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August 11, 2022

Lawrence A. Tabak, D.D.S., PhD.
Acting Director
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9000 Rockville Pike
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Dr. Tabak,

We write to follow-up on the National Institutes of Health's (NIH) September 17, 2021, response and its October 26, 2021, briefing with minority committee staff regarding NIH's handling of sex harassment complaints. In its written response, the NIH stated that it was constrained from investigating sexual misconduct at grantee institutions once the alleged perpetrator no longer is affiliated with grantee institutions. However, this narrow view begs the question of an alleged perpetrator who is no longer affiliated with a grantee institution but is still affiliated with the NIH by co-chairing an NIH institute steering committee. Our letter focused on the case of Axel Grothey, an oncologist who continued to co-chair a National Cancer Institute steering committee despite being disciplined by three states for inappropriate sexual conduct. Further, one of the complainants had no communication from the NIH, not even an acknowledgement of the complaint or even to tell her that NIH truly could not investigate the matter.¹ Only after *The Cancer Letter* reported on this situation did the NIH finally act to remove Dr. Grothey from the steering committee, two years after complainants contacted the NIH.

The issue arising from the Grothey case is only one manifestation of a broader concern affecting NIH grantees and NIH-supported researchers. NIH's own statistics show a significant problem with more than 300 cases related to harassment since 2018. That also represents hundreds of women who are being bullied or threatened.

¹ NIH ignored my report of sexual misconduct by Axel Grothey—and danced around questions from Congress, *The Cancer Letter* (October 1, 2021).

NIH has made combatting sex harassment a high priority. In his September 21, 2018, blog, then NIH Director Francis Collins stated:

I plan to ask the Committee [National Science and Technology Council Committee on Science] to consider uniform measures that would be most effective in changing the pervasive culture of sexual harassment in science, and fostering a culture of respect for all. I personally consider addressing this matter to be a high priority for NIH.²

Although he wrote that he personally considered changing the culture of sexual harassment in science a high priority for NIH, he did not sign the response letter to us. Instead, you signed the letter when you were serving as the Principal Deputy Director of the NIH.

We acknowledge that the NIH has issued several policies and there have been efforts at the Office of Extramural Research (OER) to strengthen NIH's responsiveness.³ NIH provided an overview of harassment reports as of October 24, 2021, to the minority committee staff. (See attachment). Table 1 of the overview showed a total of 390 harassment reports submitted from calendar year 2018 to October 22, 2021, described by NIH as "a large number of complaints." According to NIH's descriptions of the harassment cases, more than 62 percent of the cases included either a sex harassment allegation alone or a sex harassment allegation along with other allegations. Table 2 in the overview showed a list of findings and outcomes of the cases reported to the NIH OER.

However, during the briefing, NIH acknowledged past understaffing issues and the minority committee staff expressed concern to the NIH about insufficient public communication. Thus, we have concerns that NIH's actions thus far are not adequate to ensure a safe and functional biomedical research workplace given the apparent scale of the challenges.

All the more troubling is the fact that recent independent surveys have found top institutions and major NIH grant recipients with a high number of reported instances of sexual misconduct. In 2015, the Association of American Universities (AAU) conducted a campus survey on Sexual Assault and Sexual Misconduct. This survey included over 150,000 undergraduate, graduate, and professional students at 27 universities that participated.⁴ For example, Yale University had the highest rates of female sexual assault with the exception of two other universities which both boast a significantly larger student body population. Further, in

² The National Institutes of Health (NIH), Changing the culture of science to end sexual harassment, (September 17, 2018), available at <https://www.nih.gov/about-nih/who-we-are/nih-director/statements/changing-culture-science-end-sexual-harassment>.

³ The National Institutes of Health (NIH), Supporting a Safe and Respectful Workplace at Institutions that Receive NIH Funding, available at <https://grants.nih.gov/grants/policy/harassment.htm>.

⁴ Cantor, David et al. (Sept. 21, 2015), *Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct*, Westat, available at https://www.aau.edu/sites/default/files/@%20Files/Climate%20Survey/AAU_Campus_Climate_Survey_12_14_15.pdf.

2019, AAU conducted a follow up Campus Sexual Assault and Sexual Misconduct survey and found that sexual assaults at Yale had actually increased.

Such findings and high-profile cases raise concerns about possible non-compliance with Federal laws applicable to NIH funding, including Title IX. As you know, Yale has been among the largest recipients of Federal taxpayer funding in the form of research grants. During the past ten years, for example, Yale has received approximately 9,584 awards to faculty and professors totaling around \$4.3 billion from NIH alone. Each of these awards was conditioned on Yale's full compliance with applicable Federal laws such as Title IX. We could cite several other major grantee institutions for similar issues.

Based on the massive number of NIH grants and commensurate billions of Federal funds benefitting or inuring to the benefit of Yale and ongoing inquiries, we are concerned that Yale and other institutions may not have complied with their responsibilities under Title IX as a recipient of Federal funds. Compliance with Title IX is more than a mere formality – it is a prerequisite for receipt of Federal funds. Additionally, the Department of Health and Human Services (HHS) asserts that complying with research grant requirements is a significant priority.⁵

In light of these concerns, please provide the following by September 12, 2022:

1. For Table 2, please provide more details about the outcomes listed as “other grant actions.”
2. Upon receipt of a harassment complaint, what is the NIH process for requesting more information from grantees?
3. Does the NIH ask different questions if special populations (children) are involved in the complaint?
4. Does the NIH ever talk to the alleged victim of harassment, not just the grantee institution?
5. When a Principal Investigator is removed, does NIH ask the grantee institution about safety management for affected individuals?
6. For physicians involved in harassment complaints submitted to the NIH, is patient harm viewed as part of sex harassment?
7. How many complaints were sent directly to the NIH Director or Acting NIH Director since January 1, 2019? How many of these complaints were referred to the OER? If there were any complaints not referred to OER, why not?

⁵ U.S. Department of Health and Human Services (HHS), Title IX of the Education Amendments of 1972, *available at* <https://www.hhs.gov/civil-rights/for-individuals/sex-discrimination/title-ix-education-amendments/index.html>.

8. How many complaints were sent directly to a Director of an NIH institute or center? How many of these complaints were referred to OER? If there were any complaints not referred to OER, why not?
9. How does NIH detect the “passing the rogue” problem (i.e., universities exchanging faculty members accused of misconduct) referenced in NIH’s PowerPoint presentation during the October 26, 2021, staff briefing?
10. If a grantee institution retaliated against a complainant, how would NIH know about it, and what actions would be taken?
11. For Table 2, please expand on the data to include recipient institutions and the alleged perpetrators by name in cases where the allegation was substantiated.
12. How many reports included allegations of retaliation in addition to and apart from harassment, bullying or other forms of discrimination?
13. NIH indicated it was working with HHS Office of Civil Rights in September 2020. What was the outcome of these interactions? How many targets of discrimination or retaliation have been contacted as a result? Were NIH investigations or institutional Title IX investigations (or others) reviewed? Please provide specifics.
14. How much has NIH allocated to resources to respond to targets and survivors in harassment cases involving NIH in some way?
15. Following the Grothey case, it is evident that power granted by the NIH is not limited to academic institutions and grant recipients but also to large, funded networks. How many network investigators have been the subject of harassment allegations? How were these allegations handled within the network? How many were removed from network activities at the time of NIH’s knowledge of the allegations? Were co-chairs and other members of committees notified? How were access to funding lines, publications and network resources handled for the alleged perpetrators? Please provide specific numbers for each network and outcomes as known.
16. NIH reports to have the ability to request Title IX (and possibly other) investigations outside of NIH. In how many cases were these requested? What determines whether these are requested? In reviewing the OER’s policy, if noncompliance with Title IX protocols is found, what steps does NIH take?
17. Please provide a breakdown of allegations and outcomes by discipline (scientific and/or clinical for MDs).
18. NIH has created a separate reporting mechanism by which victims or targets may report and responses often indicate a ‘need to know’ basis. Please define criteria or circumstances by which NIH feels a reporter/target/survivor needs to know?

19. As in the Grothey case, the persistence of a perpetrator in a position of power leads survivors and advocates to report. How are letters to institute directors or direct reports to NIH personnel handled? Since 2018, how many victims and/or complainants who have agreed to speak with NIH been followed up with?
20. Has NIH (or working with other agencies) contacted any complainants to assess their sense of safety after disciplinary action to validate institutional reports?
21. Following reports to NIH, how many follow up communications from complainants requesting any information pertinent to a prior allegation involving NIH grants or its handling have NIH responded to? What is the median response time (aggregate by year please)? How many have not been responded to and why?
22. NIH states it does not intervene in personnel matters. Workplace harassment can involve violence and contributes to an unsafe work environment. When do safety concerns (violence, threatened violence) prompt intervention as a result of environment? How many reports involve security measures for the target, bystander and/or perpetrator? How is this detailed in ongoing follow up? How is this required prior to awarding of new grants to an institution?
23. How does NIH work with the grantee institution in instances where violence has occurred? Are the perpetrators ever stripped of grants?
24. In what percentage of cases where NIH grants were involved with harassment were the subjects of the complaint involved with decision making? How many gave subjects the opportunity to be involved?
25. How many complainants were willing to speak with NIH? With how many did NIH speak with specific attention to institutional handling, safety, retaliation and/or restorative justice processes?
26. The 2018 National Academies of Sciences, Engineering, and Medicine (NASEM) report⁶ listed women in medicine as particularly vulnerable to harassment. The pandemic has added additional strains and mental health challenges to this population. Have complainants in medicine who reported since 2018 been offered specific supports?
27. Please give the ranges of durations for investigations of which the NIH has inquired. When the NIH is aware of an open investigation, with what frequency do they inquire with the institution? What questions are asked with regards to safety measures?
28. Women of color are also particularly vulnerable to sexual harassment. How is NIH handling reports from intersectional discrimination cases?

⁶ National Academies of Sciences, Engineering, and Medicine (NASEM), *Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine* (2018), available at <https://nap.nationalacademies.org/catalog/24994/sexual-harassment-of-women-climate-culture-and-consequences-in-academic>.

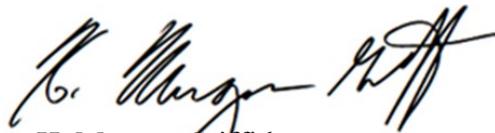
29. NIH states that it follows media reports for information on sexual misconduct. Please expand on how this is conducted, where the database is maintained, who has access, what is done with the information and how follow up is conducted for any potential victims. Several media stories have captured serial sexual misconduct at the institutional level. Will NIH require reporting when institutions are under criminal investigation for sexual misconduct?
30. What is the credentialing requirement for NIH officials handling reports of harassment or abuse? Are personnel trauma-informed? Are recipient institutions encouraged or required to have trauma-informed personnel handle victims/complainants for investigations and post determination?

If you have questions about this correspondence, please contact Alan Slobodin of the Minority Committee Staff.

Sincerely,



Cathy McMorris Rodgers
Republican Leader
Committee on Energy and Commerce



H. Morgan Griffith
Republican Leader
Subcommittee on Oversight and
Investigations
Committee on Energy and Commerce

Cc: The Honorable Frank Pallone, Chair, House Energy and Commerce Committee
The Honorable Diana DeGette, Chair, Subcommittee on Oversight and Investigations

Attachment

Overview of Harassment Reports to NIH

Michael Lauer, National Institutes of Health (NIH) Office of Extramural Research (OER)
Patricia Valdez, NIH OER Hiromi Ono, NIH OER Liza Bundesen, NIH OER

2021-10-24

The NIH Office of Extramural Research (OER) has been addressing compliance concerns related to harassment and hostile work environment since 2018. In early 2019, [NIH leadership released a statement](#) on agency efforts to address sexual harassment in science and, at the same time, opened a digital mailbox to hear concerns. NIH also formed a special Working Group to the Advisory Committee to the Director (ACD) on “[Changing the Culture to End Sexual Harassment](#)”; the ACD offered the Working Group’s [final report with recommendations](#) to the NIH Director, who accepted them.

The Working Group’s [Final Report](#) included a recommendation that “NIH should create a parallel process to treat professional misconduct, including sexual harassment, as seriously as research misconduct.” The OER has done so, [establishing and implementing process](#) parallel to research misconduct for receiving, considering, and reviewing harassment concerns. Of note, in mid-2019 the OER established, in addition to the email box, a [web-form](#) that allowed for easy anonymous reporting. In June 2020, NIH released [Guide Notice NOT-OD-20-124](#) stating its expectations that institutions would inform the agency of workplace environment concerns (e.g. due to harassment) in cases where principal investigators or key personnel were being changed (e.g. due to administrative actions or employee departure for another institution).

Here we present a high-level description of our experience from calendar year 2018 to October 22, 2021.

Table 1 shows characteristics of cases reported (where each case refers to one unique person) by year. The number of reports increased substantially from 2018 to 2019 and continues to remain higher. Of note the proportion of cases citing sexual harassment has declined, while the proportion of self-disclosures has increased modestly.

Table 2 shows findings and outcomes by the type of allegation, whether sexual harassment only, sexual harassment plus other (e.g. bullying), or other only. In most cases, the OER has been in contact with senior institutional officials (Vice-President for Research or equivalent). In over half of cases the institution conducted a formal investigation and in approximately a quarter of cases the institution issued a report indicating that allegations were substantiated. Other outcomes included removal of principal investigators from grants and what we refer to as other grant actions (e.g. grant termination or restriction of funds). Of note, a relatively large proportion of scientists were removed from peer review at least temporarily due to ongoing concerns (e.g. a known ongoing institutional investigation). In cases that dealt with sexual harassment only, there were a larger proportion of formal investigations, substantiated allegations, removal of Principal Investigators from grants, institutional departures, and removal from peer review.

In summary, these data show that:

- NIH has received and responded to a large number of complaints since it first took steps to publicize its concerns about sexual harassment and other threats to workplace safety.
- Over time, a smaller proportion of complaints have focused primarily on sexual harassment.
- In a substantial proportion of cases, institutions substantiated allegations and reported other actions, including employment separations and/or specific safety-oriented measures.
- In a substantial proportion of cases, offending scientists have been removed from the NIH peer review system and from specific NIH-issued awards.
- Self-disclosures from institutions represent a minority of cases.

Table 1: Characteristics of harassment cases reported to the NIH Office of Extramural Research (OER) in calendar years 2018 to October 22, 2021. Values shown are Number (%).

Characteristic		2018	2019	2020	2021
Total N (%)		33 (8.5)	110 (28.2)	108 (27.7)	139 (35.6)
Allegation	Sexual Harassment Only	16 (48.5)	57 (51.8)	36 (33.3)	50 (36.0)
	Sexual Harassment Plus Other	12 (36.4)	30 (27.3)	19 (17.6)	24 (17.3)
	Other Only	5 (15.2)	23 (20.9)	53 (49.1)	65 (46.8)
Media Publicity		18 (54.5)	22 (20.0)	18 (16.7)	48 (34.5)
Self-Disclosure		2 (6.1)	8 (7.3)	16 (14.8)	16 (11.5)

Table 2: Findings and outcomes according to allegation type of harassment cases reported to the NIH Office of Extramural Research (OER) in calendar years 2018 to October 22, 2021. Values shown are Number (%) with percentages based on allegation type.

Finding / Outcome	Sexual Harassment Only	Sexual Harassment Plus Other	Other Only
Total N (%)	159 (40.8)	85 (21.8)	146 (37.4)
Contact with Institution	120 (75.5)	64 (75.3)	121 (82.9)
Formal Investigation	93 (58.5)	52 (61.2)	64 (43.8)
Allegation Substantiated	48 (30.2)	18 (21.2)	23 (15.8)
Principal Investigator Removed	50 (31.4)	14 (16.5)	24 (16.4)
Other Grant Actions	15 (9.4)	13 (15.3)	11 (7.5)
Left Institution	46 (28.9)	14 (16.5)	15 (10.3)
Removed from Peer Review	79 (49.7)	32 (37.6)	44 (30.1)