ul style="list-style-type: none"> <li>Professors/TAs recognizing and calling on one gender more often than another in class discussions.</li> </ul>	X	
<ul style="list-style-type: none"> <li>Professors/TAs interrupting students of one gender but not students of the other, or allowing others in the class to do so.</li> </ul>		X
<ul style="list-style-type: none"> <li>Use of sexist stereotypes through subtle, often unintentional means.</li> </ul>	X	
<ul style="list-style-type: none"> <li>Offensive jokes or inappropriate gender-related remarks in the lab or classroom.</li> </ul>	X	
<ul style="list-style-type: none"> <li>Disrespect of abilities, based on gender (e.g., she got into that program because they’re saying “we need more women”).</li> </ul>	X	
<ul style="list-style-type: none"> <li>Unfair grading, based on gender.</li> </ul>		X
<ul style="list-style-type: none"> <li>Other inappropriate gender-related conduct or actions.</li> </ul>		X
9. The Department or Program has support organizations dedicated to gender equity, e.g., women in science and engineering.	X	

**Observations:**

*Student Experiences*

Regarding advising at the graduate level, students are paired with academic advisors upon enrollment; however the advisors are not always tied directly to the student’s graduate research. NASA heard about some challenges in finding a reliable advisor, with some students (both male and female)

reporting several changes of advisors and feeling that they were wasting time finding a good advisor. This may suggest the need for the Department to review its practices around graduate advising (see Recommendations below).

Regarding classroom and lab experiences more broadly, a majority of male students and many female students interviewed described classroom and research experiences in which they had not observed or experienced any concerns relating to gender. Students generally seemed pleased with the Department's pedagogy and classroom environment.

Nonetheless, a few concerns were raised. For example, the lab setting was not depicted as entirely free of gender-related issues. Both male and female students recalled specific instances in which they perceived subtle or unconscious gender bias. It was also reported that a summer lab associate was dismissive of some females in the lab and flirted aggressively with others (the lab director was notified and spoke to the summer lab associate who stopped the behavior and was not invited back to UC Berkeley).

Other concerns: Some students noted that, in their perception, conference invitations seemed to be extended more to the male post-docs or researchers – perhaps perpetuating predominately male representation and outreach at conferences. Others mentioned that they experienced or observed male professors calling on men in the classroom more often, while females' questions and answers were sometimes casually dismissed. NASA also heard from some interviewees that prestigious scholarships given to females are sometimes characterized by male students as having been won due to ethnicity or gender rather than merit.

The NASA Title IX survey results echoed the concerns of students interviewed. For example, when asked whether they were ever treated differently because of their gender, 87 percent of males responded "never," compared to only 37 percent of women. Further, a majority of female students (52 percent) felt their opinions were only somewhat valued by male peers, while 79 percent of males reported their opinions were valued to a great extent by their male peers. These results indicate the need for further consideration of environmental factors that are causing the disparity in how women vs. men view the academic environment within the Department (see Recommendations below).

As to the recent UC Berkeley findings of sexual harassment by an Astronomy Department faculty member and his ultimate departure from the program, NASA did not find evidence of a lingering hostile educational environment; however, the NASA Title IX survey did reveal that 20 percent of female respondents stated they had sometimes been in situations in the program where one or more individuals repeatedly told sexual stories or jokes that were offensive to the respondent. Further, 10 percent of female respondents stated that they had sometimes experienced unwanted attempts to establish a romantic sexual relationship in the program despite attempts to discourage it (63 percent of women answered never; 90 percent of men answered never and 3 percent answered sometimes). Ten percent of female respondents said that they sometimes experienced "other unwanted gender-related behavior." Overall, slightly more than half of female respondents (53 percent) reported being only moderately comfortable with reporting sexual harassment.

The picture these numbers paint is one of an academic department in which "inappropriate gender-related conduct" is occurring; however, because the conduct does not reach the level of legally actionable sexual harassment (i.e., conduct that is "severe or pervasive" in nature), it is likely to go unreported. Nonetheless, even relatively minor occurrences of harassing behavior are problematic

because these kinds of behaviors may intensify and aggregate to a level that prevents women and other victims from enjoying equal opportunities in STEM programs.<sup>59</sup> The question becomes: is there a way to address these minor inequities – even if they are not by themselves illegal – and before they rise to a level where they pose a barrier to full participation and advancement and/or become illegal? A key part of the solution is proactive prevention efforts focused on closer partnership, consultation, and benchmarking with professional Title IX practitioners, such as the Berkeley Title IX Coordinator and her office, other STEM programs, and professional societies such as the American Astronomical Society (see Recommendations, below).

### *Faculty Experiences*

Such concerns exist in the faculty context as well. While we did not find anything approaching a hostile environment in the current Astronomy Department climate, we note the Department continues to be impacted by the University's recent finding of sexual harassment against a faculty member. The faculty member resigned under pressure from the academic community, though divisions remain in the Department on the propriety of that outcome. Both faculty and student interviewees noted a generational divide among faculty regarding the ultimate outcome of the sexual harassment case. Anecdotally, we were advised that long-term and older faculty generally believe the outcome was too harsh, while newer and younger faculty generally believe the opposite.

In fact, NASA heard from a majority of interviewees about a generational gap, beyond this case, encompassing opinions as to what is and is not acceptable behavior. Numerous interviewees touted younger faculty members as much more aware of current potential educational and work climate issues. NASA repeatedly heard that older faculty members were observed as being less aware of or sensitive to the impact on the educational climate. This included gender-related statements that might have been considered acceptable in the past but no longer are considered appropriate. These faculty members were perceived as being, in general, resistant to changes that could help ameliorate the negative impact that comes with gender-related inappropriate behavior.

We want to make clear, however, that while we have observed some challenges for the Department in addressing the need for greater gender equity (e.g., the generational divide in how to address gender-related and other diversity issues), we did not find a lingering hostile education environment based on the well-publicized case of sexual harassment. Moreover, we did observe some very proactive steps the Department is taking to make the program environment more diverse and inclusive. One example is the Climate Advisory Group discussed above.

### *b. Parental/Marital Status ("Family Friendly" Policies)*

The NASA Title IX regulations include detailed provisions on matters pertaining to marital and parental status.<sup>60</sup> Generally, under the regulations, a recipient of grant funds such as UC Berkeley may not apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex. The regulations also require that pregnancy and childbirth be treated in

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<sup>59</sup> See, e.g., Settles, I.H., Cortina, L.M., Malley, J., & Stewart, A.J. (2006). The climate for women in academic science: The good, the bad, and the changeable. *Psychology of Women Quarterly*, 30, 47-58; Lim, S. & Cortina, L.M. (2005). Interpersonal mistreatment in the workplace: The interface and impact of general incivility and sexual harassment. *Journal of Applied Psychology*, 90, 483-496.

<sup>60</sup> Marital or parental status, 14 C.F.R. § 1253.445 and 1253.530.

the same manner and under the same policies as any other temporary disability or physical condition.<sup>61</sup> Further, Title IX requires that in the case of a grant recipient that does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, “a recipient shall treat pregnancy . . . as a justification for a leave of absence for as long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status that she held when the leave began.”<sup>62</sup> More recently, in its “Dear Colleague” letter of June 25, 2013, and the accompanying technical assistance document, “Supporting the Academic Success of Pregnant and Parenting Students,” OCR has provided a wealth of guidance and information to educational grant recipients on Title IX requirements pertaining to pregnancy and parental status.<sup>63</sup>

<i>Review Criteria: Family Friendly and Parental Leave Policies</i>	<i>Yes</i>	<i>No</i>
1. The institution has a separate leave policy that addresses parental/family status.	X	
<ul style="list-style-type: none"> <li>If yes, does the parental/family leave policy treat pregnancy and child birth in the same manner as any other temporary disability or physical condition?</li> </ul>	X	
<ul style="list-style-type: none"> <li>If no, does the Program treat pregnancy as a justification for a leave of absence for as long a period of time as deemed medically necessary by the student’s physician and that allows for reinstatement to the status she held when the leave began?</li> </ul>		
2. The Program regularly disseminates information to program participants, including faculty and students, regarding pregnancy-related policies and a majority of those departmental students interviewed are aware of the policies.		X
3. The individual situations NASA heard about involving pregnancy indicate that individual faculty members are responding appropriately and consistent with Title IX requirements.	X	

**Observations:** UC Berkeley’s family friendly policies are embodied in a number of documents provided by the University in response to NASA’s information request. For staff, academic personnel, and union members, the University human resources (HR) office provides information on the Federal Family and Medical Leave Act of 1993, the California Family Rights Act, and the California Pregnancy Disability Leave Act, as well as a 20-page “Pregnancy and Newborn Child Fact Sheet.” According to the HR Web site, the California Fair Employment and Housing Act allows for up to four months of leave during the time an employee is “actually disabled and unable to perform her job due to pregnancy, childbirth, or related medical conditions.”<sup>64</sup>

<sup>61</sup> Admission, *Prohibitions relating to marital or parental status*, 14 C.F.R. § 1253.300(c)(3).

<sup>62</sup> Marital or parental status, 14 C.F.R. § 1253.445 (b)(5).

<sup>63</sup> The Dear Colleague letter is accessible at <<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201306-title-ix.pdf>>; “Supporting the Academic Success of Pregnant and Parenting Students” is accessible at <<https://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf>>.

<sup>64</sup> UC Berkeley, Human Resources, “Pregnancy Disability Leave,” accessed at <<https://hr.berkeley.edu/policies/leaves/pregnancy>>.

In 2014, the State of California amended its Education Code to require higher education institutions to adopt policies and procedures to protect graduate students from pregnancy discrimination, pursuant to Title IX. UC Berkeley's policy was finalized in April 2016.<sup>65</sup> The 4-page policy provides for:

- Additional time to meet established deadlines for passing preliminary and/or qualifying examinations and/or completing their dissertations, and for calculating normative time for purposes of qualification for certain fellowships, and
- Time off for up to six weeks without loss of financial support for female doctoral students anticipating childbirth who are supported by graduate student instructor and/or researcher appointments.

The total additional time granted by the policy cannot exceed two years, regardless of the number of children for which a graduate student is responsible. Additionally, students on parental leave are not eligible to work academically with faculty or in other campus employment, such as fellowships, nor can they receive financial aid. This policy can be found in the online "Guide to Graduate Policy," which, when printed, is approximately 120 pages, which is somewhat unwieldy and difficult to search.<sup>66</sup>

It appears that little information is provided to undergraduate students regarding family leave policies. On both the Dean of Students and OPHD Web sites, a link for "Student Accommodations" takes one to the UC Berkeley Center for Teaching & Learning webpage for campus policies which states:

Instructors are reminded of their responsibilities for excusing medically necessary absences for pregnancy and related conditions and making reasonable accommodations in the areas of class sessions, exams, tests, project deadlines, field trips, and any other required activities . . . While we anticipate that most academic accommodation issues can be resolved quickly between students and faculty, if a mutually satisfactory arrangement cannot be achieved, a student may seek further assistance or file a complaint using the campus appeals process or the complaint process in the Office of the Prevention of Harassment and Discrimination."<sup>67</sup>

A search for "pregnancy" or "pregnant student" on the UC Berkeley website leads one to the Student Parent Center. The Center provides both undergraduate and graduate students access to counseling, childcare, and a breastfeeding support program, among other services and programs. The University also has a thorough Frequently Asked Questions (FAQs) document manner (accessible at <http://studentparents.berkeley.edu/faq/>) that lays out Berkeley's policy on pregnancy and parenting in an easy-to-understand manner. It should be noted that UC Berkeley's response to NASA's information request provided links to the Student Parent Center Web site as the location of family-friendly policies and procedures for both graduate and undergraduate students.

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<sup>65</sup> Fiona M. Doyle, Dean of the Graduate Division, re: Policy Statement: Parenting Leave for Graduate Students with Re-Enrollment, April 14, 2016, accessed at <[http://grad.berkeley.edu/wp-content/uploads/Parenting-Leave-for-Graduate-Students-with-Re-Enrollment\\_MEMO-2016-April-14.pdf](http://grad.berkeley.edu/wp-content/uploads/Parenting-Leave-for-Graduate-Students-with-Re-Enrollment_MEMO-2016-April-14.pdf)>.

<sup>66</sup> UC Berkeley, Graduate Division, "Guide to Graduate Policy (Full Version)," section F6, Student Parent Policies, accessed at <<http://grad.berkeley.edu/policy/fullguide/#f6-student-parent-policies>>.

<sup>67</sup> UC Berkeley, Center for Teaching & Learning, "Academic Calendar and Student Accommodations - Campus Policies and Guidelines," section on Accommodation for Pregnancy and Parenting, accessed at <<https://teaching.berkeley.edu/academic-calendar-and-student-accommodations-campus-policies-and-guidelines#anchor6>>.

A few individuals interviewed by NASA indicated there may be subtle gender bias with regard to faculty and researchers who request family leave. It was noted, however, that the only researchers who have children are male, and there have been hardly any students with parenting responsibilities. NASA has found in other reviews, including the 2013 review of the Berkeley Physics Department, graduate students often receive the subtle message that taking time off for childbirth or parenting is frowned upon. Thus, it is important that the Astronomy Department as well as the Graduate Division ensure that students are aware of the policies related to parental leave and understand that there are no penalties for taking such leave.

While the Astronomy Department climate surveys for in 2015 and 2016 did not address the issues of pregnancy and parenting, for the UC Berkeley campus overall, the 2013 climate survey results revealed that 70 percent of faculty members felt their departments created climates that were responsive and supportive of family needs, including usage of family-related leave policies. However, 47 percent believed that perceptions about using family-related leave policies differ for men and women faculty. In addition, 7 percent felt that faculty members who use family-related leave policies are disadvantaged in promotion or tenure. In general, male and female faculty of the Astronomy Department alike urged better childcare options on campus and more supportive and better-disseminated family friendly policies for graduate students, post-doctorates, researchers, and undergraduates.

*c. Safety*

<i>Review Criteria: Campus Safety</i>	<i>Yes</i>	<i>No</i>
1. Students believe the campus is a safe environment (e.g., has night-time shuttle service, night-time escort, police cars on patrol, information dissemination about safety issues).	X	
2. Information on safety policies is disseminated to students.	X	
3. Students are aware of the following safety measures:		
• Night-time shuttle service	X	
• Night-time escort service	X	
• Regular security/police patrols on campus	X	
• Regular security/police patrols in buildings where students work at night	X	
• Dissemination of information about safety issues	X	
• Controlled-access buildings and labs	X	

**Observations:** Notable among UC Berkeley’s efforts to ensure physical safety on its campus is their provision of a night safety shuttle that operates from 7:30 PM to 3:30 AM. In addition, night safety services feature escorts for short walks from dusk until 3:00 AM and door-to-door shuttle services that occur from 3:00 AM until 5:30 AM. Some survey respondents noted that parts of the campus are not well lit at night and, therefore, feel less safe. NASA heard from students about a desire to fund more companion escorts for short walks during the night and to bolster this program. In addition, interviewees noted incidents of harassment and thefts that occur on streets adjacent to campus.

## 2. Recommendations

**a. Address Presence of Gender Bias.** Further education and awareness, specifically directed to undergraduate and graduate students, should be explored in creative, intentional, and meaningful ways. NASA encourages further trainings such as the Astronomy Department’s “Respect is Part of Research” workshop held in August 2016 as part of the graduate student orientation and the interactive theater workshop held in December 2015 focusing on faculty climate. Future trainings can cover topics such as harassment, implicit bias, pregnancy in the work place, and parenting policies. Increased workshops, trainings, and engagement on gender bias should be a consistent priority for the Astronomy Department. To the extent that it has not already done so, the Astronomy Department may wish to consider consulting with the American Astronomical Society Committee on the Status of Women (<https://cswa.aas.org/>) to explore fresh ways of addressing issues of gender bias in the program.

**b. Address Generational Divide.** The Astronomy Department retained a consultant last fall who identified a continuing need for dialogue to address differing generational attitudes and communication styles. Students and faculty alike have called for continued efforts to bridge these gaps. Steps to address the presence of generational gaps should begin with a demonstrated commitment from program leadership and faculty. This might include, for example, training units on how to effectively address generational differences. NASA encourages UC Berkeley to reach out to partners within the University of California system to foster efforts that stimulate and engage students, post-docs, researchers, staff, and faculty on this issue.

**c. Consistency in Measuring Program Climate.** The Department should continue to measure the program climate and make necessary changes/improvements as dictated by climate analysis (see also Section II.C on “Self-Evaluation,” above).

**d. Ensure Family Leave Policies are Consistent with Title IX.** To address the concerns NASA heard regarding lack of knowledge of Berkeley’s pregnancy policies and the perception that pregnancy is somehow “frowned upon” in the Department, NASA recommends that OPHD work hand-in-hand with the Astronomy Chair to ensure that the Department provides information regarding Berkeley’s policies in this arena on a more frequent basis, such as the beginning of each academic semester. The Dean should make clear that pregnancy and parenting is covered under Title IX and that students and faculty seeking accommodation for these reasons have a right to do so under the law. A link to the Student Parent Center FAQs should be included. In addition, the department may wish to convey information on this topic in other ways, such as a colloquium on pregnancy and parenting and requirements under Title IX, along with the university’s relevant policies.

**e. Provide Information on Parental Leave Policies to Staff, Faculty, and Students.** Adequate steps are not being taken to appropriately disseminate parental leave policies and encourage students to request such leave when necessary. The University, through a partnership between OPHD and other stakeholders, including the Graduate Division, Student Parent Center, and departmental chairs, should take steps to address this concern, such as better disseminating the parental leave FAQs with written statements of support from leadership accompanying them to facilitate knowledge and understanding

of the policy by both faculty and students. In addition, the Astronomy Department might want to gather feedback as to current knowledge of family-related policies in all stakeholder populations and solicit feedback on how to improve these policies.

### **3. Promising Practice**

**“Respect is Part of Research” Workshop.** NASA applauds the inclusion of this workshop as part of the graduate student orientation. In addition to providing training on discrimination and sexual harassment, it is important to educate students on workplace or academic environment climate issues in a scientific setting.

### **III. CONCLUSION**

NASA finds the University of California, Berkeley to be in compliance with the Title IX procedural requirements regarding coordination and self-evaluation. The University is in substantial, but not full, compliance with Title IX grievance procedure and policy dissemination requirements. While Berkeley provides an easy-to-understand and easily accessible Title IX policy and procedures, the latter does not include all required components (e.g., information to complainants of their right to file directly with a Federal agency). We note, however, that Berkeley is addressing this and other NASA procedural concerns based on the OCR February 2018 Letter of Findings of its Title IX investigation and Berkeley’s resolution agreement with OCR. In addition, NASA finds that, due to the many different organizations across Berkeley with a stake in Title IX and gender equity-related issues, the University should maintain a clear focal point and lead coordinating office for all matters pertaining to Title IX compliance and should continue to seek ways to enhance campus compliance and coordination efforts.

With respect to the Astronomy Department itself, NASA did not find evidence of non-compliance with Title IX. Specifically, we did not find different treatment based on sex or methods of administration that were having an adverse impact or otherwise limiting program participation, based on sex. We also found that the Department, with the support of campus organizations such as OPHD, the PATH to Care Center, and the Division of Equity and Inclusion, is taking a number of tangible and creative steps to address recent issues of sexual harassment. For example, the Department has formed a Climate Advisory group and a new team of Astronomy representatives, both comprising faculty, post-docs, students, and staff and offering a new means for diverse voices in the Department to be heard by leadership. Notably, however, NASA is concerned with the presence of gender biases and micro-aggressions. While these concerns do not reach the level of Title IX violations, they must be taken seriously and addressed promptly by the Department. This may be done in part through implementing NASA’s recommendations, such as partnering more closely with OPHD on education and awareness in this arena and consulting with the American Astronomical Society on further interventions. In addition, NASA is concerned about the level of awareness of the Astronomy Department relating to Berkeley policies on pregnancy and parenting and has made compliance recommendation to address this area.

The recommendations throughout this report are designed to assist UC Berkeley and the Astronomy Department in furthering their efforts to ensure equal educational opportunity regardless of sex. NASA will conduct monitoring six months from the date of this report on its findings (including compliance requirements to be met) and recommendations to strengthen existing compliance efforts.

## APPENDIX A: January 2016 Letter from NASA Administrator to NASA Grant Recipients

National Aeronautics and  
Space Administration  
**Office of the Administrator**  
Washington, DC 20546-0001



As a leader in the fields of science, technology, engineering, and mathematics (STEM), NASA endeavors to make our collaborations with our grant recipient institutions as productive and successful as possible in all facets of our shared objectives. This means that we seek not only the most innovative and cutting-edge scientific and technological research from our grant recipients, we also expect strong efforts to create and sustain welcoming and inclusive educational environments. We view such efforts not as “something nice to do” if the time can be spared, or something that human resources or the diversity and equity offices are responsible for, but rather as an integral and indeed necessary aspect of all educational program environments.

Let me be perfectly clear: NASA does not tolerate sexual harassment, nor should any organization seriously committed to workplace equality, diversity and inclusion. Science is for everyone, and any behavior that demeans or discourages people from fully participating is unacceptable.

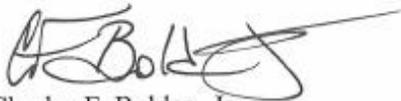
NASA takes very seriously our obligations, both legal and ethical, to make sure that when we provide Federal dollars to a STEM educational program that the program is extending equal opportunity to all of its participants. We seek to help STEM programs nation wide in their efforts to achieve educational environments in which equality of opportunity and inclusion are not just buzzwords, but are internalized by all members of the community and institutionalized in fair and equitable policies and practices. We do so, in part, through program assessments under civil rights laws, such as Title VI of the Civil Rights Act of 1964, which prohibits race, color, and national origin discrimination and harassment among federal funding recipients, and Title IX of the Education Amendments Act of 1972, which prohibits educational funding recipients from engaging in sex discrimination, including sexual harassment and sexual violence. Accordingly, where a grantee’s compliance is at issue, we work closely with the grant recipient institution and other stakeholders, such as the Department of Education’s Office for Civil Rights, to bring that recipient into compliance. No grantee institution that

allows impermissible harassment to go unaddressed can be deemed to be in compliance with civil rights law.

That being said, we must all remain vigilant about protecting the legal rights of those who pursue careers in STEM. I urge all of our NASA grantee institutions to examine closely their current policies and procedures for addressing allegations of misconduct such as harassment. It is critical for educational institutions to address these matters as promptly and equitably as possible. Beyond the law, we must seek to create the kinds of welcoming and supportive program environments in which all students can flourish.

For grantee institution officials or beneficiaries of NASA grants wishing to learn more about rights and responsibilities under the law, I would direct your attention to NASA's MissionSTEM Web site, accessible at <http://missionstem.nasa.gov/index.html>. MissionSTEM is designed as a civil rights technical assistance tool for STEM programs. It provides a wealth of written information and visual material on civil rights requirements, as well as promising practices for achieving greater diversity and creating more inclusive STEM program environments. I urge your institutions to make use of this powerful tool at your disposal. For those who wish to leave a comment or ask a question at MissionSTEM, they may do so at <http://missionstem.nasa.gov/comments-questions.html>.

We must lead the way by refusing to be silent in the face of conduct that is not only illegal but destroys the very fabric of our STEM community. I believe we can grow stronger as a community by arming ourselves with knowledge about the kinds of behavior that are unacceptable and won't be tolerated in our STEM workplaces and educational environments.



Charles F. Bolden, Jr.

## **APPENDIX B: Methodology**

### ***1. Pre-onsite Review Activities***

NASA developed a Title IX compliance review plan (CRP) to identify relevant regulatory requirements, potential issues and specific inquiries needed to conduct a thorough compliance assessment of its grantees. The CRP was developed in consultation with the U.S. Department of Justice (DOJ), Civil Rights Division, and the U.S. Department of Education (ED) Office for Civil Rights (OCR), the lead agencies on Title IX investigations. The CRP identified two focal points for compliance assessment: 1) Title IX procedural compliance requirements; and 2) program administration, that is, policies, procedures, and practices affecting the academic environment (see “Objectives,” above). The CRP also identified the methods by which needed information would be gathered from recipients, including: information requests for statistical data and relevant policies and procedures, and an onsite visit to interview university officials, program faculty, and students. In addition, NASA developed a Title IX literature review to better understand national concerns regarding gender in science, technology, engineering, and mathematics (STEM) fields as well as strategies recipients should undertake to address such concerns, including stronger Title IX compliance efforts in the STEM context.

### ***2. Onsite Compliance Review Activities***

The NASA compliance team conducted an onsite review of the UC Berkeley Department of Astronomy, during April 18-20, 2017. During the visit, the compliance team conducted interviews with the following individuals:

- Chair, Department of Astronomy;
- Dean, Mathematics and Physical Sciences (MPS);
- Director, Science Diversity Programs, MPS;
- Vice Provost for Faculty;
- 13 faculty members;
- 4 post-doctoral researchers and university research staff members;
- 8 graduate students; and
- 5 undergraduate students.

In addition to the one-on-one interviews, NASA reached other Astronomy students with our Title IX survey. NASA, through its NASA Shared Services Center (NSSC), a professional survey administration organization, partnered with Berkeley in deploying an online survey. The purposes of the survey were to: 1) gain a greater understanding of gender dynamics in the University’s academic environment in support of the compliance review analysis and assessment; and 2) provide the University’s administration with an additional tool for assessing the gender dynamics of their academic environment, as part of their efforts to better ensure equal opportunities regardless of gender. Thus, focal points of the survey were program climate, gender discrimination/harassment, and campus safety, including sexual assault and sexual violence. NSSC deployed the survey via email to students during the period of March 15 – April 7, 2017. The survey was sent to all Berkeley Astronomy students and post-docs. The response rate was 50 percent, with 64 surveys completed. Key results of the survey are discussed in NASA’s Compliance Review Analysis (see Section II of the report).

The facts cited in our compliance analysis concerning University's Title IX compliance; student data (including recruitment, admissions, etc.); and program administration and academic environment were obtained from the University's responses to our information request, onsite interviews, and the survey results, unless otherwise specified.