



BAYLOR
UNIVERSITY

Baylor University

TITLE IX PROGRAM REVIEW & CLERY ACT COMPLIANCE ASSESSMENT

SEPTEMBER 2014



MARGOLIS HEALY
SOLUTIONS FOR SAFE CAMPUSES®

Baylor University
TITLE IX PROGRAM REVIEW & CLERY ACT
COMPLIANCE ASSESSMENT
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STATEMENT OF NEED

Chartered in 1845 by the Republic of Texas through the efforts of Baptist pioneers, Baylor is the oldest continually operating university in Texas. Located in Waco, Baylor welcomes students from all 50 states, the District of Columbia, and 89 countries to study a broad range of degrees among its 12 nationally recognized academic divisions.

Baylor University (Baylor) retained Margolis Healy & Associates, LLC to conduct on- and off-site reviews of the College's Clery Act compliance program, including an in-depth evaluation of the Annual Security and Fire Safety Report(s) using the MHA Proprietary Clery Act Compliance Checklist and process, developed and evolved over several years working to enhance Clery compliance at institutions of higher education.

ORGANIZATION OF THIS REPORT

This report is presented in a chapter format with two major parts. Part I includes the Title IX Program Review and Part II contains the Clery Act Compliance Assessment. Each of the major parts is further sub-divided into sections: Section I contains preface information related to scope, methodology, and general observations. Section II includes requirements/guidance, observations and recommendations related to the subject area. For example, Part I, Section II includes information regarding Title IX compliance and best practices for the investigation and adjudication of reports of sexual assault and sexual harassment. The recommendations in all sections address areas where we believe the University should make improvements to meet current best, promising or acceptable practices. We have also included a Master List of Recommendations and a final section that includes attachments and reference materials.

DISCLAIMER AND DISCLOSURE

Margolis Healy & Associates conducted this review and prepared this report at the request of Baylor University (Baylor). The author's opinions, findings, conclusions, and recommendations are provided solely for Baylor's use and benefit. Any warranties (expressed and/or implied) are specifically disclaimed. Any statements, allegations, and recommendations in this report should not be construed as a governing policy, or decision, unless so designated by other documentation. The report is based on the most accurate data gathered and available to Margolis Healy & Associates at the time of the assessment and presentation. Our recommendations might be subject to change in light of changes in such data.

EXECUTIVE SUMMARY

Purpose

This Executive Summary provides an overview of the major observations and recommendations from the Margolis Healy assessment of Baylor University's compliance with Title IX and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.

Background

Baylor University (Baylor) retained Margolis Healy & Associates, LLC to conduct on- and off-site reviews of the University's Title IX and Clery Act compliance program, including an in-depth evaluation of the Annual Security and Fire Safety Report(s) using the MHA Proprietary Title IX and Clery Act Compliance Checklist and process, developed and evolved over several years working to enhance sexual violence prevention and response and Clery compliance at institutions of higher education.

Discussion

With respect to Title IX compliance, it is our professional opinion that Baylor University has several opportunities to enhance its efforts to prevent sexual harassment and sexual assault and respond promptly and effectively to incidents that may deny or limit an individual's ability to participate in or benefit from the University's educational programs or activities on the basis of sex. While the University has taken several significant steps to comply with the guidance from the U.S. Department of Education's Office of Civil Rights (OCR), including designating a Title IX Coordinator, providing basic level training to Title IX investigators, and providing some awareness level programming on sexual assault to students, the University would be better served with a more strategic, comprehensive, and integrated approach to addressing the complex issue of sexual harassment and violence.

1. Title IX Coordinator – While Baylor recently appointed a new administrator as the Title IX Coordinator, the University has historically appointed an administrator who has other full-time duties. We do not believe that the University can realistically achieve a robust Title IX program unless it appoints an administrator who is able to devote a significant amount of time and effort to develop and/or put in place appropriate structures, processes, relationships and training/education programs.
2. Title IX Policies – The University has a Notice of Nondiscrimination as required by the Title IX implementing regulations, although it has not widely published this Notice, as required. In addition, the content of the Notice does not fully meet the mandates set forth in the regulations, i.e., it does not provide contact information for the Title IX Coordinator

and indicate that anyone can contact s/he and OCR with questions about the applicability of Title IX. The Notice also indicates that the University has some exemptions from Title IX, but does not specify the nature of those exemptions, which may be confusing to some readers, particularly as to whether the University is obligated to address sexual harassment/violence concerns consistent with OCR expectations. While the University has some policies that would be generally helpful to a campus community member seeking to know more about how to report, or seek resources or support in connection with an incident of sexual assault, domestic violence, dating violence or stalking, it does not have a comprehensive, integrated, and unified policy that addresses these issues. An integrated, unified policy could be practically useful to complainants, respondents and University personnel charged with receiving complaints and implementing disciplinary and support processes.

3. **Risk Management Infrastructure** – We found that the University does not currently employ a risk management approach to communications with students about sensitive issues, in which checklists, scripts and templates are used to document those communications. Our experience tells us that there are times when documentation is required so that there is no question that, for example, complainants were informed of their right to contact law enforcement, and that University personnel will assist them appropriately and that University personnel offered other appropriate support resources.
4. **Prevention, Education, and Training Activities** – Given the VAWA amendments to the Clery Act and the April 29, 2014 OCR Q&A, along with the White House Task Force To Protect Students From Sexual Assault first Report “Not Alone,” it is especially important to ensure that Baylor is implementing prevention programming and educational efforts that both meet the spirit and the letter of the law and evolving best practices in the field of sexual violence prevention and response. In our professional opinion, prevention measures should be at the top of the list of the University's priorities as it discusses how it should best address these complex issues.
5. **Interim Measures** – During our interviews, we sensed significant resistance towards implementing interim measures (e.g., changes in academic, residential, working or transportation arrangements) that would adversely affect respondents while an investigation is underway. OCR guidance emphasizes that interim measures should be implemented, and that they these measures should minimize the burden on complainants. Our view is that this means in practice that if someone has to be inconvenienced, the respondent has to be inconvenienced rather than the complainant, even before an investigation has been concluded.

6. Title IX Investigator – Currently, one individual at the University investigates all allegations of sexual assault by students. Our impression is that this individual has worked hard to educate herself about Title IX requirements and sexual assault investigations, but that she is relatively inexperienced in sexual assault and gender violence-related incidents and overwhelmed by the caseload. The University should consider providing additional resources in this area.

The recommendations in the full Report should address these Challenges and well as the others highlighted in the Specific Observations section of the Report.

With regard to compliance with the Clery Act, it is our overall opinion that the University should aggressively implement the recommendations in the full Report. We have identified several areas that require immediate attention and, in some cases, may require additional resources. In our professional opinion, Baylor does not have the requisite resources committed to the compliance program, given the law's current and evolving complexity.

1. Annual Fire Safety and Security Report (AFSSR) – The University does not have a compliant AFSSR in that there is no single, comprehensive document that includes the policies, policy statements, and procedures required by the Clery Act implementing regulations. We have assisted the University with developing a compliant ASR.
2. Ownership of Clery – The University has not formally designated an office or person to manage Clery Act compliance. Some interviewees thought that the Police Department owned Clery, while others saw the responsibility belonging to the Office of Student Conduct Administration. Baylor should consider appointing one person as the Clery Act Coordinator and charge that individual with managing compliance.
3. Campus Security Authorities – In our professional opinion, the University has not identified, notified, or certified its campus security authorities (CSAs). CSAs were either unaware of their responsibilities or unclear on their responsibilities. The University must identify all possible CSAs and immediately provide appropriate training.
4. Training – We are concerned about training deficiencies in two additional critical areas. First, none of the members of the BUPD responsible for classifying crimes have had any formal Uniform Crime Reporting (UCR) training. During our interviews, when asked crime classification questions, staff pointed to the chief of police or the administrative assistant as their resource. However, neither has had formal training. We identified misclassified crime reports as evidence of the lack of appropriate training. A second critical area of training deficiency is formal Clery Act training. When asked, several staff members told us they have had no formal Clery training. Training for many of these

staff amounted to reading The Handbook for Safety and Security Reporting, participating in webinars or having other untrained staff provide information.

Conclusion

In our professional opinion, there are several opportunities for the University to enhance compliance with both these two landmark Federal laws. It was clear to use during our review that the University is committed to taking the necessary steps to ensure compliance and adoption of best and promising practices for preventing and responding to sexual and gender violence. If the University were to systematically adopt the recommendations in the full report, we believe it will have model Title IX and Clery Act compliance programs.

PART I – TITLE IX REVIEW

SECTION I – METHODOLOGY

In accordance with the Baylor University's wishes, Margolis Healy & Associates ("Margolis Healy" or "MHA") conducted reviews of the University's compliance with Title IX and the Clery Act.

The scope of work included concurrent assessments of the University's compliance with the applicable Department of Education Office of Civil Rights (OCR) guidance regarding Title IX Sexual Violence provisions and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). Both assessments consisted of comprehensive reviews of the requisite policies, protocols, systems, and practices specific to Federal guidance, related requirements, and promising practices for preventing and responding to sexual harassment and sexual violence.

This report acknowledges the University's strengths and identifies areas for improvement and future consideration.

We visited the campus from Monday, May 5, 2014 – Friday, May 9, 2014 to review documentation and conduct interviews with appropriate administrators and staff involved in the applicable compliance programs. During the site visit, the team reviewed the areas under consideration; conducted interviews of staff from various departments related to the review; and met with University leadership. We performed the necessary background research, document review, interviews, verification and analysis to have become familiar with the issues under review and key participants. The review included the following:

- Multiple day site visits to the Baylor University campus in Waco, TX;
- Interviews with University administrators, faculty, and staff representing key departments and demographics relevant to the various areas under review;
- Review of relevant procedures, protocols and policies.

We considered the following documents and information provided by the University.

Title IX:

- The University's Notice of Nondiscrimination, and associated procedures for distributing the notice, and/ or a list of all publications and web site locations through which the community is informed about the University's nondiscrimination policy;
- Document formally appointing at least one employee to coordinate the University's efforts to comply with and carry out its responsibilities under Title IX (Title IX Coordinator appointment) and/or a list of all

publications and web site locations through which the community is informed about the Title IX Coordinator designation;

- Copies of all University grievance procedures (pertaining, as applicable, to anti-harassment, sexual assault, staff/faculty misconduct, and/or general student misconduct prohibitions and procedures) providing for the prompt and equitable resolution of student and employee sex discrimination, sexual harassment and/or sexual violence complaints, and any descriptions of resources, academic/residential accommodations, and advice for victims of sexual violence;
- Curriculum for any and all training programs developed and delivered by the University to ensure those persons involved in implementing related investigations and grievance procedures have appropriate training and/or experience in handling investigations and adjudicating complaints, and records verifying such training; and,
- Copies and records for all sexual harassment and sexual violence prevention education programming.
- A copy of the University's catalog and student handbook and for each separate school, division, or location within the University for all academic years from 2010 - 2013;
- Other documents relevant to this review.

Clery Act:

- Baylor University Police Department (office that has primary responsibility for Clery Act compliance);
- Student Affairs Division representatives (various offices);
- Athletics; and,
- Office of Human Resources representatives;

We interviewed the following people given their responsibilities related to Title IX, the Clery Act and/or the investigation or adjudication of sexual harassment (as defined by the University) or sexual assault (as that term is commonly understood).

Our Observations and Recommendations related to these assessment address the extent to which Baylor University complies with the provisions of Title IX, including guidance issued by the U.S. Department of Education's Office of Civil Rights (OCR) in the April 4, 2011 Dear Colleague Letter (and supplemented, as needed, with guidance from the April 29, 2014 OCR Q&A and the White House "Not Alone" Report), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, evolving practices arising from OCR Resolution, and our collective and extensive experience as university administrators, campus public safety professionals, sociologists, higher education attorneys, and Title IX coordinators. Additionally, we base

our observations and recommendations on widely accepted professional standards related to the first response, investigation and adjudication of sexual misconduct incidents and best practices in prevention programming, including education and training activities. Our observations and opinions are to a reasonable degree of professional certainty, and are based on our education, training, and years of experience and our understanding of applicable laws.

SECTION II – GENERAL OBSERVATIONS and MAJOR THEMES

In our professional opinion, Baylor University has several opportunities to enhance its efforts to prevent sexual harassment and sexual assault and respond promptly and effectively to incidents that may deny or limit an individual's ability to participate in or benefit from the University's educational programs or activities on the basis of sex. While the University has taken several significant steps to comply with the guidance from the U.S. Department of Education's Office of Civil Rights (OCR), including designating a Title IX Coordinator, providing basic level training to Title IX investigators, and providing some awareness level programming on sexual assault to students, the University would be better served with a more strategic, comprehensive, and integrated approach to addressing the complex issue of sexual harassment and violence.

Essential Challenges

1. Title IX Coordinator – Roles and Responsibilities

Baylor recently appointed a new administrator as the Title IX Coordinator. The University has not designated any Deputy Title IX Coordinators.

Baylor's Title IX Coordinator historically has been an administrator who has other full-time duties. While Baylor staff working in this area, including the Title IX Coordinator, want to ensure Baylor's compliance with Title IX and that sexual harassment/violence matters are handled well, this cannot realistically be achieved unless the Title IX Coordinator is able to devote a significant amount of time and effort to develop and/or put in place appropriate structures, processes, relationships and training/education programs. Further, it will be important for the future Title IX Coordinator to develop systems and processes that ensure s/he is informed of all incoming sexual harassment/violence concerns, so that s/he can engage in institution-wide pattern tracking that will allow the University to address such concerns in a more targeted manner.

2. Title IX Policies

Baylor has a Notice of Nondiscrimination as required by the Title IX implementing regulations, although the University has not widely published this Notice, as required. In addition, the content of the Notice does not fully meet the mandates set forth in the regulations in that, for example, it does not provide contact information for the Title IX Coordinator and indicate that anyone can contact s/he and OCR with questions about the applicability of Title IX. The Notice also indicates that the University has some exemptions from Title IX, but does not specify the nature of those exemptions, which may be confusing to some readers, particularly as to whether the University is obligated to address sexual harassment/violence concerns consistent with OCR expectations.

While the University has some policies that would be generally helpful to a campus community member seeking to know more about how to report, or seek resources or support in connection with an incident of sexual assault, domestic violence, dating violence or stalking, it does not have a comprehensive, integrated, and unified policy that addresses these issues. An integrated, unified policy could be practically useful to complainants, respondents and University personnel charged with receiving complaints and implementing disciplinary and support processes.

Similarly, the University should consider developing a comprehensive procedure that separately describes how it will adjudicate sexual harassment, sexual assault, domestic violence, dating violence and stalking reports raised by students, employees or covered third parties against students, employees or covered third parties, that contains procedural features consistent with OCR guidance and the VAWA amendment obligations.

The development of an integrated, unified policy and associated procedures will also help address our observation that while Baylor has the good fortune of having some professionals who execute their Title IX-related duties in good faith, many are doing so based on their personal gravitas, as opposed to being able to rely on comprehensive, detailed policies and procedures. Policies and procedures would help inculcate good practices, so that appropriate support and procedures can be provided and followed even if the connected, talented individuals currently doing Title IX-related work are not available in the future.

3. Risk Management Infrastructure

We found that the University does not currently employ a risk management approach to communications with students about sensitive issues, in which checklists, scripts and templates are used to document those communications. The University instead relies upon the good faith, good work and memories of individuals who interact with complainants. Our experience tells us that there are times when documentation is required so that there is no question that, for example, complainants were informed of their right to contact law enforcement, and that University personnel will assist them appropriately and that University personnel offered other appropriate support resources.

4. Prevention, Education, and Training Activities

Given the VAWA amendments to the Clery Act and the April 29, 2014 OCR Q&A, along with the White House Task Force To Protect Students From Sexual Assault first Report "Not Alone," it is especially important to ensure that Baylor is implementing prevention programming and educational efforts that both meet the spirit and the letter of the law and evolving best practices in the field of sexual violence prevention and response. In our professional opinion, prevention measures should be at the top of the list of the University's priorities as it discusses how it should best address these complex issues.

It appears that Baylor struggles to find prevention and education programs that will be perceived as consistent with Baylor's mission and values and OCR requirements. This has resulted in limited, intermittent programs that target women and focus on risk reduction, rather than primary prevention efforts focusing on consent, bystander intervention, and highlighting available resources. The University should focus on developing an approach to deliver coordinated, integrated and evidence-based programming to all students. We believe that programs can recognize Baylor's religious values, standards and expectations, while acknowledging that sexual and gender violence are valid concerns of the Baylor community and that the University is required by law to address these issues.

The University is required to orient all their employees about Title IX and their specific responsibilities. One significant part of training is ensuring that individuals who interact with complainants are knowledgeable about working with individuals who have experienced sexual violence, and understand their roles and responsibilities in fulfilling Baylor's obligation to investigate and respond promptly and equitably. We are particularly concerned about the lack of orientation and training for employees on several different levels. We recommend that Baylor conduct comprehensive training for those directly involved with responding to Title IX-related incidents and cases. The training should include in-depth discussion and debunking of sexual violence myths, understanding how trauma impacts victims, support systems for survivors, interim measures, and how to conduct investigations, as needed.

5. Interim Measures

During our interviews, we sensed significant resistance towards implementing interim measures (e.g., changes in academic, residential, working or transportation arrangements) that would adversely affect respondents while an investigation is underway. OCR guidance emphasizes that interim measures should be implemented, and that these measures should minimize the burden on complainants. Our view is that this means in practice that if someone has to be inconvenienced, the respondent has to be inconvenienced rather than the complainant, even before an investigation has been concluded. This preference should, in our view, be incorporated into the University's handling of sexual assault, domestic violence, dating violence and stalking cases.

6. Title IX Investigator

Currently, one individual at the University investigates all allegations of sexual assault by students. Our impression is that this individual has worked hard to educate herself about Title IX requirements and sexual assault investigations, but that she is relatively inexperienced in sexual assault-related issues and overwhelmed by the caseload to carry out the ever-burgeoning Title IX investigation responsibilities effectively. The University should consider

providing additional resources in this area. We address this issue further in the Specific Observations section of this report.

SECTION III – SPECIFIC OBSERVATIONS

Title IX Coordinator

Requirements and Applicable Guidance

Title IX and OCR guidance¹ requires an institution to designate a Title IX Coordinator to oversee all Title IX complaints and identify and address patterns or systemic problems that are discovered during periodic reviews of an institution's compliance with Title IX. The Title IX Coordinator must also be available to meet with individuals who have Title IX-related concerns.

An institution may designate more than one Title IX Coordinator, provided it notifies its community of the additional Coordinators (see "Notice of Title IX Coordinator and Notice of Nondiscrimination," below). In addition, each Coordinator's particular Title IX responsibilities should be outlined and the title for the position should reflect those specific responsibilities. Title IX Coordinators should not have other job responsibilities that may create a conflict of interest. Examples of conflicts of interest provided by OCR include, but may not be limited to the following: a Title IX Coordinator who serves on a disciplinary hearing board; or the institution's general counsel.

The Title IX Coordinator(s) must have adequate training regarding what constitutes sexual harassment, including sexual violence, and be knowledgeable regarding the institution's relevant grievance procedures. The Title IX Coordinator (or designee) should provide assistance to the institution's campus public safety agency regarding how to respond appropriately to reports of sexual violence, and should be given access to public safety investigation notes and findings as necessary for the institution's Title IX investigations, provided such does not compromise a criminal investigation.

Because institutions of higher education are complex organizations, verifying Title IX compliance at every level at all times is challenging. However, the Title IX Coordinator is responsible for ensuring that the institution has the appropriate processes, internal systems, external relationships and training programs/protocols in place so that those responsible for handling Title IX issues do so promptly and effectively, and that individuals who may have Title IX concerns either know or can easily determine how to bring those concerns forward.

Observations

Dr. Karla Leeper, Vice President for Board and Executive Affairs and Chief Compliance Officer, serves as the University's Title IX Coordinator. Dr. Leeper has served as the Title IX Coordinator since January 1, 2014. Prior to Dr. Leeper's appointment to this role, Vice President for Human Resources John Whelan was the University's Title IX Coordinator. Dr. Leeper will be leaving Baylor shortly, at which point Mr. Whelan will resume the Title IX Coordinator duties until a new Title IX Coordinator is identified or hired (we learned

¹Where this Report uses the term "OCR Guidance," it refers generally to the April 4, 2011 Dear Colleague Letter, the April 2014 OCR Question and Answer (Q&A) Document on Title IX and Sexual Violence, as well as other pertinent DCLs that address issues related to sexual and gender violence.

after our site visit that Mr. Whelan has also left the University, and that the University has designated another staff member as the Title IX Coordinator). To date, the University has not named any Deputy Title IX Coordinators. Dr. Leeper indicated that she had planned to name deputies, but stopped when she determined she would be leaving Baylor.

One concern that was repeatedly raised by interviewees, and which we share, is that the duties of the Title IX Coordinator have in the past been part of a position that has other full-time duties. As such, the individual in the position does not have the capacity to engage Title IX efforts across the University at the level needed to ensure Title IX Compliance. This may be a primary reason that Baylor has not developed the type of policies, procedures, structures, relationships, information sharing, tracking and training/prevention efforts that ensure both Title IX Compliance and that sexual harassment/assault concerns are being addressed in the manner the institution would wish. We note that staff informed us that there haven't been any complaints, either internally or through the federal government, related to Baylor's handling of sexual harassment concerns. This is an excellent outcome to date and speaks well of the individual effort of various staff members across campus, but it is a result based to a certain extent on luck, versus a coordinated system designed to ensure adherence to federal guidelines and proper handling of Title IX concerns. It also provides no assurance of a positive outcome in the event of an OCR compliance review.

Baylor staff working in this area, including the Title IX Coordinator, want to do well, reportedly work hard to handle sexual harassment/violence concerns well, and want to ensure Baylor's compliance with Title IX; however, this cannot realistically be achieved unless the Title IX Coordinator is able to devote a significant amount of time and effort to developing and/or putting in place appropriate structures, processes, relationships and training/education programs. Without the guidance of a Title IX Coordinator, staff members are left to work on an ad hoc basis to address issues. As one staff member said, "We [reviewed] the DCL and covered what's in our area." What Baylor does not know, and cannot know without a knowledgeable and attentive Title IX Coordinator, is whether the area in question made appropriate changes, all changes that were necessary, and how the changes that area has made affect other units that also have Title IX compliance obligations.

Finally, throughout our conversations with staff that handle sexual harassment/violence issues directly, we noted that few thought to notify the Title IX Coordinator of the various Title IX-related matters they have been handling. One extremely important function a Title IX Coordinator serves is to review all Title IX-related issues for patterns. This type of review allows the University to track and identify patterns in a way that enables it to more effectively address sexual harassment/violence. With this type of tracking, institutions are more readily able to identify areas of concern (e.g., a specific location or student group) or, in some cases, a particular individual of concern.

This allows the institution to engage in a much more targeted and, hopefully, effective response to the issue. While Baylor is doing some limited tracking through individual offices, there is no institution-wide tracking for all Title IX matters (student, faculty, staff and visitors).

Recommendations

1. Hire a full-time Title IX Coordinator who does not have other significant job duties. Note that when an institution first assesses or reassesses its Title IX compliance, these efforts generally require all of the Title IX Coordinator's attention; however, as the program matures, that individual may be able to assume some additional duties without negatively impacting Title IX compliance.
2. Continue to place the Title IX Coordinator at a level within the organizational structure so the position has and is perceived as having institution-wide authority on Title IX issues. In making the assessment as to where the Title IX Coordinator most reasonably fits within the institutional hierarchy, consider the Coordinator's responsibility to coordinate efforts University-wide. We suggest the Title IX Coordinator report directly to an executive officer of the University.
3. Assess whether designating additional Deputy Title IX Coordinators would strengthen compliance efforts across campus, (e.g., Student Affairs, HR, Athletics, etc.).
4. Provide relevant, on-going training to the Title IX Coordinator and Deputy Title IX Coordinator(s).
5. Create a Title IX team comprised of appropriate individuals from across campus (Title IX Coordinator, Deputy Title IX Coordinators, Student Affairs, Human Resources, Police, Provost, Counseling Center, etc.). The Title IX Coordinator should lead this and discuss and ensure coordination of all Title IX complaints/concerns/compliance issues. Consider having this team meet regularly to identify and address compliance issues/progress, policies and procedures, patterns, campus culture surrounding Title IX, barriers to reporting, promising practices, and any barriers to implementing promising practices or achieving compliance. Title IX teams can build strong relationships amongst key Title IX stakeholders, allowing such issues to be handled more efficiently and effectively. While greatest efficiency will likely be achieved if all Title IX matters are addressed by one group, if that is not possible, the institution could assign one group to address student issues, while another addresses issues involving faculty, staff and visitors.
6. As appropriate structures and processes are put in place, have the Title IX Coordinator assess the investigation/hearing process and campus culture to determine whether and how to increase reporting of sexual harassment/violence (e.g., reducing the burden on the parties).

7. Ensure that the Title IX Coordinator has the opportunity to assess proposed action to be taken against a Baylor community member when Baylor's policies related to Title IX have been violated (e.g., corrective action, sanctions, continued protective measures, etc.). This review is intended to ensure the institution's actions are reasonably calculated to eliminate the harassment, prevent its recurrence, and address its effects, while also assessing for consistency across campus.
8. The Title IX Coordinator should develop a relationship between those at Baylor who work on Title IX issues and local law enforcement/prosecutor's offices. This will build understanding as to their shared interest in addressing sexual violence, domestic violence, dating violence and stalking, within the context of the different processes and obligations each has, and how the two entities might work best and with mutual respect toward their shared interest.

Notice of Title IX Coordinator and Notice of Non-Discrimination, and Other Policy Issues

Requirements and Applicable Guidance

The regulations implementing Title IX require that institutions publish a Notice of Non-Discrimination. See 34 CFR §106.9(a). This requirement is re-emphasized in the DCL. See DCL, pages 6 and 7. The required Notice of Non-Discrimination must clearly state that the institution does not discriminate on the basis of sex in its education programs and activities, as required by Title IX, and that inquiries concerning the application of Title IX may be referred to the Title IX Coordinator or OCR. The DCL states that the Notice should include the Title IX Coordinator's name or title, office address, telephone number and email address. There is also an independent obligation to disseminate this information about the Title IX Coordinator to the campus community (See 34 CFR §106.8(a)). Many institutions find it most effective to meet that requirement via the required Notice of Non-Discrimination.⁸ OCR also requires institutions to issue Notices of Non-Discrimination relative to some of the other federal civil rights laws it enforces, and often institutions issue one comprehensive Notice of Non-Discrimination that covers each OCR notice requirement as well as other applicable federal and state civil rights notice requirements. OCR has issued guidance to assist institutions in developing comprehensive notices of non-discrimination.⁹

Institutions are expected to distribute their Notice of Non-Discrimination widely, including publishing it prominently electronically and on "printed publications of general distribution that provide information to students and employees about the school's services and policies."

Title IX does not require an institution to adopt a specific policy prohibiting sexual harassment/violence, but the institution's policy prohibiting sex discrimination is considered by OCR to be noncompliant if it is not clear

⁸The regulations only require institutions to provide the "name, office address and telephone number" of the Title IX Coordinator; however, OCR consistently requires that institutions also provide an email address.

⁹See www2.ed.gov/about/offices/list/ocr/docs/nondisc.pdf.

that sexual harassment/violence are prohibited forms of sex discrimination. OCR also recommends that institutions provide examples of the types of behavior that constitute sexual harassment/violence.

Various policy statements are required by the VAWA Amendments to the Clery Act (generally referred to as the "Campus SaVE Act"), recommended or required by OCR, or commonly included in OCR Resolution Agreements and/or Resolution Letters.

Observations

Baylor has a Notice of Non-Discrimination (the "Notice") that may be found by conducting a search on the Baylor homepage for the term "nondiscrimination."⁴ The Notice, which is the first document returned by this search, reads as follows:

Baylor University complies with all applicable federal and state nondiscrimination laws and does not engage in prohibited discrimination on the basis of race, color, nationality or ethnic origin, sex, age, or disability in employment or the provision of services. The university is governed by a predominantly Baptist Board of Regents and is operated within the Christian-oriented aims and ideals of Baptists. Baylor is also affiliated with the Baptist General Convention of Texas, a cooperative association of autonomous Texas Baptist churches. As a religiously controlled institution of higher education, Baylor University is exempted from compliance with some provisions of certain civil rights laws, including some provisions of Title IX of the Education Amendments of 1972.

Baylor's Notice of Non-Discrimination is not otherwise easy to find on the Baylor website. For example, the home page does not appear to have a link to the Notice.

In terms of publication of the Notice in official Baylor publications, we note that it was included in the 2013-2014 Undergraduate Catalog. We reviewed other recent official Baylor publications, such as hard copies of the Spring 2014 edition of *Baylor News* (vol. 24 no 2), *Baylor Arts & Sciences* (Spring 2014), and *Baylor* magazine (Spring 2014). None of these three publications included the required Notice of Non-Discrimination. We also sought to review applications (both for students and employees) to determine whether they contain the Notice. We were informed that these documents are not available in paper form, so we sought to access them electronically. We were unable to access an electronic version of a student application, but were able to access the employment application by randomly applying for a position on line. As far as we could determine, the application did not include the required Notice of Non-Discrimination.

⁴ See www.baylor.edu/student_policies/index.php?id=22176.

With regard to the content of Baylor's current Notice, it does not fully meet OCR's expectations.⁵ While the Notice states that Baylor does not discriminate on the basis of sex, as required, it states that it does so in "employment or the provision of services," versus in its education "programs and activities."⁶ Further, and most significantly, the Notice does not provide contact information for the Title IX Coordinator and indicate that s/he and OCR may be contacted with questions about the applicability of Title IX. Finally, the Notice references Title IX as a law from which it has some (unexplained) exemptions.⁷ Although such a notation is not contrary to OCR guidance, this notation, without further explanation, could give the reader the erroneous impression that Baylor is not subject to the provisions of Title IX that protect members of the campus community from sexual harassment, including sexual violence.

Recommendations

9. Revise the Notice of Non-Discrimination so that it complies with OCR guidance and expectations. Particular attention should be paid to identifying the Title IX Coordinator and providing his/her full contact information. To the extent the University retains the language that states that it is exempt from certain provisions of Title IX, explain clearly to the reader what this means, so that the reader will understand that Baylor is subject to Title IX mandates related to sexual harassment/violence.
10. Publish the Notice widely, both electronically and in all official Baylor publications. Review official Baylor publications "that provide information to students and employees about the school's services and policies" to ensure they contain the revised Notice. Admissions and employment applications should be included in this review.
11. Ensure that administrators in various units are aware that the revised Notice is an official Baylor policy that should not be modified on their individual unit websites/publications. Note that many institutions choose to have a "long" version of their Notice that is more descriptive and appears on the institution's website and policy manual, and also a "short" version for inclusion in official University publications.

Grievance Procedures

Requirements and Applicable Guidance

Sexual violence is underreported throughout the country, and the DCL and OCR Q&A cites statistics to that effect that are specific to higher education. Underreporting is a societal problem and not unique to the colleges and universities; however, there are steps a college can take in an effort to increase the likelihood that members of the campus members will report sexual harassment and sexual violence. Chief among them is to create a system for handling such matters that is easy to understand, as transparent as possible, provides support for the physical and emotional security of the parties, and is effective in that it takes meaningful action when an individual is found

⁵ In addition to information in the DCL and the Q&A, OCR has provided guidance as to how to draft a compliant Notice of Nondiscrimination. This guidance is available at www2.ed.gov/about/offices/list/ocr/docs/nondisc.pdf.

⁶ Note that this term is interpreted quite broadly by OCR and would include employment activities.

⁷ A version of the Notice that appears on the Baylor Law School Career Development website provides some information as to the exclusions under Title IX. See www.baylor.edu/law/cd/index.php?id=74853.

to have engaged in sexual harassment or sexual violence. In essence, if an institution has strong procedures in place, the campus community is aware of them and they are implemented properly, and the institution has palpably demonstrated its commitment to addressing sex discrimination, including sexual harassment and violence. Over time, this commitment may increase the number of complaints brought forward through its grievance procedures. This occurs not because there are more instances of sexual harassment and violence, but, more likely, as a result of increased trust in the institution's ability and commitment to address existing incidents. As noted elsewhere in this report, however, the institution must have adequate (and adequately trained) staff members in place to respond to increased complaints so that it can ensure that all complaints are addressed promptly and effectively.

Department of Education regulations (at 34 C.F.R. § 106.8(b)) and OCR require that the College have grievance procedures to address sex discrimination complaints. OCR emphasizes that such grievance procedures should address complaints of sexual harassment and violence from students, faculty and staff against students, faculty, staff and third parties. The procedures do not have to be separate from existing disciplinary procedures, so long as they afford the complainant a "prompt and equitable resolution." Voluntary, informal processes such as mediation may be used for sexual harassment complaints that do not involve sexual assault, provided the complainant is not required to resolve the matter directly with the respondent without the College's involvement. The complainant must also be able to end the mediation whenever s/he wishes and move forward to a more formal resolution. Mediation is not appropriate in cases that involve allegations of sexual violence.

The DCL states that grievance procedures should be "easily understood, easily located and widely distributed." OCR has provided substantive guidance regarding how it believes such procedures should operate. For example, the institution should notify complainants of their right to file a criminal complaint, but not hold off in conducting an internal review of the matter pending the outcome of a criminal investigation or prosecution. The institution should use a preponderance of the evidence standard of proof. The grievance procedures should be equitable, with both parties having the same procedural rights (e.g., access to information, to offer witnesses, to offer character witnesses if any are allowed, etc.). The institution is discouraged from developing procedures that allow the parties to cross-examine or question each other directly. A complaint should generally reach resolution within 60 days. Both parties should receive written notification of the outcome. OCR does not require that institutions provide an appeal process, but if one is provided it must be equally accessible to both parties, irrespective of the outcome of the investigation and any hearing.

It is also important to note that while the Clery Act has long required the adoption of sexual assault policies with certain features, the breadth and detail

of these requirements were expanded significantly by the VAWA Amendments to the Clery Act, signed into law by President Obama on March 7, 2013 as part of the Violence Against Women Reauthorization Act of 2013. The VAWA Amendments, which essentially apply many of the principles and definitions of the Violence Against Women Act to the college and university context, went into effect in March of 2014 (see generally 20 U.S.C. § 1092(f)). Under the VAWA Amendments, each covered institution must develop and distribute in its Annual Security Report (“ASR”) policies and statements that cover:

- The institution’s programs to prevent domestic violence, dating violence, sexual assault, and stalking;
- The procedures that the institution will follow once an incident of domestic violence, dating violence, sexual assault, or stalking has been reported;
- Notification about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available to survivors both on-campus and in the community;
- Notification about a survivor’s right to either choose to notify law enforcement (with institutional support) or to decline to notify law enforcement;
- Notification about the availability of protective orders and institutional sanctions;
- Notification about steps that survivors should take to preserve evidence of covered violence and/or stalking; and
- The provision to survivors of information about options for, and available assistance in, changing academic, living, transportation, and working situations, if such assistance is requested by the survivor and if such accommodations are reasonably available (regardless of whether the survivor chooses to report to campus police or local law enforcement).

The Amendments also codifies some, but not all, of the procedural requirements outlined in OCR’s April 2011 DCL and the April 2014 Q&A. Procedural features include:

- Covered disciplinary proceedings will provide a prompt, fair and impartial investigation and resolution;
- Such proceedings will be conducted by officials who receive annual training on issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that “protects the safety of victims and promotes accountability;”
- The standard of proof must be specified (the Amendments do not dictate what the standard should be, but OCR requires a preponderance of the evidence standard);
- Both parties involved in a covered grievance procedure must have an equal

opportunity to be accompanied to any hearing or related proceeding or meeting by “an advisor of their choice;”

- Both parties involved in a covered grievance procedure must be simultaneously informed in writing of the outcome of disciplinary proceedings (and the result of any appeals); and,
- Appeal procedures available to both parties must be described.

It should be noted that the Amendments require that both students and employees have the benefit of the listed policies and procedures. (The procedures articulated here are from the statute and the early draft regulations, as the Department of Education is currently engaged in the Negotiated Rulemaking process).

From a practical standpoint, sexual harassment and sexual violence matters offer unique circumstances and procedural needs not associated with other disciplinary matters. For this reason, some institutions have found that their procedures for addressing sexual harassment and violence are easier to navigate (both for administrators and the parties) if they are separated from other grievance procedures.

OCR has recently made the point that policies against sexual harassment and sexual violence should be phrased to encourage reports of all unwelcome conduct of a sexual nature, rather than only reports of unlawful sexual harassment and sexual misconduct. OCR made this point in its Resolution Agreement with the University of Montana-Missoula. There, OCR stated its view that it is best if sexual harassment policy language encourages reporting of all unwelcome conduct of a sexual nature, even if such conduct is not necessarily at a level where it has the purpose or effect of unreasonably interfering with an individual’s work or educational performance or creating an intimidating, hostile or offensive working or educational environment. The theory behind language to this effect is that it encourages reporting of lower-level conduct so that the institution can determine whether it really creates a hostile environment or not, it allows the institution to address unwelcome conduct of a sexual nature even if it is not technically unlawful, and it avoids a situation where a more technically legalistic definition of prohibited sexual harassment might “chill” a would-be complainant’s desire to report low-level unwelcome conduct of a sexual nature. Again, policy language to this effect is not absolutely required, but would likely be viewed positively by OCR.

The DCL encourages policy language to the effect that an institution’s primary concern is student safety, that any other rules violations (such as violations of alcohol or drug policies) that come to light in the course of a sexual harassment/sexual misconduct investigation will be addressed separately from the sexual harassment/sexual misconduct allegation, and that the use of alcohol or drugs never makes a complainant at fault for an incident of sexual harassment/sexual misconduct.

Observations

Policies

Baylor's sexual misconduct policy is reachable from a link on the Student Conduct Administration web site. It is very short, and does not contain a definition of consent to sexual activity or definitions of sexual assault or sexual harassment. Notwithstanding media reports that Baylor's student senate voted in October, 2013 to change language regarding homosexual acts, the policy as accessed through the Student Conduct Administration web site still defines "homosexual acts" as a form of sexual misconduct. The Student Conduct Administration office created and maintains a "Know Your Rights" document that is apparently provided to complainants at the time reports are made. This is not a Baylor policy; it is instead an OCR summary that has been packaged with a cover letter that is on Baylor letterhead. There is no one document that outlines, in one place, all a complainant would need to understand (and under the VAWA Amendments to the Clery Act, should be provided in written form) regarding topics such as confidentiality, support resources, who decides whether a case goes forward against a complainant's wishes and why, what interim measures and protection orders are available, etc.

Student Procedures

We understand that Baylor maintains a Civil Rights Policy, and visitors to the Division of Student Life web site are advised to "[u]se [the Civil Rights Policy] statement for information about reporting sexual harassment." The Civil Rights Policy identifies Title IX as one of the laws that defines the civil rights of faculty, staff and students, but contains no detailed information regarding sexual harassment or sexual violence. We were told in interviews that the Civil Rights Policy is rarely if ever used in sexual harassment/violence cases. Therefore, we will turn our attention to the Division of Student Life Student Conduct Code, which appears to be the process used to address complaints of sexual harassment/violence involving student respondents.

While the Division of Student Life generally adjudicates sexual harassment/violence cases under the Student Conduct Code, there is some language in the Code (in the form last accessed by us through the Division of Student Life's web page on June 21, 2014) obviously intended to promote compliance with OCR guidance. Specifically, the following language is stated at several appropriate places in the procedures:

In cases of sex offenses, both the accused student and the complainant will have an equal opportunity to have notice of the hearing, to have access to any evidence that will be presented at the hearing, to attend the full hearing, to present evidence and witnesses, to question witnesses at the hearing, to be notified in writing of the outcome of the hearing and sanctions if applicable, and to be notified of the appeal process.

The appeal procedures provide, again consistent with the OCR guidance, that “[i]n cases of sex offenses, both the accused student and the complainant will have an equal opportunity to appeal the decision.” It is not clear from the procedural provisions themselves whether sexual harassment would fall within the definition of “sex offense” for purposes of these unique procedural features; if it does not, the University should consider clarifying or broadening the language, as the DCL, while focused on sexual violence, does refer to sexual harassment generally when describing procedural requirements, and emphasizes that sexual violence is a form of sexual harassment. The paragraph above does not indicate, as essentially required by the DCL, that complainants in sexual harassment/violence cases will not be subjected to cross-examination by respondents, and the “Questioning” section of the Student Conduct Board procedures, which is not qualified for sexual harassment/violence cases, could be read to suggest that respondents have a right to question complainants as they would other witnesses. There is no language in the procedures regarding accommodations for separating the parties during hearings.

In the form as posted on the Division of Student Life’s web site as of June 21, 2014, the Student Conduct Code policies did not describe unique procedural features imposed by the VAWA Amendments on cases involving domestic violence, dating violence, sexual assault or stalking. These unique procedures are described in the Requirements and Applicable Guidance section immediately above.

OCR guidance states clearly that schools are not required to adjudicate sexual harassment/violence cases through separate disciplinary processes, so long as the processes used comply with OCR requirements. It has been our experience, nonetheless, that with the increase in the number of unique procedural features required by OCR and the VAWA Amendments to the Clery Act, and practical accommodations that are often provided in that many schools are finding that they can more efficiently and clearly describe all of the policy statements and procedural requirements in a separate, integrated and unified comprehensive policy. Often, schools are combining sexual assault policies and procedures with domestic violence, dating violence and stalking policies and procedures, given the common procedural requirements of the VAWA Amendments regarding these types of misconduct.

Current University policies do not allow attorneys or any advisors for parties to attend hearings. The VAWA Amendments provide specifically that parties to domestic violence, dating violence, sexual assault and stalking cases may bring an “advisor of their choice” to any hearings or related meetings. Proposed regulations provide that schools may restrict the ability of such advisors from addressing the panel or doing anything other than speaking privately with their advisee. There remains some hope that the negotiated rulemaking process will soften this requirement, but as of June 2014, the plain language of the statute is consistent within the proposed regulations.

Applied Procedural Issues

Several noteworthy issues regarding how procedures are applied arose during our interviews.

First, we were told that Student Conduct Administration follows a practice (not documented in University policy) whereby an initial determination is made after an investigation whether “a preponderance of the evidence demonstrates that it is more likely than not that there was a possible sexual assault or sexual harassment.” If the answer to this question is “yes,” the case goes forward to an administrative or conduct board hearing, but if the answer is “no,” the case does not go forward. We have concerns about this approach, as it appears to be conflating the ultimate responsibility determination with a threshold step controlled solely by an administrator, who is also the Title IX investigator. It would be more appropriate for an investigator to determine only whether the facts alleged by the complainant, if found through an administrative or student conduct board hearing to be true, could establish a violation of policy. If the answer to that question is yes, then a case should proceed. We would be concerned about the University’s ability to explain to a complainant or OCR that it had decided not to proceed with a case, without the hearing that appears to be promised by University policy, based upon a sole administrator’s preliminary judgment on the facts.

Second, in discussing interim measures (such as academic or residential accommodations that can be implemented while a case is pending), it became clear to us that there is significant resistance on the part of responsible administrators to the imposition of interim measures that could curtail a respondent’s access to classes, to his or her preferred living arrangement, or to campus in general, while a case is pending. It appears that in practice, interim measures are arranged by moving the complainant, but not by restricting the respondent. The DCL makes clear OCR’s position that inconvenience to the complainant should be minimized if there is no choice but to inconvenience one party or the other, and complainants, while initially cooperative, could allege if a case drags on that they were moved and inconvenience in retaliation for their making a report of sexual harassment/violence.

Third, we were told that most investigations are not completed within 60 days. It appears that the individuals charged with investigating and processing sexual misconduct cases are working very diligently, but that they are simply overwhelmed by the volume of cases under the current adjudication system.

Fourth, there is a lack of checklists or scripts that student conduct administrators could use to demonstrate what they have communicated to complainants and respondents about sensitive issues such as interim measures and a student’s agreement to same, and templates are not used to document (by email with a confirmation requested, for example) what the University has offered and what a student has agreed to in regards to case handling as, for example, when a student reports sexual misconduct but then decides not to go forward.

Fifth, it appears that the Student Conduct Administration office makes decisions about whether or not to go forward with a case against the complainant's wishes, but that the Title IX Coordinator is not consulted about such decisions. There is also no statement in policy regarding who makes such decisions and why. OCR's Q&A recommends that a statement on these issues should be included in a school's policies.

Finally, we were told about concerns regarding the delays in University case processing that are occasioned by waiting for the Waco Police Department to process forensic evidence.

Recommendations

12. Create a comprehensive, integrated, unified policy that defines sexual harassment, sexual assault, domestic violence, dating violence and stalking in terms consistent with the requirements of the VAWA Amendments and OCR guidance. This policy would contain all information a complainant would need to know, and is entitled to know under current federal guidance. The policy and procedure checklist that accompanies the Not Alone document published by the White House on April 29, 2014 is a good resource for understanding the scope of such policy. Such policy, when combined with a comprehensive procedures document, could be provided to parties to sexual harassment/violence cases, in satisfaction of the VAWA Amendments written information requirements.
13. Create a comprehensive procedure that separately describes how the University will adjudicate sexual harassment, sexual assault, domestic violence, dating violence and stalking reports raised by students, employees or covered third parties against students, employees or covered third parties, which contains procedural features consistent with the requirements of the VAWA Amendments and OCR guidance. The policy and procedure checklist that accompanies the Not Alone document published by the White House on April 29, 2014 is a good resource for understanding the scope of such procedures. Such procedure, when combined with a comprehensive policy document, could be provided to parties to sexual harassment/violence cases, in satisfaction of the VAWA Amendments written information requirements. The University could have separate procedures for cases involving staff or third party respondents, but such procedures would have to comply with all requirements.
14. Whatever form the University's sexual harassment/sexual violence policies take, consider revising them to encourage reporting of all unwelcome conduct of a sexual nature, not just sexual conduct that would rise to the level of unlawful sexual harassment.
15. Consider adding language to the University's student conduct policies (in whatever form they take) in both the alcohol and drugs section

and the sexual misconduct section, to the effect that the University's primary concern is student safety, that any other rules violations (such as violations of alcohol or drug policies) that come to light in the course of a sexual harassment/sexual misconduct investigation will be addressed separately from the sexual harassment/sexual misconduct allegation, and that the use of alcohol or drugs never makes a complainant at fault for an incident of sexual misconduct.

16. If the current Student Conduct Code section on sex offense procedural features is retained, clarify that the unique procedural features currently reserved in the Student Conduct Code for "sex offenses" also apply to sexual harassment cases.
17. Make other revisions to the University's sexual harassment/sexual violence policies and procedures as required by the VAWA Amendments and OCR's April 29, 2014 Q&A document, and consider the policy and procedure suggestions made in the White House's Not Alone document and related checklist (and adopt as many of those suggestions as possible).
18. End the practice whereby Student Conduct Administration makes a threshold preponderance of the evidence judgment before allowing a case to proceed to hearing.
19. Adopt a more open perspective on interim measures, which recognizes that there may be cases where a respondent has to be inconvenienced or even removed from campus while a sexual misconduct case is pending, if that is the only alternative to avoid creating a hostile educational environment for a complainant.
20. Consider steps, whether based on personnel or process, which would allow the University to process most investigations and hearings within 60 days of a report of sexual harassment/violence.
21. Adopt a risk management approach to communications with students about sensitive issues, in which checklists, scripts and templates are used to document those communications, rather than relying upon the memories of individuals (however experienced they might be).
22. Involved the Title IX Coordinator in decisions about whether to go forward with a case against a complainant's wishes, and state in University policy who makes such decisions and why.
23. Verify whether there are current issues with the Waco Police Department and delays related to cases involving forensic evidence, and work to resolve those issues through a Memorandum of Understanding or other arrangements.

Infrastructure to Support the Title IX Program

Requirements and Applicable Guidance

As noted above, the DCL and the VAWA Amendments to the Clery Act contain many specific requirements as to how covered institutions must support complainants, perform investigations, remediate sexual harassment (including sexual violence), and educate members of the campus community about sexual harassment/sexual violence, domestic violence, dating violence and stalking. The requirements from the VAWA Amendments are broader than those encompassed by Title IX, meaning that various administrators are likely to have responsibility for implementation and continued compliance efforts. The Title IX Coordinator has ultimate responsibility for ensuring Title IX compliance and, to the extent the institution's efforts to comply with the aspects of the VAWA Amendments that address sexual harassment/violence are consistent with Title IX, the Title IX Coordinator should work collaboratively with others on campus who have responsibilities under the Clery Act⁶ to ensure that the institution meets both Title IX and Clery Act obligations. This will reduce duplication of effort and ensure the College's Title IX and Clery Act obligations are met on an ongoing basis, and policies and procedures outline a framework for compliance that is valuable and informative for administrators and campus community members alike. Of course, even a compliant system of policies and procedures, overseen by a competent, adequately resourced Title IX Coordinator can only be effective if it is supported by an adequate Title IX program infrastructure.

Education and prevention programming and outreach efforts are a crucial part of the Title IX program infrastructure. Those are discussed below. In this section, we address our observations and recommendations regarding other noteworthy infrastructure elements.

Observations

Institutional Values

One of Baylor University's core values is that sexual relationships are to occur exclusively within the bonds of heterosexual marriage. Interviewees routinely indicated that they struggle to address Title IX issues in a way that honors Baylor's values, but also provides students and other members of the Baylor community with the information and support they need. While OCR does not require Baylor to alter its values regarding sexual activity outside of marriage (or related to consumption of alcohol), it does expect Baylor to educate its students about issues related to sexual harassment/sexual violence, including where they may go for help (both supportive and adjudicative) if they experience such behavior and with the understanding that sexual harassment/violence occurs between and across genders.

It is possible for Baylor to educate its campus community about Title IX issues without condoning sex outside of marriage; however, staff indicates

⁶ As recommended below, the institution, if it has not already done so, should determine which administrators have responsibility for the various compliance obligations set forth in the VAWA Amendments to the Clery Act.

that they struggle to raise the subject within the University's administrative structure because it seems inconsistent with core values. For that reason, it is a subject that is whispered about, but not addressed directly. One interviewee, seeing the dichotomy between this behavior and Baylor's obligation to serve members of its community who have experienced sexual harassment/violence and seek to prevent it, put it succinctly: "We have to stop being stupid."

Interviewees raised concerns that by not discussing sexual harassment/violence with students, Baylor is potentially contributing to the problem. Interviewees repeatedly mentioned that many Baylor students were home schooled or come from small communities where their classmates were their trusted and close personal friends. One staff member spoke of the naiveté this may cause and the incorrect assumptions some students will make about their fellow students as a result, meaning that they will not necessarily understand "how vulnerable they are." Interviewees also spoke to the assumptions students make about other members of the Baylor community because they are Christian. One interviewee explained that Baylor's messaging is that it offers a "caring, wonderful Christian environment," which it does, but that "Christians sometimes do things that are as wicked as others." This interviewee, along with others, noted that students "need to be aware that there may be people in the [Baylor community] who will seek to hurt them so that they may be alert and protect themselves."⁹ Other interviewees raised concerns that by not talking about sexual harassment/violence within the context of the Baylor community, it does nothing to combat the shame amongst those who experience it may feel and, therefore, discourages reporting.

Interviewees understand that Baylor has an obligation to engage in prevention and education activities for its students, but expressed frustration with finding "off the shelf" training programs, because these programs are predicated on the notion that sex outside of marriage (and alcohol consumption) is acceptable. It may be that Baylor cannot find a pre-packaged training that educates the campus community in a way that is also reasonably consistent with its core values. To that extent, it is incumbent upon Baylor to develop its own training. In the end, Baylor's obligation is to ensure the members of its community are aware of Baylor's expectations that they not engage in sexual harassment/violence; what to do in the event they experience sexual harassment/violence, whether within the context of marriage or not; where they can get help/report if they experience sexual harassment/violence; and how, as a bystander, to intervene to prevent possible sexual harassment/violence.

In working on these issues, it may be helpful for Baylor to conduct a campus climate survey. Climate surveys can provide the University with valuable information about campus culture, attitudes about sexual harassment, and anecdotal information about participant's experiences with sexual and gender violence. Climate surveys are also strongly encouraged in the Not Alone task force report published by the White House on April 29, 2014. We note,

⁹The need to educate Baylor students as to the potential dangers of the campus community is somewhat unique to Baylor. By raising this issue we want to acknowledge this cultural issue. It is important to note that we are not advocating that individuals are responsible for protecting themselves from sexual assault. We note that persons who experience sexual assault often experience "victim blaming." For example, a survivor may be "blamed" because s/he was incapacitated by drugs or alcohol when the assault occurred, or is said to have encouraged the sexual assault by having flirted with the person who subsequently assaulted them, or for not having fought back during the assault. A survivor is never at fault for having been assaulted; it is the responsibility of the person who assaulted the survivor not to engage in non-consensual sexual activity. However, given the circumstances described by the interviewees, it seems wise for Baylor to educate its students about the possible differences between their high school community and their college community, but to do so in a way that does not make students feel that they are to blame in the event they are assaulted by another member of the community.

however, that Baylor should not delay its prevention and education efforts pending the results of the climate survey.

High Dependence on Individuals Over Systems/Data Management

Administrators responsible for Title IX issues at Baylor are working diligently to maintain records of the matters they handle; however, there is no consistent method/database outside of the student affairs office for creating and maintaining records of issues that arise across campus. As a result, this historical knowledge resides at the individual level. Employees inevitably leave or retire, sometimes without even minimal knowledge transfer. For this reason, among others, institutional knowledge should be stored and maintained in an organized, centralized manner easily understood and accessible by other existing and future employees. Currently, files related to Title IX matters outside of student affairs are stored in different offices under different systems, including paper files without an associated database. This inefficient system creates the opportunity for unfortunate error, such as the institution handling a sexual harassment allegation against a member of the Baylor community and not being aware of a previous similar allegation, because the employees who were aware of the previous allegation either were not asked or are no longer at Baylor.

We are aware that the student affairs office uses a spreadsheet to organize information about sexual harassment/violence matters in the student context, and that at least two staff members in that office have access to the spreadsheet.

Baylor-Wide Infrastructure Issues

The administrators at Baylor who work on Title IX matters hold each other in high personal regard and respect one another as individuals; however, while this often translates into respect for the work various offices are doing related to Title IX matters, that is not always the case. When this occurs at even a minimal level, it results in a certain amount of dysfunction in handling Title IX issues, where one office may not wish to recommend the services of another office, thereby diminishing the University's ability to respond well – and as required – to sexual harassment/violence issues.

Given the high level of respect interviewees expressed for one another, it was not possible to accurately discern how widespread this issue is or may become (e.g., intentionally not referring members of the community to various individuals, offices or processes, or discouraging members of the community from accessing them), but it seems that some of this dysfunction results from a lack of information-sharing and/or understanding of the institution's Title IX obligations and each unit's role in meeting them.

As noted elsewhere in this report, Baylor does not currently have a significant amount of coordination of its Title IX efforts, therefore offices working directly and indirectly on Title IX matters do not necessarily coordinate

their efforts or understand whether certain actions were taken and why. This type of information sharing can engender significant trust (and high levels of efficiency) amongst the various individuals and offices working on these issues and give each office an important perspective on other offices' work that they otherwise would not have. In the absence of this information, individuals often make assumptions that are not accurate and that can lead to distrust and dysfunction.

There does appear to be University support for student complainants through the Counseling Center, and the Case Manager appears to be qualified to provide some level of non-confidential support as well. There does not appear to be a victim's advocate support system on campus. There does not appear to be a support system for respondents, though the ombudsperson was mentioned as a hypothetical option, though not one currently used by respondents.

Recommendations

24. Encourage open and frank discussion amongst relevant administrators of the need to provide sexual harassment/violence prevention and education programs to students, faculty and staff, and how/whether those programs will be offered in a manner consistent with Baylor's values.
25. Conduct a campus climate survey for the purpose of gathering information about campus culture, attitudes about sexual harassment, and anecdotal information about participants' experiences with sexual and gender violence.
26. Develop a campus-wide system for collecting and maintaining files and data related to Title IX matters. Evaluate whether the documentation system used by the student affairs office is adequate and sufficiently accessible by those who need access it, make any necessary changes to the system, and consider using the resulting system as a broader based system, under the control of the Title IX Coordinator, to track the University's handling of complaints of misconduct prohibited by Title IX and Campus SaVE.
27. As noted above, develop a Title IX team consisting of offices across campus that address Title IX issues for the purposes of knowledge sharing, efficient handling of Title IX matters, and relationship building. When this team is first assembled, to encourage openness and understanding, it should consider conducting a review of one or more past cases from beginning to end, so that team members will know how the case was handled, why, and can offer suggestions for improvements.
28. Assess whether the University should adopt a more comprehensive confidential or non-confidential support system, outside of the Counseling Center, for student and employee complainants. Also, assess

whether a publicized, accessible respondent support system is necessary and could be reasonably implemented at the University.

Cooperation and Coordination with Local Law Enforcement

Requirements and Applicable Guidance

Institutions must be able to move forward with their internal processes for addressing sexual harassment/sexual violence concerns even when the same incident is being investigated through the criminal justice system. OCR guidance suggests that an institution should, whenever possible, “coordinate with any other ongoing criminal investigations of the incident and establish appropriate fact-finding roles for each investigator.” Further, the OCR Q&A on Title IX and Sexual Violence states that an institution “should also consider whether information can be shared among the investigators so that complainants are not unnecessarily required to give multiple statements about a traumatic event.” (Q&A, pg. 25)

An institution may need to delay temporarily the fact-finding portion of a Title IX investigation in the early stages of a law enforcement investigation. If the institution does delay to allow the law enforcement investigation to progress, the institution must still consider interim measures to protect the complainant in the educational setting. The institution should also continue to update the parties on the status of the investigation, including when it resumes the Title IX investigation.

If the institution delays the fact-finding portion of a Title IX investigation, it must promptly resume and complete its fact-finding for the Title IX investigation once it learns that the evidence gathering stage of the criminal investigation is complete. OCR has clearly stated that the institution should not delay its investigation until the ultimate outcome of the criminal investigation or the filing of any charges.

Promising practices and OCR guidance suggest that the institution should enter into a memorandum of understanding (MOU) or other agreement with local law enforcement and prosecutorial agencies regarding the protocols and procedures for referring allegations of sexual violence, sharing information, and conducting contemporaneous investigations. The agreement must allow the institution to meet its Title IX obligation to resolve complaints promptly and equitably, and must comply with the Family Educational Rights and Privacy Act (“FERPA”) and other applicable privacy laws. (Q&A, pg. 28) An MOU can prove helpful even when an institution has its own sworn police force, since the institution is responsible for addressing off campus sexual misconduct between its students when the alleged off campus misconduct impacts campus life.

An institution is obligated to notify complainants of the right to file a criminal complaint, should not dissuade a complainant from doing so either during or after the Title IX investigation, and should assist the complainant in

filing a criminal complaint with either local or campus police. While Title IX does not require an institution to report alleged incidents of sexual violence to law enforcement, state, local, or other federal laws may mandate notification (Q&A, pg. 27).

Observations

While it is clear that the BUPD has a healthy relationship with the Waco Police, and that there is an existing relationship between some Baylor administrators and Waco PD, there are no formal agreements outlining the delineation of responsibilities and expectations regarding the University's response obligations to Title IX covered incidents. The lack of shared understanding about these issues could lead to conflicts when the University receives a report, and the complainant elects to pursue a criminal case.

Recommendations

29. At a minimum, orient Waco PD on Baylor's Title IX responsibilities and how a criminal investigation may overlap with institutional responsibilities.
30. Consider entering into a formal agreement with appropriate local law enforcement and prosecutorial agencies regarding the coordination of simultaneous investigations and procedures for referring complainants to the criminal justice system.

Training and Education

OCR guidance outlines specific types of training for the groups identified here. The recommendations below and in the next section identify the levels of training applicable to each. Covered groups include: Title IX Coordinators, Investigators, Hearing Boards/Grievance Panels/Appeals Officers, Deans, Campus Public Safety, Confidential Resources, Resident Advisors and Other College Employees Likely to Witness or Receive Reports of Sexual Harassment/Violence.

Requirements and Applicable Guidance

In terms of the general categories of employees who should receive training on Title IX issues, the Questions and Answers on Title IX and Sexual Violence document issued by OCR on April 29, 2014 ("Q&A") provides as follows:

A school needs to ensure that responsible employees with the authority to address sexual violence know how to respond appropriately to reports of sexual violence, that other responsible employees know that they are obligated to report sexual violence to appropriate school officials, and that all other employees understand how to respond to reports of sexual violence. A school should ensure that professional counselors, pastoral counselors, and non-professional counselors or advocates also understand the extent to which they

may keep a report confidential. A school should provide training to all employees likely to witness or receive reports of sexual violence, including teachers, professors, school law enforcement unit employees, school administrators, school counselors, general counsels, athletic coaches, health personnel, and resident advisors.

Similarly, the DCL states that:

Schools need to ensure that their employees are trained so that they know to report harassment to appropriate school officials, and so that employees with the authority to address harassment know how to respond properly. Training for employees should include practical information about how to identify and report sexual harassment and violence. OCR recommends that this training be provided to any employees likely to witness or receive reports of sexual harassment and violence, including teachers, school law enforcement unit employees, school administrators, school counselors, general counsels, health personnel, and resident advisors. (DCL, pg. 4)

In the Resolution Agreement with the University of Montana Missoula campus, OCR and DOJ provided additional guidance, stating:

To further improve the campus climate, under the Agreement, the University will ensure that all offices within the University convey the same message that sexual assault is unacceptable and inform students how and where to file Title IX complaints and of their right to file criminal complaints. Therefore, in addition to ensuring that students receive sufficient training, the Agreement requires the University to make sure that all faculty and staff, particularly those to whom students will report sexual assault, receive training on how to discuss sexual assault with students, the discrimination prohibitions of Title IX, the University's Title IX obligations, its Title IX complaint process, and how to clarify the criminal and non-criminal (e.g., Title IX and SCC) consequences of reporting to various campus and community resources. The training aims to ensure that those who will be directly involved in processing, investigating, and/or resolving complaints will notify complainants of the right to file a criminal complaint and share information permitted by law regarding sexual harassment and sexual assault allegations among University employees, including OPS employees, and other law enforcement officials. (See May 9, 2013 Letter of Findings regarding University of Montana, Missoula campus, page 25)

It is imperative to provide appropriate training to those individuals on campus who are most able to influence the institution's ability to address sexual harassment/violence, whether by interacting with students, faculty or staff who have such concerns; investigating, hearing or deciding appeals regarding such concerns; administering relevant processes; providing advocacy or support

services; or confidentially advising members of the University community – including complainants and respondents – regarding such matters.

One significant part of training is ensuring that individuals who interact with complainants are knowledgeable about working with individuals who have experienced sexual violence and understand their roles and responsibilities in fulfilling the institution's obligation to investigate and respond promptly and equitably.

OCR expects that all employees at an institution (except designated "confidential resources") will report sexual harassment/violence concerns of which they become aware to the Title IX Coordinator. Training all faculty and staff members takes significant time, effort and planning. In general, it is best to identify all groups that will be trained, then prioritize training for those most likely to receive information about sexual harassment and sexual violence, as identified above (e.g., student affairs staff, athletic staff, community advisors and other housing staff, faculty advisors, human resource professionals, faculty administrators, and so on).

Educational programs for remaining faculty and staff should discuss what sexual harassment/sexual violence is, Baylor's procedures for handling such concerns, and the University's expectations of faculty and staff if they learn of an incident of sexual harassment or sexual violence. OCR and DOJ, in the University of Montana agreement, also recommend assessment of training, specifically "...[issuing] surveys to staff and faculty to assess their knowledge of how to complain about and respond to sex-based harassment, as well as the effectiveness of the training." (pg. 8). OCR recommends that similar educational information be included in faculty and staff handbooks.

In addition to training faculty and staff regarding what to do if a member of the community discloses a sexual harassment/violence concern to them, faculty and staff should also receive information regarding what they may do if they have a sexual harassment/violence concern.

In summary, all faculty and staff should: be given information regarding sexual harassment and sexual violence; be able to identify it; know their options/obligations in terms of reporting it; know that the institution takes such concerns seriously; that the matter can be reported both internally and through the criminal justice system; know where to get medical, counseling and other support services, whether the individual chooses to report the incident or not; and know that retaliation is prohibited and will be addressed if reported.

Observations

Currently, Baylor does not have a plan for providing training to all faculty and staff regarding their reporting obligations. Some training is provided through ad hoc requests from departments. Human Resources provides a recommend, but not required, on-line Sexual Harassment Prevention training.

It focuses on the University's sexual harassment policy, rather than on Title IX issues. Sessions are not coordinated, planned and tracked in a way that allows the University to be assured that all faculty and staff have been trained.

There has been optional sexual harassment training for staff managers; however, the managers who supervise only students are not included. Therefore, there is concern that if training for supervisors becomes mandatory, supervisors of students will be left out. We received no information indicating that deans and department heads have received Title IX training, nor that there currently is a plan in place to present, reinforce and update training on a regular basis.

Baylor recognizes that there has been only limited in-depth training for those individuals who are responsible for managing the University's response to sexual misconduct. Student Conduct staff have diligently worked to train themselves by attending sessions at conferences, viewing webinars (one staff member attended a Title IX Coordinator web-based program that was presented over the course of eight weeks) and reading legal/legislative updates. They have presented a session for Student Life leaders in order to pass on their knowledge of compliance requirements. The information presented consists mainly of familiarizing staff with relevant documents, including OCR's 2001 Title IX Guidance, the DCL, VAWA Amendment language and similar items.

We are particularly concerned about the lack of orientation and training for employees, on several different levels. First, it appears that the University has not purposefully identified "responsible employees" or introduced basic Title IX awareness programming for them. This is essential, as OCR specifically highlights several groups within the organization (including teachers, school law enforcement unit employees, school administrators, school counselors, general counsels, health personnel, and resident advisors) that should be trained to an appropriate level. We address this area in depth in the following sections.

There is little or no first responder, staff or Student Conduct Board training on the social and behavioral dynamics of sexual violence, stalking, dating and domestic violence, and sexual harassment. It also appears that there is no training that covers the neurobiological, psychological or social response to trauma. Only counselors and the Case Manager have significant training in this area, received from their experiences outside the University. The staff member who investigates sexual violence complaints has had discussions with Baylor counseling professionals regarding the effects of sexual violence-related trauma, but that information has not been formalized in a curriculum or provided to others.

This is a critical oversight, given that key staff members demonstrated adherence to rape/sexual violence myths that are likely to impact Baylor's response to both complainants and respondents in Title IX cases. Training

on consent and capacity are vital, given that Baylor has no written definition of consent in their Code of Conduct. Administrators who hear appeals also have not received any training. OCR expects all individuals working on these matters to receive suitable, on-going and documented training.

The individual who investigates sexual violence complaints has not had training regarding how to conduct such investigations, how to question witnesses or document interviews, or how to collect or assess forensic evidence.

Resident Chaplains and their supervisor, the University Chaplain, are in positions in which they may be the first to receive information about sexual harassment or sexual violence. They have had no training on Title IX or what to do as a first responder. The University Chaplain did not know until October 2013 that he is required to report information that he heard from his staff. He is not a required reporter in his role as Chaplain. However, our understanding is that the resident chaplains are not ordained and so do not have the same confidentiality. We noted during the course of our interviews that there is some confusion among different Baylor administrators as to whether the resident chaplains are or are not able to provide confidentiality. Policies do not state specifically who and who are not able to provide confidentiality. In addition, Community Leaders (CL) have been trained that if a complainant does not want his/her name disclosed, the CL can report it to Martha Lou Scott as "anonymous," even if the CL knows the complainant's identity.

Athletics Department staff with whom we spoke had received no training regarding Title IX or VAWA requirements, or their responsibilities if a student-athlete or other member of the community were to report sexual harassment/violence or domestic violence, dating violence or stalking to them.

Administrators appropriately recognize the need for ongoing training, but expressed difficulty in identifying who is responsible for training or assessing when an individual had received a proper level of training for the work they are performing. There is a task force looking at training issues; however, they have focused on mapping the conduct process and as of the time of our visit had not yet identified training needs gaps for staff. In addition, many expressed that the culture at Baylor around the topic of sex among students presents a serious impediment. The tension between being a faith-based institution with strict values about premarital sex and the need for frank discussion about sexual behaviors has led to discomfort with currently available commercial training products for faculty, staff or students.

Recommendations

31. Assess whether Baylor wishes to require all employees to report discrimination, harassment, domestic violence, dating violence and stalking concerns to Human Resources. In our professional opinion, the University should direct employees to report these incidents to the

Title IX Coordinator or Director of Student Conduct.

32. Require training for those employees who are obligated to report sex discrimination/harassment/violence. Training should focus on recognizing and appropriately addressing reports of sex discrimination/harassment/violence and understanding Baylor's policies.
33. Training should include clear expectations that faculty and staff have reporting obligations under Title IX and where/how they are expected to report, and also inform faculty and staff how they may bring their own concerns forward. At a minimum, ensure all employees are required to take an online orientation that provides an appropriate context for Title IX, the University's policies and procedures for preventing and responding to sexual and gender violence, and what they should do if they learn of an incident of sexual harassment/violence.
34. Conduct assessments of faculty and staff to assess the effectiveness of the training.
35. Consider sending a letter to all employees from the President and/or Provost on an annual basis that clearly outlines applicable Baylor policies, reporting obligations, where to report and how employees may report their own concerns both confidentially and when seeking institutional action.
36. Identify and publish the identity of "responsible employees" (as defined in OCR's April 29, 2014 Q&A document) and notify them of this designation and what it requires of them in terms of reporting and response.
37. Conduct formal, comprehensive Title IX and VAWA (that is, domestic violence, dating violence and stalking) compliance and investigation training for those directly involved in adjudicating Title IX-related cases. This should be updated annually, as required. All training (past and future) should be documented.
38. Provide training to ensure that individuals who are responsible for administering grievance procedures are knowledgeable about how to do so in a non-judgmental manner and otherwise aware of how to interact with individuals who have concerns about sexual harassment/violence or have had such a complaint brought against them. This training should include in-depth discussion and debunking of sexual violence myths, the need and support for interim measures and how to appropriately weigh evidence.
39. Develop a comprehensive training plan for those groups highlighted in the DCL, prioritizing those who are most likely to receive complaints of sexual harassment/sexual violence.¹⁰ Ensure the plan does not inadvertently omit temporary employees who are in positions that render them more likely to hear of sexual harassment/violence concerns, such

¹⁰While not specific to higher education settings, a helpful resource for creating a training plan is Training Professionals in the Primary Prevention of Sexual and Intimate Partner Violence: A Planning Guide, available at http://www.cdc.gov/violenceprevention/pdf/Training_Practice_Guidelines.pdf.

as assistant coaches, CAs and Resident Chaplains. It is not sufficient to simply recount the OCR guidance and VAWA requirements.

40. Ensure training occurs on a continual basis and is re-emphasized each time the University makes significant changes to its policies and procedures.
41. Ensure the Title IX Coordinator reviews all trainings to verify they use OCR definitions of sexual harassment/sexual violence and are otherwise consistent with OCR guidance concerning sexual harassment and violence.
42. Continue to provide training intended to ensure that the Case Manager, advocates (including local resources) and confidential resources understand the grievance procedures and can answer questions about them for potential complainants.
43. Provide training to athletics department staff so that they understand how to identify sex discrimination/harassment/violence and their obligations to report.
44. Ensure that the content of each training session is tailored to the specific audience with role-specific information on both the requirements and the limitations of the trainees' roles, including examples of appropriate and inappropriate responses to disclosures.
45. Periodically assess training efforts to evaluate whether learning outcomes are being achieved and use results for improvement. Consider creating a mechanism for complainants to provide feedback on the responses they are receiving from institutional authorities, and use this input to continue refining training programs.
46. Continue to develop the relationship with local law enforcement, so that they are aware of how the University addresses sexual harassment/violence matters, its commitment to doing so, and its strong desire that local law enforcement encourage members of the Baylor community to file both criminal and internal complaints regarding such matters.

Prevention Framework and Training Efforts

Given the VAWA Amendments to the Clery Act, it is especially important for the University to conduct a comprehensive review of its prevention programming and educational efforts addressing sexual and gender violence, and to add prevention and educational efforts regarding dating and domestic violence and stalking. Additionally, the University should conduct an institution-wide review of the training and awareness programs offered to all students and employees, with a focus on training those responsible for Title IX and Campus SaVE compliance and others likely to witness or receive reports.

Requirements and Applicable Guidance

The DCL briefly addresses proactive measures institutions should take to prevent sexual harassment and violence. In the Letter, OCR states that institutions ("schools") should implement preventive education programs for students, make comprehensive victim resources available, develop materials, and assess student activities regularly.

In our professional opinion, prevention initiatives should be at the top of the list of an institution's priorities as it discusses how it should best address the complex issues of sexual and gender violence, domestic violence, dating violence and stalking. Research and best practices from the field of public health and the Centers for Disease Control and Prevention (CDC) support the need for a comprehensive, coordinated approach for any violence prevention initiative.

Campuses are diverse settings, and there is no "model" prevention initiative that will work at every institution. Accordingly, experts in the prevention field have recommended a set of principles and a process that campus and community members can use to collaborate on issues like sexual and relationship violence and stalking.¹¹ This approach allows campus-based professionals to create a prevention initiative that is tailored to their campus circumstances based on local data and research on effectiveness. The following is a list of principles for designing an overall campus violence prevention initiative. In general, more effective efforts are:

- Prevention-focused in addition to response-focused;
- Comprehensive, addressing multiple types of violence, all campus constituents, and all settings where problems occur;
- Planned and evaluated, using a systematic process to design, implement, and evaluate the initiative;
- Strategic and targeted, addressing priority problems and settings (and their risk and protective factors) identified through an assessment of local problems and assets;
- Research-based, informed by current research literature and theory;¹²
- Multi-component, employing multiple programs, policies, and practices;
- Coordinated and synergistic, ensuring that efforts complement and reinforce each other;
- Multi-sectoral and collaborative, involving key campus stakeholders and disciplines;
- Supported by infrastructure, institutional commitment, and systems.

In addition, each individual program, policy, and service should be designed according to best practices. For example, Lee, et al. reviewed the research and concluded that more effective educational programs: (1) include multiple

¹¹ Langford, L. (2004). Preventing Violence and Promoting Safety in Higher Education Settings. Overview of a Comprehensive Approach. U.S. Department of Education, The Higher Education Center for Alcohol and Other Drug Abuse and Violence Prevention.

¹² Lonsway, K. A., Banyard, V. L., Berkowitz, A. D., Gidycz, C. A., Koss, J. T., Koss, M. P., ... Edwards, D. (2011). *Rape Prevention and Risk Reduction: Review of the Research Literature for Practitioners*. VAWnet: The National Online Resource Center on Violence Against Women. Retrieved from http://www.vawnet.org/applied-research-papers/print-document.php?doc_id=1655

sessions of sufficient length and intensity; (2) incorporate opportunities for follow-up; (3) take place before risk factors arise; (4) are developmentally appropriate for participants; (5) engage participants in modifying the curriculum for diverse populations; (6) vary teaching methods to reach participants with different learning styles; (7) include interactive activities; (8) offer opportunities to practice new skills; (9) reinforce and expand upon previous material with any new material; and (10) be delivered by prepared, competent facilitators who are able to foresee potential controversies and strategically create learning opportunities (Lee et al. (2007), cited in Lonsway, 2009).¹³

It is important to be aware that violence programs are situated within a broader environment and to take that context into account when developing prevention efforts. This includes many aspects, for example, the geographic environment, the institutional culture, the social environment, and student norms of behavior. One aspect of the broader environment includes the role of alcohol in the campus community. Because campuses with higher levels of alcohol abuse experience more crime and violence generally, including sexual violence,¹⁴ strong alcohol and other drug abuse prevention efforts can be an important complement to dedicated efforts to address sexual violence, intimate partner violence, and stalking.

OCR recommends conducting regular assessments of education and prevention activities and the use of that information to inform outreach, education, and prevention efforts. In the DCL, OCR states, "Schools also should assess student activities regularly to ensure that the practices and behavior of students do not violate the schools' policies against sexual harassment and sexual violence." (pg. 15). DOJ and OCR provide further guidance on assessment in their May 9, 2013 Letter of Findings regarding University of Montana, Missoula campus (page 29):

[The Agreement requires the University to] ...develop one or more annual climate surveys for all students to (1) assess students' attitudes and knowledge regarding sexual harassment, sexual assault, and retaliation; (2) gather information regarding students' experience with sex discrimination while attending the University; (3) determine whether students know when and how to report such misconduct; (4) gauge students' comfort level with reporting such misconduct; (5) identify any barriers to reporting; (6) assess students' familiarity with the University's outreach, education, and prevention efforts to identify which strategies are effective; and (7) solicit student input on how the University can encourage students to report sexual harassment, sexual assault, and retaliation, and better respond to such reports. Based on a review of the results of the climate surveys, the University will take appropriate action to address climate issues related to sex-based harassment identified through the surveys.

¹³ See summary of best practices entitled "Applying the Principles of Prevention: What Do Prevention Practitioners Need to Know About What Works?" at www.mentoring.org/downloads/mentoring_4.pdf, based on Nation, M., Crusto, C., Wandersman, A., Kumpfer, K. L., Seybold, D., Morrissey-Kane, E., & Davino, K. (2003). What works in prevention: Principles of effective prevention programs. *American Psychologist*, 58(6-7), 449-456.

¹⁴ Grossman, M., and Markowitz, S. *Alcohol Regulation and Violence on College Campuses*, Nber Working Paper No. 7129 (Cambridge, Mass.: National Bureau of Economic Research, 1999). Available online at <http://www.nber.org/papers/w7129>.

¹⁵ Wechsler, H., Lee, J. E., Kuo, M., Seibring, M., Nelson, T. F., & Lee, H. (2002). Trends in college binge drinking during a period of increased prevention efforts. Findings from 4 Harvard School of Public Health College Alcohol Study surveys: 1993-2001. *Journal of American College Health*, 50(5), 203-217.

Campus climate surveys are also recommended strongly by the Not Alone task force report published by the White House on April 29, 2014.

Observations

Baylor is aware that it should be engaging in significant education and prevention efforts for its students; however, as discussed above, we learned that Baylor staff members have struggled to find prevention and education programs that they feel will be perceived as consistent with Baylor's mission. To date, Baylor's prevention and education efforts for students have included a brief mention during orientation, mostly in connection with a discussion of alcohol use, and training for female students living in residence halls. The brief orientation program discussion regarding sexual assault has been limited not only by the tension between the University's Christian values and the subject matter, but also by the fact that parents are present during orientation, which adds to that tension. Men living in residence halls only receive training if they live in a mixed gender hall, and our understanding is that training is focused on bystander information, rather than any acknowledgment that men can be subjected to sexual violence, and may accordingly need to access support, resources, and reporting mechanisms.

We learned that Baylor plans to offer mandatory training for all students living in residence halls that house women. By not educating men in the Baylor community, Baylor is reinforcing the stereotype that men do not experience sexual violence and is failing to provide relevant information to its male students. Further, in the trainings about which we were told, the focus is on actions the survivor can take to avoid sexual assault (risk reduction), versus actions that can be taken to ensure consent, bystander intervention, and available resources in the event of a sexual assault, etc. Risk-management training for women, in the absence of primary prevention and bystander intervention training, may send a message that sexual violence is a women's issue and makes them responsible for the victimization.

We also learned that this fall, the Counseling Center plans to address sexual violence at the third Chapel session, which all freshman are required to attend. This will be a good opportunity for Baylor to begin to address issues of sexual and gender violence with its entire student population, and the Title IX Coordinator should review the program in advance to ensure its message is consistent with Title IX, OCR's expectations and is gender neutral. We note that we were not informed of plans for programs to reinforce the information presented during this first effort at student body-wide education, or to evaluate the effectiveness of the presentation.

We were not told of specific plans to provide initial awareness programs and an ongoing educational campaign for faculty, staff and students that encompass bystander intervention and risk reduction curricula regarding domestic violence, dating violence and stalking. Such prevention programs are required by the VAWA Amendments and will have to be described in the University's October 2014 Annual Security Report, so the University

committee working on VAWA Amendment compliance issues will obviously want to work with resources on and off campus, as necessary, in order to develop and plan the implementation of these programs.

Recommendations

47. Develop plans to deliver evidence-based prevention programming to all students. Programs may recognize religious standards and expectations, while acknowledging that sexual harassment and sexual violence are valid concerns among Baylor students, faculty and staff. Plan to present at least some of this programming in non-orientation sessions, to avoid the situation where the presence of parents adds to the tension surrounding discussion of sexual issues at Baylor.
48. Ensure that plans for prevention programming are coordinated and have consistent messaging. They should be presented by staff with sufficient training in Title IX requirements, the dynamics and myths of sexual harassment and sexual violence, and resources in place to assist students. Programs should be presented in a manner that both encourages reporting and is not victim blaming.
49. Create a coordinated and integrated primary prevention plan that consists of an ongoing sequence of educational efforts that build upon each other over the course of the year and throughout a student's college career. Although there is some overlap, we suggest that the planning process separate education and training that is primarily related to response (i.e., what happens after an assault) from prevention-related activities (i.e., designed to keep incidents from happening in the first place by preventing perpetration.). Specific steps that may be helpful:
 - a. Create an inventory of planned education and prevention efforts focused on primary prevention. This should describe each program in some detail, including its objectives/learning outcomes, audience, content, format and delivery mode, reach, evidence of effectiveness, and other key attributes.
 - b. Use this inventory and the results of the focus/framing process outlined above to identify gaps, ways to strengthen current efforts, and needed revisions to comply with best practices in the field and federal mandates. Specifically, review the overall portfolio of prevention and educational efforts and the content of each effort to ensure that there is a focus on primary prevention (stopping perpetration) in addition to a focus on risk reduction and response.
 - c. Compare existing efforts to the VAWA requirements and identify changes needed, including the topics addressed, incorporating bystander intervention, ensuring that all employees and students receive both initial and ongoing educational efforts.
50. Ensure that the University develops and provides initial awareness

programs and an ongoing educational campaign for faculty, staff and students that encompass bystander intervention and risk reduction curricula regarding domestic violence, dating violence and stalking, as required by VAWA.

51. Review the amount of professional staff hours specifically dedicated to education and prevention efforts and modify, as needed. Determine the role of the Title IX Coordinator in these efforts.

PART II – CLERY ACT COMPLIANCE ASSESSMENT

SECTION I – METHODOLOGY

In accordance with Baylor's wishes, MHA conducted a review of the University's compliance with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act assessed against acceptable, promising and reasonable practices. The MHA team conducted an on and off-site review of several of the University's Annual Security Reports, and reviewed data and records and interviewed key stakeholders during the site visit, May 5 – 8, 2014. The MHA team consisted of Team Leader MHA Director Paul V. Verrecchia, and MHA Senior Associate Aaron L. Graves, and MHA Associates Vicky Stormo and Roxanne Hall.

We requested and reviewed several documents, including:

- A list of all Campus Security Authorities for Clery Act purposes.
- A copy of the University's catalog and student handbook and for each separate school, division, or location within the University for all academic years from 2010 – 2013.
- A copy of the organizational chart for the policing and security-related functions for the institution and all separate schools, divisions, etc. within the University.
- The Baylor University Police Department policy manual and policies related to the following functions (dispatch, response to calls, report writing, arrests including issuance of citations, and protocols for responding to and/or investigating arson, sexual assault, and active shooter scenarios).
- The relevant portion of any applications, brochures, disclosures, forms, and other publications related to the Clery Act that is normally distributed to 1) prospective students; 2) prospective employees; 3) first-time students; and, 4) new hires of the University and all separate schools, divisions, etc. within the University that address campus crime and campus security.
- Copies of all agreements and/or contracts with any agencies or organizations that provide any protective service, security, counseling, or other service related to the University's security and safety programs.
- A detailed description of all dispatch/response and recordkeeping systems (hardcopy; software; etc.) utilized by any of the University's offices or contractors with security-related responsibilities (Police Department, Student Conduct, Housing, Student Life; etc.).
- Copies of all campus, patrol, and/or sector maps (with legends) utilized by the Police Department, contract security agency, and/or the real estate office.
- A comprehensive list of all buildings and property owned or controlled