



**BAYLOR**<sup>®</sup>  
UNIVERSITY

**Baylor University**

TITLE IX PROGRAM REVIEW & CLERY ACT COMPLIANCE ASSESSMENT

SEPTEMBER 2014

**Baylor University**  
**TITLE IX PROGRAM REVIEW & CLERY ACT**  
**COMPLIANCE ASSESSMENT**  
**SEPTEMBER 2014**



**TABLE OF CONTENTS**

STATEMENT OF NEED.....	1	Security Awareness and Crime Prevention	
ORGANIZATION OF THIS REPORT .....	2	Education Programs [668.46(b)(5)&(6)].....	55
DISCLAIMER AND DISCLOSURE.....	3	Monitoring and Recording Criminal Activity at Off-Campus	
EXECUTIVE SUMMARY .....	4	Locations of Student Organizations [668.46 (b)(7)] .....	56
PART I – TITLE IX Review .....	8	Drug and Alcohol Policies [668.46(b)(8), (9), & (10)].....	57
SECTION I – METHODOLOGY.....	8	VAWA Amendments to the Clery Act.....	58
SECTION II – GENERAL OBSERVATIONS and MAJOR THEMES .....	11	Campus Sex Crimes Prevention Act [668.46(b)(12)].....	61
Essential Challenges .....	11	Crimes That Must be Reported [668.46(c)(1)] .....	61
1. Title IX Coordinator – Roles and Responsibilities .....	11	Recording Crimes [668.46(c)(2)].....	63
2. Title IX Policies.....	11	Hate Crimes [668.46(c)(3)] .....	63
3. Risk Management Infrastructure.....	12	Crimes by Location [668.46(c)(4)].....	64
4. Prevention, Education, and Training Activities .....	12	UCR definitions [668.46(c)(7)].....	64
5. Interim Measures .....	13	Use of a Map [668.46(c)(8)].....	65
6. Title IX Investigator.....	13	Crime Statistics Gathering and Classification .....	65
SECTION III – SPECIFIC OBSERVATIONS .....	15	Gathering Crime Statistics from Local	
Title IX Coordinator.....	15	Police Agencies [668.46(c)(9)] .....	66
Notice of Title IX Coordinator and Notice of		Disclosures for Separate Campuses [668.46(d)].....	67
Non-Discrimination, and Other Policy Issues .....	18	Timely Warning Notices [668.46(e)].....	68
Grievance Procedures .....	20	Daily Crime Log [668.46(f)] .....	69
Infrastructure to Support the Title IX Program.....	29	Emergency Response & Evacuation Policies [668.46(g)].....	70
Cooperation and Coordination with Local		Missing Student Notification Policies and Procedures	
Law Enforcement.....	33	[668.46(h)].....	72
Training and Education.....	34	ASR Distribution to Current Students and	
Prevention Framework and Training Efforts .....	40	Employees [668.41(c)(1) & (e)(1)].....	74
PART II – Clery Act Compliance Assessment .....	46	Notice of the Availability of the ASR for	
SECTION I – METHODOLOGY.....	46	Prospective Students and Employees [668.41(e)(4)].....	75
SECTION II – GENERAL OBSERVATIONS and		Annual Security Report Submission to	
MAJOR THEMES .....	48	the Secretary [668.46(e)(5)].....	75
Essential Challenges .....	48	Annual Fire Safety Report [668.49(b)] .....	75
1. Annual Fire Safety and Security Report (AFSSR).....	48	SECTION IV – MASTER LIST OF RECOMMENDATIONS .....	77
2. Ownership of Clery.....	48	Title IX.....	77
3. Campus Security Authorities.....	49	Clery Act Compliance Assessment.....	84
4. Training.....	49	SECTION V – REFERENCE MATERIALS .....	90
5. Crime Classifications.....	49	Attachment 1 – Required Policy Elements for Integrated,	
SECTION III – SPECIFIC OBSERVATIONS .....	50	Unified Policy on Sexual Harassment, Discrimination	
Introduction.....	50	and Retaliation .....	90
Specific Comments .....	51	Attachment 2 – Explanation of Single Investigator Model of the	
Policy & Program Development, Implementation & Disclosure.....	51	Adjudication of Sexual Misconduct Cases .....	92
Statement of Procedures for Students and Others		Attachment 3 – Investigator Job Description.....	97
to Report Criminal Actions and Other Emergencies		Attachment 4 – OCR Guidance for the Non-Discrimination	
Occurring on Campus [668.46(b)(2)].....	51	Statement .....	99
Current Policies Concerning Security of and		Attachment 5 – Sample Timely Warning Notice Policy .....	100
Access to Campus Facilities [668.46(b)(3)] .....	53	Attachment 6 – Timely Warning Report Determination Form .....	102
Current Policies Concerning Campus Law Enforcement		Attachment 7 – Sample Emergency Response and	
[668.46(b)(4), inclusive] .....	53	Evacuation Policy .....	103
		Attachment 8: Firm Description & Qualifications.....	107

## 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 induct 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 guidance<sup>1</sup> 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

<sup>1</sup>Where 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.<sup>2</sup> 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.<sup>3</sup>

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

<sup>2</sup>The 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.

<sup>3</sup>See [www2.ed.gov/about/offices/list/ocr/docs/nondisc.pdf](http://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.”<sup>4</sup> 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.

<sup>4</sup>See [www.baylor.edu/student\\_policies/index.php?id=22176](http://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.<sup>5</sup> 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."<sup>6</sup> 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.<sup>7</sup> 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

<sup>5</sup>In addition to information in the DLC 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](http://www2.ed.gov/about/offices/list/ocr/docs/nondisc.pdf).

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

<sup>7</sup>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](http://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 Act<sup>8</sup> 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

<sup>8</sup> 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."<sup>9</sup> 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,

<sup>9</sup>The 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.<sup>10</sup> 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

<sup>10</sup>While 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](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.<sup>11</sup> 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;<sup>12</sup>
- 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

<sup>11</sup> 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.

<sup>12</sup> Lonsway, K. A., Banyard, V. L., Berkowitz, A. D., Gidycz, C. A., Katz, 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](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).<sup>13</sup>

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,<sup>14</sup> 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.

<sup>13</sup> 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](http://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.

<sup>14</sup> 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>.

<sup>15</sup> 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



by Baylor University, including leased property (the list should include the address, the building code, and category of the property as defined by the Clery Act: (on campus, residence halls, non-campus property, and public property, etc.).

- A list of all buildings and property owned or controlled by any Baylor University-recognized student organizations including leased property (the list should include the address, the building code, category of the property as defined by the Clery Act).

## **SECTION II – GENERAL OBSERVATIONS and MAJOR THEMES**

It is our overall opinion that Baylor University should aggressively implement the recommendations in this Report to enhance its compliance with the Clery Act. We have identified several areas that require immediate attention and, in some cases, may require additional resources. It was clear to us that while several offices at the University have taken some steps to comply, there is a significant gap in understanding Clery Act requirements and an overall lack of coordination across the University. It is important to note that the Clery Act is an institutional responsibility and that compliance relies on coordination and collaboration across the University, along with the appropriate capacity to manage the Clery Act program. In our professional opinion, Baylor does not have the requisite resources committed to the compliance program, given the law's current and evolving complexity. We further recommend Baylor consider retaining MHA to help the University establish a firm foundation from which to further enhance compliance.

Below, we highlight the essential challenges arising from this assessment.

### **Essential Challenges**

#### **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. The document that is presented as the AFSSR is essentially a website with several links to useful, and in some cases, compliant information, but, in our professional opinion, falls far short of the intent of an Annual Security Report. We are currently assisting the University with addressing this gap.

#### **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. This coordinator would be responsible for requesting the required information from campus security authorities, the police (both university and local), developing the AFSSR to ensure the accurate and compliant content, ensuring the University has the appropriate systems and capacity to support compliance and submitting the required Clery Act crime data to the U.S. Department of Education. Baylor should also consider appointing a Clery Compliance Coordinating Committee to assist with these endeavors. Clery compliance (especially with the comprehensive additional requirements imposed by the VAWA amendments) is a holistic institutional effort and it currently appears that the University approaches compliance as an additional duty.

### **3. Campus Security Authorities**

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. Gaps were especially prevalent with Athletics; however, others also expressed confusion as to whether they were or were not CSAs.

### **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 assistance 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.

### **5. Crime Classifications**

The BUPD utilizes Tyler Technologies records management software, which is designed to assist public safety agencies in managing the FBI's Uniform Crime Reporting (UCR) requirements. The software offers a canned report for Clery-reporting purposes; however, BUPD has identified that the software does not generate accurate numbers for Clery reporting. The software is designed to assign a UCR code based on the Texas Penal code title, but without the ability for the users to assess crimes on a case-by-case bases and amend reportable codes as necessary, the software system will not always provide an accurate count of Clery-reportable offenses, thus resulting in the possibility of under or over reporting of crimes. We provide possible remedies for this shortfall in the Specific Observations section of this Report.

## SECTION III – SPECIFIC OBSERVATIONS

### Introduction

The Clery Act is an institutional responsibility that is intended to provide the public, as potential consumers of higher education services, with accurate, complete and timely information about safety on campus. Compliance with the Clery Act provides students and families with the information that may prove helpful in making informed decisions about the relative safety on specific campuses.

The Clery Act requires institutions of higher education to publish information about their campus security policies and to give timely warnings of crimes that represent a threat to the safety of students or employees. It also requires the institution to collect crime data, report those data to the campus community and to submit the statistics to the Department of Education.

To comply with the Clery Act regulations, your institution has several obligations falling into three main categories: 1) policy disclosure; 2) records collection and retention; and 3) information dissemination.

1. Policy disclosure: The College must provide the campus community with accurate statements of current security policies and practices regarding a wide range of issues, including its policies and programming related to sexual assault, dating and domestic violence, and stalking.
2. Records collection and retention: The University is required to collect and maintain certain records and to request crime statistics from the applicable local law enforcement agencies.
3. Information dissemination: The University must also provide campus community members with information about their safety and disseminate that information in several ways.

All institutions that participate in federal Title IV student aid programs essentially have the same compliance responsibilities.

Compliance with the Clery Act is not simply a matter of entering statistics into a Web site or publishing a brochure once a year. Compliance is achieved through collaboration – this coordination ensures the institution develops the appropriate policies, gathers accurate information from all the required sources and translates it into the appropriate categories. Finally, a system-wide approach ensures the institution is disseminating the right information, at the right time, and maintaining the appropriate records. Many people at the College, from the President to individuals charged with day-to-day compliance to designated campus security authorities, should be involved in compliance activities.

## Specific Comments

### **Policy & Program Development, Implementation & Disclosure**

As noted, the document presented as the AFSSR does not include many of the policies, policy statements, and procedures mandated by the Clery Act. We did find that in some cases, the policies required by Clery were web linked to a policy on the Baylor University Police Department website, but as noted, this is not permissible for the Annual Security Report.

In the succeeding sections of this Report, we identify the required policy statements that must be included in the ASFSR. While the entire policy does not have to be included in the Report, the essential elements must be stated, keeping in mind, as stated in the Handbook, page 150, “disclosure of the procedures, practices and programs your institution uses to keep students and employees safe and its facilities secure.” Finally, it is vitally important that the University ensure that it complies with the policies and procedures that it represents as its policies. We know that institutions often have challenges with what they say in the ASR and their actual practice.

### **Crime Statistics [668.46(b)(1)]**

The institution must prepare an Annual Security Report that includes the crime statistics in paragraph “c” of this section. Please refer to the sub-section entitled “Crimes that must be reported” for detailed information on crime reporting at Baylor University.

### **Statement of Procedures for Students and Others to Report Criminal Actions and Other Emergencies Occurring on Campus [668.46(b)(2)]**

A statement of current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus. This statement must include the institution’s policies concerning its response to these reports, including—

- i. Policies for making timely warning reports to members of the campus community regarding the occurrence of crimes described in paragraph (c)(1) of this section

### **Timely Warnings Reports [668.46(b)(2)(i)]**

#### ***Findings***

The University has an appropriate a statement of policy regarding Timely Warnings. The policy includes the circumstances in which a warning will be issued, that BUPD is responsible for issuing the warning, and the manner in which the timely warning and/or emergency notification will be disseminated. The policy statement is located on the Baylor University Police Department website. In addition to the policy statement, the University is required to have a “policy.” We have attached a sample Timely Warning Report policy in the reference section of this Report.

**Recommendations**

1. Add language in the policy that explains when a Timely Warning Report will not be issued.
2. Ensure the policy and policy statement state that the reports will include recommendations regarding how to avoid becoming a victim in a similar crime.

Policies for preparing the annual disclosure of crime statistics [668.46(b)(2)(ii)]

**Findings**

We located a policy statement on the Baylor University Police Department website that generally outlines where crime statistics are obtained, i.e. campus security authorities and local law enforcement, but not specifically how they are obtained. The website includes a statement that, “The BUPD makes *reasonable* efforts to obtain crime statistics from ‘campus security authorities.” Clearly, this statement is non-compliant, as the University is *required* to obtain these statistics as a fundamental mandate of the Clery Act.

**Recommendations**

3. Remove the phrase “makes ‘*reasonable*’ efforts to obtain crime statistics” from the statement. It is an institutional responsibility to report crimes and therefore the policy statement should state that crime statistics are obtained from CSAs and local law enforcement.
4. Ensure those responsible for preparing the AFSSR receive comprehensive initial Clery Act compliance training and on-going refresher training, especially as requirements change.

A list of the titles of each person or organization to whom students and employees should report the criminal offenses described in paragraph (c) (1) of this section for the purpose of making timely warning reports and the annual statistical disclosure. This statement must also disclose whether the institution has any policies or procedures that allow victims or witnesses to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics, and, if so, a description of those policies and procedures.[668.46(b)(2)(iii)]

**Findings**

The Baylor University Police Department (BUPD) website provides a list of eight preferred campus security authorities to whom individuals should report crimes, in addition to the BUPD. Most of the eight positions are on in student affairs. The website encourages members of the community to report crimes, even if confidentially, in order for the University to provide a more accurate “portrait of actual campus crime.”

**Recommendations**

5. The statement should include the disposition of reports, i.e., what the University does in response to these reports and the fact the incidents will be included in the AFSSR, whether reported confidentially or not.

**Current Policies Concerning Security of and Access to Campus Facilities [668.46(b)(3)]**

A statement of current policies concerning security of and access to campus facilities, including campus residences, and security consideration used in the maintenance of campus facilities.

**Findings**

We located a link on the Clery Act webpage page under Campus Safety subtitled as Campus Facilities (Security of and Access to) Including Campus Maintenance. The link connects to the BUPD “Crime Prevention and Awareness at Baylor” webpage. This page does not include a required policy statement addressing current policies for security of and access to campus facilities, including campus residences and security considerations used in the maintenance of campus facilities.

**Recommendations**

6. Develop a written policy that addresses access to campus, campus facilities, and security considerations used in the maintenance of campus facilities. The policy should include information about vegetation control, maintenance of campus lighting, and other physical security systems, including access control systems. The statement in the AFSSR should summarize this policy (see attached sample ASR).
7. Ensure the policy addresses facility business hours and how to obtain access if permitted for special events. The policy should also provide contact information for staff to contact the appropriate department for access control systems. Typically, institutions have a separate policy for residence halls due to their sensitive nature.

**Current Policies Concerning Campus Law Enforcement [668.46(b)(4), inclusive]**

A statement of **current policies** concerning campus law enforcement that-

- Addresses the enforcement authority and jurisdiction of security personnel, including their relationship with State and local police agencies and whether those security personnel have the authority to arrest individuals;
- Any agreements, such as written memoranda of understanding between the institution and such agencies, for the investigation of alleged criminal offenses.
- Encourages accurate and prompt reporting of all crime to the campus police and the appropriate police agencies; and

- Describes *procedures*, if any, that encourage pastoral counselors and professional counselors, if and when they deem appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics. *Re-emphasize the differences between voluntary, confidential reporting and Anonymous reporting.*

### **Findings**

#### Law Enforcement Authority and Local Law Enforcement Relationship

The Clery Act website includes a section subtitled “Enforcement Authority and BUPD’s Relationship with Other Law Enforcement Agencies.” The link connects to the “About the Baylor University Police Department” page. The page does not include the law enforcement or arrest authority of BUPD officers. The page contains a statement about mutual aid assistance between Waco PD and BUPD, although there is no formal mutual aid agreement between the two agencies. The page also does not state that BUPD has enforcement authority off-campus.

#### Accurate and Prompt Reporting of Crimes

We found a statement on the BUPD website that specifically encourages victims and/or witnesses to report all crimes to campus police under Voluntary Crime Reporting. There are several links on the BUPD website that speak to confidential reporting. There are no statements concerning accurate and timely reporting of crimes.

#### Procedures that Encourage Pastoral and Professional Counselors to Inform Those They are Counseling

The BUPD website on voluntary reporting states “Campus pastoral counselors and mental health professionals, when acting as such, are not considered to be campus security authorities and are not required to report crimes for inclusion into the annual disclosure of crime statistics. As a matter of policy, they are encouraged, if and when they deem appropriate, to inform persons being counseled of the procedures to report crimes on a voluntary basis for inclusion into the annual crime statistics.” While this statement partially meets requirements, the regulations require the University to specifically state the procedures for encouraging pastoral and professional counselors to advise those that they are counseling of the voluntary, confidential reporting process. There are numerous links on the BUPD website that address confidential reporting, but not all of the statements give the same information, including who is considered a pastoral counselor and mental health professional. In our opinion, this adds confusion for a victim. We also found that there is some confusion at Baylor as to who meets the definition of pastoral counselor due to Baylor’s mission and assignment of seminary students in residential halls.



**Recommendations**

8. Develop a statement that there is no formal memorandum of agreement (MOA) or memorandum of understanding (MOU) with outside law enforcement agencies. We encourage Baylor to obtain a formal agreement and then include that in the policy statement. In the meantime, you must be stated that there is no MOU or MOA.
9. Include in the policy statement that BUPD does take enforcement action off campus and in what areas this enforcement action occurs. Also include any other programs or activity that BUPD conducts off campus, such as the Crime Free Multi Housing Program.
10. Include in the policy statement the enforcement and arrest authority of all individuals who have security and law enforcement responsibilities, including Safety & Security Education Officers (SSEO's)
11. Include a statement that encourages the accurate and prompt reporting of all crimes to BUPD.
12. Implement a policy and associated procedures that encourages professional and pastoral counselors to inform those they are counseling about the voluntary, confidential reporting procedures. As needed, revise the voluntary, confidential reporting procedures to ensure they are compliant with local and state directives, and Title IX requirements.
13. Identify and address through policy and training those who meet the definition within the framework of professional and pastoral counselors under Clery, as well as their responsibilities to report or not report.

**Security Awareness and Crime Prevention Education Programs [668.46(b)(5)&(6)]**

- A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.
- A description of programs designed to inform students and employees about the prevention of crimes.

**Findings**

We found that several departments at Baylor University, including Campus Living and Learning, offer security awareness and crime prevention programs. The type and frequency of all of the programs must be included in the AFSSR, as required.

We were unable to determine if current programming addresses security procedures and practices, crime prevention and initiatives aimed at encouraging the campus community to be responsible for their own safety, since some of the programs are residential life housing specific.

The BUPD Clery Act website contains a fairly comprehensive page on Crime Prevention and Awareness. The programs and information provided on the website are inclusive of students, faculty and staff. Another webpage, "Campus Safety," includes safety tips. We found that the first website primarily focuses on what the BUPD can provide through security procedures and practices, but the regulations require the encouragement of students and employees to be responsible for their own security and the security of others. The page does not clearly state this fact.

**Recommendations**

14. Conduct a comprehensive inventory of all crime prevention, security awareness and related programming to accurately and centrally catalog efforts in these areas.
15. Maintain a current list of all applicable programming.
16. Ensure a description of the type and frequency of the all programs are included in the AFSSR.
17. Separate out programs provided by Baylor for students, faculty and staff that are focused on security procedures and practices, and those programs encouraging the campus community to look out for themselves and one another.

**Monitoring and Recording Criminal Activity at Off-Campus Locations of Student Organizations [668.46 (b)(7)]**

A statement of policy concerning the monitoring and recording through local police agencies of criminal activity in which students engaged at off-campus locations of student organizations officially recognized by the institution, including students organizations with off-campus housing facilities. Spend time explaining the purpose of this requirement.

**Findings**

Based on our interviews, Baylor University does not have any recognized student organizations with off-campus locations.

There is no formal process or structure for Waco PD to notify Baylor University of incidents involving students. Waco PD representatives stated that although there are not any recognized student organizations off campus that there are homes in the community that are clearly marked with Greek system lettering.

**Recommendations**

18. While the Clery Act does not require the University to have memoranda of understanding with local and supporting police agencies, we find formal agreements facilitate expectations and clearly communicate collective understanding. We encourage the University to develop formal

agreements with the Waco and Dallas Police Departments addressing how the parties will communicate and cooperate with respect to criminal activity at off-campus locations, as well as emergency response, support for investigations and other routine matters.

19. The BUPD chief of police should continue regular communications with the police chiefs from the neighboring police agencies. The communications should include informing these agencies of Baylor's Clery Act requirements and the importance of the notifying BUPD of reported crimes and arrests on or in the area of University property.

#### **Drug and Alcohol Policies [668.46(b)(8), (9), & (10)]**

A statement of policy regarding the possession, use and sale of alcoholic beverage and enforcement of State underage drinking laws. There are 3 separate and overlapping policy statements regarding Alcohol & Drugs: 1) the institution's policy regarding Alcohol & Drugs; 2) the institution's enforcement policies for Alcohol & Drugs; 3) drug & alcohol abuse education programs.

- A statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws
- A description of any drug or alcohol-abuse education programs, as required under section 120(a) through (d) of the HEA. For the purpose of meeting this requirement, an institution may cross-reference the materials the institution uses to comply with section 120(a) through (d) of the HEA.

#### **Findings**

Student Policies and Procedures include the requirements of this section and is located on the Baylor website. As recommended above, this information must be incorporated into the AFSSR.

We encourage the University to review its Drug and Alcohol Abuse Prevention Programs (DAAPP) to ensure compliance with the applicable sections of the Drug Free Schools and Communities Act (DFSCA). The DFSCA requires any institution participating in Title IV funding to certify that it has developed and implemented a drug and alcohol abuse education and prevention program. The program must be designed to prevent the unlawful possession, use, and distribution of illegal drugs and alcohol on campus and at sponsored events and activities.

On an annual basis, the University must provide a DAAPP disclosure to all current students, including all students enrolled for any type of academic credit, except for continuing education units) and all current employees that explains the educational, disciplinary, health, and legal implications of illegal alcohol and drug use and abuse and information about available counseling, treatment, and rehabilitation programs. The plan for distributing the DAAPP disclosure must allow for providing the notice to students who enroll after the initial distribution and for employees who are hired at different points

throughout the year. We could not determine if a plan has been established to provide notice to students who enroll after initial distribution and/or employees hired at different points throughout the year.

The DFSCA also requires institutions to conduct a biennial review to determine the effectiveness of its DAAPP.

#### **Recommendations**

20. The University should undertake a review of its obligations under the Drug Free Schools and Communities Act to ensure the policy statement on the web and the policy statement in the AFSSR are in agreement, or consider cross-referencing the AFSSR to the source document.
21. Ensure the Drug and Alcohol Policies included in the AFSSR meets the requirements of the DFSCA, including those pertaining specifically to employees.

#### **VAWA Amendments to the Clery Act**

##### **Guidance<sup>16</sup>**

The VAWA Amendments to the Clery Act, which went into effect on March 7, 2014, requires institutions to conduct an in-depth assessment and probable revision of its policies, procedures, and practices related to sex offenses, domestic violence, dating violence and stalking. Specifically, the Act requires the following:

##### **Crime Reporting**

Adds domestic violence, dating violence, and stalking to the categories that, if the incident was reported to a campus security authority or the local police agency, must be reported under Clery.

While on-going Negotiated Rule Making will clarify appropriate definition, they are currently defined as:

- “Domestic violence” includes asserted violent misdemeanor and felony offenses committed by the victim’s current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.
- “Dating violence” means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.
- “Stalking” means a course of conduct directed at a specific person that would cause a reasonable person to fear for her, his, or others’ safety, or to suffer substantial emotional distress.

<sup>16</sup>The information included in this Guidance is, in part, taken from an American Council on Education (ACE) talking paper entitled “New Requirements Imposed by the Violence Against Women Reauthorization Act.”

- Sex Offenses will remain as they are currently defined, with minor adjustments due to changes in the FBI's National Incident Based Reporting System (NIBRS).

#### Hate Crime Definitions

The provision adds “national origin” and “gender identity” to the hate crime categories, involving intentional selection of a victim based on actual or perceived characteristics, which must be reported under the Clery Act.

#### **Timely Warning Reports**

The provision requires, with respect to the “timely reports” the Clery Act mandates for crimes considered a threat to other students and employees, that victims’ names be withheld.

#### **Policy Statements and Standards**

The Amendment adds that institutional policy must also include information on:

- Victims’ options to, or not to, notify and seek assistance from law enforcement and campus authorities.
- Victims’ rights and institutional responsibilities regarding judicial no-contact, restraining, and protective orders.

The amendment proscribes standards for investigation and conduct of student discipline proceedings in domestic violence, dating violence, sexual assault, and stalking cases.

- Institutional policy must include a “statement of the standard of evidence” used (bear in mind that the OCR directs a standard of “preponderance of the evidence.”
- Institutional officials who conduct the proceeding must be trained on how to investigate and conduct hearings in a manner that “protects the safety of victims” and “promotes accountability.”
- Institutional policy must identify “sanctions or protective measures” the institution may impose following a final determination of rape, acquaintance rape, domestic violence, dating violence, sexual assault or stalking.
- “[T]he accuser and the accused are entitled to the same opportunities to have others present during an institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice....”
- Accuser and accused must be notified “simultaneously” and “in writing” of: the outcome of the proceeding; appeal procedures; any change to the result before it becomes final; and when the result becomes final.

Institutional policy must address how victims' confidentiality will be protected, including record-keeping that excludes personally-identifiable information on victims.

### **Prevention & Education**

The institution will be required to provide new students and new employees "primary prevention and awareness programs" that promote awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking.

The training programs must include:

- A statement that the institution prohibits those offenses.
- The definition of those offenses in the applicable jurisdiction.
- The definition of consent, with reference to sexual offenses, in the applicable jurisdiction.
- "Safe and positive" options for bystander intervention an individual may take to "prevent harm or intervene" in risky situations.
- Recognition of signs of abusive behavior and how to avoid potential attacks.
- Ongoing prevention and awareness campaigns for students and faculty on all of the above.

### **Findings**

The University should undertake a comprehensive review of the VAWA Amendments and initiate a good faith effort to comply with these new requirements, in anticipation of the U.S. Department of Education publishing the final regulations.

Since there is no sole source AFSSR (or ASR), there are multiple sources of website links that apply to this section. Each link is not consistent with the required information. As a result, the statement of policy regarding the University's campus sexual assault programs and other sections do not meet Clery Act requirements. Specially, there is not a clear statement that includes the following:

- A description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and non-forcible sex offenses;
- Inconsistency on information on a student's option to notify appropriate law enforcement authorities, including on-campus and local police, and inconsistency in statements or lack thereof that institutional personnel will assist the student in notifying these authorities, if the student requests the assistance of these personnel;

### **Recommendations**

22. Recommendations regarding efforts to comply with the VAWA Amendments are continued within the Title IX sections of this report.
23. Review all policy statements, procedures, and websites covering the University's response to sexual assault and make one statement in the AFSSR. Ensure the new policy statement addresses the requirements outlined in the amendments (see attached sample Good Faith Effort VAWA Amendments policy statement). Refer to the Handbook on required content of the statement in Chapter 8.
24. Compile a description of educational programs and include in the AFSSR.

### **Campus Sex Crimes Prevention Act [668.46(b)(12)]**

Beginning with the annual security report distributed by October 1, 2003, a statement advising the campus community where law enforcement agency information provided by a State under section 170101(j) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(j)), concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address.

### **Findings**

There is no statement meeting this requirement; however, there is a link on the BUPD website under Clery Act that provides a link to the Texas Public Sex Offender Registry.

### **Recommendations**

25. Include in the AFSSR information about the Texas Public Sex Offender Registry and how to gain access to the information.

### **Crimes That Must be Reported [668.46(c)(1)]**

Crimes that must be reported. An institution must report statistics for the three most recent calendar years concerning the occurrence on campus, in or on noncampus buildings or property, and on public property of the following that are reported to local police agencies or to a campus security authority:

- Criminal Homicide
  - Murder and nonnegligent manslaughter
  - Negligent manslaughter
- Sex Offenses
  - Forcible sex offenses
  - Nonforcible sex offenses

- Robbery
- Aggravated assault
- Burglary
- Motor vehicle theft
- Arson
- Arrest for liquor law violations, drug law violations, and illegal weapons possession
- Persons not included in paragraph (c)(1)(viii)(A) [ABOVE] of this section, who were referred for campus disciplinary action for liquor law violations, drug law violations, and illegal weapons possession.

### ***Findings***

Based on our interviews, it is our professional opinion that the University currently lacks the administrative capacity and knowledge of the Clery Act to correctly classify Clery Act crimes. A case-by-case review of assaults reported in the calendar year of 2012 showed that two assaults were reported as aggravated assaults, but the offenses were not classifiable as aggravated using Clery definitions. The result is that the BUPD over reported aggravated assaults in 2012. In other cases, the BUPD received four separate reports of sexual assault from the same victim. These reports were contained in two separate police reports. Each police report narrative outlined the two separate sexual assaults (separation of time). The crime statistics only reflected two reported sexual assaults even though the reports clearly showed that four separate sexual assault offenses were being reported within the two reports. Thus, Baylor has underreported sexual assaults.

The Tyler Technologies records management software claims to assist public safety agencies in managing and reporting Uniform Crime Reporting (UCR). Although the software offers a canned report for Clery-reporting purposes, the Department has identified that the software does not generate accurate numbers for Clery reporting. The software is designed to assign a UCR code based on Texas Penal code title, but without the ability for the users to assess crimes on a case-by-case basis and amend reportable codes as necessary, the software system will not always provide an accurate count of Clery-reportable offenses.

### ***Recommendations***

26. Train all BUPD members and campus security authorities on Clery Act requirements, crimes and definitions.
27. Implement a process of strict quality control and accountability by including a secondary crime classification review thereby ensuring accurate the classification of Clery-reportable crimes. Training and



quality control efforts are essential for accountability and accuracy of classifications of reported crimes.

28. Initiate discussions with Tyler to address the current deficiencies regarding Clery Act record keeping.

#### **Recording Crimes [668.46(c)(2)]**

Recording crimes. An institution must record a crime statistic in its annual security report for the calendar year in which the crime was reported to a campus security authority.

#### **Findings**

Based on our review and statements made during our on-site visit, it is our professional opinion that the University lacks the appropriate controls for ensuring that all Clery Act crimes that are reported to campus security authorities are included as a statistic in the Annual Security Report, in the year in which it is reported. It does not appear that the University has a process in place for designating campus security authorities and therefore does not request the proper crime information for inclusion in the Annual Security Report.

#### **Recommendations**

29. Identify and notify campus security authorities of their Clery Act obligations and responsibilities.
30. Create a reporting structure for the campus security authorities to report Clery act crimes in real-time for 1) determination of Timely Warning; 2) inclusion in the Daily Crime Log, as required; and 3) reporting in the annual statistical disclosure.

#### **Hate Crimes [668.46(c)(3)]**

An institution must report, by category of prejudice, any crime it reports pursuant to paragraphs c(1)(i) through (vii) of this section, and any other crime involving bodily injury reported to local police agencies or to a campus security authority, that manifest evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability.

#### **Additional Hate Crime Categories [668.46(c)(3)(ii)]**

The crimes of larceny-theft, simple assault, intimidation, and destruction/damage/vandalism of property.

**Findings**

The University's crime statistics show no reported hate crimes during calendar years 2010, 2011 and 2012. We assume, based on this finding, that the University is accurately disclosing Hate Crimes.

**Crimes by Location [668.46(c)(4)]**

The institution must provide a geographic breakdown of the statistics reported under paragraphs c (1) and (3) of this section according to the following categories:

- On campus.
- Of the crime in paragraph c(4)(I) of this section, the number of crime that took place in dormitories or other residential facilities for students on campus.
- In or on a noncampus building or property.
- On public property

**Findings**

During our interviews, it is unclear if the University has fully identified its Clery geography. BUPD has "extra-territorial jurisdiction" for police response in some areas of the City of Waco, surrounding the campus. These areas are either near the main campus or may also be in areas identified as having a high concentration of privately owned student residential properties and/or populations. In an interview with Student Affairs, we learned that campus security authorities would greatly benefit from a Clery "map" that describes the Clery reportable geographies.

**Recommendations**

31. The Clery Compliance Committee should undertake an effort to identify all Clery reportable geographical areas.
32. Provide all CSAs with a Clery map to facilitate accurate reporting.

**UCR definitions [668.46(c)(7)]**

An institution must compile the crime statistics required under paragraphs (c)(1) and (3) of this section using the definitions of the crime provide in Appendix E to this part and the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Hate Crime Data Collection Guidelines and Training Guide for Hate Crime Data Collection. For further guidance concerning the application of definitions and classification for crimes, an institution must use either the UCR Reporting Handbook or the UCR Reporting Handbook: NIBRS EDITION, except that in determining how to report crime committed in multiple-offense situation an institution must use the UCR Reporting Handbook.

**Findings**

As we previously observed, the UCR classifications contained within the Tyler Technologies software were at times incorrect. The BUPD staff was familiar with Uniform Crime Reporting and kept a separate excel spreadsheet of UCR reportable offenses. However, as is mentioned above, in some cases, such as aggravated assault or sexual assault, the classification was inaccurately applied.

**Recommendations**

33. Establish a secondary review to ensure that Uniform Crime Report definitions are accurately applied.

**Use of a Map [668.46(c)(8)]**

In complying with the statistical reporting requirement under paragraphs (c)(1) and (3) of this section, an institution may provide a map to current and prospective students and employees that depicts its campus, noncampus buildings or property, and public property areas if the map accurately depicts its campus, noncampus building or property, and public property areas.

**Findings**

We learned that while Baylor uses a map to identify Clery boundaries, the map is outdated. The BUPD reported that the map was in the process of updated.

**Recommendations**

34. Continue to update the aforementioned map depicting Clery geographical areas.

**Crime Statistics Gathering and Classification****Gathering Crime Statistics from Non-Police/Security CSAs**

(From the Handbook) Encourage CSAs to immediately forward reports of crimes to your campus police or security department if you have one, or to an individual responsible for collecting the reports if you don't. This is because a CSA crime report may be the basis for determining if there is a serious or continuing threat to the safety of the campus community that would require an alert (i.e., a timely warning).

Also, if your institution has a campus police or security department and a crime is reported to a non-police/security CSA, the report should be forwarded to your campus police or security department so that it will be entered in your institution's daily crime log in a timely manner.

Keep hard copy or electronic documentation for all CSA-reported crimes and make sure that more than one person knows where it's kept. If there is

reason to believe that a crime report was not made in “good faith,” and your institution does not disclose a statistic for the reported incident, we strongly suggest that you document the justification for not disclosing the statistic.

### **Findings**

As previously noted, the University has not identified, notified, or certified its CSAs. While the Clery Act does not specifically require this three-step process, CSAs are critical to Clery Act compliance and their official designation and training is equally important. CSAs that we interviewed were either unaware of their responsibilities or unclear on important points with respect to their responsibilities.

Although the Clery Act does not specifically require CSA training, we believe it is essential because of the critical role of campus security authorities. This is a major challenge in the University’s Clery compliance efforts. Failure to receive real-time Clery crime information from CSAs poses a concern about the department’s/institution’s ability to issue Timely Warnings Reports and collect statistics for the annual disclosure. Several staff members interviewed were not aware that their roles and responsibilities within the University qualified them as CSAs. If any training has been conducted, it was informal and sporadic. Most could only identify Clery training provided via a webinar hosted by the General Counsel’s Office. The training was not documented to reflect who attended.

At Baylor University the role of the Resident Advisors (RAs) are accomplished by graduate students attending seminary. Inherent in their duties is the responsibility to offer pastoral counseling. We were advised the conversation at the University has changed within the past six months regarding reporting crimes that have been revealed to RAs. Their current job descriptions define their position as a Minister. However, we learned from the General Counsel’s Office that these RAs are viewed as advisors, not pastoral counselors. The chaplain submits crime reports received from students to the Office of Student Affairs. RAs and others within Spiritual Life are told they must report notices of crimes to BUPD.

### **Recommendations**

35. Identify, notify and certify (train) all CSAs. This training should include an annual awareness program for formerly identified CSA.
36. Designate and individual or office to coordinate and oversee CSAs
37. Ensure the CSA list is kept current and complete.

### **Gathering Crime Statistics from Local Police Agencies [668.46(c)(9)]**

Statistics from police agencies. In complying with the statistical reporting requirements under paragraphs c(1) through (4) of this section, an institution must make a reasonable, good faith effort to obtain the required statistics and

may rely on the information supplied by a local or State police agency. If the institution makes such a reasonable, good faith effort, it is not responsible for the failure of the local or State police agency to supply the required statistics.

### ***Findings***

It is important to note that for Clery Act purposes, a crime is considered reported when it is brought to the attention of a CSA or the local police. Therefore, the University needs a process to receive this information from local police agencies and should develop formal agreements outlining the expectation and the procedures. The BUPD does not have written procedures outlining the process to receive and maintain the information. BUPD relies on its ability to view the data from their shared access with the Tyler Technologies RMS system. This functionality affords BUPD the ability to look into the system on a real time basis to see crimes occurred and their location. BUPD then determines if the crime and location is reportable under the Clery Act. In addition, annually the University police request crime data from the Waco Police.

A request for reported crime data for the Baylor School of Nursing is submitted to the Baylor Hospital Police Department in Dallas, Texas. We could find no requests for crime statistics for Baylor locations in New York City, Las Vegas or London. Current practice fails to indicate a “good faith effort” is being made to obtain the required information from local law enforcement agencies.

### ***Recommendations***

38. Develop formal policies and procedures for the gathering of crime data from local law enforcement agencies and include these policies in the required Clery Act policy.
39. Document requests and any “good faith effort for gathering crime data for local law enforcement agencies.”
40. Ensure that all related Clery documentation is maintained for seven years.

### **Disclosures for Separate Campuses [668.46(d)]**

An institution must comply separately with the requirements of this section for each separate campus.

### ***Findings***

We saw no evidence that the Baylor campus locations in Las Vegas and London were included or considered for reporting under Clery requirements. The lack of a comprehensive CSA infrastructure further leads us to believe compliance at separate campuses under this section requires immediate attention. Currently, the University’s ability to obtain Clery reportable data is hampered resulting in less than accurate reporting and disclosure.

**Recommendations**

41. Systematically identify all programs, activities, and locations in which the University participates to determine if they may constitute a separate campus as defined by the Handbook.
42. Consider conducting Clery Act assessments for all campus locations. Once appointed the University's Clery Act Coordinator could reasonably conduct the reviews.

**Timely Warning Notices [668.46(e)]**

An institution must, in a manner that is timely and will aid in the prevention of similar crimes, report to the campus community on crime that are -

- Described in paragraph (c)(1) and (3) of this section;
- Reported to campus security authorities as identified under the institution's statement of current campus policies pursuant to paragraph (b)(2) of this section or local police agencies; and
- Considered by the institution to represent a threat to students and employees.
- An institution is not required to provide a timely warning with respect to crime reported to a pastoral or professional counselor.
- If there is an immediate threat to the health or safety of students or employees occurring on campus, as described in paragraph (g)(1) of this section, an institution must follow its emergency notification procedures. An institution that follows its emergency notification procedures is not required to issue a timely warning based on the same circumstances; however, the institution must provide adequate follow-up information to the community as needed.

**Findings**

BUPD is responsible for issuing timely warnings. Baylor has a timely warning report (TWR) policy (dated 1/1/2012). (We could not determine if a formal TWR policy was in effect prior to January 2012.) The current policy requires the police department, "with or without coordination with other officials, as appropriate under the circumstances, to evaluate the facts and circumstances to determine if a timely warning is warranted." Of concern is that while there is a process for determining whether a timely warning will be issued or not issued, the police department does not maintain records documenting the dissemination of timely warning reports, particularly in those situations where no timely warning is disseminated. While the Clery Act does not require an institution to maintain records where no timely warning is distributed to the campus community, in our experience it is important to document and maintain this information for future need, ex: in the event of a Department

of Education Clery audit, the university may be required to demonstrate how it and why determined there was no serious or ongoing threat to the campus.

The responsibility for sending timely warning notices to the campus rests with the chief of police or the assistant chief of police. However, in those cases where there is an immediate need for a timely warning, the TWR policy is not clear as to the authority of others within the BUPD to send the timely warning.

The timely warning policy statement requires warnings specify information that would promote safety and would aid in the prevention of similar crimes and reporting options.

According to the 2012 timely warning policy, the method of communicating time warnings may be through the university's emergency notifications system (Baylor Alert), direct communication emails, information posted on bulletin boards, the university website, and/or social media. In practice timely warnings are generally distributed via blast email, and leaflets if necessary.

The Waco Police Department weekly provides the Baylor University Police Department a list of all crimes reported in the area of the University within the previous seven days. Upon receipt of the weekly crime reports, the BUPD then makes a determination if any timely warnings are necessary. We heard observations from campus stakeholders that some timely warnings do not appear to be timely and this weekly process could be the reason.

#### **Recommendations**

43. Develop a policy and procedure that requires all decisions and rationale to send or not to send a warning are documented as part of the timely warning report decision process. Consider developing a timely warning notice form that would provide aid in this documentation. (See provided Timely Warning Notice Determination Form)
44. Amend the University's Timely Warning policy to define the authority of others within the BUPD to send Timely Warnings in those cases where there is an immediate need for the warning to be distributed to the campus community.
45. Collaborate with the Waco Police Department to define a new procedure that would allow the BUPD to receive notification of crimes reported in the area of the University on a daily bases.

#### **Daily Crime Log [668.46(f)]**

[668.46(f)(1)] An institution that maintains a campus police or a campus security department must maintain a written, easily understood daily crime log that records, by the date the crime was reported, any crime that occurred on campus, on a noncampus building or property, or within the patrol jurisdiction of the campus police or the campus security department and is reported to the campus police or the campus security department. This log must include --

- The nature, date, time, and general location of each crime; and
- The deposition of the complaint, if known.
- The institution must make an entry or an addition to an entry to the log within two business days, as defined under paragraph (a) of this section, of the report of the information to the campus police or the campus security department, unless that disclosure is prohibited by law or would jeopardize the confidentiality of the victim.
- An institution may withhold information required under paragraphs (f) (1) and (2) of this section if there is clear and convincing evidence that the release of the information would-
  - o Jeopardize and ongoing criminal investigation or the safety of an individual;
  - o Cause a suspect to flee or evade detection; or
  - o Result in the destruction of evidence.
- The institution must disclose any information withheld under paragraph (f)(3)(I) of this section once the adverse effect described in that paragraph is no longer likely to occur.
- An institution may withhold under paragraphs (f)(2) and (3) of this section only that information that would cause the adverse effects described in those paragraphs.
- The institution must make the crime log for the most recent 60-day period open to public inspection during normal business hours. The institution must make any portion of the log older than 60 days available within two business days of a request for public inspection.

#### ***Findings***

The chief of police reviews the incident reports each business day and determines which incident(s) must be recorded in the daily crime log. The crime log is posted on the University police department's webpage. The fire log is maintained as part of the daily crime log and is compliant with the requirements of the Clery Act.

#### ***Recommendations***

46. Explore ways to automate the Daily Crime Log through the existing Tyler Computer Aided Dispatch System.

#### **Emergency Response & Evacuation Policies [668.46(g)]**

[668.46(b)(13)] Beginning with the annual security report distributed by October 1, 2010, a statement of policy regarding emergency response and evacuation procedures, as described in paragraph (g) of this section.



**Emergency Notification [668.46(g)]**

An institution must include a statement of policy regarding its emergency response and evacuation procedures in the annual security report. This statement must include -

- The procedures the institution will use to immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus;
- A description of the process the institution will use to --
  - Confirm that there is a significant emergency or dangerous situation as described in paragraph (g)(1) of this section;
  - Determine the appropriate segment or segments of the campus community to receive a notification;
  - Determine the content of the notification; and
  - Initiate the notification system.
- A statement that the institution will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing a notification will, in the professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency;
- A list of titles of the person or persons or organization or organizations responsible for carrying out the actions described in paragraph (g)(2) of this section
- The institution's procedures for disseminating emergency information to the larger community; and
- The institution's procedures to test the emergency response and evacuation procedures on at least an annual basis, including --
  - Tests that may be announced or unannounced;
  - Publicizing its emergency response and evacuation procedures in conjunction with at least one test per calendar year; and
  - Documenting, for each test, a description of the exercise, the date, time, and whether it was announced or unannounced.

***Findings***

We found a document on the website that includes Emergency Response and Evacuation Procedures included with Timely Warnings under BUPD's Clery Act website. We found the following deficiencies in addressing the requirements of this section:

- A description of the process to confirm that there is a significant emergency or dangerous situation involving an immediate threat.
- A description of the process to determine the appropriate segment or segments of the campus community to be notified.
- Publicizing the emergency response and evacuation procedures in conjunction with at least one test per calendar year.

The document refers to an Emergency response plan and procedures, but the link did not work. We were able to find a specific policy statement to meet this requirement.

#### ***Recommendations***

47. Develop a policy statement and supporting procedures regarding the University's emergency response and evacuation procedures (see attached sample policy) and include in the AFSSR. Ensure that the all of the above deficiencies are included.

#### **Missing Student Notification Policies and Procedures [668.46(h)]**

[668.46(b)(14)] Beginning with the annual security report distributed by October 1, 2010, a statement of policy regarding missing student notification procedures, as described in paragraph (h) of this section.

[668.46(h)(1)] An institution that provides any on-campus student housing facility must include a statement of policy regarding missing student notification procedures for students who reside in on-campus student housing facilities in its annual security report. This statement must -

- Indicate a list of titles of the persons or organizations to which students, employees, or other individuals should report that a student has been missing for 24 hours;
- Require that any missing student report must be referred immediately to the institutions' police or campus security department, or, in the absence of an institutional police or campus security department, to the local law enforcement agency that has jurisdiction in the area;
- Contain an option for each student to identify a contact person or persons whom the institution shall notify within 24 hours of the determination that the student is missing, if the student has been determined missing by the institutional police or campus security department, or the local law enforcement agency;
- Advise students that their contact information will be registered confidentially, that this information will be accessible only to authorized campus officials, and that it may not be disclosed, except to law enforcement personnel in furtherance of a missing person investigation;
- Advise students that if they are under 18 years of age and not emancipated,

the institution must notify a custodial parent or guardian within 24 hours of the determination that the student is missing, in addition to notifying any additional contact person designated by the student; and

- Advise students that, the institution will notify the local law enforcement agency within 24 hours of the determination that the student is missing, unless the local law enforcement agency was the entity that made the determination that the student is missing.
- The procedures that the institution must follow when a student who resides in an on-campus student housing facility is determined to have been missing for 24 hours include --
- If the student has designated a contact person, notifying that contact person within 24 hours that the student is missing;
- If the student is under 18 years of age and is not emancipated, notifying the student's custodial parent or guardian and any other designated contact person within 24 hours that the student is missing; and
- Regardless of whether the student has identified a contact person, is above the age of 18, or is an emancipated minor, informing the local law enforcement agency that has jurisdiction in the area within 24 hours that the student is missing.

### **Findings**

There is a link on the Clery Act website to the Missing Student Procedure. The procedure is not included in the links purported to be the AFSSR. Baylor's policy statement only applies to those students living in on-campus housing, according to the statement. We are unsure if it applies to students on reside in University owned non-campus student housing. The policy does not contain the following:

- A list of the titles of the persons or organizations to which students, employees, or other individuals should report a student who has been missing for 24-hours is not included in the statement. The statement only suggests that BUPD be contacted.
- Students are not advised that their registered contact information is accessible only to campus officials that are authorized, and that if reported to any other university official/authorized campus official that it may not be disclosed, except to law enforcement personnel in furtherance of a missing person investigation.
- The statement does not include advising students that, the institution will notify the local law enforcement agency within 24 hours of the determination that the student is missing, unless the local law enforcement agency was the entity that made the determination that the student is missing.

**Recommendations**

48. Develop a clear and concise Missing Student Notification policy and procedures using Chapter 10 of the Handbook.
49. Supplement the policy with a system that allows students to designate an emergency contact specific to missing student reports, assure that this data is restricted in both use and access, and that the entire required policy elements are contained in the AFSSR.

**ASR Distribution to Current Students and Employees [668.41(c)(1) & (e)(1)]**

An institution annually must distribute to all enrolled students a notice of the availability of the information required to be disclosed pursuant to paragraphs (d), (e), and (g) of this section, and pursuant to 34 CFR 99.7 (99.7 sets forth the notification requirements of the Family Education Rights and Privacy Act of 1974). The notice must list and briefly describe the information and tell the student how to obtain the information.

By October 1 of each year, an institution must distribute, to all enrolled students and current employees, its annual security report described in 668.46(b) through appropriate publications and mailings, including -

- Direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail;
- A publication or publications provide directly to each individual; or
- Posting on an Internet website or an Intranet website, subject to paragraphs (e)(2) and (3) of this section.

**Findings**

The associate dean for student conduct administration has taken on the responsibility for ensuring the AFSSR is distributed to students, faculty and staff. The distribution is accomplished via email. We could not determine if the University has sufficient evidence the email did in fact reach all current students, faculty and staff. The Office of Student Conduct webpage has a link to the AFSSR; however, in actuality the link is to a document that lists all information that the University is legally required to provide as notice to students. The document contains a link to the police webpage in order to obtain a copy of the AFSSR.

**Recommendations**

50. Provide a direct web link to the AFSSR.
51. Create a system whereby sufficient evidence that the notice of the availability of the AFSSR did in fact, reach all current students, faculty and staff.

**Notice of the Availability of the ASR for Prospective Students and Employees [668.41(e)(4)]**

Prospective students and prospective employees-annual security report. The institution must provide a notice to prospective students and prospective employees that includes a statement of the report's availability, a description of its contents, and an opportunity to request a copy. An institution must provide its annual security report, upon request, to a prospective student or prospective employee. If the institution chooses to provide its annual security report to prospective students and prospective employees by posting the disclosure on an Internet website, the notice described in this paragraph must include the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report upon request.

**Findings**

As best as we can determine, Baylor does not have a system in place to ensure that prospective students and employees receive notice of the availability of the AFSSR.

**Recommendations**

52. Create a system that will ensure that prospective students and employees receive notice of the availability of the AFSSR. Consider providing the required notice as part of the application process for both prospective students and prospective employees, noting that the University likely has several employment and admissions processes. The Clery Coordinating Committee should undertake this project as a high priority.

**Annual Security Report Submission to the Secretary [668.46(e)(5)]**

Each year, by the date and in a form specified by the Secretary, an institution must submit the statistics required by Sec 668.46c to the Secretary.

**Findings**

Clery Act statistics in the US Department of Education website aligned with the data on the Clery Act webpage.

**Annual Fire Safety Report [668.49(b)]**

Beginning October 1, 2010, an institution that maintains any on-campus student housing facility must prepare an annual fire safety report that contains, at minimum, the following information:

- The fire statistics described in paragraph (c) of this section;
- A description of each on-campus student housing facility fire safety system;
- The number of fire drills held during the previous calendar year;

- The institution's policies or rules on portable electrical appliances, smoking, and open flames in a student housing facility;
- The institution's procedures for student housing evacuation in the case of a fire;
- The policies regarding fire safety education and training programs provided to the students and employees. In these policies, the institution must describe the procedures that students and employees should follow in the case of a fire;
- For purposes of including a fire in the statistics in the annual fire safety report, a list of the titles of each person or organization to which students and employees should report that a fire occurred;
- Plans for future improvements in fire safety, if determined necessary by the institution.

#### *Findings*

Responsibility for fire safety reporting was transferred to the BUPD in calendar year 2012. We learned that fire safety policies in existence prior to the transfer are not well documented. BUPD is attempting to reconstruct the policies for Clery recordkeeping purposes.

The fire safety reports for 2010 and 2011 failed to list the number of fire drills held during the previous calendar. The 2012 report states drills are held three times per year (fall, spring and summer). A strategic plan for improvements to the University's fire safety equipment has been developed and improvements to fire detections and suppression systems have begun.

#### *Recommendations*

53. Continue to reconstruct fire safety policies in effect prior to 2012.
54. Attempt to determine the number of fire drills held for calendar years 2010 and 2011 for Clery recordkeeping.

## SECTION IV – MASTER LIST OF RECOMMENDATIONS

### Title IX

#### Title IX Coordinator

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**

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**

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**

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 the VAWA Amendments to the Clery Act.

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**

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**

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.<sup>17</sup> 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 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.

<sup>17</sup>While 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](http://www.cdc.gov/violenceprevention/pdf/Training_Practice_Guidelines.pdf).

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**

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.

### **Clery Act Compliance Assessment**

#### **Statement of Procedures for Students and Others to Report Criminal Actions and Other Emergencies Occurring on Campus [668.46(b)(2)]**

1. Add language in the policy that explains when a Timely Warning Report will not be issued.
2. Ensure the policy and policy statement state that the reports will include recommendations regarding how to avoid becoming a victim in a similar crime.
3. Remove the phrase “makes ‘reasonable’ efforts to obtain crime statistics” from the statement. It is an institutional responsibility to report crimes and therefore the policy statement should state that crime statistics are obtained from CSAs and local law enforcement.
4. Ensure those responsible for preparing the AFSSR receive comprehensive initial Clery Act compliance training and on-going refresher training, especially as requirements change.
5. The statement should include the disposition of reports, i.e., what the University does in response to these reports and the fact the incidents will be included in the AFSSR, whether reported confidentially or not.

**Current Policies Concerning Security of and Access to Campus Facilities [668.46(b)(3)]**

6. Develop a written policy that addresses access to campus, campus facilities, and security considerations used in the maintenance of campus facilities. The policy should include information about vegetation control, maintenance of campus lighting, and other physical security systems, including access control systems. The statement in the AFSSR should summarize this policy (see attached sample ASR).
7. Ensure the policy addresses facility business hours and how to obtain access if permitted for special events. The policy should also provide contact information for staff to contact the appropriate department for access control systems. Typically, institutions have a separate policy for residence halls due to their sensitive nature.

**Current Policies Concerning Campus Law Enforcement [668.46(b)(4), inclusive]**

8. Develop a statement that there is no formal memorandum of agreement (MOA) or memorandum of understanding (MOU) with outside law enforcement agencies. We encourage Baylor to obtain a formal agreement and then include that in the policy statement. In the meantime, you must be stated that there is no MOU or MOA.
9. Include in the policy statement that BUPD does take enforcement action off campus and in what areas this enforcement action occurs. Also include any other programs or activity that BUPD conducts off campus, such as the Crime Free Multi Housing Program.
10. Include in the policy statement the enforcement and arrest authority of all individuals who have security and law enforcement responsibilities, including Safety & Security Education Officers (SSEO's)
11. Include a statement that encourages the accurate and prompt reporting of all crimes to BUPD.
12. Implement a policy and associated procedures that encourages professional and pastoral counselors to inform those they are counseling about the voluntary, confidential reporting procedures. As needed, revise the voluntary, confidential reporting procedures to ensure they are compliant with local and state directives, and Title IX requirements.
13. Identify and address through policy and training those who meet the definition within the framework of professional and pastoral counselors under Clery, as well as their responsibilities to report or not report.

**Security Awareness and Crime Prevention Education Programs [668.46(b)(5)&(6)]**

14. Conduct a comprehensive inventory of all crime prevention, security awareness and related programming to accurately and centrally catalog efforts in these areas.
15. Maintain a current list of all applicable programming.
16. Ensure a description of the type and frequency of the all programs are included in the AFSSR.
17. Separate out programs provided by Baylor for students, faculty and staff that are focused on security procedures and practices, and those programs encouraging the campus community to look out for themselves and one another.

**Monitoring and Recording Criminal Activity at Off-Campus Locations of Student Organizations [668.46 (b)(7)]**

18. While the Clery Act does not require the University to have memoranda of understanding with local and supporting police agencies, we find formal agreements facilitate expectations and clearly communicate collective understanding. We encourage the University to develop formal agreements with the Waco and Dallas Police Departments addressing how the parties will communicate and cooperate with respect to criminal activity at off-campus locations, as well as emergency response, support for investigations and other routine matters.
19. The BUPD chief of police should continue regular communications with the police chiefs from the neighboring police agencies. The communications should include informing these agencies of Baylor's Clery Act requirements and the importance of the notifying BUPD of reported crimes and arrests on or in the area of University property.

**Drug and Alcohol Policies [668.46(b)(8), (9), & (10)]**

20. The University should undertake a review of its obligations under the Drug Free Schools and Communities Act to ensure the policy statement on the web and the policy statement in the AFSSR are in agreement, or consider cross-referencing the AFSSR to the source document.
21. Ensure the Drug and Alcohol Policies included in the AFSSR meets the requirements of the DFSCA, including those pertaining specifically to employees.

**VAWA Amendments to the Clery Act**

22. Recommendations regarding efforts to comply with the VAWA Amendments are continued within the Title IX sections of this report.



23. Review all policy statements, procedures, and websites covering the University's response to sexual assault and make one statement in the AFSSR. Ensure the new policy statement addresses the requirements outlined in the amendments (see attached sample Good Faith Effort VAWA Amendments policy statement). Refer to the Handbook on required content of the statement in Chapter 8.
24. Compile a description of educational programs and include in the AFSSR.

**Campus Sex Crimes Prevention Act [668.46(b)(12)]**

25. Include in the AFSSR information about the Texas Public Sex Offender Registry and how to gain access to the information.

**Crimes That Must be Reported [668.46(c)(1)]**

26. Train all BUPD members and campus security authorities on Clery Act requirements, crimes and definitions.
27. Implement a process of strict quality control and accountability by including a secondary crime classification review thereby ensuring accurate the classification of Clery-reportable crimes. Training and quality control efforts are essential for accountability and accuracy of classifications of reported crimes.
28. Initiate discussions with Tyler to address the current deficiencies regarding Clery Act record keeping.

**Recording Crimes [668.46(c)(2)]**

29. Identify and notify campus security authorities of their Clery Act obligations and responsibilities.
30. Create a reporting structure for the campus security authorities to report Clery act crimes in real-time for 1) determination of Timely Warning; 2) inclusion in the Daily Crime Log, as required; and 3) reporting in the annual statistical disclosure.

**Crimes by Location [668.46(c)(4)]**

31. The Clery Compliance Committee should undertake an effort to identify all Clery reportable geographical areas.
32. Provide all CSAs with a Clery map to facilitate accurate reporting.

**UCR definitions [668.46(c)(7)]**

33. Establish a secondary review to ensure that Uniform Crime Report definitions are accurately applied.

**Use of a Map [668.46(c)(8)]**

34. Continue to update the aforementioned map depicting Clery geographical areas.

**Crime Statistics Gathering and Classification**

35. Identify, notify and certify (train) all CSAs. This training should include an annual awareness program for formerly identified CSA.
36. Designate an individual or office to coordinate and oversee CSAs
37. Ensure the CSA list is kept current and complete.

**Gathering Crime Statistics from Local Police Agencies [668.46(c)(9)]**

38. Develop formal policies and procedures for the gathering of crime data from local law enforcement agencies and include these policies in the required Clery Act policy.
39. Document requests and any “good faith effort for gathering crime data for local law enforcement agencies.”
40. Ensure that all related Clery documentation is maintained for seven years.

**Disclosures for Separate Campuses [668.46(d)]**

41. Systematically identify all programs, activities, and locations in which the University participates to determine if they may constitute a separate campus as defined by the Handbook.
42. Consider conducting Clery Act assessments for all campus locations. Once appointed the University’s Clery Act Coordinator could reasonably conduct the reviews.

**Timely Warning Notices [668.46(e)]**

43. Develop a policy and procedure that requires all decisions and rationale to send or not to send a warning are documented as part of the timely warning report decision process. Consider developing a timely warning notice form that would provide aid in this documentation. (See provided Timely Warning Notice Determination Form)
44. Amend the University’s Timely Warning policy to define the authority of others within the BUPD to send Timely Warnings in those cases where there is an immediate need for the warning to be distributed to the campus community.
45. Collaborate with the Waco Police Department to define a new procedure that would allow the BUPD to receive notification of crimes reported in the area of the University on a daily bases.

**Daily Crime Log [668.46(f)]**

46. Explore ways to automate the Daily Crime Log through the existing Tyler Computer Aided Dispatch System.

**Emergency Response & Evacuation Policies [668.46(g)]**

47. Develop a policy statement and supporting procedures regarding the University's emergency response and evacuation procedures (see attached sample policy) and include in the AFSSR. Ensure that the all of the above deficiencies are included.

**Missing Student Notification Policies and Procedures [668.46(h)]**

48. Develop a clear and concise Missing Student Notification policy and procedures using Chapter 10 of the Handbook.
49. Supplement the policy with a system that allows students to designate an emergency contact specific to missing student reports, assure that this data is restricted in both use and access, and that the entire required policy elements are contained in the AFSSR.

**ASR Distribution to Current Students and Employees [668.41(c)(1) & (e)(1)]**

50. Provide a direct web link to the AFSSR.
51. Create a system whereby sufficient evidence that the notice of the availability of the AFSSR did in fact, reach all current students, faculty and staff.

**Notice of the Availability of the ASR for Prospective Students and Employees [668.41(e)(4)]**

52. Create a system that will ensure that prospective students and employees receive notice of the availability of the AFSSR. Consider providing the required notice as part of the application process for both prospective students and prospective employees, noting that the University likely has several employment and admissions processes. The Clery Coordinating Committee should undertake this project as a high priority.

**Annual Fire Safety Report [668.49(b)]**

53. Continue to reconstruct fire safety policies in effect prior to 2012.
54. Attempt to determine the number of fire drills held for calendar years 2010 and 2011 for Clery recordkeeping.

## SECTION V – REFERENCE MATERIALS

### Attachment 1 – Required Policy Elements for Integrated, Unified Policy on Sexual Harassment, Discrimination and Retaliation

- Accurate definition of various types of sex discrimination, including sexual harassment and sexual assault that may provide the basis for a complaint according to the University's policies.
- Notice that the procedures apply to complaints of sexual harassment, including sexual assault and sexual violence.
- An easily understood and accessible process for filing complaints under the procedures
- The name or title, office address, and telephone number of the individuals(s) with whom to file a complaint.
- The name and titles of "Confidential Resources" available at the University, including an explanation of what "confidential" means within the scope of the policy.
- Rights and responsibilities of both parties and relationships between criminal and Title IX investigations
- Provision for the prompt, adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence.
- In any appeal or review of the initial determination regarding the complaint, provision for a fair and equitable review of the process and determination, and equal opportunities for both parties to participate in any further process.
- Provision for ensuring that the parties are afforded similar and timely access to any documents and information used at a hearing.
- A statement that the preponderance of the evidence standard of proof will be used for investigating and adjudicating Title IX complaints.
- Provision for weighing request by complainants not to proceed with a formal resolution, including criteria for when to proceed with a full investigation and when to limit the investigation.
- An assurance that the University will make complainants aware of their right also to file a complain with a local law enforcement agency and that the University will comply with law enforcement agency requests for cooperation and that such cooperation may require the University to temporarily suspend the fact-finding portion of a Title IX investigations while the law enforcement agency gathers evidence and that the University will promptly resume its investigation as soon as notified by the law enforcement agency that it has completed the evidence gathering process.

- A provision indicating the availability of interim measure to assist or protect the complaining party as necessary during a Title IX investigation and any law enforcement investigation to address victim and campus security and to avoid retaliation.
- Designated and reasonably prompt timeframes for the major stages of the process, including notification to the parties when additional time will be necessary.
- Written Notice to the parties of the outcome of the complaint, including whether sex discrimination was found and a description of the University's response.
- Provision of equal appeal right for both parties.
- An assurance that the University will take steps to prevent recurrence of any hostile environment and to correct its discriminatory effects on the complainant and others, including interim measures, where needed.
- Prohibition of retaliation.
- Specification for adequate documentation and record keeping for investigative files.
- The University may wish to consider whether it includes its provisions for responding to dating violence, domestic violence, and stalking in this unified and integrated policy and associated procedures.

## **Attachment 2 – Explanation of Single Investigator Model of the Adjudication of Sexual Misconduct Cases**

In our professional opinion, the single investigator model, in which one investigator gathers information and then reaches a conclusion as to whether College policy has been violated, is both efficient and effective, and an evolving best practice. Not only does this process streamline the adjudicatory process, it limits the number of times an institution has to interview a complainant and respondent and eliminates the need for the complainant and respondent to confront each other during a hearing panel. Further, both OCR and the EEOC use this model in their respective investigation processes.

For this model to work well, it is important for the investigator to be well trained, skilled, and experienced, and for the College to have an appropriate checks and balances system. A well-trained investigator will know how to conduct a fair and unbiased investigation. Training and skill will allow the investigator to find and gather information, determine what information is relevant, properly assess that information, reach a supportable conclusion and produce a written report that demonstrates such.

With regard to checks and balances, even the most skilled investigator benefits from third party review, and this is an essential component of a strong compliance system. The following is one high level example of how a single investigator model, with appropriate checks and balances, might operate:

- The investigator interviews the complainant (if possible) and summarizes the interview in a written statement that is provided to the complainant for his/her review and comment. The investigator reviews any comments that are submitted and incorporates relevant and clarifying comments into the complainant's statement. Comments that conflict significantly with information previously submitted by complainant should be noted and may be useful in making credibility assessments. As a part of this process, the investigator assesses appropriate interim measures and works with partners across campus to ensure they are in place, if other offices have not already taken these steps.
- The investigator interviews the respondent (if possible) and summarizes the interview in a written statement that is provided to the respondent for his/her review and comment. The investigator reviews any comments that are submitted and incorporates relevant and clarifying comments. Comments that conflict significantly with information previously submitted by the respondent should be noted and may be useful in making credibility assessments.
- The investigator interviews any witnesses identified by the complainant and respondent, or others and produces written summaries of their statements. These summaries, as well as the summaries of complainant and respondent's statements, form the basis of the written report.

- The investigator reviews any other evidence submitted by the parties (e.g., texts, emails, photographs, etc.). Relevant information is described in the written report and appended (and redacted, if necessary), as appropriate.
- The investigator gathers and assesses any other relevant evidence available to the institution (e.g., additional witnesses not identified by the parties, security camera footage, respondent's disciplinary history, expert review of medical records, etc.). Relevant information is described in the written report and appended (and redacted, if necessary), as appropriate.
- At the conclusion of the investigation, but before any decision is reached, the investigator submits his/her draft written report (with attachments, but without finding) to the Title IX Coordinator for review. The Title IX Coordinator may request additional clarification or gathering of evidence, as appropriate.
- The draft written report (without finding, but as revised consistent with any suggestions from the Title IX Coordinator) is submitted to the complainant and respondent for review and comment. Relevant and clarifying comments should be incorporated. Significant deviations from previous statements should be noted and may be useful in making credibility assessments. If the complainant and/or respondent identify additional relevant evidence (with a good investigator this will be rare), that evidence should be gathered by the investigator and included in the written report. Depending on the nature of the newest evidence, it should be shared with the parties for comment.
- The investigator then reaches a conclusion, writes a finding and resubmits the entire investigation report with a draft finding to the Title IX Coordinator. The finding should be clearly explained and show careful analysis, addressing each element necessary to establish sexual harassment/violence so that the reader understands how the investigator reached his/her conclusion in light of the available evidence and the standard of proof. The Title IX Coordinator offers feedback, if any, which should be incorporated into the final draft. The Title IX Coordinator may ask to review the next draft, as well.
- If the Title IX Coordinator disagrees with the investigator's finding and, after discussion (which can include the Office of the General Counsel, as appropriate), the investigator and Title IX Coordinator still disagree as to the finding, the Title IX Coordinator should assume responsibility for the case and write the finding to reflect the decision s/he feels is warranted. This should be an extremely rare occurrence, but should be permitted since the Title IX Coordinator has ultimate responsibility for Title IX Compliance.
- The final draft investigation report is submitted to the Office of the General Counsel for review and advice. OGC may offer advice, but does not substitute its judgment for that of the investigator. That is not to say

that reasonable minds may not differ, particularly in difficult cases, but ultimately this decision rests with the investigator; however, OGC is a critical partner in ensuring that investigation reports are well-written, properly document the investigation and that the finding is well-reasoned and supported by the evidence.

- OGC's comments, if any, are considered, and the final report is issued to relevant administrators for follow up. An institution may also elect to provide the complainant and respondent with a copy of the report, or provide a summary. If the institution offers an appeal process, the parties should have a sufficient understanding of the finding and how it was reached to allow them to make an informed decision as to whether to file an appeal.
- In some models, the investigator also makes recommendations as to corrective action/sanctions, whereas in other models an official in Student Affairs, Human Resources, the Provost's Office or another relevant administrator makes that decision. If an investigation report is well-written and well-reasoned, it is less important who makes the decision as to corrective action/sanctions, since all needed information will be available in the investigation report; however, the Title IX Coordinator should be involved in the "sanctioning" process to ensure the corrective action is reasonably calculated to eliminate the effects of the hostile environment and ensure it does not recur. The Title IX Coordinator also helps to ensure that the College is acting consistently from case to case across campus.

As stated earlier, there are multiple benefits of the single investigator system. One significant benefit is that the process is much less burdensome on the parties, since complainants and respondents generally only have to meet with one College official, one time. Institutions that offer this model often see an increase in reporting, because complainants say that they feel more comfortable not having to recount the experience multiple times and that they feel a level of comfort with speaking to only one person, and not a group of individuals, some of whom may be fellow students or others of whom may ask inappropriate questions. In addition, detailed, written reports may operate to engender trust in the process, because they demonstrate the attention that has been paid to the matter and how the decision was reached.

It is important to note that some individuals feel uncomfortable with the single investigator model. This is particularly true at institutions that have previously used a hearing panel model. Criticisms of this model are sometimes based on inaccurate assumptions or mistrust. For example, one may argue that it is inappropriate for the investigator to both prosecute the case and also serve as the decision maker. This argument demonstrates a fundamental misunderstanding of the model. The investigator is not a prosecutor and does not in any way function in that capacity. The crux of a well-functioning single stage investigatory model is that the investigator is neutral, has no



vested interest in whether there is a finding that College policy was violated or not, and does not take the side of either party. The investigator may seek out information independently, but this information is intended to elucidate the facts. The single investigator model is more analogous to a bench trial, in which a learned individual receives information from the parties and is trusted to determine which of that information is relevant to the case at hand and render a fair and unbiased decision.

Some individuals prefer models in which the investigator develops the facts in a written report that s/he provides to a hearing officer or other decision maker, who then makes a determination as to whether College policy has been violated. This model is less efficient than the single investigator model and, significantly, does not usually offer the same checks and balances that give the institution assurance that it is meeting its Title IX obligations. In addition, there are possible drawbacks to consider. For example, the decision maker may want more information than is available in the investigation report. It is not uncommon for a decision maker to want to hear from the parties him/herself, or at least have contact with the parties. Otherwise, it is like rendering a decision based on deposition transcripts. A person can reach a good decision on that basis, but most individuals are likely to want to ask their own questions and hear the answers themselves. This leads to duplication of effort and eliminates one of the greatest benefits of the single investigator model: the parties generally only have to meet with one College official. While it is easy in theory to decide that the decision maker will only use the investigation report to reach conclusions, in practice this is likely to result in difficulty and consternation.

Another drawback is that in this model, it would not likely work well for the investigator to make decisions as to what evidence is relevant when another individual will be making a determination based on the evidence gathered. Those who conduct investigations know that a piece of evidence that may seem unimportant at the outset of an investigation can take on great significance as the case develops, and vice versa. When an investigator is developing an investigation report for their own decision-making purposes, they know how to make adjustments for this. When the investigator is not going to be making the decision, s/he should report all information that is provided to him/her, so that all of the information will be available to the decision-maker. This puts the institution in the uncomfortable position of creating "investigation reports" that may contain irrelevant and inflammatory information. One might suggest that the investigator should only provide relevant information to the decision-maker, but that begs the question as to whether the investigator will know what the decision-maker may find relevant. If the investigator is sufficiently knowledgeable and skilled to truly understand what information would be relevant to a finding the case (meaning s/he would also be aware what the finding should be), why would the institution employ a second person to then make that same assessment? In addition, parties generally expect that the person making the decision in their case will have access to all information

they have provided before reaching a decision, and may question the fairness of the process where that is not the case.

### **Attachment 3 – Investigator Job Description**

#### **Summary**

This position is responsible for managing the day-to-day responsibilities associated with the College's Title IX investigations with a particular emphasis on investigating alleged cases of sexual assault, sexual harassment, intimate partner violence, and stalking involving undergraduate and graduate students at the College. The incumbent will work closely with the College's Title IX Coordinator and deputies, the Center for Violence Prevention and Response, and the Office for Diversity and Inclusion to investigate complaints. When a complaint is filed by a student, the Title IX Investigator will conduct a prompt and thorough investigation, which includes: identifying and interviewing witnesses, gathering and securing relevant documentation, and identifying other information that would be helpful to the Hearing Panel. The investigator acts as a neutral party in the investigation and provides a detailed, unbiased report to the Hearing Panel regarding the findings of the investigation. (TO BE REVISED UPON DECISION ON MODEL)

#### **Characteristic Duties and Responsibilities:**

1. Manage the daily responsibilities associated with conducting Title IX investigations on campus.
  - a. Develop an investigation plan for each complaint.
  - b. Contact all involved parties and provide them with information about the investigatory process.
  - c. Interview the complainant, respondent, and potential witnesses.
  - d. Gather and secure relevant documentation.
  - e. Keep accurate and thorough records and notes of investigatory process.
2. Develop comprehensive reports for sanctioning administrators, used to aid in determining appropriate sanctions.
3. Act as a neutral party through all aspects of the investigation.
4. Provide on-going updates to Title IX Coordinator.
5. Advocate for improvements in the investigatory process.
6. Provide resource referrals to students who could benefit from additional support during the investigation.
7. Continuously identify and integrate best practices in the Title IX investigation arena into knowledge base and practice. Stay abreast of current movements in the field of student conduct investigations by participating in listservs; building relationships with colleagues at peer institutions; reviewing current literature and research; attending

and presenting at professional conferences; and participating in local, regional or national professional associations and organizations.

8. Aid the Center for Violence Prevention and Response in designing and facilitating trainings on Title IX policies and procedures for students, staff, and faculty.

**Qualifications:**

Bachelor's degree required. An equivalent of 3 years work experience is required. Should demonstrate superior judgment with the ability to manage highly sensitive and confidential communications. Strong interpersonal skills with the ability to remain neutral are required. Excellent written and verbal communication skills required. Demonstrated commitment to serving a diverse student population with cultural competence and sensitivity. Must be able to work evenings and weekends as necessary.

**Preferred Experience:**

J.D., M.S.W, advanced degree in Psychology or Forensic Psychology, law enforcement or student conduct experience highly preferred. Knowledge of complexities surrounding sexual assault, sexual harassment, and intimate partner violence cases in a college setting, including experience conducting investigations in a sensitive and confidential manner. Experience in higher education and/or a campus setting and familiarity with civil rights law and regulations is highly desirable. Experience working with college students and training students, staff, and faculty is highly preferred.

**Attachment 4: OCR Guidance for the Non-Discrimination Statement**

**Attached as separate document.**

## Attachment 5: Sample Timely Warning Notice Policy

### Timely Warning Notices

**Purpose:** The purpose of this policy is to outline procedures that MY College will use to issue Timely Warnings in compliance with the Clery Act.

The College will issue a Timely Warning Notice in the event that it receives notice of an alleged Clery Crime (defined below) occurring on campus, on public property within or immediately adjacent to the campus, or in or on non-campus buildings or property controlled by the College, where the College determines, in its judgment, that the allegations present a serious or continuing threat to the college community. For purposes of this policy, “timely” means as soon as reasonably practicable, generally not more than 48 hours after an incident has been reported to the Department of Public Safety or the *Campus Security Authorities* identified by MY College, or local police agencies that have concurrent jurisdiction have reported the information to the College. The Director of the Department of Public Safety, or, in his absence or unavailability, his designee, is responsible for determining whether to issue a Timely Warning Notice. If the Director or designee is not available, the determination will be made by a member of the College’s emergency response contingent called the 24/7 Team (*See* “Emergency Response” policy).

Whether to issue a Timely Warning Notice is determined on a case-by-case basis for Clery Act crimes: arson, homicide, burglary, robbery, forcible and non-forcible sex offenses, aggravated assault, motor vehicle theft, domestic violence, dating violence, stalking and Hate Crimes, as defined by the Clery Act.<sup>18</sup> Notices also may be distributed for other crimes as determined necessary by the Director of Public Safety and the 24/7 Team, or their designees.

In determining whether to issue a Timely Warning, the College will consider any factors reflecting on whether the alleged crime represents a serious or continuing threat to the College community, including, but not limited to, (a) the nature of the incident; (b) when and where the incident occurred; (c) when it was reported; (d) the continuing danger to the campus community; and (f) the amount of information known by the Department of Public Safety. If there is insufficient information available to determine whether the incident represents a continuing threat to the College community, the College will issue a Timely Warning unless, based on the information available, it appears unlikely that there is an ongoing threat to the Community, and will note in the content of the Timely Warning that, based on the information available, the College does not have full information to evaluate the nature of the ongoing threat.

The Director of Public Safety will make efforts to consult with the Vice President of Communications or a designee, if s/he is available, to develop the content of the Timely Warning Notice. Time permitting, additional input may be garnered from additional members of the 24/7 Team, including the

<sup>18</sup> A hate crime is a criminal offense of murder and non-negligent murder, forcible sex offenses, non-forcible sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, arson, larceny-theft, simple assault, intimidation, destruction/damage/vandalism of property, domestic violence, dating violence, or stalking incidents, where the criminal offense was committed against a person or property which is motivated, in whole or in part, by the offender's bias. Bias is a preformed negative opinion or attitude toward a group of persons based on their race, gender, gender identity, religion, disability, sexual orientation or ethnicity/national origin.

V.P. of Human Resources, V.P. of Facilities and Services, the Dean of Students and the Executive Assistant for Facilities and Services. The College's Title IX Coordinator may also be consulted in appropriate situations.

The reasons the College does or does not issue a Timely Warning for any Clery Crime reported to the College will be documented and maintained by the Department of Public Safety for seven years.

The Timely Warning Notice will typically include, to the extent known, the date, time and nature of the offense, a brief overview of its particular circumstances, a physical description of the actor(s), law enforcement's immediate actions, a request and method for witnesses to contact law enforcement, and where applicable and appropriate, cautionary advice that would promote safety. In developing the content of the Timely Warning Notice, the College will take all reasonable efforts not to compromise ongoing law enforcement efforts.

The College distributes Timely Warning Notices in various ways. Once the College determines that an alert will be issued, the Department of Public Safety e-mails the announcement and posts it on its website (www.[enter appropriate website].edu), and posts alerts on bulletin boards throughout campus. The College will also send text messages disseminating the notice to those who register their cell phone numbers.

Anyone with information about a serious crime or incident should report the circumstances to the Public Safety Department by phone at (xxx-xxx-xxxx) or in person at XX. If a report is made to other College administrators, those administrators will immediately notify the Public Safety Department.

**Attachment 6: Timely Warning Report Determination Form**



## **Attachment 7: Sample Emergency Response and Evacuation Policy**

### **Policy Statement Regarding XX College Emergency Response and Evacuation Procedures**

This policy statement summarizes the University's emergency response and evacuation procedures, including protocols for emergency notifications in those situations that represent a significant emergency or dangerous situation affecting the health and/or safety of the University community. This policy statement complies with the Emergency Notification requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, as amended by the Higher Education Opportunity Act of 2008 and applicable Department of Education regulations.

#### **Emergency Response Plan:**

The University has an Emergency Preparedness Committee that is responsible for the overall direction and planning for emergency situations on campus or those that occur in the local or regional area affecting the campus. Under the direction of the EPC, the University has developed a comprehensive, all-hazards Emergency Response Plan that outlines steps the University will take to prevent and mitigate, prepare for, respond to, and recover from a full range of likely hazards the University may face. A summary of the University's emergency response procedures is located at [www.myuniversity.edu](http://www.myuniversity.edu). Included at this web page is detailed information regarding the University's emergency notification policy, including how to enroll in the mass notification system to ensure you receive emergency notices on University and personal phones.

To ensure these plans remain current and actionable, the University will conduct an emergency management exercise, at a minimum once yearly. These exercises may include tabletop drills, emergency operations center exercises, or full-scale emergency response exercises. The University conducts after-action reviews of all emergency management exercises.

In conjunction with at least one emergency management exercise each year, the University will notify the community of the exercise and remind the community of the information included in the University's publicly available information regarding emergency response procedures.

#### **Emergency Notification System:**

The University is committed to ensuring the campus community receives timely, accurate, and useful information in the event of an emergency situation on campus or in the local area that poses a risk to the health and safety of campus community members. To support this commitment, the University has invested in several multi-modal forms of communications that allow administrators to distribute notices in the event of a critical incident or dangerous situation.

*Confirming the Existence of a Significant Emergency or Dangerous Situation and Initiating the Emergency Notification System:*

The Department of Public Safety and/or other campus first responders may become aware of a critical incident or other emergency situation that potentially affects the health and/or safety of the campus community. Generally, campus first responders become aware of these situations when they are reported to the Department of Public Safety Communications Center or upon discovery during patrol or other assignments.

Once first responders confirm that there is, in fact, an emergency or dangerous situation that poses an immediate threat to the health or safety to some or all members of the campus community, first responders will notify supervisors in the Department of Public Safety or other authorized University office to issue an emergency notification.

The University's authorized representatives, including supervisors in the Department of Public Safety, individuals assigned to Environmental Health and Safety, representatives of the University's Emergency Medical Service, officials in the Office of Communications, and/or other members of the University's senior administration, will immediately initiate all or some portions of the University's emergency notification system. If, in the professional judgment of first responders, issuing a notification potentially compromises efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency, the University may elect to delay issuing an emergency notification. As soon as the condition that may compromise efforts is no longer present, the University will issue the emergency notification to the campus community or applicable segment of the community.

*Determining the Appropriate Segment or Segments of the Campus Community to Receive an Emergency Notification:*

Campus and local first responders on the scene of a critical incident or dangerous situation that poses an immediate threat to the health or safety of the campus community will assist those preparing the emergency notification with determining what segment or segments of the campus community should receive the notification. Generally, campus community members in the immediate area of the dangerous situation (i.e. the building, adjacent buildings, or surrounding area) will receive the emergency notification first. The University may issue subsequent notifications to a wider group of community members. In addition to the emergency notification that may be issued via the University mass notification system, the University will also post applicable messages about the dangerous condition on the University homepage to ensure the rest of the campus is aware of the situation and the steps they should take to maintain personal and campus safety. If the emergency affects a significant portion of or the entire campus, University officials will distribute the notification to the entire campus community.

*Determining the Contents of the Emergency Notification:*

The office responsible for issuing the emergency notification (usually the Department of Public Safety communications officers) will, with the assistance of campus and local first responders, determine the content of the notification. The University has developed a wide range of template messages addressing several different emergency situations. The communications officers (or others issuing the alert) will select the template message most appropriate to the on-going situation and modify it to address the specifics of the present incident. Those issuing the notification will use the following guidelines when determining the contents of the emergency message.

1. The first message is intended to **Alert** the community or appropriate segment of the campus community of the dangerous condition and the actions they should take to safeguard their and their neighbor's safety. Messages distributed in this stage of a rapidly unfolding critical incident will generally be short, precise, and directive. Examples include: "The campus is experiencing a major power outage affecting the following buildings: Brown, Red, White, and Yellow Halls. All occupants of these buildings should immediately evacuate and meet at the designated building rally point." "There is a chemical spill at Brown Hall. The chemical released is extremely hazardous if inhaled. Occupants of Brown Hall should immediately evacuate the building through the northeast exits. Follow the directions of fire personnel who are on scene."
2. The second message is intended to **Inform** the community or appropriate segment of the campus community about additional details of the situation. This message is generally distributed once first responders and the Emergency Operations Center has additional information about the dangerous situation. Examples include: "The power outage affecting Brown, Red, White, and Yellow Halls was caused by a cut power line. PSE&G are responding along with Facilities personnel to repair the damage. We expect the outage will last until 2:00 p.m. Refer to the University homepage for additional information or dial xxx-xxxx."
3. Finally, the third message is the **Reassure** notice that is generally distributed once the situation is nearly or completely resolved. The purpose of this message is to reassure the community that the University is working diligently to resolve the dangerous situation. It can also be used to provide additional information about the situation and where resources will be available.

In those cases where there are no pre-determined template messages in the system, the individual issuing the alert will send develop the most succinct message to convey the appropriate message to the community. The goal is to ensure individuals are aware of the situation and that they know the steps to take to safeguard their personal and community safety.

*Procedures Used to Notify the Campus Community:*

In the event of a situation that poses an immediate threat to members of the campus community, the University has various systems in place for communicating information quickly. Some or all of these methods of communication may be activated in the event for emergency notification to all or a segment of campus community. These methods of communication include the mass notification system [NAME], the University's email system, campus PA system and/or emergency messages that scroll across computer screens. The University will post updates during a critical incident on the homepage. Individuals may also call the University's emergency line (xxx-xxxx) for a pre-recorded message about the emergency situation. If the situation warrants, the University will establish a telephone call-in center staffed by University specialists who are trained to communicate with the campus community during an emergency situation.

## Attachment 8 – Firm Description and Qualifications

Margolis Healy & Associates, LLC, is a professional services firm specializing in higher education safety and security. Our focus includes, but is not limited to, campus facility security assessments; emergency operations response training and policy development; behavioral threat assessment team development and case-by-case threat assessment consultation; campus public safety management studies and assessment centers; litigation consultation; security technology audits; *Clery Act* documentation audits; and campus public safety arming studies & deployment strategy development. In January 2008, after more than fifteen years each of providing consulting services to clients in the education, public and private sectors, Dr. Gary J. Margolis and Mr. Steven J. Healy merged their practices, Margolis & Associates, LLC and Strategic Security Consulting, LLC, into Margolis Healy & Associates, LLC. Their combined experience has quickly catapulted MHA into one of the leading professional services firms for safety and security needs at universities, colleges and K-12 school systems.

Our team of professionals brings a diverse set of skills and expertise to client institutions ranging from large public universities to private institutions, community colleges and K-12 school districts.

Mr. Healy and Dr. Margolis have been intimately involved in the national discussion on mass notification for college campuses, including Mr. Healy's testimony before the United States Congress. They have relationships with the industry's leading providers and have published articles and participated in related webinars on the topic. The MHA emergency notification principles of "Timely, Accurate, and Useful (TAU)" and "Alert, Inform, Reassure (AIR)" have become industry taglines and found their way into testimony and legislation. Our mass and emergency notification template messages, available free through our website, are being used by universities and colleges across the country.

Dr. Margolis, Mr. Healy and their team have personally managed or been intimately involved with scores of critical incidents on college campuses ranging from violent crime to natural disasters (including the 9/11 tragedy and its impact on the schools in NYC). We have first-hand experience in crisis response and recovery planning and operations at institutions of higher education. In 2008, Dr. Margolis was contracted to review the next iteration of FEMA's emergency action guides for educational settings.

Mr. Healy and Dr. Margolis are the lead authors of the International Association of Campus Law Enforcement Administrator's *Blueprint for Safer Campuses: An Overview of the Virginia Tech Tragedy and Implications for Campus Safety*. This document, unveiled at a press conference sponsored by the Woodrow Wilson School at Princeton University on April 18, 2008, is a roadmap for campus safety and security. In 2006, Mr. Healy was selected to serve as a faculty member for the first-ever comprehensive, collaborative *Clery Act* training sessions funded by a U.S. Department of Justice grant. As a certified instructor

for this program, he has provided training at several programs delivered across the country.

Shortly after the Virginia Tech incident, the President of The National Association of Attorneys General (NAAG), Georgia Attorney General Thurbert Baker, determined to establish an ad hoc Task Force on School and Campus Safety (Task Force) to consider what had transpired since the issuance of the previous NAAG report in 1999, including the incident at Virginia Tech, and issue a report making updated recommendations regarding the prevention of, and response to, violence in schools and on college campuses. Mr. Healy participated in the development of this report, *The National Association of Attorneys General Task Force on School and Campus Safety*.

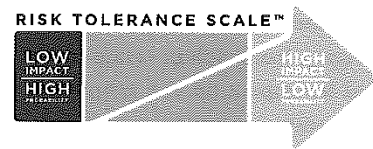
In 2008, Dr. Margolis was contracted to review the next iteration of the Federal Emergency Management Department's *Incident Action Guides* to assure their relevancy to the higher education environment.

Margolis Healy & Associates was recently awarded a U.S. Department of Justice, Community Oriented Policing Services (COPS) Office competitive grant to develop and deliver a behavioral threat assessment curriculum for universities and colleges across the nation ([www.CampusThreatAssessment.org](http://www.CampusThreatAssessment.org)). We help institutions of higher education develop and implement a threat assessment capacity that fits within their unique cultures and that is effective in both preventing violence and helping persons in need. We train higher education institutions on how to create and implement a threat assessment team (or add threat assessment capabilities to an existing team) and how to identify, investigate, evaluate, and intervene with persons and situations that raise concern on campus. We also consult on individual threat cases and provide guidance on crafting or revising institutional policies and procedures to facilitate effective threat assessment and collaborative case management.

### The MHA Methodology

Margolis Healy & Associates serves our clients through the development of a Risk Tolerance Profile that assists the institution with identifying the range of realistic threats and vulnerabilities it faces, and then implementing a decision making process to determine which require prevention, mitigation and/or response plans. Without such a process, universities and colleges face the daunting task of giving equal attention to all perceived and real threats. Our process recognizes the range between high impact/low probability and low impact/high probability events. The active shooter tragedy (high impact/low probability) and the iPod theft from the library (low impact/high probability) each require different strategies. Impact is defined through the institution and the individual.

MHA has developed a unique, proprietary methodology for evaluating safety and security needs at institutions of higher education based on years of



educational campus safety and security experience, research, reflection and evaluation. We assess safety and security at educational institutions through our proprietary 3 Circles of Prevention System.<sup>™</sup> We have extensive proprietary checklists that support our methodology.

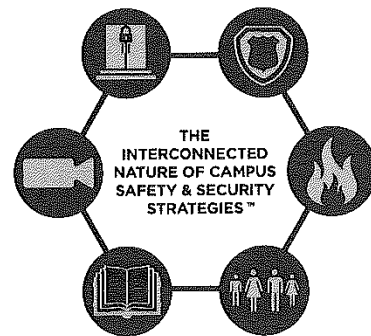
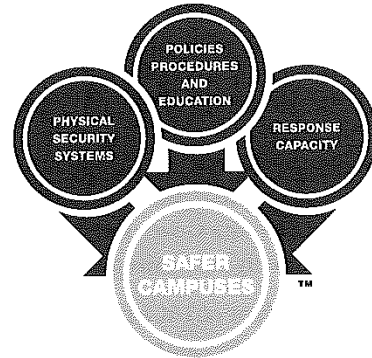
The First Circle asks to what extent relationships and services exist for early interception and intervention for problems and issues germane to faculty, staff and students. Such services may include drug and alcohol education and counseling, behavioral threat assessment teams, grievance policies, workplace violence policies and prevention systems, sexual assault, stalking and domestic violence victim advocacy; mediation services and grievance policies and procedures for faculty and staff; and other similar policies and services that address problems before they become a crisis.

The Second Circle explores the extent to which institutions of higher education have employed physical obstacles, delaying tactics and security technology to control, secure or regulate access to the physical plant. This may include systems that direct vehicular traffic; security cameras; networked or standalone door locking systems and hardware; campus lighting (interior and exterior); E911 capacity and PBX phone systems; mass notification systems (high and low technology); fire and life safety systems; visitor management policies and practices; inclusion of crime prevention through environmental design considerations; and access control and other security technology tools.

The Third Circle explores measures that enable the institution to respond to events and security and safety related needs in an organized, timely, and efficient manner. This may include a public safety function with organized involvement of students, faculty and staff in the security of the campus; memoranda of understanding with area police, fire and emergency medical services; emergency response and recovery systems, policies and procedures that have been trained to; and adoption and implementation of the National Incident Management System (NIMS) and the Incident Command System (ICS). Combined, this third circle of prevention builds capacity for the human response to safety and security requirements.

Taken together, the various strategies depict the interconnected nature of campus safety and security. Changes or decisions made to one area impact the others. The deployment of security technology (cameras, door prop alarms, controlled access points) may or may not have an effect on the number of public safety officers, which may or may not impact other security needs. MHA works with our clients to develop a reasonable campus safety and security program based on their current state and the desired future state.

The measures taken to address safety and security are as much data and metrics driven as they are based on perception. We believe that our expertise, knowledge and experiences uniquely qualify us to assist our client institutions with recommendations tuned to their culture and needs.



Margolis Healy & Associates, LLC is a minority and veteran-owned small business. For a complete listing of available services, please visit [www.margolishealy.com](http://www.margolishealy.com).

### **The MHA Project Team**

#### ***Steven J. Healy, Managing Partner***

Steven Healy was the Director of Public Safety at Princeton University from 2003 - 2009, where he led the University's safety, security, and law enforcement programs. He is a Past President of the International Association of Campus Law Enforcement Administrators (IACLEA), and has served as a member of the association's Government Relations Committee for the past 13 years. He is a nationally recognized expert on the Clery Act.

As President of IACLEA, Steven contributed significantly to the national dialogue about campus safety and security in the aftermath of the tragic rampage-shooting incident at Virginia Tech University in April 2007. He has appeared on numerous news programs and talk shows including CNN with Lou Dobbs, ABC Nightly News, CBS, the Fox Network, MSNBC, and National Public Radio. In April 2007, he testified before the U.S. Senate Committee on Homeland Security and Governmental Affairs on the topic of "Security on America's Campuses." In May 2007, he was invited to testify before the U.S. House of Representatives Committee on Education and Labor on the topic of "Best Practices for Keeping America's Campuses Safe." Steven has been named one of the "Top 25 Most Influential People in the Security Industry" by Security Magazine.

In December 2007, he completed his term as the chairperson of the National Center for Campus Public Safety Advisory Board. In that role, Mr. Healy was responsible for leading the development of a strategic plan and framework for the National Center for Campus Public Safety. In February 2008, Mr. Healy was a featured presenter in a Plenary Session at the ACE Annual Meeting, addressing issues of "Campus Security, Response and Recovery in a New Era."

Prior to Princeton, Mr. Healy was the Chief of Police at Wellesley College in Wellesley, MA. He also served as Director of Operations at the Department of Public Safety at Syracuse University. During his tenure at Wellesley College, Mr. Healy was the IACLEA Regional Director for the North Atlantic Region and President of the Massachusetts Association of Campus Law Enforcement Administrators. Mr. Healy is a 1984 graduate of the United States Air Force Academy. He spent 10 years on active duty with the United States Air Force as Security Police Officer. From 1992 to 1995, Mr. Healy was the Operations Officer for the 95th Security Police Squadron at Edwards Air Force Base. Mr. Healy is a frequent speaker at national conferences and seminars on issues related to campus safety and security.

He serves as a subject-matter expert for the U. S Departments of Education and Justice. He is currently leading an IACLEA special panel reviewing



post-Virginia Tech challenges and concerns for the higher education community. At the request of the U.S Department of Education, he was asked to serve on a special working group developing emergency management planning guidelines for the higher education community. He is IACLEA's representative to the NACUBO "National Campus Safety and Security Project" and to EDUCAUSE's "The IT Role in Campus Safety" project. Mr. Healy was a featured speaker and panelist with Dr. Margolis on emergency response and recovery at the annual meeting of the National Association of College and University Business Officers (NACUBO).

***Dr. Gary J. Margolis, Managing Partner***

Dr. Gary J. Margolis has more than a decade of higher education public safety experience as the Chief of Police at the University of Vermont, and more than nineteen years in policing. Under his leadership, UVM Police Services became a twice internationally accredited police agency through the Commission on Accreditation for Law Enforcement Agencies (CALEA) for whom Dr. Margolis is a Commissioner. Dr. Margolis holds a Research Associate Professor appointment in the UVM College of Education & Social Services, and a faculty appointment at Norwich University in Northfield, VT. He offers courses in leadership development to masters and doctoral students in the graduate programs at both institutions.

He is a Past General Chair of the University & College Section of the International Association of Chiefs of Police, the oldest and largest police association in the world, and a former member of the association's executive committee. Dr. Margolis is an active member of the International Association of Campus Law Enforcement Administrators as a member of the Government Relations Committee and Chair of the Education Committee. He is often called upon by the US Department of Justice and US Department of Homeland Security as a campus security expert. He is a much sought after speaker, consultant, educator, expert witness, and trainer on campus safety and security; security technology application; emergency response & recovery planning; and preventing violence against women crimes on campuses. In the Fall 2008, he evaluated the forthcoming iteration of the FEMA Action Guides for Emergency Response & Recovery.

Dr. Margolis has testified before the United States Senate Committee on the Judiciary on matters relating to criminal justice. Prior to his role as the Chief of Police at UVM, Dr. Margolis was a training administrator at the Vermont Police Academy, responsible for the basic and in-service training of Vermont's police officers. He has a Masters Degree in Education and a Doctor of Education in Educational Leadership and Policy Studies from the University of Vermont.

In January 2007, Dr. Margolis led a full-scale active shooter exercise on campus and has been featured as a keynote speaker on the subject. Dr. Margolis is a graduate of the Harvard University Kennedy School of

Government Executive Education Program on Crisis Management and, in early 2008, traveled to Israel as an invited guest of the Israeli Government to study terrorism and share his expertise with the Israel National Police and Israel Defense Forces.

Dr. Margolis has been a featured speaker and panelist on emergency response and recovery with Mr. Healy at the annual meetings of the National Association of College and University Attorneys (NACUA), the National Association of College and University Business Officers (NACUBO), and the National Association of College Auxiliary Services (NACAS). His work has been featured in *Police Chief* magazine and the *Campus Law Enforcement Journal* magazine. He is a member in good standing of the International Association of Professional Security Consultants (IAPSC).

Margolis, Healy & Associates, LLC has created a “dream team” to provide the highest level of service to our clients. They assist in the execution of projects and delivery of services in accordance with their professional standing and our prerequisite skills. MHA works with only the best and brightest colleagues to ensure that we exceed our client's expectations, and we select our associates carefully based on their experiences, qualifications, and reputations.

***Daniel R. Pascale, Senior Director of Security & Emergency Management Services***

Daniel Pascale is responsible for security technology and emergency management related services for MHA clients. Prior to joining MHA full-time in October 2012, Daniel Pascale was the Senior Director of Emergency Communications & Security Technology for the University of Chicago. In this role he was responsible for overseeing all aspects of physical security systems including the design, procurement and implementation of security technology. In addition, Dan oversaw the UC Communications Center which serves as the primary public safety answering point for the University and Medical Center Safety and Security operations. Prior to the University of Chicago, he served 9 years with Rutgers University in NJ where he held the position of Commander of Security Operations and later the Director of Emergency Management with the Division of Public Safety. Dan is a Certified Protection Professional (CPP) and was selected as one of America's “Top 20 Security Professionals under 40” by Security Director News in July 2009. He has completed the Emergency Management Institutes Incident Command, Unified Command and Community Educator programs in addition to Basic and Enhanced Risk Assessment through the Department of Homeland Security and Texas Engineering Extension Service (TEEX). Dan has written several articles published in periodicals such as *Security Management*, *Security Dynamics* and *Campus Security Report* relating to event planning, risk analysis and physical security. He has also served as President of the NJ College & University Public Safety Association and as a member of the NJ Governor's Campus Security Task Force.

***Vicky M. Stormo, Manager of Organizational Assessment Services***

Vicky M. Stormo retired after 29 years of law enforcement service, most recently having served as the Chief of Police at the University of Washington in Seattle from 1999 to 2008. UWPD is a fully accredited law enforcement agency by the Commission on Accreditation of Law Enforcement Agencies. The fifty-five commissioned officers of the University of Washington Police Department oversee 680 acres with a service population of 67,000 people.

The University of Washington police address many challenges including activism in the Northwest that led to the WTO riots and arson of the Urban Horticulture Center; dignitary protection; managing football games with 74,000 screaming Husky fans; a top ten Medical Center and Health Sciences department; and a major research institution. She retired from the Albuquerque Police Department at the rank of lieutenant to take the chief's job at UW in Seattle. While in Albuquerque, she worked in many facets of the department, including patrol, detectives, civil litigation, operations review, watch commander, communications center commander, and recruiting and selection.

She was credited with increasing the number of women applicants from 8% to 25% while serving as the Recruitment and Selection commander and has spoken nationally about the strategy used to attract women along with the Institute for Women in Trades, Technology and Sciences (IWITTS). She also increased the number of women at the UWPD to 24%, doubling the national average. In her law enforcement career, she was the Officer of the Month in her rookie year, was featured on Paul Harvey for solving a series of armed robberies utilizing computers when computer technology was new to law enforcement, and has received the New Mexico Commission on the Status of Women Trailblazer award and the YWCA Woman on the Move award. She has also received the Breaking the Glass Ceiling award from the National Center for Women and Policing. Ms. Stormo has a Bachelor of Science degree in Criminology from the University of Albuquerque and a Masters in Public Administration from the University of New Mexico. She is a past President of the National Association of Women Law Enforcement Executives.

***Paul Allena, Associate***

Paul Allena has over twenty years of management experience in Security, Safety, and Emergency Management. Paul has held significant management positions in higher education, health care and corporate organizations. He is a career oriented and results driven professional with proven expertise and success in all areas of management. He has been effective in designing, implementing and monitoring security and safety programs. He has conducted risk assessments that have resulted in the reduction of exposure to organizations, and designed and installed CCTV and Access Control Systems. Paul has been a presenter for safety and security awareness programs to various organizations.

Paul recognizes and values the participation in volunteer leadership positions of professional organizations. He has served for over ten years as a volunteer leader at numerous levels of ASIS-International and most recently served as a Senior Regional Vice-President. He was recognized by ASIS-International as Regional Vice-President of the Year in 2004. He is also a 30 year Life Member and former chief of the Somerville Rescue Squad, an 80 member volunteer Emergency Medical Service and Rescue agency.

***John R. Matherson, Associate***

John Matherson is the Director of Security Systems in the Department of Safety and Security at the University of Chicago. As Director, John provides management and oversight of all security systems involving access control, alarm systems, and security cameras at the University of Chicago. He also provides systems administration support to all of the enterprise applications and systems used by all divisions within the department as serves as the Department's liaison with the University's central Information Technology Services Department.

John's career includes over 20 years of experience in technology in various roles of increased responsibility. His background includes experience in higher education as well as the public and private sector.

John is a native of North Carolina and holds both a BS and MS in Electrical Engineering from North Carolina Agricultural and Technical State University. He is a member of the Project Management Institute and a member of the American Society of Industrial Security.

**In Association With:**

***Jeffrey J. Nolan, Esq. (Dinse, Knapp & McAndrew, PC)***

Margolis, Healy & Associates, LLC collaborates on our projects with Jeffrey J. Nolan, a partner with the law firm Dinse, Knapp & McAndrew, P.C. Mr. Nolan brings a wealth of legal knowledge and experience to our projects as a higher education attorney. His practice focuses on: representing employers and institutions of higher education before courts and administrative agencies in employment and student-related matters; advising employers and institutions of higher education on the resolution and legal implications of employment and student-related issues; and assisting employers and institutions of higher education in the development and implementation of appropriate policies, handbooks and training programs.

Mr. Nolan speaks regularly at national, regional and local-audience seminars on employment law issues and legal issues affecting colleges and universities. He often provides training for and consults with clients around the country regarding workplace violence prevention, campus threat assessment, and sexual violence prevention and response. In 2009-2011, Mr. Nolan participated as a subject matter expert in the development of the curriculum for a U.S.

Department of Justice-funded program created and delivered by Margolis, Healy & Associates, “Campus Threat Assessment Training: A Multidisciplinary Approach for Institutions of Higher Education,” and co-presented that training at 10 locations throughout the United States.

Mr. Nolan has published numerous nationally distributed articles regarding threat assessment (in both peer-reviewed and non-peer-reviewed journals), employment law, and related issues, and he contributes regularly to the Vermont Employment Law Letter authored and edited by the firm. Mr. Nolan is listed in Chambers & Partners America’s Leading Lawyers for Business in the area of Labor and Employment law, in The Best Lawyers in America in the area of Labor and Employment law, and in New England Super Lawyers in the area of Employment and Labor law. Through his collaboration with MHA, Mr. Nolan reviews MHA draft and final reports before submission to clients. More information about Mr. Nolan and his higher education-related practice is available at [www.Margolis-Healy.com](http://www.Margolis-Healy.com) and [www.dinse.com](http://www.dinse.com).



**MARGOLIS HEALY\***  
*SOLUTIONS FOR SAFE CAMPUSES\**

128 Lakeside Avenue, Suite 302  
Burlington, Vermont 05401  
866.817.5817 (toll free & fax)  
[www.nccpsafety.org](http://www.nccpsafety.org)  
[www.margolishealy.com](http://www.margolishealy.com)