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VIA E-MAIL

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Re: External Title IX Audit

Dear Dr. Muma and Dr. Flanders:

In May 2020, Wichita State University and the Kansas Board of Regents jointly engaged Cozen O'Connor to conduct an external audit of the University's Title IX program, including policies, procedures, and practices.¹ The purpose of the audit was to assess legal compliance and enhance the effectiveness of policies, procedures and practices related to sexual and gender-based harassment and violence under Title IX of the Education Amendments of 1972 and related provisions of the Jeanne Clery Disclosure of Campus Security Policy and Campus

¹ The timing of this engagement was impacted by a number of factors, including business interruptions caused by the COVID-19 pandemic, the resignation of former WSU President Jay Golden, and the release of new Title IX regulations in May 2020.

Crime Statistics Act (Clery Act), as amended by the Violence Against Women Reauthorization Act of 2013 (VAWA).²

The observations and recommendations herein are based on our familiarity with the law and guidance, understanding of institutional practices, our decades-long experience with complainants, respondents, and the dynamics of discrimination and harassment, including sexual and gender-based harassment and violence. We have extensive experience working with colleges and universities across the country in assessing and improving campus responses, developing policy and procedures, conducting investigations and decision-making processes, providing education and training programs, and responding to regulatory investigations by the U.S. Department of Education. We approach this review through the lens and depth of our unique skill set and background, which is focused on a holistic understanding of the context, rather than a narrow legalistic focus.

This overview presents a summary of our observations about current policies, procedures and practices, feedback from campus constituents, and recommendations that seek to enhance the University's response to sexual and gender-based harassment and violence. We appreciate the time, engagement, and thoughtful insights provided by WSU students, staff, and faculty who contributed to our understanding of the current Title IX program.

I. Scope of Engagement

In order to assess legal compliance and effectiveness, our audit involved three distinct, but intersecting steps: 1) review of written policies, procedures, and related documents and communications; 2) interviews of campus implementers and stakeholders; and, 3) a survey of students, staff, and faculty to seek feedback, observations and recommendations.

With respect to written policies and procedures, Cozen O'Connor reviewed the following policies: 3.02 Notice of Nondiscrimination, 3.06 Sexual Harassment, Discrimination and Retaliation, 3.16 Nepotism, 3.19 Prohibition of Retaliation, and 3.47 Discrimination Review Procedures. Cozen O'Connor also reviewed internal protocols, handbooks, and other written procedures, including, for example, the Wichita State University Police Department Policy Manual, the risk assessment rubric used by the University's CARE Team, the Student-Athlete Handbook and Code of Conduct, the syllabus for the Personal and Academic Success Seminar ("PASS") course designed for first-year Wichita State University student-athletes, the 2019-2020 Housing and Residence Life Emergency Response Procedure Manual, results from the National College Health Assessment ("ACHA-NCHA III") (April 22, 2020),³ and other information provided by the University.

In addition, we reviewed information publicly available on the University's relevant webpages, including Office of Institutional Equity and Compliance, CARE Team, WSU Police, Student

² Cozen O'Connor conducted a similar external audit in the fall of 2017. Our recommendations were provided to the former General Counsel, David Moses, in an attorney-client privileged report dated January 22, 2018. Recommendations included revisions to policy, procedures, and the notice of non-discrimination; creation of a centralized Office for Institutional Equity and Compliance; development of a multi-disciplinary team to enhance collaboration and information sharing between departments; development of intake process and protocols, including oversight of supportive measures; expand prevention and education programming; and, consider conducting an external audit of the University's Clery Act compliance program.

³ Wichita State University results were based on responses from 1628 WSU students. National results are based on responses from 50,307 college or university students nationwide.

Affairs, Student Conduct and Community Standards, Student Involvement Team, WSU We Support U, Office of Diversity and Inclusion, Administration, and Leadership.

During the fall semester (2020), we interviewed more than 30 campus constituents and stakeholders, including the Executive Vice President and Provost (now Interim President); the Senior Vice President and Executive Director of the National Institute for Aviation Research; the Vice President for Student Affairs; the Vice President Chief Diversity Officer and Director of Military and Veteran Affairs; the Vice President of Strategic Communications and Chief Marketing Officer; the Interim Vice President for Regional Engagement and Economic Development; the Associate Vice President for Strategic Enrollment Management; the Executive Director, Government Relations and Strategy, and Executive Director to the Board of Trustees; the President of WSU Tech; the Executive Director of HR; the Executive Chief of Staff and Executive to the President; the Office of Institutional Equity and Compliance (OIEC) Executive Director, Title IX Coordinator, and EO Coordinator; the Chief and Operations Captain of University Police; the Associate Dean of Students; the Executive Director of Housing and Residence Life; the Associate Vice President for Student Affairs; the Dean of Students; the Assistant Vice President for Student Affairs, Assessment and Student Retention; the Associate Director for Student Conduct; the Assistant Vice President of Counseling and Wellness; the Assistant Director of Counseling and Prevention Services; the Prevention and Outreach Coordinator; the Director of Student Health Services; the Director of Athletics; the Faculty Athletics Representative; the Senior Women's Administrator; the President of the Faculty Senate; the President of the Unclassified Professionals Senate; the President of the University Support Staff Senate; the Student Body President; a Student Advocate; and the Wichita Area Sexual Assault Outreach Advocate assigned to WSU for campus outreach.

During the audit, we met periodically with a working group comprised of former President Jay Golden, Regent Mark Hutton, and Kansas Board of Regents President and CEO Blake Flanders, as well as counsel for both the University and the Kansas Board of Regents. In November 2020, we presented a detailed update to this working group regarding our observations and high-level recommendations to date. We subsequently worked with the University to create a forum to seek feedback and information from University community members in a manner that encouraged participation and provided the opportunity for anonymous responses.

In the spring semester (2021), we designed and disseminated an online survey to all WSU students, staff, and faculty. The questions in the survey were developed to build on, and gather additional information about, the feedback we gathered through our meetings with campus implementers, constituents, and leaders. The survey focused on understanding the visibility, awareness, and effectiveness of campus policies, resources, training and educational programming regarding harassment and discrimination. It was not designed to measure incident rates on campus. The survey ran from April 9 to April 22, 2021. The survey included authentication protections, which ensured that only WSU students, staff, and faculty could participate in the survey, but at the same time, allowed respondents to participate anonymously.

The survey was disseminated to 15,340 individuals, including 2,937 employees and 12,403 students. We had a 5.9% response rate to the survey (911 respondents), which represented 17% of all WSU employees and 3.3% of all WSU students. In addition, sixteen employees and twenty students requested the opportunity for a follow up discussion as part of the external audit. Given the date between the closing of the survey, and the date of this report, those discussions are still ongoing. To the extent those additional conversations yield information not

already encompassed in this report, we will supplement this letter with any additional observations and recommendations.

We have incorporated feedback from the survey, as well as the individual discussions held to date, into our observations and recommendations set forth in this report.

II. Legal and Regulatory Framework

The institutional response to sexual and gender-based harassment and violence is governed by a complex federal and state legal and regulatory framework. The federal framework is based on two primary statutes: Title IX of the Education Amendments of 1972⁴ (Title IX), and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act⁵ (Clery), as amended by Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA).⁶ Effective institutional responses demand a coordinated and integrated approach to Title IX and Clery implementation. Educational institutions must also carefully consider obligations under state and local laws. To effectively fulfill compliance obligations, higher education institutions must have current, comprehensive and coordinated policies and procedures that integrate the complex regulatory framework and the unique dynamics of discrimination, harassment and trauma as they impact individuals and communities in the distinctive context of each educational institution.

Title IX is a federal civil rights law that provides that no “person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”⁷ Title IX is accompanied by implementing regulations, which require that an institution publish a non-discrimination statement;⁸ appoint a Title IX coordinator;⁹ and adopt grievance procedures that are prompt and equitable.¹⁰ In evaluating compliance, the U.S. Department of Education’s Office for Civil Rights (OCR) reviews an educational institution’s policies, as written, and equally important, as applied.

The standards applied by OCR in evaluating compliance have varied greatly over the past ten years. Guidance provided by OCR has evolved significantly during that time frame, including the issuance – and rescission – of significant guidance documents like the April 4, 2011 Dear Colleague Letter, the April 29, 2014, Questions and Answers on Title IX and Sexual Violence, the September 22, 2017 Dear Colleague Letter, and the September 22, 2017 Questions & Answers on Campus Sexual Misconduct. At the same time, civil courts have introduced new standards in certain jurisdictions, such as the requirement to hold a hearing that provides the

⁴ Title IX is codified starting at 20 U.S.C. § 1681. This paragraph provides a high-level summary of Title IX requirements. There are significant nuanced institutional responsibilities under Title IX, too numerous to detail here, which informed our review and assessment of institutional responsibilities.

⁵ 20 U.S.C. § 1092(f).

⁶ Pub. L. 113-4, Violence Against Women Act of 2013 (Mar. 7, 2013).

⁷ 20 U.S.C. § 1681(a).

⁸ 34 C.F.R. § 106.9.

⁹ 34 C.F.R. § 106.8(a).

¹⁰ 34 C.F.R. § 106.8(b).

opportunity to confront one's accuser in cases involving credibility determinations. Given these changes in the guidance, and in some instances the law, OCR's enforcement approach has varied significantly between recent administrations. Most recently, on May 6, 2020, OCR promulgated revised Title IX regulations, which took effect on August 14, 2020. Those regulations shifted Title IX frameworks for institutional responses – they both restricted the scope of conduct that constitutes potential sexual harassment under Title IX, and expanded the procedural protections required in the grievance processes for responding to reports and formal complaints of sexual harassment.

Under the current Title IX regulations, when a school is on notice of sexual harassment within its education program or activity in the United States, the school's Title IX Coordinator must: 1) promptly contact the complainant to discuss the availability of supportive measures; 2) consider the complainant's wishes with respect to supportive measures; 3) inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and 4) explain to the complainant the process for filing a formal complaint. While evolving practices and existing resources will aid the University in meeting the requirement to provide supportive measures, the step of requiring a formal complaint to move forward with a formal or informal resolution is new. Like almost all schools, Wichita State has had to update its procedures and workflows to accommodate the requirement of a formal written complaint, and ensure appropriate attention to enhanced documentation requirements.

If a formal complaint meets designated jurisdictional requirements, the University must initiate a grievance process that complies with the final regulations. That grievance process must include a prompt and equitable investigation with written notice of the allegations, equal opportunity to participate in the investigation, the opportunity to view all evidence directly related to the allegations and respond in writing to that evidence, and the opportunity to view a written investigation report and respond in writing. At the conclusion of the grievance process, the University must provide a live hearing with cross-examination of each party and witness conducted by the other party's advisor. If a party does not have an advisor present at the live hearing, the school must provide one without fee or charge to that party. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility. The heightened hearing requirement in the final regulations requires extensive training, a change in approach toward evidentiary issues, and will necessitate additional resources to fulfill the need for University-provided advisors and other key roles in the process.

III. Effective Practices

As a foundational matter, an effective institutional response integrates three concepts:

- (1) Compliance with the federal and state regulatory guidance and legal authority;
- (2) An understanding of the dynamics of sexual and gender-based harassment and violence, trauma, barriers to reporting, and other related concepts; and
- (3) A recognition of an institution's unique policies, procedures, personnel, resources, culture, climate, and institutional values.

To be effective, the response must coordinate roles and responsibilities of personnel in diverse departments, provide mechanisms for the timely sharing of information, provide balanced attention to the needs of the parties, address individual and campus safety, assure fair and

impartial investigations, and facilitate a prompt and equitable resolution. The institutional response must also include coordinated and ongoing training and educational programming for students and employees (both staff and faculty).

Key elements of an effective institutional response include:

- Adherence to coordinated and accessible policies and procedures;
- An independent and fully empowered Title IX Coordinator with sufficient authority and resources to effectively navigate oversight and compliance responsibilities;
- A coordinated multi-disciplinary response team to provide support, resources and accommodations and to facilitate informed decision-making;
- A centralized reporting, response, investigation, and resolution process to ensure consistent application of policies and procedures;
- Clear communication about the difference between confidential resources (with legally-protected and privileged communications, like counseling and health services) where individuals can see confidential assistance, and reporting options (which trigger an institution's Title IX obligations, like campus Title IX offices, campus police, and responsible employees), and;
- Coordination of employee reporting obligations under Title IX, Clery, mandatory child abuse reporting, and other federal and state provisions to assure that all individuals are aware of how and where information that is shared with an employee will be disclosed;
- An initial assessment in each report designed to evaluate known facts and circumstances, take interim steps to protect the complainant and the campus community, facilitate compliance with Title IX and Clery responsibilities, and identify the appropriate institutional response;
- Protocols for the identification, implementation, enforcement and documentation of supportive measures;
- Separation of support and advocacy functions from impartial investigative and adjudicative processes;
- Reliable, impartial, objective, and thorough investigations and hearings by experienced and trained investigators and decision-makers;
- Procedures for resolution that recognize the balance between complainant autonomy and agency and fair and impartial procedures that incorporate the procedural requirements of notice and an opportunity to be heard;
- Regular communication with the parties and transparency about processes to maintain the trust of individual stakeholders and the community;
- Consistent training, education and prevention programs;

- Centralized record keeping and documentation for tracking and monitoring reported incidents, monitoring patterns and assessing campus climate; and,
- Periodic assessment to evaluate effectiveness and ensure sustainability.

IV. Observations and Recommendations

A. Compliance with Title IX Regulations

As noted above, the Title IX regulations require that the University publish a non-discrimination statement, appoint a Title IX Coordinator, and adopt grievance procedures that are prompt and equitable. Wichita State complies in each of these areas.

The University maintains a written Notice of Nondiscrimination Policy (3.02) available online to campus community members through a link on many University webpage footers, including the home page, Academics, Athletics, Admissions, Student Life, Human Resources, OIEC, and many other relevant webpages. An abbreviated notice (“Wichita State University (“WSU”) does not discriminate on the basis of sex in its education programs, activities, admissions and employment.”) is also included in the footer of University webpages. In addition, the Notice of Nondiscrimination is readily accessible in the University’s online Policy Manual. In support of these efforts, Policy 3.02 also includes administrative procedures that mandate inclusion of the notice of non-discrimination in job advertisements, and all University publications, including catalogs, newsletters, magazines, brochures, folders, posters and flyers. The inclusion of these specific, written procedures in Policy 3.02 reflects the University’s commitment to making the notice readily available to all community members, and documenting this mandate in written policy is a step above and beyond how most institutions ensure compliant implementation of this provision of the Title IX regulations.

The University has a dedicated, full-time Title IX Coordinator, Sara Zafar, who is part of the University’s Office for Institutional Equity and Compliance (OIEC). Ms. Zafar joined the University in June 2019. She has prior experience in sexual and gender-based harassment and violence and Title IX through her work with community organizations. Ms. Zafar reports directly to the Executive Director of OIEC and with the Executive Director and is charged with oversight of the University’s Title IX program.

The University also maintains prompt and equitable written grievance procedures for resolution of reports and formal complaints of sexual harassment. Following the implementation of revisions to the Title IX regulations, effective August 14, 2020, the University revised Policy 3.06 Sexual Harassment, Discrimination and Retaliation to comply with the required elements of the regulations. The University also disseminates Policy 3.06 to campus community members each academic year, as required by Title IX.

As part of the online survey, a majority of respondents (81% of employees and 55.3% of students) said that they had read and/or knew where to find the University’s policies and procedures to address discrimination and harassment. Most (82% of employees and 92.2% of students) also said they had never used those policies as a complainant, respondent, witness, advisor or responsible employee. Among those who had used the policies, a majority reported that they found the policy easy to read and follow, were able to find answers to their questions in the policy, and were directed by the policy to the right resources or people on campus.

B. Overview of Current Structure

In late 2018, the University created a new centralized office, the Office of Institutional Equity and Compliance (OIEC), to provide a University-wide report-and-response office for all reports of discrimination, harassment, and retaliation based on protected characteristics for all students, staff, and faculty.¹¹ The creation of this office was consistent with evolving effective practices nationally, and reflected a growing recognition of the need to centrally address compliance obligations under Title IX to effectively and consistently serve all campus community members.

In August 2018, Christine Taylor was hired to fill the newly created position of Executive Director of OIEC. Over the course of the 2018-2019 academic year, the University built the infrastructure for the office and hired personnel to fill key positions. In January 2019, Michael Irvin was hired to serve as the Equal Opportunity Coordinator. As noted above, in June 2019, Sara Zafar was hired to serve as the Title IX Coordinator. Together, the OIEC team is charged with implementing the University's policies against discrimination, harassment, and retaliation, providing a robust intake and initial assessment process, overseeing the provision of supportive measures, conducting prompt and equitable investigations and resolution processes, and leading training for students, staff, and faculty, including employees designated as responsible employees.

We observed a number of strengths in OIEC's integration into the existing campus framework of support, response, and resolution of concerns for students, staff, and faculty. The most significant improvement we noted between our prior review and the current review was the rebuilding of trust and collaboration by and between the Title IX program and key campus partners, like Human Resources, Student Affairs/Student Conduct, and the University Police.¹² Among campus administrators, we heard largely positive feedback about OIEC and their willingness to collaborate, share information, and work with other campus departments, both informally and through multiple University committees (Title IX, Clery, and Prevention Services Advisory Board). In particular, the relationship between the newly created OIEC and Human Resources has dramatically improved. We also note that OIEC has improved access to timely and effective legal advice through the current Office of General Counsel.

For a relatively nascent office, we have also observed a commitment to candor and transparent communication with the parties involved in reporting discrimination and harassment. For example, OIEC instituted a practice of recording meetings and interviews and making a party's own audio recordings available to that party, and sharing all information gathered with the parties. OIEC has also instituted an annual report to share aggregate information about the nature and volume of reports received by OIEC, along with key demographics. In addition, OIEC has expanded available web content and provided more accessible, digestible, and helpful information to campus community members.¹³ OIEC has also conducted trainings and outreach

¹¹ OIEC was created, in part, based on our prior recommendations. At the time, the University had already been considering changes to its Title IX infrastructure to best serve the needs of all campus community members.

¹² During the 2018-2019 academic year, the University experienced significant turnover in key positions related to the University's Title IX program, including both Title IX implementers, like the Title IX Coordinator, as well as key campus partners.

¹³ In November 2020, we recommended that OIEC review its website to include frequently asked questions, flow charts, and other aides to clarify recent changes to policies and procedures, and identify and provide information

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programs on campus. These efforts are all important steps towards establishing OIEC as a trusted and valued resource on campus.

At the same time, we have identified a number of challenges that are not atypical of institutional growth following the creation of a new campus resource. The May 2020 Title IX regulations required extensive revisions to policies and procedures, personnel roles, and internal documentation requirements. Successful implementation of the regulations will require continued investment of resources – and reassessment of the need for additional resources – as OIEC implements the heightened procedural requirements under the regulations and ensures that all OIEC employees and external professionals who facilitate informal resolutions, conduct investigations, serve as decision-makers, or evaluate appeals have sufficient training in the required elements under the regulations, as well as effective practices.

We have heard two key criticisms related to OIEC. First, the office is not yet well known or visible on campus. This feedback was shared in many individual discussions, as well as through the online survey. The online survey reflected that while most employees (57.6% of those surveyed) said they were familiar with OIEC, just 27.6% of students surveyed said they were familiar with OIEC.

Second, anecdotal feedback gathered through follow up discussions from survey respondents, which we are unable to validate or refute without conducting a review of individual cases, reflects some confusion as to process by participants, including complainants, respondents, and advisors. Advisors, in particular, reflected that they felt a need for more intensive and in-person (virtual) training.¹⁴ In addition, third party reporters, such as employees with designated reporting responsibilities, requested acknowledgement of receipt of the report and to be contacted in response to their outreach. Each of these observations reflect the need for additional definition of intake and outreach protocols, expanded training, and clarity around process in communications.

As part of the online survey, a small percentage of those surveyed – 5.6% of employees surveyed and 1.7% of students – reported that they had direct interactions with OIEC as a complainant, respondent, witness or advisor. On average, their experiences with OIEC were positive, although there were both highly positive and highly negative responses submitted. When asked whether OIEC has responded appropriately to reports of sexual harassment, sexual violence, dating or domestic violence, stalking, retaliation, discrimination or harassment, only a limited number of respondents expressed an opinion.¹⁵ Of those who did answer the question, most answered that they believed OIEC was responding appropriately (83% of employees and 57% of students who answered the question).

Our own observations reflect a few core themes. The case data shared with Cozen O'Connor reflects a larger than anticipated discrepancy between the number of reports received by OIEC

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about confidential resources and reporting options, including the confidential WASAC Confidential Campus Outreach Advocate.

¹⁴ We note that OIEC has created extensive training materials. We also note that serving as an advisor is a particularly fraught role for University employees to assume and will require ongoing and continued attention to the appropriate level of training and experience necessary for this role.

¹⁵ 90% of employees and 89% of students declined to answer or answered that they did not know. This is consistent with the small number of survey respondents who reported that they had direct interaction with OIEC.

and the number of reports that do not move forward to an investigation and resolution. While our experience nationally reflects that reports typically fall into one of four categories (reporting only with limited engagement or communication, accessing supportive measures, informal resolution, or investigation), the proportion of cases that move forward are far lower than what we would expect given the volume of reports.¹⁶ For example, the data provided by OIEC from academic year 2019-2020 reflected that while the office received approximately 150 to 200 reports, only about five cases went through the formal investigation process. Additional analysis reflected that approximately 39% of cases in academic year 2019-2020 were closed because the complainant did not respond to outreach attempts and approximately 25% of cases in academic year 2019-2020 were closed after intake because the reported conduct did not fall within the definitions of conduct prohibited by University policy. The relatively high rate of individuals who do not respond to outreach warrants further evaluation to understand the dynamics at play.

As part of the online survey, a minority of campus community members (24.4% of employees and 14.8% of students) surveyed said they had either experienced or known someone who experienced sexual harassment, sexual assault, dating or domestic violence, stalking, or discrimination or harassment themselves and declined to report it to the University. The most common reasons employees said they did not report were, in order: 1) they did not think reporting would solve anything; 2) fear of retaliation; and, 3) they worried about others' reactions such as being blamed, not being believed, or being treated differently. The most common reasons students said they did not report were: 1) they did not think reporting would solve anything; 2) they did not think the University would do anything; and 3) they were afraid their family or partner would find out. Some employees' responses suggest a potential gap in understanding their responsible employee reporting obligations. Indeed, in response to a separate question, 18.6% of employees said they did not know if they were required to report sexual harassment, dating or domestic violence, stalking, discrimination or harassment to the University.

As it relates to internal protocols within OIEC, the Executive Director has taken steps to separate support and advocacy functions from investigative functions. The current staffing model, however, may not be sustainable should there be an increase in reports and/or investigations. Moving forward, it will be critical to the successful implementation of the regulations, and the perception and effectiveness of OIEC, to identify or create a dedicated intake and outreach/supportive measures role within OIEC, and depending on volume, to consider the use of an external investigator for some types of investigations.

As it relates to the perception of OIEC, we recognize that OIEC is working to shift culture regarding accountability and responsibility, but that the new office has necessarily inherited mistrust and a jaundiced view based on individual experiences and perceptions of the prior (pre-OIEC) University policies, procedures, and personnel related to Title IX. The prior perceptions regarding responsiveness and effectiveness of campus responses generally continue to impact whether campus community members view OIEC as a viable reporting office, and if so, how they perceive their interactions with OIEC. Efforts to address broader cultural issues, however, must be a coordinated commitment across the University.

Our recommendations with respect to OIEC include the following:

¹⁶ We note that the new regulations, which apply to the 2020-2021 academic year, specifically delineate the difference between a report and a formal complaint, and reflect a deferential approach to complainant agency and autonomy in deciding whether to move forward with a formal complaint.

1. Facilitate continued access to training and professional development for OIEC team members and other implementers. This will allow OIEC to maintain fluency with the evolving legal framework and developing effective practices in response to the continuing evolution of Title IX.
2. Consider the creation of a dedicated intake and outreach position within OIEC to ensure compliance with the intake processes and documentation required by the Title IX regulations and the Clery Act related to procedural information and access to supportive measures. This will be important if expansion in training, education, and prevention occurs as contemplated, as those efforts will likely yield increased reporting and the current staffing model does not allow for adequate separation of roles. This is also important to facilitate the separation of support and advocacy functions from investigation functions.
3. Consider revisions to Policy 3.06 to evaluate the role of external professionals in the investigation and decision-making processes as it relates to efficiency and effective use of campus resources. The most recent OIEC budget shared with us will be insufficient to meet the demand and fees in this area, especially if the hearing model maintains a three-person panel of external professionals.
4. Consider creating an administrative support role within OIEC to assist in the maintenance of case files and required documentation, responsive communications to all individuals who contact OIEC, and other key tasks.
5. Develop a formalized multi-disciplinary team (evaluation panel or initial assessment triage team) to more formally and consistently share information, conduct a holistic assessment of new reports, track and respond to patterns and trends, and facilitate informed decision-making at key stages (e.g., whether the Title IX Coordinator should file a formal complaint, implementation of supportive measures, imposition of emergency removal or administrative leave, etc.). This team should include representatives from OIEC, Human Resources, Student Conduct, University Police, Counseling and Prevention Services, and the Provost's Office.
6. To continue to be responsive to the needs of campus community members who interact with OIEC, build in a process for exit interviews for participants (or other quality assurance measures) to assess experience with process.

C. Other Campus Resources and Student Support

We heard overwhelmingly positive feedback for the work of the CARE Team, which focuses on student retention through holistic care for student needs, and the expanded team of Student Services Coordinators. One administrator observed, "A lot of people talk about silos, but when it comes to the needs of the student, I am extremely impressed with how we work across department lines to do whatever is needed for the best of the student." Provision of supportive measures that facilitate continued access to educational programs and activities and continues to be an essential aspect of Title IX compliance and student welfare. To the extent that Student Service Coordinators are directly involved in the implementation of supportive measures, OIEC will need to exercise careful oversight and maintain detailed documentation under the new regulations.

We also heard extremely positive feedback for Counseling and Prevention Services (CPS). As of the fall of 2020, we understood that appointments were readily accessible, with little to no wait time for students seeking counseling.¹⁷ We also heard positive feedback about the “right size” approach that seeks to prioritize a student’s individual treatment needs. At the same time, individuals with whom we spoke uniformly recognized the need for more diversity among counseling providers.

The Wichita Area Sexual Assault Center (WASAC) Campus Outreach Advocate is available as a free and confidential resource for students who have experienced sexual harassment, sexual assault, dating or domestic violence, or stalking. The WASAC advocate holds office hours, meets with students for consultation, conducts training and educational programming for the campus community, and is available to serve as an advisor for Complainants during the grievance process. However, this valuable resource is not well known and appears to be under-utilized. To the extent possible, providing a warm handoff to the WASAC Advocate would promote higher utilization of this advocacy resource to assist complainants in navigating OIEC and local law enforcement processes.

D. Training and Education

A core theme that emerged in our prior and current review revolved around the question of whether to mandate Title IX training for students, staff, and faculty. Many individuals expressed a strong preference not to mandate training for students given concern about potential impacts on enrollment and retention. In our prior review, there was a strong sentiment that mandating training would create an insurmountable barrier for some students. The participation numbers, however, reflect that without a mandate, many students do not complete critically important educational programming about sexual harassment, sexual assault, Title IX and campus policies and resources. Currently, fewer than 25% of incoming students take the online training that is currently offered, even though it is presented as a “mandatory” training. This is a significant gap that has many potential downstream impacts.

During the current review, we heard uniform support for mandating completion of training as part of orientation and employee onboarding. As part of the online survey, a majority of respondents (69.5% of employees and 62.8% of students) said they were in favor of the University requiring mandatory sexual assault prevention, policies and resources training annually for all members of the campus community.

This baseline and foundational training is a critical tool to raise awareness and understanding, reinforce culture and climate, provide preventive information, and familiarize students and employee with information about campus policies and resources. An anticipated outgrowth of this increased awareness will likely be a commensurate increase in the number of individuals making reports to OIEC. It will be important for the University to track increases in reporting rates and be prepared to provide additional resources to ensure responsiveness and timely resolutions that lead to positive interactions and improved perceptions of OIEC.

With respect to prevention and educational programming beyond online foundational Title IX training, we were gratified to learn of the work of the Prevention Services Advisory Board (Board), which focuses on wellness, sexual violence, suicide prevention, and substance abuse. The Board, which meets monthly, is comprised of key campus partners. It also has a

¹⁷ We emphasize that this feedback is anecdotal, not based on an assessment of data from CPS. We do not opine on the appropriate level of resources for CPS as that is outside the scope of our review.

subcommittee devoted to sexual violence prevention. This collaborative work is an important element of a prevention program; it does not, however, satisfy the need for a full-time prevention and education coordinator.

We understand that the University has recently received a Department of Justice grant, which will provide funding for a prevention and education coordinator for 3 years. We encourage the University to use this time to identify a funding stream and internal structure for a full-time, *non*-grant-funded specialist tasked with overseeing all programming and coordinating with the Prevention Services Advisory Board, student groups, volunteers and other personnel. We also encourage the University to consider how to incorporate a more formalized Health Promotion and Education program within Student Health.

We recommend the following:

1. Require completion of Title IX training for all incoming students and identify a mechanism to incentivize completion, rather than penalize non-completion. Foundational online training can be supplemented with additional programming for targeted populations for campus residents, athletes, the Greek community, student-employees, and student leaders (many of which already receive additional and *required* programming based on their role).
2. Consider incorporating prevention and awareness programming into the first-year seminar for new students.
3. Track and monitor training completion of Title IX training for staff and faculty.
4. Provide Title IX training for senior leaders, supervisors, and managers regarding their role in reporting, in fostering a culture and climate of accountability and responsibility, and in promoting and supporting the independence of OIEC.
5. Enhance the availability and reach of current programming related to prevention, bystander intervention and campus awareness programming to prevent and address sexual assault, intimate partner violence and stalking.
6. As described above, consider creating a full-time and dedicated position for prevention and education.

E. Referral of Incidents that do not Implicate Policy 3.06 and 3.47

1. Differentiating Bias Incidents from Hostile Environment Investigations

One of the themes we heard was that OIEC did not effectively respond to bias incidents that do not rise to the level of a policy violation. This responsibility, however, may not fall within OIEC's mission and portfolio, but rather, within the province of bias incident response protocols. We are not asked to assess the University's current processes for bias incident response (e.g., CutH8), but several interviewees identified development of such a process as a priority for the University. We understand the University is in the process of developing and implementing formal bias incident response policies and protocols under the leadership of Student Affairs, which we have not been asked to review.

With respect to its intersection with OIEC, we recognize the need to carefully consider the overlap between bias response and investigation into a potential hostile environment under 3.06 or 3.47. This distinction should be communicated clearly through both processes and on University websites to reinforce trust in the integrity and accessibility of each process.

We recommend the following:

1. Coordination of bias incident response protocols with OIEC as it relates to jurisdiction and applicability of supportive measures and investigative processes.
2. Proactive education and communication with the campus community, as well as training and education regarding resources available through each process.

2. Employee Relations

In a related area, we heard frustration that matters involving employee misconduct that did not rise to the level of a policy violation under 3.06 or 3.47 did not receive consistent responses when referred back to Human Resources or direct supervisors for follow up investigation and disciplinary response. Recognizing that we were not asked to evaluate the University's Human Resources program, we are not assessing the effectiveness of the University's employee relations functions, but rather, sharing feedback received regarding insufficient or ineffective responses to lower level workplace misconduct. This is particularly true with respect to faculty misconduct, where immediate supervisors may not have the sufficient resources, training, or processes to conduct a fact-finding investigation, assess what corrective action, if any, is appropriate, evaluate intersections with legal requirements, and maintain consistent documentation for progressive discipline, performance appraisal processes, and identification of patterns.

We recommend the following:

1. Review and revise, as necessary, policies and procedures regarding workplace misconduct that does not rise to the level of a policy violation under 3.06 and 3.47.
2. Ensure that employee misconduct is appropriately documented in a manner that allows the University to appropriately track and monitor patterns and concerns.

V. Conclusion and Next Steps

This letter provides a summary of our high-level observations and recommendations. It does not purport to encompass all of our observations, insights gathered from review of documents and discussions with campus constituents, but rather, to prioritize recommendations for effective implementation of Title IX.

We are available to assist the University in implementing these recommendations and evaluating how information from the survey or this review might be shared with the campus community.

We appreciate the opportunity to serve Wichita State University and the Kansas Board of Regents.

Sincerely,

COZEN O'CONNOR



By: Gina Maisto Smith



By: Leslie M. Gomez



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