

# **Boston University**

## **Department of Astronomy**

# **Title IX Compliance Report**



**Office of Diversity and Equal Opportunity**  
**February 2016**

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Title IX Compliance Report  
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**TABLE OF CONTENTS**

|   |    |
|---|----|
| I. INTRODUCTION .....   | 3  |
| A. Background .....   | 3  |
| B. Objectives and Scope .....   | 3  |
| C. Methodology .....  | 4  |
| 1. Pre-onsite Review Activities .....   | 4  |
| 2. Onsite Compliance Review Activities .....  | 5  |
| II. COMPLIANCE REVIEW ANALYSIS .....  | 5  |
| A. Designation of Official for Title IX Coordination and Enforcement .....  | 5  |
| 1. Compliance Assessment .....  | 5  |
| a. Title IX Coordinator and Contact Information Dissemination.....  | 6  |
| b. Effective Title IX Coordination: Oversight of the Grievance Process,<br>Authority/Access to Senior Leadership, and Training Efforts..... | 7  |
| 2. Recommendations .....  | 8  |
| 3. Promising Practice .....   | 8  |
| B. Adoption of Grievance Procedures and Policy Dissemination .....  | 9  |
| 1. Compliance Assessment .....  | 9  |
| a. Grievance Procedures.....  | 9  |
| b. Policy Dissemination .....   | 12 |
| 2. Recommendations .....  | 16 |
| 3. Promising Practice .....   | 17 |
| C. Self-Evaluation .....  | 17 |
| 1. Compliance Assessment .....  | 17 |
| 2. Recommendations .....  | 18 |
| D. Recruitment, Admissions, Enrollment, Degrees Earned, and Faculty<br>Recruitment .....  | 19 |
| 1. Compliance Assessment .....  | 19 |
| a. Outreach and Recruitment.....  | 19 |
| b. Graduate Admissions, Enrollment, and Degree Progress .....   | 20 |
| c. Undergraduate Admissions, Enrollments, and Degree Progress .....   | 23 |
| d. Faculty Hires.....   | 24 |
| 2. Recommendations .....  | 24 |
| 3. Promising Practices.....   | 25 |

|  |    |
|--|----|
| E. Program Administration and Academic Environment .....                               | 25 |
| 1. Compliance Assessment .....   | 25 |
| a. Academic Advising and Career Counseling .....                                       | 26 |
| b. Classroom Experiences and Research Participation .....                              | 26 |
| c. Parental/Marital Status (“Family Friendly” Policies).....                           | 27 |
| d. Safety .....  | 29 |
| e. Overall Academic Environment .....  | 29 |
| 2. Recommendations .....   | 29 |
| 3. Promising Practice .....  | 30 |
| III. CONCLUSION .....  | 31 |
| APPENDIX: January 2016 Letter from NASA Administrator to NASA Grant<br>Recipients..... | 32 |

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**I. INTRODUCTION**

NASA conducted a compliance review of the Boston University (BU or the University) Department of Astronomy (the Department or the program), 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, 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 became effective in November 2000. NASA's Title IX compliance program received further impetus with 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> NASA has been involved in many Title IX related compliance activities since the regulations were issued in 2000, conducting a number of limited-scope "desk-audit" as well as onsite reviews of grant recipients.

**B. Objectives and Scope**

NASA sought to achieve the following key objectives in conducting this review:

Objective 1: Evaluation of Boston 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 Boston University program under review; and
- Evaluate the Astronomy Department's provision of equal opportunity regardless of gender in the following areas of program administration: student and faculty

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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). Note that NASA's most recent authorizing legislation does not include this provision; however, as the original provision had no sunset clause, we continue to seek to meet the 2005 requirement.

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), physical safety of the program environment.

Objective 2: Identification of promising practices of Boston University and the Astronomy program designed to promote gender equity, specifically to:

- Describe efforts consistent with the recommendations and focus of the July 2004 GAO report; and
- Determine the extent to which promising practices are actually helping to create greater gender equity and diversity in the program, for both students and faculty.

## **C. 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.<sup>5</sup>

NASA, through its NASA Shared Services Center (NSSC), a professional survey administration organization, partnered with Boston University in deploying an online survey or Title IX Compliance Review Data Collection. 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 Boston 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 September 15 to October 3, 2014. The survey was sent to all Boston University Astronomy students. The response rate was 55 percent (37 of 67 surveys completed). Key results of the survey are discussed in NASA’s Compliance Review Analysis (see Section II below).

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<sup>5</sup> The NASA Title IX Summary Literature Review is accessible on the NASA MissionSTEM Web site: [http://missionstem.nasa.gov/docs/Title\\_IX\\_Summary\\_Lit\\_Rev\\_6-3-13\\_TAGGED.pdf](http://missionstem.nasa.gov/docs/Title_IX_Summary_Lit_Rev_6-3-13_TAGGED.pdf).

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

The NASA compliance team conducted an onsite review of the Boston University Astronomy Department during September 16-18, 2014. During its visit, the compliance team conducted interviews with the following Boston University administrators, faculty members, and staff:

- Virginia Sapiro, Dean, College of Arts and Sciences
- Kim Randall, Executive Director of Equal Opportunity (University Title IX Coordinator)
- Dale Robbins, Assistant Dean of Students and Director of Judicial Affairs
- Alexandra Adams, Director, Faculty Actions; Kerry Buglio, Director, Academic Services (Undergrad); and Laura Wipf, Graduate Services Administrator (Deputy Title IX Coordinators, College of Arts and Sciences)
- Bennett Goldberg, Director, STEM Education Initiatives
- Joyce Wong, Director, Advance, Recruit, Retain and Organize Women in STEM
- Sheryl Grace, NSF ADVANCE Co-Principle Investigator, Associate Professor of Mechanical Engineering
- Maureen Mahoney, Director, Sexual Assault Response and Prevention Center
- Ten Department of Astronomy faculty members (five female and five male), including Department Chair (Theresa Brainerd); the Director of the Center for Space Physics (Merav Opher); and the Department's Director of Graduate Studies (Jeffrey Hughes), Director of Graduate Admissions (Paul Withers), and Director of Undergraduate Studies (Andrew West)

NASA also spoke with two postdoctoral associates, 16 graduate students (eight female, eight male), and six undergraduate students (four female, two male). In addition to the one-on-one interviews, NASA reached a larger number of Astronomy students with our Title IX survey. The facts cited in our compliance analysis below concerning BU 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.

## **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. The associated recommendations are intended to strengthen existing compliance activities. Promising practices associated with each of the compliance areas are also reported.

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

#### **1. Compliance Assessment**

The NASA Title IX regulations state that a recipient must designate an official responsible for Title IX coordination and enforcement, i.e., a "Title IX Coordinator."<sup>6</sup> The recipient must notify all students and employees of the Title IX Coordinator's name, office address, and telephone number. NASA reviewed BU'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

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<sup>6</sup> Designation of responsible employee and adoption of grievance procedures, 14 C.F.R. § 1253.135(a).

campus. In addition, NASA reviewed the Title IX Coordinator's oversight of the grievance process, access to senior leadership, and training efforts with regard to Title IX.

*a. Title IX Coordinator and Contact Information Dissemination*

Boston University's Title IX Coordinator is Executive Director of Equal Opportunity, Kim Randall. Ms. Randall's Title IX responsibilities include: disseminating and implementing BU policies regarding Title IX; monitoring campus-wide Title IX initiatives overseeing internal investigations of complaints of sexual misconduct brought against faculty and staff; developing and presenting training to faculty and staff; and training and working closely with Deputy Title IX coordinators. Ms. Randall uses a variety of means of disseminating Title IX information, such as posting information on several university Web sites, sending emails to students from the Dean of Students each fall, and conducting new student orientation.<sup>7</sup> Information concerning Title IX, the role of the Title IX coordinator, and how to contact the Title IX coordinator is provided to undergraduate students and parents of incoming students during orientation sessions. In both fall 2014 and fall 2015, the Title IX coordinator or a Deputy Title IX coordinator provided this information in person at orientation sessions for incoming graduate students.<sup>8</sup>

Two prominent Web sites that display the University Title IX Coordinator's name, phone number, and email address are the Campus Safety Web site, which provides information on sexual misconduct, and the Equal Opportunity Office (EEO) Web site.<sup>9</sup> The EEO Web site provides extensive information on Title IX, university policies, grievance procedures, and the responsibilities of the University Title IX Coordinator and Deputy Title IX Coordinators. The Title IX Coordinator and Deputy Title IX Coordinators are identified by name and contact information is provided.

During onsite interviews, the compliance team sought to determine the extent to which Astronomy students, faculty, and staff were aware of the Title IX Coordinator, her office, and the purpose of her office. The compliance team found most students and faculty members did not know the name of the Title IX coordinator and some were only aware of the Title IX coordinator because of the NASA compliance review. However, several individuals noted that they were generally aware of the university's Title IX policy through orientation or other information they had received from the university.

Those interviewed also did not mention familiarity with BU's Deputy Title IX Coordinators. The Deputy Title IX Coordinators were appointed in December 2013. According to the University's Web site, Deputy Title IX coordinators "are trained to receive complaints and, in cooperation with the University Title IX Coordinator, address issues of gender-based

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<sup>7</sup> For example, in March 2014, the University Provost and the University Title IX Coordinator sent a letter to all Boston University students reinforcing Boston University's commitment to eliminating sexual misconduct on campus. The letter provided links to information and resources regarding sexual misconduct and discrimination. The letter also provided a link to contact information for the deputy Title IX coordinators in each school and college. Kim Randall, Executive Director, Equal Opportunity Office, Boston University, to Robert Cosgrove, External Compliance Program Manager, NASA Office of Diversity and Equal Opportunity, re: NASA Title IX Compliance Review, April 29, 2014 (hereafter referred to as Boston University response to NASA request for information), exhibit III.A.1.b. The letter is also available at the Boston University Office of the Provost Web site (accessed June 23, 2015, at <<http://www.bu.edu/provost/2014/03/31/title-ix-and-sexual-misconduct/>>).

<sup>8</sup> Kim A. Randall, Executive Director and Title IX Coordinator, Equal Opportunity Office, Boston University, to Rebecca S. Kraus, Ph.D., Civil Rights Analyst, NASA Office of Diversity and Equal Opportunity, re: draft compliance report, November 13, 2015 (hereafter referred to as "BU Response Letter").

<sup>9</sup> Boston University, Campus Safety, "Sexual Misconduct," accessed Feb. 23, 2015, at <<http://www.bu.edu/safety/sexual-misconduct/>>; Boston University, "Title IX," accessed Feb. 23, 2015, at <<http://www.bu.edu/eoo/title-ix-2/>>. Another relevant Web site is the Boston University Sexual Assault Response & Prevention Center, accessed June 23, 2015, at <<http://www.bu.edu/sarp/>>.



discrimination and sexual misconduct within their respective college, school or administrative unit."<sup>10</sup> There are approximately 45 Deputy Title IX Coordinators in various offices and departments across the University. For example, College of Arts & Sciences, which houses the Astronomy Department, has three Title IX Coordinators: the Director of Academic Services, the Graduate Services Administrator, and the Director of Faculty Actions.

*b. Effective Title IX Coordination: Oversight of the Grievance Process, Authority/Access to Senior Leadership, and Training Efforts*

While the NASA Title IX regulations do not provide further specificity regarding the role and effective functioning of the Title IX Coordinator's role, 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.<sup>11</sup> These additional considerations appear in DOJ's document, "Questions and Answers Regarding Title IX Procedural Requirements" (Title IX Q&A).<sup>12</sup> More recently, in April 2015, the U.S. Department of Education (DOEd) Office for Civil Rights (OCR) has offered a Dear Colleague Letter and Resource Guide specifically addressing Title IX coordination, focusing on the authority, responsibilities and training of Title IX Coordinators.<sup>13</sup> In addition, effective Title IX coordination is one of a number of key Title IX requirements addressed in OCR's April 2014 guidance, "Questions and Answers on Title IX and Sexual Violence" (April 2014 Q&A).<sup>14</sup> As its title indicates, this most recent guidance clarifies and expounds on Title IX requirements in the context of addressing sexual violence, but it contains valuable guidance for compliance with a host of Title IX requirements. These are critical documents with which Title IX Coordinators should be well-versed.

**Title IX Coordination Compliance Requirements.** In addition to the contact information dissemination requirement, for purposes of this review, NASA focused on the following key aspects of Title IX coordination:

1. Effective functioning, including skills and competencies, regarding the key responsibilities of administrating 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.

The University's Equal Opportunity Office is responsible for investigating Title IX allegations made against a member of the faculty or staff; allegations made against students are investigated by Judicial Affairs. Investigations are conducted by individuals fully trained in conducting investigations of complaints of discrimination and harassment, including sexual misconduct. All individuals may initiate a complaint of discrimination with the EOO. In addition, faculty and staff may also file a complaint with Human Resources or, if employed in an academic unit, with their dean's office. Students also may initiate a complaint through their dean's office or the Dean of Students. If a student or employee discloses an incident to any other responsible employee on campus, the responsible employee is required to report the matter to the Title IX Coordinator or a Deputy Coordinator. Complainants are also

<sup>10</sup> Boston University, "Title IX," accessed Feb. 23, 2015, at <<http://www.bu.edu/eoo/title-ix-2/>>.

<sup>11</sup> See Executive Order 12250, 3 C.F.R., 1980 Comp. 298. Section 1-203 of the Executive Order states that "[t]he Attorney General shall develop standards and procedures for taking enforcement actions and for conducting investigations and compliance reviews."

<sup>12</sup> This document is accessible at <<http://www.justice.gov/crt/about/cor/coord/TitleIXQandA.php>>.

<sup>13</sup> The DCL is accessible at <<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>>. The resource guide is accessible <<http://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>>.

<sup>14</sup> This document is accessible at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

advised that they may file a complaint with OCR, the Equal Employment Opportunity Commission, or the Massachusetts Commission Against Discrimination, as appropriate. They are not notified that they may also file a complaint with NASA.

The BU Title IX Coordinator provided an initial training to deputy coordinators and holds regular “brown bag” meetings.<sup>15</sup> In addition, the University offers a variety of EO and diversity training opportunities for faculty, staff, and students. All incoming students receive sexual harassment prevention training at orientation; student athletes, student group leaders, and student wellness volunteers are required to attend a bystander intervention training program presented by the University’s Sexual Assault Response and Prevention Center (SARP); and all Resident Assistants are required to attend an introductory training presented by SARP.

Regarding access to top leadership, the Title IX Coordinator reports to a senior vice president who reports directly to the President of the University. Ms. Randall meets with the senior vice president on a monthly basis and more often as needed. She also works closely with the Dean of Students, the Vice President for Administrative Services, the University Police Chief, the General Counsel, and other BU officials.

## **2. Recommendations<sup>16</sup>**

**a. Title IX Coordinator Contact Information.** While contact information is available on the University’s Web site, the University may wish to consider transmitting the information to all students at the beginning of each semester, such as via email. Included with such information could be a brief overview of Title IX and the University’s policies and procedures.

*Update: In its response to our draft report, BU noted incoming students and new employees are provided information regarding Title IX and the Title IX Coordinator during orientation. The University is also considering sending out Title IX information in an email to all students at the beginning of each semester.*

**b. Deputy Title IX Coordinators.** The Equal Opportunity Office should periodically revisit the number of Deputy Title IX Coordinators to ensure that it is a manageable number. For example, ensure that all are properly trained and that replacements are made in a timely manner, as necessary.

*Update: Beginning in Fall 2015, the Title IX Coordinator began working with the Deputy Coordinators in smaller groups based on their areas of interest and expertise, such as meeting with Deputy Coordinators in Student Affairs and focusing on the kinds of incidents that may occur in the student residences, at campus events, and other Student Affairs-related contexts, and how to address such incidents.*

## **3. Promising Practice**

**Extensive Cadre of Deputy Title IX Coordinators.** The Equal Opportunity Office has established and trained Deputy Title IX Coordinators across the many schools and offices of the university.

<sup>15</sup> NASA Interview with College of Arts & Sciences Deputy Title IX Coordinators, September 2014.

<sup>16</sup> Updates to recommendations throughout this report reflect information provided by Boston University in its November 13, 2015, response to a draft of this report. NASA will contact the University one year after the issuance of this report and our compliance report to learn about the progress made toward addressing our recommendations.

## 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>22</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>23</sup>

In 2015, Boston University revised its Title IX policies and procedures and reorganized its Web pages containing the policies or links to the policies. Compliance with regard to (a) the content of the grievance procedures, and (b) policy dissemination, is discussed below.

#### a. Grievance Procedures

NASA's compliance assessment seeks to ensure that Boston 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>24</sup> As the regulations do not provide any further specificity regarding the procedures, NASA looked to key guidance documents from DOJ and ED OCR.<sup>25</sup> These guidance documents provide additional considerations on the basic components of effective, i.e., prompt and equitable,

**Grievance Procedures Compliance Requirements.** In evaluating whether a school's grievance procedures are prompt and equitable, and thus satisfy the Title IX requirement, NASA looks to applicable DOJ and OCR guidance to determine whether the procedures provide for:

1. Notice of the right to file a discrimination complaint with an appropriate Federal agency, either simultaneously with the filing of an internal grievance or after the unsatisfactory resolution of a grievance.<sup>17</sup>
2. Notice to students, parents of elementary and secondary students, and employees of the procedure, including where complaints may be filed;
3. Application of the procedure to complaints alleging harassment carried out by employees, other students, or third parties;
4. Provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
5. Designated and reasonably prompt timeframes for the major stages of the complaint process;
6. Written notice to the complainant and alleged perpetrator of the outcome of the complaint;<sup>18</sup>
7. An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate;<sup>19</sup>
8. Where appeals are part of procedures, they must be accorded equally between the parties;<sup>20</sup>
9. Ease of access and understanding.<sup>21</sup>

<sup>17</sup> DOJ, Title IX Q&A, "Grievance Procedures."

<sup>18</sup> April 2014 Q&A, p. 12.

<sup>19</sup> See OCR Revised Sexual Harassment Guidance, § IX. Prompt and Equitable Grievance Procedures (citations omitted); see also, April 2014 Q&A, p. 12.

<sup>20</sup> April 2011 DCL, p. 12.

<sup>21</sup> Importantly, OCR states that "[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>22</sup> Designation of responsible employee and adoption of grievance procedures, 14 C.F.R. § 1253.135(b).

<sup>23</sup> Dissemination of policy, 14 C.F.R. § 1253.140.

<sup>24</sup> 14 C.F.R. § 1253.135(b).

<sup>25</sup> These include the following: 1) DOJ Title IX Q&A and OCR's 2) Revised Sexual Harassment Guidance, 3) April 2011 "Dear Colleague" letter (DCL) on sexual violence, and 4) April 2014 Q&A.

NASA also looks to the following, regarding which OCR has stated “a school’s Title IX grievance procedures should also explicitly include in writing:”<sup>26</sup>

1. A statement of the school’s jurisdiction over Title IX complaints;
2. Adequate definitions of sexual harassment (which includes sexual violence) and an explanation as to when such conduct creates a hostile environment;
3. Reporting policies and protocols, including provisions for confidential reporting;
4. Identification of the employee or employees responsible for evaluating requests for confidentiality;
5. Notice that Title IX prohibits retaliation;
6. Notice of a student’s right to file a criminal complaint and a Title IX complaint simultaneously;
7. Notice of available interim measures that may be taken to protect the student in the educational setting;
8. The evidentiary standard that must be used (preponderance of the evidence) (i.e., more likely than not that sexual violence occurred) in resolving a complaint;<sup>27</sup>
9. Notice of potential remedies for students;
10. Notice of potential sanctions against perpetrators; and
11. Sources of counseling, advocacy, and support.

grievance procedures in the discrimination and harassment contexts.<sup>28</sup> NASA reviewed the two relevant complaints procedures, (1) Complaint Procedures in Cases of Alleged Unlawful Discrimination or Harassment, and (2) Sexual Misconduct Procedures.

*(1) Complaint Procedures in Cases of Alleged Unlawful Discrimination or Harassment.*

Boston University prohibits discrimination on the basis of: race, color, religion, sex, age, national origin, physical or mental disability, sexual orientation, gender identity, genetic information, military service, or because of a marital, parental, or veteran status. The process for filing complaints under this policy is detailed in the University’s *Complaint Procedures in Cases of Alleged Unlawful Discrimination or Harassment*.<sup>29</sup> Regarding the considerations for effective grievance procedures (identified in the blue boxes above and on this page), NASA notes that several items in the DOJ and OCR guidance are not included and/or are not readily apparent in Boston University’s grievance procedures for complaints of discrimination or harassment.

Although the procedures note that “[t]here are a variety of [university] offices available to receive complaints from students, faculty, and

staff who believe they have been subjected to unlawful discrimination,”<sup>30</sup> the procedures do

<sup>26</sup> April 2014 Q&A, p. 13.

<sup>27</sup> April 2011 DCL, p. 11, stating: “[I]n order for a school’s grievance procedures to be consistent with Title IX standards, the school must use a preponderance of the evidence standard (i.e., it is more likely than not that sexual harassment or violence occurred). The “clear and convincing” standard (i.e., it is highly probable or reasonably certain that the sexual harassment or violence occurred), currently used by some schools, is a higher standard of proof. Grievance procedures that use this higher standard are inconsistent with the standard of proof established for violations of the civil rights laws, and are thus not equitable under Title IX. Therefore, preponderance of the evidence is the appropriate standard for investigating allegations of sexual harassment or violence.” April 2011 Dear Colleague letter, § Prompt and Equitable Requirements, (B) Adequate, Reliable, and Impartial Investigation of Complaints; see also April 2014, Q&A, p. 13.

<sup>28</sup> The DOJ Title IX Q&A 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>29</sup> Boston University, Equal Opportunity Office, “Equal Opportunity/Affirmative Action Policy,” effective June 1, 2015, accessed June 23, 2015, at <<http://www.bu.edu/eoo/policies-procedures/equal-opportunity/>>. The compliance procedures are located at three separate locations on the university Web site: Boston University, Equal Opportunity Office, “Complaint Procedures in Cases of Alleged Unlawful Discrimination or Harassment” accessed March 12, 2015, at <<http://www.bu.edu/eoo/policies-procedures/complaint/>>; Boston University, Academics, Policies, “Complaint Procedures in Cases of Alleged Unlawful Discrimination or Harassment” accessed March 12, 2015, at <<http://www.bu.edu/academics/policies/complaint-procedures-in-cases-of-alleged-unlawful-discrimination-or-harassment/>>; and Boston University, Dean of Students, Policies, Lifebook, Grievance and Complaint Procedures, “Complaint Procedures in Cases of Alleged Unlawful Discrimination or Harassment” accessed March 12, 2015, at <<http://www.bu.edu/dos/policies/lifebook/grievance-and-complaint-procedures/>>.

<sup>30</sup> Boston University, Equal Opportunity Office, “Complaint Procedures in Cases of Alleged Unlawful Discrimination or Harassment.” The *Equal Opportunity/Affirmative Action Policy* notes that “[i]nquiries concerning

not state that a complaint can be filed with OCR or NASA. The procedures also do not include an assurance that the university will take steps to prevent recurrence of harassment and to correct its discriminatory effects, if appropriate.

Further, the appeals process is unclear. The procedures refer the reader to the appropriate appeals processes outlined in the faculty and employee handbooks and the *Code of Student Responsibilities*. However, the faculty and employee handbooks clearly state that the grievance procedures outlined in those documents **do not** apply to cases of discrimination or harassment. For example, the complaint procedures note that "Any action involving faculty will be consistent with the procedures outlined in the *Faculty Handbook*." Yet, the faculty handbook section on the grievance procedures states: "Please note that all allegations of *unlawful discrimination or harassment* are to be processed under the University's policy regarding '*Alleged Unlawful Discrimination or Harassment*', rather than through the Grievance Procedure described here"<sup>31</sup> (note that there is no *policy* titled, "Alleged Unlawful Discrimination or Harassment," as the handbook suggests; the policy is titled *Equal Opportunity/Affirmative Action Policy*). The handbook then provides a link back to *the Complaint Procedures in Cases of Alleged Unlawful Discrimination or Harassment*. Thus, a process for appealing a decision is not outlined in either document.

Similarly, no appeals process for discrimination or harassment cases is identified in the employee handbook. Like the faculty handbook, this handbook states, "this grievance process does not apply to and should not be used for complaints alleging unlawful discrimination or harassment, including sexual harassment" and notes that individuals who believe they have been subjected to unlawful discrimination or harassment should refer to the *Complaint Procedures in Cases of Alleged Unlawful Discrimination or Harassment*.<sup>32</sup> While the *Code of Student Responsibilities* clearly explains the appeal procedures for students found guilty of violations of the code, it does provide procedures for complainant appeals in cases of discrimination or harassment. Nonetheless, the OCR guidance makes it clear that if a school provides for an appeal of the findings or the remedy, it must provide an appeals process for **both parties**.<sup>33</sup>

Finally, the *Complaint Procedures in Cases of Alleged Unlawful Discrimination or Harassment* make no reference to Title IX or other anti-discrimination laws (other than to refer one to the Sexual Misconduct/Title IX Policy and the procedures for the resolution of sexual misconduct complaints, which do refer to Title IX, Title VII of the Civil Rights Act of 1964, and other applicable laws). In fact, under Section V, "Appeals," the document concludes:

These procedures shall constitute the grievance procedures mandated by the regulations implementing Section 504 of the Rehabilitation Act of 1973. The procedures for student grievances under Section 504 are set forth below in the ***Student Grievance Procedure in Cases of Alleged Disability Discrimination***.

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application of Title IX" may also be directed to OCR, but does not clearly state that a complaint may be filed with OCR or other Federal agency.

<sup>31</sup> Boston University, Office of the Provost, "Grievance Procedure," Faculty Handbook, accessed March 12, 2015, at <<http://www.bu.edu/handbook/human-resources/grievance-procedure/>>

<sup>32</sup> Boston University, Human Resources, *Employee Handbook*, rev. April 2015, accessed June 23, 2015, at <<http://www.bu.edu/hur/documents/employee-handbook.pdf>> NASA also notes that the *Employee Handbook* provides a link to the University's "Sexual Harassment Policy," which has been superseded by the *Sexual Misconduct/Title IX Policy* and removed from the University Web site. When the reader clicks on the link, he or she is taken to the location of former policy on the EOO Web site, but gets the message, "We cannot find the page you want..." It is unclear from this page that there is a new policy. Boston University, Equal Opportunity Office, accessed July 10, 2015, at <<http://www.bu.edu/eoo/policies-procedures/sexual-harassment/>>.

<sup>33</sup> April 2011 DCL, p. 12.

The above paragraph is confusing and should be revised to more clearly refer to laws and/or regulations relevant to this policy and the procedures.

(2) *Sexual Misconduct Procedures*. Boston University's *Sexual Misconduct/Title IX Policy* notes that the University does not discriminate on the basis of sex in its educational programs or in the context of employment and notes that sexual misconduct, including sexual harassment, is a form of sex discrimination prohibited by Title IX. The policy further notes: "'sexual misconduct' is a broad, non-legal term that encompasses a wide range of behaviors, including but not limited to, sexual harassment, sex/gender discrimination, sexual assault, rape, acquaintance rape, stalking, and relationship violence (including dating and domestic violence."<sup>34</sup> However, under the definitions of prohibited conduct, the procedures only define: sexual assault (including rape), sexual harassment, sexual exploitation, stalking, relationship violence, and retaliation. Other forms of sex discrimination are not addressed, nor is the reader referred to the *Complaint Procedures in Cases of Alleged Unlawful Discrimination or Harassment*. Thus, it is unclear what the University's policy and procedures are for other forms of sex discrimination.

There are two sets of procedures related to this policy, one for complaints against students<sup>35</sup> and another for complaints against faculty, staff, affiliates, and non-affiliates of the University.<sup>36</sup> These procedures generally meet the Department of Education's requirements. However, the student procedures contain more detail concerning potential remedies for victims and potential sanctions against perpetrators. Further, the student procedures identify additional rights of the complainant and respondent that are not listed in the faculty/staff procedures. Notably absent from the list provided in the faculty/staff procedures are the following rights:

- To have an advisor present throughout the process;
- To participate or decline to participate in the investigation or complaint resolution process;
- Adequate time to review documents;
- To appeal the decision made or any sanctions imposed; and
- To refrain from making self-incriminating statements.

Given that a student could be a complainant under both procedures, it is curious that they do not seem to have the same rights under both procedures. The procedures for complaints against faculty, staff, and others clearly note that the respondent has the right to appeal, but do not provide for the complainant's right to appeal.

#### *b. Policy Dissemination*

Relevant OCR and DOJ guidance also informed NASA's assessment of the University's compliance with the regulatory provision requiring dissemination of Title IX policy and

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<sup>34</sup> Boston University, Campus Safety, *Sexual Misconduct/Title IX Policy*, effective Jan. 1, 2015, accessed March 3, 2015, at <<http://www.bu.edu/safety/sexual-misconduct/title-ix-bu-policies/sexual-misconducttitle-ix-policy>>.

<sup>35</sup> Boston University, Safety, Sexual Misconduct, Title IX and BU Policies, "Student Sexual Misconduct Procedures: Procedures for the Resolution of Sexual Misconduct Complaints Against Students," effective January 1, 2015, accessed March 12, 2015, at <<http://www.bu.edu/safety/sexual-misconduct/title-ix-bu-policies/student-sexual-misconduct-procedures/>>.

<sup>36</sup> Boston University, Safety, Sexual Misconduct, Title IX and BU Policies, "Faculty/Staff Sexual Misconduct Procedures: Procedures for the Resolution of Sexual Misconduct Complaints Against Faculty, Staff, Affiliates and Non-Affiliates," effective Jan. 1, 2015, accessed March 12, 2015, at <<http://www.bu.edu/safety/sexual-misconduct/title-ix-bu-policies/facultystaff-sexual-misconduct-procedures/>>.

procedures.<sup>37</sup> NASA has some concerns about the appropriate dissemination, particularly ease of access, to Boston University's policies and procedures for Title IX. These policies can be found in various combinations on four University-wide Web sites for students (the Equal Opportunity Office, Academics, the Dean of Students, and Safety), only one of which, Academics, is directly accessible from the University's home page. Further, only the Web site for the Equal Opportunity Office contains links to both policies and, as of July 2015, the Academics site contained links to outdated policies.

**Policy Dissemination Compliance Requirements.** OCR's guidance emphasizes the need for recipient institutions to have "well-publicized" grievance procedures.<sup>38</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>39</sup> Importantly, OCR stated in its Revised Sexual Harassment Guidance (2001): 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 for students, parents of elementary and secondary students, faculty, and staff; and identifying individuals who can explain how the procedures work.<sup>40</sup>

More recently, in its April 2011 Dear Colleague letter on Title IX and sexual violence, OCR has advised grant recipients that their "grievance procedures be prominently posted on school Web sites; sent electronically to all members of the school community; available at various locations throughout the school or campus; and summarized in or attached to major publications issued by the school, such as handbooks, codes of conduct, and catalogs for students, parents of elementary and secondary students, faculty, and staff."<sup>41</sup> DOJ regulations also make Federal funding agencies and recipient institutions responsible for disseminating information materials, e.g., handbooks, manuals, pamphlets, to ensure program beneficiaries are aware of their rights pursuant to EO law.<sup>42</sup>

NASA made the following observations regarding the primary Web sites for Title IX and student information:

- Of the many places and ways the information is displayed on Boston University's various Web pages, the EOO Web site is the most comprehensive and most accessible location for the materials. Within the EOO Web site, both the landing page and the page for "Policies & Procedures" contain links to the Equal Opportunity/Affirmative Action and Sexual Misconduct/Title IX policies.<sup>43</sup> Clicking on the *Equal Opportunity/Affirmative Action Policy* takes one to a separate page within the EOO

<sup>37</sup> See, e.g., U.S. Department of Justice Civil Rights Division, *Title IX Legal Manual* (Jan. 11, 2001), § V.E., p. 111 (accessible at <<http://www.usdoj.gov/crt/cor/coord/ixlegal.htm>>); OCR Revised Sexual Harassment Guidance.

<sup>38</sup> See OCR Revised Sexual Harassment Guidance, Preamble, "Enduring Principles from the 1997 Guidance."

<sup>39</sup> *Ibid.*, § V(D), "The Role of Grievance Procedures."

<sup>40</sup> *Ibid.*, § IX. Prompt and Equitable Grievance Procedures (emphasis added).

<sup>41</sup> April 2011 Dear Colleague letter, § Prompt and Equitable Requirements, (A) Notice of the grievance procedures.

<sup>42</sup> Public dissemination of Title VI information, 28 C.F.R. § 42.405(c).

<sup>43</sup> Boston University, Equal Opportunity Office, "Welcome to EOO," accessed March 10, 2015, at <<http://www.bu.edu/eoo/>>; Boston University, Equal Opportunity Office, "Policies & Procedures," accessed March 10, 2015, at <<http://www.bu.edu/eoo/policies-procedures/>>. The link for the Equal Opportunity/Affirmative Action takes the reader to a separate page with the EOO Website: Boston University, Equal Opportunity Office, "Equal Opportunity/Affirmative Action Policy," accessed March 10, 2015, at <<http://www.bu.edu/eoo/policies-procedures/equal-opportunity/>>. The link to the Sexual Misconduct policy takes the reader to a page on the Campus Safety Web site: Boston University, Campus Safety, "Sexual Misconduct/Title IX Policy," accessed March 10, 2015, at <<http://www.bu.edu/safety/sexual-misconduct/title-ix-bu-policies/sexual-misconducttitle-ix-policy/>>.

Web site which provides the policy as well as a link to the relevant complaint procedures. However, clicking on the *Sexual Misconduct/Title IX Policy* takes the reader to an entirely different part of the university's Web site, the Campus Safety Web site.<sup>44</sup>

- The Safety Web site was established in 2014. This new site covers five main areas: Campus Safety, Sexual Misconduct, Alcohol & Drugs, Hazing, and Protecting Minors.<sup>45</sup> The page on Sexual Misconduct contains links to pages on the Campus Safety Web site containing information on: what to do if someone has been sexually assaulted, how to report both sexual assault and sexual misconduct, Title IX and other University policies, definitions of sexual misconduct, and legal and educational resources. Clicking on "Read more" under Title IX & BU Policies takes the reader to another page that provides links to the sexual misconduct policies and procedures, among other things. This page provides the contact information for the Title IX Coordinator, but does not provide a link to the EOO Web site or the University's *Equal Opportunity/Affirmative Action Policy*.
- The Dean of Students Web site has a page for student-related policies that contains The Lifebook (criteria for student conduct) and Student Responsibilities (code of student responsibilities). The Lifebook section contains links to "Grievance & Complaint Procedures" and "Sexual Misconduct Policies."<sup>46</sup> The first link takes the reader to another page on the Dean of Students site that displays the *Complaint Procedures in Cases of Alleged Unlawful Discrimination or Harassment*; the second link takes the reader to the Campus Safety Web page on Sexual Misconduct. The Dean of Students Web site appears to make no mention of the University's Title IX Coordinator nor does it link to the policies and procedures on the EOO Web site.
- On the main Web site for the university (www.bu.edu), there is a tab for "Academics." On the "Policies" page of the Academics site there are links for the "Harassment and Discrimination" policies.<sup>47</sup> As late as July 2015, this page had links for: (a) *Complaint Procedures in Cases of Alleged Unlawful Discrimination or Harassment*,<sup>48</sup> (b) *Equal Opportunity/Affirmative Action Policy*,<sup>49</sup> and (c) *Sexual*

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<sup>44</sup> Boston University, Equal Opportunity Office, "Equal Opportunity/Affirmative Action Policy," accessed March 10, 2015, at <<http://www.bu.edu/eoo/policies-procedures/equal-opportunity/>>; Boston University, Campus Safety, "Sexual Misconduct/Title IX Policy," accessed March 10, 2015, at <http://www.bu.edu/safety/sexual-misconduct/title-ix-bu-policies/sexual-misconducttitle-ix-policy/>.

<sup>45</sup> Boston University, "Campus Safety," accessed March 10, 2015, at <<http://www.bu.edu/safety/network/>>. According to the Title IX Coordinator, several safety and security-related Web sites were consolidated into a new Safety Web site in 2014.

<sup>46</sup> Boston University, Dean of Students, Policies, "Lifebook," accessed March 10, 2015, at <<http://www.bu.edu/dos/policies/lifebook/>>. NASA notes that Boston University has been updating its various Web pages to reflect the new policies. As late as July 10, 2015, however, at least one page remained referencing the former policy, *Sexual Misconduct and the Judicial Process*, although there appear to be no external links to it (i.e., it is only found by searching the terms using the University's search engine). The page notes that there is a new policy, but the link provided does not work. Boston University, Dean of Students, "Sexual Misconduct and the Judicial Process," accessed July 10, 2015, at <<http://www.bu.edu/dos/2011/11/17/sexual-misconduct-judicial-process-bu/>>.

<sup>47</sup> Boston University, Academics, "Policies," accessed July 9, 2015, at <<http://www.bu.edu/academics/policies/>>.

<sup>48</sup> Boston University, Academics, Policies, "Complaint Procedures in Cases of Alleged Unlawful Discrimination or Harassment" accessed July 9, 2015, at <<http://www.bu.edu/academics/policies/complaint-procedures-in-cases-of-alleged-unlawful-discrimination-or-harassment/>>. In fall 2015, this page was updated to include a link to "the most up-to-date policy" on the new Boston University Policies Web site. However, when NASA attempted to follow the updated link, we instead were sent to a "staging" Web site that was inaccessible: <<http://www-staging.bu.edu/policies/employment/alleged-unlawful-discrimination-or-harassment/>> (accessed Nov. 23, 2015).

<sup>49</sup> Boston University, Academics, Policies, "Equal Opportunity/Affirmative Action Policy," accessed July 9, 2015, at <<http://www.bu.edu/academics/policies/equal-opportunity-policy/>>.



*Harassment Policy*.<sup>50</sup> The links took the reader to separate pages within the Academics Web site that reproduce these policies and procedures; they are not linked to the EOO or Campus Safety Web sites. Further, only one of these three documents is current. The relevant complaint procedures had not been updated to reflect the new *Sexual Misconduct/Title IX Policy*, which replaced the *Sexual Harassment Policy* (the *Sexual Harassment Policy* has been removed from other University Web sites).

In fall 2015, the University reorganized its policies and procedures into a new Web site with the following sections: Academics, Employment, Ethics & Governance, Finance & Administration, Information Security & Technology, Research & Scholarly Activities, and Student Life. Four sections contain links to the EO and Sexual Misconduct policies. However, these sections do not link to the EOO Web site or the Safety Web site, but to places within the Policies Web site where the policies have been reproduced. Further, some links seem misplaced. The Academics section links to the EO/AA Policy in the Employment section and in the Employment section, the link to the EO/AA Policy for Faculty takes the reader to the Student Life section. However, it may be more efficient to link directly to the Sexual Misconduct section of the BU Safety Web site and the EO/AA Policy on the EOO Web site. The more places the policies are reproduced, the more links that need to be updated when changes are made.<sup>51</sup>

Individual schools of the University may also have Title IX policies posted. For example, the College of Arts and Sciences has a brief statement on discrimination and harassment in its "Faculty & Staff" section, which provides links to resources such as: the EOO, Office of the Ombuds, Behavioral Medicine (mental health resources), Sexual Assault Response & Prevention, and Safety & Emergency Information.<sup>52</sup> However, the link to the EOO Web site takes one to an outdated page on the EOO Web page with the message, "We cannot find the page you want..."<sup>53</sup> Previously, this page was titled, "What is Title IX?," and provided detailed information on Title IX, Title IX Coordinators, University policies, and campus resources.<sup>54</sup> Although some of this information has been moved to the Campus Safety Web site, the basic information on sex discrimination is no longer on the Web site. While it is understandable that there are many layers to the Boston University Web site, when policy changes are made it is imperative that the university community is made aware of such changes and that the Web site and other sources of information are fully updated.

Web site searches for terms such as "sex discrimination," "sexual assault," and other Title IX-related terms do not consistently provide links to Title IX policies. A Google search for the term "sexual harassment" within the Boston University Web site first takes one to the *Sexual Harassment Policy* on the Academics Web site. The third link on the list is to the Policies and Procedures page on the EOO Web site.<sup>55</sup> Nonetheless, a Google search on the BU Web site for the terms "gender discrimination" and "sex discrimination" do not provide

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<sup>50</sup> Boston University, Academics, Policies, "Sexual Harassment Policy," accessed July 9, 2015, at <<http://www.bu.edu/academics/policies/sexual-harassment-policy/>>. Note: This policy was removed after a draft of this report was forwarded to the University in September 2015.

<sup>51</sup> In its response to our draft report, BU noted that it is in the process of finding and taking down any free-standing copies of the equal opportunity and non-discrimination policies and procedures from department Web sites and instead linking to the official BU Policies Web site. BU Response Letter, November 13, 2015.

<sup>52</sup> Boston University, Arts & Sciences, Faculty and Staff, "Discrimination and Harassment," accessed July 10, 2015, at <<http://www.bu.edu/cas/faculty-staff/administration/discrimination-and-harassment/>>.

<sup>53</sup> Boston University, Equal Opportunity Office, accessed July 10, 2015, at <<http://www.bu.edu/eoo/title-ix-2/>>.

<sup>54</sup> Boston University, Equal Opportunity Office, "What is Title IX?," accessed Feb. 23, 2015, at <<http://www.bu.edu/eoo/title-ix-2/>>.

<sup>55</sup> Boston University Web site search, accessed Feb. 23, 2015 (and replicated on July 10, 2015), at <<http://www.bu.edu>>.

links to the EOO Web site or the Safety Web site. Ironically, the first article appearing in the list of search results carries the headline, "New Paper ... Finds Gender Discrimination Irrelevant in Math-Intensive Fields."<sup>56</sup>

In addition to its Title IX Web site, the University employs other means of Title IX information dissemination. Title IX information also is provided to students at the beginning of the fall and spring semesters through new student orientation. Each fall, the Dean of Students sends a message to all new and returning students providing links to student resources such as the Code of Student Responsibilities and resources related to student safety. Further, the university pamphlet, *Have you Experienced Sexual Assault, Sexual Harassment, Stalking, or Domestic or Dating Violence?*, is distributed throughout campus and in offices such as: Residence Life, Student Activities, the Department of Athletics, the Fitness and Recreation Center, and Student Health Services. In addition, the University has developed a mandatory online training program on sexual misconduct for faculty and staff, which was launched in November 2014.<sup>57</sup> The University is planning to implement a similar training for students.

## 2. Recommendations

**a. Grievance Procedures.** The University should ensure that the grievance procedures for both the *Equal Opportunity/Affirmative Action Policy* and *Sexual Misconduct/Title IX Policy* include all of the compliance considerations identified by OCR, including: (1) notice of the right to file a discrimination complaint with NASA or OCR; (2) assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate; (3) appeals must be accorded equally between the parties; (4) ease of access and understanding; (5) notice of potential remedies for students; and (5) notice of potential sanctions against perpetrators.

In addition, BU should ensure that the appeals processes for both faculty and staff are clearly explained in the *Complaint Procedures for Cases of Alleged Unlawful Discrimination or Harassment*, and the appeals process for both complainants and respondents is incorporated into the procedures. Further, the University should ensure that the Student and Faculty/Staff Sexual Misconduct Procedures are compatible. For example, to the extent possible, ensure that both sets of procedures afford students the same rights and protections. In addition, the appeals process for both complainants and respondents should be clearly explained in both sets of procedures.

**b. References to Current Policies.** As both the policies and the related procedures were revised in 2015, the University should revise all links and references to those policies as well. For example, the Employee Handbook should be updated so that it links to the current *Sexual Misconduct/Title IX Policy*.

*Update: In BU's response to a draft of this report, it was noted that the University is in the process of updating the Employee Handbook.*

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<sup>56</sup> Boston University Web site search, accessed Feb. 23, 2015 (and replicated on July 10, 2015), at <<http://www.bu.edu>>. The search finds the page, Boston University, Questrom School of Business, "New Paper from Shulamit Kahn Finds Gender Discrimination Irrelevant in Math-Intensive Fields," accessed July 10, 2015, at <<http://www.bu.edu/questrom/2014/10/09/new-paper-from-shulamit-kahn-finds-gender-discrimination-irrelevant-in-math-intensive-fields/>>.

<sup>57</sup> Leslie Friday, "Sexual Misconduct Trainings Roll Out," BU Today, Nov. 21, 2014, accessed March 3, 2015, at <<http://www.bu.edu/today/2014/sexual-misconduct-trainings-roll-out/>>.

**c. Ease of Finding Policies on Boston University Web sites.** Regarding the Title IX-related policies found on the various university Web sites, BU should:

- (1) Ensure that relevant Title IX policies reside in only one or two places on the University Web site, such as the sites for EOO and Campus Safety. Other University Web sites should link to those pages, not reproduce the policies and procedures.
- (2) Ensure that all links to former policies (including broken links and nonfunctional links) are removed or updated to link to the current policies.
- (3) Provide additional information on and links to the EOO Web site from the Safety Web site.
- (4) Use search engine optimization to ensure that searches for terms like "sex discrimination," "sexual harassment," and "sexual harassment" lead one to policies and procedures or Web sites where individuals can obtain information and assistance.

*Update: BU noted that it has developed a new BU Policies Web site where all University policies appear in one place, grouped for easier access to related documents.*

**d. Information on Sex Discrimination.** BU should clarify which policies are applicable to sex discrimination when it does not take the form of sexual misconduct, such as allegations of differential treatment based on gender, for example, in admissions, grading or testing policies or practices. Although the *Sexual Misconduct/Title IX Policy* references sexual harassment, the policy is geared toward actions such as sexual assault, and it is unclear how the policy addresses sexual harassment and other forms of gender discrimination.

*Update: BU noted that as of November 2015, the Faculty Handbook has been updated to clarify that sexual misconduct allegations will be handled under the Sexual Misconduct/Title IX Policy (and Sexual Misconduct Procedures) while sex and gender discrimination complaints will be handled under the Equal Opportunity/Affirmative Action Policy (and the Complaint Procedures in Cases of Alleged Unlawful Harassment or Discrimination). The University is also in the process of making changes to the equal opportunity and non-discrimination policies and procedures to ensure students and employees know which policies and procedures addresses their concerns.*

### **3. Promising Practice**

**Sexual Assault Information.** Boston University distributes its pamphlet, *Have you Experienced Sexual Assault, Sexual Harassment, Stalking, or Domestic or Dating Violence?*, in a variety of locations across campus and recently created a new Web site to provide information on Campus Safety and its revised *Sexual Misconduct/Title IX Policy*. Such actions help increase awareness of such issues on campus.

## **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>58</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 gender. They also provide an opportunity to evaluate trends over time and to develop mechanisms for proactively addressing emerging issues.

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<sup>58</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>59</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.

Participation in this Title IX review and reviewing the data requested by the NASA Office of Diversity and Equal Opportunity for conducting this review is a good start to conducting a self-evaluation. In addition, Boston University's response to the NASA information data request noted that the EOO, Office of General Counsel, and other relevant administrative offices continually review the universities policies, procedures, training, and outreach efforts to ensure compliance with Title IX and related regulations. In fact, the University's equal opportunity and sexual harassment policies were updated in 2011, 2013, and 2015 (see above discussion of the policies and procedures). In 2013, the Boston University created the Sexual Misconduct Coordinating Committee, which meets five times a year to review program on various initiatives.

Further, in the spring semester of 2015, Boston University conducted a confidential student sexual assault survey. The purpose of the survey was to determine the extent of sexual violence on campus and students' perceptions of the campus climate, policies, and resources. The results of the survey will help the University provide better support of those who have experience sexual violence and help develop prevention tools.<sup>60</sup>

## **2. Recommendations**

**a. Regular Departmental Title IX Self-Evaluations.** The Department of Astronomy, as well as other STEM departments, should conduct self-evaluations on a regular basis. Departments should refer to NASA's guide for conducting Title IX self-evaluations for information and suggestions on how to conduct such evaluations.

*Update: The University informed us that the Astronomy Department is scheduled to conduct its next Academic Program Review in 2016-17. It will conduct these formal reviews every eight years thereafter, with midterm reviews in between.*

**b. University-wide Title IX Evaluations.** Boston University's Title IX Coordinator should participate in (with the appropriate offices and committees) regular Title IX evaluations of Title IX-related policies, procedures, and practices, such as those related to employment practices of academic and nonacademic personnel.

*Update: BU noted the Title IX Coordinator reviews BU's employment practices each year for the annual Affirmative Action Plan. She also works closely with Human Resources to review recruitment practices. A member of her staff works closely with the Provost's Office regarding faculty searches.*

<sup>59</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>60</sup> Boston University, Dean of Students, "Student Climate Survey FAQs," March 11, 2015, accessed July 10, 2015, at <<http://www.bu.edu/dos/2015/03/11/student-climate-survey/faqs/>>.

## D. Recruitment, Admissions, Enrollment, Degrees Earned, and Faculty Recruitment<sup>61</sup>

### 1. Compliance Assessment

The NASA Title IX regulations state that recipients may not discriminate on the basis of sex in admissions and recruitment.<sup>62</sup> Consistent with this requirement, 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 the comprehensive and qualifying exams. The review was based on five academic years: 2009-10 through 2013-14.

#### a. Outreach and Recruitment

The Department of Astronomy appears to have limited recruiting efforts for graduate students. The Department advertises its program on its Web pages and sends flyers to other university astronomy departments. In recent years, because of low numbers of female graduate students, they have reached out to colleagues at women's colleges such as Wellesley and Bryn Mar to encourage applicants. Recruitment is also done at the annual meeting of the American Astronomical Society.

During the onsite interviews, it was noted that the Department had no reason to know which undergraduates at other universities are likely to be strong enough to be admitted to the graduate program and that they do not want to mislead women who may not be good candidates. Thus, they mostly contact the department chairs at other schools and ask them to encourage strong candidates to apply. Similarly, the Department has no formal undergraduate recruitment program. Some faculty members noted that faculty may contact students who are doing well in physics and calculus to encourage them to pursue Astronomy.

However, NASA notes that there are several departmental and university-wide programs that may be useful in recruiting and retaining undergraduate students in Astronomy and other STEM fields. These include:

- Pre-Majors Program. Originally part of the University's First-Year Experience program, the Department of Astronomy offers a "Pre-Majors in Astronomy Program" (Pre-MaP) that is modelled after a similar program at the University of Washington.

**Admissions and Recruitment Compliance Requirements.** NASA's Title IX regulations prohibit discrimination on the basis of sex in admission and recruitment to educational programs or activities receiving financial assistance from NASA. Specifically, the regulations prohibit educational institutions from such activities as:<sup>63</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 of 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 recruitment, advertising, and the process of application for employment.<sup>64</sup>

<sup>61</sup> All data in this section pertaining to Boston University students was provided by the University in response to NASA's information request.

<sup>62</sup> Admission, 14 C.F.R. §1253.300; Recruitment § 1253.310.

<sup>63</sup> 14 C.F.R. §1253.300-1253.455.

<sup>64</sup> 14 C.F.R. §1253.500.

This program is designed to recruit, mentor, and train underrepresented first-year students in Astronomy. Offered during the fall semester, the Pre-MaP teaches basic computer programming, data analysis, and research skills. The program also introduces students to the University and the college environment.<sup>65</sup>

- Graduate Women in Science and Engineering (GWISE). GWISE is a university-wide graduate student organization that supports and promotes women in STEM. GWISE offers networking, educational, and outreach opportunities for the Boston University community. Several Astronomy students and faculty have been involved with this program.<sup>66</sup>
- Specialty Community Residences. Boston University maintains a variety of specialty residences for students. Two of these are aimed at female STEM students. For freshmen women, WISE@Warren is a residency floor in Warren Towers for women interested in studying Science and Engineering who have signed up for a First Year Experience program. WISE@Warren provides evening programming, peer mentors, and other social and academic programs. WISE-UP House is a specialty residence for upper class (sophomore, junior, and senior) female students who have declared STEM majors. Activities include special seminars, interaction with STEM female faculty, peer and graduate student mentoring, academic support, STEM career experiences, creativity and innovation, and societal outreach in STEM.<sup>67</sup>
- Office of STEM Education Initiatives. Created in 2013, this office is responsible for oversight and coordination of the University's efforts to improve the effectiveness of instruction in STEM fields at the University.<sup>68</sup>
- ARROWS: Advance, Recruit, Retain & Organize Women in STEM. The mission of ARROWS is "to organize, align, and vertically integrate programs created to advance women throughout the STEM community at Boston University."<sup>69</sup> The program provides information on University programs, organizations, events, and activities for faculty, graduate students, post-doctoral students, and undergraduates.

In addition, the Astronomy Department participates in a number of K-12 outreach programs including women and underserved minorities.

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

### *(i) Admissions Process*

Prospective students must submit the following with their applications for graduate admissions: transcripts, three recommendations, official GRE General Test score report, personal statement/statement of purpose, and a curriculum vitae. In addition, the expected qualifications for the program are clearly stated on the Astronomy Department Web site.

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<sup>65</sup> Boston University, Department of Astronomy, "About Pre-Map," accessed Aug. 20, 2015, at <<http://www.bu.edu/astronomy/undergraduate/premap/premapmission/>>.

<sup>66</sup> Boston University, Graduate Women in Science and Engineering, "Welcome to GWISE!" accessed Aug. 24, 2015, at <<http://www.bu.edu/gwise/>>.

<sup>67</sup> Boston University, Housing, "List of specialty community residences," accessed Aug. 24, 2015, at <<http://www.bu.edu/housing/residences/specialty/list/>>; Boston University, WISE@Warren, "About WISE@Warren," accessed Aug. 24, 2015, at <<https://www.bu.edu/prostars/wise/about.html>>.

<sup>68</sup> Boston University, STEM Education Initiatives, "About STEM Education Initiatives," accessed Aug. 26, 2015, at <<http://www.bu.edu/stem/about/>>.

<sup>69</sup> Boston University, ARROWS, "Mission," accessed Aug. 26, 2015, at <<http://www.bu.edu/arrows/about/mission/>>.

These include undergraduate courses in: mechanics, electromagnetism, atomic and nuclear physics, optics, and thermodynamics/statistical mechanics.<sup>70</sup> Although not explicitly stated on the Web site, in considering students for admission, the Department's Graduate Admissions Committee (GAC) considers not only the quality of applicants' undergraduate preparation, but also their prior research experience.

Once the Department has identified applicants to whom it wishes to offer admission, it makes recommendations to the Graduate School of Arts and Sciences, which makes formal offers to the candidates. Once the offers are made, the prospective students are contacted by three members of the Department: a GAC member, a faculty working in the student's area of interest, and a current graduate student. These prospective students also are invited to visit the University in February or March.

(ii) Graduate Admissions, Enrollment, Departures and Financial Aid

In the past six academic years (2008-09 through 2013-14), 40 students matriculated into Boston University's Ph.D. program in Astronomy; women accounted for 40 percent of these new students (see Table 1). On average, total enrollment in the Program was approximately 38 Ph.D. students each year, with women accounting for 47 percent of the students. This is higher than women's representation in Astronomy programs across the United States, where women account for 31 percent of all graduate students in Astronomy.<sup>71</sup>

On average, over the past six years, women have accounted for 43 percent of applicants and 38 percent of those accepted into the Ph.D. program. While the percentage of applications that are from women has remained relatively stable during this time, the percentage of those accepted who are women has fluctuated from year to year (for example, women accounted for less than 25 percent of those accepted in academic years 2009-10 and 2011-12, but were nearly half of those accepted in 2008-09). Further, the percentage of matriculants who are women has recently declined (see Table 1.) In particular, NASA notes with concern that since academic year 2011-12, only one woman enrolled in the program and she ultimately withdrew. Thus, the 2011, 2012, and 2013 student cohorts consist entirely of men.

Table 1. Applicants, Acceptances, and Matriculations, by Sex, 2008-2013

| Year                  | Applicants |           |            |            | Accepted |           |            |            | Matriculated |          |            |            |
|-----------------------|------------|-----------|------------|------------|----------|-----------|------------|------------|--------------|----------|------------|------------|
|                       | Female     | Male      | % Female   | % Male     | Female   | Male      | % Female   | % Male     | Female       | Male     | % Female   | % Male     |
| 2008-09               | 35         | 49        | 42%        | 58%        | 11       | 12        | 48%        | 52%        | 4            | 3        | 57%        | 43%        |
| 2009-10               | 26         | 33        | 44%        | 56%        | 4        | 14        | 22%        | 78%        | 3            | 3        | 50%        | 50%        |
| 2010-11               | 43         | 47        | 48%        | 52%        | 14       | 12        | 54%        | 46%        | 8            | 4        | 67%        | 33%        |
| 2011-12               | 37         | 49        | 43%        | 57%        | 2        | 10        | 17%        | 83%        | 1            | 4        | 20%        | 80%        |
| 2012-13               | 37         | 58        | 39%        | 61%        | 5        | 10        | 33%        | 67%        | 0            | 5        | 0%         | 100%       |
| 2013-14               | 22         | 33        | 40%        | 60%        | 7        | 13        | 35%        | 65%        | 0            | 5        | 0%         | 100%       |
| <b>6-year Average</b> | <b>33</b>  | <b>45</b> | <b>43%</b> | <b>57%</b> | <b>7</b> | <b>12</b> | <b>38%</b> | <b>62%</b> | <b>3</b>     | <b>4</b> | <b>40%</b> | <b>60%</b> |

Note: numbers highlighted in red indicate areas of concern.

<sup>70</sup> Boston University, Astronomy, "Graduate Program – Admission," accessed Aug. 27, 2015, at <<http://www.bu.edu/astronomy/graduate/graduate-program-admission/>>.

<sup>71</sup> Since 2001, approximately one-third of graduate students in Astronomy have been women. National Science Foundation, National Center for Science and Engineering Statistics (NCSES), *Science and Engineering Indicators 2014*, Arlington, VA, February 2014, App. Table 2-24. Available at: <<http://www.nsf.gov/statistics/indicators/>>.

NASA conducted an applicant flow analysis to compare acceptance and matriculation rates of women and men.<sup>72</sup> This analysis revealed substantially lower female acceptance rates in 2 of the 6 years reviewed, and substantially lower female matriculation rates in 3 of the 6 years. However, it also showed substantially lower male matriculation rates in 2 of the 6 years. Over the 6-year period, 22 percent of the women who applied were accepted, compared to 26 percent of the men who applied. While these differences are not necessarily statistically significant (a test of statistical significance was not conducted), such differences indicate an area that should be investigated more fully by the Department.

Several faculty members and graduate students stated that the Department was aware of the downward trend in women's matriculation, but did not know the cause of it. They stated that they were working on recruiting more female students. NASA recommends that the Department develop more proactive recruitment strategies for women.<sup>73</sup> In addition, the Department should reach out to women who decline offers of admission and ask them their reasons for not enrolling. Additional considerations, such as conducting a climate survey and a Title IX self-evaluation should also be considered. (See recommendations below.)

NASA reviewed student outcomes at various stages of the Program. Women accounted for 47 percent of total enrollment in the Ph.D. program in Astronomy between 2008 and 2014, yet are overrepresented (i.e., account for more than 47 percent) among those who left the program (either voluntarily or were dismissed). In the six-year period, 7 women voluntarily left the program or were dismissed, compared to 4 men.

NASA also analyzed the data by cohort to determine the number of students who: (1) did not take the written comprehensive exam, (2) did not attempt the exam a second time, and (3) failed the exam after two attempts.<sup>74</sup> Nearly every student who matriculated between the 2008-09 and 2013-14 academic years took the written comprehensive exam at the end of their first year in the program; one male and one female did not. The data show that on this first attempt men and women perform similarly: 33 percent of women and 30 percent of men passed the exam.<sup>75</sup>

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<sup>72</sup> This analysis examines acceptances as a percentage of applications and new enrollments as a percentage of acceptances for each gender separately. This permits a comparison of men and women. In many science and engineering programs, fewer women than men apply and, thus, fewer women are accepted and matriculate. An applicant flow analysis shows whether there are gender differences in acceptance rates of those who applied and enrollment rates of those who were accepted. 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, p. 7, accessible at: <<http://odeo.hq.nasa.gov/>>.

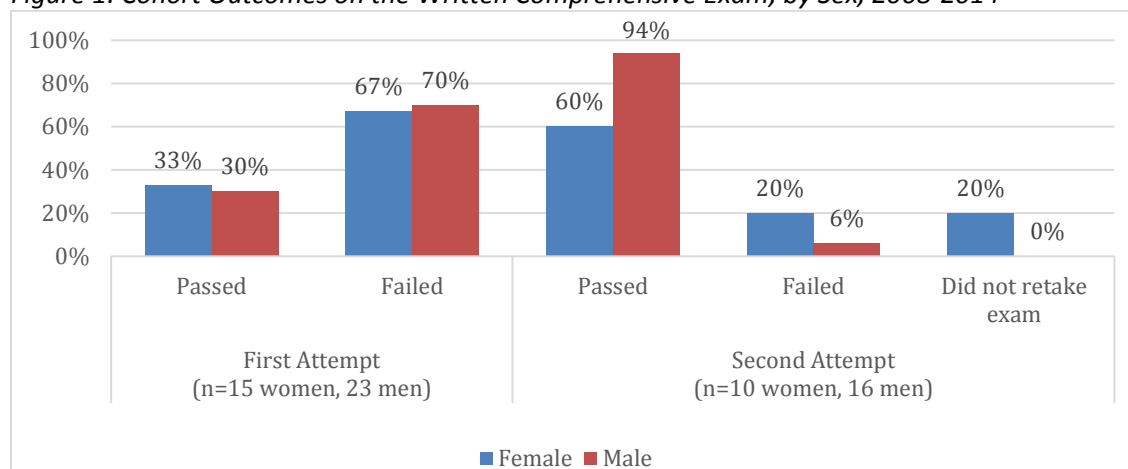
<sup>73</sup> For 2015-16, the Department received 87 applications and admitted 18 applicants (7 female and 11 male), yet only three students accepted the offer (all male). The University stated, "[t]his suggests that recruitment is sufficient, but the yield needs to be increased." Nonetheless, the Department has determined it will take additional steps to encourage admitted students to matriculate. BU Response Letter, November 13, 2015.

<sup>74</sup> Students are required to have passed the written comprehensive exam (also referred to as the written exam), by the end of their second year in order to advance to Ph.D. candidacy. They are encouraged to take the exam at the end of their first year in the program and may retake it a second time if they do not pass. The final oral exam is generally taken at the end of the third year of study. After students present their work orally, the faculty ask questions about their research and their studies to gauge their degree progress. Between 2008-09 and 2013-14, 15 students took and passed the oral exam on their first attempt.

<sup>75</sup> Of the 40 students who matriculated during this time period, two students - one male and one female - did not take the exam and withdrew from the program. Of the remaining students, 15 female students and 23 male students took the exam in their first year of the program: 5 females and 7 males passed the exam, 10 females and 16 males failed.



Figure 1. Cohort Outcomes on the Written Comprehensive Exam, by Sex, 2008-2014



However, as shown in Figure 1, there are differences in outcomes between men and women who failed the first attempt. Of the 10 women who failed the exam on the first attempt, 6 ultimately passed (60 percent), 2 failed (20 percent), and 2 did not retake the exam (20 percent).<sup>76</sup> Of the 16 men who failed on the first attempt, 15 passed (94 percent) and 1 failed (6 percent) on the second attempt. The overall pass rate for the written exam (ultimately passing after one or more attempts) is 80 percent for women (12 out of 15) and 96 percent for men (22 out of 23). However, women accounted for only 35 percent of the total number of students (12 out of 34) who passed the test.

NASA is concerned with the differences in outcomes for men and women on the written comprehensive exam and urges the Department to review its policies and procedures related to the test to ensure that there are no hidden biases and that all students are provided an equal opportunity for success.<sup>77</sup>

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

Enrollment in the undergraduate program has fluctuated between 30 and 50 percent during the 2008-2014 period. However, on average, women have accounted for approximately 40 percent of undergraduates in the program. Similarly, women account for approximately 43 percent of those earning Bachelor's degrees in Astronomy at the University. This is higher than the national average of 37 percent for women.<sup>78</sup>

<sup>76</sup> Of the three students who failed the exam the second time: one woman petitioned to retake the exam a third time and ultimately passed, and two students (one male, one female) left the program with Master's degrees. Two female students (and no male students) did not retake the exam in their second year. One of these students graduated with a Master's degree and one student withdrew from the program.

<sup>77</sup> Between the 2008-09 and 2013-14 academic years, 26 students took the Ph.D. qualifying oral exam, all of whom passed on their first attempt (a passing grade on the oral exam is required no later than the end of the first semester of the fourth year of study). In addition, all 28 students took and passed their final oral exam (dissertation defense) on their first attempt. Data provided by the Department indicate that the average length of time to conferment of the doctoral degree for men and woman is similar.

<sup>78</sup> National Science Foundation, National Center for Science and Engineering Statistics (NCSES), *Science and Engineering Indicators 2014*, Arlington, VA, February 2014, Appendix Table 2-17. Available at: <<http://www.nsf.gov/statistics/indicators/>>.

#### d. Faculty Hires

Women account for one-quarter of the faculty in the Astronomy Department. For the 2012-13 academic year, the faculty consisted of 5 women and 15 men (excluding adjunct faculty), which is higher than the national average of 19 percent estimated by the American Institute of Physics.<sup>79</sup> Since 2008, the Department has conducted 5 faculty searches, resulting in the hiring of 2 women and 3 men. Overall, women accounted for approximately 20 percent of the applicant pool (see Table 3).

Table 3. Outcomes of Faculty Searches, 2008-2013

| Faculty Searches |                 | Applicants |            |            | Hires    |          |
|------------------|-----------------|------------|------------|------------|----------|----------|
| Year             | No. of Searches | Female     | Male       | % Female   | Female   | Male     |
| 2008-09          | 1               | 20         | 93         | 18%        | 0        | 1        |
| 2009-10          | 2               | 9          | 44         | 17%        | 1        | 1        |
| 2012-13          | 2               | 30         | 105        | 22%        | 1        | 1        |
| <i>Totals:</i>   | <i>5</i>        | <i>59</i>  | <i>242</i> | <i>20%</i> | <i>2</i> | <i>3</i> |

## 2. Recommendations

**a. Graduate Student Recruitment.** Given the low numbers of women accepting offers of admission to the graduate program, the Department of Astronomy should strengthen its recruiting practices for graduate students. For example:

- The Department should partner with GWISE and other national organizations focused on Women in Science in its advertising, as well as concentrating efforts on women's colleges and universities.
- The Department should follow-up with students, particularly women, who decline acceptance offers to determine their reasons for not enrolling.

*Update: The Department has established a goal of having 30 percent of offers accepted by taking additional steps to encourage students who are admitted to attend BU, particularly female students.*

**b. Written Comprehensive Exam.** The Department should re-examine why women appear to have a higher overall failure rate than men on the comprehensive exam and whether women have different outcomes in the program than men (such as departing with a Master's degree instead of the Ph.D.). Given that fewer women have matriculated in recent years, the Department may wish to examine several previous years' data to determine the reason for any apparent gender disparities. The Department should also establish whether the exam is a valid predictor of program success, that is, is it doing what it was designed to do. To the extent that the exam is judged to be valid educationally but gender disparities exist that are of concern, the Department should consider other methods of test administration, grading, or means of evaluation that have a less disparate impact.

<sup>79</sup> American Institute of Physics, "Women among Physics & Astronomy Faculty," *focus on*, August 2013. Available at: <<http://www.aip.org/statistics>>.

**c. Faculty Recruitment.** The Astronomy Department should seek out additional sources for faculty recruitment when it conducts faculty searches, such as by contacting national organizations for women in STEM fields.

*Update: BU stated that the percentage of female faculty is about the national average, "which suggests that the Department's recruitment strategies, which include those recommended by NASA, are sufficient. The Department contacts all known sources of qualified potential faculty during its faculty searches by consistently reviewing its resource list to see if new sources can be added." Nonetheless, NASA encourages BU to aim higher than "sufficient" and recommends more rigorous recruitment of women and minorities for future faculty searches.*

### **3. Promising Practices**

**a. Pre-Majors Program.** The Department's Pre-Majors Program, designed to interest underrepresented students in Astronomy, is an important education and recruiting tool for interesting women and minorities in majoring in Astronomy.

**b. Specialty Community Residences.** The WISE@Warren and WISE-UP House specialty residences for women should help encourage women to major in and stay in STEM fields at the undergraduate level.

## **E. Program Administration and Academic 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 activity operated by the recipient.<sup>80</sup> In January 2016, 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 nation wide in their efforts to achieve educational environments win 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>81</sup>

The compliance team examined Boston University and the Astronomy Department's program administration and its impacts on the overall academic environment of the Department (including academic advising, career counseling, research participation, classroom experiences, "family friendly" policies, and physical safety of the program

<sup>80</sup> Education programs or activities, 14 C.F.R. § 400(a),(b)(7).

<sup>81</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).

**Program Administration Compliance Requirements.** Based on its Title IX regulations, NASA looks to the following to assess compliance in the program administration context:

**1. Denial of Benefits/Limitation on Program Participation.** NASA's Title IX regulations prohibit a recipient from denying the benefits of its programs or services or otherwise limiting program participation based on sex, including sexual harassment and sexual violence.<sup>82</sup>

**2. Discriminatory Effects.** The Title IX regulations incorporate by reference the NASA Title VI regulatory provision prohibiting a recipient from utilizing methods of administration which have the effect of defeating or substantially impairing accomplishment of the objectives of the program for an individual based on sex.<sup>83</sup>

**3. Career Counseling and Guidance.** The Title IX regulations explicitly state that a recipient may not discriminate on the basis of gender with regard to career counseling or guidance.<sup>84</sup>

**4. Parental and Marital Status.** The NASA Title IX regulations include detailed provisions on matters pertaining to marital and parental status.<sup>85</sup> Generally, under the regulations, a recipient 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 the same manner and under the same policies as any other temporary disability or physical condition.<sup>86</sup> Further, Title IX requires that in the case of a 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>87</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>88</sup>

environment, as well as the extent of concerns among students regarding sexual harassment or sex discrimination), 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. Although not all survey results show statistically significant differences between male and female students, differences in survey responses between males and females may be an indication of potential areas of concern.<sup>89</sup>

*a. Academic Advising and Career Counseling*

NASA examined the Astronomy Department's advising program, including policies and procedures, as well as student experiences and observations, to determine whether there was evidence of students being treated differently or otherwise limited in program participation, on the basis of gender. Interviews with graduate and undergraduate students and survey responses indicated that few students felt they were treated differently on the basis of gender. However, among survey respondents, women were less likely than men to indicate that professors or assigned mentors increased their enthusiasm for their major.

*b. Classroom Experiences and Research Participation*

NASA's review sought to determine whether, and if so, the extent to which, students were treated differently or otherwise limited, on the basis of gender, with regard to research participation and classroom experiences, including classroom environment and testing. Student interviews and survey response suggested little or no difference between men and women with regard to research participation.

<sup>82</sup> *Id.*

<sup>83</sup> Enforcement procedures, 14 C.F.R. § 605.

<sup>84</sup> Counseling and use of appraisal and counseling materials, 14 C.F.R. § 1253.425.

<sup>89</sup> The survey was deployed to all students in the Department, with a 55 percent response rate overall. Of the 37 surveys completed, 65 percent of the respondents were male students and 35 percent were female students.

However, there may be some evidence of differences with regard to classroom experiences. Female survey respondents were less likely than males to state that instructors “often” or “very often” treat all students with respect (83 percent and 100 percent, respectively), and female respondents reported less favorable relationships with male faculty. Female respondents also were less likely than males to state that they rarely (“never” or “once or twice”) hear individuals in their program tell sexual stories or jokes that are offensive (64 percent of females compared to 96 percent of males). In fact, approximately one-third of female respondents reported they “sometimes” heard such stories/jokes (compared to 4 percent of male respondents). In addition, several students expressed concern with the attitudes and actions of a few faculty members toward female students, faculty, and guests.

Faculty members in the department stated they had not had any kind of training on sexual harassment or gender bias in recent memory and while there has been some training for Research Assistants and Teaching Assistants on Title IX, most of those interviewed could not remember having such training.

Another concern in this arena has to do with testing at the Ph.D. level. As discussed above, data for 2008-09 through 2013-14 show that, overall, the pass rate for women was 69 percent, compared to 92 percent for men. There are also concerns among students that women are more likely than men to fail the Ph.D. exams (written and oral). Several students noted that recently there had been several failures compared to previous years, and that many of those who failed were women. In addition, with regard to the written exam, there seems to be a general lack of understanding by graduate students about the criteria for passing and how the tests are graded. In fact, several faculty members acknowledged that there is a lack of transparency concerning grading and that some subjectivity is involved in the grades.

While these findings do not establish that the test has a disparate impact based on gender, it does present several challenges to the Department: to identify potential reasons for any differential outcomes based on gender, to determine whether changes to the test are needed, and to ensure greater transparency concerning testing outcomes and grading (see Recommendation above in section II.D.1.b).

### *c. Parental/Marital Status (“Family Friendly” Policies)*

Regarding parental and marital status, NASA focused on the Title IX provisions pertaining to pregnancy and childbearing and reviewed BU’s parental leave policies. In early 2015, the University revised its employee maternity leave policy to permit employees to take parental leave for the birth, adoption, or court placement of a child. This policy provides for eight weeks of parental leave, per child. If both parents are University employees, they are only entitled to a total of eight weeks. Employees must apply accrued paid leave to cover their

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Approximately half of the respondents were undergraduate students. Given that the survey was limited in scope and not all students participated, large differences in responses between male and female students, even if not statistically significant, may indicate issues that the Department should investigate further.

<sup>86</sup> Admission, *Prohibitions relating to marital or parental status*, 14 C.F.R. § 1253.300(c)(3).

<sup>87</sup> Marital or parental status, 14 C.F.R. § 1253.445 (b)(5).

<sup>88</sup> The Dear Colleague letter is accessible at <<http://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 <<http://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf>>.

<sup>89</sup> The survey was deployed to all students in the Department, with a 55 percent response rate overall. Of the 37 surveys completed, 65 percent of the respondents were male students and 35 percent were female students. Approximately half of the respondents were undergraduate students. Given that the survey was limited in scope and not all students participated, large differences in responses between male and female students, even if not statistically significant, may indicate issues that the Department should investigate further.

absence or take unpaid leave.<sup>90</sup> Faculty members may be eligible for unpaid leave, paid absence for childbirth, or paid workload reduction, depending on the individual's needs and eligibility. Normally, faculty members who take a paid absence for childbirth or a paid workload reduction will have their deadline for consideration for tenure postponed for one year. The types of leave available to faculty members include: (1) unpaid leave for up to 12 weeks, (2) paid absence for up to six weeks for those faculty members who are unable to work because of medical reasons related to pregnancy and childbirth, and (3) paid relief for up to one semester of teaching duties, committee assignments, and other service (faculty receiving paid workload reduction are still required to advise graduate students and sustain their research program or creative activities).<sup>91</sup>

The Department approved a new policy for childbirth and adoption accommodation for full-time Ph.D. students in June 2014. The policy allows for extensions for academic coursework and other requirements as well as the continuation of stipend support. Students may receive an accommodation of up to 60 days.<sup>92</sup> This policy was developed specifically for full-time Ph.D. students because: (1) they often have a limited number of years in which to complete their degrees, and (2) they have a critical need for their stipends to continue during the accommodation period.<sup>93</sup>

There are no specific University-wide childbirth and adoption policies for other graduate students and undergraduates.<sup>94</sup> However, the College of Arts and Sciences does have a childbirth and adoption policy for full-time master's degree students that provides an accommodation of up to 60 days. The policy provides for extensions for academic coursework and the continuation of stipend support for funded students.<sup>95</sup>

Under Title IX, pregnancy should be considered as a temporary disability in the absence of specific policies. Boston University requires that student requests for leaves of absence for medical reasons be reviewed by Student Health Services or its designee. The policy further states, "[a] student seeking to re-enroll after a medical leave must demonstrate to the University that the student's health permits the successful completion of studies. Documentation needed to support this finding will be determined by Student Health Services or its designee."<sup>96</sup>

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<sup>90</sup> Boston University, Human Resources, "Parental Leave," accessed Sept. 25, 2015, at <<http://www.bu.edu/hr/2015/05/07/parental-leave/>>; Boston University, Policies, *Employee Handbook*, section 304, Parental Leave, accessed Sept. 25, 2015, at <<http://www.bu.edu/policies/employment/parental-leave/>>.

<sup>91</sup> Boston University, "Personal Life – New Children, Ombuds, and More," accessed Sept. 25, 2015, at <<http://www.bu.edu/apfd/work-life-resources/personal-life>>.

<sup>92</sup> Boston University, Academics, "Childbirth and Adoption Accommodation for Full-Time PhD Students," effective June 26, 2014, accessed Sept. 25, 2015, at <<http://www.bu.edu/acdemics/policies/childbirth-and-adoption-accommodation/>>.

<sup>93</sup> BU Response Letter, November 13, 2015.

<sup>94</sup> The University stated that while they considered applying the full-time Ph.D. student policy to Master's students, "because some of the Masters programs at the University are modular, group-orient, and lock-step programs, it would not be possible to accommodate those students in the manner addressed by the Ph.D. policy. Instead Master's students generally take a leave of absence. Individual departments have been encouraged to develop their own policies for their masters-level students." BU Response Letter, November 13, 2015.

<sup>95</sup> Boston University, Graduate School of Arts & Sciences, "Childbirth and Adoption Accommodation for Full-Time Master's Students," accessed Nov. 23, 2015, at <[http://www.bu.edu/cas/students/graduate/grs-forms-policies-procedures/grs-masters-forms-policies-procedures/childbirth\\_grs\\_masters/](http://www.bu.edu/cas/students/graduate/grs-forms-policies-procedures/grs-masters-forms-policies-procedures/childbirth_grs_masters/)>.

<sup>96</sup> Boston University, Academics, "Withdrawal, Leave of Absence, and Reinstatement," accessed Sept. 25, 2015, at <<http://www.bu.edu/acdemics/grs/policies/withdrawal-leave-of-absence-and-reinstatement/>> and <<http://www.bu.edu/acdemics/policies/withdrawal-leave-of-absence-and-reinstatement/>>.

#### *d. Safety*

Regarding Boston University policies and student experiences involving physical safety on campus, NASA's review does not suggest serious concerns around physical safety having limited any student's program participation based on gender. However, several individuals noted that the Astronomy Department is located in the College of Arts and Science building which is open to the public and does not require key card access. Thus, there have been thefts and other instances in which individuals not associated with the University have gotten into the building. Also, some students noted that the building is locked after 10 or 11 p.m., which makes it difficult for members of the Astronomy Department to get in at night. Further, it is not clear if campus security patrols the building on a regular basis.<sup>97</sup>

#### *e. Overall Academic Environment*

Overall, more than two-thirds of students who participated in NASA's Title IX survey reported a positive climate at Boston University, reporting positive ("often" or "very often/almost always") support and interaction with faculty and fellow students. However, when asked if the likelihood of continuing in the program had changed as a result of their experiences in the program, women were more likely to state that the likelihood had decreased "somewhat" or "greatly" (25 percent of female respondents, compared to zero male respondents).

Given the concerns of some students regarding classroom experiences and the potential lack of respect toward women by some faculty members, as well as the declining number of women among new graduate students, it is important for the Department to ensure that it provides a welcoming and supportive environment for all students. Although the majority of faculty members clearly voiced support for women in the Department and diversity in general, the Department must clearly demonstrate its commitment to diversity to current and future students.

## **2. Recommendations**

**a. Training for Students and Faculty.** Given the concerns of some students regarding the fair and respectful treatment of women, the University and the Title IX Coordinator should ensure that training is provided to all members of the Astronomy Department regarding Title IX, sex discrimination, and sexual harassment. In addition, the College of Arts and Sciences should consider education and awareness around unconscious bias. In this regard, BU should consider utilization of NASA's unconscious bias learning tool accessible at: <http://missionstem.nasa.gov/eLearn.html>.

*Update: BU stated it would consider promoting education and awareness around unconscious bias and would consider using NASA's learning tool.*

**b. Address Perceptions Regarding Written and Oral Qualifying Exams.** Although the Department does provide general information on the outcome of exams, to address misperceptions about the exam, how it's graded, and pass/fail rates, the Department should provide additional information and appropriately anonymous results data to students.

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<sup>97</sup> The University noted that access to the building is available at all times to students and faculty of the Astronomy Department. Further, BU Police statistics indicate that in 2014 there were 10 thefts in the approximately 2-block area in which the Department is located (which includes the College of Arts and Sciences building, the Graduate School, the Tsai Performance Center, and the Stone Science Library). Through November 2015, there had been seven thefts. Generally, thefts are of items that are left unattended for some time, such as laptops. BU Response Letter, November 13, 2015.

**c. Family-Friendly Policies.** NASA is concerned that BU's policies in this arena are unclear with respect to students who are not full-time Ph.D. students. BU should review its overall policies in this area to ensure that students and other members of the University for whom there are no specific policies on pregnancy and childbirth understand that the policies on medical leaves of absence are applicable to pregnancy and childbirth. BU should also ensure that such policies are in conformity with Title IX. NASA recommends that BU review the Title IX regulatory provisions, Marital or parental status, at 14 C.F.R. § 1253.445 and 1253.530 and OCR's June 2013 Dear Colleague Letter and technical assistance document, "Supporting the Academic Success of Pregnant and Parenting Students," which provide information on strategies that educational institutions may use and programs that can be developed to address the educational needs of students who become pregnant or have children. At a minimum the University's policy review should address whether its policy is clear on the following points:

- i. A school must excuse a student's absences because of pregnancy or childbirth for as long as the student's doctor deems the absences medically necessary. When a student returns to school, she must be allowed to return to the same academic and extracurricular status as before her medical leave began.
- ii. Schools must treat pregnant employees and students in the same way that they treat similarly situated students, that is, temporary medical conditions. There is a "mirror-image" provision for employees to the one requiring "return to same status" mentioned in (i) above.
- iii. A student who is pregnant or has given birth may not be required to submit medical certification for school participation unless such certification is also required for all other students with physical or emotional conditions requiring the attention of a physician.
- iv. Steps should be taken to ensure thorough dissemination of pregnancy policy, for example, through email, online and print communications. All faculty members and graduate teaching assistants should be provided with a copy of OCR's technical assistance document on supporting pregnant and parenting students, as University Student Rule 7 directs students to faculty for requests for leave and faculty should fully understand Title IX requirements in this arena.

**d. Address Building Safety Issues.** NASA recommends increasing the physical security of the Astronomy Department, such as by providing key-card only access on certain floors and/or ensuring that campus police patrol the building several times during the day and night.

**e. Demonstrate Commitment to Gender Diversity.** The Astronomy Department must clearly demonstrate its commitment to gender diversity and women in STEM. This can be done by increasing the number of programs and services it provides students through additional seminars, **colloquia**, conferences, and mentoring opportunities aimed specifically at women. In addition, the Department should continue to enhance its collaboration with groups such as GWISE.

*Update: The Department noted it will take steps to implement these or similar programs and opportunities in the future.*

### **3. Promising Practice**

**University Policy on Childbirth and Adoption Accommodation for Full-Time Ph.D. Students.** NASA applauds BU for having a formal, written policy on childbirth and accommodation for graduate students and ensuring that it is applicable to both male and female Ph.D. students.



### **III. CONCLUSION**

NASA finds Boston University to be in compliance with the Title IX procedural requirements regarding coordination, grievance procedures, and self-evaluation. NASA also finds the Astronomy program in compliance with Title IX in that we did not find methods of administration that were having an adverse impact or otherwise limiting program participation based on gender. However, the University should continue to enhance its coordination and self-evaluation efforts, and to review and revamp certain aspects of its Title IX policies and procedures, as well as their dissemination, to address NASA's recommendations. The recommendations regarding both procedural requirements as well as program administration are designed to assist Boston University and the Astronomy Department in furthering their efforts to ensure equal educational opportunity regardless of gender. NASA will contact the University one year after the issuance of this compliance report to learn about the progress made toward addressing our recommendations.

## **APPENDIX: 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.

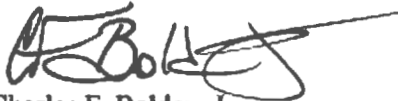
NASA takes very seriously our obligations, both legal and ethical, to make sure that when we provide Federal dollars to a STEM educational program that the program is extending equal opportunity to all of its participants. We seek to help STEM programs nation wide in their efforts to achieve educational 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.