

**TO: BAYLOR VERIFICATION OVERSIGHT COMMITTEE OF  
THE BOARD OF DIRECTORS OF THE BIG 12 CONFERENCE, INC.**

**FROM: POLSINELLI PC**

**DATE: AUGUST 31, 2018**

**RE: REPORT ON VERIFICATION OF IMPLEMENTATION OF  
105 RECOMMENDATIONS BY BAYLOR UNIVERSITY**

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## **I. INTRODUCTION**

On May 26, 2016, the Board of Regents of Baylor University publicly released the “Baylor University Report of External and Independent Review,” which is a list of 105 “Recommendations,”<sup>1</sup> and the “Baylor University Board of Regents – Findings of Fact.”<sup>2</sup> The Findings of Fact arose out of a series of incidents involving sexual harassment and/or assaults that occurred at Baylor during the years 2012 through 2015 and Baylor’s institutional response to those incidents. This resulted in the May 2016 termination or resignation of then-Baylor President, Ken Starr; then-Baylor Athletics Director, Ian McCaw; and then-Baylor head football coach, Art Briles.

The Board of Directors of The Big 12 Conference, Inc. adopted corporate resolutions<sup>3</sup> on February 3, 2017 that determined that the Findings of Fact constituted an admission by Baylor of its violation of Sections 1.3.2 and 3.6 of the Conference’s corporate bylaws.<sup>4</sup> Based on this violation, as authorized by Section 3.6 of the Conference Bylaws, the Conference Board imposed the Sanctions on Baylor, which directed management of the Conference “to withhold 25% of the amount of each payment that is paid or distributed by the Conference to Baylor” beginning February 3, 2017, until a Majority of the Disinterested Directors (as defined in the Conference Bylaws) determines “that Baylor is in compliance with, and has taken all reasonable steps to thereafter remain in compliance with, the Conference Bylaws and rules and regulations.”

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<sup>1</sup> The “Baylor University Report of External and Independent Review” (the “Recommendation(s)”) issued by Pepper Hamilton LLP (“Pepper Hamilton”) and released by the Board of Regents (the “Board”) of Baylor University (“Baylor”) accompanies this Memorandum as Appendix I.

<sup>2</sup> The “Baylor University Board of Regents – Findings of Fact” (the “Findings of Fact”) accompanies this Memorandum as Appendix II.

<sup>3</sup> The resolutions (the “Resolutions”) adopted by the Board of Directors (the “Conference Board”) of The Big 12 Conference, Inc. (the “Conference”) imposing the sanctions described therein (the “Sanctions”) accompany this Memorandum as Appendix III.

<sup>4</sup> The relevant portions of the Conference’s corporate bylaws (the “Conference Bylaws”) accompany this Memorandum as Appendix IV.

The Resolutions directed the Disinterested Directors to base this determination on an independent verification (the “Verification”) of whether the factors leading to the violation of the Conference Bylaws have been rectified, as well as other relevant information. The Conference retained Polsinelli PC (this “Firm”) to perform the Verification of whether Baylor has structurally completed and practically implemented the Recommendations in a manner that is sustainable over time and provide legal advice based on the Verification as to whether Baylor is currently in violation of the provisions of Section 1.3.2 of the Conference Bylaws.

This Memorandum constitutes the Report (this “Report”) on the Verification of Baylor’s implementation of the Recommendations. Pursuant to the Resolutions, this Report is presented to the Oversight Committee appointed by the Conference Board to inform the Oversight Committee on the steps taken by Baylor to implement the Recommendations and as legal advice relating to compliance with the Conference Bylaws. The Oversight Committee consists of Burns Hargis, Chair of the Oversight Committee and President of Oklahoma State University, Victor Boschini, Chancellor of Texas Christian University, and Gordon Gee, President of West Virginia University.

## **II. VERIFICATION COUNSEL, SCOPE AND LIMITATIONS**

In addition to utilizing the advice and counsel of its attorneys, this Firm retained the legal services of Janet P. Judge, Esq. (“Special Counsel” and together with this Firm, the “Verification Team”)<sup>5</sup> as special legal counsel to provide specialized legal advice in areas of education and employment law including, but not limited to, Title IX of the Education Amendments of 1972 (“Title IX”), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”), and the Violence Against Women Reauthorization Act of 2013 (“VAWA”). Our Special Counsel participated with attorneys from this Firm throughout the Verification, and she provided significant input to the review, analysis, context, and conclusions contained in this Report.

The Conference engaged this Firm, and this Firm engaged Special Counsel, solely to verify, analyze, and legally assess whether Baylor has taken the necessary steps to implement the Recommendations since the time they were adopted by Baylor’s Board in May of 2016.<sup>6</sup> It follows that the Verification Team was not engaged to investigate or provide legal input and assessment on any matters occurring prior to or since the adoption of the Recommendations, or to provide legal advice regarding any actual or potential legal claims or other matters not expressly addressed by the Recommendations.<sup>7</sup>

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<sup>5</sup> Ms. Judge is a Litigation Partner and member of the Higher Education Practice Group in the Boston office of the Holland & Knight LLP law firm.

<sup>6</sup> In addition to the limitations expressly listed, and as a natural result of such limitations, our ability to affirmatively verify Baylor’s compliance with, and implementation of, certain of the Recommendations was limited in many cases to review of documents in Baylor’s possession and interviews with Baylor personnel.

<sup>7</sup> All communications that fall outside the scope of the Verification are nonetheless still subject to the full protections of the attorney-client privilege and attorney work product.

The Conference expressly instructed the Verification Team to limit the scope of its review in the following ways:

1. The Conference directed the Verification Team not to investigate or provide legal input or assessment on any pending matters or litigation or past, present, or potential judicial, administrative, or any other external or internal actions or claims against Baylor or any person or entity affiliated with Baylor, including, but not limited to, those arising out of Baylor's implementation of the Recommendations or to provide any legal advice regarding any actual or potential legal claims or other matters not expressly addressed by the Recommendations;
2. The Conference directed the Verification Team not to evaluate any matters relating to the completed or ongoing investigations involving Baylor by the National Collegiate Athletic Association ("NCAA"), the US Department of Education ("US DOE"), the US DOE Office for Civil Rights ("OCR"), the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC), or the Texas Rangers;
3. The Conference expressly excluded from the Verification those elements of the Recommendations the Verification Team finds to be vague, aspirational, or absolute, to require future ongoing action by the school, or otherwise not subject to reasonable and/or objective verification;
4. The Conference directed the Verification Team to limit its review of the Recommendations to interviews, personal observations, and reviews of non-confidential and non-privileged documentation, as reasonably provided by Baylor;
5. The Conference directed the Verification Team not to contact or interview any former or current students involved in pending or threatened lawsuits or other persons involved with the sexual assault or related claims involving Baylor;<sup>8</sup> and
6. The Conference directed the Verification Team to employ a plain reading of the Recommendations.

Further, the Verification Team has not reviewed or investigated any matters relating to (and expresses no opinion with respect to) the validity, accuracy, adequacy, appropriateness, or sufficiency of the Findings of Fact, the Recommendations, or public statements made about the matters relating to the Recommendations, including, but not limited to, the following: (i) the 2015 internal investigation conducted by Jeremy Counsellor, Baylor Professor of Law and the

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<sup>8</sup> The Conference so limited the Verification Team for the following reasons: (i) interviews and contact with victims of sexual assault that predated the Recommendations, and any information to be gained from such interviews, is generally outside the scope of the Conference's engagement of this Firm to verify Baylor's steps taken toward implementing the 105 Recommendations; and (ii) on balance, the Conference placed a heavier weight on concerns for and consideration of students' right to privacy than the perceived value of any information that may have been obtained through such interviews, and the Verification Team does not deem the lack of such interviews to have materially impacted our Verification.

Faculty Athletics Representative (the “Counsellor Investigation”);<sup>9</sup> (ii) the Findings of Fact or the Recommendations; (iii) the reports on the completion of the implementation of the Recommendations issued by the Baylor Board or by Cozen O’Connor, legal counsel to Baylor, at various times, including, but not limited to, those made on May 12, 2017 and November 3, 2017, respectively; (iv) the reports related to the implementation of the Recommendations issued by Cozen O’Connor; (v) the claims made in public statements by various parties relating to issues relating to Baylor, including, but not limited to, allegations made by groups that either publicly support or criticize Baylor, such as the Bears for Leadership Reform group; (vi) the content and allegations made in any news or media reports, including those made in the following published books: Violated: Exposing Rape at Baylor University Amid College Football’s Sexual Assault Crisis, written by Mark Schlabach and Paula Lavigne, and Bear Country: The Baylor Story, written by former Baylor President Ken Starr; (vii) the claims made in any court filings or depositions or other legal proceedings involving Baylor, including, but not limited to, the statements made by former Baylor Athletics Director Ian McCaw in his deposition taken in Jane Does 1-10 v. Baylor University<sup>10</sup> on June 19, 2018, or public or private statements relating thereto; (viii) the NCAA’s ongoing investigation into Baylor’s possible violations of the NCAA rules and regulations; (ix) the US DOE’s ongoing investigation into Baylor’s compliance with the Clery Act, initiated in May of 2017; (x) the OCR’s ongoing investigation into Baylor’s compliance with Title IX; or (xi) any other pending investigations.

Neither the Verification Team, the Conference, the Conference Board, nor the Oversight Committee has or has had any obligations or duties to any third parties other than the Conference, its Board, and the Oversight Committee regarding the conclusions or matters discussed herein. This Report speaks as of the date hereof, and the Verification Team disclaims any responsibility to update, modify, or supplement this Report thereafter in any respect. Further, this Verification was conducted by this Firm, Special Counsel, and the Verification Team for the Conference pursuant to the attorney-client privilege and attorney work product privileges. Therefore, all materials and communications regarding the Verification are subject to the full protections of the attorney-client privilege and attorney work-product privileges, as well as any and all other legal protections the Conference, the Verification Team, this Firm, and Special Counsel are entitled to pursuant to applicable law. None of these privileges are deemed to be waived, modified, or otherwise qualified by conducting the Verification or submitting this Report.

Finally, it is important to note that many of the Recommendations go beyond what is required by applicable law. As a result, in assessing Baylor’s modifications to its policies, procedures, and practices as mandated by the Recommendations, the Verification Team makes

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<sup>9</sup> Based on news articles and other publicly available information, the Counsellor Investigation was initiated and announced by former Baylor President Ken Starr in August of 2015, following the sexual assault conviction of Sam Ukwuachu. Following the Counsellor Investigation, then-President Starr recommended to the Board that Baylor retain services of outside counsel to conduct a follow-up investigation. The Verification Team did not review the findings or any aspect of the Counsellor Investigation and expresses no opinion with respect thereto.

<sup>10</sup> No. 6:16-cv-00173-RP (W.D. Tex. filed June 15, 2016).

no findings with regard to Baylor's prior policies, procedures, and practices and their compliance with applicable law.

### **III. BACKGROUND OF SANCTIONS**

The Resolutions and the Sanctions imposed thereby arose out of, among other things, the Findings of Fact and the Recommendations publicly issued by the Board in May of 2016. The Findings of Fact were issued publicly, adopted as its own by Baylor on Baylor University letterhead as "Baylor University Board of Regents Findings of Fact," and are posted on its website. By adopting the Findings of Fact, the Board admitted to, among other things, "a fundamental failure . . . to implement [Title IX] and [VAWA]." More specifically, the Board acknowledged that "Baylor's efforts to implement Title IX were slow, ad hoc, and hindered by a lack of institutional support and engagement by senior leadership" and that, during the period in question,

[Baylor's] student conduct processes were wholly inadequate to consistently provide a prompt and equitable response under Title IX, that Baylor failed to consistently support complainants through the provision of interim measures, and that in some cases, [Baylor] failed to take action to identify and eliminate a potential hostile environment, prevent its recurrence, or address its effects for individual complainants or the broader campus community.

Further, the Findings of Fact cited evidence of "actions by [Baylor] administrators that directly discouraged complainants from reporting or participating in student conduct processes, or that contributed to or accommodated a hostile environment." The Board noted,

Pepper [Hamilton] found specific failings within both the football program and Athletics Department leadership . . . [and that Pepper Hamilton's] findings also reflect significant concerns about the tone and culture within Baylor's football program as it relates to accountability for all forms of athlete misconduct.

The Board also acknowledged,

Institutional failures at every level of Baylor's administration directly impacted the response to individual cases and the Baylor community as a whole. . . . Baylor's senior leadership lacked consistent or meaningful engagement in [Baylor's] Title IX functions. The composition and functioning of [Baylor's] Executive Council did not provide effective leadership for integration of Title IX compliance responsibilities across all [Baylor] functions.

Of special significance from the Conference's point of view, the Findings of Fact acknowledged, "Baylor failed to maintain effective oversight and supervision of the Athletics Department as it related to the effective implementation of Title IX." The Findings of Fact concluded by stating that "[Baylor] has taken and will take additional steps to address the deficiencies noted in the

findings of fact. The Board has already adopted [Pepper Hamilton’s] recommendations, which are set forth in a separate document.”<sup>11</sup>

Beginning in May of 2016, Conference management and the Conference Board required and received regular briefings from then-Interim Baylor President, Dr. David Garland, and other members of the Board and Baylor’s executive leadership on the status of Baylor’s efforts to address the issues raised in the Findings of Fact and the Recommendations.<sup>12</sup> The Conference Board adopted the Resolutions on February 3, 2017, based on the statements made by Baylor in the Findings of Fact and other available information, finding “that Baylor may not have been in compliance with the provisions of Sections 1.3.2 and 3.6 of the [Conference] Bylaws,” relying, at least in part, on the Conference Board’s determination that the Findings of Fact constituted an admission by Baylor that it was in violation of those sections of the Conference Bylaws. Therefore, as authorized by Section 3.6 of the Conference Bylaws, the Conference Board passed the Resolutions imposing the Sanctions.<sup>13</sup> The Resolutions further directed the Conference to “engage one or more consultants, law firms, or other experts independent from Baylor to undertake and provide to the [Conference] Board” the Verification. The Conference Board appointed the Oversight Committee and engaged this Firm to conduct the Verification; this Firm engaged our Special Counsel to provide legal advice to the Firm and to participate in the Verification and the preparation of this Report; and this Report is provided to the Conference Board pursuant to the mandate of the Resolutions.

#### **IV. THE RECOMMENDATIONS**

The Recommendations are grouped into 13 categories and each Recommendation directs Baylor to take certain actions. As described below, our ability to determine whether Baylor has structurally completed and practically implemented the Recommendations in a manner that is

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<sup>11</sup> Public statements by various parties have called into question issues surrounding the Findings of Fact and the Recommendations. For example, according to published newspaper articles, Baylor Regents and others criticized the investigation that led to the Findings of Fact and the Recommendations and the lawyers that conducted that investigation with charges of “bias, harassment, and racial animus” that led to a two-month internal probe of the investigation in late 2016. Other public newspaper reports stated that, in a recent deposition, former Baylor Athletics Director, Ian McCaw, characterized the investigation that led to the Findings of Fact and the Recommendations as being a conspiracy that was an “elaborate plan that essentially scapegoated the black football players and the football program for being responsible for what was a decades-long, university-wide sexual assault scandal.” These allegations are beyond the scope of our Verification, which focuses solely on the subsequent actions taken by Baylor to implement its own Recommendations. Accordingly, the Verification Team did not investigate or evaluate the following: (i) the substance of or basis for the Findings of Fact or the Recommendations or who drafted those documents; (ii) the investigation that led to the Findings of Fact and the Recommendations; or (iii) any allegations of wrongdoing or other issues relating thereto. The Verification Team expresses no opinion with regard to these allegations and did not take them into account in the Verification process.

<sup>12</sup> In response to requests from the public and the Conference, among others, Baylor has consistently stated that no further written report from Pepper Hamilton detailing its investigation exists.

<sup>13</sup> Section 1.3.2 of the Conference Bylaws provides, among other things, that Conference member institutions must comply with NCAA rules and regulations, and must “demonstrate institutional control and ensure that authority for the intercollegiate athletics program is vested in the campus chief executive officer of such Member.” Section 3.6 authorizes sanctioning of member institutions by the Conference for, among other reasons, “violat[ing] any provision of [the Conference] Bylaws.”

sustainable over time was limited by the terms, wording, and structure of the Recommendations themselves.

Many of the Recommendations use vague terminology or require subjective interpretation or the discovery of additional information to determine if they have been implemented. For example, *Recommendation IV.1*—“Properly resource (personnel and funding) Title IX office to implement policies”—requires the discovery of certain subjective information from current staff to determine whether they think their current resource needs are being met and whether those are sufficient to satisfy the requirement of Title IX. Similarly, *Recommendation III.1* states, “Resolve current governance issues at the [President’s] Council<sup>14</sup> and Board levels.” Before implementation of this Recommendation could be considered, the question “What was meant by the ‘current governance issues’?” had to be answered. The Verification Team expresses no opinion on the Recommendations to the extent that they use vague terminology, require subjective interpretation, or require the discovery of additional information that the Verification Team was not able to discern through the Verification.

Recommendations in a separate category are “aspirational” in nature and verifying whether Baylor has fully implemented such Recommendations as of this date is not possible. For example, *Recommendation I.1* mandates that Baylor “[e]stablish Title IX obligations as an institutional priority,” *Recommendation I.5* calls for Baylor to “[e]ngage in measures that will instill a consistent institutional understanding of Title IX obligations,” and *Recommendation I.12* charges Baylor to “[c]onsider the importance of forthright communication to the effective implementation of Title IX.” Recommendations such as these do not establish any observable objective metrics to be used to judge whether such priorities have been established on an institutional level, leaving us with only anecdotal observations gathered in our interviews reflecting the work that is being done on the Baylor campus and among its community to comply with the requirements of Title IX. The Verification Team expresses no opinion as to whether these aspirational Recommendations have been implemented.

Finally, a number of the Recommendations can only fully be implemented over time by future action. Whether these Recommendations will in fact be implemented in a sustainable manner in the future will only be determined with certainty over time, as they will require Baylor to implement and follow clear protocols that assign to appropriate Baylor personnel individual responsibility, authority, and accountability to take these future actions. For example, *Recommendation IX.2* calls for Baylor to “[u]se the results of the climate survey to inform institutional priorities and educational programming.” *Recommendation VIII.3* directs Baylor to take certain actions “[u]ntil further study demonstrates otherwise.” Along the same lines, *Recommendation I.9* mandates that Baylor “[c]reate a culture within the football program that ensures that the reporting, investigation, and disciplinary actions involving student-athletes and athletics department staff are managed in the same manner as all other students and staff on campus, and that student-athletes are held accountable to the same standards as all Baylor students.” Similarly, *Recommendation V.7* requires Baylor to “[c]ommit to conducting an annual

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<sup>14</sup> The body formerly known as the Executive Council (at the time of the Recommendations) has since been renamed the “President’s Council” to avoid confusion with the newly created Executive Committee of the Board. Throughout this Report, we refer to this body as the President’s Council.

review and assessment of Title IX policies, procedures, and practices to incorporate changes in the law and lessons learned from the current year (through student and administrator input).” As President Livingstone noted in discussing the Recommendations in a June 2017 interview with The Texas Tribune,

[T]here is going to have to continue to be significant attention paid to a number of them. There was a certain set that relate to implementing processes and procedures related to culture—and those things don’t happen overnight. You put the right processes in place, the right structural support and then you have to ensure that over the long run you create a culture that it is just embedded in what you do as an institution.<sup>15</sup>

There is no guarantee that the Recommendations that must be implemented by future action over time actually will be implemented on a sustainable basis in the future. The Verification Team did, however, confirm that Baylor’s Office of Internal Audit and Management Analysis has put into place various tools that, if implemented on a continuous basis, will enhance the likelihood that these ongoing endeavors will be sustained.<sup>16</sup>

## **V. VERIFICATION PROCESS**

In preparing this Report, the Verification Team reviewed over 600 documents provided by Baylor relating to implementation of the Recommendations. Following Baylor’s initial productions, the Verification Team submitted requests for additional information and documents (e.g., minutes of Board and committee meetings, policies, sample intake and investigative reports, contracts, team rules, and other documents), which Baylor either provided to the Verification Team or allowed members of the Verification Team to review onsite. In addition, the Verification Team conducted approximately 100 in-person and telephonic interviews with over 70 persons between August 2017 and August 2018,<sup>17</sup> including members of Baylor’s senior

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<sup>15</sup> Matthew Watkins, “How Baylor’s New President Plans to Move the School Past Scandal,” The Texas Tribune, June 13, 2017, *available at* <https://www.texastribune.org/2017/06/13/how-baylors-new-president-wants-overcome-scandal-and-elevate-her-sch/> (last visited August 31, 2018).

<sup>16</sup> Baylor leadership confirmed in August of 2018 that Rob Carter, Director of Baylor’s Office of Internal Audit and Management Analysis, is the person with primary day-to-day responsibility for such implementation and ensuring that future actions are completed in a timely manner. In an interview with the Verification Team, Mr. Carter stated that his primary role in this regard is to ensure “validation and verification” of these future-looking Recommendations, including, but not limited to, the annual review of various policies and procedures, training needs and enhancement opportunities, continued engagement of the Baylor community members, and staffing needs, as well as providing an annual report to the Board’s Compliance and Regulatory Affairs Committee (the “Compliance Committee”) on these matters. Mr. Carter provided us with an “in process” spreadsheet (the “Sustainability Tracker”) that he said would be used to facilitate sustainability. The Verification Team reviewed the Sustainability Tracker and, without commenting on the completeness and accuracy of its content against the Recommendations, it appears to be the type of systemic tool that would enhance the tracking of future sustainability efforts of this subset of the ongoing Recommendations.

<sup>17</sup> To the extent that conclusions stated herein on the Verification of certain Recommendations are based on interviews conducted during the Verification period from August 2017 through August 2018, those conclusions speak as of the date of those interviews. Note that we conducted multiple interviews throughout this period with various individuals, including Baylor’s executive leadership, Athletics Department, and the staff of its Title IX



administration, Athletics Department personnel, the Title IX Office, the Clery Office, Student Conduct, Human Resources, the Baylor faculty, law enforcement officers, and other Baylor personnel, employees, students, outside counsel, and consultants.

The Verification Team also conducted in-person interviews with then-current members of the Board, including its Chair, all three Vice-Chairs, and chairs of certain committees of the Board, and certain former Regents and employees.<sup>18</sup> The Verification Team also reviewed many publicly available news sources, although it did not rely on such news sources as independent verification of Baylor's implementation of the Recommendations. The Verification Team did not encounter any material limitations or restrictions on the scope of our Verification.<sup>19</sup>

Baylor, its Regents, employees, students, and outside consultants were cooperative with our Verification and we express our sincere thanks to President Linda Livingstone, and all of Baylor's Regents, executive leadership, employees, and students with whom we interacted for their cooperation in the process of this Verification. We offer our special thanks to Marsha Duckworth, Senior Director for Board and Legal Services, for her always cheerful and capable logistical support.

To our knowledge, neither this Firm nor our Special Counsel has represented in the past nor currently represents Baylor or any persons affiliated with Baylor named herein, and therefore this Firm and our Special Counsel are independent of Baylor for the purpose of conducting this Verification, issuing this Report, and providing the legal advice to the Oversight Committee, the Board, and the Conference relating hereto.

## **VI. RESULTS OF VERIFICATION AND LEGAL CONCLUSIONS**

Since May of 2016, Baylor has invested considerable resources and effort to implement the Recommendations. Based on our Verification (as summarized below) and subject to the limitations, qualifications, and exceptions stated throughout this Report, the Verification Team is of the opinion that Baylor has in all material respects structurally completed and practically implemented the Recommendations as of the date hereof. Whether the Recommendations that require future action or are aspirational in nature will continue to be implemented in a sustainable manner will only be verifiable over time.<sup>20</sup>

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Office, among others. Text in quotations in this Report that is not given specific attribution herein is taken from the interviews conducted or documents reviewed by the Verification Team.

<sup>18</sup> The persons interviewed include many of the members of Baylor's senior administrative management, all members of the Title IX Office and the then-current, then-interim, and new Title IX Coordinators (Dr. Johnson, Baylor's Title IX Coordinator, began her tenure on June 15, 2018), approximately nine current or former Regents, many members of the Baylor Athletics Department and current and former Baylor student-athletes, leaders from Baylor's student government and Greek communities, attorneys with Baylor's outside legal counsel Cozen O'Connor (successor to the engagement of Pepper Hamilton), former Baylor President Ken Starr, and former Baylor Athletics Director Ian McCaw, as well as members of the Baylor and Waco, Texas, police departments, the City Attorney for the City of Waco, the Assistant City Attorney, and other relevant groups.

<sup>19</sup> One or more representatives from Baylor's Office of General Counsel participated on Baylor's behalf in all of our interviews with Baylor employees and Regents.

<sup>20</sup> See the final two paragraphs of Section IV and footnote 16, above.

The Verification Team therefore advises the Oversight Committee that, in our legal opinion, Baylor is not currently in violation of the provisions of Section 1.3.2 of the Conference Bylaws, which requires all members of the Conference to “demonstrate institutional control and ensure that authority for the intercollegiate Athletics programs is vested in the campus chief executive officer” and was the basis for the imposition of the Sanctions in February of 2017. Pursuant to Section 3.6 of the Conference Bylaws and the Resolutions, the Conference Board has broad discretion in determining what if any future action to take with respect to the Sanctions, and the Verification Team has not been asked to and does not make any recommendations in this regard.

## **VII. EVALUATION OF IMPLEMENTATION OF RECOMMENDATIONS**

The following is a summary of the observations made by the Verification Team that are a part of the basis for the conclusions stated in Section VI above. As this is only a summary, not all Recommendations are expressly addressed, those that are addressed are not necessarily discussed in numerical order, and not all information on which the Verification Team relied in reaching our conclusions is cited in this summary. In this summary, the Recommendations are grouped together by the categories in which they are presented in the Recommendations document.

### **1. Broad Recommendations**

Many of the 12 Recommendations in Section I are to a large extent broad, vague, and subjective. For example, *Recommendations I.1 and I.2* use phrases such as “Establish Title IX as an institutional priority” and “Take swift and certain action,” which are not subject to factual verification. However, the Verification Team routinely asked those it interviewed in senior and key positions, including various Regents, the President, representatives of the Office of General Counsel, Title IX, Student Conduct, Student Life, Compliance & Risk, Human Resources, Public Safety, including the Baylor University Police Department (the “BUPD”), Clery, Athletics Department, Medical Services, the Counseling Center, and others whether, in their opinion, Baylor has established Title IX as an institutional priority, which they all answered in the affirmative (and perhaps more important, none answered in the negative), and each was able to point to concrete proactive examples of actions taken by Baylor.

Still, it is important to note that throughout the Verification, the leadership of Baylor’s Title IX Office was in a state of flux.<sup>21</sup> When the Verification Team began the process, the Title IX Office was led by a recently appointed full-time Title IX Coordinator. Prior to the departure of that Title IX Coordinator, Baylor reorganized the reporting structure of its Title IX Office. More specifically, following the restructuring, Baylor’s Title IX Coordinator no longer directly supervised the Title IX staff, including the Interim Deputy Title IX Coordinator, two Investigators, Administrative Case Manager, Administrative Manager & Assistant to the Title IX Coordinator, and Training and Prevention Specialist. Rather, these positions reported to

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<sup>21</sup> See the discussion of *Recommendation IV.1* in Section VII.4 below for a more detailed discussion of these recent leadership transitions.

individuals outside the Title IX Office until November of 2017, at which time Baylor's full-time Title IX Coordinator elected to begin a leave of absence.

In addition, contrary to Title IX's regulatory mandate<sup>22</sup> that each covered school must designate an *employee* to serve as its designated Title IX Coordinator, Baylor contracted with its outside law firm in November of 2017 to have one of the firm's attorneys serve as Title IX Coordinator on an interim basis until such time as Baylor hired a full-time employee to serve as its Title IX Coordinator. Baylor's Interim Title IX Coordinator was contracted to be on campus three days per week and otherwise to be available by telephone from her home base in Philadelphia, Pennsylvania. Baylor posted the replacement Title IX Coordinator position January of 2018 and did not fill that position until mid-April of 2018 when Baylor hired Dr. Laura Johnson.

Dr. Johnson began her tenure as Baylor's Title IX Coordinator on or about June 11, 2018. As of the date of this Report, Baylor still needs to fill two important Title IX positions (a full-time Title IX Investigator and an Administrative Assistant) and to staff its Deputy Title IX Coordinator on a non-interim basis. The Verification Team confirmed on August 30, 2018, that the Deputy Title IX Coordinator and Administrative Assistant positions are posted on Baylor's jobs portal. Further, Baylor has represented to the Verification Team that it has budgeted for the third Title IX Investigator position and that the position will be posted after Baylor staffs its Deputy Title IX Coordinator position on a non-interim basis. The Verification Team confirmed with Dr. Johnson that she is a full-time Baylor employee, reports directly to Baylor's Vice President for Internal Administration and Compliance and Chief of Staff (the "Chief of Staff"), Dr. Robyn Driskell, and has direct access to the President, if needed, which the Verification Team also confirmed through its interviews with President Livingstone. We further confirmed that the Title IX Office now reports to Dr. Johnson as Baylor's Title IX Coordinator. The Verification Team was assured by the incumbent Title IX staff and Baylor's outside consultants that the Title IX Office continued to operate consistent with its policies notwithstanding the leadership changes.

The Verification Team found that Baylor appears to have provided its new Title IX Coordinator with sufficient autonomy and authority to perform her job as set forth in and required under the OCR's 2015 Guidance. Of course, Dr. Johnson has only recently begun her tenure. The Verification Team is hopeful that Baylor will fill its open Title IX positions in the very near future. Until such time, however, we limit our Verification regarding the staffing to the hires Baylor has committed to execute, and Baylor's assurance that the outside investigator and other Title IX support services will continue to be made available to the Title IX Office. We further limit our Verification regarding the autonomy of the Title IX Coordinator to verbal assurances made to the Verification Team by Baylor's recently hired Title IX Coordinator approximately 60 days after she first arrived on campus.

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<sup>22</sup> *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its [Title IX] responsibilities." 34 C.F.R. 106.8(a). See also the OCR's "Dear Colleague" Letter, dated April 24, 2015 (the "2015 Guidance").

Notwithstanding these personnel transitions, the Verification Team further observed that the incumbent Title IX staff<sup>23</sup> has worked diligently to provide stability and implement Baylor's Title IX policies and procedures effectively, notwithstanding Baylor's Title IX leadership changes. Many good things are occurring on Baylor's campus to change attitudes, increase student support, and put in place the policies, procedures, and resources necessary to increase student safety and welfare, including making Title IX education and training a prominent part of the community culture. Additionally, Baylor leadership has repeatedly acknowledged many of the problems addressed by the Recommendations and has publicly represented that it has offered apologies and remedies pursuant to *Recommendation I.3*, as discussed further in Section VII.2 below.

*Recommendations I.4 and I.7* concern Compliance, Title IX, Clery, and BUPD personnel and leadership. Since May of 2016, Baylor has made significant changes in the organizational structure<sup>24</sup> and personnel of the Office of the President and, as discussed further below, the Athletics Department. The interviews the Verification Team conducted with and public statements made by Baylor's senior executive leadership and its Athletics Department, many of whom are new to Baylor since 2016, evidence strong awareness of and commitment to "oversight and effective implementation of Title IX and related compliance requirements" and expected responses regarding conduct issues. Interviews with Joel Allison, Chair of the Board, and numerous other Regents reflected a clear institutional understanding of, and engagement by, the Board in supporting effective oversight of Baylor's Title IX obligations, as referenced in *Recommendations I.5 and I.6*. The Board has dedicated a segment of each of its recent meetings to regulatory compliance, which includes Title IX updates and furthers the Board's ability to effectively oversee Baylor's continued application of Title IX practices and procedures.

*Recommendation I.8* requires Baylor to "commit sufficient infrastructure and resources for effective Title IX implementation." In its memo dated October 4, 2016, the Board stated that it "is fully committed to finding (where necessary) and allocating these resources." In accordance with that statement, Baylor increased its 2017 Title IX Office budget to nearly five times its 2015 budget. In addition, Baylor's recently hired Title IX Coordinator stated that the Title IX Office budget for 2018-2019 is more than sufficient. The Verification Team's observations regarding infrastructure are described above, and more fully below in Section VII.4. The Verification Team observed throughout the process that outside consultants and attorneys with expertise in Title IX and Clery have been made readily available and that significant resources have been committed to the Title IX Office, the Clery Office, and to the BUPD to enhance their respective compliance and implementation efforts.

*Recommendations I.9 and I.10* relate to the creation of a "culture within the football program that ensures . . . that student-athletes are held accountable to the same standards as all

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<sup>23</sup> Baylor's current Title IX staff includes the Title IX Coordinator, Interim Deputy Title IX Coordinator, two Investigators, Administrative Case Manager, Administrative Manager & Assistant to the Title IX Coordinator, and Training and Prevention Specialist.

<sup>24</sup> Such fundamental changes include President Livingstone's significant restructuring of her President's Council including elevating the Director of Human Resources to a position on the President's Council, as well as reconfiguring the Title IX and Clery reporting structures so that both pass through the Chief of Staff, who sits on the President's Council.

Baylor students,” and that leadership of the Athletics Department (i) sets a “strong and consistent tone” regarding Title IX and conduct issues and (ii) “sets expectations for required actions in response to student misconduct, harassment, and discrimination.” In compliance with these Recommendations, the Athletics Department has incorporated the following four pillars into its training program: academic achievement, athletic success, character formation, and spiritual growth.<sup>25</sup> The character formation program focuses on life skills, social responsibility, and respectful relationships. Baylor’s current Vice President and Director of Intercollegiate Athletics Mack Rhoades and Head Football Coach Matt Rhule showed great confidence in the enhanced training policies and procedures. As examples, they discussed interactive, integrated, and targeted training; increased cross-campus integration; recruiting protocols for all incoming student-athletes; and the Student-Athlete Misconduct Reporting and Determination of Suspension Policy and Protocol (the “Athletics Privileges Policy”), including the Athletics Privileges Committee.

The Verification Team has been informed through our interviews with Baylor personnel that Baylor “[m]ake(s) appropriate external reports to enforcement authorities” as mandated by *Recommendation I.11*, including to the McLennan County District Attorney’s Office and the Texas Rangers, as well as additional communications between the BUPD and the McLennan County District Attorney’s Office on cases the BUPD has investigated since the Recommendations were issued. Further, on or about December 21, 2017, the Waco Police Department (the “Waco PD”) and the BUPD executed a Memorandum of Understanding (the “MOU”) on or about December 21, 2017, to facilitate communication and collaboration between Baylor and external enforcement authorities. In addition, Baylor hired an Associate Vice President of Public Safety and Security (with significant law enforcement experience) who, according to the Waco Chief of Police, provides the Waco PD with a specific point of contact at Baylor in addition to the BUPD. The City Attorney of Waco also noted that there is frequent and ongoing sharing of information between the BUPD and the Waco PD.

Baylor leadership acknowledged in their interviews that they had considered the importance of forthright communication regarding the implementation of Title IX, thus carrying out the mandate of *Recommendation I.12*. The Verification Team notes Baylor’s public release of the results of its “2017 Social Climate Survey” (the “Climate Survey”), regular communication and press releases from the Board, and President Livingstone’s “Presidential Perspectives” series of press releases that are publicly available on Baylor’s website as examples of Baylor’s efforts in this area. Further, in our time on campus, from our observation of extensive student and staff training sessions and materials, Title IX pamphlets, pocket guides, website content, and “It’s On Us” materials posted and located throughout campus, and the Verification Team’s review of other written and electronic materials and website notices, we have confirmed that there has been and continues to be extensive communication about Title IX on campus, emphasizing who to contact to report incidents subject to Title IX. The Verification

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<sup>25</sup> The four pillars adopted by the Athletics Department are complimentary to the foundational Four Pillars of Baylor’s new Academic Strategic Plan, *Illuminate*, recently introduced by President Livingstone to the Regents and the Baylor community: unambiguously Christian educational environment; transformational undergraduate education; research and scholarship marked by quality, impact and visibility; and nationally recognized programs in human performance through the arts and athletics.

Team further explored this issue in interviews with representatives from Baylor's Student-Athlete Advisory Council, Greek Life, and Student Government (including "It's On Us" student leaders). These interviews and observations provided the Verification Team with clear and consistent evidence of extensive communication efforts and active student engagement regarding Title IX.

## 2. Restorative Remedies

The five Section II Recommendations direct Baylor to take actions regarding the restorative and ongoing needs of the victims of reported sexual assault cases between 2011 and 2015, including adopting appropriate protocols, contacting known victims regarding these remedies, reviewing past cases to consider pattern, trends and climate, identifying and taking remedial and restorative action with respect to victims who were still at Baylor, and determining whether those Baylor students who made Title IX reports and later withdrew from Baylor withdrew due to Title IX concerns.

In light of the Conference's desire to protect the privacy of, and due to legal issues relating to, the confidentiality of student information (including, but not limited to, the Family Educational Rights & Privacy Act of 1974 ("FERPA"), and confidentiality issues relating to pending and threatened litigation involving Baylor), and because of the limitations on the scope of our engagement as noted above, the Verification Team limited its verification of *Recommendations II.2, II.4, and II.5* to interviews with current and former Baylor employees, including Baylor's President, Athletics Director, General Counsel, Vice President for Student Life, and then-Senior Vice President and Chief Operating Officer. These individuals reported to us in various interviews that they and others (including then-President Ken Starr and then-Interim President Dr. David Garland) had constructive meetings with those victims who were willing to meet,<sup>26</sup> and that the scope and content of each of these meetings varied depending on the needs and desires expressed by the victims consistent with the restorative remedies contemplated by these Recommendations.

The Verification Team reviewed the numerous public statements of support and apology Baylor has made to its sexual assault victims and the Baylor community, including a May 26, 2016, statement by then-Chair of the Board, Ron Murff, in which he offered an apology on behalf of the Board to the victims who "sought help from Baylor." In addition, then-Interim President Garland issued two letters of apology, both of which are available via Baylor's website as of the date of this Report. According to our interviews, Baylor's senior leadership also has reached out to victims individually to meet with them and offer personal apologies and support. As noted in an interview in December of 2017 in an event presented by *The Texas Tribune* entitled "A Conversation with Linda Livingstone, Baylor President," President Livingstone met with two of the survivors. From those meetings, President Livingstone remarked,

[H]ear[ing] their story . . . makes you much, much more attuned and sensitive to the importance of the issue and how we have to, at the core, find ways to address

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<sup>26</sup> Baylor represented to the Verification Team that it has not met in this capacity with any of the plaintiffs in active litigation.

that on college campuses, because no young woman, or young man for that matter, should have to experience a sexual assault. You need to hear those stories, and you need to know what those students are experiencing.<sup>27</sup>

Additionally, the Verification Team has confirmed through interviews that the Title IX Office, in conjunction with Baylor's outside legal counsel, reviewed the past cases of sexual assault between 2011 and 2015 to determine appropriate restorative remedies to address the ongoing needs of victims of reported sexual assault consistent with *Recommendation II.1*. The Verification Team was told in interviews with Baylor's outside legal counsel and its Title IX Office that Baylor's outside counsel had met with representatives from the Title IX Office, Student Life, and Student Conduct to identify any additional contacts or requests for additional support and to ensure that the Title IX Coordinator had all necessary information "to consider patterns, trends, and climate" in accordance with *Recommendation II.3*. As stated above, our Verification of these Recommendations was limited to these inquiries.

### 3. Governance, Leadership, and Compliance

Section III of the Recommendations contains eleven separate Recommendations that relate to matters of corporate governance (*III.1, III.2, III.3*), reporting lines (*III.4*), staffing of the compliance function (*III.5*), establishing appropriate checks and balances on compliance functions (*III.6*), resourcing the general counsel and compliance offices to handle Title IX matters (*III.7*), training of senior leadership on Title IX and other matters (*III.8*), identifying a special Board committee to oversee the implementation of the Recommendations (*III.9*), and providing periodic reports to the Board (*III.10* and *III.11*).

*Recommendation III.1* is the overarching mandate regarding corporate governance reform: "Resolve Current Governance Issues at the [President's] Council and board levels." In response to this Recommendation, the Board established a Governance Review Task Force (the "Task Force") in November of 2016 "to review [Baylor's] current Board governance structure and practices, including the relationship between the Board and [Baylor], and to make recommendations to the Governance and Compensation Committee and the Board regarding governance best practices." The six-member Task Force included three Regents and three independent members, who, according to our interviews with Regents, directed the work of the Task Force. The Task Force issued its report on January 16, 2017 (the "Task Force Report").

The Verification Team has reviewed and confirms Baylor's actions to implement the approximately 35 initiatives in the Task Force Report,<sup>28</sup> including the formation of the first Executive Committee of the Board and the dissolution of the longstanding Athletics Committee of

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<sup>27</sup> Phillip Ericksen, "Livingstone Sets Vision, Message of Collaboration for Baylor," *Waco Tribune-Herald*, April 26, 2017, available at [https://www.wacotrib.com/news/higher\\_education/livingstone-sets-vision-message-of-collaboration-for-baylor/article\\_8c2d3752-d4a3-5930-aaa8-7b0d89ece9d9.html](https://www.wacotrib.com/news/higher_education/livingstone-sets-vision-message-of-collaboration-for-baylor/article_8c2d3752-d4a3-5930-aaa8-7b0d89ece9d9.html) (last visited August 31, 2018).

<sup>28</sup> A limited number of the recommendations made in the Task Force Report were not implemented exactly in the way in which the Task Force drafted such recommendations for various reasons. Through our consultations with the Regent members of the Task Force, the Verification Team does not believe that these deviations are material to the overall impact of the actions to implement these Recommendations on the corporate governance structures and procedures implemented by Baylor in response to the Task Force Report.

the Board. The Board restructured its committees pursuant to the Task Force’s recommendations to separate powers and responsibility and to reduce the risk of potential conflicts of interest. In our interviews with President Livingstone and numerous Regents, including Chairman Allison, the Verification Team heard repeatedly that many of the measures and changes that both Baylor and the Board implemented were designed to ensure that Baylor personnel and the Regents “stay in their lanes” as described more fully below.<sup>29</sup> In addition, the Verification Team learned through interviews with members of the President’s Council and the Board that the restructuring of Board committees provided for much shorter, streamlined Board and committee meetings, which further reduced the risk of micromanagement by the Board.

The Regents the Verification Team spoke with alluded to a “power vacuum” that predated the Verification, in that there had been a dysfunctional relationship between the Board and the Office of the President. From their point of view, this “vacuum” led the Board to involve itself with Baylor affairs that were out of the Board’s purview. Chairman Allison stated that the restructuring of the Board and committees, including the modifications to the meeting times and structures of each, coupled with the amicable working relationship the Board has already developed with President Livingstone, reinforces the key concept that the Board and the committees will not be “getting down into the weeds on things they shouldn’t” be involved in.<sup>30</sup> The committee realignment and the shortening of meetings are directly responsive to certain recommendations included in the Task Force Report and are codified in the Board’s governing documents.<sup>31</sup>

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<sup>29</sup> President Livingstone further emphasized this point in a video interview in December of 2017, in an event presented by The Texas Tribune entitled “A Conversation with Linda Livingstone, Baylor President,” stating,

[T]hrough all that’s happened over the last couple of years, the Regents were very self-reflective on what happened, what role they played in that, how they needed to do things differently, and it is very clear to me that they are very conscientious now about what their proper role is, what the proper role of the administration is, and then how we need to find the right intersection of that to ensure that the University works together effectively. . . . We use the term “keeping our folks in their lanes.”

Emma Platoff, “Baylor Still Faces Five Sexual Assault Investigations. Here’s Where They Stand.” The Texas Tribune, December 14, 2017 (video interview), *available at* <https://www.texastribune.org/2017/12/14/livestream-linda-livingstone-baylor-president/> (last visited December 20, 2017). In the scope of preparing this Report, the Verification Team learned the video is no longer available at the link provided and previously accessed. The video is currently available from RadioPublic at <https://radiopublic.com/the-texas-tribune-events-podcast-8jL4DW> (last visited August 31, 2018).

<sup>30</sup> Chairman Allison stated in interviews with the Verification Team that he and President Livingstone discuss issues on an as-needed basis. In addition, he made it clear that President Livingstone and the Regents understand that “the Board is the Board, and management is management.” He also noted that while it is critical that there be good communication and a good working relationship between the President and the Board, there also needs to be “that clear delineation, bright line, [between] the Board and management.”

<sup>31</sup> Various statements have been made in newspaper articles and media interviews, on social media, in depositions, and in other communications alleging that a small group of current and former Baylor Regents have in the past and may continue to engage in a conspiracy to cover-up various actions at Baylor and to control the management of Baylor, notwithstanding the recent changes to Baylor’s corporate governance structures. In the course of the interviews that were a part of the Verification process, we saw nothing that caused us to validate these allegations, and as a result the Verification Team expresses no opinion with respect to these allegations and did not take them into consideration in the Verification.



The current size of the Board (43 total members, including President Livingstone; 40 of whom are voting members) is not out of line with that of certain comparable private nonprofit educational institutions. Newly imposed Regent term limits of nine consecutive years (three terms of three years each) appear to appropriately balance a desire for continuity of experience with the need for new ideas and energy on the Board. A new streamlined process for the removal of directors with or without cause has been implemented with respect to Regents elected by the Board (but not to alumni-elected Regents). Regent Statements of Commitment and Responsibilities, Code of Conduct, and Code of Ethics have been reviewed, modified, and/or implemented by the Board as recommended to clarify and strengthen the commitment that the Regents make to Baylor. The Regents are required to annually reaffirm and recommit to these standards by executing the Statement of Commitment and Responsibilities.<sup>32</sup> Continued diligence by Baylor's Board and executive leadership will be necessary in the future to ensure that the "power vacuum" observed in the past does not again come into play, and that Regents, administrators, and others remain "in their lanes." Nevertheless, the Verification Team has confirmed that reasonable structures establishing the responsibility, authority, and accountability for these ongoing efforts are in place.

The provisions in the Board's Guidelines for Board Operations (the "Guidelines") relating to confidentiality and appropriate lines of communication (particularly, Section 5.1.1.6 of the Guidelines) have been strengthened, and currently state that "it is important for the Board to communicate and present unified support for Baylor's mission and policies." The Guidelines also stipulate that the Chair is the official spokesperson for the Board, and the President of Baylor is the official spokesperson for Baylor. As noted above, interviews with individual Regents, including Chairman Allison; members of Baylor's executive management staff, including President Linda Livingstone; members of Baylor's Athletics Department, including Athletics Director Rhoades; and a number of Baylor's coaches confirmed with conviction that the various entities are expected to "stay in their lanes." Regents should communicate to Baylor leadership only through the Chair, and executive leadership (including members of the Athletics Department) should communicate to the Board only through the President.

As further evidence of this commitment, one focus of the Board's annual retreat in July of 2016 was maintaining proper lines of communication and reporting protocols. In addition, interviews with representatives of Baylor's Office of General Counsel and Athletics Department confirmed that employment contracts of coaches, assistant coaches, and certain key Athletics Department administrative personnel contain express covenants regarding these matters, including prohibitions related to contact with Regents regarding such matters as employment contracts and other matters related to the coach's or other staff member's employment at Baylor.

As recommended in the Task Force Report, orientation programs for new Regents have been updated and attendance is mandatory. The 2016 and 2017 Regent retreats and new Regent orientation programs included training and presentations from the Association of Governing Boards ("AGB"), as further set forth in the Task Force Report. In addition, as stipulated in the

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<sup>32</sup> The Baylor University Code of Ethics still applies to members of the Baylor University community (e.g., Regents, faculty, staff, students, administration, etc.), while the Code of Conduct was subsumed by the most recent, operative version of the Statement of Commitment and Responsibilities.

Guidelines, and pursuant to the recommendations set forth in the Task Force Report, the Board must complete an annual Regent self-evaluation and feedback program, which includes a “360-degree review” process for Regents as a condition to nomination for reelection. Further, the Guidelines mandate that the Board retain an outside consultant to conduct a thorough assessment of the Board’s performance at least every five years.

In addition to the actions taken pursuant to the Task Force Report, the manner in which Baylor Regents are nominated and elected was modified by amendments to the Bylaws of Baylor University (the “Baylor Bylaws”) to modify the manner in which Regents are nominated and elected to provide more groups with representation on the Board, with the goal of increasing the diversity of views and background of the individuals on the Board. The Regents currently are selected in accordance with the following criteria:

1. At least 75% of the Regents must be Baptist and the remaining (up to) 25% must be active members of a local church from a “historic Christian tradition”.
2. At least 50% of the Regents must have Texas as their principal state of residence when elected (presumably this means upon reelection as well as initial election).
3. Approximately 10% of the voting Regents are elected by Baylor alumni as a result of the settlement of a lawsuit between Baylor and its Alumni Association.
4. Regents *Honoris Causa* comprise two Faculty Regents, one Regent from among the membership of the Baylor B Association (comprising former Baylor student-athlete letterwinners), one Regent from among the membership of the Baylor Bear Foundation (organization whose purpose is support for student-athletes and Baylor Athletics), and two Student Regents (of whom, the Student Regent in his or her second term, if any, is a voting member), all of whom are selected by the Board pursuant to input and initial nomination by the represented groups.
5. Voting Regents are selected by election, with approximately 65% of the membership elected by the Regents themselves, approximately 10% elected by University alumni, and up to 25% elected through a process with the Baptist General Convention of Texas.

These requirements and the terms of service and term limits for Regents place an inherent limitation on the extent and pace at which the Board can achieve greater diversity. However, although the Board remains predominately Caucasian and male, the last three annual elections of new Regents have increased the gender and racial/ethnic diversity of the Board’s membership. In discussing the Board’s makeup, President Livingstone noted that an increase in representation on the Board by those with backgrounds in higher education is one of the strategic priorities for enhancing the ability of the Board to advance Baylor’s mission.<sup>33</sup> She emphasized the important

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<sup>33</sup> All five of the current Regents whose vocational backgrounds are in higher education have been elected in the previous three elections.

ongoing role of the newly implemented Selection Task Force, made up of both Regents and non-Regent Members, in continuing to enhance the diversity and quality of the Board.

The commitment and opportunity exists for the Board to become more diverse. To this end, the 2017-2018 Nominating, Governance & Regent Leadership Committee (the “Governance Committee”) charge mandates that the Governance Committee develop a desired profile of the Board to be used as guideline for recruitment and election of Regents, as well as for developing and overseeing plans for enhancing Board diversity. This goal, and the overall thrust to increase the diversity of the Board, was repeatedly echoed by the Regents interviewed by the Verification Team. The Guidelines also set forth requirements relating to Board size and composition, geographic diversity and “other diversity of background and experience,” and the Board continues to strive toward increasing the diversity of Regents, as noted above. Ultimately, however, the future success of these diversification efforts will only be measurable over time.

As to the identification and selection of new Regents, the Task Force’s recommendations on a new procedure for identification of and qualifications for new candidates for election as new Regents have been implemented by the addition of a Selection Task Force appointed by the Governance Committee. Based on our interviews with Regents and members of the administration and our review of Board and committee meeting minutes and materials, we have confirmed that the Selection Task Force has been formed and comprises both non-Regent and Regent members.

Detailed Task Force recommendations on the qualifications, responsibilities, and duties of the Chair and Vice Chairs of the Board and chairs of Board committees have been structurally implemented. With limited exceptions, and pursuant to recommendations and requirements set forth in the Task Force Report and the Guidelines, respectively, all Regents now serve on two committees, and no Chair or past Chair serves as a voting member of any committee. As noted above, Board and committee meeting schedules have been streamlined and reorganized to shorten meetings to focus on strategic agenda items and to allow all Regents to attend any or all committee meetings, if they so choose. In addition to safeguarding against the prior tendency of the Board to micromanage operating details, the streamlined meeting structure allows for all Regents to attend all committee meetings, whether or not a Regent is a member of the particular committee. In addition, and in compliance with recommendations in the Task Force Report, absent special circumstances all Board and committee meeting materials are provided in advance to all Regents. These changes have resulted in a marked increase in the number of Regents attending meetings of committees other than those on which such Regent serves. Further, standing Board committees have been reorganized to divide prior committee responsibilities, allow focused engagement, and avoid possible conflicts of interest. In addition, detailed procedures for committee meetings, membership, leadership, and reporting have been implemented as recommended.

Of special significance, in 2016, the Board authorized and appointed Baylor’s first Executive Committee of the Board comprising between 10 and 15 members. The Executive Committee is empowered to perform normal and appropriate functions pursuant to delegation by the Board. The Executive Committee appears to be constituted and empowered in conformity with the recommendations in the Task Force Report. In addition, and in part pursuant to *Recommendations X.5 and X.6*, the Board’s Compliance Committee is tasked with ensuring and

monitoring appropriate oversight by the President and other senior administration of the Athletics Department and the Athletics Director. Other standing committees have also been tasked with functional responsibility over certain operational aspects of the Athletics Department, since the prior Athletics Committee was dissolved in the Board's restructuring and committee realignment.

The Board also has implemented recommendations made in the Task Force Report on the frequency and structure of Board executive sessions<sup>34</sup> and regular presidential assessments.<sup>35</sup> In addition, pursuant to the Task Force's recommendations, the Board and the President have hired a qualified Board Professional to serve as the principal officer of the Board regarding administration of its responsibility and as the principal staff officer to the Regents in the discharge of their fiduciary duties. On October 13, 2017, Baylor hired Kristy J. Orr as its new Board Professional. An attorney, she had previously served in a similar capacity as Senior Associate General Counsel to the Board for the University of Texas System and its Board of Regents. The Verification Team interviewed her in October of 2017, she attended the October 2017 Board meetings, and formally began her duties on December 4, 2017. The Task Force set forth its recommendations for core responsibilities of the Board Professional, which are reflected in the description of her position.

Regarding *Recommendation III.2*, in April of 2016, three Regents attended the AGB's National Conference of Trusteeship. In addition, at the Board's July 2016 annual retreat, the Board retained Raymond Cotton of Mintz, Levin, and Dr. Cathy Trower, President of Trower & Trower (a New Hampshire-based consulting firm), to assist in Board deliberations on governance issues. During the July 2017 Board retreat, the AGB presented a program entitled "A Primer on Shared Governance," which dealt explicitly with shared governance among boards of trustees, the university president/administration, university faculty, and student voices.

With regard to *Recommendation III.3*, through our Verification (particularly through interviews and our review of the President's Council Leadership Chart), the Verification Team confirmed that the President's Council now integrates Title IX across university functions (including Human Resources) in the following ways:

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<sup>34</sup> The Task Force recommends that the Board hold executive sessions at the beginning or end of each meeting. Through our review of Board minutes from May 2016 to October 2017, the Verification Team confirmed that executive sessions were held at the meetings during that period in accordance with the Task Force's recommendation.

<sup>35</sup> The Task Force recommends that the Board "regularly assess presidential performance in advancing the mission and strategic plan for the University and performing his or her administrative responsibilities so that the Board can make appropriate adjustments to expectations, actions and compensation," and that the President's compensation be linked to his or her performance. The Verification Team has confirmed that this recommendation has been structurally implemented in the Guidelines. In addition, the Guidelines require that such assessments be completed and that the University Leadership and Compensation Committee (the "Leadership Committee") of the Board conduct the assessment and evaluate the President's performance and compensation. The Guidelines further outline criteria to be used in the assessment and task the Leadership Committee with reporting the results of its assessment to the Board.

- The Chief Operating Officer provided progress reports regarding implementation of the 105 Recommendations until May of 2017 when the Board announced structural completion;
- Cheryl Gochis was promoted to Vice President and Chief Human Resources Officer, and is a member of the President’s Council;
- Baylor hired Paul Liebman as its Chief Compliance & Risk Officer<sup>36</sup> with the assigned responsibilities outlined in *Recommendation III.5*;
- The Clery Compliance Manager reports directly to the Chief Compliance & Risk Officer; and
- The Title IX Coordinator reports directly to the Chief of Staff, Dr. Robyn Driskell, who is a direct report of the President and a member of the President’s Council. In addition, as noted earlier, the Title IX Coordinator has direct access to the President as needed.

With regard to *Recommendations III.4* and *III.6*, Baylor restructured the reporting lines for its Title IX and Clery (VAWA) Coordinators. Since August of 2018, the Title IX Coordinator reports directly to the Chief of Staff, who is a member of the President’s Council. Since June 2017, the Clery Compliance Manager reports directly to the Chief Compliance & Risk Officer who, in turn, reports directly to the Chief of Staff. In addition, the Chief Compliance & Risk Officer provides quarterly reports to the Compliance Committee regarding various statistics, including those pertaining to Title IX, Student Conduct, Athletics, and Clery, among others.

Various executives in charge of these functions expressed their opinion that their respective offices were “properly resourced” to track key legal developments, proactively identify risks and related compliance requirements, and provide appropriate legal advice with respect to Title IX compliance, as required by *Recommendation III.7*.

In assessing Baylor’s compliance with *Recommendation III.8*, through interviews with many key members of the Board, as well as members of Baylor’s senior leadership, our Verification confirmed that extensive training has resulted in the leadership group understanding current federal law and guidance to support Baylor’s Title IX functions. The interviews with these groups evidenced that they have a clear understanding of, and an “informed tone at the top” that reinforces Baylor’s current commitment to, Title IX. In addition, individuals the Verification Team interviewed regarding their level of competency and understanding of Title IX and their obligations thereunder repeatedly stated and our discussion confirmed that the training they received was very thorough. The Chief of Staff stated that, in her opinion, Baylor has

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<sup>36</sup> Paul Liebman replaced former Chief Compliance Officer, Doug Welch, who served in that position from October 2016 until July 2018 and is now Baylor’s Chief Privacy Officer.

adequately provided for its current Title IX training needs.<sup>37</sup> The Regents the Verification Team spoke with repeatedly stressed that one of their top priorities was ensuring that the Title IX Office is adequately and appropriately resourced and staffed. The Regents also discussed the Board-specific Title IX training and demonstrated an understanding of its importance, commenting that they discuss Title IX practically every time they convene, in some capacity or another.

Pursuant to *Recommendation III.9* (and in implementing *Recommendations X.5 and X.6*), in an October 2016 Board memorandum, the Board tasked the Audit and Compliance Committee (now the Compliance and Regulatory Affairs Committee) with “provid[ing] primary oversight” of the implementation of the Recommendations and “designated the new Executive Committee to confirm” that the Recommendations are properly resourced, completed in a timely manner, and effectively implemented. Further, during the 2016-2017 Board year, the Compliance Committee received quarterly updates from Pepper Hamilton / Cozen O’Connor on the status of implementation of the 105 Recommendations. In addition, the Board received periodic comprehensive reports on the progress of implementation.

Our review of Board and committee agendas, minutes, and materials indicate that the provisions of *Recommendations III.10 and III.11*, which require that the Board receive detailed periodic reports to the Board regarding the implementation of the Recommendations, have been implemented through the period of our Verification. In addition, members of the Title IX Office and the Athletics Department provided quarterly reports to the Compliance Committee during the 2016-2017 and the 2017-2018 academic years.

In November of 2017, the Board received a report entitled “External Report re: Completion of 105 Recommendations” (dated November 3, 2017), from Cozen O’Connor attorneys Gina Maisto Smith and Leslie Gomez (formerly of Pepper Hamilton), Baylor’s legal counsel hired to advise Baylor in implementing the Recommendations, that Baylor had effectively implemented the 105 Recommendations and had “seen tremendous effort and engagement that has met or exceeded the tasks set forth in the recommendations.” On the same date, Baylor publicly announced that the implementation of the Recommendations was complete. The Verification Team has not relied on and expresses no opinion as to the accuracy of the November 3, 2017, Cozen O’Conner report, and the Verification Team is not aware whether the Board continues to receive updates on ongoing efforts to comply with the Recommendations and to ensure their sustainability.

#### 4. Title IX Infrastructure, Resources and Internal Protocols

*Recommendations IV.1 through IV.12* address a wide variety of issues relating to the structure, staffing, and resources available to support the implementation of the requirements of Title IX. These Recommendations are of significant importance due in part to the admissions by the Baylor Board in the Findings of Fact that “Baylor’s efforts to implement Title IX were slow,

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<sup>37</sup> Though Chief of Staff Dr. Robyn Driskell felt the University’s Title IX training needs currently are met, she acknowledged that Baylor will address an additional training support position if and when requested by Baylor’s Title IX Coordinator. See further discussion elsewhere in this Section VII.

ad hoc, and hindered by a lack of institutional support and engagement by senior leadership” and that “Baylor lacked . . . sufficient infrastructure and an informed policy.” In short, “[t]he insufficient dedication of resources and support . . . led to limited visibility of Title IX on campus.”

The Verification Team spent a significant amount of time meeting with members of Baylor’s Title IX Office and reviewing various iterations of Baylor’s Title IX Policy and other documents that incorporate Baylor’s Title IX practices and procedures. The Verification Team found Baylor’s incumbent Title IX staff to be experienced, sufficiently trained, and tasked appropriately (including the separation of the support and investigative functions) to perform their respective Title IX responsibilities. This was further confirmed in the Verification Team’s discussions with Baylor’s outside Title IX consultant and counsel. Baylor has made a significant investment in its Title IX compliance efforts, including, most recently, its hiring of a full-time Title IX Coordinator.

*Recommendation IV.1* directs Baylor to “[p]roperly resource (personnel and funding) [the] Title IX Office to implement policies, procedures, and practices.” As a fundamental matter, pursuant to the 2015 Guidance, Title IX requires covered institutions to “designate at least one employee to coordinate their efforts to comply with and carry out their responsibilities under [Title IX]. These dedicated employees are generally referred to as Title IX coordinators.” As noted in Section VII.1 above, during our Verification, three individuals served in the role of Baylor’s Title IX Coordinator, two of whom were Baylor employees.<sup>38</sup> When we began the Verification, Baylor had recently promoted its Senior Deputy Title IX Coordinator, Kristan Tucker, to Title IX Coordinator. It is the Verification Team’s understanding that Ms. Tucker served in this position on a full-time basis until the beginning of November of 2017, when she elected to take a leave of absence. On November 13, 2017, Baylor’s Office of General Counsel notified the Verification Team that Ms. Maureen Holland, a Member of Philadelphia-based law firm Cozen O’Connor, would serve as Baylor’s Interim Title IX Coordinator.<sup>39</sup> In interviews with Ms. Holland, various members of Baylor’s senior administration (including the Office of General Counsel), and the incumbent Title IX staff, the Verification Team learned that Ms. Holland was contracted to spend three days per week on campus and to otherwise provide support as necessary from her Philadelphia base.

Starting in January 2018, Baylor conducted a national search for a permanent employee to fill its Title IX Coordinator position. The search was led internally by Baylor’s Manager of Talent Acquisition, Tim Webb. On April 19, 2018, Baylor informed the Verification Team that Dr. Laura Johnson, who had served for the prior seven years as Georgetown College’s first Title

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<sup>38</sup> The Verification Team conducted interviews with the Title IX staff in August of 2017 (when Ms. Tucker was the Title IX Coordinator), November of 2017 (when Ms. Holland was the Interim Title IX Coordinator), and August of 2018 (approximately two months after Dr. Johnson began her tenure as Title IX Coordinator). More specifically, the Verification Team spoke with the Interim Deputy Title IX Coordinator, two Title IX Investigators, the Coordinator for Student Support Services, and the Administrative Manager & Assistant to Title IX Coordinator. The Verification Team notes that these individuals have served in these capacities throughout our Verification and provided continuity to Baylor’s Title IX process during that time.

<sup>39</sup> Baylor announced Ms. Tucker’s resignation on December 7, 2017, effective January 2, 2018.

IX Coordinator, among other positions,<sup>40</sup> had accepted an offer to become Baylor's new Title IX Coordinator. The Verification Team's introductory meeting with Dr. Johnson occurred on May 22, 2018, after she accepted the Title IX position, and prior to her official start date of June 11, 2018. Dr. Johnson told the Verification Team that it would likely take her 30 to 60 days after arriving on campus before she could confirm, with any degree of confidence, Baylor's implementation of the Recommendations as they pertain to her area of responsibility.

Accordingly, the Verification Team conducted its final interview with Dr. Johnson on August 8, 2018, after she had been on campus for approximately 60 days.<sup>41</sup> At that time, Dr. Johnson stated her belief that Baylor's Title IX Office is "more than sufficiently resourced" both financially and with regard to personnel. She further affirmed that she had received assurances from Baylor that (i) the Deputy Title IX Coordinator position would be filled on a permanent basis,<sup>42</sup> (ii) the recently vacated administrative assistant position would be filled, (iii) a third Investigator position had been budgeted for and could be hired following the hire of the Deputy Title IX Coordinator, and (iv) the Title IX Office could continue to use third-party outside investigators, consultants, and legal counsel with Title IX expertise. The Verification Team heard clearly from individual members of the incumbent Title IX staff in their August 2018 interviews that, in their opinions, optimal staffing would require all of the positions listed above plus a second Training and Prevention Specialist. The Verification Team confirmed during its August 2018 visit that Baylor has committed to filling three of these positions and that Dr. Johnson will continue to evaluate the need for the second Training and Prevention Specialist.<sup>43</sup>

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<sup>40</sup> Dr. Johnson concurrently served as Georgetown College's Vice President for Student Life, Dean of Students, and Title IX Coordinator. Georgetown College is located in Georgetown, Kentucky, and has a student population of approximately 1,750 full-time students. Its intercollegiate athletic programs participate in the Mid-South Conference, which is affiliated with the National Association of Intercollegiate Athletics ("NAIA"). By comparison, Baylor has a combined undergraduate and graduate student population of approximately 17,000 full-time students and its intercollegiate athletics programs participate in the Conference, which is affiliated with the NCAA. In addition to serving as Title IX Coordinator at Georgetown College, the Verification Team understands that Dr. Johnson's post-graduate academic work focused on Title IX compliance and in her dissertation research, Dr. Johnson examined 141 Title IX resolution letters issued by OCR over a fourteen-year period.

<sup>41</sup> Dr. Johnson's first 60 days (and beyond) occurred during the summer term, prior to the first day of fall classes, which occurred on August 20, 2018. In interviews conducted in August of 2018, the Verification Team received uniformly positive input from the members of Baylor's executive leadership and its Athletics Department with whom Dr. Johnson had met with during her first weeks on campus. President Livingstone, Chief of Staff Driskell, General Counsel Holmes, Athletics Director Rhoades, Coach Rhule, Deputy Athletics Director Rogers, and others, including the members of the Title IX Staff, stated that based on their initial meetings and interactions with Dr. Johnson, they believe she is qualified for the job and expressed confidence in her abilities and comfort with her interpersonal communication skills.

<sup>42</sup> Although *Recommendation IV.1* expressly requires the addition of "Deputy Title IX coordinators for intake, support, and case management," Deputy Coordinators are not expressly required by Title IX, and these functions are currently filled by existing Title IX personnel.

<sup>43</sup> The Chief of Staff confirmed in her interview with the Verification Team that Baylor has recently posted the Deputy Title IX Coordinator position and has budgeted for the addition of a third investigator once the Deputy Title IX Coordinator position is filled. The Verification Team has independently confirmed that the administrative assistant job was recently posted on Baylor's jobs portal.



In our numerous interviews with Baylor's Title IX staff,<sup>44</sup> its outside Title IX consultant, its outside counsel, and members of Baylor's Title IX Case Management Team, and after a thorough review of three iterations of Baylor's Title IX Policy, as well as Baylor's Title IX templates, training materials, forms, agendas, and redacted initial assessment and investigation reports, the Verification Team believes that the policies, procedures, and practices Baylor has put in place adequately meet the directives contained in *Recommendations IV.2* through *IV.10*. In accordance with limitations on the scope of its Verification, the Verification Team did not track individual cases through Baylor's Title IX process. Rather, we confirmed through extensive interviews with those responsible for Title IX implementation, including Baylor's outside consultants, and an examination of the documents listed earlier, that Baylor has developed appropriate documentation and structured protocols for all stages of its Title IX process, including assessment, support, response, discipline, and remediation. The Verification Team further learned from Baylor's Director of the Office of Internal Audit and Management Analysis that he, in conjunction with Baylor's outside counsel, had conducted an audit of the Title IX case files and found the files to be consistent with Baylor's policies, procedures, and systems, including those set forth in Baylor's Title IX Policy. Finally, the Verification Team asked each member of Baylor's Title IX staff individually, in multiple interviews, to describe Baylor's Title IX Office's case management protocols and documentation systems in detail, including how information is logged in, managed, and shared among members of the Title IX Office, and with the Title IX Case Management Team, outside investigators, and with others with related Title IX responsibility. In each interview, the Verification Team received specific and consistent responses.

In particular, the Interim Deputy Title IX Coordinator, Administrative Manager and Assistant to Title IX Coordinator, and Administrative Case Manager separately reviewed with the Verification Team Baylor's complaint intake and initial assessment process, including the determination of individual and campus safety, provision of support and interim measures, and the process for evaluating complainants' requests for confidentiality, where requested. As detailed in its Title IX Policy, Baylor has developed standardized processes for evaluating requests for anonymity, including balancing such requests against Baylor's ongoing responsibility to provide individual and campus safety. Through the review of redacted initial assessment reports and staff interviews, the Verification Team confirmed that Baylor's assessments evaluate the safety of the individual, the campus community, and that sufficient information is requested to determine next steps. The Verification Team reviewed Title IX Case Management Meeting agendas and confirmed that sufficient student identifying information<sup>45</sup> is provided in advance of the meeting to allow members of the Case Management Team<sup>46</sup> to search their own systems and thereby identify trends, prior conduct, and potential for serial offenders.

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<sup>44</sup> The Verification Team interviewed Ms. Tucker, Ms. Holland, and Dr. Johnson two times each, and five other members of the Baylor Title IX staff three times each, beginning in August of 2017.

<sup>45</sup> Student identification numbers, as opposed to student names, are shared with attendees.

<sup>46</sup> Baylor's Title IX Case Management Team includes the Title IX Coordinator, Interim Deputy Title IX Coordinator, two Investigators, Associate Dean for Student Conduct Administration, BUPD Chief of Police, Associate Vice President for Student Life, Director of HR Consulting, Assistant General Counsel, and Chief Privacy Officer, as well as others, by invitation. The Chief of Staff told the Verification Team in an interview that she occasionally attends these meetings as well. Baylor's outside Title IX consultant also attends these meetings.

In this way, the Case Management Team Meetings facilitate the coordination of information among diverse departments with overlapping Title IX responsibility, including, for example, BUPD, Student Conduct, Student Life, and Human Resources.<sup>47</sup> In interviews with Title IX staff, the Verification Team explored Baylor's current alternative resolution policy and determined that cases resolved through such measures are properly evaluated and documented.

Baylor's Title IX Coordinators and Title IX Investigators discussed with the Verification Team their individual processes and controls. For those cases that are assigned to an investigator, progress is tracked through separate weekly investigation meetings where internal investigators provide case updates. Each of Baylor's two Title IX Investigators stressed the importance of these meetings. The Investigators further shared how they work through cases with outside investigators and how all actions are documented consistent with Title IX protocols. In the Verification Team's review of redacted investigation reports, it found the reports clearly set forth the appropriate standard of review and documented the facts that supported each Investigator's findings as noted by Baylor's outside consultant. Moreover, Baylor's outside consultant confirmed to the Verification Team that, in his opinion, Baylor's Title IX investigation reports are "surprisingly good and in-depth."

Regarding support measures, the Administrative Case Manager briefly talked the Verification Team through the process of providing interim measures, including academic accommodations. During the initial assessment, after meeting with students to identify what types of accommodations are appropriate, Ms. Jeong stated that she works with various personnel, including the Vice Provost for Undergraduate Education and Institutional Effectiveness, as well as personnel in University Advising to accommodate the students' respective academic needs. She confirmed to the Verification Team that she has not encountered any major difficulty procuring the necessary academic accommodation support for Baylor students. Ms. Jeong told the Verification Team that in addition to classroom and faculty support and accommodations, she assists complainants and respondents with, inter alia, access to counseling services, as well as appropriate housing and work accommodations.

While each member of Baylor's Title IX incumbent staff expressed consistent and serious concerns about the absence of a central case management database,<sup>48</sup> they consistently described a system of protocols, practices, and templates they have developed to track the progress of cases through all major stages of the process including initial assessments, provision of interim support and remedial measures, investigations, panel review, and appeals to ensure that overall

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<sup>47</sup> In fact, Baylor's outside consultant stated that not only is Baylor's Title IX work product good, but he further cited the weekly Title IX Case Management Meeting as a model in that everyone is engaged and noted that these meetings provide an effective weekly opportunity to coordinate information among critical offices.

<sup>48</sup> This sentiment was expressed by several members of the Title IX staff. Baylor's Interim Deputy Title IX Coordinator said that she "dream[s] of a day when [Baylor's Title IX Office] is fully integrated into case management software." Baylor's Administrative Manager and Assistant to Title IX Coordinator shared a similar desire, stating that her "top wish would be for a better case management software program. [Baylor's Title IX Office] now use[s] share drives, Excel tracking, and Symplicity [(an online platform)]. If [the Title IX Office] had one system, that would be helpful." Finally, one of Baylor's Title IX Investigators stated in an interview with the Verification Team, "Without case tracking software, we can't seamlessly document without duplication."

compliance, consistency, and documentation exist for all Title IX cases.<sup>49</sup> In the same vein, while the Title IX staff currently relies on Baylor's Title IX Case Management Meetings to identify potential repeat offenders, and in conjunction with its closeout case checklists and recently completed Climate Survey, to identify patterns and trends for incorporation into discussions around training, policy, and protocol, a centralized case management database would streamline and consolidate these tasks and make them much less dependent on personnel action. Note that *Recommendation IV.12*, which deals with technology for reporting, responding, and tracking cases, relates to *Recommendation VI.6*. Both are discussed in Section VII.6 below. While no particular software system is required by law, it is an industry best practice and Baylor's executive leadership assured Dr. Johnson that she could procure a centralized case management system. Dr. Johnson affirmed to the Verification Team in her August 2018 interview that she and others are currently meeting with vendors to determine which system would best serve Baylor's needs.

In the Verification Team's interview with Dr. Johnson in August of 2018, Dr. Johnson affirmed that she is comfortable that the Recommendations that apply to the Title IX Office have been structurally completed and practically implemented, and that she believes that Title IX compliance is an institutional priority at Baylor. This belief was echoed by each member of the Title IX Staff the Verification Team interviewed. As one among many examples, the Title IX staff pointed to significant improvements in their physical space that provided for enhanced security, comfort, and privacy.<sup>50</sup> The Verification Team toured Baylor's Title IX Office, as well as its Counseling Center, Medical Center, and the BUPD facilities and found that they were appropriate and available "to effectively implement [Baylor's] Title IX responsibilities" in accordance with *Recommendation IV.11*.

Given the above caveats, the Verification Team believes that the staffing, experience, and training of Baylor's current Title IX staff is adequate and fully functional, although as with every organization some personnel have greater experience and some have an opportunity to grow fully into their positions. To the extent that caseloads vary, and depending on subject matter of the complaint,<sup>51</sup> the Verification Team understands that external Title IX investigators (often attorneys from the Waco and Dallas-Fort Worth area) are available to supplement Baylor's two investigators, who are full-time employees of the Title IX staff. Whether these steps and resources, including with respect to *Recommendation IV.1*, discussed above, will be sufficient to meet the needs of the Baylor community in the future on a sustainable basis will depend on how those needs and the staffing and resource allocation to the Title IX function evolves over time.

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<sup>49</sup> In an interview with the Verification Team, then-Interim Title IX Coordinator, Maureen Holland, stated, "Having worked at other institutions . . . documents, templates, and process, and documenting the process . . . it's really unparalleled."

<sup>50</sup> The Verification Team noted the improvements in security of the Title IX Office both through our Special Counsel's tour of the Title IX Office and through our interviews with Title IX personnel, including enhanced security, private access and egress, and private interview space upgrades. One student our Special Counsel interviewed, in referencing the renovated Title IX space, stated, "I think it has a more welcoming environment . . . warm-feeling office that encourages disclosure."

<sup>51</sup> The Verification Team further understands from its interviews with Baylor's Title IX staff that any time there is a case of sexual assault in Title IX, an internal investigator is paired with an external investigator.

## 5. Title IX Policy

*Recommendations V.1* through *V.6* mandate revisions to, and review of, Baylor's policy, procedures, and practices to conform to applicable law and to incorporate various listed best practices and provisions.

The Verification Team reviewed three versions of Baylor's Title IX Policy, procedure, and practices and confirmed with Baylor's Office of General Counsel and external Title IX counsel that it is their opinion that Baylor's Title IX Policy, procedures, and practices are consistent with the law, guidance, and the most effective models from around the country. While we offer no opinion regarding the "most effective models" or whether "promising practices/solutions" have been incorporated, the Verification Team agrees that Baylor's Title IX Policy, procedure, and practices are consistent with current Title IX guidance as of the date of this Report and that Baylor's current Title IX Policy has been updated to incorporate lessons learned, continuing and evolving Title IX guidance, and appears to be consistent with "Baylor's institutional values and mission." While *Recommendation V.1* also directs Baylor to incorporate the findings of Pepper Hamilton's review, the Verification Team was not made privy to those findings, and, therefore, the Verification Team offers no opinion as to whether or not "[t]he findings of [Pepper Hamilton's] review" have been incorporated into Baylor's Title IX Policy, procedures, and practices.

The Verification Team confirmed that Baylor's current Title IX Policy incorporates certain amnesty provisions as mandated by *Recommendation V.2*. In particular, the Recommendations direct Baylor to apply amnesty from its separate Sexual Conduct Policy ("SCP") to complainants and witnesses involved in any Baylor Title IX matter. Baylor's SCP provides that

Baylor will be guided by the biblical understanding that human sexuality is a gift from God and that physical sexual intimacy is to be expressed in the context of marital fidelity. Thus, it is expected that Baylor's students, faculty and staff will engage in behaviors consistent with this understanding of human sexuality.

The Title IX amnesty provision includes language that "[Baylor] will not pursue disciplinary action against students (complainants or witnesses) for conduct in violation of the SCP. Under no circumstances will a complainant or witness who makes a report of sexual assault or other prohibited conduct, or a respondent who participates in an investigation, be charged with violating the SCP, regardless of the outcome."<sup>52</sup> In addition, Baylor's Title IX Policy also incorporates an amnesty provision for any enrolled student "who makes a good faith report to [Baylor] as a complainant or a witness to an incident of prohibited conduct . . . [which] includes amnesty for disclosure of personal consumption of alcohol or other drugs (underage or illegal) which would otherwise be a violation of the Code of Student Conduct."<sup>53</sup> In addition, the

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<sup>52</sup> Baylor has represented to the Verification Team that the good faith requirement is consistent with applicable state law.

<sup>53</sup> For further discussion on Baylor's treatment of drugs and alcohol with respect to responsible behaviors and implications regarding consent, see Section VII.9.

Verification Team confirmed that Baylor has updated its Title IX Policy to provide alternative resolution; interim measures, including remedial and protective measures; and an equity of rights, including equitable access to interim measures and equitable opportunities for all parties to participate in the investigative and adjudicative processes, per *Recommendations V.4* through *V.6*.

Baylor reported that it is confident that its Title IX Policy is implemented as written. To that end, the Verification Team asked Baylor's General Counsel to clarify whether Baylor places notations on the transcripts of respondents who leave the school while an investigation is pending. More specifically, our Special Counsel asked Baylor to clarify its practices pursuant to the following Policy provision:

At any time, [Baylor] may place an administrative hold on the respondent's [Baylor] transcript, make a transcript notification, or defer or withhold the award of the respondent's degree. Although a respondent may withdraw from [Baylor] while the investigation is pending, this withdrawal may be considered permanent and the respondent's transcript *will* be noted withdrawal pending investigation. Even if a respondent withdraws from [Baylor], the Title IX Coordinator may decide to proceed with the investigation and resolution process. (emphasis added)

Through its Office of General Counsel, Baylor noted that the above quoted language was at all times intended to be permissive and that Baylor does not currently include "withdrawal pending investigation" language on any of the transcripts of any respondents who leave Baylor while their Title IX investigation is pending. Upon request, Dr. Johnson further made inquiry and confirmed to the Verification Team that no such notation had been made on any respondent's transcript during the Verification, including those male and female, athlete and non-athlete, respondents who left while their respective Title IX or Student Conduct investigations remained open. Baylor further confirmed that it has withheld at least one respondent's degree pursuant to this provision.

Finally, *Recommendation V.7* requires Baylor to "commit to conducting an annual review and assessment of the Title IX Policy, procedures, and practices to incorporate changes in the law and lessons learned from the current year (through student and administrator input)." As noted above, Baylor updated its Title IX Policy three times during the Verification.<sup>54</sup> Members of Baylor's Title IX staff reported that they each keep an ongoing list of potential action items to be discussed during the annual Title IX Policy review.<sup>55</sup> Each member of the incumbent Title IX staff stated that they had met as a team over the summer to discuss their most pressing policy revisions. The Title IX Investigators engaged in a separate discussion to talk about the issues most pertinent to their role. In the Verification Team's August 2018 interviews, Dr. Johnson and

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<sup>54</sup> Baylor adopted its 2017 Title IX Policy on January 9, 2017, its next Title IX Policy on January 8, 2018, and amended its Title IX Policy for the third time on June 14, 2018 to make minor revisions reflecting Dr. Johnson as the Title IX Coordinator.

<sup>55</sup> This list is derived both from the experiences of members of the Title IX team in their performance of their duties and from feedback they have received from students who have gone through the Title IX process. The Verification Team learned through interviews that the Title IX Office discusses policy revisions and internal goals for the Title IX Office at its annual summer retreat.

the Title IX staff confirmed that the annual policy had been an agenda item on their most recent annual retreat, and that their recommended revisions were close to being finalized. Each member of the incumbent Title IX staff shared with the Verification Team certain concrete items that the Title IX Office had discussed. Further, Dr. Johnson confirmed that she intends to have the Title IX Office continue to conduct this review on an annual basis. The Verification Team confirmed that the Title IX Policy annual review is an action item included in the Sustainability Tracker.

#### 6. Centralized Reporting and Resolution of Reports

The six Recommendations contained in Section VI address Baylor's obligations to outline and provide training regarding all relevant reporting obligations, to implement systems to ensure that all reports are evaluated and properly documented under Baylor's Title IX Policy, and to ensure that all failures to report are addressed appropriately. Notwithstanding those Recommendations that begin with the directive to "ensure" that certain results occur, the Verification Team reviewed the actions taken by Baylor to date with regard to the matters discussed in the Recommendations within this Section.

Consistent with *Recommendation VI.1*, Baylor's current policies, procedures, and protocols clearly outline relevant reporting responsibilities. For example, all Baylor employees who are not designated as "Confidential Resources" are "Responsible Employees" ("Responsible Employee(s)") (as defined in Baylor's Title IX Policy) and therefore "**are required to report immediately** any information they know about suspected prohibited conduct or potential violations of [the Title IX Policy]" to the Title IX Office. (emphasis in original) In addition, Baylor separately has designated more than 700 of its employees as "campus security authorities" ("CSA(s)"), consistent with Clery guidance and as recommended by Baylor's outside Clery consultants. Baylor's Department of Public Safety website contains information regarding who is (and who is not) a CSA and contains links to CSA responsibilities, CSA incident reports, and CSA training. Finally, on its "Protection of Minors" website, Baylor has designated *all* "employees in paid or unpaid positions" as "mandatory reporters" ("Mandatory Reporter(s)") of suspected child abuse and neglect, consistent with Texas State Law.<sup>56</sup> The Verification Team confirmed that Baylor trains its newly hired employees, and through the date of this Report, provides annual training updates for its Responsible Employees, CSAs, and Mandatory Reporters, instructing them on their respective reporting responsibilities and on Baylor's expectations for centralized reporting as mandated by *Recommendation VI.2*. Training is discussed further in Section VII.8.

*Recommendation VI.3* directs that Baylor "ensure accountability for all failures to report by [Baylor] employees." Baylor's Title IX Policy includes language reinforcing the consequences for failures to report by Baylor's Responsible Employees: "Failure by a Responsible Employee to report suspected prohibited conduct in a timely manner may subject

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<sup>56</sup> The Verification Team reviewed Baylor's current "Policy to Protect Children and Prevent Abuse" effective since 2015, as well as a 2018 draft "Protection of Minors Policy," which is expected to be put in place upon completion of final revisions. Although both of these policies direct all members of the Baylor community to report suspected incidents of child abuse and neglect, neither includes the term "Mandatory Reporter" in its definitions section.

them to appropriate discipline, including removal from a position or termination of employment.” When asked by the Verification Team whether all known deviations from Baylor’s Title IX response protocols have been addressed appropriately, representatives from Baylor’s Internal Audit and Management Analysis, Human Resources, Title IX, Athletics, and the Office of General Counsel, all answered in the affirmative, and some additionally provided concrete examples.<sup>57</sup> The Verification Team further confirmed that appropriate counseling and targeted training had been provided to address certain misunderstandings with regard to Baylor’s response protocols. In speaking with those who provided such training, as well as members of Baylor’s staff who attended, our Special Counsel confirmed that the training accomplished its goals in that attendees demonstrated a clear understanding of Baylor’s Title IX policies, procedures, and expectations regarding their respective complaint intake, response, and reporting obligations.

The Verification Team also confirmed, through discussions with Baylor’s Office of General Counsel, that Baylor has added a “Fail to Report” provision as grounds of “for cause” termination into all Athletics contracts starting in 2017 (new hires and renewals), which states as follows:

*Fail to Report.* Fail to immediately report any known, alleged, reported, or suspected student-athlete misconduct as defined by and in accordance with Baylor and/or Athletics Department policies and/or procedures. These policies address Title IX, the Clery Act, and other reporting requirements.

Baylor also has added the following reporting language to such contracts:

In the event of uncertainty about whether an obligation to report exists, any doubt should be resolved in favor of reporting. Coach acknowledges that any failure to comply with any provision of this section constitutes cause for termination of this Contract.

Finally, though the “Fail to Report” clause quoted above was originally structured to set forth reporting obligations with regard to misconduct involving student-athletes, the Verification Team recently learned from the Office of General Counsel that Baylor has revised the provision for prospective contracts to expand the reporting requirement to misconduct involving other members of the Baylor community. Of course, as discussed above, Baylor’s Title IX Policy already requires all Responsible Employees, including coaches, to make such reports.

The Verification Team further confirmed, through discussions with Baylor’s Office of General Counsel, that all 2016 Athletics Department contracts contain one of two versions of a similar “Fail to Report” provision, which constitute grounds of “for cause” termination, which state as follows:

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<sup>57</sup> The Verification Team is, of course, unable to determine with any certainty whether Baylor has identified all failures to report.

*Version 1:*

[Employee] will promptly report to the [Athletics Director], the assigned Sport Administrator, and as applicable, Student Conduct Administration, the Title IX Coordinator and/or, as necessary the President of Baylor, any violation or alleged violation of said Laws and Rules by Baylor or by any coach, student, alumnus, or “representative of the athletic interests” of Baylor, as that term is defined in Section 13 of NCAA Bylaws . . . and acknowledges that any failure to do so constitutes cause for termination of this contract.

*Version 2:*

Additionally, the term “for cause” includes: failure to immediately report any known, alleged, reported or suspected student-athlete misconduct as defined by and in accordance with Baylor or Athletics Department policies and/or procedures. These policies address Title IX, the Clery Act and other reporting requirements.

In addition, and though it was represented to the Verification Team by the drafters of the Recommendations and by Baylor’s Office of General Counsel that the intent of the Recommendation was to apply to Athletics employment contracts, Baylor has elected to include a modified version of the Responsible Employee reporting provision to new contracts of members of Baylor’s senior administration outside of Athletics. The Office of General Counsel further represented to the Verification Team that faculty and staff contracts (of those employees who have contracts) incorporate and reference Baylor policies and, therefore, the failure to report such misconduct may serve as the basis for discipline up to and including termination. Language regarding incorporation of Baylor policies is excerpted below:

[V]iolation of any Baylor policy, to include but not limited to failure to comply with reporting requirements for Title IX, the Clery Act, and minors on campus policy.

Through interviews with Title IX staff, our Verification Team asked and the staff confirmed that they believe all Responsible Employees understand that they are required to report known or suspected violations of Baylor’s Title IX Policy to the Title IX Office, and further, that administration, faculty, and staff understand there are consequences for failure to report such known or suspected violations.

*Recommendations VI.4* and *VI.5* direct Baylor to ensure that reports of sexual or gender-based harassment or violence or other forms of interpersonal violence are reported to the Title IX Office and evaluated under the Title IX policy. Further, *Recommendation VI.6* requires that Baylor “develop a centralized system for all reporting and a database and protocols for consistent record-keeping.” Through its review of Baylor’s website, documentation, and interviews with Baylor personnel, the Verification Team found that Baylor’s training modules, policies, related Title IX pamphlets, and other materials provide clear direction to community members regarding available online and in-person reporting avenues, including anonymous options for students, faculty, staff, and third parties. As discussed earlier, Baylor’s Title IX Policy contains clear



language expressly requiring that all reports of known or suspected violations of Baylor's Title IX Policy must be directed to the Title IX Office.<sup>58</sup>

To ensure that reports reach the Title IX Office for review and assessment, Baylor has developed a centralized reporting system for making Title IX and Clery reports, among others. The system includes an online reporting tool called "Report It,"<sup>59</sup> a website that directs faculty, staff, students, alumni, parents and the public to a range of reporting tools and instructions, including tools for reporting such incidents as Title IX and Clery; EthicsPoint, an anonymous reporting system for ethical, legal, and other issues and concerns; a separate system for the BUPD to make reports; and a Serious Misconduct Incident Report Form portal for Athletics-based incidents of serious misconduct. All of these systems funnel appropriate reports to the Title IX Office. Once reports are received, the Title IX Coordinator and the Interim Deputy Title IX Coordinator reported to the Verification Team that they review and assess every report that comes in to determine threat,<sup>60</sup> risk, student safety, and applicability of the Title IX Policy to ensure that it proceeds through the proper channels and is routed to the proper department. Through weekly Title IX Case Management Meetings, information and updates are provided to a wide variety of departments with responsibility for student conduct, safety, and well-being with regard to new and ongoing matters to ensure that each is evaluated appropriately under Baylor's policies, including Baylor's Title IX Policy.

Baylor represented throughout the Verification that certain vendors were unwilling to allow the school to audit the security of their systems as the primary reason why it has not yet purchased and implemented a centralized case management system. While Title IX does not mandate that schools adopt any one centralized database, it is an industry standard to do so. These systems facilitate cross referencing of student and staff information, automatic generation of documents, and selective access to materials, and help to facilitate timely documentation.<sup>61</sup> Those on the ground charged with response, support, investigation, and resolution of cases involving Student Conduct, Human Resources, Title IX, Clery Compliance, and the BUPD,

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<sup>58</sup> Section 7.C of Baylor's Title IX Policy states, "Responsible Employees must report all known information, including the identities of the parties, the date, time and location, and any details about the reported incident to the Title IX Office. The Title IX Office will share all reports with the [BUPD] to ensure a coordinated institutional response."

<sup>59</sup> It was represented to us through interviews that reports filed through Report It are automatically shared with the appropriate office, including Compliance & Risk, Title IX, BUPD, Clery, and Student Conduct.

<sup>60</sup> During the initial assessment, the Title IX Coordinator and/or the Interim Deputy Title IX Coordinator may alert the Threat Assessment Group, the BUPD, or the Students of Concern Committee depending on the seriousness of the conduct at issue.

<sup>61</sup> A centralized system would afford Baylor the capability to audit cases and review trends, including Title IX and Clery data, in a more streamlined manner. It would also allow those conducting an initial assessment to cross-reference critical student information, including prior reports, housing, and academic information. Although many of these functions currently are handled by personnel through the use of siloed software and spreadsheet solutions, according to Mark Mastin, Baylor's Senior Director of Cloud Technology Services, in his interview with the Verification Team, the systems Baylor has in place "don't talk to each other." Still, as noted above in Section VII.4, Dr. Johnson has been given assurances by Baylor's executive leadership that she could procure a centralized case management system, and she and others are currently reviewing options for such a system with vendors to determine which best suits Baylor's needs. The Verification Team learned through interviews that Baylor's previous Title IX Coordinators had been provided similar assurances.

among others, have expressed a strong desire to purchase and implement a centralized case management software solution; however, none cited the lack of such a system as an insurmountable obstacle to the performance of their respective duties.<sup>62</sup> Still, such a system would allow related departments to manage cases; generate and track respondents, templates, notes and user actions; calendar and provide alerts regarding important stages of the respective process; and allow departments to share and restrict information with others as appropriate.<sup>63</sup>

Further, in spite of the lack of a true centralized database, Baylor has moved toward centralized reporting as evidenced by the report entitled “Baylor Title IX Reporting Process,” which accompanies this Report as Appendix V (the “Baylor Title IX Reporting Process Charts”).

## 7. Resources and Support

The nine Recommendations within this Section focus on campus and outside resources and support both to aid victims and other members of the student body and to further implement steps initially taken by the Board to support the implementation of the Recommendations.<sup>64</sup>

*Recommendation VII.1* calls for the expansion of “resources and support functions to augment steps taken by the [Board] in February 2016.” More specifically, the Board announced an action plan to increase the staffing and footprint of the Counseling Center, among other measures.<sup>65</sup> *Recommendations VII.3* through *VII.6* focus on improvements to the counseling services provided to Baylor students, including that counseling resources adequately address student needs, and that what is communicated to students by the staff of the Counseling Center is caring and helpful.

Since the adoption of the Recommendations, the Counseling Center has more than doubled its staffing, including clinical and administrative positions. In addition, it has added physical space, and its overall physical footprint through the addition of a separate space on campus. Through this addition, the Counseling Center now includes trauma recovery, the Mind Body Lab, and group meeting areas within its combined 11,880 square foot facilities. As our

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<sup>62</sup> This was expressed in interviews with members of the Student Conduct, Title IX, and Clery offices.

<sup>63</sup> Under the current system, with respect to Title IX cases involving outside investigators, for instance, because these external investigators have no access to the Title IX share drive, the record keeping burden is shouldered by Baylor’s internal investigators.

<sup>64</sup> While many of the Recommendations expressly reference support services for victims, we note that current Title IX guidance requires that schools must provide equitable support to complainants and respondents. By focusing on the language of the Recommendations, the Verification Team is in no way ignoring the obligation of institutions to abide by current Title IX guidance. In other words, schools must, without compromising the services they may provide to complainants/victims, provide equitable access to appropriate support and resources for respondents.

<sup>65</sup> The Board’s February 2016 press release, which is available at <https://www.baylor.edu/mediacommunications/news.php?action=story&story=165807> (last visited August 31, 2018), also addressed the Board’s action plan to (i) provide measures to ensure academic accommodation and continued academic access to those involved in Title IX matters; (ii) mandate annual training for upper class and graduate students and faculty, as well as enhanced training for incoming students; and (iii) allocate funding for continuing education for those with Title IX responsibilities. The academic accommodation support is discussed more fully in Section VII.4 above. Baylor’s training efforts are discussed more fully in Section VII.8 below.

Special Counsel observed during her campus tour, both complainants and respondents are now able to access the facility safely and separately.

In an interview with the Verification Team, Baylor's Executive Director for Counseling Services, Dr. Jim Marsh, stated that his department is adequately staffed and has a student to counselor ratio that is among the best in class. Dr. Marsh also highlighted additional improvements attributable to increased staffing, including extended hours, a 24/7 staffed Crisis Hotline, staff on call, walk-in hours, and trauma-informed and trained counselors who can serve as resources for complainants or respondents. In addition, Baylor has put in place systems to eliminate office visit limits, to provide services free of charge for students who pay the requisite Student Services Fee,<sup>66</sup> and to ensure that students in need are seen immediately, with follow-up appointments scheduled no further than 48 hours out. In addition, the Counseling Center also has added informal individual drop-in meetings with counselors called "Let's Talk!" and has developed online content. More specifically, its "Sexual Assault and Interpersonal Violence" website contains video content and helpful links for survivors, parents, and friends, as well as links to the websites for Baylor's Title IX Office and The Advocacy Center for Crime Victims (the "Advocacy Center") (located in Waco). The "Student Resources" webpage provides information and resources for *all* students coping with, inter alia, thoughts of suicide, loneliness, loss and grief, and relationship concerns.<sup>67</sup>

*Recommendation VII.2* calls for an assessment as to "whether additional resources are needed within Student Life, Title IX, counseling, or health services to provide an optimal level of care for victims," and for the addition of resources as soon as practicable to address any gaps. Through interviews with the Executive Director for Counseling Services, Baylor's Medical Director,<sup>68</sup> and others, the Verification Team was assured that each of the departments and offices currently has sufficient resources to provide an adequate level of care for victims/complainants and respondents. For example, Health Services has added a mid-level mental health provider to assist in the provision of direct medical services and the Athletics Department has hired a licensed counselor. Based on our findings through those interviews, the Verification Team is satisfied that the Recommendation has been implemented and shortfalls have been, or are in the process of being, addressed.<sup>69</sup>

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<sup>66</sup> Penalties are, however, assessed for missed appointments.

<sup>67</sup> In an interview with our Special Counsel, one student stated, "I think the Counseling Center has been really receptive to student needs, especially relationships, anxiety, and depression."

<sup>68</sup> With respect to Baylor's Health Services, one student stated in an interview with our Special Counsel, "Dr. Stern [Medical Director of Health Services] is great!" When our Special Counsel asked another student about general interactions around Health Services, the student stated, "Very positive and they've been great advocates."

<sup>69</sup> The Verification Team learned through conversations with Baylor's General Counsel, Chris Holmes, that one of the perceived gaps identified through Student Life is the possible addition by Baylor of a Sexual Assault Nurse Examiner ("SANE Nurse"). While Baylor has determined that it is not practical to have a SANE Nurse on staff, the Counseling Center provided us with its SANE Exam Protocol that ensures students have access to these offsite services. The BUPD and Baylor's Title IX Office ensured us that the BUPD provides transportation for Baylor students to receive SANE exams at local hospitals. In addition, the Verification Team learned through interviews that the Advocacy Center pays for the SANE exam, which is provided by one of two local hospitals.

The Verification Team confirmed, both through discussions with the Director of the Office of Internal Audit and Management Analysis and through independent access, that an after-hours Crisis Hotline is available and operational. The Counseling Center's Crisis Hotline information may be found on the Counseling Center's "Are you in crisis?" webpage, where students can obtain information, including local hospital and national crisis/emergency numbers, including the National Hope Network Hotline and the National Suicide Prevention Lifeline. The Verification Team confirmed that the crisis hotline is staffed during business and non-business hours seven days per week. For all of these reasons, the Verification Team believes that counseling resources currently provided to Baylor students reasonably address their needs.

In July of 2016, Baylor's Counseling Center staff completed a four-day training workshop entitled "Working with Trauma Survivors in a University Context." This training focused on trauma-informed strategies and approaches to those suffering from PTSD. In addition, Dr. Marsh shared with the Verification Team the Counseling Center's sexual assault protocols (i.e., Sexual Assault Response Protocol for After-hours, Sexual Assault Response Protocol for Business Hours, and SANE Exam Protocol). Members of the Counseling Center staff have attended comprehensive training, including annual continuing education, training regarding Baylor's Title IX Policy and procedures, including responsibilities of those designated as Confidential Resources under Baylor's Title IX Policy. On April 26, 2017, Baylor's Title IX implementers attended training to effectively communicate the availability of resources, interim measures, and process options.

In an effort to determine whether these efforts have resulted in a general sense that what is communicated to students in need is caring and helpful, our Special Counsel put the question directly to Baylor's student leaders. Baylor students reported that, in their opinions, the Counseling Center is viewed favorably on campus. One student noted that several friends had sought support there and would recommend Baylor's Counseling Center to others. Further, the Counseling Services Intake Coordinators (including the Assistant Director of Case Management Services and the Crisis Care Counselor), in particular, were cited by students to our Special Counsel as particularly positive representatives of Baylor's Counseling Center.

With regard to *Recommendations VII.7* and *VII.8*, the Verification Team has reviewed Baylor's written resource guides and process charts, in the forms of a pamphlet entitled "Title IX Office: Your Rights, Options, and Resources," a pocket guide entitled "Sexual and Gender-Based Harassment and Sexual Violence: What You Need to Know," and a pamphlet entitled "The Path of a Report of Student Prohibited Conduct," all of which convey Baylor's necessary information and are available to students and others in the Baylor community and are located throughout campus (e.g., Title IX Office and Counseling Center), as well as various Baylor website pages (e.g., Title IX's and Campus Safety's pages and the "It's On Us Baylor University" Facebook page). As discussed more fully in Section VII.8, Baylor conducts extensive Title IX training for all members of its community, both online and in person. The most recent "It's On Us" event occurred on August 20, 2018, and was mandatory for all new incoming and transfer students.

Finally, the Verification Team has confirmed implementation of *Recommendation VII.9*, which calls for dedicated victim-advocacy services on campus through a full-time confidential advocate or that such services be contracted through community agencies.<sup>70</sup> While Baylor employed an on-campus victim advocate for a short period of time, these services are now made available to Baylor students through off-campus partners pursuant to a Memorandum of Understanding between Baylor and the Advocacy Center, dated as of May 17, 2017 (the “Advocacy Center MOU”). The services are referenced in the Title IX Policy and on the Title IX website under the “Resources” tab. The Verification Team has additionally confirmed through interviews with Title IX and Counseling Center staff that resources are available to both complainants and respondents.

#### 8. Training, Education, and Communication of Efforts

*Recommendations VIII.1* through *VIII.6* focus on the coordination and integration of multi-disciplinary university-wide training and educational programming relating to Title IX, Clery, and VAWA, as well as to issues such as tolerance, diversity, inclusion, alcohol and substance abuse, consent, social media and bullying, racism, and other issues that impact campus culture and the development and education of students.<sup>71</sup> Mandatory training focuses on the prioritization of annual education and training consistent with federal law for all community members, including students, administration, faculty, staff, and the Board. In addition, the Recommendations direct Baylor to provide trauma-informed training for all implementers, investigators, and adjudicators, informed by effective practices and implemented by experienced practitioners, consistent with Baylor’s mission and values. Finally, these Recommendations require the communication of all efforts related to training, education, policies, procedures, reporting options, resources, and programs through a “user-friendly centralized website” and other ongoing, effective means.

*Recommendation VIII.1* directs Baylor to “[d]esignate one individual with oversight responsibility for coordination and review of all [Baylor] training and educational programming related to and required by Title IX, Clery and VAWA.” This Recommendation has been an evolving process at Baylor throughout our Verification. During our early site visits, the Verification Team determined that multiple departments shared responsibility for the provision and tracking of portions of Baylor’s impressive overall Title IX and VAWA education campaign. Those departments included Clery, Human Resources, Athletics, Compliance, and Title IX. For example, Clery Compliance Manager Shelley Deats reported that she is responsible for the development and implementation of related Clery training for faculty and staff, including

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<sup>70</sup> Title IX requires, and Baylor’s Title IX Policy provides for, an equity of support, including advocates. As summarized on its Title IX website, Baylor’s Title IX Policy “provide[s] the complainant and respondent with the same opportunities to have others present during any related meeting, including the opportunity to be accompanied, at the party’s expense, to any related meeting or proceeding by an advisor of their choice.” “Baylor Title IX: Policy & Procedures,” <https://www.baylor.edu/titleix/index.php?id=873164> (last visited August 31, 2018).

<sup>71</sup> To the extent it was recommended that Baylor consider integrated multi-disciplinary programming, as outlined in *Recommendation VIII.2*, the Verification Team found that Baylor has considered this Recommendation and that the process and efforts toward integrating programs to address these diverse areas and issues are ongoing. For example, Baylor University Human Resources developed and presented Diversity 101 Training, copies of which were provided to the Verification Team.

training with regard to CSAs' reporting protocols and obligations.<sup>72</sup> In our August 2018 interview with Elizabeth Wellingshoff, Baylor's Training and Prevention Specialist, she identified herself as the "one individual with oversight responsibility" for Title IX and VAWA training and educational programming. This responsibility was further confirmed by Baylor's Office of General Counsel, the Title IX Coordinator, and the Chief of Staff.

In our interviews, the Verification Team confirmed that mandatory Title IX and Clery training sessions were conducted for all new Baylor faculty and staff, either in person (some of which were conducted by outside professional trainers and some by Baylor's Title IX or Clery staff) or online. According to the Baylor Title IX: Prevention & Training: Faculty & Staff Training website, all faculty and staff are required annually to complete the "Intersections: Preventing Harassment, Discrimination, & Sexual Violence" online course. As noted in the course description on the website, this course "includes references to non-Christian faiths" to "provide guidance on interactions with students, community members, and external colleagues who may be of other faiths." The 2017-18 student online course takes about an hour to complete and, according to the Baylor Title IX: Prevention & Training: Student Training website, contains "information about healthy relationships, types of abuse, and red flags for abusive relationships, consent, bystander intervention, and the role of Title IX." Elizabeth Wellingshoff is listed as the contact person for this in-person training. Special Counsel reviewed prior versions of the staff and student training and found them to be consistent with Baylor's Title IX Policy.

In August of 2017, our Special Counsel attended the "It's On Us" new student event, which is a training session geared toward all incoming students, as well as comprehensive and interactive training sessions provided to student-athletes and Athletics Department staff by Neil Irvin, Executive Director of Men Can Stop Rape; Alison Kiss, then-Executive Director of the Clery Center; Dawn Rogers, Deputy Athletics Director, and Kristan Tucker, then-Title IX Coordinator.<sup>73</sup> While attending the Athletics Department training sessions in 2017, our Special Counsel observed that student-athletes and Athletics Department personnel were generally engaged, intellectually curious, and demonstrated an informed appreciation of the seriousness of the subject matter. Training topics included sex and gender discrimination, consent and the role of drugs and alcohol, bystander intervention, intimate partner violence, Baylor's Policy Against Retaliation, and Baylor's Title IX Policy, including its amnesty provisions. She also observed certain responses by student-athletes that indicated the need for supplemental targeted training. Upon further inquiry, Baylor confirmed in writing to the Verification Team that these trainings had been conducted. In addition to the general student-athlete orientation programs, Ms. Rogers confirmed to the Verification Team that she meets with all student-athlete groups that arrive on campus over the summer or during preseason to conduct Title IX training so that all student-athletes have been properly trained prior to their participation. Ms. Rogers provided the Verification Team with a copy of Baylor's 2017-2018 NCAA Attestation Form certifying that all

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<sup>72</sup> CSAs are required to report Clery Act qualifying crimes and mandated policy violations of which they are aware, on a timely basis, to the Baylor University Department of Public Safety.

<sup>73</sup> Our Special Counsel attended training sessions held for male and female student-athletes, coaches, and staff. It was represented to the Verification Team that the content she observed in the sessions she attended is representative of content presented to all other student-athletes, coaches, and staff.

Baylor student-athletes and Athletics Department employees have been trained in accordance with NCAA Board of Governors Policy on Sexual Violence.

With respect to *Recommendation VIII.3*, the Verification Team believes Baylor is “continu[ing] to prioritize annual education and training consistent with federal law and guidance for *all* community members and implementers.” Ms. Wellinghoff confirmed that Baylor is continuing to utilize the “It’s On Us” campaign to advance the informational and training aspects of integrating Title IX issues into campus life as evidenced by the recently uploaded “Be the Change: It’s On Us” video, featuring President Livingstone and Baylor students, and located on the Baylor Title IX: Prevention & Training website. While not required by law, Baylor provides ongoing education and updates through its website to alumni, parents, and the greater community with regard to its Title IX compliance. Although the upcoming events calendar had not been populated as of August 30, 2018, Ms. Wellinghoff reviewed the 2018 training plan and schedule with the Verification Team during her August 2018 interview, including, but not limited to, training of Responsible Employees, CSAs, resident assistants, incoming students, student supervisors, faculty online training, and training of student leaders from student government groups, student activities, and Greek Life organizations. Baylor’s Office of Student Activities requires all club and other group presidents to attend risk management training. According to one of the students the Verification Team interviewed, Baylor “shut[s] down your group if you don’t attend.”

Ms. Wellinghoff reported that Deputy Athletics Director Dawn Rogers is her primary contact for training with student-athletes and Athletics Department personnel. Ms. Wellinghoff also noted that the Athletics Department collaborates with the Title IX Office when planning its Title IX training. In her August 2018 interview with the Verification Team, Deputy Athletics Director Rogers explained how she had researched effective Title IX training programs for student-athletes and shared that members of the Athletics Department and the Title IX Office are working together to facilitate a new healthy relationship curriculum for Athletics personnel to be implemented in the fall of 2018. Based on a program developed by the United States Air Force Academy (“USAFA”), and tailored for Baylor’s use, the program uses a “train the trainers” approach to allow Baylor Athletics and Title IX employees to lead discussions with student-athletes and staff around issues such as consent, intimate partner violence, and physical and verbal sexual exploitation. Ms. Rogers indicated that Baylor plans to use a four-year rotation of USAFA programming to continue such training in the future to facilitate continuity and sustainability. Dr. Johnson and Ms. Wellinghoff attended the “train the trainer” session and will participate as facilitators. A copy of the Facilitator’s Guide was provided to, and reviewed by, the Verification Team. In addition to these Athletics-specific programs, student-athletes undergo the same training required of the remainder of the student body.

With respect to *Recommendation VIII.4*, representatives from Baylor’s Office of General Counsel, Title IX Office, Clery, Counseling Services, BUPD, Regents, Student Conduct, and Human Resources confirmed that they received requisite trauma-informed training from Baylor’s outside consultants in 2017.<sup>74</sup> In addition, enhanced training was provided to certain Title IX

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<sup>74</sup> The Special Counsel confirmed that Jeff Nolan is the outside consultant who provided the trauma-informed training for those who conduct Baylor’s Title IX investigations. Mr. Nolan, an attorney at the law firm of Dinse, Knapp & McAndrew, P.C. provides trauma informed training that is fair both to complainants and respondents. See, e.g., “Promoting Fairness in Trauma-

Liaisons (i.e., employees with enhanced Title IX responsibility), all outside investigators, and members of Baylor's review panel pool. Baylor's outside Title IX consultant and the Title IX staff assured the Verification Team that no one may serve on a review panel until they have gone through sufficient training and that, Baylor's review panel pool is large enough to convene the review panels in a timely manner.

Per *Recommendation VIII.5*, Baylor's Title IX training is consistent with effective practices and is developed in consultation with experienced practitioners, as confirmed to the Verification Team through its interviews with Baylor's outside consultants and its own independent review. Further, materials are presented in a manner that Baylor executives told the Verification Team is consistent with Baylor's mission and values. With respect to *Recommendation VIII.6*, Baylor routinely provides updates on these and other training initiatives through various formats, including websites, interviews, press releases, and other publications. Baylor had previously identified certain gaps in training, including training for graduate students, outside investigators, and contract employees. During its August 2018 interview with Ms. Wellinghoff and the Office of General Counsel, the Verification Team confirmed that the gaps had been filled and these groups had received the required training. In addition, with respect to employee training, Human Resources confirmed to the Verification Team that it checks in with all new employees 30, 60, and 90 days post hire to ensure that they have completed the requisite training and that annual refresher courses are provided to Baylor employees thereafter. Ms. Wellinghoff confirmed that in 2018, sign-in sheets with student names and numbers are being utilized to track attendance at student training events, and that she provides these sheets to the leaders of the student-groups to cross check to ensure that all individuals have undergone required training.

Throughout the Verification, Ms. Wellinghoff has taken on more responsibility to become the "individual with oversight responsibility for coordination and review of all [Baylor] training and educational programming related to and required by Title IX, Clery, and VAWA" (as required by *Recommendation VII.1*) to the point that she was comfortable identifying in that role to the Verification Team. Moreover, she is identified on Baylor's websites as Baylor's training point of contact for Baylor faculty, staff, and students. In this way, the Verification Team observed a development and maturation of the training function of the Title IX Office during the Verification. Of course, as Title IX Coordinator, Dr. Johnson remains responsible for the oversight of Baylor's Title IX compliance, including training. As noted earlier, she is in the process of evaluating Baylor's ongoing training and prevention needs.

## 9. Culture and Climate

Recommendations within this Section direct Baylor to conduct a survey of its community members and to use the results of this survey to inform institutional priorities. In addition, they direct Baylor to assess the role of alcohol and drugs on campus, to design and conduct Title IX focused campus-wide campaigns, and to prioritize student engagement.

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Informed Title IX Investigations," United Educators Podcast December 2017, <https://www.edurisksolutions.org/Templates/template-article.aspx?id=3430&pageid=94> (last visited August 31, 2018).



The Verification Team notes from the outset that the evaluation of culture and climate is necessarily subjective and requires an understanding of baseline behaviors and norms. To the extent that such an evaluation is measurable, the Verification Team offers the following observations. Consistent with *Recommendation IX.1*, Baylor designed and distributed the Climate Survey to its current students “to evaluate the effectiveness of campus procedures, identify challenges in the current campus climate that affect the educational or employment environment or create barriers to reporting, and test for prevalence.” The Climate Survey was based on a nationally recognized instrument and tailored through student and staff input to more closely align with Baylor’s mission and values. Representatives from Baylor’s student government confirmed to the Verification Team that they had reviewed the survey prior to its implementation and worked with Baylor’s then-Title IX Coordinator to offer their suggestions for incorporation, consistent with Baylor’s values and mission.

The Verification Team found that the Climate Survey was appropriately advertised and that student participants were assured that their identities would remain confidential. In interviews with students, faculty, and staff, the Verification Team confirmed that the Climate Survey’s existence was well-known among those groups, who reported varying degrees of familiarity with its results. We learned from President Livingstone that she had discussed the Climate Survey and its results with her senior staff at a President’s Council meeting and had spent time considering how she wanted to address some of the results of the Climate Survey going forward. Although each member of the Title IX staff stated individually that he or she had reviewed the findings when they were released, it is the Verification Team’s understanding that the Title IX Office has not yet met formally to discuss the results. Dr. Johnson told the Verification Team during her August 2018 interview that reviewing the Climate Survey is on her “to do” list and that she intends to assign the analysis and the review of the survey results to one of two graduate students to be assigned to the Title IX Office this fall.

The Climate Survey remained open to the Baylor student community for approximately six weeks, from January of 2017 until March of 2017. President Livingstone released the survey findings publicly on Baylor’s website in the beginning of November of 2017 (the “Climate Survey Press Release”). The Climate Survey Press Release highlighted key findings and reiterated strengths, challenges, and the importance of prevention and response to this important issue. In all, 4,523 students (a little over 20% of Baylor’s undergraduate and graduate student population) responded to the survey.

As President Livingstone stated in the Climate Survey Press Release, “While many of the responses demonstrate significant progress and provide hope for our campus community, others have shown that more assistance, training and resources are needed as part of our ongoing commitment to continuous improvement.”

According to President Livingstone, Baylor will use the results of the Climate Survey “to inform our future educational, training and prevention programs, as we continue to provide a safe

and secure educational environment for our campus community.”<sup>75</sup> In a subsequent January 2018 Baylor press release, President Livingstone stated,

In our recently released climate survey data, [Baylor] learned that knowledge of where to report is well-established, but more understanding is needed about what to expect from the Title IX process. Reviewing the policy annually and participating in one of the training sessions offered by our Title IX team are important steps we all can take.

While Baylor has taken steps to begin to use the results of the Climate Survey “to inform institutional priorities and educational programming,” this Recommendation will require focused ongoing future efforts, as President Livingstone noted. Both President Livingstone and her Chief of Staff, in their August 2018 interviews with the Verification Team, reaffirmed Baylor’s commitment to conduct ongoing climate surveys to track the success of Baylor’s concerted Title IX prevention and education efforts.

In response to specific requests for examples of ways in which Baylor has used the survey results “to inform institutional priorities and educational programming” consistent with *Recommendation IX.2*, Baylor provided the following examples:

1. Based on the results of the Climate Survey, it is apparent that not all Baylor students understand the process that occurs when the Title IX Office first receives a report. In addition, students expressed confusion as to whether the Title IX Office would respect student requests regarding whether or not to proceed with an investigation. In response, Baylor’s initial contacts and intakes with complainants emphasize the Title IX Office’s and Baylor’s efforts to respect the wishes of the complainant regarding whether to proceed with an investigation, while also making clear that, in certain instances, Baylor may have to proceed with an investigation, regardless of the complainant’s wishes. In addition, the Title IX Office communicates to students what types of support is available throughout the process and offers them greater insight into the reporting process itself. To facilitate this, Baylor created a pamphlet entitled “The Path of a Report of Student Prohibited Conduct,” which is a flow chart that outlines the disciplinary and resolution process involving a Title IX claim. This chart is included in the resource folder that the Title IX Office provides to both complainants and respondents. Similarly, future revisions to the Title IX Policy will be geared toward making the Policy easier to navigate through such additions as a table of contents and hyperlinks to sections within the Title IX Policy.
2. Climate Survey results indicate that Baylor students are unaware of available support or accommodations or do not believe that Baylor would provide such support or accommodations. In response, Baylor has adjusted training and orientation programs and intake protocols to emphasize that students can receive

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<sup>75</sup> Climate Survey Press Release.

support and accommodations without going through a Title IX investigative process.

3. Climate Survey results indicate that approximately 8% of the student body identifies with the LGBTQ+ community. Baylor has adjusted its training programs to emphasize that gender-based harassment encompasses harassment based on sexual orientation, gender expression, and gender identity. The Title IX Office has also contacted Baylor's un-registered LGBTQ student organization to answer questions it or its members may have, speak at meetings, etc. Likewise, the Board's training in July of 2018 included discussion of this topic to ensure the Regents are aware of Baylor's diverse community.
4. Climate Survey results indicate that students do not necessarily feel reports would be handled fairly for all parties. Future revisions to the Title IX Policy will clarify that interim measures are available to both complainants and respondents. In addition, the Coordinator for Student Support Services and the Title IX Coordinator have been collaborating with the Counseling Center to ensure that respondents have the same assistance in accessing counseling services as complainants.
5. Climate Survey results indicate that 56% of Baylor students have experienced sexual harassment by a faculty member that involved sexist or sexually offensive language, gestures, or pictures. In response, the Title IX Office has offered targeted and individualized trainings for faculty members in Baylor departments on an as needed / as requested basis. Further, Baylor recognizes that additional training and education on this issue must be included in its annual online training module for faculty and staff. Baylor currently has begun the process for evaluating and improving this training module (including consideration of different vendors).
6. Overall, Climate Survey results indicate that there is room for improvement in getting people to report to Title IX, overall perceptions of campus climate, and knowledge of resources. To raise awareness about climate issues and Baylor processes and resources, as noted above, Baylor released the Climate Survey results online to raise awareness and provide opportunity for feedback. Further, as discussed below, Baylor sponsored such student-led outreach programs as "What Were You Wearing, Waco?" to help dispel myths around sexual violence and to send the message to survivors that Baylor and the community have resources available to assist them. Finally, beginning in the fall of 2018, as noted above, Baylor's Title IX Office will have a graduate assistant tasked with analyzing the results of the Climate Survey and suggesting specific ways that can inform and improve outreach programming.

In addition, and consistent with *Recommendations IX.3* through *IX.7*, the Verification Team found that Baylor has developed a sustained and branded campaign designed to ensure that Baylor's policies and procedures around prevention and response to sexual and gender-based harassment and sexual and interpersonal violence are visible to the Baylor community. The

Director of Baylor's Office of Internal Audit and Management Analysis represented that the Title IX Office and Baylor's marketing and communications team had worked together to develop a strategic plan to implement a branded campaign through digital and other print media. The Verification Team reviewed Baylor's online materials, including website pages, videos, and social media platforms in popup messages that students must click through in order to access their online information. In addition, the Verification Team reviewed Baylor's print materials, with signature green and gold Baylor branding, which were placed in strategic locations throughout Baylor's campus. Members of the Verification Team noted that these materials were visible in many of the locations they visited on campus.

The Verification Team has confirmed through interviews, direct observation, and review of training materials that Baylor has considered and integrated the impact of "alcohol or other drugs on campus" as it pertains to responsible behaviors and effective consent. In observed student-athlete and Athletics Department staff trainings, our Special Counsel noted that this population generally demonstrated a clear understanding of the role drugs and alcohol may play when determining whether full and effective consent of intimate contact may be communicated. Our Special Counsel stated that this understanding was particularly evident when the groups were asked to evaluate hypothetical scenarios involving drug and alcohol use and informed consent. As is the case in many schools across the country, Baylor has committed to providing substantive alcohol education to its students as they matriculate, through the use of alcohol.edu, a web-based product of Everfi. Student leaders affirmed during interviews with the Verification Team that students are required to complete this program prior to being able to register for classes. The Associate Vice President for Student Life told our Special Counsel in an interview that all students at Baylor have completed a version of the required alcohol training. This was confirmed in interviews with student leaders.

The Verification Team also confirmed with student leaders, and with representatives from Student Life, that student organization chairs and student activity leaders are required to undergo risk management training as a precondition to student activity participation. Moreover, the Greek community leaders described training required of their groups in addition to student activities training required of all Student Life leaders. The student leaders involved in these organizations confirmed in their interviews with the Verification Team that the training involves alcohol and community standards, in accordance with *Recommendation IX.5*.

In its interviews with student government representatives, including the "It's On Us" Student Advisory Council, the Verification Team confirmed that students are substantively involved in the design and implementation of Baylor's "It's On Us" programming. Our Special Counsel observed the active onstage participation of some of the student leaders during Baylor's dynamic and interactive "It's On Us" kickoff event for all incoming students, including first-year and inbound transfer students. Other student-led initiatives, such as "What Were You Wearing, Waco?" and a student-initiated speaker series featuring discussions around issues of particular import from the Baylor community, including the intersection of religion and sex, demonstrate that students are actively involved and that Baylor is creating spaces for candid discussions about complicated topics.

Finally, Baylor's Interim Title IX Coordinator shared with the Verification Team that Title IX staff and members of the faculty had met to explore ways to build bridges to reinforce

respectful dialog among those on campus with disparate viewpoints. In each of the Verification Team's meetings with President Livingstone, she reiterated her sincere commitment that Baylor is invested in building a community of care and respect to encompass all members of the Baylor community. President Livingstone's statements are echoed on Baylor's Title IX faculty and staff training portal as follows: "Baylor continues to develop a campus culture of care. Our role as a prominent Christian University demands that we create a safe and secure environment within which all members of our community—faculty, staff, and students—can learn, thrive, and become the people God has created them to be. Every faculty and staff member plays an integral part in fostering a campus culture characterized by dignity, integrity, safety, and respect." In all of these ways, the Verification Team finds that Baylor has taken and continues to take positive steps to implement its vision of a community of care. Future climate surveys will demonstrate the relative effectiveness of the current practices.

#### 10. Athletics Department

*Recommendations X.1 through X.20* relate to various aspects of the operation of the Athletics Department, including culture, reporting, training, oversight, and related policies and procedures.

Since his hire in July of 2016, Athletics Director Mack Rhoades has focused on "creat[ing] and maintain[ing] culture of high moral standards, enforcement, and discipline." In our interviews with Athletics Director Rhoades, the Verification Team found him to be focused on personal accountability, appropriately encouraged by the direction the program is moving, and transparent about the effort needed to continue the good work that has been accomplished to date. He has made more than 100 hires to work with and complement those existing talented and committed Athletics personnel whose employment predated his arrival. Surrounded by a capable senior leadership team that appears to share his vision and work ethic, the Verification Team found that Athletics Director Rhoades practices leadership through action, and sets high compliance expectations for himself, the staff, and Baylor's student-athletes. While many of the student-athlete misconduct policies and procedures that have been implemented in and around Athletics far exceed those found at peer institutions, Baylor's Athletics Department coaches have embraced these changes.<sup>76</sup>

In interviews, the Verification Team found that coaches agreed that certain protocols will make Baylor an even stronger program, even where they may place significant increased time and personnel burdens on staff, including those regarding recruiting, and inbound transfer protocols. In addition, all Athletics administration, coaches, staff and student-athletes have attended and plan to continue to attend annual extended Title IX/VAWA and Athletics reporting responsibility training, in addition to the training that is expected of all Baylor community members. The Verification Team found that Baylor's Athletics leadership now coordinates its education programs with the Baylor Title IX Office and others on campus to supplement,

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<sup>76</sup> In the Verification Team's interviews with Deputy Athletics Director Dawn Rogers, Deputy Athletics Associate Vice President for Intercollegiate Athletics Jeremiah Dickey, and other Senior Associate and Associate Athletics Directors all stated that they fully support Athletics Director Rhoades's leadership of Baylor's Athletics Department.

enhance, and build on Baylor's existing Title IX education campaign to ensure that those in Baylor's Athletics Department are among the most informed and empowered to prevent (including bystander interventions), and to respond appropriately to, instances of sexual and gender harassment, violence, and other forms of serious misconduct. The Athletics Department has incorporated Title IX reporting and resources into its online student-athlete handbook.

The Verification Team met with Athletics Director Rhoades, Deputy Athletics Director Rogers, and Head Football Coach Rhule during its multiple visits to campus, as well as with Head Men's Basketball Coach Scott Drew, Head Women's Basketball Coach Kim Mulkey, Head Women's Soccer Coach Paul Jobson, Head Acrobatics and Tumbling Coach Felecia Mulkey, the Faculty Athletics Representative, and other members of the senior Athletics Department administration, coaches, staff, and student athletes. In each interview, the Verification Team made inquiry regarding reporting responsibilities and expectations, overall knowledge of Baylor's Title IX and Athletics policies and procedures, and perceived consequences for those who fail to take appropriate action in response to suspected or known violations of Baylor's Title IX and Student Conduct Policies. Each individual interviewed demonstrated a clear understanding of their personal obligations to report problematic conduct, as well as their obligation to make reports promptly using the Serious Misconduct Incident Report Form. Athletics Department staff uniformly articulated a belief that failure to report misconduct appropriately and promptly would be met with swift consequences consistent with *Recommendation X.3*. Athletics Director Rhoades reports directly to President Livingstone, is a member of the President's Council, and regularly provides updates to the President and other senior administration regarding Athletics matters, including any response failures that may occur, consistent with *Recommendation X.2*. When asked, Athletics Director Rhoades confirmed to the Verification Team that he has taken certain actions to respond to isolated instances of delayed or inadvertent response failures that have occurred since he started at Baylor.

The Verification Team found that Director Rhoades's efforts appear to be having an impact on how the Athletics Department is perceived both inside and outside the Department. In interviews with members of the Athletics Department, Regents, Baylor leadership, and student-athletes, all confirmed a broadly held and uniform viewpoint throughout Baylor that the current environment and culture of the Athletics Department emphasizes "high moral standards, enforcement, and discipline." Numerous people interviewed commented on Athletics Director Rhoades direct and proactive leadership and communication skills, including those relating to Title IX compliance, student welfare, and reporting obligations and his commitment to remedying the past response failures in the Athletics Department, as is required by *Recommendations X.2* and *X.3*.

*Recommendation X.4* calls for Baylor to "consider" appropriate disciplinary response for employee misconduct or employee failure to respond to reported allegations of misconduct by football players that predate the Verification and the Recommendations. While the Verification Team makes no finding as to the adequacy of Baylor's disciplinary response for allegations of misconduct that it has not been made privy to, we note that there has been significant turnover of Baylor's Athletics administration and football coaching staff personnel since the Board's adoption of the Recommendations. Further, as discussed in Section VII.6 above, Baylor's Title IX Policy includes language stating that a Baylor employee's failure to report misconduct will be disciplined and may include termination of employment. This affirmative obligation is

also reiterated in Athletics Department trainings, staff meetings, coaches' contracts, and the Department of Athletics Incident Reporting Guide. In speaking with Coach Rhule, the Verification Team confirmed that he shares Athletics Director Rhoades's Title IX compliance expectations, including that there will be no special treatment for student-athletes or Athletics Department staff, and regularly shares these expectations with his staff and student-athletes.

The Verification Team learned that Coach Rhule has made outreach efforts across campus and in the Baylor community where he has shared his philosophy and his personal commitment to compliance, including Title IX and VAWA. In an interview with our Special Counsel, one student remarked, "I'm friends with a few football players and can say I've never seen them boast about anything inappropriately. I don't think athletes are viewed by the student body as above discipline." Another shared a classroom experience with our Special Counsel that further demonstrates the perceived positive shift in the culture at Baylor. The student stated, "I was in a leadership class with two football players who were two of the most active in the class. They were presenting and used [Head Football] Coach [Matt] Rhule [as an example] and talked about how amazing and influential he's been in their lives."

In response to *Recommendations X.5* and *X.6*, the Board designated the Audit and Compliance Committee to provide primary oversight of Athletics Department and Athletics Director by the President or other senior administration and to ensure that the Athletics Director and President have appropriate authority over department personnel. The Board eliminated its Athletics Committee and delegated the prior duties of that committee to other standing committees of the Board. Our interviews confirmed that personnel of the Athletics Department and Baylor's executive administration and Regents believe that the Audit and Compliance Committee has appropriate authority over Athletics Department personnel.

As discussed at length above, in interviews with coaches of a number of different athletic programs and other Athletics Department personnel, the Verification Team confirmed pursuant to *Recommendation X.7* that coaches have been trained and educated about the need to remain within appropriate lines of communication with Baylor officers and Regents. In addition, coaches have been instructed that the proper contact with regard to communication to or from the Board about the administration or operation of the athletics program, including any contractual or other employment-related issues, is the Athletics Director. Additionally, a Board Professional was hired by Baylor on December 4, 2017, to facilitate communication in a manner that enhances effective Board operations, governance, and relationships among Regents, senior administration, and other constituencies of Baylor. The Verification Team understands that the Board Professional now serves as the primary point of contact between the Board and the rest of the administration, including the Athletics Department.

*Recommendations X.8*, *X.9*, and *X.12* refer to training and educating Athletics Department personnel on Title IX issues, reporting policies and protocols, and student safety risks. As discussed in Section VI.8 above, our Special Counsel reviewed and attended several extended Title IX training sessions with Athletics personnel and student athletes outlining the Title IX Policy, prohibitions, obligations, and responsibilities, and associated risks per

*Recommendations X.8 and X.9.* Baylor also provided a copy of its NCAA Attestation Form<sup>77</sup> (dated March 28, 2018, executed by Baylor’s President, Athletics Director, and Title IX Coordinator) to the Verification Team documenting that all student-athletes, coaches, and staff have been educated on sexual violence prevention, intervention, and response. In addition, as noted previously, Baylor’s Athletics Director and Deputy Athletics Director told the Verification Team that the Athletics Department had recently hired a counselor from the Counseling Center to help address individual student safety risks and to supplement the Athletics Department’s efforts to ensure student-athlete well-being in compliance with *Recommendation X.9*.

The Verification Team has further confirmed that Athletics Department personnel have been trained on prompt<sup>78</sup> “reporting policies/protocols to ensure immediate sharing of information with the Title IX coordinator and student conduct.” The Verification Team acknowledges that while Baylor has taken steps to implement *Recommendations X.8 and X.12*, these Recommendations contain directives to “ensure” that certain results occur. While not capable of objective verification, the Verification Team does confirm that the training was designed to ensure prompt and proper reporting consistent with Title IX and Baylor’s Title IX Policy.

With regard to *Recommendation X.10*, the Verification Team has confirmed through multiple conversations with representatives from Student Life, Student Conduct, Human Resources, Department of Public Safety (including members of the BUPD), and the Counseling Center that Athletics Director Mack Rhoades has prioritized finding ways to more fully integrate Athletics into the greater Baylor community. The Verification Team has found that Coach Matt Rhule and other members of Baylor’s coaching staff have embraced Athletics Director Rhoades’s commitment to develop relationships across campus. Baylor provided the Verification Team with a list of campus activities and events in which Athletics Department personnel participate. In addition, members of the Student-Athlete Advisory Council shared with the Verification Team examples of student-athlete efforts to integrate athletes with non-athletes as an example of the evolving culture at Baylor and within the Athletics Department.

As directed by *Recommendation X.11*, Baylor “develop[ed] and implement[ed] a new drug testing policy” in 2016. In interviews with Athletics Director Rhoades, he noted that the implementation of an effective drug-testing program was a high priority for him when he arrived at Baylor, and that the current policy is consistent with those implemented at several peer institutions. In multiple discussions with Baylor’s NCAA outside counsel, the Verification Team learned that he has reviewed the program and is comfortable that it complies with NCAA rules. The Verification Team further learned through conversations with Senior Associate Athletics Director for Compliance and other senior Athletics Department staff that the program has been implemented as designed, including its protocols for notification, testing, and sanctions for noncompliance.

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<sup>77</sup> The NCAA Board of Governors adopted a policy on campus sexual violence on August 8, 2017, requiring all member institutions to conduct annual training addressing sexual violence prevention, intervention, and response. Baylor had committed to conduct this training on an annual basis prior to the NCAA’s adoption of this policy.

<sup>78</sup> The Verification Team acknowledges that the Recommendation requires “immediate” reporting, but the training advised prompt reports. Requiring prompt reports from Responsible Employees is consistent with OCR guidance.



In response to *Recommendation X.13*, all Baylor Athletics Department coaches and staff, including graduate assistants and student workers, outside consultants, and volunteer coaches, are required to report in writing known or suspected instances of misconduct to the Senior Associate Athletics Director for Internal Affairs or the Athletics Director.<sup>79</sup> Reports must also be made within 24 hours after first learning of the underlying behavior through Baylor's online misconduct portal for certain violations of Baylor's conduct policies including Baylor's Title IX Policy.<sup>80</sup> According to the Athletics Privileges Policy, any reporting obligation uncertainty "must be resolved in favor of reporting." Failure to make such reports may be grounds for discipline up to and including termination of employment, which, in addition to similar language within the Title IX Policy, fulfills the requirements of *Recommendation X.14*. With regard to Title IX reporting, the Athletics reporting protocols are set forth in the chart entitled the "Title IX Reporting Process: Athletics" included in the Baylor Title IX Reporting Process Charts. Per the Athletics Privileges Policy, these reporting requirements are in addition to any obligations contained in an individual's employment contract. Moreover, student-athletes who are arrested, charged, or cited with a criminal non-minor traffic offense must self-report to their head coach within 24 hours after the event or their release from jail.

In the fall of 2016, Baylor formalized its policy for student-athletes who are arrested, charged, or cited with any criminal offense, in compliance with *Recommendation X.18*. The policy clearly states that such type of conduct may result in team suspension or dismissal. The Athletics Director, Baylor's Threat Assessment Team, and the Athletics Privileges Committee have the authority to limit or suspend a student-athlete's privilege to play pending the resolution of a Baylor Title IX or student conduct investigation. The Athletics Privileges Committee comprises the Director of Athletics, the Faculty Athletics Representative, and one individual designated by the Office of the President. Baylor's Office of General Counsel serves as an advisor to the Athletics Privileges Committee. Any member may convene the Athletics Privileges Committee to consider behavior that, if verified, would constitute serious misconduct (as that term is defined in the Athletics Privileges Policy). Student-athletes will be subject to indefinite suspension of their athletics privileges in cases where it is determined that they committed serious misconduct or were arrested, cited, or charged with certain serious crimes. Certain procedural protections are embedded in the policy to ensure that the Athletics Privileges Committee's process does not compromise the validity of the underlying Title IX or student conduct investigation. Baylor head coaches may also limit or suspend a student-athlete's athletics privileges for violation of Athletics Department or team rules.

Note that *Recommendation X.15* directs Baylor to "[e]xpand its Athletics compliance function to capture and monitor [student-]athlete misconduct" and to "[c]onsider independent Athletics compliance oversight through an officer . . . with dual reporting lines to the President and an appropriate Board committee." The Verification Team has confirmed through interviews with the Senior Associate Athletics Director for Compliance, Deputy Athletics Director, and the

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<sup>79</sup> Baylor advised the Verification Team that, in practice, these reports are made to the Deputy Athletics Director or the Athletics Director. The Senior Associate Athletics Director for Internal Affairs reports to the Deputy Athletics Director and serves as the point of contact for all incoming reports of concern from Student Conduct.

<sup>80</sup> Baylor's online misconduct portal, which is available at [www.baylor.edu/misconduct](http://www.baylor.edu/misconduct), is a secure site that requires Baylor login credentials for access.

former and current Chief Compliance & Risk Officers that the Chief Compliance & Risk Officer monitors NCAA misconduct through meetings with the Senior Associate Athletics Director for Compliance and is monitoring other student-athlete misconduct through meetings with the Deputy Athletics Director. As noted in Section VII.3, the Athletics Department and the Chief Compliance & Risk Officer make quarterly reports to the Board’s Compliance Committee.

The Verification Team believes that Baylor’s policies regarding incoming student-athletes (including incoming first-year and transfer student-athletes) as set forth in Baylor’s Prospective Student-Athlete Background Assessment Policy and its Prospective Student-Athlete Enrollment Policy on April 6, 2017, fully comply with *Recommendations X.16* and *X.17* for incoming student-athletes. The policy statement of the Prospective Student-Athlete Background Assessment Policy follows: “In compliance with Big 12 Conference Rules on Serious Misconduct (Rules 6.7-6.10) Baylor does not admit a prospective student-athlete (“PSA”) who has a record of misconduct and will perform reasonable due diligence procedures aimed at discovering such misconduct.” The Verification Team confirmed the implementation of these policies and protocols through interviews with senior administration, the Faculty Athletics Representative, head and assistant coaches, Student Conduct, Director of the Office of Internal Audit and Management Analysis, and Senior Associate Athletics Director for Compliance. Baylor has created clear guidelines for the PSA recruitment and enrollment process, which involves personnel both inside and outside of the Athletics Department, including, but not limited to, the Faculty Athletics Representative, the Office of General Counsel, the Student Conduct Administration, and Admissions. Individual responsibilities in the screening process are set forth in the policy in the following chart and in the discussion that follows:

<b>Responsibilities Athletics Compliance</b>	The Athletics Compliance Office must conduct internet research using search terms reasonably calculated to detect misconduct on the part of the prospective student-athlete, including criminal misconduct and expulsion or suspension from an educational institution or sports team.
<b>Sport Head Coach</b>	The Head Coach for the PSA’s sport must certify that the answers to the PSA Background Information Questionnaire contained in the Baylor University Athletics Compliance Incoming Student-Athlete Request Form (attached to this policy as Exhibit A) are true to the best of his or her knowledge based on a reasonably diligent inquiry.
<b>PSA</b>	Transfer and freshman PSAs must complete the PSA Background Information Form. Transfer PSAs must complete and sign a FERPA consent form authorizing the release to Baylor of all student conduct records from any prior college or university the Transfer PSA has attended.

<b>Admissions Office</b>	The Office of Admissions must conduct internet research (including social media review) using search terms reasonably calculated to detect misconduct on the part of the prospective student-athlete, including criminal misconduct and expulsion or suspension from an educational institution or sports team.
<b>Student Conduct Administration</b>	The Baylor Student Conduct Administration office must request and attempt to obtain student conduct records from all colleges or universities the Transfer PSA has disclosed as previously attended. An admissions decision will not be made until any such records have been received and reviewed.

In addition to the screening set forth above, incoming transfers must submit to a Criminal Background Check. Results of the screening process are reviewed at each stage by the Faculty Athletics Representative who (with assistance from the Student Conduct Review Committee, if desired) will decide whether to proceed with the recruitment or transfer process. All stages of the process are tracked and documented in an online system called Slate.

In addition, our Special Counsel has reviewed changes made to the 2017-2018 team rules with respect to “team suspension or dismissal with respect to arrest and/or student conduct investigation” and confirmed that where such rules exist (e.g., 2017 Baylor Football Team Policy), they incorporate and are consistent with Athletics Department policies. Other teams have language addressing team discipline for violation of team rules, but have not formally addressed arrest and/or student conduct investigations. Because the Recommendation does not require that such language be included, and in light of representations made by both the Athletics Department and the Office of General Counsel that they are continuing to formalize appropriate team disciplinary policies and that a full review of all team rules for 2018-2019 is ongoing, Baylor is in compliance with *Recommendation X.18*.

As discussed in Section VII.6 above, and in compliance with *Recommendation X.19*, Baylor has considered and moved toward a centralized reporting system as outlined in the Baylor Title IX Reporting Process Charts, which outline software and other reporting solutions for various Baylor departments, including the Athletics Department. These reports are initiated through a student misconduct form, and the process then proceeds through the Title IX Reporting Process: Athletics, as set forth in the Baylor Title IX Reporting Process Charts. Conduct reported via the student misconduct form is forwarded to Title IX, Clery, BUPD, and the Student Conduct Administration for assessment and response. The form directs that if anyone is in immediate danger, they should contact the BUPD or 911.

*Recommendation X.20* calls for annual review of “all cases of athletes accused of misconduct to ensure that responses are consistent with applicable policies and procedures for all Baylor student misconduct.” Though this is an ongoing responsibility that cannot be confirmed at this time, the Verification Team has confirmed through interviews with the prior Chief Compliance Officer that Baylor has conducted these reviews in the past in preparation for presentation to the Compliance Committee as discussed in Section VII.3 above. In addition, the

Verification Team confirmed through interviews with the current Chief Compliance & Risk Officer that he has taken responsibility for ensuring that these reviews will continue.

#### 11. Baylor University Police Department

In assessing implementation of *Recommendations XI.1* through *XI.4*, the Verification Team undertook the following:

- Special Counsel toured the BUPD's physical space;
- reviewed the MOU (entitled "Interlocal Cooperation Agreement Between Baylor University and the City of Waco"), executed on or about December 21, 2017, and with an initial term from October 1, 2017 through September 30, 2018, which automatically renews thereafter for successive one-year terms, unless terminated by either party;
- interviewed Chief of Police Brad Wigtil and Assistant Chief of Police John Kolinek, III of the BUPD, and Chief of Police Ryan Holt and Assistant Chief of Police Robert Lanning of the Waco PD;
- interviewed Jennifer Richie, City Attorney for the City of Waco, and Judith Benton, Assistant City Attorney for the City of Waco;
- interviewed Associate Vice President of Public Safety and Security of Baylor University Mark Childers, as well as other officers and officials of the BUPD;
- interviewed officers in the BUPD Investigations Department; and
- reviewed training records and materials.

Per *Recommendations XI.1* through *XI.3*, Baylor funded the BUPD's hiring of an outside consultant to provide training, help develop policies and protocols, and conduct audits of the BUPD's handling of sexual assault cases. As part of this work, the BUPD drafted a Sexual Violence Response and Investigation Policy in 2017. After seeking input from advocates, prosecuting attorneys, and outside consultants, the BUPD finalized the Sexual Violence Response and Investigation Policy on June 14, 2017. Later that month, the outside consultant trained all BUPD staff on the proper implementation of the protocols contained within the Sexual Violence Response and Investigation Policy, consistent with trauma-informed practices. In interviews with the BUPD Chief of Police, the Verification Team learned that the outside consultant also completed a review of six months of BUPD sexual assault case files and found that the files evidenced a trauma-informed approach and appropriate documentation.

In interviews with members of the BUPD, and as confirmed through document reviews of training and attendance logs, the Verification Team found that the BUPD's commitment to provide training opportunities for its employees is one of the BUPD's strengths. While not an exhaustive list, the Verification Team confirmed that new officers are trained on the Sexual Violence Response and Investigation Policy. As part of their orientation and onboarding protocol, new officers also visit local advocacy centers. In addition, BUPD employees are

trained on Baylor's Title IX Policy by Baylor's Title IX Coordinator, and all BUPD investigators take the Texas Sexual Assault Family Violence Investigators Certification Course once every two years. In order to identify and ensure that ongoing training needs are met on an annual basis, the BUPD worked with its outside consultant to develop a training matrix and implementation plan. Further, the BUPD confirmed in interviews with the Verification Team that annual reviews of training have been and continue to be conducted.

The Verification Team heard from a variety of sources throughout the course of its Verification, including from students and Title IX staff, that the BUPD is a visible presence on campus and an active and cooperative partner in Baylor's ongoing Title IX compliance efforts.<sup>81</sup> Consistent with *Recommendation XI.4*, Chief Wigtil is a member of the weekly Title IX Case Management Meetings. Individuals from the Title IX Office and BUPD personnel confirmed that individual officers participate in campus trainings, invite others to their trainings, attend trainings provided by other departments, make themselves available to assist in Title IX and Student Conduct investigations, meet with individual students to answer questions, assist in transporting students to area hospitals to obtain SANE exams, and otherwise assist in the resolution of Title IX and Student Conduct cases. Our interview with Chief Wigtil confirmed that the BUPD provides training for its command chief and administrative staff on reporting through an online system for complaints, grievance, and conflict resolution, Symplicity (Advocate), and continues to work to implement its software system as outlined in the chart entitled "Title IX Reporting Process: BUPD," which is part of the Baylor Title IX Reporting Process Charts.

## 12. Community Partnerships

*Recommendations XII.1 to XII.5* relate to the relationship between Baylor and its Police Department and local law enforcement and prosecuting authorities (including updating the MOU), external advocacy organizations, campus and community support organizations, and local government entities and area non-profits (including an effort to develop a local Sexual Assault Response Team).

The Verification Team confirmed the adoption and execution of a collaborative MOU, effective as of December 21, 2017, between the BUPD and the Waco PD that outlines the sharing of related Title IX, Clery, and VAWA information between the two organizations. The Verification Team understands from interviews with Chief Wigtil that conversations also

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<sup>81</sup> Through interviews with students, our Special Counsel learned that BUPD officers participate in dorm trainings, are accessible, and give out their cards with contact information. One student commented that a female BUPD officer had reached out to "over 300 female students involved in Greek Life. [The officer] talked about campus safety, 'blue lights,' and gave out her contact information." Our Special Counsel was further told by numerous students of their positive interactions with and high opinions of the BUPD. For example, a student, noting that the BUPD was willing to meet with student groups regarding sensitive equity issues, stated, "My experience with BUPD has been pretty positive." Another student stated, with approval, "Since my freshman year, the BUPD has definitely increased their presence. More cars and officers around."

occurred between Baylor and the McLennan County Sheriff's Department ("MCSD"), but that no Memorandum of Understanding is in place between the BUPD and the MCSD.<sup>82</sup>

With respect to *Recommendation XII.3* and *XII.4*, the Verification Team has confirmed through interviews with members of the BUPD and the Title IX Office, as well as a tour of the Counseling Center, that Baylor offers counseling and health services, which are available to *any* student. The Advocacy Center MOU, discussed above in Section VII.7, "formalizes the commitment of the parties to work together to provide trauma-informed services to student and employee victims of sexual violence and to improve the overall response to sexual violence at Baylor University." The Advocacy Center MOU is effective as of May 17, 2017 and continues until terminated by either party. In addition to the Advocacy Center MOU, the Verification Team confirmed that the website for the Advocacy Center, which is located in Waco, lists resources for Baylor students, including a link to the Counseling Center, located on Baylor's main campus. Chief Wigtil stated to the Verification Team that the BUPD had invited external advocates to sexual violence training conducted for the BUPD staff and that visits to local advocacy groups were incorporated into the field training program for new police officers and dispatchers.

Resources and support services for complainants and respondents are identified in Baylor's Title IX Policy and in a brochure entitled "Your Rights, Options, and Resources"—one of several Title IX brochures available at various locations throughout campus. This brochure lists confidential and non-confidential on-campus resources, as well as non-confidential off-campus resources, available to students, faculty, and staff. The Verification Team confirmed through interviews that the Title IX Administrative Case Manager also meets with respondents individually, in addition to meeting with complainants. Through certain of these interviews with Title IX staff, the Verification Team confirmed that the level of check-in a respondent receives from Title IX personnel, as well as the level of services offered by the Title IX Office, is commensurate with the level of services available to complainants.<sup>83</sup>

In addition, with respect to *Recommendation XII.5*, which calls for the development of a Waco-area Sexual Assault Response Team ("SART"), the Verification Team has confirmed through interviews with Chief Wigtil that the SART was established, and the Verification Team has reviewed meeting minutes from April 10, 2017 and November 13, 2017. The Advocacy Center hosts quarterly meetings, and the Verification Team learned through interviews that members of the Title IX Office attend these meetings. The Verification Team learned from Chief Wigtil that the BUPD has participated in the McLennan County SART for several years. The Verification Team also learned from Chief Wigtil that local area entities such as local hospitals and other nonprofits are active participants in SART. Further, the Verification Team learned from Assistant Chief Kolinek that he is a member of the board of the Advocacy Center.

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<sup>82</sup> Memoranda of understanding are not required under Title IX.

<sup>83</sup> Baylor's Title IX Administrative Case Manager stated in her interview with the Verification Team that she feels "the level of services [Baylor provides] to complainants and respondents is pretty similar."

### 13. Clery

*Recommendation XIII.1* directs Baylor to “[u]pdate [its] Clery analysis and assess [its] reporting obligations based on Pepper Hamilton findings.”<sup>84</sup> As noted above, the US DOE is currently conducting a review into Baylor’s overall compliance with the Clery Act. In interviews with Baylor’s General Counsel, the Verification Team confirmed that the review is ongoing and that Baylor has cooperated fully with the US DOE. Baylor further engaged an outside consulting firm to conduct a full assessment of its Clery program compliance. While the Verification Team reviewed the two reports issued by Baylor’s outside consulting firm and understands that Baylor continues to implement the recommendations made in those reports, the Verification expresses no opinion as to whether Baylor has appropriately implemented all of the findings made in those reports into its Clery program.

Our verification of *Recommendation XIII.1* is limited to whether Baylor has updated its Clery analysis and whether it has assessed Clery reporting obligations. The Clery Office has been expanded to include two full-time employees. The Clery Compliance Manager, Shelley Deats, now reports directly to Chief Compliance & Risk Officer Paul Liebman. Mr. Liebman confirmed to the Verification Team in our August 2018 interview that Baylor had updated its Clery analysis (including all of its Clery-related data) and provided its updated information to the US DOE. He further confirmed his belief that the Clery Office is adequately staffed and that the Clery Compliance Manager has sufficient autonomy and authority to carry out her duties effectively. Ms. Deats confirmed Mr. Liebman’s assessment during a November 30, 2017 interview. She also stated that her interactions with the BUPD, Title IX, and other related departments on campus are professional and positive and that Baylor has sufficient current controls in place.

The Verification Team confirmed that Baylor publicly issued its Annual Fire Safety and Security Reports for 2016 and 2017, including the following additional data updates: “Correction Details as of 10/13/17” and “Correction Details as of 1/8/18.” In interviews with Clery Compliance Manager Shelley Deats, then-Chief Compliance Officer Doug Welch, BUPD Chief Wigtil, current Chief Compliance & Risk Officer Paul Liebman, and Interim Deputy Title IX Coordinator Alex Fulcher, as well as a review of related documentation and information contained on Baylor’s Department of Public Safety website, the Verification Team confirmed that Baylor maintains a daily campus crime and fire log, which is accessible online and is updated regularly by Baylor’s Title IX Office, among others; defined its Clery geography; and has made the Annual Campus Security Report available to the public and to members of the Baylor community on Baylor’s Department of Public Safety website. The Verification Team has confirmed that Baylor has processes and procedures in place (called Baylor Alert) to issue emergency notifications and timely warnings in the event of a serious and continuing threat to students or employees. Further, Baylor has identified and provides training for its more than 700 CSAs consistent with Clery mandates and has provided all necessary updates to the US DOE. The Verification Team has confirmed that CSAs are identified on a monthly basis, are trained annually, and that training is provided on a rolling basis as new hires join the Baylor community.

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<sup>84</sup> As the Verification Team is not privy to the Pepper Hamilton findings, the Verification Team offers no opinion as to updates and assessment based on such findings.

The Verification Team reviewed Baylor's CSA reporting protocols as set forth in its Annual Security Reports and online. The Verification Team learned that all CSAs are encouraged to make appropriate reports to the Department of Public Safety. The Verification Team further notes that Baylor also has designated 16 offices as places to report crimes, including Student Life, Student Conduct, Human Resources, and Student Activities. Although the Title IX Office is not included in the list of 16 offices, Baylor's Interim Deputy Title IX Coordinator shared with the Verification Team that one of her job responsibilities as part of the Title IX Office's initial assessment process is to ensure that appropriate CSA reports are forwarded to the Department of Public Safety.

The Verification Team was not engaged to investigate or provide legal input and assessment on Baylor's past or current Clery compliance, and the Verification Team expresses no opinion with regard to such compliance. Based on our Verification, we confirm that Baylor has updated its analysis and assessed its reporting obligations in compliance with the requirements of the Clery Act. The Verification Team offers no opinion as to the possible results of the US DOE's pending review or other pending or potential future claims for violation of the Clery Act.

If you have questions with regard to this Report, please contact Kevin R. Sweeney, Chair of Polsinelli's Sports Industry Group and Vice Chair of its Corporate & Transactional Practice Group, at [KRSweeney@polsinelli.com](mailto:KRSweeney@polsinelli.com).



**APPENDICES TO**  
**REPORT ON VERIFICATION OF IMPLEMENTATION OF**  
**105 RECOMMENDATIONS BY BAYLOR UNIVERSITY**

## **APPENDIX INDEX**

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## **APPENDIX I**

Baylor University – Report of External and Independent Review (105 Recommendations)

(attached)

**BAYLOR UNIVERSITY  
REPORT OF EXTERNAL AND INDEPENDENT REVIEW**

**RECOMMENDATIONS**

**I. Broad Recommendations**

- I.1. Establish Title IX obligations as an institutional priority.
- I.2. Take swift and certain action consistent with these recommendations.
- I.3. Offer institutional and personal apologies and appropriate remedies.
- I.4. Consider necessary personnel action for accountability and effective implementation of Title IX.
- I.5. Engage in measures that will instill a consistent institutional understanding of Title IX obligations.
- I.6. Take measures to ensure that the level of engagement by board members supports effective oversight of Title IX.
- I.7. Structure senior leadership to ensure appropriate and informed administrative oversight and effective implementation of Title IX and related compliance requirements.
- I.8. Commit sufficient infrastructure and resources for effective Title IX implementation.
- I.9. Create a culture within the football program that ensures that the reporting, investigation, and disciplinary actions involving student-athletes and athletics department staff are managed in the same manner as all other students and staff on campus, and that student-athletes are held accountable to the same standards as all Baylor students.
- I.10. Identify leadership for the Athletics Department and football program to set a strong and consistent tone regarding Title IX and conduct issues and set expectations for required actions in response to all forms of student misconduct, harassment and discrimination.
- I.11. Make appropriate external reports to enforcement authorities.
- I.12. Consider the importance of forthright communication to the effective implementation of Title IX.

## **II. Restorative Remedies**

- II.1. Develop protocols to address the restorative and ongoing needs of victims of reported sexual assault between 2011 and 2015.
- II.2. Contact known victims in the specific cases identified in this review to determine if there are appropriate remedies consistent with the goals of Title IX.
- II.3. Conduct review of past cases from 2011 to 2015 to consider pattern, trends, climate.
- II.4. Identify victims who are still at Baylor who made reports that did not move forward to determine if the following exist:
  - any current conduct of concern
  - any current need for support
  - any appropriate restorative actions
  - any need for additional investigative steps
- II.5. Identify victims who made reports, but later withdrew from Baylor, to understand if the withdrawal was connected to Title IX concerns.

## **III. Governance, Leadership, and Compliance**

- III.1. Resolve current governance issues at the Executive Council and board levels.
- III.2. Empower board committees to take active role in education, oversight, and enforcement of governance issues and fiduciary responsibilities:
  - Provide Association of Governing Boards training for Board of Regents
  - Evaluate and make recommendations regarding board size and composition
  - Review considerations and standards for new board membership, including actual or perceived conflicts of interest, and implement due diligence standards in the selection of board members
  - Educate and train board members to remain within appropriate reporting protocols and lines of communication when addressing members of the administration and the Athletics Department (consistent with employment contracts)
- III.3. Expand representation of departments on the Executive Council in order to integrate Title IX across university functions (e.g., human resources).
- III.4. Restructure reporting lines for the Title IX and Clery (VAWA) Coordinators to ensure that each position has the power and authority necessary to implement responsibilities.
- III.5. Hire a full-time, dedicated, and qualified Chief Compliance Officer responsible for identifying risk, the likelihood of occurrence, the effectiveness of existing controls, the action needed to address gaps in compliance, and the consequences of failure to comply.

- III.6. Develop oversight system of checks and balances to recognize non-compliance and hold administrators accountable for failures to comply.
- III.7. Properly resource general counsel's office and the chief compliance officer to track key legal developments in Title IX law and guidance, proactively identify risks associated with Title IX and related compliance requirements, and provide appropriate legal advice.
- III.8. Train senior leadership to understand current federal law and guidance to support the University's Title IX function and set an informed tone at the top that reinforces Baylor's commitment to Title IX.
- III.9. Identify a special oversight committee of the board to work in conjunction with leadership to ensure that these recommendations are properly resourced, completed in a timely manner, and effectively implemented.
- III.10. Provide detailed periodic reports to the Board regarding the implementation of these recommendations.
- III.11. Provide detailed continuing quarterly reports to the Board on Student Conduct issues, Title IX compliance, and athletics compliance.

#### **IV. Title IX Infrastructure, Resources and Internal Protocols**

- IV.1. Properly resource (personnel and funding) Title IX office to implement policies, procedures, and practices:
  - Add Deputy Title IX coordinators for intake, support, and case management
  - Add prevention and education coordinator
  - Evaluate current investigative functioning to ensure thorough, adequate, reliable investigations
  - Assess the need for additional trained and experienced investigators (internal or external)
  - Provide trained and effective administrative support
  - Identify personnel for all positions based on level of training and experience to ensure effective implementation and removal of conflict in roles and reporting structure
- IV.2. Restructure the Title IX office to improve the implementation of policy, procedure and practices:
  - Develop specific intake protocol
  - Use case management approach to track and monitor interim measures and student success
  - Separate investigations from the provision of resources and support
  - Develop investigative templates and protocols for consistent documentation and evaluation

- Review internal operating protocols to assure compliance, consistency, and follow up on all reports
- IV.3. Develop structured protocols and systems for the coordination of information between and among implementers, including internal case management and documentation that tracks timelines, regular and ongoing internal and external communications, and documents investigative steps, interim measures and steps taken to eliminate sexual harassment or violence, prevent its recurrence and address its effects.
- IV.4. Develop consistent protocols for application to critical decisions that identify decision-making authority, outline the applicable law and guidance, establish a template list of key considerations, and maintain appropriate documentation of the factual foundation for each decision.
- IV.5. Review and standardize existing template communications for regular stages of the process to assure consistency, the use of trauma-informed language, adherence to policy requirements and compliance with federal law regarding required written communications.
- IV.6. Conduct an initial assessment in every case and ensure contemporaneous documentation of steps taken and information considered. The initial review should proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made, and the Title IX Coordinator and/or Title IX Management Team has sufficient information to determine the best course of action, which may include an investigation or steps to otherwise determine what occurred.
- IV.7. As part of the initial assessment of a report, develop a standardized process for evaluating a complainant's request for anonymity, determining the appropriate course of action when balancing individual autonomy with broader campus safety obligations, and documenting the facts and circumstances that inform the University's determination. This process, which must be supportive of a complainant's needs and iterative in nature, can involve the Title IX Coordinator, the Title IX Management Team, or a separate entity specially designated to assist or evaluate a request for anonymity. The Title IX Coordinator should document the information gathered, the factors considered, the determination reached, and any additional steps taken to eliminate, prevent, and address the effects of the misconduct. Initial assessment protocols should vet whether a potential pattern of sexual violence is present.
- IV.8. Ensure that all forms of informal resolution are clearly documented to demonstrate the actions that are taken to meet the University's Title IX obligation to take action to eliminate a hostile environment, prevent its recurrence and address its effects on the complainant and the community.
- IV.9. Maintain appropriate documentation and records of all reports and steps taken to eliminate, prevent and address the effects of the prohibited conduct.



- IV.10. Review and revise protocols to incorporate patterns, trends and climate assessment for consistent broad remedy analysis and investigation of potential serial offenders.
- IV.11. Evaluate appropriateness and availability of facilities to effectively implement Title IX responsibilities.
- IV.12. Explore the use of available technology for reporting, responding, and tracking cases.

**V. Title IX Policy**

- V.1. Revise Title IX policy, procedure, and practices consistent with law, guidance, and most effective models from around the country. Incorporate the following considerations:
  - The findings of this review
  - Lessons learned from implementation during the 2015-2016 year
  - Compliance-related required updates
  - Effective and promising practices/solutions
  - Baylor's institutional values and mission
- V.2. Revise Baylor's Title IX policy to include a clear amnesty provision for violation of the Sexual Conduct Policy.
- V.3. Revise the Title IX policy appeals process.
- V.4. Revise the Title IX policy to ensure that both parties may be present for, or otherwise participate in, the other party's presentation to adjudicator.
- V.5. Revise policies, procedures, and practices to ensure consistent access to interim remedial measures and consistent use, as appropriate, of interim protective measures.
- V.6. Review policy regarding informal resolution process.
- V.7. Commit to conducting an annual review and assessment of Title IX policies, procedures, and practices to incorporate changes in the law and lessons learned from the current year (through student and administrator input).

**VI. Centralized Reporting and Resolution of Reports**

- VI.1. Ensure that relevant policies, procedures, and protocols clearly outline all Title IX, Clery, and any other reporting responsibility (e.g., mandatory child abuse reporting).
- VI.2. Provide training and annual updates for clear implementation of reporting responsibilities and centralized reporting expectations.
- VI.3. Ensure accountability for all failures to report by University employees. Amend "for cause" language in all prospective contracts to specifically include the failure to report

misconduct as required by policy or law. Make clear in existing policies that violation of reporting obligations could be cause for discharge.

- VI.4. Ensure that all reports of sexual or gender-based harassment or violence or other forms of interpersonal violence are reported to the Title IX office.
- VI.5. Ensure that all reports of sexual or gender-based harassment or violence or other forms of interpersonal violence are evaluated under the Title IX policy.
- VI.6. Develop a centralized system for all reporting and a database and protocols for consistent record-keeping.

## **VII. Resources and Support**

- VII.1. Expand resources and support functions to augment the steps taken by the Board of Regents in February 2016.
- VII.2. Review whether additional resources are needed within student life, Title IX, counseling, or health service to provide an optimal level of care for victims. Add resources as soon as practicable if there are remaining gaps.
- VII.3. Confirm availability of after-hours crisis hotline.
- VII.4. Ensure counseling resources currently provided to students adequately address their needs.
- VII.5. Ensure that what is communicated to students in need who present to the counseling center is caring and helpful.
- VII.6. Ensure there is adequate space for the counseling center.
- VII.7. Ensure that information about the range of interim measures is widely disseminated and accessible to all community members.
- VII.8. Train all implementers to effectively communicate availability of resources, interim measures, and all process options. Develop and provide a written resource guide and process chart.
- VII.9. Provide dedicated victim-advocacy services on campus through full-time confidential advocate or contracted services with community agencies.

## **VIII. Training, Education, and Communication of Efforts**

- VIII.1. Designate one individual with oversight responsibility for coordination and review of all University training and educational programming related to and required by Title IX, Clery and VAWA.

VIII.2. Consider integrated multi-disciplinary programming to address issues of sexual and gender-based harassment and violence, gender equity, tolerance, diversity, inclusion, intersectionality, alcohol and substance abuse, consent, social media, bullying and hazing, classism, racism, and other issues that impact campus culture and the development and education of students.

VIII.3. Until further study demonstrates otherwise, continue to prioritize annual education and training consistent with federal law and guidance for *all* community members and implementers, including:

- Students – undergraduate and graduate
  - All student groups
  - Fraternities and sororities
  - Athletes
- Administration and Staff
  - All athletics personnel including coaches
  - Baylor Police
  - Faculty
  - Student Affairs/Student Conduct
  - Title IX Staff
  - Counseling
  - General Counsel
  - Executive Leadership
- Board
- Alumni

VIII.4. Ensure that all implementers, investigators and adjudicators have trauma-informed training.

VIII.5. Ensure that all training is informed by effective practices and experienced practitioners and is consistent with Baylor University's mission and values.

VIII.6. Communicate all efforts (training, education, policies, procedures, reporting options, resources, and programs) through a user-friendly centralized website and other ongoing and effective means.

## **IX. Culture and Climate**

IX.1. Conduct appropriate climate surveys or assessments to evaluate the effectiveness of campus procedures, identify challenges in the current campus climate that affect the educational or employment environment or create barriers to reporting, and test for prevalence.

IX.2. Use the results of the climate survey to inform institutional priorities and educational programming.

- IX.3. Evaluate the role of alcohol or other drugs on campus and the efficacy of existing alcohol or other drug policies.
- IX.4. Design and conduct a campus campaign to provide a visible platform for candid discussion about consent, alcohol or other drug use, common victim-blaming myths, and barriers to reporting (including the University's amnesty policy).
- IX.5. Develop and implement a sustained campaign to keep institutional and community focus on Baylor's commitment to the prevention of sexual and gender-based harassment and violence.
- IX.6. Collaborate with the University's Marketing and Communications personnel to develop an intentional and strategic plan to implement the campaign, identify branding, design visual content, and consider the effectiveness of forms of delivery, including web content, written materials, posters, and other formats.
- IX.7. Prioritize student engagement. Seek mechanisms to incorporate student input through student leaders, open forums and individual engagement from current and former students.

**X. Athletics Department**

- X.1. Create and maintain culture of high moral standards, enforcement, and discipline. Review, revise, and reinforce the expectation of a culture of high moral standards and discipline from coaches and staff to players.
- X.2. Communicate findings to senior leadership and relevant athletic administrators regarding response failures in Athletics Department
- X.3. Identify leadership to set a tone from the top regarding Title IX compliance, attention to student welfare, and reporting obligations.
- X.4. Consider appropriate disciplinary response for employee misconduct or employee failure to respond to several reported allegations of misconduct by football players.
- X.5. Charge the Board audit committee with ensuring and monitoring appropriate oversight of Athletics Department and Athletic Director by the President or other senior administration.

- X.6. Through an appropriate board committee, ensure that the President and the Athletics Director have appropriate authority over department personnel.
- X.7. Consistent with employment coaches, train and educate coaches about the need to remain with appropriate reporting protocols and lines of communication when addressing members of Board of Regents.
- X.8. Ensure that all athletics personnel receive specific, extended, targeted, ongoing, and annual training regarding Title IX obligations and responsibilities, including an understanding of the risks attendant to Title IX issues.
- X.9. Educate athletics personnel about individual student safety risks as well as risks to the program and the university community.
- X.10. Build opportunities for athletics personnel to integrate and develop relationships with non-athletics personnel.
- X.11. Develop and implement a new drug testing policy. This policy should follow the standard of informed practices among peer institutions.
- X.12. Educate athletics personnel on reporting policies/protocols to ensure immediate sharing of information with the Title IX coordinator and student conduct as required by policy.
- X.13. Establish clear policies and protocols for all Athletic Department staff when students are accused of misconduct in violation of University policy.
  - Clear documentation protocols for athlete misconduct
  - Clear reporting protocol
    - To Head Coach and Athletic Director
    - To Title IX Coordinator
    - To Judicial Affairs
- X.14. Establish clear disciplinary consequences for personnel who fail to follow reporting and documentation protocols.
- X.15. Expand athletics compliance function to capture and monitor athlete misconduct. Consider independent athletics compliance oversight (i.e. Chief Compliance Officer) with dual reporting lines to the President and an appropriate board committee.
- X.16. Review and revise transfer policies and protocols to ensure due diligence is exercised in the screening of transfer candidates. Consider Big 12 and national best practices when implementing a protocol that will consider, at a minimum, criminal history, college disciplinary history, and character references.
- X.17. Establish policy and practice for consistent evaluation of any recruit with some level of past legal or disciplinary conduct issue, including the review of the known information by

compliance professionals outside of the Athletics Department, and as appropriate, external to the University.

- X.18. Formalize team and departmental policies regarding team suspension or dismissal with respect to arrest and or student conduct investigation.
- X.19. Consider a software solution for reporting, documenting, and sharing of information.
- X.20. Annually review all cases of athletes accused of misconduct to ensure that responses are consistent with applicable policies and procedures for all Baylor student misconduct.

## **XI. Baylor University Police Department**

- XI.1. Develop policies, procedures, and protocols to integrate federal, state, and local laws with trauma-informed responses to all forms of sexual and gender-based harassment, violence, interpersonal violence, and stalking.
- XI.2. Identify informed training programs to support BUPD in the effective implementation of Title IX, Clery, and all other federal, state and local laws.
- XI.3. Annually review training, personnel, and policy needs.
- XI.4. Develop systems to consistently coordinate information sharing with Title IX and Student Conduct personnel. Consider use of available technology.

## **XII. Community Partnerships**

- XII.1. Meet with local law enforcement and prosecuting authorities to review and update the memorandum of understanding that outlines the coordination of responsibilities between internal and external law enforcement agencies consistent with the proper implementation of Title IX, Clery and VAWA.
- XII.2. Revisit protocol for sharing of information between Waco Police Department and Baylor University Police Department.
- XII.3. Identify and develop partnerships with external advocacy organizations.
- XII.4. Identify appropriate campus and community supports for respondents.
- XII.5. Work with local governmental entities and area non-profits in an effort to develop a Waco-area Sexual Assault Response Team (SART).

## **XIII. Clery**

- XIII.1. Update Clery analysis and assess reporting obligations based on Pepper Hamilton findings.

## **APPENDIX II**

Baylor University Board of Regents – Findings of Fact

(attached)



## **BAYLOR UNIVERSITY BOARD OF REGENTS**

### **FINDINGS OF FACT**

#### **Summary**

In August 2015, Baylor University engaged Pepper Hamilton to conduct an independent and external review of Baylor University's institutional response to Title IX and related compliance issues through the lens of specific cases. Following an intensive investigation, Pepper provided the Board of Regents with a detailed and comprehensive presentation of its findings and recommendations. Pepper's findings of fact, as set forth in greater detail in this statement, reflect a fundamental failure by Baylor to implement Title IX of the Education Amendments of 1972 (Title IX) and the Violence Against Women Reauthorization Act of 2013 (VAWA). Pepper found that Baylor's efforts to implement Title IX were slow, ad hoc, and hindered by a lack of institutional support and engagement by senior leadership. Based on a high-level audit of all reports of sexual harassment or violence for three academic years from 2012-2013 through 2014-2015, Pepper found that the University's student conduct processes were wholly inadequate to consistently provide a prompt and equitable response under Title IX, that Baylor failed to consistently support complainants through the provision of interim measures, and that in some cases, the University failed to take action to identify and eliminate a potential hostile environment, prevent its recurrence, or address its effects for individual complainants or the broader campus community. Pepper also found examples of actions by



University administrators that directly discouraged complainants from reporting or participating in student conduct processes, or that contributed to or accommodated a hostile environment. In one instance, those actions constituted retaliation against a complainant for reporting sexual assault. In addition to broader University failings, Pepper found specific failings within both the football program and Athletics Department leadership, including a failure to identify and respond to a pattern of sexual violence by a football player, to take action in response to reports of a sexual assault by multiple football players, and to take action in response to a report of dating violence. Pepper's findings also reflect significant concerns about the tone and culture within Baylor's football program as it relates to accountability for all forms of athlete misconduct.

### **Overview of Engagement**

In August 2015, Baylor University engaged Pepper Hamilton LLP (Pepper) to conduct an independent and external review of Baylor University's institutional response to Title IX and related compliance issues through the lens of specific cases. A Special Committee of the Board of Regents, on behalf of the University, accepted the President and Chancellor's recommendation to engage Pepper in order to ensure objectivity, and Pepper was provided with unfettered access to personnel and data. Pepper's review was detailed, thorough and rigorous. While keeping within the scope of the engagement, Pepper engaged in an open exploration of the issues with no limitation by the University. Pepper conducted document-based interviews to ensure accuracy, integrity and efficiency, and Pepper's findings and recommendations are based on the law, related authority, facts and reasonable inferences from the facts.

Pepper reviewed emails, mobile device data, and documents from current and former Baylor employees. Pepper's review of documents included current and prior policies and

procedures, Judicial Affairs and Title IX files related to specific reports and investigations, relevant trial transcripts, personnel files, student records, training and educational materials, prior internal and external audits, Title IX Task Force materials, and other relevant and available information. In addition to an exhaustive review of data, Pepper interviewed more than 65 individuals, including current employees, former employees, current students, and former students. The current and former students included individuals who identified as victims/survivors of sexual assault or dating violence. Pepper interviewed witnesses across multiple departments, including the President's Office, Executive Council, Student Life, Judicial Affairs (now called Student Conduct Administration), the Office of General Counsel, the Athletics Department, the football program, Athletics Compliance, Risk Management, Human Resources, the Counseling Center, Health Services, Baylor University Police Department, the Title IX Office, Faculty Athletic Representatives, the Admissions Office and outside counsel. Many individuals were interviewed more than once to allow for a full and fair opportunity to reconcile and synthesize information in the context of documents and available information from other interviews.

Over the course of the engagement, Pepper provided the Special Committee with detailed and specific information and regular updates. Earlier this month, Pepper provided the full Board of Regents with a detailed and comprehensive presentation outlining Pepper's findings of fact and recommendations. This statement contains the salient findings, which are being shared publicly to reflect transparency and accountability. The findings discussed below occurred in one or more of the cases reviewed. This statement also contains Pepper's recommendations, which have been adopted by the Board.

## **Failure to Prioritize, Recognize, Implement and Resource Title IX**

Baylor failed to effectively implement Title IX in the wake of the U.S.

Department of Education's Office for Civil Rights (OCR) April 4, 2011 "Dear Colleague Letter," the passage of the Violence Against Women Reauthorization Act of 2013 (VAWA), and related authority and guidance. While individual administrators identified emerging and evolving Title IX and VAWA requirements, the University as a whole failed to prioritize Title IX implementation. Implementation efforts were slow, ad hoc, diffuse, and uncoordinated. Senior leadership failed to recognize the significance of the national context, including evolving guidance from OCR and high profile examples of institutional failures at peer institutions. As a result, Baylor lacked the sufficient infrastructure and an informed policy. The administration instead relied upon existing personnel until November 2014, and existing processes (the Student Code of Conduct and Civil Rights Policy) until August 2015, when Baylor's Sex Discrimination, Sexual Violence, and Sexual Harassment Policy was adopted. The administrators tasked with implementing Title IX prior to November of 2014 had a limited understanding of the dynamics of sexual violence and existing barriers to reporting on Baylor's campus, including the impact of other campus policies regarding the prohibition of alcohol and extra-marital sexual intercourse. The insufficient dedication of resources and support to the University's Title IX function led to limited visibility of Title IX on campus.

Baylor's institutional response failed to integrate Title IX and VAWA requirements. Prior to the 2014-2015 academic year, Baylor failed to provide training and education to students; failed to identify and train responsible employees under Title IX; failed to provide clear information about reporting options and resources on campus; failed to have a centralized process for ensuring that all reports reached the Title IX Coordinator; failed to

impose appropriate interim measures in many cases; failed to appropriately evaluate and balance institutional safety and Title IX obligations against a complainant's request for anonymity or that no action/investigation be pursued against; failed to conduct prompt, equitable, adequate, and reliable investigations; failed to give complainants access to full range of procedural options under the policy; and failed to take sufficient action to identify, eliminate, prevent and address a potential hostile environment in individual cases. Institutional failures at every level of Baylor's administration directly impacted the response to individual cases and the Baylor community as a whole.

### **Many Factors Impeded Effective Implementation of Title IX**

Baylor's senior leadership lacked consistent or meaningful engagement in the University's Title IX functions. The composition and functioning of the Executive Council did not provide effective leadership for integration of Title IX compliance responsibilities across all University functions. The University lacked a proactive compliance function that would have identified the nature of the risks attendant to sexual and gender-based harassment and violence and interpersonal violence, the likelihood of occurrence, and the adequacy of existing controls to ensure an informed and effective institutional response. In addition to their many other responsibilities, administrators assumed elements of the Title IX function on an ad hoc basis, which impeded timely implementation of rapidly evolving Title IX and VAWA mandates. The University did not maintain systems or protocols to coordinate information or keep centralized records necessary to fulfill compliance mandates, and the University did not carefully review roles and responsibilities of Title IX implementers to assure that there was no actual or perceived conflict within the assigned multiple roles held by many Title IX administrators.

The University did not provide sufficient institutional support for Title IX functions. Prior to November 2014, the Title IX Coordinator position was assigned to senior administrators, each of whom already had a full profile of professional responsibilities. The administrators in those roles lacked the necessary training, experience and frame of reference to meaningfully implement Title IX responsibilities. They also lacked the necessary time, resources or infrastructure to meaningfully implement Title IX responsibilities. Moreover, when the University hired a full-time Title IX Coordinator in November 2014, the University underestimated the level of infrastructure and resources that would be necessary for successful implementation. The Title IX Coordinator did not have sufficient institutional support from senior leadership, or experienced and trained supervision, necessary to promote timely and effective implementation. Despite the hiring of two full-time investigators, Baylor's Title IX Coordinator did not have sufficient or qualified support within the Title IX Office. Because of the overwhelming need for education and training, the Title IX Coordinator and staff did not have sufficient time or resources to focus on building the infrastructure of the office, drafting internal operating procedures and template communications, or managing the influx of new reports. In addition, as of the spring of 2015, there were no clear protocols for documentation or consistency in practice across implementers.

### **Inadequate Institutional Response to Sexual Violence under Title IX/VAWA**

A high-level audit was conducted of all known reports of sexual harassment and sexual assault reported through Baylor's student conduct processes for three academic years: 2012-2013, 2013-2014, and 2014-2015. The overwhelming majority of cases did not move forward to an adjudicative hearing, with only an extremely limited number of cases resulting in a finding of responsibility or significant sanction. Many complainants did not move forward with

the University's Title IX process, and the University failed to appropriately weigh a request not to move forward against the University's Title IX obligation to investigate or otherwise determine what occurred. The University failed to conduct sufficient inquiry into individual barriers to participation, which in some instances were directly related to barriers created by conversations with University personnel that discouraged, rather than encouraged, participation in the University's Title IX processes. Even in those cases where a complainant did choose to move forward, Baylor did not pursue hearings in the majority of reports, sometimes because of an erroneous determination that Baylor did not have jurisdiction in off campus matters or because the investigator in Judicial Affairs improperly determined that there was not a preponderance of the evidence based on an inadequate or uninformed investigation. As a consequence, in some cases, the University failed to take action to identify and, as needed, eliminate a potential hostile environment, prevent its recurrence, or address any effects on the individual complainant or broader campus community.

With respect to sexual assault investigations conducted by Judicial Affairs, staff members in Judicial Affairs applied a very "by the book" student conduct approach that treated all respondents equally, regardless of their status as a student-athlete. However, this rigid approach was not trauma-informed and was overly reliant on the perceived consistency or inconsistency of complainant's statements to the exclusion of other relevant considerations. The investigations reviewed were wholly inadequate to fairly and reliably evaluate whether sexual violence had occurred. While individual administrators sought professional training opportunities, they were not adequately trained in the dynamics of sexual and gender-based harassment and violence, dating violence, domestic violence, stalking, the neurobiological impacts of trauma, the evaluation of credibility, consent and the role of alcohol as it relates to

consent and alcohol-facilitated sexual assault. In addition, the investigations were conducted in the context of a broader culture and belief by many administrators that sexual violence “doesn’t happen here.” Administrators engaged in conduct that could be perceived as victim-blaming, focusing on the complainant’s choices and actions, rather than robustly investigating the allegations, including the actions of the respondent. In many instances, student conduct investigators conducted cursory investigations and failed to identify and interview readily apparent witnesses or gather relevant evidence. Student conduct investigators also applied the preponderance of the evidence standard of proof in an inconsistent manner, and in many instances, required a far greater level of proof than preponderance.

Prior to the 2014-2015 academic year, Baylor failed to conduct adequate training and education for its students and employees, and Baylor had not created an atmosphere that fostered reporting and participation in the Title IX process. Baylor’s students lacked awareness of the range of conduct prohibited under Title IX and of University policies, resources or reporting options. A lack of clearly identified reporting mechanisms, combined with insufficient training and attention to sexual and gender-based harassment and violence and other forms of interpersonal violence, may have led to significant underreporting by students and missed opportunities by administrators to respond appropriately to reports. The University’s approach to issues related to alcohol or other drug use by students created barriers to reporting. In addition, prior to August 2015, the University did not have a written amnesty policy for alcohol or other drug violations when reporting misconduct. Perceived judgmental responses by administrators based on a complainant’s alcohol or other drug use or prior consensual sexual activity also discouraged reporting or continued participation in the process.

Prior to the creation of the Title IX office in November 2014, once reports were received, Baylor failed to consistently identify or impose appropriate interim protective measures. In many instances, Baylor's responses to the needs of individual complainants were uncoordinated and ad hoc, and complainants received inconsistent and inadequate support. In some instances, the burden was placed on complainants to identify and obtain appropriate interim measures. Administrators failed to exercise appropriate oversight of interim measures, think holistically about the needs of complainants, follow through and follow up with complainants, provide complainants with continued access to educational opportunities, and take sufficient steps to retain complainants as University students.

Baylor did not have a system or protocol for either the consistent coordination of information between and among implementers, or for consistent, centralized sharing of information and documentation that would have allowed the University to track, identify, investigate or address a pattern of sexual violence at the earliest opportunity. Once aware of a potential pattern of sexual violence, the University failed to take prompt and effective action to protect campus safety and protect future victims from harm. Further, Baylor failed to consider patterns, trends or climate-related concerns that would enable the University to take prompt and responsive action to individual and community concerns. Baylor failed to identify, eliminate, prevent or address a potential hostile environment in individual cases, and took insufficient steps with respect to both individual complainants and broader community remedies.

In some instances, administrative responses and campus processes caused significant harm to complainants. Actions by an University administrator within BUPD and an administrator within an academic program contributed to, and in some instances, accommodated or created a hostile environment, rather than taking action to eliminate a hostile environment.



### **Barriers to Implementation of Title IX within Baylor's Football Program**

Baylor failed to maintain effective oversight and supervision of the Athletics Department as it related to the effective implementation of Title IX. Leadership challenges and communications issues hindered enforcement of rules and policies, and created a cultural perception that football was above the rules. In addition to the issues related to student misconduct, the University and Athletics Department failed to take effective action in response to allegations involving misconduct by football staff. Further, despite the fact that other departments repeatedly raised concerns that the Athletics Department's response to student or employee misconduct was inadequate, Baylor administrators took insufficient steps to address the concerns.

Baylor failed to take appropriate action to respond to reports of sexual assault and dating violence reportedly committed by football players. The choices made by football staff and athletics leadership, in some instances, posed a risk to campus safety and the integrity of the University. In certain instances, including reports of a sexual assault by multiple football players, athletics and football personnel affirmatively chose not to report sexual violence and dating violence to an appropriate administrator outside of athletics. In those instances, football coaches or staff met directly with a complainant and/or a parent of a complainant and did not report the misconduct. As a result, no action was taken to support complainants, fairly and impartially evaluate the conduct under Title IX, address identified cultural concerns within the football program, or protect campus safety once aware of a potential pattern of sexual violence by multiple football players.

In addition, some football coaches and staff took improper steps in response to disclosures of sexual assault or dating violence that precluded the University from fulfilling its legal obligations. Football staff conducted their own untrained internal inquiries, outside of policy, which improperly discredited complainants and denied them the right to a fair, impartial and informed investigation, interim measures or processes promised under University policy. In some cases, internal steps gave the illusion of responsiveness to complainants but failed to provide a meaningful institutional response under Title IX. Further, because reports were not shared outside of athletics, the University missed critical opportunities to impose appropriate disciplinary action that would have removed offenders from campus and possibly precluded future acts of sexual violence against Baylor students. In some instances, the football program dismissed players for unspecified team violations and assisted them in transferring to other schools. As a result, some football coaches and staff abdicated responsibilities under Title IX and Clery; to student welfare; to the health and safety of complainants; and to Baylor's institutional values.

In addition to the failures related to sexual assault and dating violence, individuals within the football program actively sought to maintain internal control over discipline for other forms of misconduct. Athletics personnel failed to recognize the conflict of interest in roles and risk to campus safety by insulating athletes from student conduct processes. Football coaches and staff took affirmative steps to maintain internal control over discipline of players and to actively divert cases from the student conduct or criminal processes. In some cases, football coaches and staff had inappropriate involvement in disciplinary and criminal matters or engaged in improper conduct that reinforced an overall perception that football was above the rules, and that there was no culture of accountability for misconduct.

The football program also operates an internal system of discipline, separate from University processes, which is fundamentally inconsistent with the mindset required for effective Title IX implementation, and has resulted in a lack of parity vis-à-vis the broader student population. This informal system of discipline involves multiple coaches and administrators, relies heavily upon individual judgment in lieu of clear standards for discipline, and has resulted in conduct being ignored or players being dismissed from the team based on an informal and subjective process. The ad hoc internal system of discipline lacks protocols for consistency with University policy and is wholly undocumented. The football program's separate system of internal discipline reinforces the perception that rules applicable to other students are not applicable to football players, improperly insulates football players from appropriate disciplinary consequences, and puts students, the program, and the institution at risk of future misconduct. It is also inconsistent with institutional reporting obligations.

The football program failed to identify and maintain controls over known risks, and unreasonably accepted known risks. Leadership in football and the athletics department did not set the tone, establish a policy or practice for reporting and documenting significant misconduct. The lack of reporting expectations resulted in a lack of accountability for player misconduct and employee misconduct. Further, no attempt was made to understand the root causes of behavior or steps necessary to prevent its recurrence. In addition, in one instance, in response to concerns about misconduct by football players that could contribute to a hostile environment, an academic program that required interaction with the football program improperly restricted educational opportunities for students, rather than take steps to eliminate a potential hostile environment.

### **Failure to Implement or Follow Consistent Transfer Protocols**

Baylor did not consistently conduct due diligence with respect to potential transfers. In at least one identified instance, the process reflected a failure to conduct appropriate due diligence and assessment of risk regarding past criminal or student conduct and an affirmative decision not to seek additional information about an athlete's prior criminal or student conduct records. Baylor did not adhere to a consistent protocol regarding transfers and importantly, Baylor did not consistently follow previously implemented processes regarding criminal background checks, request for records of any prior college disciplinary actions, and character reference screening forms.

### **Conclusion**

The University has taken and will take additional steps to address the deficiencies noted in the findings of fact. The Board has already adopted Pepper's recommendations, which are set forth in a separate document.

### **APPENDIX III**

Big 12 Conference, Inc. Board of Directors' Resolutions – February 3, 2017

(attached)

## **RESOLUTION**

**FEBRUARY 3, 2017**

**WHEREAS**, Baylor University (“Baylor”) is a Member of the Big 12 Conference, Inc. (the “Conference”), as that term is defined in the Bylaws of the Conference (the “Bylaws”) and as such is subject to the terms and conditions of the Bylaws and the other agreements between Baylor and the Conference;

**WHEREAS**, the members of the Board of Directors of the Conference who are not “Interested Directors” with respect to the issues covered by these resolutions have determined that the representative of Baylor serving on the Board is an “Interested Director” with respect to the matters covered by this resolution (as such terms are defined in Section 1.5.2.2 of the Bylaws);

**WHEREAS**, after providing management of Baylor prior notice at various times and numerous opportunities to present information to the Board and a number of full opportunities to be heard over time by the entire Board, a Supermajority of Disinterested Directors (as defined in section 1.5.3 of the Conference’s Bylaws) of the Conference’s Board of Directors (the “Board”) has given due and careful consideration to information that it deems on its face to be credible (the “Available Information”), including but not limited to: (i) the contents of the document entitled “Baylor University Board of Regents Findings of Fact” as released by the Baylor Board of Regents on or about May 26, 2016 (the “Findings of Fact”); (ii) the “Baylor University Report of External and Independent Review – Recommendations” of the remedial actions recommended to be taken by Baylor (the “Remedial Actions”) by the Pepper Hamilton LLP law firm; (iii) information conveyed in presentations made to the Board at least 3 recent meetings of the Board, including most recently on February 3, 2017, by Baylor Interim President David Garland, members of the Board of Trustees of Baylor, and General Counsel to Baylor, as well as in meetings with Commissioner Bob Bowlsby; and other information that the Board deems to be credible; and

**WHEREAS**, although based on the information provided to the Board by Baylor, the Board believes that Baylor has taken numerous steps to remedy the legal and compliance issues raised in the Findings of Fact and other issues that have arisen subsequently and to implement the Remedial Actions (the “Remedial Steps”), a Disinterested Supermajority of the Board has determined based on a proper exercise of their fiduciary duties to the Conference and to all of its Members taken as a whole, that it is reasonable and prudent to take certain actions to verify compliance by Baylor with the Bylaws and rules and regulations of the Conference independent of the information provided by Baylor as to these compliance efforts and to impose certain Sanctions until the completion of this verification review, all on the terms and conditions set forth below.

**NOW, THEREFORE**, a Supermajority of Disinterested Directors of the Conference unanimously votes affirmatively to approve the foregoing preliminary “Whereas” statements and to adopt the following Resolutions:

**RESOLVED**, that based on a proper exercise of their fiduciary duties to the Conference and all of its members taken as a whole and on a prima facie analysis of the Available Information, pursuant upon prior notice and a further opportunity for Baylor to be heard, that it is hereby determined pursuant to Section 3.6 of the Bylaws that the Board has a reasonable basis to believe that Baylor may not have been in compliance with the provisions of Sections 1.3.2 and 3.6 of the Bylaws, among other things (the “Section 3.6 Determination”).

**FURTHER RESOLVED**, that based on the Section 3.6 Determination and in accordance with Section 3.6 of the Bylaws, the following Sanction (the “Current Sanction”) is hereby approved to be effective during the Term (as defined below) or until the Current Sanction is otherwise modified by a vote of a Majority of Disinterested Directors:

“Management of the Conference is hereby directed to withhold 25% of the amount of each payment that is paid or distributed by the Conference to Baylor during the Term (the “Withheld Payments”).”

**FURTHER RESOLVED**, that the “Term” of the Current Sanction shall begin on February 3, 2017, and shall continue until a Majority of Disinterested Directors shall determine, based on the Verification Review (as defined below) and such other information and factors as a Majority of Disinterested Directors shall determine reasonable and appropriate, that Baylor is in compliance with, and has taken all reasonable steps to thereafter remain in compliance with, the Conference Bylaws and rules and regulations.

**FURTHER RESOLVED**, that at an appropriate time or times selected by the Conference, the Conference shall engage one or more consultants, law firms, or other experts independent from Baylor (the “Consultant”) to undertake and provide to the Board a factual review to verify whether the factors leading to the Section 3.6 Determination have been rectified (the “Verification Review”). The Conference shall consult with management of Baylor as to its views on the appropriate time for the Verification Review. The Verification Review may include, but shall not necessarily be limited to, verification of implementation of the Remedial Steps implemented by Baylor, verification of factual issues relating to corporate governance, institutional control, and compliance with Title IX, verification of the sustainability of the changes implemented by Baylor, and to other legal and regulatory mandates as are relevant to the Section 3.6 Determination. As a condition to the end of the Term, Baylor will be expected to fully cooperate with and provide access for the Consultant with institutional personnel and records (subject to appropriate confidentiality provisions and other legal protections) and to pay or reimburse the Conference for all internal and external costs incurred by the Conference in connection with the Sanctions and the Verification Review, including but not limited to the fees and expenses of the Consultant (the “Costs”). Failure to cooperate and provide such access may be the basis for continuation of the Term and additional Sanctions.

**FURTHER RESOLVED**, that the Chair of the Board shall appoint an Oversight Committee consisting of three Directors (the “Committee”) to work with the Commissioner and staff of the Conference to provide broad oversight for the Verification Review as they in their discretion deem necessary and appropriate for the expeditious and effective execution of the Verification Review, including but not limited to (i) establishing the scope of the Verification Review; (ii) recommending one or more Consultants to perform the Verification Review for final approval by a Majority of Disinterested Directors; (iii) periodically monitoring the progress and timeliness of the conduct of the Verification Review during its pendency and reporting on that progress and timeliness to the Board at each of its meetings during the Term and at such other times as the Chair of the Board may request; and (iv) recommending for consideration by a Majority of Disinterested Directors any modifications to the Sanctions during the Term that a majority of the Committee may deem appropriate.

**FURTHER RESOLVED**, that at the end of the Term, the Conference shall pay to Baylor such amount of the Withheld Payments (less the Costs, which shall be paid by the Conference out of the Withheld Payments as they are incurred by the Conference) as a Majority of Disinterested Directors shall deem fair and reasonable both to Baylor and to the Conference and to all of the other Members of the Conference, taken as a whole, taking into account such factors as they may deem appropriate, which may include, but are not necessarily limited to, any damage caused to the Conference or the other Members as

a result of the facts resulting in the Section 3.6 Determination and the continuation thereof prior to or during the Term.

**FURTHER RESOLVED**, that the Conference reserves the right to impose further Sanctions against Baylor based on the prior, continuing, or future actions or failures to act of Baylor, as may be determined by a Supermajority of the Disinterested Directors from time to time in accordance with Section 3.6 of the Bylaws or to take such other action as they may deem appropriate in accordance with the Bylaws and the other rules, regulations and agreements of the Conference.



## **APPENDIX IV**

Sections 1.3.2 and 3.6 of the Bylaws of the Big 12 Conference, Inc.

(attached)



# BIG 12 CONFERENCE

2018-19 CONFERENCE HANDBOOK

- 1.3.1.3 Organize, promote and administer intercollegiate athletics among its member institutions.
- 1.3.1.4 Optimize revenues and provide supporting services compatible with both academic and competitive excellence.
- 1.3.1.5 Encourage collaboration in areas beyond athletics that builds good-will between institutions and promotes the overall missions of the universities.
- 1.3.2 **Adherence to NCAA Rules.** All Members of the Conference are committed to complying with NCAA rules and policies. Accordingly, Members shall demonstrate institutional control and ensure that authority for the intercollegiate athletics program is vested in the campus chief executive officer of such Member. In addition, the conduct of Members shall be fully committed to compliance with the rules and regulations of the NCAA and of the Conference. Each Member accepts the primary responsibility for the administration of rules and regulations, for investigating known or alleged violations at that institution, and for taking prompt and effective corrective actions where violations have occurred. On a regular basis, the Conference, through its Commissioner and others designated by the Commissioner, shall provide information and instructions to institutional personnel to assist the Members in their efforts to administer and enforce NCAA rules and regulations.
  - 1.3.2.1 **Compliance Reviews.** To further assist each Member in maintaining institutional control, the Conference, in cooperation with an outside firm, shall review each institutional compliance program at least once every four years. The specific procedures for the review shall be developed by the Conference.
- 1.3.3 **Institutional Athletically Related Financial Aid.**
  - 1.3.3.1 **Minimum Amount.** Member Institutions shall award athletically related financial aid based on the maximum amount permitted by NCAA Bylaws.
  - 1.3.3.2 **Period of Award.** Member Institutions shall award athletically related financial aid for no less than the student-athlete's initial period of eligibility or graduation at the certifying institution.
  - 1.3.3.3 **Former Student-Athletes.** Member Institutions shall award athletically related financial aid to former student-athletes per institutional policy.
  - 1.3.3.4 **Effective Date, Interpretations, Implementation and Sanctions for Violations.** Bylaw 1.3.3 shall become effective on August 1, 2015. Interpretations shall be made by the Bylaw 1.3.3 Committee consisting of one representative designated by the President or Chancellor of each Member Institution, which shall have the authority to adopt interpretations and to delegate to the Member Institutions the authority to make decisions implementing the Bylaws set forth in [Section 1.3.3](#), all subject to review and approval by the Faculty Athletics Representatives. Those initial interpretations shall be issued no later than March 31, 2015 and may be modified from time to time thereafter by the Bylaw 1.3.3 Committee. Violations of the Bylaws in

Member's representatives on any Advisory Committee (as defined in the Rules) shall be entitled to attend any meeting of, vote on any matter before, notice of any meeting of, or copies of materials distributed to, the Board of Directors or any Advisory Committee.

- 3.6 **Sanction of a Member.** The Conference may sanction ("Sanction" and "Sanctioned" and variations thereof) a Member by the affirmative vote of a Supermajority of Disinterested Directors at any meeting of the Directors at which the Director representative(s) of the Member(s) that are the subject of such vote has been given reasonable prior notice and the reasonable opportunity to be present and to be heard. A Supermajority of Disinterested Directors may take such action if, after the Member's opportunity to be heard, a Supermajority of Disinterested Directors determines that such Member has: (i) violated any provision of these Bylaws or the Rules and other regulations established from time to time by the Board of Directors that govern the Conference or the Grant of Rights Agreement; (ii) engaged in any action or a course of conduct materially adverse to the best interests of the Conference taken as a whole; (iii) taken or omitted to take any other action that could be the basis for Withdrawal as described above if a Supermajority of Disinterested Directors does not elect to deem the action to constitute a deemed Withdrawal at that time; or (iv) otherwise taken any action or omitted to take an action that a Supermajority of Disinterested Directors determines merits Sanctions. In accordance with the preceding sentence, a Supermajority of Disinterested Directors shall, in its sole discretion, be empowered to determine whether any Sanctions are appropriate, the type, extent, and conditions to any Sanctions imposed, and impose such Sanctions on a Member depending, in each case, on factors that a Supermajority of Disinterested Directors deems to be relevant, including but not limited to the severity of the harm to the Conference taken as a whole resulting from the action or inaction set forth in the preceding sentence. Without limiting the foregoing and merely as an illustration of the types of Sanctions that could be considered by a Supermajority of Disinterested Directors are prohibitions on appearance in postseason events or televised events, restrictions on revenue distributions, and limitations on recruiting or scholarships.

## **SECTION 4- PERMITTED MEMBER INSTITUTION OUTLETS**

- 4.1 **Permitted Member Institution Outlets.** Each Member shall not, and shall cause its PMIO not to, produce, telecast, show, or otherwise distribute on its PMIO (while such PMIO is acting in the capacity as such Member's PMIO) any high school games or highlights of high school games. Pursuant to NCAA interpretations, it is permissible to use scores, standings, and statistics of high school games on a PMIO.

## **APPENDIX IV**

Sections 1.3.2 and 3.6 of the Bylaws of the Big 12 Conference, Inc.

(attached)



# Baylor Title IX Reporting Process

Student Conduct Administration	Human Resources	Baylor University Police Department	Campus Living and Learning	Athletics	Clery Office
<b>Primary Reporting Sources</b>					
Symplicity (Advocate) EthicsPoint report Report It reporting form Student Misconduct form Honor Code reporting form Email Phone Walk-in	EthicsPoint report Report It reporting form Email Phone Walk-in	Officer Reports resulting from response to call through BUPD or Waco PD dispatch or a third party BU Campus Guardian EthicsPoints report Symplicity (Advocate) Reports from: CSAs, Athletics, and Campus Living and Learning Waco Daily Crime Log Email	Student report to Community Leader, Hall Director, Resident Chaplain, Faculty in Residence CARE Team EthicsPoint report Phone Email Walk-in	Student report to Coach, Trainer, Nutritionist, Administrator Student Misconduct form EthicsPoint report Phone Email Walk-in	Campus Security Authority (CSA) Reporting System ARMS (BUPD Report System) Symplicity (Advocate) Student Misconduct form Student Conduct Admin
<b>Internal Tracking System (Reports logged into)</b>					
Filemaker Symplicity (Advocate)	Symplicity (Advocate)	Baylor Box	Symplicity (Advocate)	Symplicity (Advocate)	Campus Security Authority System Baylor Box
<b>Process</b>					
<ul style="list-style-type: none"> <li>Each report is reviewed by a Judicial Affairs Officer for TIX implications/elements</li> <li>If possible TIX elements are identified, Student Conduct Admin forwards a copy of the report to TIX Coordinator via email</li> <li>TIX Coordinator reviews and determines jurisdiction and documents back to Student Conduct the disposition of the report – handled by TIX or by Student Conduct Admin</li> <li>Findings of responsibility from TIX cases are uploaded to Baylor Box and Student Conduct Admin makes them a part of student's disciplinary file</li> </ul>	<ul style="list-style-type: none"> <li>Each report is documented through appropriate HR Consultant via Symplicity</li> <li>If possible TIX elements are identified, HR forwards a copy of the report to TIX Coordinator via email or shares information with TIX team in person</li> <li>TIX Coordinator reviews and determines jurisdiction and documents back to HR the disposition of the report – handled by TIX or by HR</li> <li>Findings of responsibility from TIX cases are uploaded to Baylor Box and HR makes them a part of employment file</li> </ul>	<ul style="list-style-type: none"> <li>Incident/information reports shared with TIX Office unless it will compromise investigation/prosecution of case               <ul style="list-style-type: none"> <li>BUPD Records Manager uploads report to Baylor Box</li> <li>Box notifies TIX staff</li> <li>BUPD Records Manager emails TIX staff</li> </ul> </li> <li>If sharing report will compromise investigation:               <ul style="list-style-type: none"> <li>Basic information emailed to TIX upon report</li> <li>Post-investigation report and related documents shared via Baylor Box with TIX once release will not compromise investigation/prosecution</li> </ul> </li> <li>If calls/notifications to BUPD yield indication of TIX elements, but no official report due to victim wishes, email notification sent to TIX</li> <li>All sources assessed for Clery Timely Warning Determination status, decision-making process is documented, and appropriate warning issued</li> <li>All reports/information reviewed by BUPD Records Manager to determine if incident qualifies for Clery mandated crime log</li> <li>The Chief or Assistant Chief, reviews Clery determinations to insure accuracy</li> </ul>	<ul style="list-style-type: none"> <li>If report is generated from active situation, call made to BUPD and CL&amp;L ADRL on-call. Clery Timely Warning determination assessed and appropriate warning issued</li> <li>Each report is documented by original contact via Symplicity. Reports are routed through reporting chain – Community Leader to Hall Director/Hall Director-on-Call (Completes CSA form) to Asst/Assoc Director of CL&amp;L (Reviews/Completes CSA form). Director of CL&amp;L is made aware of the situation via email/phone</li> <li>If possible TIX elements are identified, CL&amp;L copies documentation from Symplicity into TIX Report and submits to TIX Office</li> </ul>	<ul style="list-style-type: none"> <li>If report is generated from active situation, call made to BUPD and Deputy AD or designee-on-call. Clery Timely Warning determination assessed and appropriate warning issued</li> <li>Each report is documented by original contact via Student Misconduct Form. Forms are copied to TIX, Clery, BUPD, Student Conduct Administration, and report originator calls Deputy AD with information</li> <li>Deputy AD calls office or offices most likely to lead investigation to make them aware of incoming report and initiates Privilege to Play Committee for review</li> <li>TIX Coordinator reviews and determines jurisdiction and documents back to Athletics the disposition of the report – handled by TIX or Student Conduct Administration or Athletics</li> </ul>	<ul style="list-style-type: none"> <li>All Campus Security Authorities (as outlined in policy) must complete a CSA form for any allegation/incident reported to them</li> <li>CSAs are identified monthly based on information provided by HR</li> <li>CSAs are trained and receive memos/responsibility reminders at a minimum annually. Multiple training sessions are held throughout the year based on new hire volume, change in faculty advisors, etc.</li> <li>Clery Coordinator reviews all possible cases and sorts into include/exclude files</li> <li>Clery Compliance Manager and Clery Act Associate review daily crime log for accuracy</li> </ul>

# Title IX Reporting Process

## Student Conduct Administration

### Primary Reporting Sources

Symlicity (Advocate)  
EthicsPoint report  
Report It reporting form  
Student Misconduct form  
Honor Code reporting form  
Email  
Phone  
Walk-in

### Internal Tracking System

Reports are logged into two databases

Filemaker

Symlicity (Advocate)

### Process

1

Each report is reviewed by a Judicial Affairs Officer for Title IX implications/elements

2

If possible Title IX elements are identified, Student Conduct Admin forwards a copy of the report to Title IX Coordinator via email

3

Title IX Coordinator reviews and determines jurisdiction and documents back to Student Conduct the disposition of the report – handled by Title IX or by Student Conduct Admin

4

Findings of responsibility from Title IX cases are uploaded to Baylor Box and Student Conduct Admin makes them a part of student's disciplinary file

### Redundancies

- Case Management meetings – each new case on the meeting agenda is reviewed for past conduct and relevant information shared by Student Conduct during the meeting
- Relevant physical files are shared with Title IX Coordinators and Investigators through a logged tracking system
- If complaint originates in Title IX and is not Title IX jurisdiction, Title IX refers the case via email and/or Baylor Box documentation to Student Conduct Admin for action
- Campus Security Authority report submitted to Clery Coordinator

# Title IX Reporting Process

## Human Resources

### Primary Reporting Sources

EthicsPoint report  
Report It reporting form  
Email  
Phone  
Walk-in

### Internal Tracking System

Reports are logged into

Symlicity (Advocate)

### Process

1

Each report is documented through appropriate HR Consultant via Symlicity

2

If possible Title IX elements are identified, HR forwards a copy of the report to Title IX Coordinator via email or shares information with Title IX team in person

3

Title IX Coordinator reviews and determines jurisdiction and documents back to HR the disposition of the report – handled by Title IX or by HR

4

Findings of responsibility from Title IX cases are uploaded to Baylor Box and HR makes them a part of employment file

### Redundancies

- Case Management meetings – each case on the meeting agenda is reviewed for past conduct and relevant information is shared by HR during the meeting
- If complaint originates in Title IX and is not Title IX jurisdiction, Title IX refers the case via email documentation to HR or EEO for action
- Campus Security Authority report submitted to Clery Coordinator



# Title IX Reporting Process

## Baylor University Police Department

### Primary Reporting Sources

Officer Reports resulting from response to call through BUPD or Waco PD dispatch or a third party  
BU Campus Guardian phone app  
EthicsPoints report  
Symplicity (Advocate)  
Reports from: CSAs, Athletics, and Campus Living and Learning  
Waco Daily Crime Log  
Email

### Internal Tracking System

Reports are logged into

Baylor Box

### Process

1

All incident reports and information reports are shared with the Title IX Office unless doing so will compromise the investigation or prosecution of a case

- The BUPD Records Manager downloads the report into Baylor Box
- Box generates a notification email to the Title IX staff
- The BUPD Records Manager also sends an outlook email to the Title IX staff to help ensure they are aware of the report

2

If sharing the police report will compromise an ongoing criminal investigation:

- Basic information immediately shared via email with Title IX
- Post investigation report and all related documents uploaded and shared via Baylor Box with Title IX once it is determined that release will not compromise the investigation or prosecution

3

If called or other means of notification to BUPD yields indication of TIX elements, but no official report due to victim wishes:

- Email notification sent to Title IX

4

Regardless of how the information is received a Timely Warning Determination Form is completed to assess Clery Timely Warning status, the decision-making process is documented, and appropriate warning issued

5

All reports/information received is reviewed by the BUPD Records Manager to determine if the incident needs to be placed on the Clery mandated crime log

6

The Chief of Police or Assistant Chief of Police in the Chief's absence, reviews the determinations of the Records Manager to insure accuracy

# Title IX Reporting Process

## Baylor University Police Department

### Redundancies

- Case Management meetings – each case on the meeting agenda is reviewed prior to the meeting for past conduct. The BUPD Chief of Police pulls all information on items listed on the case management agenda and briefs participants during the meeting
- If TIX receives a complaint for which victim wants BUPD or other law enforcement Report, TIX actively works to connect victim(s) with law enforcement. Contact information for local law enforcement also provided in intake packet given to each victim/complainant
- Campus Security Authority reports reviewed for Clery compliance are also reviewed to determine if Title IX elements are identified and appropriate reports referred to TIX Office via email

# Title IX Reporting Process

## Campus Living and Learning (CL&L)

### Primary Reporting Sources

Student report to Community Leader, Hall Director, Resident Chaplain, Faculty in Residence  
CARE Team  
EthicsPoint report  
Phone  
Email  
Walk-in

### Internal Tracking System

Reports are logged into

Symplicity (Advocate)

### Process

1

If report is generated from active situation, call made to BUPD and CL&L ADRL-on-call. Clery Timely Warning determination assessed and appropriate warning issued

2

Each report is documented by original contact via Symplicity. Reports are routed through reporting chain – Community Leader to Hall Director/Hall Director-on-Call (Completes CSA form) to Asst/Assoc Director of CL&L (Reviews/Completes CSA form). Director of CL&L is made aware of the situation via email/phone

3

If possible TIX elements are identified, CL&L copies documentation from Symplicity into TIX Report and submits to TIX Office

### Redundancies

- Case Management meetings – each case on the meeting agenda is reviewed for past conduct and relevant information is shared by Student Life during the meeting
- If complaint originates in TIX and is not TIX jurisdiction, TIX refers the case via email documentation to Student Conduct Administration for action
- Campus Security Authority report submitted to Clery Coordinator
- Monthly review/clearing of un-submitted draft reports in Symplicity
- Student referrals made to CARE Team
- If CL&L generates a Title IX report where the accused student is known/identified an informational incident report is forwarded to Student Conduct



# Title IX Reporting Process Athletics

## Primary Reporting Sources

Student report to Coach, Trainer,  
Nutritionist, Administrator  
Student Misconduct form  
EthicsPoint report  
Phone  
Email  
Walk-in

## Internal Tracking System

Reports are logged into

Symplicity (Advocate)

## Process

1

If report is generated from active situation, call made to BUPD and Deputy AD or designee-on-call. Clery Timely Warning determination assessed and appropriate warning issued

2

Each report is documented by original contact via Student Misconduct Form. Forms are copied to TIX, Clery, BUPD, Student Conduct Administration, and report originator calls Deputy AD with information

3

Deputy AD calls office or offices most likely to lead investigation to make them aware of incoming report and initiates Privilege to Play Committee for review

4

TIX Coordinator reviews and determines jurisdiction and documents back to Athletics the disposition of the report – handled by TIX or Student Conduct Administration or Athletics

## Redundancies

- All Athletics Employees are Responsible Employees and are required to report all allegations
- If complaint originates in TIX and it has TIX jurisdiction, TIX notifies Privilege to Play Committee for review
- Student Misconduct Form submitted to Clery Coordinator

# Title IX Reporting Process

## Clery Office

### Primary Reporting Sources

Campus Security Authority (CSA) Reporting System  
ARMS (BUPD Report System)  
Symplicity (Advocate)  
Student Misconduct form  
Student Conduct Admin

### Internal Tracking System

Reports are logged into two databases

Campus Security Authority System

Baylor Box

### Process

1

All Campus Security Authorities (as outlined in policy) must complete a CSA form for any allegation/incident reported to them

2

CSAs are identified monthly based on information provided by HR

3

CSAs are trained and receive memos/responsibility reminders at a minimum annually. Multiple training sessions are held throughout the year based on new hire volume, change in faculty advisors, etc.

4

Clery Coordinator reviews all possible cases and sorts into include/exclude files

### Redundancies

- CSA system generates a record number used to connect reports through the resolution process in TIX, Student Conduct Admin
- TIX completes a Campus Security Authority form for most reports originating in their office if they deem them to be within Clery geography and/or a Clery crime
- Clery Coordinator matches each CSA form indicating TIX elements with a CSA form submitted by the TIX office. If no match can be made, Coordinator contacts TIX Office to reach resolution
- Clery Compliance Manager and Clery Act Associate review daily crime log for accuracy

# The Path of a Report of Student Prohibited Conduct

Baylor University's Sexual and Gender-Based Harassment and Interpersonal Violence Policy

## Initial Assessment of Report

Upon receiving a report of Prohibited Conduct, the University will:

- 1 Provide support and assistance in obtaining University and community resources.
- 2 Provide information about preserving evidence, obtaining medical treatment, and contacting police.
- 3 Evaluate safety of individuals and the University community.
- 4 Determine jurisdiction over the report.

A report to law enforcement may be made at any point throughout this process  
Resources and support are available throughout this process

5

Ascertain Complainant's preferences:

- A Complainant may request **anonymity** and/or that **no further University action** be taken.
  - B Complainant may request one of two forms of **University resolution**.
    1. **Disciplinary Resolution**, which involves an investigation, and hearing/sanction (if applicable).
    2. **Alternative Resolution**, which (if available) includes a variety of informal options for resolving reports.
- The University will seek to honor this request if possible to do so while also **protecting the health and safety of individuals and the University community**.

## Threat Assessment of Report

Next, the University will conduct an assessment to determine University actions:

- 1 If Complainant requested **University Resolution**: grant request and initiate appropriate resolution process.
- 2 If Complainant requested **anonymity/no action**: balance request with health and safety risk factors to determine whether request can be honored.
- 3 If Complainant **chose not to participate in the process**: determine whether to proceed in an investigative process without the Complainant's participation.

## Conclude or Begin Resolution Process

Process either concludes or moves to Disciplinary Resolution or Alternative Resolution. Resources and assistance may still be available even if process concludes here.

The University also offers access to confidential resources for students who are unsure about whether to report Prohibited Conduct, such as:

Baylor University Counseling Center (254) 710-2467,  
Baylor University Health Services Center (254) 710-1010, and  
Burt Burleson, University Chaplain (254) 710-3517.



# Disciplinary Resolution Process for Students

## Investigative Process

To commence the investigative process:

**1**  
**Notice of Investigation** will be sent to the Complainant and Respondent by the Title IX Coordinator or designee.

**2**  
**Investigator(s)** will conduct a prompt, thorough, fair, and impartial investigation. Both parties will have an equal opportunity to be heard, to submit evidence, to identify witnesses, and to submit questions they believe should be directed by the Investigator to each other or to any witness.

**3**  
**Advisor of Choice** may accompany, support, and advise each party throughout the investigative and resolution process. The advisor may not be an active participant in the process.

At the conclusion of the investigative process:

**1**  
Investigator will prepare **Preliminary Investigative Report** summarizing the information gathered, without recommended finding(s), for review and response by each party.

**2**  
After considering any response by the parties, Investigator will prepare a **Rationale** for the Final Investigative Report, which will include a recommendation as to whether or not there is sufficient evidence to support a finding of responsibility for Prohibited Conduct by a preponderance of the evidence.

## Recommended Finding

**A**  
Recommended Finding(s) of Responsibility: Parties may accept or contest. Parties may submit impact and mitigation statements in writing.

**B**  
Recommended Finding(s) of No Responsibility: Parties may accept or contest. If Complainant accepts finding(s), process is concluded.

## Review Panel Hearing and Final Outcome

Next steps for contested finding(s) and/or sanction:

**Review Panel Hearing:** If either party contests the investigative finding, the Review Panel will hold a hearing to determine: (1) whether there was a material procedural error that substantially impacted the outcome and (2) whether there was a rational basis, applying a preponderance of the evidence standard, for the investigative finding. If an investigative finding of responsibility is upheld, the Review Panel will determine the appropriate sanction.

**Sanction:** If recommended finding of responsibility is affirmed, the Review Panel will determine, by majority vote, the appropriate sanction(s). Impact and mitigation statements may be considered if applicable.

**Decision of the Review Panel is final**, without further recourse or appeal by either party. The Review Panel Chair will issue a written decision (the Final Notice of Outcome) to both the Complainant and the Respondent.

Resources and support are available throughout this process

A report to law enforcement may be made at any point throughout this process

Typically, the period from commencement of the investigative process through resolution (finding(s) and sanction(s), if any) will not exceed 60 calendar days. This time frame may be extended for good cause.