

Beyond Compliance: A Multi-Case Study Analysis of University Behavior and Policy
Negotiation in Response to the Dear Colleague Letter on Campus Sexual Violence

by

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Dedication

This dissertation is dedicated to all who have suffered injustice
Those who speak out and stand up to inequity in its many forms
Those who provide comfort and care
May time heal what reason cannot

To my Mom, Anne
Who is the sun I can touch and kiss and hold without getting burnt
“I’ll be thinking of you every single day”

To my Dad, Don
For your integrity and gentleness
You inspire me, Dad. Thank you for a lifetime of love and support

To my husband and best friend, George
Who has taught me to value every day and not sweat the small stuff
Thank you for the many sacrifices you made as a graduate student spouse
I am so very happy you are my partner in this life’s journey

To my children, Melina and Nicolas
Whose light, laughter, and love improve everything
You are the greatest treasures in my life
I will always love you unconditionally

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Abstract

This qualitative, multi-case study research examines the dynamic processes undertaken at three universities in their review and negotiation of policy and programming following newly imposed federal compliance requirements. Organizing review teams to interpret and respond to Title IX obligations set out in the highly contentious and ambiguous 2011 Dear Colleague Letter on campus sexual violence, these universities developed forward-thinking results that enhanced opportunity for the institution and its students. In doing so, the universities exceeded minimal compliance expectations by creating new organizational structures and protocols that influenced not only change on campus, but broader field developments and the construction of compliance.

This study looks at the institutional processes that enabled such advances to occur. It examines how decision makers from these universities were able to foster collaboration among diverse constituents to take into account the universities' legal obligations and considerations of importance to the organizations and society as they enacted change. Adopting a new institutional theoretical approach and drawing on a proactive law framework to understand how organizations and its members navigate this complex environment, this study demonstrates institutional actors' discretion in interpreting and responding to the law as they develop substantive practices. By analyzing the mechanisms that guide an organization's response to a contentious legal compliance issue, this study expands theoretical understanding of how institutions address their socio-legal environment.

Organizational effectiveness necessitates that institutions draw on different design and intervention strategies to address a broad range of situations. In the context of the review

process, institutional actors across multiple organizational positions played vital roles in the teams' successes. Leadership was demonstrated at various levels across subject-matter experts. These leaders' abilities to engage others in collective action and induce cooperation proved essential in overcoming tension, ambiguity, and pressure from different constituents to advance successful policy negotiations and arrive at substantive solutions. Participants did not perceive any one group or interest as dominating the negotiation process. Despite the increasingly legal environment in which universities operate, neither legalistic decision criteria nor any inherent or perceived authority from legal counsel was found to take priority over organizational, interpersonal, or social factors relevant to organizational decision making.

This research is important because models and practices perceived as legitimate diffuse across fields and are adopted by other organizations, influencing normative standards and the courts' interpretation of what good compliance entails. By addressing the organizational dynamics and behavior underlying university responses to compliance obligations, this study advances greater understanding of the internal negotiation of process and strategy in explaining organizational adaptation in uncertain times. Although the Dear Colleague Letter provides the specific context for this inquiry, the research findings are relevant to other complex university policy considerations in which the dynamic negotiation of social, organizational, and legal influences takes place. With changes to the university's regulatory environment accelerating and pressure to comply with burgeoning legal obligations mounting, this research is necessary to better understand how universities' responses to laws - through its faculty, staff, students, and leaders - shape normative practices and the construction of compliance as universities adapt to escalating and complex legal obligations.

Chapter 1: Introduction

Colleges and universities operate in a complex and shifting legal environment, with regulations and the law touching virtually everything they do, frequently heavy-handedly (Alger, 2008; Dunham, 2010; Gajda, 2009; McLendon & Hearn, 2006; Olivas, 2005; Toma, 2011). Such legal obligations, often ambiguous and costly to implement, create tension and uncertainty within universities (Dunham, 2010; Gajda, 2009; Task Force on Federal Regulation of Higher Education, 2015). Overwhelmed by the weight of their responsibilities under the law, some universities take minimal measures to meet their legal obligations (Edelman, 1992; Koss, Wilgus, & Williamsen, 2014; Siedel, 2002; Vendituoli, 2014b; Wilson, 2014a). Such responses often create the symbolic illusion of complying without substantive effect (Edelman, 1990, 1992, 2007; Edelman, Leachman, & McAdam, 2010; Siedel, 2002). Other institutions, however, surpass compliance expectations. Here we find industry leaders and innovators aligning policies, procedures, and programming with institutional mission while exceeding minimal legal obligations. Some of the compliance actions they take become institutionalized by way of organizational mimicry and normative practice (Edelman, 1990, 1992, 2007; Edelman, Leachman, & McAdam, 2010; Meyer, Ramirez, Frank, & Schofer, 2007; Meyer & Rowan, 1978). Evolving into taken-for-granted standards, their actions shape not only the organization and those in it, but influence our understanding of acceptable forms of compliance (Edelman, Fuller, & Mara-Drita, 2001; Edelman, Leachman, & McAdam, 2010; Edelman & Suchman, 1997; Scott, 1994; Suchman & Edelman, 1996).

Despite evidence that universities, and the individuals working within them, possess the power to construct the meaning of compliance, shape the law, and mediate the effects of regulations on institutional policies, we know little about the organizational environment in which the dynamic negotiation of social, organizational, and legal influences takes place (Edelman, Fuller, & Mara-Drita, 2001; Edelman, Leachman, & McAdam, 2010; Edelman & Suchman, 1997; McLendon & Hearn, 2006; Scott, 1994; Sitkin & Bies, 1994; Suchman & Edelman, 1996). There is little systematic, empirical research into the phenomenon of how higher education decision makers negotiate the internal interpretation of external legal pressures as they consider institutional and constituent interests while addressing legal obligations (Edelman, 1992; Gornitza & Larsen, 2004; Gould, 2001). Examining how decisions originating from a legally derived change are negotiated among university decision makers, this study advances our understanding of the organizational environment of universities in which the dynamic negotiation of social, organizational, and legal influences takes place. In the current environment in which compliance requirements limit institutional autonomy, governmental oversight dilutes deference, and regulations constrain academic freedom, such insight holds important implications for the governance and values of higher education (Dunham, 2010; Gajda, 2009; Hanley, 2015; Olivas, 2005).

One of the complex, ambiguous, and costly regulations garnering national attention both inside and outside higher education over recent years has been the 2011 Dear Colleague Letter (DCL) on campus sexual violence. Intending to clarify educational institutions' existing obligations under Title IX, the DCL's ambiguity has instead left university leaders confused, constrained, and besieged by both increasingly intense governmental oversight and unwanted public scrutiny of their actions. University leaders have responded to changing post DCL legal

and cultural expectations with a wave of structural elaboration (the transformation of pre-existing structures) designed to align policies, procedures, and programming with compliance obligations. Five years into this developing reform, the lines between addressing campus legal obligations while upholding institutional values remain blurred. Uncertainty persists as universities' obligations to address culture, policies, and practices surrounding issues of campus sexual misconduct, harassment, and assault continue to be defined. This qualitative research utilizes a multi-case study strategy to examine the dynamic processes undertaken by three universities in their review and negotiation of policy and programming following newly imposed ambiguous, contentious, federal compliance requirements. It looks at the institutional actions advanced by university actors that enabled forward-thinking results that enhanced opportunity for the institution and its students. Beyond simply responding to minimal DCL requirements, the study examines how these three universities successfully exceeded compliance expectations to influence change on campus.

Background

The 2011 release of a “significant guidance document” by the federal government addressing university responsibilities related to sexual violence on campus changed both the legal and organizational landscapes of higher education. Known as the “Dear Colleague” Letter on Sexual Violence (Appendix A), the DCL describes universities' duties to take immediate and effective steps to respond to campus sexual violence in accordance with Title IX of the Education Act. Despite four decades of case law¹ under Title IX - a law intended to prevent gender discrimination - requiring universities to establish complaint and investigation procedures

¹ A summary of important cases and regulatory developments during this period can be found at Title IX Info, 2016; and Women's Sports Foundation, 2016.

for campus sexual misconduct, partial or complete disregard of Title IX obligations ran rampant. Incidents of sexual harassment and violence continued across campuses, with the majority of cases going unreported. Those who came forward felt stonewalled by inadequate institutional response and victim blaming (Krebs, Lindquist, Warner, Fisher, & Martin, 2007; Fisher, Cullen, & Turner, 2000).

High profile cases and growing activism bringing institutional shortcomings and survivor stories to light contributed to the Department of Education's Office for Civil Rights strengthening enforcement of existing Title IX law. Reminding universities of their legal obligations to maintain a safe campus free from gender discrimination, it released the DCL guidance. The Department of Education framed the DCL as not introducing any new law. Rather, it reinforced universities' existing obligations under Title IX to fully and effectively respond to, as well as take steps to prevent, sexual acts enacted against a person's will (U.S. Department of Education, Office for Civil Rights, Dear Colleague Letter, 2011). Despite arguments that the Department of Education overreached and the DCL should be declared invalid (described in more detail in Chapter 2, see Legality of the DCL), to date the 2011 DCL remains in force. In addition to being met with arguments questioning its legitimacy and legality, the DCL guidance was widely perceived as vague and over-arching, presenting significant challenges to university decision makers attempting to satisfy expansive directives with few clear standards (Cohn, 2011; Foundation for Individual Rights in Education, 2014; Kelderman, 2014; Koss, et al., 2014; Peterson, 2014; Vendituoli, 2014b; Wilson, 2015a). Given the serious repercussions of withholding federal funding from institutions violating Title IX, most

institutions found they had little choice but to comply with the DCL.² Although no university has ever had its funding affected in this manner, none want to risk being the test case in this new era of heightened enforcement of Title IX obligations (Dear Colleague Letter, 2011; Wilson, 2015a).

The federal government's strengthened stance to end sexual violence, introduced through the DCL, was precipitated by a variety of factors. Among them, the federal government was alarmed by data that continued to indicate a disturbing number of sexual assaults on university students. Multiple research studies provide evidence that at least one in five female students and one in sixteen male students are sexually assaulted during their undergraduate university experience in the United States (Anderson & Clement, 2015; Association of American Universities, 2015; Fisher et al., 2000; Krebs et al., 2007; U.S. Department of Education, Office for Civil Rights, Fact Sheet, 2011). The federal government recognized that devastating physical and emotional consequences resulting from crimes of a sexual nature – including depression, anxiety, suicidal behavior, post-traumatic stress, psychosomatic complaints, decline in academic performance, social isolation, and alcohol and drug abuse – interfere with students' rights to receive an education free from discrimination (Chang, Lian, Yu, Qu, Zhang, Jia, Hu, Li, Wu, & Hirsch, 2015; Fact Sheet, 2011; Jordan, Combs, & Smith, 2014; Mason & Lodrick, 2013). The magnitude of these conditions is compounded when students continue to attend classes together, run into each other across campus, or live in the same residence hall as their alleged perpetrator (Association of American Universities, 2015). Confronted by hostile environments, victim blaming, and lackadaisical institutional response in the face of complaints, outspoken survivors

² A handful of colleges remain independent from federal funding, for example Hillsdale College, MI; Grove City College, PA; and Patrick Henry College, VA (Baumgardner, 2014). Close to 30 waivers have also been granted to religiously affiliated colleges, exempting them from abiding by provisions of Title IX that are inconsistent with their religious beliefs, predominantly regarding issues of sexuality and gender (Stack, 2015).

and advocates rallied for change. Coordinated and unrelenting activism and lobbying efforts resulted, creating a cultural shift in understanding and addressing campus sexual assault (Burroughs & Katz, 2015; Dick & Ziering, 2015; Flanagan & Tso, 2014; Not Alone, 2016; Perez-Pena, 2013; Know Your IX, n.d.; Schonfeld, 2014; SurvJustice, 2016).

Credited as a crucial influence inciting stepped up investigation and enforcement of Title IX obligations, student activists demanding university accountability created ripples in cultural and institutional awareness of campus sexual violence. As the student activist movement grew and the federal government increased its scrutiny of institutional conduct, new organizational forms exploded onto the higher education scene. These included advocacy groups for accused students, lawyers specializing in representing male respondents in student hearings, safety and prevention apps for student use, packaged prevention programs for institutions, and consultants in everything Title IX related (Baker, 2014b; New, 2014). Third party, for-profit agencies touted their expertise in policy, training, and prevention consulting. Universities jumped at the opportunity to outsource some of this contentious and ambiguous work. The University of Missouri, for example, reportedly paid close to half a million dollars for a consultant to co-create its Title IX policies and training (U. of Missouri pays \$500,000 for Title IX consulting, 2014).³ George Washington University contracted with the president of a legal consulting firm to serve as interim Title IX coordinator (New, 2014).⁴ More than 2,000 higher education Title IX coordinators and investigators have been trained by a legally based, external, risk management agency developed in response to DCL obligations (New, 2014). Though perhaps filling a compliance obligation requiring prevention and response policies, such third party organizations are generally regarded as serving institutional interests, eliminating Title IX compliance-related

³ National Center for Higher Education Risk Management, www.nchem.org

⁴ Wise Results LLC (one person legal consulting firm out of Washington DC, no website).

risk, and protecting university image. They are often perceived as indifferent in advancing issues of student safety, gender equity, or the prevention of sexual assault, all of which are mandated under the DCL and Title IX (Baker, 2014b; Fact Sheet, 2011; New, 2014).

In addition to the uncharted territory institutional leaders must navigate in the face of national pressure to end sexual violence on campus, a plethora of connected legislation adds to their legal burden. Interplay between Title IX and the Clery Act (Clery), Violence Against Women Act (VAWA), Campus SaVE Act (Campus SaVE), and The Family Educational Rights and Privacy Act (FERPA) has reinforced the government's agenda to eradicate the hostile learning environments arising from sexual violence (American Council on Education, 2014; SurvJustice, 2016; U.S. Department of Education, Office for Civil Rights, Questions and Answers, 2014; White House Task Force to Protect Students from Sexual Assault, 2014). With prescriptive rules and harsh judgment of university actions, university leaders are left feeling, five years after the release of the DCL, worried and confused over their institution's responsibilities and actions regarding proper compliance under Title IX.

Statement of the Problem

There is a dynamic process that takes place in the construction of universities' sexual harassment and violence policies. But what do we know about that process? How do universities, seeking to balance educational mission with the judicial role imposed upon them by expanded legal requirements, consolidate confusing regulations, heightened concerns over campus responses, and institutional values in such a highly-charged and poorly defined environment? This research considers that process - one in which institutional policy is negotiated through a series of ongoing actions – resulting from a change in the institution's legal environment.

We know little about what leads some universities to move beyond merely reacting to a legal problem toward advancing new, substantive policies. We do know that universities possess the power to influence legal compliance and shape norms as they select, interpret, and challenge laws (Edelman, et al., 2001; Edelman, et al., 2010; Edelman & Suchman, 1997; Scott, 1994; Suchman & Edelman, 1996). But extant literature and research has left us with inadequate knowledge about what goes into the construction of such norms. Issues such as how the problem is defined; what is taken into account when making decisions; whose interests are valued and why; and how innovation is supported greatly influence institutional outcome and field development. This dissertation research provides preliminary answer to those questions. With revised expectations under the DCL, universities are being called on to investigate and adjudicate serious crimes, often blurring the lines between risk mitigation and educational mission. To complement higher education legal analyses, practice, and policymaking, greater insight into this dynamic process is needed to illustrate whether (and if so - how) universities are able to develop forward-thinking results that enhanced opportunity for the institution and its students as they address compliance obligations.

Purpose of the Study

University leaders and administrators, juggling the day-to-day demands of mitigating campus sexual misconduct matters with risk management and public accountability concerns, are eager for research that informs this contentious area of practice. This study examines the *how* and *why* of institutional decision making processes as universities reacted to changes in the Department of Education's administrative guidance addressing campus sexual violence obligations. How did universities respond to the DCL and why did they choose to do it that way? I examine the deliberation and policy-making organizational processes at three universities that

provided information-rich, insightful, and varied approaches to understanding and addressing DCL compliance. These cases advance the study's intent of informing our understanding of how universities can address legal obligations arising from a complex regulatory environment while enhancing opportunity for the institution and its students in the process. I studied three universities whose actions exceeded minimal compliance expectations. Institutional actors at these universities - leaders, decision makers, faculty, administrators, students, and other constituents – were able to use the DCL catalyst as an opportunity to advance change on campus. In doing so, they also influenced the organizational field and advanced issues of importance to society. Although the DCL provides the specific context for this inquiry, the research findings can be extrapolated to other complex university policy considerations in which the dynamic negotiation of social, organizational, and legal influences takes place.

With changes to the university's regulatory environment accelerating, pressure to comply with burgeoning rules has most universities reacting to the legal issue at hand. By addressing only legal obligations, however, and not taking into account the broader cultural context when making decisions, some of the best options for innovation and transformation may be lost (Siedel, 2002). The purpose of this study is to investigate the processes through which institutional policy is negotiated and strengthened as universities address legal compliance obligations. Adapting a four-step model introduced under the proactive law framework (Siedel, 2002; Siedel & Haapio, 2010, 2011), the study examines the process in which decision makers from these universities were able to progress from merely reacting the DCL to establishing promotive practices. In other words, moving beyond initial problem-solving responses that protect the institution from legal liability (reactive) to fostering collaboration and innovation in

order to take into account not only legal obligations, but other considerations of importance to the organization and society (promotive).

This study attempts to broaden our understanding of how, in the wake of ambiguous and contentious external legal requirements, universities can elevate decision making processes and policy outcomes by affirming possibilities within the scope of new regulations, rather than emphasizing compliance deficiencies. Being called on to fulfill a judicial role imposed upon them by expanded Title IX obligations, university leaders are intensely watching for strategies that satisfy compliance obligations while supporting institutional and community values. This study does not attempt to examine the complex cultural dynamics underlying the issue of sexual violence, harassment, and assault on campus. Nor is it intended to analyze the merits of different policies created in response to the law. Rather, it is a nuanced and in-depth examination of decision making processes that can be used to advance institutional capacity in moving beyond compliance to lawful, innovative responses to externally imposed legal directives.

Conceptual Framework

This study is premised on circumstances in which an outside legal force affects the organization, and those in it, creating opposition in the university's legal culture and environment. Organizational, legal, and educational scholars examining the close association of law and organizations refer to this concept as *legalization* (Gajda, 2009; Jasanoff, 1985; Meyer, 1983; Olivas, 2005; Selznick, 1969; Sitkin & Bies, 1994). Universities are not powerless in shaping laws determined outside the boundaries of the organization (exogenously created). Rather, the policies and programs they create in response give meaning to the law, influencing the law's interpretation and scope (endogenously created). This study is informed by the substantial literature in organizational theory of law being used by organizations to strategically

shape responses to legal mandates as they construct the meaning of compliance, thereby mediating the impact of regulations on institutional policies. Universities possess the power to influence legal compliance and mediate the laws' effects on their organizational interests as they select, interpret, and challenge laws (Edelman, 1992; Edelman et al., 2001; Edelman et al., 2010; Edelman & Suchman, 1997; Gornitza & Larsen, 2004; Gould, 2001; Scott, 1994; Suchman & Edelman, 1996). The extent to which they embrace and respond to legal concerns, however, varies (Edelman, 1990; Siedel, 2002; Siedel & Haapio, 2010, 2011; Sitkin & Bies, 1994). Multiple contributions to organizational theory provide the conceptual framework underlying the study's goal of better understanding the institutional decision-making process under increasingly legalized circumstances.

Research Questions

The over-arching purpose of this study is to better understand how university decision makers are able to enhanced opportunity for the institution and its students as they respond to externally imposed legal pressures. In order to gain insight into this process, I developed the following research questions to guide the study. The primary research question, *how is institutional policy negotiated around an ambiguous, multi-interest, regulatory prompt*, is supported by four sub-questions: How do multiple interests shape understanding of the issue? What influences the compliance outcomes chosen? In what ways are strategies on preventive solutions developed? Finally, how is space for innovation, collaboration, and/or proactivity created in the decision making process? Additional information relevant to the study's research questions is communicated in the methodology section (see Chapter 3, Review of the Problem and Guiding Research Questions).

Nature of the Study

This qualitative, multi-case study research examines the organizational space in which university actors interpret ambiguous Title IX compliance obligations. Three public, 4-year, doctorate-granting, research universities that organized teams of university constituents to review and respond to the DCL provide the sample for this study. I gathered primary data from 21 one-on-one, semi structured interviews of members of the universities' Title IX DCL review teams. Participants held leadership positions within the dean of students office, academic advising, institutional equity, Title IX compliance, conduct, counseling services, athletics, housing, LGBTQ services, and ability and mobility services. The sample also included graduate and undergraduate students. Such participants, representing diverse areas of expertise across campus, are considered important contributors to issues of campus sexual violence (Armstrong, Hamilton, & Sweeney, 2006; Minow & Einolf, 2009; Miranda, 2013; Moynihan, Banyard, Arnold, Eckstein, & Stapleton, 2010). Secondary data also consisted of campus observations, participation in programming and awareness events, and document analysis of public records.

Key Concepts: Overview and Definitions

Title IX encompasses much more than the issues raised by the DCL. As a gender discrimination law, it pertains to discrimination on the basis of sex in all education programs and activities, including hiring and employment practices, awarding scholarships, access to health care, quality of housing facilities, availability and funding of sport activities, etc. The DCL also addresses more than the issue of campus sexual violence. It prohibits gender-based aggression, intimidation, or hostility based on sex or sex stereotyping, even when such harassment does not involve sexual acts. Sexual violence is a form of sexual harassment prohibited under Title IX. Sexual violence, defined below, includes a number of sexual acts committed against a person's

will. These include rape, sexual assault, sexual battery, and sexual coercion. Lack of consent to such acts renders them illegal. Perpetrators can be liable in a criminal court, which could result in conviction, jail or fines paid to the state. They can also be responsible in civil court for damages suffered by the complainant (plaintiff) and ordered to pay money to them. Within a school's jurisdiction, a perpetrator can also be sanctioned for violating general student codes of conduct or specific codes governing sexual misconduct.

Sexual misconduct policies referred to in this dissertation, unless otherwise noted, govern only student conduct. The DCL covers other permutations of sexual harassment, involving faculty and student, or supervisor and subordinate, for example. University policies against sexual harassment by faculty or staff, and the procedures to follow when filing a complaint of such activity, are often separate policies from the ones governing student behavior, however, or have yet to be addressed further to the DCL guidance. The DCL defines sexual violence as:

Physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX. (Dear Colleague Letter, 2011, p 1-2)

While some universities have begun to adopt this language, many continue to use the term sexual misconduct, which universities would normally define in its codes of conduct. I use the term university throughout the dissertation document to refer to accredited, degree-granting, federally funded colleges, universities, and other institutions of higher education.

Delimitations

I imposed certain delimitations to complete this research study. Most notably, I chose to study three universities that showed initiative in its responses to the DCL, as opposed to a single institution or contrasting two different cases. The three research sites were not necessarily ideal

candidates, but due to the obstacles involved in recruiting participants, I elected to move forward with these institutions after having been turned down by others I had approached. In addition, I guaranteed anonymity to both individual participants and the universities themselves. I made this decision based on the sensitive nature of the topic, negative media attention of university missteps and inaction that affected climate at the time of sampling, institutional actors' fear of Office for Civil Rights investigations and punitive reach, and belief that offering confidentiality would ease participants anxiety in contributing to this research.

Organization of the Document

My dissertation is organized in a traditional social science format. Chapter 1 introduces my research topic, focus, and contributions of the study to the field of higher education. Chapter 2 familiarizes the reader with various environmental considerations of importance to the study: the university legal environment, Title IX obligations, the impact of the DCL, and the complex, difficult, and sensitive dimensions intertwined in issues of campus sexual violence. It also identifies the conceptual frames that provide the theoretical grounding and research direction for the study. It is here that I synthesize relevant inter-disciplinary research from higher education, sociology, organizational studies, and law. Chapter 3 subsequently sets forth the methodological approach, rationale, and design I felt appropriate for undertaking this research study.

Collectively, chapters 4 to 7 convey the findings and discussions from the data. Chapter 4 communicates the organizational contexts of the research sites, how addressing the DCL took on different forms at each site, and how the universities prepared their organization for change. Chapter 5 speaks to the multiple leadership roles actors adopted that were instrumental in the review teams' success. Chapter 6 focuses on the collaboration dynamics involved in creating the team culture that enabled members to advance legally compliant and context appropriate policies

and protocols that exceeded compliance obligations. Tying up the findings, Chapter 7 addresses specific changes advanced by the review teams, the diffusion of these practices, and the intended and unintended positive effects that have resulted from universities' post DCL efforts to address and combat campus sexual violence. Finally, Chapter 8 wraps-up the dissertation with my conclusions and recommendations for research and practice.

Significance of the Study

More than five years have passed since the Department of Education released its DCL guidance "clarifying" universities' Title IX obligations. Since then, two additional "clarifications" have been issued addressing DCL ambiguities (Appendix B, Questions and Answers on Title IX and Sexual Violence, 2014; Appendix C, Dear Colleague Letter: Title IX Coordinators, 2015). A widely held perception across higher education is that the combined "guidance" documents have raised more issues than they have clarified (Duehren & Talkoff, 2016; Mangan, 2016; New, 2016a, 2016b; Russell, 2015; Special Report on Title IX Enforcement, 2016; The Trends Report: 10 Key Shifts in Higher Education, 2016; Wilson, 2015a, 2015b). The post DCL campus environment remains unsettled, with pressure on universities to address and prevent campus sexual violence more intense than ever.

The Chronicle of Higher Education's 2016 Trends Report named institutional "handling" of sexual assault complaints as a key shift in higher education, placing university leaders on the defensive "to stay ahead of the curve" (The Trends Report: 10 Key Shifts in Higher Education, 2016). Intensifying enforcement, the Office for Civil Rights' budget was increased by 107 million dollars in 2016 to hire additional Title IX investigators (Special Report on Title IX Enforcement, 2016). Not only is the number of Title IX investigations against universities mounting, but the investigations themselves are becoming increasingly harsh (Special Report on

Title IX Enforcement, 2016; Wilson, 2015b). Issues of how best to address campus sexual violence persist, with controversial responses often pitting student concerns against institutional interests (Baker, 2014a; Baker, 2014b; Kingkade, 2014, 2015; New, 2016b). Balancing the complexities underlying the multiple issues implicated in campus sexual violence is complicated. It involves more than having an updated code, some investigators, and resources to provide to students (Wilson, 2016). Higher education leaders and practitioners are eager for research that will assist them in navigating increasingly intense governmental oversight, public scrutiny, and best practices in the Title IX compliance environment (Kelderman, 2014; New, 2016a, 2016b; Vendituoli, 2014b; Wilson, 2014a, 2015a, 2015b).

This research advances our understanding of the organizational environment in which the dynamic negotiation of social, organizational, and legal influences takes place by examining the process in which institutional policy is negotiated following a change in the institution's legal environment. In doing so, institutional leaders will better understand how universities have the ability to shape the construction of legal responses as they enhance opportunity for the institution and its students while addressing compliance obligations. Such a study is important to the field of higher education in order to expand our understanding of how institutions respond to their growing responsibilities under Title IX and other regulations. Knowing more about how such responses are constructed will help us to understand normative practices being redefined as universities are thrust into new and developing roles – such as the investigators and adjudicators of serious crimes – that raise issues surrounding educational mission, shared-governance, institutional autonomy, judicial deference, and academic freedom.

Chapter 2: Literature Review and Conceptual Frame

Organizational Environment

Higher education institutions in the United States are extremely diverse. That the sector is experiencing increasing amounts of organizational diversification and stratification as resources and status become more polarized has been well documented (Altbach, Gumport, & Berdahl, 2011; Bastedo, 2009; Bess & Dee, 2012; Blackburn & Lawrence, 1995; Goldrick-Rab, 2010; Gumport, 1997; Stevens, Armstrong, & Arum, 2008). The extent to which universities are accountable and responsive to their environments depends, in large part, on institutional legitimacy and financial stability. With limited resources, universities are often called to choose between competing social, cultural, political, legal, or economic priorities. This often entails a balancing of interests and demands between internal and external stakeholders, including tensions existing between institutional self-interest, societal goals, and individual benefits (Bess and Dee, 2012).

University as a Public Good

Higher education has a long-standing tradition of fulfilling a public mission in society. Its responsibility in realizing significant social, cultural, political, economic, and technological benefits has significantly influenced public policies related to its affairs. The increasing commoditization of higher education as a private good available for trade, however, has shifted its duty to this core public commitment (Bowen, 1997; Harkavy, 2006; Kezar, Chambers & Burkhardt, 2005; Labaree, 1997; Slaughter & Rhoades, 2004). With the effectiveness of the

university premised on a covenant struck between the university and the general public in which society financially supports the university and grants it great autonomy, and in return the university invests its resources and freedoms to serve the larger public interest, shifts in this relationship appear to be weakening the basic social compact underlying higher education (Finkin & Post, 2009; Rhodes, 2001). Increasing federal encroachment and oversight on the academy has both contributed to this decline and attempted to preserve its noble commitment to the public good (Dunham, 2010; Gajda, 2009; McLendon & Hearn, 2006; Task Force on Federal Regulation of Higher Education, 2015; Toma, 2011; Yudof, 1981).

Specific laws and statutes impose upon universities a duty to provide a safe and secure learning environment for the campus community (among others, the Campus Sexual Violence Elimination Act, 2013; Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 1990 et. seq.; Title IX of the United States Education Amendments of 1972, 2012; Violence Against Women Reauthorization Act, 2013). An increase in reported campus crimes, including catastrophic mass shootings on campus, and greater public scrutiny of university actions have compelled universities to focus more attention on their role in providing safer campus environments (Letarte, 2014). The Department of Education intensified the campus safety discussion by setting out ambitious public policy objectives for universities through the DCL. Among them, universities are being asked to confront campus sexual harassment and violence, promptly and equitably address its effects, and prevent its recurrence (Dear Colleague Letter, 2011). Questions over goal displacement, mission drift, and appropriateness of universities fulfilling this quasi-criminal justice, investigative, and judicial role have contributed to a highly volatile sector in which confusion, controversy, and scrutiny eclipse universities' every action (Harris, 2015; Henrick, 2013; Kelderman, 2014; Koss, et al., 2014; New, 2016a,

2016b; Vendituoli, 2014b; Wilson, 2014a, 2015a, 2015b; Yoffe, 2014). With the national conversation focusing on what universities are getting wrong as they address issues of campus sexual violence, this study helps to illuminate what universities may be getting right as they act to understand their legal responsibilities and construct compliance with the law.

Legal Landscape

The diffusion of legal considerations throughout all expanses of campus life has become an undeniable reality of university functioning in the 21st century. Universities are required to comply with a myriad of laws and regulations as they craft policies designed to satisfy divergent interests while adhering to core educational values. While avoiding legal liability is an important motivator in addressing legal issues facing universities, it is not necessarily the first or only concern. Universities respond to the law to establish legitimacy and advance self-interests (Feldman & Levy, 1994; McLendon & Hearn, 2006; Olivas, 2002; Tierney, 1993). Policy considerations, as well as the university's mission and priorities, often lead institutions to do more than the law requires (Pavela & Kaplin, 2006; Roth, Sitkin, & House, 1994; Siedel, 2002; Siedel & Haapio, 2010, 2011).

Three distinct facets of law make up an organization's legal environment. The regulatory environment regulates organizational activity, usually at the hands of the state, to actively control organizational behavior. Title IX of the Education Act is an example of the U.S. Department of Education's regulatory activity in higher education. The interactional environment provides an arena for organizational action, enabling institutional actors to influence how problems and disputes are constructed and resolved. Here we find lawsuits, public hearings, Freedom of Information Act requests, and numerous informal maneuvers and negotiations. The definitional environment defines the basic building blocks of organizational forms and interorganizational

relationships between social actors (Edelman & Suchman, 1997; Scott, 1994; Suchman, 1993). In this space, various classes of organizational actors are constructed by the legal system, which also delineates the relationships between them. Classification of higher education institutions (2-year, 4 year, research, vocational, etc.) affects what the organizations are permitted to do (level of degree they can confer, for example) and influences the relations between actors (how contracts are written and enforced, what governance regimes can exist). Although this legal environment can constrain organizations, actors have the power to shape institutional rules through strategic behavior as they select, interpret, and challenge laws. This can be seen in lobbying, activism, and exploration of alternative models that diffuse throughout the organizational field into standards that become accepted by the courts (Scott, 1994). Together, these legal rules and processes operate to shape organizations and influence inter-organizational relations.

Legal counsel is an integral institutional actor in inter-organizational relations where the law intersects with organizational life. Universities routinely rely on attorneys to provide legal advice, information, and recommendations to administrators on a myriad of complex and expanding issues. Campus lawyers support relationships at every administrative and operational level within the university (White, 2008). Not all universities have the benefit of in-house counsel, however. While the National Association of College and University Attorneys boasts a membership of over 3800 attorneys who provide legal advice to approximately 1500 member institutions, this loosely represents less than a third of the 4700 two and four year colleges in the United States (National Center for Educational Statistics, 2014; White, 2008). One study (albeit small with 87 responding institution) found that only 55% of respondents have in-house legal counsel. Among those institutions with a general counsel's office, half were staffed by only one

attorney. Six percent of universities had a campus legal unit staffed by over 10 attorneys (Gelpi, 2013). Other models of legal-service delivery for institutions with limited access to in-house legal counsel include relying on legal advice from attorneys who serve on the board of trustees, law professors, or the office of the state attorney general (Bickel, 1994). Such methods of legal-service delivery cannot match the expertise of competent in-house legal counsel, who offer the advantage of not only navigating tricky legal situations because of their legal expertise, but because of their understanding of the organization and participation in strategic planning (Gelpi, 2013; Siedel, 2002; White, 2008). Lawyers, particularly high status lawyers, play an important role filtering legal information for the organization. They are often the ones that read and interpret statutes and guidance, diffusing knowledge throughout the organization as they construct the meaning of law (Edelman, 2016; Edelman, Krieger, Eliason, Albiston, & Mellema, 2011; Edelman, Uggen, & Erlanger, 1999).

Campus Sexual Violence

An issue threatening students' rights to equal access to education and universities' provision of a safe educational environment is sexual violence on campus. Strengthened federal laws and guidance, combined with pressure from activists and national media attention of institutional failings and missteps around contested issues of campus sexual assault and justice for survivors, have created an environment in which colleges and universities are under greater scrutiny than ever to address this complex societal issue (Bazelon, 2015; Dear Colleague Letter, 2011; Grigoriadis, 2014; Harris, 2015; Kelderman, 2014; Koss, et al., 2014; Peterson, 2014; Vendituoli, 2014a; Wilson, 2015a; White House Council on Women and Girls, 2014; White House Task Force to Protect Students from Sexual Assault, 2014). Acts of campus sexual violence have persisted - largely unchecked - for decades. A significant body of research reveals

that one in five female students and one in sixteen male students is sexually assaulted during college, with risks to members of the LGBTQ community being even higher (Anderson & Clement, 2015; Association of American Universities, 2015; Cantor, Fisher, Chibnall, Townsend, Lee, Bruce, & Thomas, 2015; Dear Colleague Letter, 2011; Fisher et al., 2000; Koss, Gidycz, & Wisniewski, 1987; Krebs et al., 2007; Thomas-Card & Eichele, 2015; U.S. Department of Education, Office for Civil Rights, Revised Sexual Harassment Guidance, 2001). Linkages between experiences of sexual violence, decline in academic performance, social isolation, and mental health issues - including anxiety, depression, eating disorders, and suicidal behavior - have been clearly established (Chang et al., 2015; Dear Colleague Letter, 2011; Fact Sheet, 2011; Jordan, 2014; Jordan et al., 2014; Mason & Lodrick, 2013). There is little room left for doubt: Sexual violence is occurring on campuses across the country, it has detrimental consequences, and failing to take action to eliminate it has legal consequences.

Despite a clear problem and legal obligations to address and mitigate matters connected to campus sexual violence, many universities continue to show indifference in fulfilling their moral and legal responsibilities to act. Socially constructed misconceptions about sexual violence, for example commonly held “rape myths,” continue to occupy much of the public discourse (Aronowitz, Lambert, & Davidoff, 2012; Bannon, Brosi, & Foubert, 2013; Burgess-Proctor, Pickett, Parkhill, Hamill, Kirwan, & Kozak, 2016; Hayes, Abbott, & Cook, 2016; Hayes, Lorenz, & Bell, 2012; Rader, Rhineberger-Dunn, & Vasquez, 2016). Such misconceptions perpetuate false beliefs regarding incidences of sexual violence, questioning the circumstances of the scenario and attributing blame to those who have been assaulted (Burt, 1980; Jimenez & Abreu, 2003; Lonsway & Fitzgerald, 1994). Victim blaming attaches a level of responsibility to the assaulted student because of behavior perceived to have contributed to the

incident, such as drinking alcohol, dressing provocatively, or perceptions of promiscuity (Burt, 1980; Hayes-Smith & Levett, 2010; Macrae & Shepherd, 1989; Moor, 2010; Schwartz & Leggett, 1999; Whatley, 2005). It may also involve preconceived notions of what constitutes “real” sexual assault versus a regrettable sexual experience, and draws on issues of credibility as to whether the assaulted student lied about the incident (Burt, 1980; Edwards, Turchik, Dardis, Reynolds, & Gidycz, 2011; Lonsway & Fitzgerald, 1994; Payne, Lonsway, & Fitzgerald 1999). Even with methodologically rigorous research finding that only 2 to 10 percent of campus sexual assault accusations are false (Lisak, Gardinier, Nicksa, & Cote, 2010; Lonsway, Archambault, & Lisak, 2009), rape myths act to revictimize the assaulted person (especially when sanctioned by law enforcement officials, lawyers, and doctors), and serve as a mechanism for blame and silencing (Campbell, 1998; Ryan, 2011). These dynamics contribute to sexual assault being the most underreported serious crime in the country. Of the incidents that are reported by the general public (including but not limited to university occurrences), less than 5% are prosecuted. Of those, between 0.2 to 2.8 percent result in a conviction involving jail time for the assailant (Lonsway & Archambault, 2012). This leads to an understated theme drowned out by the “rape myth” narrative: that the number of perpetrators who avoid prosecution is far greater than the number of innocent people erroneously charged (Krakauer, 2015). The challenge for universities under the current regulatory regime is how to continue to narrow the gap, giving serious consideration to the issue while balancing educational mission and legal rights.

Title IX

Title IX of the Education Act prohibits federally funded recipients, such as universities, from discrimination on the basis of sex under any education program. The gender discrimination law affords protection to women, men, transgender, and gender nonconforming individuals in

diverse areas including parental rights, educational access, sexual harassment, employment, athletics, technology, and standardized testing. Although enacted in 1972 with an emphasis on equity in sport programs, it has undergone over 20 amendments and judicial interpretation that have expanded the scope of discrimination under Title IX (*Gebser v. Lago*, 1998; *Haffer v. Temple University*, 1988; Title IX, 1972 et seq.; Title IX Info, 2016, Women’s Sports Foundation, 2016).

Included under this broad charge is the issue of campus sexual violence. The Department of Education’s Office for Civil Rights, the federal agency charged with interpreting and regulating Title IX compliance, first established guidelines to protect students from sexual harassment in 1997. That guidance was revised through a formal rule-making process, resulting in the definitive – and still in effect - guide for universities’ legal obligations in the treatment, prevention, and administration of campus sexual harassment and assault (*Revised Sexual Harassment Guidance*, 2001). Despite these prevention and response obligations, incidents of sexual harassment and assault against students showed little improvement. Thousands of universities appeared to have inadequate, or non-existent, policies and protocols in place to adequately address, respond, and mitigate the problem. In April 2011, with rising incidents of campus sexual violence, institutional under reporting of the offenses, and studies linking student dysfunction (depression, substance abuse, suicide) and impeded academic progress to experiences of campus sexual violence, the Department of Education issued the DCL. Put forward as simply a supplement to the 2001 guidance, the DCL provoked major change in Title IX law, policy, and culture (*Dear Colleague Letter*, 2011; Franke & White, 2011; Henrick, 2013; Q&A with Harvard’s Title IX officer, 2014).

Title IX is only as effective as the remedy it provides for noncompliance. With a dual enforcement scheme, a complaining student can sue the university in civil court for violation of the statute. This is often done through contentions that universities ignored students' civil rights, perpetuated unsafe activity or specific risks on campus, or showed deliberate indifference to their allegations (Harris, 2015; Henrick, 2013; Title IX investigation tracker, 2016). If the suit were successful, money could be awarded for damages the student suffered as a result of the university's actions (or inactions). This does not preclude the student from also filing a complaint with the Office for Civil Rights, the second method of enforcement. Should the complaint be substantiated and the university found to have violated Title IX, its federal funding could be revoked. This power has not been exercised in the more than forty-year history since the statute's enactment. The closest this is known to have occurred was in 2014 when Tufts University revoked its agreement with the Office for Civil Rights to remedy its Title IX violations. The Office for Civil Rights responded by *threatening* to cut Tufts' federal funding. The standoff between the government agency and the university was resolved when Tufts conceded to cure its breach (Henrick, 2013; Kelderman, 2014; Peterson, 2014).

Dear Colleague Letter on Sexual Violence

In the five years since its release, the 2011 DCL has significantly impacted higher education's compliance culture and altered structural patterns and integration across university organizations. The 2011 letter was issued to remind schools of their Title IX accountability in responding to sexual violence allegations. It clarified and expanded some elements of regulation while defining new terminology and obligations. Prior to the 2011 letter, the prevailing terminology was of sexual harassment on campus. Sexual violence surfaced as an extreme form of hostile environment sexual harassment, defined in the 2011 letter as:

Physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX. [p 1-2.]

This definition covers all permutations of sexual harassment in the campus environment:

between students, involving faculty and student, among supervisor and subordinate, etc. Its jurisdiction also extends to allegations occurring off campus or outside the university's education programs or activities (Dear Colleague Letter, 2011; Franke & White, 2011). As such, no member of the university community escapes its scope. The 2011 letter is not in itself a new law, yet represents a significant change to university legal environments, especially because the DCL is issued by the same governmental agency that investigates and enforces Title IX. Parts of the DCL are ambiguous, providing universities discretion in interpreting and responding to its direction.

The 19-page DCL outlined 71 "shoulds," 46 "mays," 17 "recommends," and 41 "musts" as guidance for universities to address issues of campus sexual misconduct (Five Colleges Compliance Website, 2012). Written in heavy legalese, the DCL offered broad suggestions with little context and few examples. In addition to outlining institutional obligations under Title IX regarding sexual violence, including mandatory language to be disseminated, minimal institutional response policies, Title IX coordinator roles and responsibilities, grievance procedures, and compliance requirements, the 2011 letter stipulates that preventive measures be implemented. These include education programs for new students, faculty, and staff; grievance procedures that provide for ending incident recurrence; maintaining a culture of prevention to stop harassment in the first place; and steps to prevent retaliation by the perpetrator against the accuser (Dear Colleague Letter, 2011; Franke & White, 2011). The letter offers little insight for

universities on the type of promotive or proactive practices effective in addressing campus sexual harassment and sexual violence.

University leaders were alarmed by the flood of Office for Civil Rights investigations taking place on the heels of the 2011 DCL. In 2014, the Office for Civil Rights released a list of universities under investigation for Title IX sexual violence violations. Fifty-five universities had the dubious distinction of finding themselves on the list (Gray, 2014; U.S. Department of Education, Office for Civil Rights Press Release, 2014). Exponentially growing, there are now 234 sexual violence investigations at 184 institutions. These investigations of alleged violations were originally contemplated to take 180 days to complete. Investigations have grown longer and more complex, some dragging on for years, with the average Title IX sexual misconduct investigation taking 1 year and 3 months to finish. Investigations have been evenly split between public and private institutions. The Office for Civil Rights has reached a decision in only 17% of their open cases. Some universities, more than 4 years after the investigation began, are still waiting for resolution (Mangan, 2016; Title IX investigation tracker, 2016).

The DCL requires that universities create and publicize sexual misconduct policies, provide prevention and education programs to combat sexual violence, and offer ample resources to aid survivors (Cantalupo, 2016; Henriksen, Mattick, & Fisher, 2016). Scrambling to respond to the more straightforward directives in the letter exposed additional layers of ambiguity. Despite clear guidance that universities must designate a Title IX coordinator, for example, issues addressing the scope of their responsibilities, necessary skills, or degree of independence were not raised in the DCL. Expertise for such a position proved to be wide-ranging. While some coordinators possessed backgrounds in law or as former federal Office for Civil Rights investigators, others held administrative positions in existing organizational units and gained

knowledge of applicable policies and misconduct practices through on-the-job training (Walesby, 2013). Organizational affiliation of Title IX coordinators also varied among institutions, with some coordinators operating directly out of the president's office (University of California Berkley, University of Virginia) while others were housed in academic affairs (Yale, Northwestern), student affairs (Georgia State University, Rutgers) or human resource units of institutional equity and diversity (The State University of New York - Buffalo State, University of Arizona, University of Maine). Many institutions created structural changes, including reorganizing existing divisions or creating new organizational units (Harvard, Ohio State University, Penn State), to address the numerous and complicated issues connected to campus sexual misconduct, DCL, and Title IX obligations.

Evidentiary Standard

One of the more clear-cut shifts in the 2011 DCL revised the standard of proof required of university adjudication of campus sexual violence. The new "preponderance of evidence" standard replaced the stricter pre 2011 DCL "clear and convincing" evidentiary standard. Traditionally, the preponderance of evidence standard was used in civil suits where one party (plaintiff) would sue another party (defendant) for a perceived wrong (defamation, harassment, etc.). In a civil case, where money is awarded for damages and jail is not at issue, the preponderance of evidence (or more-likely-than-not) standard applies. Many universities were using the preponderance of evidence standard prior to the DCL. The DCL mandated that all schools now adopt that standard (Dear Colleague Letter, 2011).

The switch in the burden of proof evolved from the public policy intent of ensuring that campus sexual assault adjudication would be equitable and impartial to both the accused and the complainant (Henrick, 2013; Title IX, 1972 et seq.; Revised Sexual Harassment Guidance,

2001). It has resulted in a lowering of the evidentiary standard necessary for a finding of responsibility (or guilt) against an accused. Some argue the lower “more likely than not” burden of proof is an easier standard for the complainant to meet and does not sufficiently protect the rights of accused students. Courts have “recognize[d] that university sexual misconduct proceedings are serious matters with “tangible sanctions” like suspension or expulsion, and that states have an important interest in ensuring those procedures are fair” (Doe v. Hazard, 2016; Harris, 2016). As universities attempt to balance the rights of complainant and accused students, they have been met with an increase in civil lawsuits instigated by aggrieved students - on both sides of the issue - asserting discrimination on the basis of sex, due process violations, or breach of contract (Harris, 2015). Although generally an uphill battle for plaintiffs suing universities, courts are increasingly finding university policies or procedures to be “flawed and untenable,” ruling in the plaintiff’s favor or creating sufficient pressure for universities to settle the suit (Doe v. University of California, San Diego, 2015; Harris v. St. Joseph’s University, 2014; Mock v. University of Tennessee at Chattanooga, 2015; Wells v. Xavier University, 2014).

Legality of the DCL

The prevailing legal interpretation of the 2011 DCL is that it is an “administrative guidance document” that adds clarity to interpreting the current state of Title IX law (34 C.F.R. § 106, 1972 et seq.; Dear Colleague Letter, 2011; Henrick, 2013; Q&A with Harvard’s Title IX officer, 2014). However, alternative legal arguments have been raised as to the legality of the DCL’s mandates. While there seems to be agreement that guidance from the federal government is not law, there is division over the extent of “guidance” versus “rulemaking” in the DCL. The most striking example raised to clarify this point is the preponderance of evidence mandate. As mentioned above, the DCL explicitly changed the standard of proof universities must use in

adjudication of sexual assault complaints. According to the Office for Civil Rights, institutions not using the preponderance of evidence standard are not in compliance with Title IX and risk losing federal funding (Foundation for Individual Rights in Education [FIRE], 2014; Henrick, 2013; U.S. Department of Education, Office for Civil Rights, Title IX and Sex Discrimination, 2015). There seems to be mounting support for the argument that the DCL is invalid because its substantive rulemaking violates the Administrative Procedures Act. Enacted without either public notice or opportunity to comment, some believe the Office for Civil Rights violated the law when it issued the 2011 DCL (Cohn, 2011; FIRE, 2014; Harris, 2015; U.S. Senate Subcommittee on Financial & Contracting Oversight, 2014). The issue remains unresolved (due largely to interpretations of substantive versus non-substantive rule making) and universities continue to recognize the 2011 DCL and its subsequent clarifications as the law they are required to follow. There is considerable pressure on universities not to antagonize the Office for Civil Rights, who, until the ambit and authority of the DCL are resolved, remain subject to the Office for Civil Rights' investigative and enforcement authority.

Post DCL Regulations and Guidance

Despite guidance, amendments, and new laws designed to increase transparency, reduce gender-related crime, respond to constituent needs, enhance student rights, set standards for disciplinary proceedings, initiate campus-wide prevention and education programs, and establish community partnerships (with local police, for example), campus sexual violence remains an area fraught with controversy, enmeshed in dispute, and besieged by politics. The 2011 DCL proposes some language and guidelines to address this critical problem. Given its lack of direction in certain areas and ambiguity in others, institutional approaches to address the multiple dimensions of the issue continue to evolve. Responding to the many unanswered questions raised

by the 2011 DCL, the Department of Education’s Office for Civil Rights released a “significant guidance document” to “further clarify the legal requirements and guidance articulated in the DCL and the 2001 Guidance” and to provide “examples of proactive efforts schools can take to prevent sexual violence and remedies schools may use to end such conduct, prevent its recurrence, and address its effects” (Questions and Answers on Title IX Sexual Violence, 2014). The 52 question-answer items reference permissible institutional actions (as an example, “a school *may* use student disciplinary procedures, general Title IX grievance procedures, sexual harassment procedures, or separate procedures to resolve sexual violence complaints”), compulsory actions (for instance, schools are *required* to adopt and publish grievance procedures) and preferred actions (such as, “Title IX coordinators *should* not have other job responsibilities that may create a conflict of interest”) [emphasis added]. The Q&A was followed a year later by a Office of Civil rights guidance on Title IX coordinator responsibilities, advising universities support the coordinator’s duties, ensure their independence, and designate numerous deputy coordinators as needed (Dear Colleague Letter on Title IX Coordinators, 2015). In the four year period between the 2011 and 2015 DCLs, the Campus SAVE Act (2013), VAWA (2013) and amendments to Clery (2014) were all signed into law, expanding the capacity of the Clery crime disclosure act and overlaying prescriptive Title IX requirements. The scope of duties required by universities to create and publicize sexual misconduct policies, provide prevention and education programs to combat sexual violence, and offer resources to aid survivors were extended to a wider range of gender identity, domestic violence, dating violence, and stalking incidents (Cantalupo, 2016; Henriksen et al., 2016; Phillips Lytle, 2013).

In addition to these different legislative actions, the Obama administration established an advisory task force in 2014 to coordinate responses and promote evidence-based practices

designed to address campus sexual assault and bring institutions into compliance with the law (White House Press Release, 2014). The White House Task Force to Protect Students from Sexual Assault released numerous reports, resource guides, tool kits, campus climate survey data, and recommendations for responding to sexual assault, all in an effort to raise awareness and increase resources available to respond and prevent campus sexual violence (Not Alone, 2016). As universities construct responses to these extensive mandates, challenges will land before the courts for judicial interpretation. Universities have the opportunity to use the change in the law as a catalyst to design procedures and reframe the issue to move beyond basic compliance toward strengthening campus culture and values. Examining this issue through the organizational process of how universities are acting to understand and address their legal responsibilities, the current study offers insight into the interpersonal dynamics and organizational investment required to think broadly about the law to implement policies that become a source of institutional and societal opportunity and advancement as universities shape the law's meaning.

There is very little scholarly attention being paid to the legitimacy, symbolism, and substance underlying the development and implementation of universities' sexual violence policies and protocols. In one emerging, but as of yet unpublished, research study combining sociological and higher education frameworks, a field-level examination of 380 universities in the United States analyzes whether institutions are responding to the letter of the law (exhibiting minimal or symbolic compliance), as opposed to the spirit of the law (to end sexual violence on campus) (Badke, Porter, Garrick, Armstrong, Levitsky, 2016). Another interdisciplinary study, drawing on perspectives from sociology, justice studies, and psychology, examines how universities plan and respond to issues of campus sexual violence. Preliminary results from this

research identify four organizational problem areas facing universities as they attempt, through their actors, to develop and implement effective sexual assault policies. First, arising from universities' origins to serve "able-bodied, privileged white males" (Federation for the Humanities and Social Sciences, 2016), university policies and services are often insufficiently designed to meet the needs of non-traditional groups. Second, universities overwhelmingly lack the financial resources necessary to implement the changes they ideally seek. Third, conflict between protecting the university's reputation and addressing students' best interests is difficult for university administrators undertaking the revisions to solve. Finally, those charged with revising sexual violence policies must have adequate training and expertise around sexual assault matters (Federation for the Humanities and Social Sciences, 2016; Shanker, 2016). While these developing studies provide valuable insight into organizational considerations influencing universities' construction and implementation of new policies, there remains a gap in the literature, and in our understanding, of how this internal reevaluation and reformulating process is shaping university behavior and policy negotiation in the construction of post DCL, Title IX compliance.

Conceptual Framework

Examining the epidemic of campus sexual violence using the metaphor of a river helps to illustrate challenges with DCL/Title IX compliance:

There is a river where lots of people wade. The bottom has lots of sharp rocks that cut people's feet. The DCL specifies that universities adjudicate violence fairly. This could mean doing a good job bandaging up people's feet after being cut. It also stipulates universities should conduct climate surveys. Maybe this means counting the rocks in the river, or counting how many people cut their feet on the rocks? It does nothing about the actual rocks in the river. Education and prevention programs are required. Many of these programs train people to avoid rocks or caution them to wear water shoes when wading in the river. The rocks are unaffected. Compliance with the DCL and Title IX does not

require the rocks be removed. Or that their sharpness be remedied. The law does not speak to effectiveness in education or prevention.⁵

What will colleges and universities do about the rocks? How are they figuring this out? Do they just want to conceal the rocks when the rock counters come? How much will attending to the rocks cost? How much will it cost if they don't? What are the ramifications of each? What are other universities doing about the rocks? Organizational research provides a means to examine these social, economic, political, and field-level considerations that shape behavior in universities (Bastedo, 2009; Bess & Dee, 2012; Fligstein, 2001a; Kezar & Dee, 2011; Rojas, 2007). Analyzing organizations and their practice, as exemplified in this study by the decision-making processes involved in understanding and responding to legally ambiguous mandates, can expand scholars' understanding of organizational stability, adaptation, and change (Cameron, 1984; Fligstein, 2001a; Kezar, 2001). It also provides insight on institutional influences affecting macro-level trends and micro-level individual behavior (Suchman & Edelman, 1996; Tierney & Bensimon, 1996). Intersecting legal and organizational analyses, organizational research provides important insight into universities' meaning-building processes as actors shape understanding and construct responses to the law in uncertain environments (Suchman & Edelman, 1996).

Organizational theory comprises a body of knowledge addressing how and why organizations function. It is concerned with understanding how the internal organizational structure of formal, complex, organizations operates to motivate actors and generate outcomes consistent with the goals of those who control the organization. It also considers how the external environment effects what goes on inside the organization (Fligstein, 2001a; Fligstein, 2001b;

⁵ Modified from presentation by Holly Rider-Milkovich and Anne Huhman, SAPAC, Nov 11, 2015, undergraduate lecture in Title IX seminar class, *Organizational Studies 495*, University of Michigan.

Heugens & Lander, 2009; Meyer, 2008; Meyer & Rowan, 2006; Scott, 2001). Through these insights, it informs the practice of leadership and management (Bess & Dee, 2012; Fligstein, 2001a). With its origins in industrial efficiency, organizational theory developed different lines of scholarship through contributions and competing theoretical perspectives from such disciplines as economics, political science, psychology, and sociology. These perspectives differ in terms of their conceptualization of organizational characteristics such as choice, influence, environment, development, and change.⁶ It is modern organizational theory with its integration of organizational and individual interests, emphasis on the dynamic process of interaction, and characteristics of adaptation that provides the theoretical foundation for this study (Fligstein, 2001a; Hicks & Gullet, 1975; Scott & Davis, 2007).

Within this modern frame, subcategories of organizational theories emerged, each focusing on different influences affecting the organization. In his analysis of organizational theory in higher education, Richard Scott (2015) highlights some of these developments. He explains how contingency theorists, for example, maintained that organizations were affected by environmental complexity, turbulence, and the state of technology. Network theorists assumed effects from relational systems within the organization. Population ecologists theorized that competition for resources among organizations affected the organization's development. Power processes were the source attributed by resource dependency theorists. Institutional theorists were motivated by cultural and symbolic systems. Figure 1, based on these descriptions by Scott (2015) of modern developments in organizational theory, provides a visual reference of the relationship between these different subcategories. I have connected a socio-legal layer evolving from institutional theory. The categories in the figure are by no means exhaustive. Rather, they

⁶ See Fligstein (2001a) for an overview of the history of organizational theory and a visual depiction of its multiple interdisciplinary connections.

are used to help illustrate connections among this study's theoretical orientations, of the convergence of the sociology of law and the sociology of organizations that developed out of new institutional traditions, which itself emerged from institutional theory's focus on organizational research.

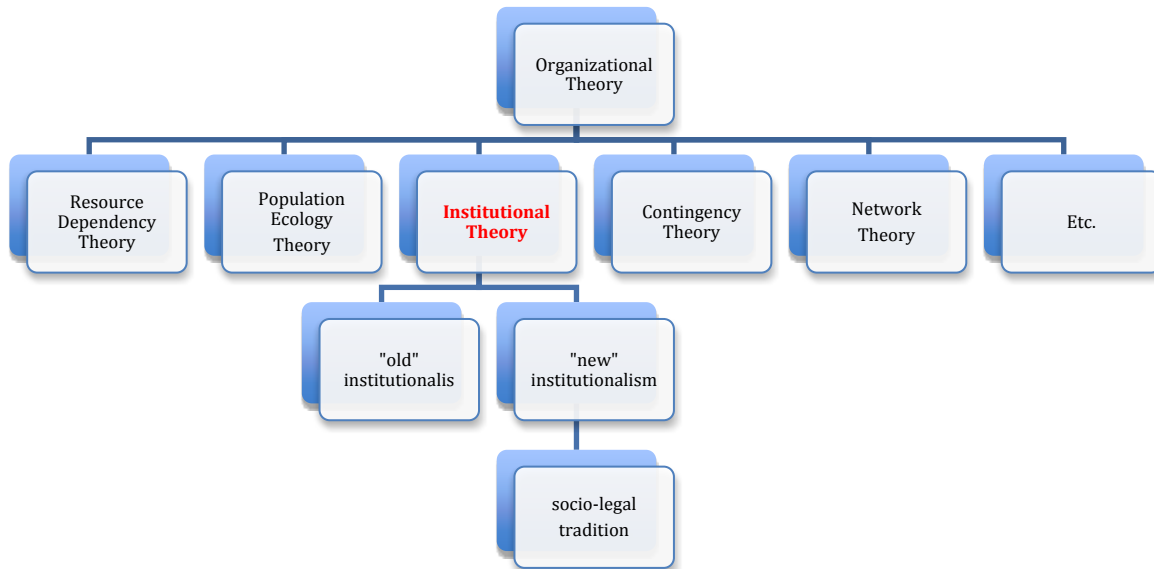


Figure 1 Subcategories of modern organizational theory

Educational scholars, including Burton Clark (1970, 1972), Robert Zemsky (2001), and James Bess and Jay Dee (2012), have advanced strong arguments supporting the importance of organizational theory in understanding the practical affairs of universities. Though many of the theoretical principles underlying organizational theory evolved from profit-making organizations, their application to the managerial skills required in universities is just as relevant. As Bess and Dee argue:

When applied correctly, theory can be used to identify the conceptual foundations of common problems that occur in organizations. Too often, organizational members tend to believe that each problem at their particular institution is totally unlike that at other,

similar institutions. However, because theory has been established on the basis of empirical research at many other such institutions, its precepts and predictions generally provide guidance in particular instances. As has often been noted, theory can be eminently practical when used correctly.

To understand organizational behavior in the context of an outside legal force that affects the organization, and those in it, in relation to its culture and environment, this study focuses on theory of the organization and administration of universities from an institutional perspective. Because this study ultimately deals with characteristics of human life that underlie behavior in organizations, applying other complementary or competing theories could also have been valid. Successful, legitimate, organizational solutions to problems, such as addressing the ambiguous legal requirements of the DCL, require meaningful contributions from multiple conceptual orientations (Bess & Dee, 2012). I have chosen institutional theory to ground this study's orientation and actions.

Institutional Theory

Institutional theory offers numerous insights that provide both theoretical grounding to this study and research direction. Adapted from concepts of both “old” institutionalism and “neo” or “new” institutionalism, institutional theory provides an understanding of process and strategy to explain organizational adaptation in uncertain environments (DiMaggio & Powell, 1983; Meyer & Rowan, 1977; Selznick, 1949, 1957, 1996). “Old” institutionalism is primarily concerned with technical forces that enhance efficiency and profit (Fligstein, 2001a; Suchman & Edelman, 1996). It views patterns of organizational interaction and adaptation as rationally responding to the organization's internal and external environments through normative elements of role expectations and enforcement mechanisms (Parsons, 1951; Selznick, 1957, 1996). In this model, coercive and determinative laws and regulations are created outside the organization's boundaries (exogenously created). They are then enforced in the external environment in which

the organization operates (Parsons, 1956, 1960). “New” institutionalism⁷ rejects this strict, rational, exogenous conception. Rather, it contends that organizations are shaped as much by their cultural environments as by rational calculations and technical imperatives (Suchman & Edelman, 1996). New institutionalism provides that actors within the organization play a powerful role in shaping cultural norms that influence institutional actions. In this way, the “rule-like” frameworks (structures) and “rational myths” (symbols) actors create in response to environmental signals give meaning to the law, influencing the law’s definition and scope (endogenously created) (Meyer & Rowan, 1977; Rowan & Miskel, 1999; Scott & Davis, 2007; Sitkin & Bies, 1994). Simply stated, whereas old institutionalism would perceive a legal regulation as a strict, codified set of rules, new institutionalism allows for a more fluid interpretation of the law’s intent in relation to the institutional field.

New institutional analyses in the study of education contend that universities are sustained more by shared beliefs (myths) than by technical exigencies or a logic of efficiency (Atkinson, 2008; Meyer & Rowan, 2006; Scott, 2015). In this view, educational institutions maintain legitimacy in the public’s eyes by conforming to institutionalized norms and values (Meyer, 1977; Meyer & Rowan, 1977; Meyer & Scott, 1983; March, 1980). Universities gain public (external) legitimacy by the socially constructed meaning its actors ascribe (internal) to rules and routines designed to make sense of a disorderly world (Meyer & Rowan, 2006). This social-constructionist view positions actors as crucial in establishing social reproduction and social change (Fligstein, 2001b; Meyer, 2008). With the significant role university leaders, decision makers, faculty, administrators, students, and other actors play in both maintaining local

⁷ There are numerous versions of new institutionalism, each with several variants. Economists tend to favor rational action considerations, sociologists the social-constructionist form, and political scientists the mediated-conflict approach (DiMaggio, 1998; Meyer, 2008). New institutionalism in the context of this dissertation derived from modern sociological conceptions.

order and negotiating new order (Fligstein, 2001b; Meyer & Rowan, 2006), thinking about university structures and social actions that establish, sustain, and challenge these social arrangements is important. The ability to engage others in collective action and induce participants to cooperate, for example, is pivotal. Skilled strategic actors often provide identities and cultural frames that motivate others (Fligstein, 2001b). Proficient execution by such actors, especially those in dominant organizations, both reproduce and transform systems of meaning within organizational fields (Fligstein, 2001b; Giddens, 1984).

Decision-making in universities is often a process assigned to a variety of actors with different skills and interests. Higher education relies on multiple forms of collaboration to achieve results (Bess & Dee, 2012). While there exists a range of definitions for collaboration in the literature, one meaning from institutional theory characterizes collaboration occurring within an organization as a cooperative and non-hierarchical relationship negotiated in an ongoing communicative process (Lawrence, Hardy, & Phillips, 2002). Though Lawrence, Hardy, and Phillips' study (2002) examined collaboration resulting from interorganizational relationships in nongovernmental organizations, its conception of how new practices, rules, and technologies transcend collaborations to effect change derive from institutional theory is applicable to higher education as well. The researchers found that collaboration among actors was instrumental in establishing new norms, understandings, and practices designed to produce innovative results (Lawrence et al., 2002). Flynn (n.d.) extrapolates from Lawrence et al.'s findings to use institutional theory in her development of a practical model of organizational collaboration. Lawrence et al. and Flynn's research on the institutional effects of collaboration identify two important characteristics of a collaboration necessary to effect change: a high level of involvement among participants and a high level of embeddedness. In high-involvement

relationships, collaborators share expertise and knowledge to advance innovative results. Highly embedded collaborators, significantly engaged in interorganizational relationships, then draw on broader networks for multidirectional information flows. In higher education, examples of these interorganizational relationships might include sharing proposed solutions with colleagues at other universities, disseminating new practices through professional organizations, and advising federal policy makers of emerging best practices.

Organizations, such as universities, operate as components in a larger system of relations. Transformation of this larger system occurs, in part, through the cooperation and skilled performances of actors inside and outside the organization. Though terminology and subtle characteristics regarding these larger systems may vary (with Bourdieu labeling these systems “fields” (1977; Bourdieu & Wacquant, 1992) and Meyer and Scott (1983) preferring the term “sectors”), institutional theorists refer to these systems as organizational fields that comprise “those organizations which, in the aggregate, constitute a recognized area of institutional life: key suppliers, resources and product consumers, regulatory agencies, and other organizations that produce similar services or products” (DiMaggio & Powell, 1983, p. 148). The central agreement across these concepts is that they are larger systems of social order where organized groups of actors gather and frame their actions in relation to each other. Analyzing and attaining cooperation, maneuvering around more powerful actors, using rules and resources shrewdly, and building successful coalitions are necessary to achieving transformation. Leaders are essential to stabilize relations within the group. In addition to inducing cooperation among actors, leaders must have a vision to create something new, and frame the strategic moves required to achieve the vision (DiMaggio, 1988; Fligstein, 2001b; Giddens, 1984). With a sudden jolt or crisis (in this case the exogenously imposed DCL) impacting all of the organizations within a field, actors

begin to discuss a range of possible solutions. Leaders suggest new ideas, justifying and aligning them with normative structures. Where some degree of social consensus emerges, new norms take on a degree of legitimacy and diffuse across organizations (Greenwood, Suddaby, & Hinings, 2002). These stages result in change within an organizational field. Organizations within the field start to become more similar to each other because of regulative, normative, and cognitive convergence of practices perceived by the field as legitimate (Fligstein, 2001b; Greenwood et al., 2002; Morphet, 2009; Scott, 2001). Institutionalization occurs when these converging elements move from abstraction among the actors to constituting repeated patterns of interaction in fields (Jepperson, 1991; Scott, 2001). New institutionalism focuses on how fields of action come into existence, how they remain stable, and how they serve as critical units that bridge organizational and societal transformation (DiMaggio & Powell, 1986; Fligstein, 2001b; Scott, 2001).

With laws that regulate educational environments often ambiguous, universities are afforded wide latitude to construct responses to the law in ways that address conflicting pressures, environmental demands, and self-interest (Burstein, 1988; Edelman, 1992). Through their institutional actors, universities have been shown to have strategically shaped responses to broad legal mandates, mediating the laws' effects on their organizational interests (Edelman, 1992; Gornitza & Larsen, 2004; Gould, 2001). Framed by university's espoused democratic values of upholding the public good (Bowen, 1999; Duderstadt & Womack, 2003; Kezar et al., 2005) and informed by institutional theory's focus on understanding process and strategy to explain organizational adaptation in uncertain environments (DiMaggio & Powell, 1983; Meyer & Rowan, 1977; Selznick, 1949, 1957, 1996), this study relies on a socio-legal conceptual framework within institutional theory to examine how university responses, arrived at through its

actors in response to their legal environment, are shaping not only legal compliance but structural elaboration within the field of higher education.

Socio-Legal Scholarship

Previous institutional research has established that legal rules and processes operate to shape organizations and influence inter-organizational relations. Foremost among socio-legal scholarship is Edelman's research on the institutionalization of organizationally constructed symbols of compliance in response to civil rights mandates. Edelman (1990, 1992) found that organizations (including universities) created symbolic structures articulating compliance through legitimate forms of legal rhetoric and due process. Structural elaboration occurred through the creation of affirmative action offices and discrimination grievance procedures. These new organizational forms spread through the organizational field, socially constructing the meaning of civil rights compliance. Although the creation of affirmative action offices offered only a symbolic gesture of compliance - initially having little impact on the populations they were designed to protect – their existence became an expectation of compliance. Courts incorporated antidiscrimination policies as a necessary requirement to satisfy the statutory mandate. Organizational responses had shaped the compliance framework, demonstrating the complex reciprocity between the formal dictates of the law and the informal norms that determine practice (Edelman, 2016, 1992; Suchman & Edelman, 1996).

Organizational responses (or non-responses) to legal mandates are influenced by a number of organizational attributes. These include such characteristics as autonomy, proximity to the public arena, competing interests, organizational innovation, organizational size, the desire to maintain organizational legitimacy, the role played by administrators in crafting policy, the institution having experienced a lawsuit, level of perceived threat, formal versus informal control

mechanisms, and the symbolic value of new measures upon the organization (Culnan, Smith, & Bies, 1994; Edelman, 1992; Feldman & Levy, 1994; Gould, 2001; Roth et al., 1994). Research on the legal and cultural environments of organizations also provides evidence of individuals within the organization possessing the power to construct the meaning of compliance, shape the law, and mediate the impact of regulations on institutional policies (Edelman et al., 2001; Edelman et al., 2010; Edelman & Suchman, 1997; Scott, 1994; Suchman & Edelman, 1996). Edelman (2016) refers to these institutional actors whose interpretation of the cultural environment shapes norms that influence institutional actions as “compliance professionals.” This emerging group of diverse individuals within and around organizations – consisting of consultants, lawyers, human resource professionals, compliance officers, and others – has responsibility for deducing law and managing compliance. They interpret and transform information between legal environment and organizational field; advising clients, making policy, resolving problems, and seeking change. Perceiving legal rules through a managerial lens, compliance professionals pursue rational responses within the context of the organization’s routines and goals. It is through the eyes of compliance professionals, who routinely reframe legal constructs in terms more conducive to managerial interests, that organizational administrators generally discern their institution’s legal environment (Edelman, 2016).

Institutional actors (decision makers, leaders, managers, compliance professionals) have numerous interests and constituencies to balance. They must generate cooperation with both allies and opponents to produce meaningful results. Edelman’s legal endogeneity theory suggests that law acquires meaning within the social fields it seeks to regulate in part because broad and ambiguous laws leave actors considerable latitude to construct the meaning of compliance (Edelman, 1992, 2016; Edelman et al., 2010). Socio-legal literature contends that laws governing

organizations are purposefully ambiguous, addressing procedure over substance, which allows actors operating within them the opportunity to either reproduce or challenge existing social systems (Burstein, 1988; Edelman, 1992; Suchman & Edelman, 1996). These organizational actors not only "capture" the law, shaping it to fit their own interests, but "enact" the meaning of law through a complex and often inadvertent cycle of action, mimicry, and interpretation (Baier, March, & Saetren, 1988; Clune, 1983; Scheid-Cook, 1992; Suchman & Edelman, 1996; Weick, 1979).

Responses perceived as legitimate spread throughout the field, guiding change through a process of imitation and emulation known as institutional isomorphism (DiMaggio & Powell, 1983; Kezar, 2001; Meyer & Rowan, 1977; Scott & Meyer, 1983). Socio-legal frameworks regard legal compliance as a form of institutional isomorphism, reproducing apparently successful practices within similar organizations (Suchman & Edelman, 1996), reinforcing new institutionalism's contention that organizations look to each other, and to the professions, to draw meaning from ambiguous mandates. They then organize their operations accordingly. The more uncertain the law, the more intense the level of isomorphic change (DiMaggio & Powell, 1983 ; Edelman, 1992; Suchman & Edelman, 1996). Because the higher education field remains unsettled in terms of widespread adaption and legitimization of policies and practices deriving from DCL compliance, this study cannot draw conclusions as to the level and extent of institutional isomorphism that has occurred. However, the actions taken by the three university research participants provides an opportunity to consider which responses are emerging and why some are being accepted and legitimized. The socio-legal framework serves as a theoretical framework through which emerging practices can be examined and understood.

Isomorphism in Higher Education

The main form of organizational change considered in institutional theory is isomorphic convergence. In such conceptualizations, change within an organizational field results from the movement of organizations toward homogeneity (DiMaggio & Powell, 1983; Greenwood et al., 2002; Levy, 2006). Leading institutional theorists DiMaggio and Powell (1983), Meyer, Scott, and Deal (1981), and Meyer and Rowan (1977), and subsequent scholars applying institutional theory to higher education (Bess & Dee, 2012; Kezar, 2001; Morphey, 2009; Scott, 2015) posit that organizations in fields such as higher education are extremely susceptible to isomorphic forces, due largely to difficult to measure goals (knowledge acquisition), unclear technology (optimal teaching methods), and highly professionalized organizational actors (specialized faculty, student affairs staff, and administrators). Because of the loosely coupled nature of universities (that units and events are responsive to each other yet preserve their own identity and separateness; Weick, 1976), normative entrenchment, professionalism, and high institutional commitment, universities tend to be homogeneous within their sector, striving to be like the peers they regard as elite (Greenwood & Hinings, 1996; Kezar, 2001; Sporn, 1999). To gain legitimacy and increase survival, they emulate other organizations operating in ways they consider prestigious or exemplary (Gioia & Thomas, 1996; Kezar, 2001). “New” institution’s emphasis on interpretation, the internal negotiation of process, and adoption are critical components analyzed in this study to better understand organizational challenges inherent in university compliance environments (DiMaggio & Powell, 1983; Gates, 1997; Kezar, 2001; Kezar & Eckel, 2002; Greenwood & Hinings, 1996).

Proactive Law Approach

Under the broad framework of institutional theory and its more specific socio-legal focus, organizations - through their actors - are capable of strategically shaping responses to law.

Questions remain as to *why* some organizations take measures to move the organization beyond minimal compliance and *how* actors constructively influence such action. A body of scholarship that addresses this interplay between responding to legal obligations and moving beyond minimal requirements to improve practice is the organizational approach known as proactive law. At its core, this decision making method enables organizations to move beyond simply reacting to changes in law, guiding the organization toward a more comprehensive understanding of how the legal disruption could be used to create substantive policies and opportunities for the organization (Nordic School of Proactive Law, n.d.; Siedel, 2002; Siedel & Haapio, 2010, 2011). In terms of commercial achievement, this creates a competitive advantage for the organization (Bagley, 2008, 2010; Bird, 2008, 2010, 2011; Siedel, 2002; Siedel & Haapio, 2010, 2011). In higher education, this competitive edge is encouraged through innovation to attract students and maintain a market niche in a rapidly changing environment (Bess & Dee, 2012). Beyond simply the creation of a competitive advantage, the proactive law approach also offers contributions and innovation in areas that are not commonly the focus in legal decision making within organizations, such as collaborating across organizational boundaries to advance ideas, valuing outcomes for diverse stakeholder groups, and serving societal needs (Haapio, 2006; Nordic School of Proactive Law, n.d.; Proactive Think Tank, n.d.; Siedel & Haapio, 2010, 2011; Sorsa, 2011).

An important element in the proactive law approach is the cultivation of teamwork and a collaborative, cross-professional process to achieve transformative organizational strategies in

solving challenges raised by the legal environment (Berger-Walliser, 2011; Siedel, 2002; Siedel & Haapio, 2010, 2011). This approach emphasizes the need for dialogue between people with different understandings and expertise of legal and organizational issues for collaborative decision-making (Siedel & Haapio, 2010, 2011). By adopting a future-oriented (proactive) approach to law, minimizing prospective legal problems (prevention) while promoting collaboration and innovation to achieve desired goals (promotive), the framework moves decision makers beyond a reactive response to their legal obligations toward reframing legal problems as opportunities for the organization to innovate and create substantive contributions to practice. Research suggests that organizations differ in their willingness to embrace the proactive aspects of law (Siedel, 2002; Siedel & Haapio, 2010, 2011), extending the institutional concept that organizations vary in their responsiveness and sensitivity to legal demands (Edelman, 1990; Sitkin & Bies, 1994).

Demonstrating a paradigm shift in the way organizations perceive and use law, this proactive approach reframes legal concerns as more than simply obligations to be answered. Rather, individuals within the affected organization are challenged to move beyond minimal compliance toward using the legal issue as a catalyst to strengthen relationships and create positive opportunities advancing both institutional and societal benefits. This study relies on this conceptualization to examine how universities are creating environments that promote innovative responses to legal compliance. Siedel (2002) and Siedel and Haapio's (2010, 2011) four-step model examining how decision makers understand legal issues (step 1: clarity), respond to the obligations imposed (step 2: reactive), implement strategies to prevent the legal problem from recurring (step 3: preventive), and foster collaboration and innovation to take into account not only legal obligations, but other considerations of importance to the organization and society

(step 4: promotive) was foundational in the development of the study's interview protocol. By examining cross-departmental collaboration among legal and non-legal professionals that promote boundary spanning institutional strategies as policy decisions are negotiated, this framework helps us to better understand actors' involvement in the institution's constructions of compliance and how those actors contribute to the university moving beyond compliance.

The proactive law framework plays an important role in this study by providing concepts to help differentiate the actions of universities that are merely complying with minimal DCL requirements from those that are exceeding compliance obligations. While most organizations are compelled to react to the legal impetus, or face the consequences of non-compliance, the proactive law framework shows how an organization can progress beyond merely reacting to legal obligations toward reframing them as opportunities to innovate and create substantive contributions to practice. The university environment's tendency to rely on inter-disciplinary, cross-unit committee review of institutional issues – important preconditions in this framework - provides an opportunity to apply proactive law concepts to university actors' contributions that enhance opportunity for the institution and its students as they address DCL compliance.

Understanding What Is Going On

The processes and structures of institutional decision-making in higher education have traditionally been shared among faculty and administrators (Birnbaum, 1988; Kezar & Eckel, 2004). Shared governance in higher education was established on the belief that a climate of reason and persuasion among empowered professionals would create better results for the university than a governance model based on centralized command and control (Kezar & Gehrke, 2014). Retrenchment of shared governance toward more corporate approaches to decision making, grounded in a focus on the “bottom line,” is on the rise in universities. This

“bottom line” often manifests in prioritizing funding and revenue generation over traditional academic values such as student learning and deference to faculty expertise (Kezar & Gehrke, 2014; Rhoades, 1996; Slaughter & Rhoades, 2004; Trackman, 2008). The “bottom line” related to legal issues, having been under-studied, is not as clear. Evidence in organizational literature suggests that the institutional environment is increasingly giving priority to legalistic decision criteria over other organizational, interpersonal, and social factors relevant to organizational decision making (Bies & Tyler, 1993; Feldman & Levy, 1994; Foote, 1984; McLendon & Hearn, 2006; Sitkin & Bies, 1994; Turkington, 1986). With heightened concerns over threats of litigation and Office for Civil Rights enforcement of universities’ legal obligations, insight into the actions and behavior of university decision makers who are actively generating rules, shaping norms, and influencing institutional actions as they construct compliance is important to understanding universities’ organizational legal environments (Rowan & Miskel, 1999; Scott & Davis, 2007; Sitkin & Bies, 1994). Because of “bottom line” pressures and an increasing emphasis on legalistic decision criteria, new institutionalism’s premise is that normatively defined environments, such as universities, are likely to associate successful compliance responses more to perceptions of legitimacy (symbols of compliance), rather than to their substantive value (Fligstein, 2001b; Morpew, 2009).

The study’s framework is designed to help identify mechanisms that enable some universities to move beyond minimal legal obligations, shaping not only legal compliance but structural elaboration within the field of higher education. Though I expect to find collaboration throughout this study, as I have chosen institutions that organized teams of university constituents to review and respond to DCL guidance, socio-legal theory suggests that these collaborative environments will nevertheless be dominated by certain actors, most likely those

actors with the most influence in constructing DCL compliance, or legal counsel. Legal counsel is likely to be the ones reading the DCL in detail and advising university leaders on their interpretation of the regulation. With risk management concerns increasingly occupying top-level leadership considerations, I expect to find legalistic decision criteria and concerns over risk management to be key contextual factors. Because of this, I anticipate that the interpersonal dynamics involved in understanding and negotiating DCL responses will be dominated by legal actors invested in protecting the organization from legal liability, rather than other university professionals potentially thinking more broadly about the educational opportunities the change in law could create.

Conclusion

The literature on law and organizations suggests that new forms of compliance tend to originate in large public or highly regulated organizations, and subsequently diffuse across organizations (Dobbin, Edelman, Meyer, Scott, & Swindler, 1988; Dobbin & Sutton, 1998; Edelman 1990, 1992; Edelman & Petterson, 1999; Edelman, et al., 1999; Sutton & Dobbin, 1996; Sutton, Dobbin, Meyer, & Scott, 1994). Public universities bear the brunt of increasingly copious and complex regulations (Dunham, 2010; Gajda, 2009; Mophew, 2009; Task Force on Federal Regulation of Higher Education, 2015). Characterized by network structures, rational myths, and institutionalized logics, universities undergo isomorphic change through regulative (DCL obligations), normative (developing expectations congruent with the academy's values), and imitative processes (adopting practices from other institutions) (Edelman, 1992; Meyer, Ramirez, Frank, & Schofer, 2007; Meyer & Rowan, 1978; Suchman & Edelman, 1991).

This study's examination of interpretation (through the understanding of DCL compliance issues from different actors' perspectives), internal negotiation of process (via the

development of institutional responses to ambiguous legal directives), and adoption (by the actions ultimately taken) resulting from a disruption to the field adds to organizational research seeking to better understand the relationship between institutional and socio-legal concepts that influence behavior and results in higher education. Because of the diversity in type, goals, funding, population served, and other factors differentiating institutions of higher education, one university's response to DCL mandates and Title IX compliance may not be appropriate for another institution. It is not the intent of this research to produce a "how to" model for the entire field to follow. By analyzing the mechanisms that guide an organization's response to a contentious legal compliance issue, however, this study expands theoretical understanding of how institutions address their socio-legal environment. While some environments might offer predictability, others may not. Organizational effectiveness necessitates that institutions draw on different design and intervention strategies to address a broad range of environments (Berger-Walliser, 2011; Bess & Dee, 2012; Cameron & Lavine, 2006; Siedel, 2002; Siedel & Haapio, 2010, 2011). As the Methodology chapter that follows describes, the study was designed to investigate processes and mechanisms that enabled universities to enhance opportunity for the institution and its students as it addressed DCL compliance obligations. Examining the process through which a fragmented organizational field makes sense of ambiguous requirements is considered a productive line of research contributing to institutional scholarship (Bess & Dee, 2012; Powell, 2007; Roth et al., 1994; Sitkin & Bies, 1994).

Chapter 3: Methodology

This qualitative study employs a multi-case study strategy to examine the organizational space in which university actors were asked to understand and interpret legally ambiguous and contentious Title IX compliance obligations. Case studies, widely recognized across organizational fields and the social sciences as rigorous research strategies offering rich empirical descriptions of a phenomenon within a specific setting, are appropriate for this research that attempts to answer *how* and *why* questions being asked about a contemporary set of events, in an unexplored research area, over which the investigator has little or no control (Eisenhardt, 1989; Eisenhardt & Graebner, 2007; Hartley, 2004; Yin, 1994, 2009). Case studies are also well suited to the study of practices, such as decision making in response to changes in the legal environment, from which the researcher can consider a setting in-depth and in-context (Bogdan & Bicklen, 2003; Stake, 1995).

Review of the Problem and Guiding Research Questions

In order to gain a deeper understanding of how university decision makers are responding to contentious legal mandates, this study examines institutional decision-making following 2011 changes to the Department of Education's administrative guidance on campus sexual violence under Title IX. Organizing my research issues around a small number of research questions that focus on understanding process (Hartley, 2004; Stake, 1995) the study answers the following guiding and sub-questions:

How is institutional policy negotiated around an ambiguous, multi-interest, regulatory prompt?

- a. How do multiple interests shape understanding of the issue?

- b. What influences the compliance outcomes chosen?
- c. In what ways are strategies on preventive solutions developed?
- d. How is space for innovation, collaboration, and/or proactivity created in the decision making process?

Research Design

A qualitative research design is appropriate to this research that seeks to explore the complexities inherent in understanding and responding to post DCL university organizational and legal environments. As opposed to a quantitative design that might employ statistical analyses to test relationships or examine cause and effect relations, a qualitative design enables the researcher to discover meaning behind a phenomenon and gain deep, rich insight into the issue being studied (Huberman & Miles, 2002; Merriam, 2002; Patton, 2002; Stake, 1995). Qualitative approaches might include phenomenological study (to describe experiences as they are lived), ethnographic study (to describe human society and culture), grounded theory study (to develop theory that emerges from the data), or historical analysis (to examine the past in order to understand the present and anticipate potential future events) (Merriam, 2002). Another common type of qualitative research is the case study, where descriptive, intensive analysis of an individual or unit takes place. Case study design is relevant when the research is context-based, as the individual or unit is selected for study based on its typicality or uniqueness (Merriam, 2002). The aim of the case study is then to provide analyses of the context and process that illuminate the theoretical issue being studied (Patton, 2002). In organizational research, the case study is likely to be one or more organizations, or groups or people operating within the organization (Hartley, 2004). A case study allows the researcher to not only observe what is occurring, but to gain insight into how or why it occurred in such a way (Yin, 2009).

Multiple-Case Study Design

While a single-case study usually examines one setting, a single subject, or one particular event, multiple-case studies enable researchers to first examine and report on particular cases individually, then compare and contrast the results. The goal of multiple-case study research is to use comparisons across cases to develop explanatory theory and contribute to general knowledge, which can then be of use to decision makers in the context of their work (Bogdan & Biklen, 2007). Although the small *n*'s of case study research are not intended to represent an entire population, the thick descriptions and in-depth analysis generated through a multiple-case study design can be used to inform similar cases (Patton, 2002).

In a seminal book on case study research, Robert Yin (2009) suggests that whenever possible, multiple-case designs are preferred over single-case designs. The major analytical benefit of a multiple-case study design lies in substantially stronger conclusions arising independently from several cases as opposed to from one case alone. Not only do data from multiple cases have the potential to fill gaps left by findings from a single case, but data from one case may respond better to shortcomings or criticisms of one of the other cases. Each single case within the multiple-case study design maintains the same unit of analysis. In my design, the unit of analysis was a collective: the university. To collect data about the organization, I interviewed individual people serving on each university's review team examining the institution's post DCL sexual misconduct policies and protocols. Because I was conducting research about the organization and not the individuals I interviewed, I was careful to design protocol questions that solicited data about *how* the organization worked and *why* it was proceeding as it was. Parallel information was collected from various data sources, described in more detail below, across all three sites within the multiple-case study design.

Sampling

Case study research, where the researcher's obligation is to understand both nuance and depth of a particular case, is not sampling research (Patton, 2002; Stake, 1995). Cases are selected to understand the phenomenon being studied. Because of this, cases are often pre-selected. Sometimes, a "typical" case is appropriate to study. Whereas at other times, an unusual case helps to illustrate matters better. Stake (1995) qualifies proper case selection criterion as (1) cases that will maximize what we can learn, (2) cases that are likely to lead us to understanding and assertions, and (3) cases that are easy to get and hospitable to our inquiry.

Purposeful (also known as purposive) sampling is widely used in qualitative research to identify and select information-rich cases to explore the phenomenon of interest (Patton, 2002). Participants are selected according to preselected criteria relevant to the research questions. I took a multipronged approach to purposeful sampling, as described below, consistent with Patton's (2002) logic of "intensity sampling." Intensity sampling consists of information-rich cases that strongly present the phenomenon of interest. Highly unusual, extreme, or deviant cases are not chosen in intensity sampling because their outstanding successes or notable failures might distort the manifestation of the phenomenon of interest.

In my ideal research design, I originally intended to include the field's most innovative and proactive university exemplars of post DCL Title IX practice, in order to explain organizational conditions that exemplify excellence. Practically speaking, however, institutional characteristics of these exemplars varied considerably. Exemplars spanned institutional characteristics from small, private, liberal arts institutions to large, public, research-intensive ones. Attempting to hold constant both institutional characteristics and factors identified in the literature that influence organizational responses to legal mandates was difficult. Moreover,

access to some of the exemplar institutions was unattainable with the time and resources available to me. By adopting an intensity sampling instead, I was better able to hold constant organizational characteristics and influences, thereby reducing complexity that arises when including diverse institutional types (Kezar, 2013b). In the following section, I describe the steps I took to determine a sample of sufficient intensity for the study.

Site and Participant Selection

Three public, 4-year or above, doctorate granting, research universities constitute the sample for this study. The three research sites were selected based on a multi-stage investigatory and sorting process. I interviewed organizational actors from a range of administrative units at each university. Using multiple sources of evidence, including the interviews, I was able gain a detailed understanding of the organizational process of how, in the context of legal pressures addressing concerns of campus sexual violence, universities are acting to understand their legal responsibilities and construct compliance. Given that this study examines forward thinking responses to legal compliance, I purposely sought out information-rich cases that illustrated the phenomenon of interest intensely, but (as mentioned above) not extremely.

First, I attempted to find universities with a reputation of carrying out quality work in areas referred to in the DCL. These are institutions considered by various individuals, professional organizations, and national policy makers to be setting benchmarks. I became aware of which universities these might be either through conversations with colleagues working in the field, media attention afforded to their innovative practices, or the universities' involvement with professional associations or legislative bodies. From these initial investigations, I created a "short list" of potential sites. I then narrowed down the institutions based on ease of access, institutional type, and comprehensiveness of their publicly available Title IX information.

As set out in the 2011 DCL, university websites are required to have easily identifiable information on its Title IX coordinators, information on grievance procedures (including measures by the university to ensure prompt and effective resolution of complaints), and a widely disseminated notice of non-discrimination (Dear Colleague Letter, 2001). I cross-referenced the short-list of possible institutions with adherence to these minimal DCL standards. Universities that had adopted the requirements provided me with corroborating evidence that it was taking positive steps to address DCL and Title IX obligations. Next, I assessed the availability of public records. I began reviewing the institution's sexual misconduct policies, response protocols, and community discourse around the issues following the release of the 2011 DCL. Universities that both established an inter-disciplinary review team to examine its institutional actions and made available information from the response process were identified as potential research sites.

Access to study participants at these potential sites proved to be tremendously challenging. Members at many desired research sites either failed to respond to my inquiries or discouraged me from pursuing such research at their institution. The prevailing climate at the time of my site selection was one of uncertainty and confusion around the issues. National and local media, as well as government agencies, were highlighting universities' shortcomings, publicly erring and scrutinizing missteps as institutions attempted to address issues of campus sexual assault (Baker, 2014a; Bogdanich, 2014a, 2014b; Clark, 2014; Shen & Vitchers, 2014; Stratford, 2014; U.S. Senate Subcommittee on Financial & Contracting Oversight, 2014; Vendituoli, 2014a, 2014b). It was during this tumultuous time that I emailed a letter of interest to potential study participants to gauge participation in the study (Appendix D). After sending hundreds of emails, engaging in exchanges with university general counsel, and participating in

phone calls with communication specialists to vet my legitimacy, many prospective participants acknowledged the importance of this research but would not speak to me on the record because of the sensitivity and volatility of the issues. Eventually, sufficient response from members of a university's post DCL-Title-IX-review-team justified my moving forward with a short-listed institution as a research site.

Confidentiality and Anonymity

The contentious environment surrounding the threat of Office for Civil Rights investigations and the negative media attention admonishing universities for failing to properly address issues of campus sexual violence had university personnel wary of participating in this study. Incessant media exposure, unsettled DCL interpretations, growing Office for Civil Rights investigations, and intensifying student activism appeared to be contributing to a chilling effect on university actors' willingness to convey their thoughts and opinions on this topic (Kipnis, 2015a, 2015b; Newman & Sander, 2014; Russell, 2015; Yoffe, 2014). Although the most desirable research option would be to disclose both institution and participant identities, anonymity is often necessary when a case study is on a controversial subject (Yin, 2009).

To quell potential participants' concerns, protect their identity, and promote their full disclosure of sensitive issues and non-public information, confidentiality of both informant and site were guaranteed. Despite this concession, recruiting participants remained a challenge. At one institution, some participants who initially agreed to be interviewed subsequently canceled the interview out of concern that the Office for Civil Rights could subpoena the interview transcripts and my notes in the event of an Office for Civil Rights audit or investigation. At the time of my site selection process, approximately 70 universities were being investigated for possible Title IX violations. One year later, that number more than doubled, to 144 (Wilson,

2015b) and continues to grow (Mangan, 2016). As 2015 drew to a close, nearly 250 cases had been subject to the Department of Education's stepped up investigations post 2011 DCL (Mangan, 2016). The reality of the subpoena contemplated by a prospective participant may have been remote, but their concerns were nevertheless genuine.

To protect the privacy and confidentiality of both the research sites and those who participated in the study, I have disguised their true identities throughout my accounts. I created fictitious names for both case study institutions and participants. I conveyed identifying information broadly, omitting particulars (such as actual job titles) to not reveal details that could unwittingly put a participant in an undesirable position and compromise their anonymity. I often selected gender-neutral pseudonyms or concealed the gender of select participants in the study's findings and discussions for additional measures of anonymity. I felt this degree of anonymity was necessary because of the sensitive nature surrounding crimes of a sexual nature and the politicization of the issue inside and outside universities. If participants were to disagree with the actions of the university, its leaders, or their colleagues, I did not want anything they discussed to jeopardize their professional standing. Because retaliation against faculty and administrators who engage in advocacy on controversial issues is not without precedent (Grinberg, 2015), maintaining participant anonymity during these tense and tumultuous times was significant in establishing a research environment in which participants felt they could openly discuss the nuances of the process and its mechanisms without fear of reprisal.

Institutional Review Board

I obtained formal approval of my research through my home institutional review board (IRB). Due to the case study nature of the research and protection of participant identities, my study fit within a human subjects research exemption in the Code of Federal Regulations (federal

exemption #2, 45 CFR 46.101.(b)). Despite my study being exempt from IRB regulations, I maintained best practices that included explaining to participants the voluntary nature of partaking in the study, their ability to withdraw from the study at any time, their right to skip particular interview questions for any reason, conducting the interview at a location and time of their choosing, and honestly and transparently explaining the study and my research motives. I audio-recorded each interview and verbally obtained informed consent from participants. Given the sensitive subject matter of the study, I was particularly careful to conduct the research with the utmost care and thoughtfulness, protecting private and sensitive disclosures - such as identities or involvement of third parties referenced in the interview, or personal experiences divulged.

Data Collection

I collected data through multiple sources, including interviews, document reviews, and observations. I visited all three research sites (some on more than one occasion), participated in formal campus tours, engaged in on-site observations, conducted interviews, participated in awareness or prevention programs, analyzed publicly available documents relating to policies and practices, and reviewed local, national, and government media coverage of the issues.

Within the three-institution sample, I interviewed 21 participants in one-on-one semi structured interviews. I did not stratify my sample by gender, race, or ethnicity. The majority of participants were female (62%). Five participants (23%) were persons of color. Each participant had been a member of their respective institution's Title IX DCL review team. Study participants included undergraduate and graduate students (n=4), as well as mid-level administrators (n=16) in student affairs, academic affairs, institutional equity, Title IX compliance, conduct, counseling services, prevention, athletics, and housing, all important contributors to issues of campus sexual

violence (Armstrong et al., 2006; Minow & Einolf, 2009; Miranda, 2013; Moynihan et al., 2010). A health professional from a community hospital rounded out the list (n=1). Table 1 summarizes the organizational units represented by study participants. Notably absent among the interview contributors were general counsel (all of whom approached for the study declining to be interviewed), leaders from Greek Life (who, for the most part, did not have a significant presence on the review teams), and faculty (many of whom explained they were too busy to be interviewed or referred me to members of the review team they felt were better suited for the study). Seventeen interviews were conducted in person and four by videoconference.

Table 1. Organizational Units Represented by Interview Participants

Organizational Unit	Participants	Organizational Unit	Participants
Ability & Mobility Services	1	Health Services	1
Academic Advising	1	Housing	1
Athletics	1	LGBTQ Office	1
Complaint Process Advising	1	President’s Office	1
Conduct	2	Prevention	3
Counseling	1	Student – Graduate	2
Dean of Students Office	1	Student – Undergraduate	2
Equal Opportunity Office	1	Student Outreach Services	1
			n=21

Phase One: Document Review

I collected data in three stages. First, I reviewed the universities’ websites to obtain key documents and insight on the planning, review, and implementation around issues of campus sexual violence. This included a review of the history of the issue and past policies at the institution, reports on constituent deliberations, media accounts, policy development, incident statistics, Title IX investigations or audits, faculty and staff handbooks, student code of conduct, safety reports, university mission, and other relevant publicly available documents. All of these

records, documents, and archives provided “a particularly rich source of information” about each organization and its attention to the issues (Patton, 2002, p. 293).

My extensive review of institutional and public documents served a number of purposes. Not only did it help me identify important concerns for the phenomenon being studied, but it also revealed organizational complexities and varying levels of support and intensity underlying campus sexual misconduct efforts. The review also brought me into both time and place of the unique cultures, processes, and histories of each research site. Capturing and communicating the development and treatment of Title IX, harassment, and sexual misconduct issues on campus, the document review and analysis provided me with background knowledge that helped to frame subsequent observations and interviews.

Phase Two: Interviews and Observations

It is during this second phase of data collection, occurring over an eight-month period from fall 2014 to summer 2015, that I conducted interviews and carried out observations at each research site. I visited each university to deepen my understanding of its culture and messaging. I conducted site observations, joined organized campus tours for prospective applicants and parents, investigated programmatic responses designed to comply with the DCL mandate to effect campus culture surrounding sexual violence, and participated in awareness programs. Genres of this sexual assault, domestic violence, and dating violence programming included tabling, expert panel discussions, theater (*The Vagina Monologues*), and community screening of a campus sexual-assault documentary exposé (*The Hunting Ground*) taking place at various points throughout my data collection. It was while I was on campus for each of these visits that I conducted the participant interviews.

I created a semi-structured interview protocol designed to use across the full range of study participants (Appendix E). I constructed the protocol based on principles advocated by Hartley (2004), Stake (1995, 2003), Strauss (1987), and Yin (1994, 2009) of asking unbiased questions in a non-threatening, open-ended manner according to primary themes identified in the literature review. Interview questions fell into one of five categories: (1) the participant's understanding of the DCL and related legal obligations; (2) description of the manner in which units/individuals were chosen to participate in the review team and the interactions they had throughout the deliberations and decision making process; (3) how sexual misconduct legal and compliance concerns were addressed by the institution; (4) the nature of, and the manner in which, any innovative strategies addressing campus sexual misconduct materialized; and (5) whether and how transforming legal concerns into organizational and social opportunity occurred. In limited instances, participants provided me with internal documents that comprised part of my document review.

Phase Three: Supplemental Document Analysis

The third and final phase of data collection has been occurring simultaneously with my data analysis and writing during the 2015-2016 academic year. In this phase I have supplemented my initial document analysis with further review of publicly available records to provide contextual and augmentative data collection. I have also analyzed new sources not previously available, such as new campus climate surveys and resolution agreements of Office for Civil Rights Title IX investigations (Cantor et al., 2015; McMahon, Steplton, O'Connor, Cusano, 2015; U.S. Department of Education, Office for Civil Rights, Recent Resolutions, 2015). These multiple data sources combine to provide a detailed understanding of the organizational process of how, in the context of legal pressures concerning campus sexual violence, universities are

acting to understand their legal responsibilities, collaborate between legal and other professionals to think broadly about the law, and implement policies that become a source of institutional and societal opportunity and advancement. Table 2 provides participant information useful to reflecting on their positionality within the organization. Though provided in broad strokes to protect their identity, the details are nevertheless important to reflect critically upon the potential challenges and influence of these participants in the university's review process and compliance construction.

Data Triangulation

I adopted practices of data triangulation to increase the credibility and trustworthiness of the research findings. Triangulation occurs when various sources are used to study the phenomenon under investigation. It may occur in the form of data triangulation (using multiple data sources), investigator triangulation (employing various evaluators), theory triangulation (applying different perspectives to examine the same data set), or methodological triangulation (utilizing multiple research methods) (Patton, 2002; Yin, 2009). An important strength of case study design is the use of data triangulation to provide multiple measures of the same phenomenon. Using different sources of evidence in my study, I was able to converge information derived from multiple resources to confirm the authenticity of facts and events. I cross-referenced information obtained from one source - for example an interview - with another source, such as institutional records. Whenever possible, I also evaluated this data against media accounts. Often times, I was able to verify the case study data through observations or subsequent interviews. Using multiple sources of evidence to collect data to examine the phenomenon of interest increased the construct validity of my study (Yin, 2009).

Table 2. Participant Characteristics and Positionality

Participant	Generation: Millennial Gen X Baby Boom	Time at U* (years) <5 5-10 >10	DCL/campus sexual assault authority and experience**	Broad area of expertise
Avi	Baby Boom	>10	medium	education & programming
Bruce	Baby Boom	>10	medium	student services
Charlotte	Baby Boom	>10	low	student services
Derek	Gen X	<5	high	conduct & adjudication
Devina	Gen X	5-10	high	DCL Compliance
Dylan	Millennial	<5	low	student issues
Etienne	Millennial	5-10	medium	education & programming
Ivy	Millennial	<5	medium	education & programming
Jackson	Gen X	<5	medium	student services
Jordan	Gen X	5-10	medium	education & programming
Leslie	Gen X	5-10	high	education & programming
Martin	Baby Boom	>10	medium	education & programming
Minn	Gen X	<5	high	conduct & adjudication
Naveen	Millennial	<5	medium	education & programming
Patricia	Baby Boom	>10	low	education & programming
Priya	Millennial	<5	low	student issues
Quinn	Gen X	<5	high	education & programming
Rachel	Millennial	<5	low	student issues
Renata	Gen X	<5	low	education & programming
Sam	Millennial	<5	low	student issues
Vanessa	Millennial	<5	medium	education & programming

*U: University

** the DCL/campus sexual assault authority and experience scale is based on my interpretation of a number of factors observed, including the participant's position within the university, extent of their prior sexual assault engagement, and perceived influence within the organization

Data Management

Qualitative research using multiple data sources creates sizeable amounts of research data. I organized audio records - such as voice memos from site observations and interview recordings - using *Box*, a secure, online, cloud storage program. Once interviews were transcribed, I began managing and coding transcripts using NVivo 10.2.1 for Mac. NVivo is a computer software package designed for qualitative researchers working with rich, text-based information requiring deep levels of analysis. I also uploaded documents and records that contributed to the evidentiary base of each case study to NVivo. I backed up my transcriptions, notes, and documents to both the cloud and to an external hard drive for safekeeping. Part way through data analysis using NVivo software, I switched to coding transcripts by hand (the reasons for which are detailed below). I found coding by hand to be more beneficial to my analysis than the NVivo program, which was not providing an easy user experience. While NVivo remained a back-up source for managing document and transcription data, pen, paper, binders, basic word processing, and old-fashioned brainpower became the primary tools for my data analysis.

Data Analysis

I analyzed data at different stages of the research project. As previously mentioned, my initial analysis of public documentation and university websites preceded participant interviews. This enabled me to develop familiarity with each institution's context and timelines. Pursuant to widely accepted data analysis methods of analyzing data simultaneously with data collection, I continued to analyze university documents, media accounts, field notes, and interview memos over the course of the interview periods (Creswell, 2003; Glesne, 2006). While document analysis and field notes from my observations increased the study's validity by providing

multiple data sources and corroborating or dispelling matters that were raised in the interviews, they ultimately served as secondary data. Secondary data was not systematically coded for data analysis purposes. Rather, such data provided context and validity for each case. My analysis of documents and field notes enabled me to reflect deeply on the content and nuances of the interview data. I used this secondary data to clarify, confirm, or provide disconfirming evidence arising from the primary interview data (Glesne, 2006; Merriam, 2002; Patton, 2002; Saldaña, 2013).

Participant interviews served as the study's primary data. Analysis was done through multiple levels of coding. Coding is essentially a cyclical process that links the study's data to a key concept or central idea (Creswell, 2003; Glesne, 2006, Saldaña, 2013). Traits of subjectivity and creativity are expected, even encouraged, in qualitative data analysis (Glaser, 1992; Patton, 2002; Strauss, 1987). There is methodological support for both flexibility in data analysis rules and procedures (Glaser, 1992) and calls for more rigid data analysis routines (Strauss & Corbin, 1998). To maintain the reliability of the research, promote clarity, and ensure transparency, I summarize below the coding procedures I employed (Strauss, 1987).

I drew on grounded theory's constant comparative method of data analysis to uncover patterns and meanings in the data in order to offer an explanation as to how universities are addressing Title IX compliance. Grounded theory as a methodological tool is highly supported across numerous qualitative research traditions (Creswell, 2003; Glaser & Strauss, 1967; Glesne, 2006; Patton & Applebaum, 2003; Strauss, 1987; Strauss & Corbin, 1998). Strauss (1987) credits the grounded theory approach as the most common coding form in qualitative research. Although I designed the interview protocol deductively by drawing on existing scholarship, theory, and frameworks, I analyzed the data inductively. I did so to generate substantive codes arising out of

the themes and words from the data itself. Selecting this analytic method to code my data supports the ultimate case study goals advocated by numerous qualitative methodology experts, namely to uncover patterns and meanings that lead the researcher to develop conclusions, in turn advancing theoretical contributions (Bogdan & Bicklen, 2003; Patton, 2002; Patton & Applebaum, 2003).

I adopted three stages of coding to uncover patterns and meaning in the data: open coding, axial coding, and selective coding. I initially listened to every interview while simultaneously reviewing that participant's transcript. In this way I was able to both correct any transcription errors and draw out major themes from each interview (for example, understanding of the issues, compliance, innovation, values). I then uploaded each reviewed transcript to NVivo and began open coding to develop first level codes (or what are known in NVivo as 'nodes'). At this level I established coding categories and sub-categories. While making connections between them, other issues beyond the immediate phenomena being studied began to emerge. As an example, leadership was neither an initial theme included in my interview protocol nor a topic I explicitly explored with participants. Yet first level coding categories identifying patterns involving innovation, collaboration, and transformation all began to exhibit properties of leadership and strategies engaged in by review team leaders that fostered positive outcomes. Whereas open coding identified numerous core categories and sub-categories, connecting properties across categories and refining the initial open coding categories took place in the second level of coding, known as axial coding.

Axial coding enabled me to narrow the information base and lay out properties of each category. It was at this stage that I switched to printing and annotating interview transcripts: highlighting sections of the interview around the specific categories, writing notes in the

margins, reflecting connections in the data. This level of analysis enabled me to achieve what Strauss (1987) describes as building up dense texture of relationships around the “axis” of the focused on category. I conducted this analysis by hand rather than through NVivo because of self-knowledge that I learn, analyze, and increase my understanding of material more effectively writing notes by hand, scribbling ideas in margins, and visually recalling information. Coding by hand rather than by use of coding software enabled me to be more mindful of the data. A growing body of scholarship supports my preference, concluding that conceptual understanding of material increases when notes are generated by hand versus on a computer (Duran & Frederick, 2013; Holstead, 2015; Mueller & Oppenheimer, 2014).

The third and final coding technique I used is known as selective coding. At this stage, I reviewed the transcripts and related new codes to the core categories beyond what I had done in axial coding. Relating all subordinate and sub-categories to the core categories, I intensified the interrelationships among them. The data is now used to saturate the core, related categories. It is from this final coding stage that a theory grounded in the data begins to emerge as I developed a narrative connecting the categories and relationships of the case (Glaser & Strauss, 1967; Strauss, 1987; Strauss & Corbin, 1998). Examples of the actual codes used, and their evolution from open to axial to selective, can be found in Appendix F. Starting from the deductive analysis of themes that emerged from the literature, Appendix F illustrates how themes such as (1) fulfilling legal requirements (compliance) and (2) creating practices that provide institutional legitimacy or advantage, developed into an inductive process of data analysis. Through open coding I extracted significant concepts from the interviews. For example, the theme of ‘relationship building’ became a code resulting from data such as “we need to work together rather than working against each other” and “the quiet people were encouraged to share what

they thought.” Connections between the codes started to become apparent during axial coding, so initial open codes such as ‘relationship building,’ ‘heated debate,’ and ‘compromise’ began to merge into a category labeled ‘dynamics.’ After axial coding was completed, these categories were then related to each other in selective coding, resulting in patterns forming from the data. In the case of fulfilling legal requirements, the dominant pattern was that interpersonal dynamics were critical to creating and putting into practice forward thinking policies and protocols. The inductive pattern of intended and unintended cultural and societal transformations arose from the deductive theme of creating practices that provide institutional legitimacy or advantage.

Role of the Researcher

Researchers consciously or unconsciously make continuous decisions about the extent of their roles in the research (Stake, 1995). Multiple roles affected the methodological choices I made and how I interpreted the study findings. As a former practicing attorney and now a scholar of higher education, I have long been interested in university legal environments: the institutional negotiation of legal quandaries, how increasing legal pressures affect university organization and functioning, and the effects on students, faculty, and the public good. My intellectual proclivity is grounded in scholarship on law and organizations that link a growing reliance on legal legitimacy and the adoption of legalistic mechanisms in organizational decision making with a decreasing concern for other organizational, interpersonal, economic, or socially sensible factors relevant to organizational decision making (Bies, 1987; Foote, 1984; Gajda, 2009; Jasanoff, 1985; McLendon & Hearn, 2006; Meyer, 1983; Olivas, 2005; Sitkin & Bies, 1993, 1994). My experiences with the power and legitimacy afforded law, juxtaposed against the undermining of justice and fairness when highly formalized legalistic procedures that meet the letter of the law - as opposed to meeting the spirit of a law - are adopted, led me to create this study.

I constructed this study not only to satisfy my personal curiosity and deepen my professional understanding, but also to uncover evidence that might inform the field of higher education. In a broad sense, I am exploring the realm of higher education decision making in relation to legal influences. Wondering whether legalistic decision criteria infiltrating universities (such as strict adherence to formal rules) was being given priority over other factors (such as normative values of academe), I struggled with designing a research study that could give careful and accurate attention to such a sweeping topic. Focusing on whether the business of higher education was being influenced by a concern over risk management and protecting the organization rather than an interest in student well-being or upholding values of public service, I decided to examine the post DCL Title IX compliance environment because of its national significance, timeliness, and understudied organizational implications.

The teacher in me wanted to inform my audience - higher education scholars and practitioners - of information they may not have substantial knowledge of but are affected by, given their professional identities. Working under what Sitkin and Bies (1994) describe as a rationality paradox, higher education professionals are often pressured to adhere to procedural authority embedded in strict formal rules rather than provide adaptive and flexible solutions to specific contexts. For example, in the context of Title IX, a faculty member may not be able to keep a student's confidence if the student were to disclose knowledge of sexual harassment or misconduct. Rather, the university's policy may require mandatory disclosure by the faculty member, even if this could jeopardize the student's personal or academic best interests. Was adherence to strict rules over case-by-case adaptability happening? The advocate in me wanted to present university administration with evidence that it could handle such matters compassionately *and* lawfully. With all of the confusion around Title IX and the DCL, many

universities appeared to be adopting overly conservative measures to minimize legal liability. As an advocate, I want to advance research that would inform administrators of the power they possess to influence legal compliance and shape norms as they select, interpret, and challenge laws. While not outwardly encouraging advocacy through this study, I'm aware as a researcher that my interpretations of the data act to support and dismiss certain conclusions, thereby advocating a particular point of view. As Stake (1995) has expressed, qualitative research is laden with values. I act to combat any biases I have brought into the research by taking on the additional research role of evaluator, giving careful attention to each case's merits and shortcomings (Stake, 1995).

Being aware of the personal biases and theoretical predispositions I bring with me as the human instrument of data collection, I took measures to ensure I had adequate knowledge and training to systematically collect data from numerous sources, examine the complexities and nuances that emerged from multiple perspectives, and report both confirming and disconfirming evidence in my conclusions (Patton, 2002). However, despite efforts to minimize potential shortcomings that could affect the rigor of the research, design and methodological flaws - as discussed below - nevertheless occurred.

Limitations

Any given research design inevitably reflects imperfections. These may be the result of resources, capabilities, purposes, or judgment calls, among other considerations (Patton, 2002). This research study is no different. The principal limitation concerns what Yin (2009) describes as the "completeness" of the data. Although I expended exhaustive effort in collecting relevant evidence, some pertinent evidence has remained uncovered. The fact that only a small proportion of review team members I approached consented to be interviewed left out many perspectives,

potentially alternative perspectives capable of creating rival explanations. With an over-representation of mid-level student affairs professionals, my findings are largely influenced by their experiences and viewpoints. Ideally I wanted near equal representation from legally and non-legally trained review team members to address differences in interpretation and transmission of information originating from a legal context. I was unable to conduct any analyses of such a nested sample because of the characteristics of the ultimate participants. The interview participant's characteristics - such as position within the university, race, and gender - all shape their perception of the process, which places constraints on my analysis and interpretation of the data.

Throughout the data collection process I attempted to uncover possible rival explanations to determine whether events and actions were what they appeared. The study participants all supported the review processes and the collaborative, forward-thinking leadership that enabled innovative policy and programming to result. Although I corroborated my findings through data triangulation whenever possible by weighing the accuracy of participants' accounts against their credibility, available documentation, and confirming evidence from other participants, those who agreed to be interviewed for the study may represent only those who had a positive experience on the team. It remains possible that members who had a less satisfactory experience chose not to participate in the study. Potential bias of the study participants' accounts could exist because of the self-selecting nature of taking part in the study. I would argue that the findings I present are internally valid based on the context and research method I used. The lack of discrepant information from informants that runs counter to the findings' themes, however, does limit the completeness of the data. I present some disconfirming evidence from participants in the findings chapters in an attempt to uncover rival explanations. Despite a diligent search, however, I found

very little discrepant evidence from these participants. Either no substantive rival explanations exist, which would increase confidence about the case study's descriptions, explanations, and interpretations, or my analyses were unable to capture them because of the limited participants available to interview. The low participation rate across the schools constrains the analyses to participants whose experiences could have been biased.

The study also includes limited perspectives from key stakeholders highly affected by issues of campus sexual violence. Some of this is reflective of review team composition itself. As mentioned earlier, not all review teams included members with cultural competence in racial and cultural diversity or a developed understanding of gender and transgender identity issues, all of which add layers of meaning and context to matters inherent in sexual violence. Nor were survivors of sexual assault, resident assistants, campus security, athletics, local community partners, or leaders from Greek Life represented across the review teams. Although I am fortunate to have interviewed participants matching many of these characteristics, their perspectives alone are not representative of all members of such groups. With the exception of legal counsel, my results may be representative of review team composition at the participating institutions. However, these same results lack alternative viewpoints that more individuals from underrepresented groups could have contributed.

Another limitation from my study concerns the lack of observational data from review team meetings. At two of the three institutions, the review teams – with some membership modifications and less frequent meetings - remained active. Their updated charge was to assess and refine, in light of legal and professional developments, their teams' recently sanctioned campus sexual assault policies and protocols. My requests to observe ongoing meetings were either denied or ignored. The third institution claimed to be contemplating a similar review

process, but did not convene any such group during the period of my data collection. Although retroactive observations of the original review team deliberations and decision making was impossible, I believe that direct observations of the revised teams, with similar member composition and responsibilities, would have provided more complete data explaining the phenomenon under investigation and further illuminated interview evidence. Such observations might have enhanced the accuracy of the case studies, providing even greater construct validity (Yin, 2009).

Finally, being unable to reveal the identity of participating institutions or discuss key aspects of institutional contexts has been limiting. Each of these institutions is doing excellent work and the field would benefit from knowing their true identities. To protect confidentiality, I am unable to directly refer to, or quote from, actual documents or external commentary (such as media accounts). Instead, I have had to take additional safeguards to protect the institutions' identities, even in using publicly available records. These safeguards include omitting certain citations and reporting some findings in a generalized way, potentially diminishing the authenticity of the data in some readers' eyes. If readers knew the institution's true identity, I believe they would benefit by having a more complete understanding of each institution and its unique context. Applying any of their prior knowledge about the university to the case would add to the overall quality of the case study (Yin, 2009). However, because of the chilling effect, contention, and insecurity surrounding the sensitive issues being examined, I felt anonymity was necessary to ensure access to participants. Many participants confirmed my suspicion by revealing that they agreed to participate in the research because of my assurances of anonymity.

Conclusion

In qualitative case study, the researcher seeks greater understanding of the unique complexities of a case (Stake, 1995). Studying the organizational issue of how legal mandates are causing university decision makers to act, this study specifically examines institutional response to the Department of Education's administrative guidance on campus sexual violence under Title IX. Three institutions serve as the cases for this multiple-case study design. I selected each institution using purposeful sampling to allow for in-depth study. The primary data for analysis consisted of twenty-five hours of interview data from participants serving on each institution's review team, which was charged with addressing university policy and protocol in light of compliance obligations. I analyzed this data using grounded theory methods to code and refine themes identified from the data. I also relied on direct observations of the campus environment, review of institutional documents, media reports, lobbying efforts, and participation in both institutional and student-led initiatives to triangulate the interview data and increase the study's validity. I explain the themes that arose from the data, and discuss their importance, in the chapters that follow.

Chapter 4 – Organizational Contexts: Research Sites

Institutional theory's conceptual frame establishes the importance of organizational attributes and individual capacity in developing responses to ambiguous legal directives. The Department of Education, having refrained from mandating boilerplate solutions across higher education for Title IX compliance, recognized the need for local discretion in constructing responses. On its face, the Department of Education expected variances in institutional policies and procedures to allow for contextual differences between organizations and localities (Dear Colleague Letter, 2011).⁸ Practically, as decisions from Office for Civil Rights Title IX investigations become known, deference to local context is markedly absent. With settlement agreements imposing noticeable standardization of responses, the importance of contextual difference appears to be diminishing (New, 2016b). Yet context and locality are vital factors that contribute to university leaders' comprehension and action in preventing and responding to campus sexual violence.

To understand the dynamic process of negotiating institutional policy in response to challenging legal mandates, it is necessary to establish the organizational contexts of each school in this study. Examining the organizational contexts of universities in response to expanded and ambiguous Title IX obligations provides important insight into how decision-making resulting from DCL compliance came about. This chapter addresses the organizational contexts of the research sites, conveying how each university addressed the DCL and prepared their

⁸ Among those contextual matters referenced in the DCL are institutional size, student population, and administrative structures.

organization for change.⁹ As one of this study's contributions toward practice, insight from these findings will enable university leaders, practitioners, and policy makers to better understand the complex characteristics, multiple investments, and diverse considerations that shape substantive compliance.

Organizational Characteristics

The scope of administrative sophistication, levels of expertise, and resources available to fulfill compliance obligations varies greatly among the range of institutions that comprise American higher education (Broad, 2014). This study's sites – Adhemar College (“Adhemar”), The University of Glensborough (“Glensborough”), and Tundell University (“Tundell”)¹⁰ offer unique and shared institutional characteristics. All three are 4-year or above, large, selective, public, doctorate-granting universities with high levels of research activity. Students can choose from an array of housing options, including on-campus university residences, off-campus houses and apartments, sorority and fraternity housing, or commuting. All are NCAA Division I schools with fervently embedded sport cultures and high profile athletic departments. Having strong athletic programs, promoting a residential experience, permitting historically all-male social clubs, and encouraging experiences with Greek Life are factors associated with the culture and incidents of sexual violence on campus (Armstrong et al., 2006; Harvard University, Task Force on the Prevention of Sexual Assault, 2016; Minow & Einolf, 2009; Miranda, 2013; Moynihan et al., 2010).

The three participating institutions are comprised of loosely coupled organizational units. Consisting principally of decentralized services with departments operating within functional

⁹ I purposely disclose minimal institutional details to protect the university's identity.

¹⁰ All institution and participant names are aliases; see Confidentiality and Anonymity section in Chapter 3 for an explanation of reasons behind this decision.

silos, the problems, solutions, and actions taken by each department are often only casually connected (Manning, Kinzie, & Schuh, 2006; March & Weil, 2005). All three institutions have general counsels on staff. As members of the National Association of College and University Attorneys, each school has access to a network of legal information and professional expertise provided by this professional association. Each school also values community engagement and partnerships, offering students opportunities through curricular engagement and outreach to participate in meaningful community activities that contribute to the public good. By holding constant institutional characteristics of the participating universities, complexity related to divergent institutional type is reduced (Kezar, 2013b). Table 3 provides a summary of the salient organizational characteristics and differences among the study’s participating institutions.

Table 3. Salient Organizational Characteristics and Differences Among Participant Institutions

	Adhemar	Glensborough	Tundell
Carnegie Class.* Level	4-year or above	4-year or above	4-year or above
Carnegie Class. Control	public	public	public
Carnegie Class. Enrollment profile	majority undergraduate	high undergraduate	majority undergraduate
Carnegie Class. Research Activity	highest	higher	highest
Carnegie Class. Setting	primarily residential	primarily nonresidential	highly residential
Approximate Student Population	40,000	30,000	30,000
Intercollegiate Athletics	NCAA Division I	NCAA Division I	NCAA Division I
State System Structure	main campus	regional campus	main campus
General Counsel (Attorneys)	in house	in house	in house
Review Team’s Decision-Making Model	co-chairs making ultimate decisions based on team’s recommendations	informal, grassroots, consensus influenced by subject-matter experts	formal, modified consensus by entire team
Post DCL, OCR** Title IX Investigation	yes	no (main campus: audit)	yes

* classification

** Office for Civil Rights

Tundell and Adhemar exhibit characteristics of flagship schools. They are well-known, well-financed, research-intensive institutions in their respective states. Glensborough does not exhibit these same flagship characteristics within its state's university system. It is one of the multiple, well-regarded, publicly funded local campuses within the state system. It is able to design and implement its own sexual misconduct procedures, protocols, programming, education, and training. It cannot, however, set policy independently of the other campuses in its system. For example, it could not independently approve an affirmative consent standard in sexual assault policies. Rather, the state's flagship school would create policy that would bind the other campuses in the system. Once policy exists at the central level, each campus can devise strategies and responses designed for its unique setting and population.

Pre DCL Environment and Initial DCL Response

Not all of the research sites professed the same values or commitment to issues of campus sexual violence prior to the DCL. Adhemar had crafted a national reputation as being a leader in prevention efforts. The university's response protocols were well developed, and although not perfect, Adhemar was addressing and contributing to best practices on issues of campus sexual misconduct. Tundell's reputation on such issues was weaker. It operated out of a system marred by neglect and missteps. While it had official channels available for students to report allegations of sexual violence, complainants report being "stonewalled." Likened to an 'old boys network' where complaints were "swept under the rug," a growing student constituency at Tundell perceived the university environment as one in which complaints were minimized by administrators who "put their heads in the sand" and ignored what was occurring. Despite prevention and bystander intervention programs operating on campus, the university lacked a cohesive investigatory arm capable of responding, addressing, and adjudicating alleged

incidents. Glensborough enjoyed a reputation of being a progressive campus renowned for service learning. It's student body is known to rally behind issues of social justice. The recent past has witnessed student activism around issues of diversity, equity, and inclusion as opposed to campus sexual violence.

Once the 2011 DCL administrative guidance was issued, Tundell and Adhemar responded with interim sexual assault policies designed to address immediate compliance obligations. Glensborough did not issue an interim policy. Its existing student code and harassment policies loosely addressed sexual misconduct. Each school gradually made structural changes and rolled-out compliance initiatives as their actors developed a greater understanding of the institution's sexual assault and violence prevention protocols in light of emerging DCL obligations. The most easily decipherable DCL guidance was tackled first. For example, it was clear that interim Title IX coordinators would have to be named. Longer-term impact, such as under which unit (general counsel's office? student conduct? equity office? dean of students?) the position would function, as well as the scope of the person's role and responsibilities, would merit further consideration. Tundell, Adhemar, and Glensborough put off such deliberations until they had a better understanding of the scope of structural reform, staffing, resources, and expertise needed to meet such compliance guidance. The DCL served as a checklist for interim decision makers to assess what university protocols were already in place, what additional steps were needed to achieve compliance, and what directives required further clarification before being acted upon.

Adhemar College

Adhemar had been active on the national scene around issues of campus sexual violence and prevention prior to the DCL. It already carried out an integrated approach addressing a range

of issues involved in sexual violence on campus - including early prevention education, bystander intervention training, crisis counseling, and medical services. Its sexual misconduct policies were included in the student code of conduct. With the largest student population of the three research sites, Adhemar had the lowest incidents of sexual assault reported among the three schools. Counseling professionals knew that the low reporting figures did not match the number of incidents their staff was addressing. When a complaint was filed at Adhemar, it was investigated by an administrative unit of student affairs dedicated to all issues of student misconduct. Adjudication was conducted through a panel of peers.

Following the release of the DCL, Adhemar put into place an interim sexual misconduct policy. Designed by a core group of the university's executive leaders, the interim policy immediately addressed the more obvious DCL directives. The interim policy adopted the newly mandated preponderance of the evidence standard (from the previously existing clear and convincing evidentiary burden), created a Title IX coordinator position (which was filled by an existing administrator), and shifted the adjudication responsibility from student panel to trained conduct professionals. This policy remained in effect until Adhemar had the opportunity to more thoroughly review and revise campus-wide sexual misconduct protocols, policies, and procedures in light of the DCL guidance. Adhemar has been the recipient of an Office of Civil Rights Title IX investigation. Results of the investigation have not yet been released.

Tundell University

Prior to the DCL there were few attempts to create a central place at Tundell to address student needs around issues of sexual violence. Prevention, education, counseling, and response expertise was scattered across divisions. Attempts to build a collaborative network across the university had neither provost-level nor presidential support. Participants perceived a lack of

resources and attention by the university to address or combat issues of sexual violence. While committed professionals struggled to make inroads with the administration, coordination of services and ease of locating relevant services was lacking. Attempting to better coordinate Tundell's programming and services, Etienne, an mid-level administrator in student affairs programming and education initiatives, describes the paradox between caring, experienced professionals being on campus and the lack of institutional effort connecting students to them:

A ton of people can care about an issue and [can] even be well-trained and be supportive, but if it doesn't trickle down and it's not signified to students and they don't know that it's a safe place and the right place to go, it's all for naught or it's not ideal at least. [...] Systems were not in place in order to help people help students.

Charlotte, a seasoned administrator describes "inappropriate and poor responses to students" by Tundell administration dealing with sexual violence matters. She provides the example of a student sexually assault while participating in a study abroad program:

The person who was the dean of students at the time never returned the call to the director of the study abroad office, never called back to follow up and provide help and support to [the] office let alone that student. I think there were two other instances that I was aware of where those types of things happened. It was part of that, it doesn't mean it wasn't dealt with - I don't want to say under the table - but it just wasn't talked about.

The lack of institutional concern and regard for student welfare contributed to a climate of mistrust on campus between students and administrators. This mistrust grew into antagonism, with "students see[ing] some people in the administration as the enemy." Shortly after the DCL's release, Tundell students filed a Title IX complaint with the Office of Civil Rights over Tundell's inappropriate and insufficient handling of sexual violence complaints. Tundell, with a similar student population as Glensborough, had the highest incidences of student reported sexual assault during comparable time frames prior to the institution's DCL overhauls.

University of Glensborough

Prior to post DCL reform, sexual misconduct fell under the student code of conduct that applied to all of the system's campuses. Each campus could then develop its own enforcement and implementation procedures. The system's Title IX coordination was managed centrally, with each campus having a deputy Title IX coordinator. The code's pre reform wording was weak, failing to address specifics necessary to properly investigate and adjudicate allegations of sexual misconduct. The code and conduct environments existing at Glensborough soon after the DCL's release were considered disappointing and problematic. Naveen, a director within student affairs trained as a hearing officer, started working at Glensborough shortly after the DCL's release.

Naveen describes his disbelief with the student code of conduct in effect at that time:

I remember looking through the code and thinking, there's not any good, there's terrible language to address sexual misconduct. There needs to be language that is explicit. If we're going to talk about penetration, we need to know exactly what that is, 'cause we need to adjudicate based on what happened, and what we can ascertain in the hearing, and in the packet, and none of that is here. It's just about these esoteric terms of harassment and prevention of educational sort of pursuit. And that's fine and everything, but there's no specific, sort of, there's nothing addressed in the code about exactly what that looks like and that was problematic to me.

In addition to the code's shortcomings, conduct operations at Glensborough were also found wanting. Both conduct processes and sanctioning was carried out informally. Naveen recounts an example illustrating this closed-door approach:

There was a time when the person who was doing conduct in my first year was adjudicating some sexual misconduct and what I found really odd was that she was just adjudicating it like inner-office, like she was just like having an interview with the complainant, an interview with the accused and then like - and it was very backwards to me. When I first got here, I just thought, that's not right, you cannot do it that way. [...] She seemed reluctant to levy a really sort of heavy sort of sanction. And I said, I just don't understand why we would allow anybody to remain part of a community or invite that person back in after a finite period of suspension. [...] Given the Lisak¹¹ numbers,

¹¹ David Lisak is a clinical psychologist and retired psychology professor from the University of Massachusetts Boston who has devoted his professional life to studying the causes and

given what we know about sort of recidivism [...] if you find somebody responsible, then just get rid of them. And I was sort of surprised that she was reluctant to do that. [...] I thought we were a little backwards.

Derek, who joined Glensborough's student conduct division nearly 2 years after the DCL release, provides additional insight into Glensborough's environment before the university's policies and protocols were revamped post DCL:

Our conduct practices were very much pre DCL, kind of an old [school] discipline where you could bring the student in and all authority rests with one figure and that person does all the work on it and makes a final decision, and so it wasn't really fair. [...] Prior to my arrival, the people who did discipline weren't really strong advocates for the office or strong advocates for their role, for the voice of this work. There were a lot of folks who did a great job building relationships and they were very likeable people but weren't able to go out and articulate to faculty and staff and students why this office had to be recognized on the campus as the expert in this area.

Derek's strategic hiring during the post DCL period in which the university grappled with its compliance obligations signaled a shift for the university and created momentum for the development of improved practices. Glensborough had similar incidences of reported sexual assault as Adhemar, though Adhemar has a larger student body. Glensborough is the only school of the three that had not been investigated by the Office of Civil Rights for a post DCL Title IX complaint, although its system's flagship school was the subject of a proactive audit by the Office for Civil Rights. Audits differ from investigations in that they are not initiated based on formal Title IX complaints, but rather on statistical data or anecdotal reports of possible violations of student's rights.

The Glensborough DCL review process is markedly different from Adhemar's and Tundell's, most notably because of the regional campus/central campus dynamic. Glensborough, a strong regional campus advocate of Title IX issues, influenced the central campus decision-

consequences of interpersonal violence. His research supports a relatively small minority of men being responsible for most campus sexual assaults (Lisak & Miller, 2002).

makers setting policy for the state system schools. Adhemar and Tundell, by contrast, made decisions independently from other campuses within their state's structure. Following the release of the DCL, student affairs professionals at Glensborough with knowledge and experience around issues of sexual assault informally joined forces to advance knowledge, prevention, and response around issues of campus sexual assault. They had neither a formal charge nor institutional resources to support them. Rather, they were a grass roots committee formed by concerned campus professionals who secured state funding to develop and launch prevention initiatives. Student affairs professionals at Glensborough were used to managing their matters with significant independence. As one director characterized:

Prior to the DCL, any student affairs work, unless it was a lawsuit that was imminent, general counsel just didn't have the time to pay much mind to what was going on in student affairs. You're left to doing a lot on your own.

This dynamic changed post DCL with general counsel shifting focus to address the system's growing compliance obligations.

As central campus decision makers began to explore university compliance with the DCL, Glensborough's informal committee surfaced as the go-to experts. Over time it was officially sanctioned and served as a model for system wide programmatic reform. Glensborough's response processes were gaining traction as being state-of-the-art. Invited by both the White House and professional governing organizations to inform its policy development, Glensborough was earning a reputation as a leader in the field of conduct practices. The politics and bureaucracy of the state system were such that system-wide DCL review was messy, however. Multiple central committees were formed to address different compliance issues raised through the DCL, VAWA, and the Campus SaVE Act. Select members from Glensborough's committee were invited to sit on more centralized review teams. A new

organizational structure was created to coordinate compliance, programing, education, student wellbeing, and academic research on sexual assault prevention, response, and support services. During this time of review and re-organization, the system's inaugural sexual misconduct policy was being written behind closed doors by senior administrators and legal counsel. The majority of the research participants for this study were not members of this closed group. Rather, they were members of the review team advancing Glensborough's compliance, prevention, and educational practices – practices considered influential to the field in this developing area.

Post DCL Review Teams

Following the release of the DCL, all three institutions reacted by assembling small, closed groups of senior administrators to make immediate changes in response to the DCL. Tundell and Adhemar quickly crafted interim sexual violence policies designed to ensure each university was complying with new Title IX obligations, such as the changing adjudication standard of evidence. Although Glensborough did not release an interim policy, it had also assembled select executive leaders, behind closed doors, who “hadn't yet understood what ... goals they were trying to reach.” The lack of transparency and exclusive decision-making across all three institutions did not sit well with campus constituents. A participant from Tundell describes the administration “put[ting] together a new system without a lot of community input” contributing to growing discontent. As one director shared: “It [the new policy] just kind of appeared. [...] It was ‘here's the Dear Colleague Letter’ and then – boom – here's a new interim policy and nobody really knew what went into crafting that.” That the policies were intended to be provisional was not made clear. This participant provides insight into the perception and fallout at Tundell at the time:

I don't think that was clear to people [that it was designed to be an interim policy]. Now that may very well have been the case, but I don't recall thinking “oh this is the interim

policy.” And I know that others around, students and other staff, faculty, did not perceive it as that. [...] The outcry that came from not having had much community input was also a variable in deciding to put the task force together.

As public discontent of institutional responses grew, campus leaders created review teams to assess current institutional practices in light of emerging DCL obligations. Each school organized their Title IX review teams differently. With broad charges to make recommendations about existing policy, procedures, protocols and propose improvements, team members largely viewed the opportunity for change brought about by the DCL as a chance to think innovatively about new policy interventions. Leslie summarizes the outlook of a majority of study participants across the three institutions as one in which review team members “had pretty free reins [to] think imaginatively about [...] policy interventions that might be offered as a new opportunity in this change.” The shared impression of review team members across the three institutions was that they felt empowered to “innovate around the Dear Colleague Letter guidance to not just check the box to achieve compliance but actually do some novel thinking.” Most viewed DCL guidance under Title IX as “the floor not the ceiling,” creating favorable conditions to exceed minimal DCL compliance to “figure out how to do this [reform] in the best possible way for students.”

Membership

Cross-departmental representation from professionals possessing subject-matter expertise characterized review team membership. Membership was attained in one of three ways - either appointed by the president, hand-picked by the chairs, or included at the individual’s request by virtue of professional reputation and proximity to the issues. As one member characterized the mix: “[w]hoever selected the group was, I believe, very strategic in picking personalities, styles, and dispositions that would lend itself to being a group that saw that they were collaborating and

doing their best to make things happen.” Representation tended to span faculty, staff, and students.¹² None of the committees had the same mix of people or know-how. Some relied more heavily on legal expertise, while student-centered professionals dominated the composition of others. Certain offices such as legal counsel, psychological services, and violence prevention were represented on all review teams. Units such as housing, athletics, academic advising, women’s center, LGBTQ center, institutional equity, and student health existed on some teams but not others. One team had an external community member who was not affiliated with the university, whereas another had a forensic nurse from a community hospital the university partnered with. One of the universities brought in external legal consultants. None had representation from Greek Life governing bodies.

Organizational Structure

The organizational structure of each review team varied considerably. One team was co-chaired by long serving senior university administrators representing both student affairs and legal affairs, creating, in the words of one participant, a “powerful balancing effect between legal compliance and educational mission and student experiences.” Final authority rested with these co-chairs, whose decisions were informed by the legwork and deliberations of the larger sub-team. By contrast, a gender-equity and coalition-building expert with little experience in higher education chaired another team. This chair relied on a system of modified consensus to move decisions forward, ensuring that each member of the committee was at least partially in agreement with the team’s ultimate recommendations. Where a member did not agree with a final submission, a written dissent of alternative positions was provided for the university’s president to consider. The third team underwent changes as the university’s review model

¹² Students did not initially serve on Glensborough’s informal committee, but were invited to join when a review team was formally charged over two years after the DCL release.

developed. Initially, the team was co-chaired by the director of the women's center and the director of counseling services. The lead conduct administrator subsequently became chair of a revised and reconstituted team charged with reviewing a more complex mix of Title IX, DCL, Clery, VAWA, and Campus SaVE policies, practices, and protocols.

Transparency

All three teams spent considerable time meeting with campus constituents. This served a double purpose of both seeking input and perspectives from different groups and populations, as well as informing them of the review team's progress and direction. Glensborough's review team met regularly with members of the student government to share information with them and bring student feedback to the team. The review team initially lacked student representation, however, raising questions about the institutional commitment to include students in the negotiation and creation of solutions. Whether student check-ins were substantive or symbolic in capturing broad constituent viewpoints is debatable. Even with the review team's eventual decision to invite students to formally join the review team, one study participant acknowledged the team's student representative rarely showed up to meetings. Outreach to students during the post DCL reform period, especially to populations in the university community who may be more vulnerable to gender violence (which increases the risk of sexual violence), or represent non-conventional needs, appears weak. Communication was also wanting, with no formal means to keep the university community informed.

Glensborough appears to have managed the post DCL reform process by relying on a small team of people that carefully managed and controlled information. Although on the surface this is consistent with crisis management theory (Davis-Blake, 2016), study data suggests that in Glensborough's case, such actions may have been the result of poor leadership and inexperience

with the compliance terrain rather than a conscious crisis management response strategy. Devina, Glensborough's deputy Title IX coordinator, describes a concern that community buy-in would slow down implementing the revisions:

When that's done [revisions to the policy], we're not going to roll it out for a buy-in, approval by nobody. Sometimes a policy is what it is based on what the regs say we must do. It's not going to get, we're not going to be asking for a review by faculty council, staff council. Like with our policy when I got here, our operating procedures, I had legal counsel review them, but I wasn't seeking buy-in, it's how we're going to do the job. And that Title IX framework will tell the campus, here's how we're doing the job, people don't get a vote, they don't get a say cause it [approval] will never happen.

This participant's viewpoint reveals a dogmatic mindset underlying the organizational dynamics at play in Glensborough's DCL oversight and review.

Tundell, by contrast, operated from a completely different model. Perhaps because Tundell was undergoing a significant crisis and public relations debacle resulting from the Office for Civil Rights complaint and activist attention to long-standing institutional shortcomings, the review team demonstrated tremendous transparency to re-establish trust. Four students were invited to sit on the review team, representing varied interests and constituent groups, including aggrieved complainants. Review team meetings were open to anyone who wanted to attend. Initially, because of the media spotlight, many spectators did attend, including aggrieved students, members of the media, lawyers for complainant and accused students, and members of the public. The review team made use of social media to communicate the team's progress and direction, sharing information widely across numerous platforms, and soliciting feedback along the way.

With Glensborough's model lying at the closed end of the spectrum and Tundell's at the open end, Adhemar's lay in the middle. A working group from the team conducted numerous town-hall style information sessions and smaller meetings to reach hundreds of constituent

groups across campus. It brought feedback from these meetings to the review team, who incorporated community feedback into its agenda and outcomes. Although review team meetings were closed to the public, the constituent meetings occurred at numerous times during the team's review cycle to inform the work at different times. Information was widely shared with the university community, including vetting policy drafts and sample language. This level of transparency fostered community buy-in of the process as the team made numerous, scheduled, and publicized meetings to ensure that "every single student across campus is at least aware of this policy and what it means." Adhemar supported a "community owned student conduct process [...] developed and reviewed by students, staff, and faculty on a regular basis." Its institutional traditions and community values supported vetting its ideas and progress with the extended university community, with stakeholders and focus groups informing the review team of revisions that should be made and sections that should be kept. As Leslie describes:

It was a process. I believe well over 30 groups were approached to vet this out, staff and faculty across campus [...] amongst focus groups and presentations about the policy and the changes that were drafted up for it and so through that, we received a lot of feedback in terms of, from the university as a whole, what this meant to them and what changes should be done.

This elaborate community vetting brought ideas back to the committee from multiethnic student groups, disability groups, black student union, and survivor groups, among others, to examine barriers and potential unintended consequences inherent in the proposed reforms. The committee gave merit to all of this feedback, despite, as Leslie states, concerns about incorporating input from hundreds of members:

At a certain point, we started to get a little bit worried about the volume of content that we were receiving from our community but then as it turns out, it did start to tend to fall into sort of general areas and so we were able to do some really good kind of content analysis about a lot of the feedback that we were receiving, making sure that we were paying attention to not just general trends but also sort of outlier information where sort of specific points of concern that may not be in the general thread of conversation did get

special attention as well, that wasn't just dismissed, but in fact was treated as potentially novel insight that we needed to also pay attention to.

Adhemar's structured and deliberate strategies for community feedback created multiple venues for every member of the community to make their voice heard.

Resource Investment

All of the review teams took longer than anticipated to revise the institution's relevant policies and make recommendations for future action. Glensborough's initial incursion into the shifting post DCL landscape was grass roots and self-selected. Concerned professionals met once a month at the end of a workday to enhance their knowledge and understanding of how emerging issues affected students and practice. It was not until 2014 that concerted efforts were made "to bring the university in line with Title IX and DCL" obligations. Staff invested substantial amount of time and energy "to get [the university] to compliance before OCR realized we weren't there." Perceptions among participants were that the university's financial investment to support the organizational infrastructure was weak. Glensborough provides an example of a poorly resourced effort largely held together by the determination and investment of committed personnel.

Evidence from Adhemar suggests that it took a more supportive stance creating an environment in which the review team was given the human resources, time, and institutional backing needed to reform the policy. Rachel provides insight into the university's long-term commitment to the review team's ongoing process:

The university learned a lot from this knowing that they need to, and they also learned that this is going to be an extensive process, it's not going to be a two-three month turnaround. This was almost two years and for a committee to meet that long is almost unheard of. Usually they're about a year or so. And so it's something that for a university the size of [Adhemar] to take their time creating policy, it's hard especially for the president and the provost that need to report to their stakeholders and everyone's questioning them – why isn't the university moving quicker? Well, this is why. So it's one of those things where you need to balance out the getting voice and consensus from across campus to create a policy as quickly as we can. And it's hard.

An experienced director within a division of student affairs reveals that review team members also did a considerable amount of reading and homework to prepare for their meetings and accomplish their goals. Members spent time outside of the meetings “thinking about the language and what it meant, what it suggested.” Minn wraps up the overwhelmingly positive institutional support team members felt by describing the privileged position a well-resourced university is in to free up senior staff for long periods of time to address this one (albeit complex) issue:

There were the resources and the support that, the infrastructure was there to begin with. On top of that, we had enough infrastructure where we were able to be specialized enough that we could really focus on the issue. So for example, [Leslie] and I as directors of our respective units had staff members that were doing the day to day work with students which allowed us to focus on higher level policy issues and a lot of folks around the country don't have that, they're in the trenches with students every day, they don't have the resources to hire the staff that we did and so we were able to put our heads together months before, anticipating what was coming and then as soon as it was released being able to respond and have a structure set up to start working and being responsive to the guidance.

Adhemar was well-resourced and well-staffed prior to the DCL. Once the directive was issued, it committed top personnel to addressing the guidance in a way that worked with their community values.

Tundell had the longest policy assessment process and the most people involved on the review teams of the three institutions. The team started with short meetings at first, ramping up their commitment to full day meetings throughout the summer to complete their charge over the span of a few months, in time to introduce the revised policy at the beginning of the fall semester. That semester turned out to be a year later. Review team members felt supported by the university, which was investing copious amounts of time, money, and people to address the issue fully. As one participant describes, however, “moving a huge ship like [Tundell] in a particular

direction is an arduous process.” Being involved in such a demanding process, opined another, should produce more than a revised policy, but instill confidence within the university and create stronger professional relationships:

I think you have to be able to identify why you are charging a task force and if you’re going to spend the time and ultimately the man hours and subsequently the money on a large task force [...] like the one at [Tundell], I think the ramifications at least and the aims need to be wider than just generating a new policy. The personnel piece, I loved our task force process, I think we were slow moving and that is one critique that I would have loved to have seen changed, but I think the result of us being slow moving is we got it absolutely right for our community as a result. I think in large part that was due to the personnel and I think the best achievement that I can say that the task force had was, it created friendships and it created a group of people who believed in each other and believed in their ability to create change. And I think you can see that in terms of how many people lasted the distance with the task force. I mean I think we were initially told this would take a summer, one summer and we would be done. I think we very quickly realized that it was not going to be one summer but I think for 22-25-30 people to last 18 months with such an intense, emotionally charged issue and the intensity of the media presence around it particularly at the start, is incredibly impressive and I think a testament to our ability to get the right people on that task force.

Variety among the three institutions’ organizational contexts provides evidence that universities can organize differently to achieve beneficial results. Members of the universities’ sexual violence review teams expressed an overwhelming commitment to “doing it well” as opposed to “doing it fast”. The “it” of policy reform and DCL compliance evolved as collaborators began to understand and address the emerging issues.

Getting It Right

It is important moving forward to characterize what is meant by “success” in the policy revision context. There is no prevailing definition of what successfully addressing the DCL guidance and Title IX compliance looks like for universities. At one end of the spectrum, successful DCL compliance responses could entail managing the university’s regulatory obligations and reducing its legal risks. Practically speaking, this could take on the form of complying with minimal DCL requirements to avoid potential Title IX claims and lawsuits from

aggrieved students. At the other end of the spectrum, compliance responses could establish innovative and substantive solutions that protect students and create improvements for the institution and society while moving beyond merely managing regulatory obligations and legal risks. When the under secretary of education categorizes universities' responses to DCL compliance and issues of campus sexual assault as "a national experiment," it begs the question as to whether there even is an ideal notion of "success," or if universities are working that out as they give meaning to the law through their constructions of compliance. While the head of the Office for Civil Rights has advised that "[t]here is tons of wiggle room" to reach the standards the department is aiming for (Wilson, 2015a), the American Council on Education's impression differs, arguing that universities are "hamstrung by uncertainty," with the "fear of vague federal mandates [limiting their] efforts ... to try different approaches and consider different things" to successfully comply with the Department of Education's DCL guidance (New, 2016b).

To move a university beyond minimal compliance, the organization and its practitioners must increase their capacities and take action to improve responses to campus sexual misconduct. The Association for Student Conduct Administrators (2014) has characterized the nature of such actions as developing a more sophisticated understanding of basic Title IX and DCL legal requirements, exploring student-centered practices, challenging rape myths, and using trauma-informed approaches to conduct culturally competent investigations and provide multiple resolution options. Combining this professional association's guidance with the significant public policy objectives of the DCL to confront campus sexual harassment and violence, promptly and equitably address its effects, and prevent its recurrence (Dear Colleague Letter, 2011), the current study considers another component of "success" as involving a level of social responsibility in serving the larger public interest of eradicating gender based violence. Success,

for the purposes of this study, is equated with moving beyond minimal compliance in order for the university to advance innovative and substantive solutions that create improvements for the institution and society, while managing regulatory obligations and legal risks.

Conclusion

Initially charged with vague goals of reviewing current policies in relation to DCL and suggesting areas of improvement, team members were soon consumed by the process of making sense of the university's changing legal, cultural, and educational environments. As in most organizations, these participants worked in groups to arrive at solutions. This chapter outlined different structural processes adopted by each university to coordinate their group's review. Each university in this study adopted the format of review teams to make sense of, and respond to, the DCL. Norms governing the modes of organizational problem solving, coupled with members' levels of commitment, motivation, conflict, and trust, contributed to the actions the team chose and the institution adopted. Team cultures reflecting deeply held beliefs and identities developed. Leadership and collaboration, presented in the subsequent two chapters, emerged as dominant themes that enabled team members across the institutions to overcome tension, ambiguity, dissent, and pressure to think broadly about the boundary spanning impact of the law on the university. As a result, the review teams were able to arrive at policy reform that moved the institution beyond minimal compliance, developing socially and institutionally desirable outcomes as they shaped cultural norms that influenced institutional actions.

Interpersonal dynamics raised by participants are an important and recurring theme influencing successes achieved by the review teams. That effective leadership emerged as an important element in producing successful results, for example, is not new. However, in the construction of compliance, there is little research from which to draw conclusions about the

types of leadership that lead to beneficial results – beneficial for the institution, for the review team members, for the students they serve, for society at large. The following chapter focuses on the various levels of leadership exhibited throughout the process by multiple people that contributed to the teams' successful outcomes.

Chapter 5: Institutional Actors as Leaders in the Review and Negotiation Process

Institutionalism, concerned with the process through which organizational norms and routines become authoritative guidelines determining social behavior within organizations, theorizes that interpersonal structures are critical components in understanding patterns of behavior within organizations (Scott, 2004; Selznick, 1957). Organizational, institutional, educational, and legal scholars all recognize that multiple forms of vision, control, and advocacy are necessary for an organization to achieve success (Berger-Walliser, 2011; Bess & Dee, 2012; Cameron & Lavine, 2006; Siedel, 2002; Siedel & Haapio, 2010, 2011). Success, in the case of the participating universities' review teams, involved enhancing opportunity for the institution and its students as the review teams took into account multiple considerations of importance to the organization and society in its review and construction of responses.

With a sudden jolt or crisis collectively impacting organizations within a field, leaders are called upon to suggest justifiable responses aligned with normative values. Such leaders must have a vision to create something new, and frame the strategic moves required to achieve the vision (DiMaggio, 1988; Fligstein, 2001b; Giddens, 1984). In the case of the DCL as the catalyst for change, an interesting dynamic arises as to whose interests affect the organization's response. As Edelman (2016) points out, compliance professionals are emerging from increasingly diverse organizational units interpreting and reframing information between institutional actors and the organizational field. Negotiating with powerful actors and diverse constituents, these compliance professionals interpret the cultural environment and shape the norms that influence institutional actions. This research draws on institutional theory and socio-legal frameworks to examine

leadership that emerged from the universities' DCL compliance review context. Would lawyers, conduct adjudicators, compliance officers, prevention specialists, student affairs advocates, or a combination of individuals, take responsibility over the issue and frame it as a matter requiring their interpretation of organizational reality? This chapter examines the role of institutional actors as leaders in the universities' review and policy negotiation processes. In doing so, we see that multiple layers of leadership influenced the universities' responses to the DCL review process, each constructing meaning through their own symbolic lens (Edelman, 2006; Kezar, 2001; Weick, 1995).

Review team members provided crucial leadership expertise in multiple places to contribute to the success of the institution's protocol, policy, and programming review process. Leadership did not occur only at the top. It was demonstrated on multiple levels, supporting traditionally held assumptions that collective leadership plays a key role in advancing change on campus (Higher Education Research Institute, 1996; Kezar, 2001, 2013a; Komives & Wagner, 2012). Study participants often cited the different roles played by various members as particularly impacting the teams' successes. Four leadership categories emerged from this study's institutional review teams as having a special impact in the review process. Three of these draw parallels with leadership categories identified by Cameron and Lavine (2006) of enablers that contribute to achieving extraordinary success in organizations. The first leadership category to emerge from the data is that of "idea champion," someone who creates enthusiasm in others and inspires the team. Those who fill this role take extraordinary interest in the success of the cause, guiding the team toward an energized future state. They serve as the glue that holds the team and the vision together. The second category of leader is the "facilitator." Facilitators provide leadership through support and encouragement, especially of other's ideas. The third

category is that of the “doer.” Doers are those active members who bring together people and resources to produce results.¹³ Multiple individuals are required to fulfill these roles, with some of them performing more than one function. Organizational scholarship suggests that multiple leadership positions are required for organizational change to occur, with each leadership role affecting the project’s success (Cameron & Lavine, 2006; Kezar, 2001). In addition to these three leadership categories derived from Cameron and Lavine (2006)’s research, this study provides insight into an additional category, that of “dissenter.” Studies support the necessity of divergent thinking to increase alternative conceptions of the issues and avoid premature convergence of ideas (Chen & Lawson, 2001; Leana, 1985). By stimulating discussion and the search for alternative information, dissenters expand options the group considers that might otherwise have gone unnoticed (Cameron, 1984; Nemeth, Brown, & Rogers, 2001; Thompson, 2008). The categories are not mutually exclusive, with members assuming different roles, sometimes simultaneously. As findings from the study begin to form a clear picture of the research puzzle, leadership emerged as an important influence affecting team dynamics and the successes each team achieved.

Idea Champions

Idea champions develop connections among concepts and individuals, creating synergy and enthusiasm that provide momentum for the initiative (Cameron & Lavine, 2006; Eckel, Green, Hill, & Mallon, 1999). Accounts from all three institutions credit one or more members as exceptional idea champions who “set the tone” for the policy discourse, driving the team through the review process toward its end goals. All teams started the review process with “apprehensions,” “tensions,” and team members “butting heads.” With members initially

¹³ Cameron and Lavine (2006) classify the three leadership categories as idea champions, sponsors, and orchestrators.

treading lightly to “figure out if you could be candid, what you’re going to say, what you’re not going to say, how political is it,” idea champions at each institution built bridges, drawing out the expertise and importance of each member sitting at the table. Idea champions challenged members “to really think deeply about our mindset, our attitudes, our biases and stereotypes.” In doing so, they maintained an environment that was “less political [than other campus issues] and more centered on the objective, more centered on a shared commitment to coming up with the best possible product.” Idea champions provided big picture thinking, often acting as liaisons between the review teams and the institutions

At Adhemar, the idea champions are credited with creating “a positive nudge” to motivate team members, providing the group with “ultimate direction on some really knotty points.” One team member perceived direction and motivation from a fellow member, who had no explicit leadership role on the team, as follows:

A continuous sort of pressure [...] that’s just a pressure saying, “you can do more here, I trust you, I believe in you that you can do more here, but I need to push you a little bit to get you to move.” [...] They push and you do get better even if it’s uncomfortable, even if that being pushed is not pleasant at the time.

Adhemar’s idea champions are also credited with including and educating members on the periphery who had joined the team because of positional authority in the organization, but who did not possess the same level of knowledge about misconduct or harassment policies, or the day-to-day experiences and services the university offered, as other team members. Rachel provides insight on how the co-chairs’ leadership elevated the team’s understanding of issues while ensuring momentum:

Some of the committee members, especially the faculty representatives, individuals that were not part of the day to day on this, these were the staff that were outside of student life, really didn’t understand a lot of the inner workings of this policy and so through this came a lot of education, a lot of training just amongst each other. [...] [The co-chairs]

really made sure that we were moving along and so if it wasn't for them, yeah, I mean it would have been just a mess.

Additional insight on the co-chairs' role as idea champions came from the athletics representative who credits them with creating an environment of trust and inclusion. Their leadership provided a sense of empowerment and co-creation of the outcome that he had not experienced on previous teams or committees:

It was one of the best experiences I've had with that large a group with such a diverse background - and I have been in a variety of those pieces. And this time I really felt that, [the co-chairs], that co-leadership set the tone. [...] Sometimes I'm invited and it's clear that they just want someone from athletics there. This group made it very clear that the input and the valuation of what was being considered, they made it clear that we were in it together, but most importantly, when we talk about it and when it went public, it was clear to anyone that would listen that athletics was part of the solution and part of the engineering and designing of the program and quite frankly, it was a critical piece to the puzzle in terms of getting our group to trust the process. And so this group was very clear about our role in the design of the policy as opposed to just imposing a policy and having no input from one of the targeted groups.

Though none of the participants used the term "idea champion" to identify individuals on the team exhibiting this category's defining characteristics, the reflections highlighted above are indicative of the important role idea champions had on the unity and success of the team. Most characteristics supportive of such principles were directed at Adhemar's co-chairs. Other idea champions existed as well, both as individual members of the team or as part of a sub-group whose leadership and influence transcended leadership categories. Adhemar's core planning group, whose contributions are elaborated upon in the "doer" subsection that follows, especially spanned such boundaries.

Idea champions at Glensborough came from two self-appointed mentors determined to advance the university's protocols and initiatives aimed at combating sexual assault on campus. The first idea champion was one of the review team's original co-chairs who built up and guided the team before DCL compliance urgency set in. As such, the foundation she laid, her personal

commitment to the cause, and the depth of her expertise provided “immediate legitimacy” as the university scrambled to understand and coordinate DCL obligations with the university’s existing initiatives. The second idea champion was hired post DCL. At this time, the university was not in compliance with its Title IX legal obligations. An experienced conduct specialist, this new hire swiftly filled an organizational need to address outdated sexual misconduct policy and revamp university procedures. Serving an important role bridging the divide between the university’s senior leadership and those already involved in sexual assault prevention and response practice, this idea champion elevated the expectations and delivery of what good Title IX practice could be.

Glensborough presents a model of “grassroots” leadership, where a concerned group of student affairs professionals joined together to share knowledge and resources, advancing social change on issues of interpersonal, gender, and sexual violence. More formal “grasstops” support was visible through hiring and resource allocation decisions necessary to address Title IX compliance protocols and shortcomings. Of the Glensborough participants interviewed, these idea champions were overwhelmingly regarded as “assets,” “experts,” “intentional” about the work, “supportive” of colleagues and students, “connected,” and “respected.” Each contributed leadership traits that not only advanced transformative practices at Glensborough, but also systematically impacted the larger university system, as well as contributing to professional association policy development of best practices.

Almost unanimously, members of Tundell’s review team attribute the team’s energy and success to its chair. Described as doing “a phenomenal job of helping to move the [review team] along and helping to keep everyone together and coherent,” Tundell’s idea champion was recognized by members as “driving the task force.” Most people interviewed could not “speak

highly enough” of her commitment and leadership. Participants also mentioned the fact that she “had the president’s ear,” which helped them to know that what the team regarded as important would be made known to the university’s top leader. In Tundell’s case, their idea champion also filled the shoes of facilitator, an important leadership role that served a different but necessary purpose: ensuring cohesion among members and creating a climate where every member felt their voice was important to the discussions.

Facilitators

The actual, concrete acts enabling the review teams to achieve success were brought about by leadership exhibited at many levels. Just as idea champions provided the motivation and support necessary to move the team forward, facilitators negotiated personalities, nurtured relationships, fostered communication, and resolved conflicts in productive ways that enabled the teams to achieve success in carrying out their charge. Participants from Tundell often invoked the term “facilitator” when describing the “trusted,” “guns a-blazing,” well-regarded leader doing “a fantastic job of creating a climate that everyone’s voice mattered.” In Tundell’s case, the idea champion and principle facilitator were one and the same. Being “committed to the process not just the end point,” the facilitator “took all these people that were coming from very different perspectives and we became a group.” Participants describe having “started pretty fractured at the beginning and pulling in different ways and people not understanding other people’s viewpoints and people wanting very different things.” Ultimately, through the facilitator’s efforts, team members “established rapport” and built “relationships of trust” that made “bringing so many people together to decide on something, [which] is always a challenging environment” one in which everyone’s voice was heard as difficult decisions were considered.

Tundell's facilitator, adapting to the team needs, introduced into the process a decision making model of modified consensus that team members lauded as being a key tool in their team's success. Describing the model and its impact, one member exalted:

We made a decision that we wanted [decision making] to be based on consensus as a group, we didn't want to do majority wins, that we had five [a five out of five in agreement with the issue] if you love it, three if you can live with it, one if you hate it. And in any decision if there was a one, we stopped what we were doing, we didn't move forward and we kept working until we got everybody at least at threes. And I think that that meant we didn't lose anybody along the way and there wasn't a point ever at which a decision got made over someone's very strong objection and then they just fell out of the conversation. And I think that was just really so crucial to the success of the group and it really was driven by the members of the group as policy came out of the members of the group.

Another member credits this modified consensus model as a crucial reason team members felt heard and were able to achieve the revised policy they produced. This member recounts:

We had such a well-functioning group of people and by well-functioning I don't mean that people just were quiet about things they disagreed with or didn't speak their piece, what I mean by well-functioning was, people brought their issues forward and we worked with them until we got to a place, it wasn't a forced consensus thing, we worked with issues, whatever the issue was until we kind of found something that felt right for us as a group. And so my perception of the decisions that we made was that they were challenging decisions and sometimes it took us a lot of work to get to a decision but I wouldn't have had it any other way. It wasn't so burdensome that it was impossible or it was not worth the effort. I really think the product that we got is better because of the process that we used.

The success of the modified consensus model and open communication it fostered was overwhelmingly attributed to the facilitator's leadership. The facilitator set a "very respectful tone and [...] collegial tone" where participants "never felt shut down" and developed such trust that they could "say anything I wanted to in there [the meetings]" because the facilitator made "sure everyone was heard." In addition to decision making based on consensus, the facilitator held "temperature checks" at each meeting to ensure team members were doing well both with the weightiness of the issues being debated and the direction the team was taking. The

relationships she nurtured, for example by “start[ing] every group meeting with a go-round of our name and where we were coming from and then some funny thing like, the favorite thing about summer or most exciting trip you’re going to take this summer, or whatever” broke down barriers that improved the team’s interpersonal dynamics.

Numerous participants attributed the facilitator’s leadership to the success of the consensual decision making model and her ability to bring team members together. Repeatedly, members extolled high praise on the facilitator, repeating a sense of awe in her ability to bring the group together: “I can’t say enough about how her leadership was just so fantastic.” A common theme raised by participants was how the facilitator “humanized us to each other so that we started seeing each other as individuals not just as the roles that we were coming into the rooms with.” Another member describes the facilitator’s group skills as “amazing,” adding “she would listen and when dissension would come, she would let the dissension play out.” Supporting this view, another participant compares the facilitator to a marriage counselor: “we would still fight but we would work out those fights, the fights wouldn’t be something that would shut the process down.” This participant adds “there was always a sense that people were being taken seriously, not matter what they said and nobody was pooh-poohed which was really beautiful.” Participants repeatedly and vehemently attributed much of the team’s success to the important facilitation role provided by this leader.

Facilitation at Adhemar was spread out among a greater number of members, drawn from both the idea champion and doer subgroups. The co-chairs were praised with “balanc[ing] voices and making sure all voices were heard.” Some participants spoke of the difficulty speaking up when senior administrators seemed to be dominating discussions. “Finding the right balance of voices and making sure all voices were heard was an important role for [the co-chairs] and I

thought they did it well,” keeping egos and power dynamics in check. As one participant observed:

There’s a lot of egos involved, a lot of heavy hitters on campus that have a lot of stake in what the policy is. [... We had a] rough start where everyone’s trying to assess everyone’s skills and abilities and what they bring to the table and what their inclinations are and what they want to get out of the policy or out of their membership on the committee. [...] The co-chairs [...] made sure that we were moving along [...] ironed [that] out. [...]. If it wasn’t for them, yeah, I mean it would have been just a mess.

Although the co-chairs were commended by team members for defusing power dynamics and drawing out all members in dialogue, two members of the “doer” subgroup provided crucial leadership around the team’s many “very robust discussions” by supporting and encouraging consideration of educational approaches that would be appropriate for the university to offer within the confines of DCL guidance. Adhemar’s unique model of having a small core planning team (the doers) who guided the substantive prevention, education, and resource support work that needed to be done, the advisory committee who provided input on merits and shortcomings from their suggestions, and the co-chairs who arrived at the final decision, had the potential of facilitators existing at each level. No facilitators emerged from the middle (advisory) level. Rather, they were book-ended by the ultimate decision makers (co-chairs) and individuals who worked on a daily basis with aspects of Title IX and its impact on students (doers).

Findings from Glensborough offer an alternative scenario for facilitators. Two members whose day-to-day involvement with Title IX was more on the periphery fulfilled the role of facilitators. One was an external participant who joined the team as a forensic medical specialist. Her position as external liaison appears to have provided a neutral perspective in an internal environment otherwise enmeshed in the political jockeying of a “good old boy system.” As facilitator, this external member provided leadership to the team through her science-based training of the neurologic and physiologic effects of trauma and what resources might be

supportive and responsive to such needs. Her demeanor, delivery, and leadership fostered the development of a “very cohesive, collaborative effort between myself and the counseling center [at Glensborough] for follow-up of these patients after we see them for a medical forensic exam.” By educating the review team members on “the national protocol on the medical forensic examination of sexual assault patients, which they had never even knew existed” this member facilitated the adoption of a memorandum of understanding (MOU) between Glensborough and the local hospital to better address allegations of sexual misconduct and the needs of students who experience acts of sexual violence. MOUs to build partnerships between universities and law enforcement agencies, hospitals, medical personnel, student advocates, and other core contributors in effectively responding and preventing campus sexual assault are increasingly recommended as important elements of standard practice (National Sexual Violence Resource Center, 2016; Not Alone, n.d.; Ohio Attorney General, n.d.; White House Task Force, 2015). Glensborough’s team welcomed this facilitator’s encouragement of scientifically-based evidence in trauma care, incorporating her input into their practice by revising the protocols they use with students who have been assaulted and increasing trauma-informed training not only to Glensborough staff, but also expanding this partnership to other campuses and into the community at large.

Glensborough’s second facilitator on the review team self-selected to participate due to his interest in advancing social justice issues on campus through improved personal interactions. His support of the review team and its contributions was primarily evident through his encouragement of fellow members’ personal and professional devotion to accomplishing “a lot of really excellent work, sort of equipping different units across the division with tools to be more effective and sort of just having these conversations and creating the right spaces.” This

facilitator's orientation that "social justice needs to be [...] tightly woven into this narrative" highlighted a fresh attitude not evident from other, more seasoned review team members. Not wielding a powerful position on campus, this facilitator's leadership was subtle, utilizing positivity and energy for the issues "to be of service."

A common thread among Glensborough's facilitators was their seemingly strong relationship developed with one of the idea champions. Both expressed accolades for this idea champion's skills and leadership in moving issues of campus sexual assault forward and overhauling outdated practices. Both seemed to work well with the idea champion, an observation further supported by their subsequent involvement on projects together beyond the review team. United through a shared concern for students, professional expertise, and commitment for this work, Glensborough's main facilitators stood out more than others on the review team as collaborating across units on issues of sexual assault awareness and prevention. Both appeared to be open to "very forward thinking, progressive" movement away from the "entrenched" status quo. Both also spoke of the DCL as an important catalyst for needed change. As one of the facilitators articulated:

I found the Dear Colleague Letter to be invigorating and refreshing and it's nice to have some guidance at all, quite honestly it's nice to have somebody say, yeah absolutely, you're not doing this well enough and you need to do it better and here's some general criteria. And I know that the addenda that have come through, sure we can be confused about the specifics but in the end I think that just having a spirit of wanting to do it really well and care for everybody involved at the highest level possible is a nice place to start. I think that good things come from that.

Each used their position on the review team to push for reform and be a "mouthpiece" for the "important conversations to have." They also expressed confidence in Glensborough's willingness to "stare down the issue" and invest financial resources and personnel time to develop meaningful responses to DCL while promoting actions that exceeded minimum

compliance obligations, developing a national reputation as emerging leaders in campus sexual assault awareness and prevention work.

Doers

Each team credits an important component of their success to a core working group within the larger review team that initiated what work needed to be done. At Adhemar, this took the form of three practitioners whose day-to-day work involved sexual assault response and prevention matters, as well as a university general counsel who worked closely with legal issues arising from issues of student affairs. The core planning team engaged in an extensive process outside of the larger review team. Their work included thinking through what a revised process would entail, conducting structured and deliberate meetings with constituents to ensure the policy changes would be community owned, and creating a viable first interim draft that would then be vetted with the larger group. Self-described as the “boots-on-the-ground” team, members of the larger group saw the core planning team as hard working soldiers “whose job it was to, okay so how is this really going to look, how is it going to be written, how would we do it?” Multiple review team members who were not a part of the doer subgroup commented on how efficiently this format worked. One noted “you can’t work with 15 people in a committee. Small work group, bringing it back, discussing an opportunity for input. I thought that worked really well and could be applied in other situations.” One member of the core work team describes the process as follows:

I thought it was an incredible structure, a sounding board, so basically we had this group of worker bees which was the four of us on the core planning team and we sort of did, well - we did all the work - but then it came up to the advisory board which then said, no, yes, could you change this, this doesn’t make sense, and they did that from their unique perspectives [of police, housing, law, faculty...]

Another reinforces this model’s effectiveness, adding:

I'm convinced that the model, this was a very complicated, it was a very complex, complicated dance and I think that the results will lend itself to saying if we have to do something similar, let's use this formula again. I really think that it's going to have a major impact on how we approach things coming up.

One member of Adhemar's doer subgroup added that the group's success could partially be attributed to members' familiarity with each other and the trust they had built up working together on prior projects. By contrast, another member of the subgroup felt renewed trust-building was necessary because of the shift in responsibilities and "learning each other's particular lenses" that was important to the process. Both of these participants also expressed that their prior knowledge of DCL expectations, acquired through their professional involvement in issues of campus sexual misconduct, was crucial to enabling a quick and successful start to the review process. Simply stated:

We knew it [DCL] was coming and so we were just ready before it had been released; we were ready for exactly what was coming and were prepared to approach it in a collaborative, interdisciplinary manner with the right folk on campus.

Glensborough's complicated organizational structure meant that a core planning team did not formally materialize until a few years after the DCL was released. The "doer" that helped to establish Glensborough's official core planning team was also one of the review team's idea champions. This person provided leadership at many levels – idea champion, doer, and later head of the core planning team – and appeared to take on a large portion of the review team's concrete work in reforming student misconduct responses and programing, as well as less tangible advocacy and networking work. This involvement establishing a presence by promoting the team's contributions appears to have been necessary for the regional Glensborough review team to wield sufficient power to influence system-wide decision makers. As a doer, this member produced tangible products for policy and protocol restructuring. His influence as a national

advocate and success with programing reform at Glensborough generated enough good will for him to carry sway within the university's larger system-wide policy review.

The only university in the study to hire outside legal consultants to help with the reform process, Tundell's consultant team proved to be the doers that brought people and resources together to achieve the desired community driven policy revision. Perceived by team members as providing support to the team, addressing public relations for the university, and offering insight on what other universities had done in response to DCL, the consultants "were really the main people [doers], they were literally writing our edits while we talked about stuff in the meeting, making it pretty and sending it back to us." Another adds that in addition to drafting the language debated by review team members, the "consultants would present ideas, and members of the task force would debate whether they had merit, and how within the framework of Title IX [...] we could shift some idea to suit our university better." The consultants' multipronged role as doers included providing both broad thinking on issues to guide the review team, as well as specific information and resources to help them meet their charge. As one member summarized, "the outside consultants were a key part of providing the framework, providing information, providing resources and explanations and examples of what other universities had done and where they had been successful and where they hadn't been successful."

While at first perceived as "coming in to [...] do their own work and then get out," the tone and acceptance toward the consultants changed as they worked with the team and earned their trust. As the chair described:

We sat the consultants [...] on the outside of the circle. They're not voting members of this [review team]. They earned the group's trust by really saying, here's what we heard you say, is this right? And then we would strike it and they would take it back and they weren't pulling fast ones on us. They would come back with a new copy or we'd put the copy up on the screen and edit it together. It was arduous. But no, people didn't instantly accept them. I think by the end everyone did, they may not have agreed with them, but

they accepted them and that was not instantaneous, eyes were very suspicious at the beginning.

Elaborating on the extent of their role, the chair added:

It [working with the consultants] didn't ever feel limiting, it felt way more like, we would ask them to go collect all the definitions that you can from schools that have gotten a little ahead on this, what can we choose from? Is there anything out there that we should know about that we should be considering? And they played like the harvesting role for us more than anything, but they didn't ever say, I can't think of a single time they said that [the task force's vision of the needed reform] wouldn't work.

Whether providing leadership by gathering information for the team to review, fine tuning the language of the ideas discussed in the meetings, or informing the team of practices they had seen at other universities, the consultants' role as doers was highly regarded by team members as being a resource that enabled them to achieve a successful review and revision of Tundell's sexual misconduct policy and practices.

Dissenters

Dissenters increase the likelihood that "groupthink" will not dominate the review process. Groupthink is a way of thinking that arises in cohesive group interactions when "members' striving for unanimity overrides their motivation to realistically appraise alternative courses of action" (Janis, 1982, p. 9). Groupthink reduces the team's openness to discrepant or unsettling information and the ability to detect errors in judgment, all of which can lead to the group pursuing inappropriate courses of action so as to not disturb team cohesiveness. To avoid groupthink, discrepant information must be introduced (Bess & Dee, 2012; Janis, 1982; Weick, 1993).

Although many participants expressed a level of opposition with some element of the review process, at least one participant from each review team exhibited observable characteristics of dissention. The strongest dissenting voice at Adhemar came from Avi, an

experienced director practicing in student affairs for over 30 years. The director approached her work from a community perspective, prioritizing the specific needs of the community under her charge. While she supported a complainant receiving services and accommodations from the university, she was equally concerned with accused students' rights and treatment. Trumping both of those needs, her primary concern was for the safety of the campus community. She was happy to see that the DCL pushed universities to investigate alleged incidents of sexual violence even if the students involved did not want to proceed. Citing the importance of investigating all allegations to ensure perpetrators did not continue to provide a threat to other students, she pushed "to have cases reported because we wanted the police to know about trends and we cared about the individual, and also the entire community." Recalling a pre DCL incident in 2010, Avi recounts:

I remember being in a meeting, I don't remember exactly the numbers [of alleged incidences of sexual assault], the number 70 sticks in my mind, and maybe ten of them had been reported only. I remember getting a little agitated, what the hell happened to the rest of them?

The others, most likely because of confidentiality and respecting the desire of the complainant not to proceed, were never pursued. Such actions disturbed this participant, who felt the community's needs were not adequately protected when possible acts of violence failed to be investigated.

Organizationally, Avi describes a pre DCL structure at Adhemar where "everybody was in their own world." Administrators did not share information outside of their units: "Things weren't reported. Police were not told. [...] there was no investigation if the survivor didn't want it." Once an incident was identified, "we wouldn't always necessarily know if a case was reported to the dean of students' office, it was like going into a black hole" with decentralized departments working independently and ultimately "acced[ing] to the wishes of the survivor" in

moving forward with an investigation or not. Post DCL, although she's happy universities were reminded of their obligation to report incidents and investigations are taken more seriously, she perceives Adhemar's organizational structure as rigid and legally focused. "Now we find ourselves in conflict with them [Title IX coordinator's office] because we find that they're a little more legalistic than we might choose to be and less aware of the nuances of a residential community." She describes Adhemar's post DCL structure as "a dualistic line of yes or no, right or wrong" without the consideration of "human judgment that has to be applied in each and every [case]."

I characterize this participant's contributions as dissenting because Avi provides disconfirming evidence of the apparently smoothly operating, cohesive organization. While she supports the university's process of negotiating post DCL policy and speaks highly of the resources it has put in place, she describes shortcomings in human relations and services. Her own dealings with the Title IX office have been "tense" and "strange," having experienced those working there as "pretty immovable," where rigid rules overrode compassion toward the parties. "We sometimes find ourselves with a difference of opinion regarding the immediacy of action given the different nature of working with people," her with a "student personnel point of view where no two students [are] alike, each student must be treated as an individual," and her perception of the Title IX office that human judgment has been removed in favor of strict policies that must be followed. In her opinion, this orientation leads to the Title IX office's tendency to proceed on the basis of everything being "just black and white." She finds many of the prevention and healthy relationship programs insufficient, noting they "need a fresh look," students "don't find a whole lot of value in [them]," and "mandatory" participation cannot be enforced. Finally, she is one of the few participants who expressed a lack of measures in place to

assist male students involved in sexual violence allegations. While many participants asserted a need for due process and fair treatment of both parties, this director was in the minority voicing her concerns of the impact post DCL changes were having on accused students. “I have seen young men absolutely wrecked by what is happening. [...] I still don’t know that we have enough safe gaps for the young men and, generally talking, perpetrators and that, I really don’t.” While no participants spoke directly about this dissenter’s conformity with team norms, her views suggest discrepant information may have been introduced to the group, which may have reduced the tendency for the review team to engage in groupthink.

While Adhemar’s dissenter exhibited some elements of antagonism toward the organizational status quo, Glensborough’s dissenter showed signs of outright hostility toward the university’s established “old boys club.” A director at Glensborough, Patricia also had almost three decades of student affairs experience serving a vulnerable student population. She describes Glensborough’s pre DCL culture as one where campus leaders knew acts of sexual violence were occurring, but were turning a blind eye to it: “We knew of this but we never did anything about it.” She witnessed voices being silenced, commenting that staff was told “you don’t discuss this.” Patricia spoke of systemic issues of gender and power in the university system that dictated “either you become a good company girl and keep your job or you fight the fight and you make a decision which way you’re going to do it.” Her fight was to put an end to “regurgitating the party line.” As she describes, nothing would change until the administrative culture of protecting those in power and avoiding responsibility changed:

No matter what this committee does, until administration changes, until the complexion of administration changes [...] until you start getting away from your good old boy system, until you start getting away from your yes men, whatever you say, yes, until you get somebody who might say, can we go a little bit further on this one, maybe we should be a little bit more upfront and discuss this, not something that’s going to give us a bunch of PR. [...] The only PR you’re going to get is when someone does something great. [...]

We won't put [negative happenings] out there. They will keep it quiet. They'll do everything to keep it quiet.

Because of the regional campuses' freedom to develop procedures that address the needs of their student population, this participant felt the review team was nevertheless able to make significant inroads in Glensborough's efforts to address issues of sexual violence and promote justice. Her role as dissenter did not ingratiate her with the higher system level Title IX reform leaders. However, at a campus level, she has been able to open up conversations and advocate for her underserved population. In her words "it took bitching - big time" to make inroads because "you guys [senior administration] don't get it." While there was evidence during her interview that this director had been a nonconformist during her administrative career, stirring the pot to "fight the fight," she also vocalized her experience that women's voices on campus were still not being heard. Despite inroads the review team was having advancing the visibility of Title IX issues and improvements in response protocols, Patricia spoke of the long road still ahead, the lack of adequate resources being invested in programming, and a culture of silencing staff by keeping communication down. Her examples provide evidence of successful, localized campus programming and support for students. However, her insight also situates such advances within a larger, fragmented system struggling to move the university into Title IX compliance.

Tundell's review team appears to have been kept in check by a vocal social justice advocate who, through twenty years of professional experience, has been actively working to raise awareness around gender based violence on campus. Having heard rumblings about the idea of a Title IX/DCL review team, this participant sought out the university president to "[make] clear that I wanted to be a part of the conversation." After being appointed to the team, the participant intentionally kept issues of gender stereotyping at the forefront of the group's attention so that the team would not fall into female complainant, male perpetrator binary

thinking. “I think there was an attention to that [sex stereotyping] mostly cause I wouldn’t let anyone forget about it.” A number of team members independently corroborate the non-conforming additions brought to the table by this participant. Ivy commended him for “hear[ing] and bring[ing] back into the room” concerns from historically excluded student groups. Priya recalled his important role in calling review team members to task to ensure revisions to the policy language were gender neutral and accommodating. Charlotte described “some reality [he] brought back [to the team] to help us understand” issues of gender violence beyond the cursory ‘he said/she said’ narrative of unreciprocated, drunken sexual encounters. Charlotte characterized his contributions as very focused on, and vocal about, the needs and circumstances of non-traditional students, saying:

[He brought] a perspective that we really needed to hear. There was never the sense of, “oh no here goes [this participant] again, let him finish and then we’ll get back to the real stuff.” It was okay, we need to hear what [he] has to say and given committees, I find that pretty remarkable.

The team chairperson also recognized the importance of this participant’s non-conforming vantage point:

[He’s] an amazing advocate for folks from all sorts of backgrounds. Now this was all on [his] back but [he], I think, very happily helped make sure the conversation included folks of marginalized identities and helped us put in the gender space talk about same sex relationships or trans-identified folks, so this wasn’t sort of pigeonholed as some kind of women’s or heterosexual issue, so at that level that was fantastic.

When the team did not agree with his contributions and he felt compelled that this point of view be heard, he wrote dissenting opinions on those particular decision points, addressing why he was not in agreement with the majority. These dissensions were provided to the president for consideration when the team submitted the revised policy for review.

Other review team members did not always appreciate this participant’s view, however, and the manner in which he presented it. Bruce spoke of the participant being “overly protective”

and “overly assertive” of marginalized identities to the point where “he would get into conflicts periodically with people.” Despite these tensions, Bruce recognized that this participant:

Played a very important role and had we not had him there, probably the whole issue of [gender nonconformity], I mean it would have been taken into consideration, but probably not nearly as much. So I think even though he had to frequently wave his flag so hard that the pole broke, I think it was an important move for him to be there. Initially, I was annoyed by it and then later I realized that that was his role, like I was playing my role, he was playing his role.

Like the dissenters from Adhemar and Glensborough, Tundell’s dissenter brought alternative ways of thinking to the team’s attention. These dissenting views created new mental maps for the team to consider. Not only were these view points incorporated into the teams’ current interactions, but the nonconforming opinions impacted behavioral patterns that team members will bring with them to future interactions. The leadership role played by the dissenters is an important one, providing alternative ways of thinking about policies and services in organizational structures designed to take into account the needs of traditional students, which do not necessarily encompass solutions for people with non-traditional needs (Bess & Dee, 2012; Federation for the Humanities and Social Sciences Congress, 2016; Shankar, 2016). Data from these dissenters also provides evidence that any institutional member can be a change agent capable of contributing to organizational transformation on campus (Kezar, 2001).

Conclusion

Leadership in organizations is often perceived as originating from the top and permeating the organization through a leader’s distinct leadership style (such as transformational, transactional, autocratic, servant). But leadership is complex and multifaceted, interacting with and influencing the organization in many ways (Andre & Christopher, 2005; Burke, 2006; Cameron & Lavine, 2006; Kamler, 2009; Tiina, 2005). The information presented in this chapter provides evidence of important and distinct leadership within the university review teams at four

different levels. Each one - idea champion, facilitator, doer, and dissenter - is fundamental to the development of innovative ideas and problem solving that move change forward in universities (Kezar, 2014). Multiple leaders playing multiple roles is one element identified in the literature as helping to move an organization from successful performance to spectacular performance (Cameron & Lavine, 2006). Participants from many of this study's leadership categories worked across different levels, directing an array of skills toward separate goals. Whether the processes undertaken by these three institutions represent spectacular performance is too early to know. Time will tell whether these institutions' revised policies will stand up to legal challenges from disgruntled parties, compliance demands from the Office for Civil Rights, and public opinion. A larger sample from the field would be necessary to see how they compare to processes undertaken at other universities. However, as the findings from this research begin to inform the study's research questions, the importance of leadership emerges as a critical feature in the dynamic process of negotiating institutional policy and constructing compliance.

The leadership roles played by the idea champions, facilitators, doers, and dissenters differed in their intent and objectives. This chapter established that certain leaders across multiple organizational positions played vital roles in the review team's success. The following chapter addresses a second interpersonal dynamic to emerge from the research data, that of collaboration. Organizational scholars have frequently identified collaboration as an important element in producing positive benefits for both the organization and for social gain (Berger-Walliser, 2011; Cameron & Lavine, 2006; Cameron & McNaughtan, 2014; Siedel, 2002; Siedel & Haapio, 2010, 2011). As Chapter 6 conveys, these leaders depended on collaboration in their efforts to successfully fulfill the team's charge. How they fostered collaboration among members

with divergent interests, and reached agreement on an outcome, is presented in the following chapter.

Chapter 6 – Leveraging Collaboration to Enhance Opportunity

The ability to engage others in collective action and induce participants to cooperate is an essential component in establishing, sustaining, and challenging order in organizational life (Fligstein, 2001b; Meyer & Rowan, 2006). Institutional actors are often responsible for helping groups decide what their interests and identities are, and engaging in negotiations across groups. It is the social skill of critical actors to induce cooperation that allows groups to work (Fligstein, 2001b). Skilled strategic actors provide the cultural frames that motivate others, producing, reproducing, and transforming systems of meaning within organizational fields (Fligstein, 2001b; Giddens, 1984). When actors engage in cooperative and non-hierarchical relationships negotiated in an ongoing communicative process with multi-directional communication flows, adoption of new practices and norms is strengthened (Lawrence et al., 2002). The level of involvement of the collaborators, manifested by deep interactions and information exchange between participants, as well as the entrenchment of multiple interests and parties, are characteristics that lead to the highest potential for new practices and norms to diffuse beyond the boundaries of the collaboration (DiMaggio & Powell, 1983; Flynn, n.d.; Lawrence et al., 2002).

The proactive law framework complements institutional theory's contention that collaboration among institutional actors is instrumental in establishing new norms, understandings, and practice designed to produce innovative results. A fundamental assertion of proactive practice is that collaboration between lawyers and subject-matter experts in addressing legal issues affecting the organization serves to strengthen interpersonal relationships, promote ethical behavior, resolve problems, foster sustainability, and advance constructive outcomes

benefiting the organization and society (Berger-Walliser, 2011). Decision-making in this model requires the ability to develop new ideas and concepts from the contributions of diverse institutional actors with subject-matter expertise. Early cross-professional collaboration and understanding, especially between legal professionals and professionals from other disciplines, is encouraged to reach common goals and avoid problems (Berger-Walliser; 2011; Siedel & Haapio, 2011). Collaboration, as conceived by proactive law scholars, promotes creative thinking, problem-solving, desirable results, and sustainable relationships (Berger-Walliser; 2011; Siedel & Haapio, 2010, 2011). Although the current study set out to examine the nature of legal and non-legal professionals' cooperation in this review process, the results represent the perspectives of the universities' non-legal (and predominantly student affairs) review team members, as lawyers involved in these teams declined to be interviewed.

Decision-making and policy negotiation processes in higher education often include a wide range of constituents drawing on specialties and expertise reaching across the institution. Institutional actors, especially decision makers, managers, and leaders, must continually balance numerous constituent interests and induce cooperation among them. Where work groups facilitate efficient cross-departmental interactions, the overall quality of organizational decisions can be improved. Conversely, poorly functioning groups can delay decisions and hinder new ways of thinking (Bess & Dee, 2012; Fligstein, 2001b). Tapping into critical issues through multiple forms of vision, practice, control, advocacy, expertise, and collaboration are important components for organizational success (Berger-Walliser; 2011; Cameron & Lavine, 2006; Siedel & Haapio, 2011; Taylor & Varner, 2009). In addition to these foundational elements, emerging research on the stumbling blocks universities face addressing issues of campus sexual assault also recognize the importance of creating structures that consider a range of nontraditional needs

and ensuring that those making policy decisions have expertise in sexual assault issues (Shankar, 2016).

Where multiple interpretations of organizational reality exist, leaders are likely to encounter conflict. Bess and Dee (2012) emphasize the need for leaders to understand a problem through different frames in order to facilitate collaborative approaches to decision making that do not marginalize different points of view. Research suggests mixing people with different perspectives, experiences, and expertise to work together on teams produces more innovative results (Bess & Dee, 2012; Davidson, 2011). Creating the conditions for interaction and collaboration that foster innovation requires organizational investment (Kim, 2012). This chapter examines whether and how participants experienced collaboration as members of the review team. As the study's theoretical framework has established, cross-professional collaboration is considered a key component to the team achieving desired objectives. Collaboration is regarded as helping to promote creative thinking, problem-solving, desirable results, and sustainable relationships that enable the organization to reach its goals while creating benefits for itself, individuals, and society at large (Berger-Walliser; 2011; Cameron & Lavine, 2006; Siedel & Haapio, 2011).

Building Trust

Composition of review teams varied by institutions, with no two universities relying on the same configuration for its post DCL review and decision making process. As described earlier in Chapter 4, Organizational Contexts: Research Sites, a variety of student affairs professionals, faculty, students, lawyers, consultants, and community members were called upon to serve on the review teams because of their connection to, or expertise in, issues related to sexual assault and university functioning. Small clusters of members had prior experience

working together at their university. For the most part, however, the teams brought together members across campus and from the community who had no prior professional relationship. To make progress in their efforts to review and revise campus policies and protocols addressing sexual violence, members needed to find common ground and develop trust in each other. Idea champions promoted shared visions for the team amid initially tense and conflict-ridden environments beset by uncertainty, mistrust, disagreement, adversarial positioning, and public scrutiny of their actions. Given the power and politics of having “a lot of egos involved, a lot of heavy hitters on campus that have a lot of stake in what the policy is and what it could be,” this was not an easy feat. The layers of complexity involved in the review and revision process unfolded to the teams as they delved deeper into their charge. One director’s perception illustrates these tensions:

There’s so many considerations [in managing campus sexual violence issues and process] that I think it takes really a team of bright and dedicated people. [...] It takes people that are talented, committed, bright, can think through and around very complicated issues, legally complicated, socially complicated, politically complicated, legislatively complicated. I can’t think of a single, simple thing surrounding campus sexual assault.

Developing trust within the team to work through these complexities was very important. As one participant observed, this did not involve elaborate trust building experiences, such as going “to a high ropes course [...], but there was a lot of trust building.” Rather, trust building was accomplished by bringing team members together frequently (often off-campus), allowing members to share their values and commitment to the issues, “learning each other’s particular lenses,” humanizing participants by speaking of interests and families, communicating information openly, exhibiting flexibility in the process, and establishing a collective goal backed by the team.

All three teams spoke of rough starts working together at the beginning of the process. Members recalled initially butting heads, with clashes over “what does this mean and how can we apply this to certain situations” frequent in the early meetings. Most concur they “eventually became comfortable with each other” after “assess[ing] everyone’s skills and abilities and what they bring to the table and what their inclinations are and what they want to get out of the policy or out of their membership on the committee.” One participant describes Adhemar’s process as becoming more collaborative once time pressures kicked in and the role individual contributors could make took shape:

It became collaborative in knowing that, okay we’re on a timeline here, we need to work together rather than working against each other and it wasn’t really that we worked against each other in any kind of way, it was just misunderstandings and miscommunication and really in sharing that we were given everything, all the information possible so that we can make, or create a policy that makes sense. And so that collaboration was between student life office staff, as well as faculty, the faculty, I think they played a pivotal role in terms of the language and revising the language and then the students, they’ve obviously been coming back to that and making sure that it wasn’t too much into legalese, I guess you could say, and so that’s where we really saw collaboration.

A different participant from Adhemar expressed that once the rough start was behind them, and the team saw evidence of their revision and decision making process working - the doers producing drafts and running them by constituents, incorporating and vetting feedback, the larger team providing input reflected in draft revisions – the team “built that sort of collaboration or commitment to being people who trusted each other, we didn’t worry about it [the formula that we had created] after that.” Overwhelmingly, participants spoke of turbulent beginnings and initial political jockeying that gave way to teams eventually becoming “comfortable with each other.”

Tundell in particular had large trust and collaboration hurdles to overcome. Many participants from Tundell spoke of experiencing a toxic, dysfunctional climate at the team’s first

few meetings. The university's actions had been in the spotlight before the team convened. In the court of public opinion, Tundell was being dragged through the mud for inadequate institutional responses to numerous sexual assault allegations. Once the review team was charged and began convening, meetings were open to the public in an attempt at establishing transparency moving forward. Student activists attended the meetings in protest, lawyers attended with an eye toward bolstering their clients' cases, and journalists noted every word uttered. Review team members reported feeling guarded and mindful of their words. As one participant recounts:

Those first few meetings, having the media there, I know I was very mindful about what I was going to say and when I was going to say something or not say something. I felt like you had to be even conscious of your non-verbals in a way that felt pressured, I felt some pressure around that.

Another concurs, adding that members often did not truly express their opinions during these early meetings:

If you're not used to hav[ing] the camera that's kind of peering over your shoulder or knowing that a journalist is writing every single word or could be writing every single word that you're sharing, over time I think it just became a part of this is going to be what we're going to have to deal with. Do I think people were very mindful that everything being shared has the potential to be absorbed by the media? Oh yeah, I think we were all very aware. And then sometimes you kind of parse your words very carefully and then on occasion, when you take a break between topics or restroom break, whatever that might be for yourself, you might pull someone aside and say, okay so I just wanted to share, this is really what I wanted to say, but I just don't want it to be voiced in such a way that the media is going to grab ahold of it so we found different ways to be able to make sure that things that needed to be said were said.

These "different ways" to communicate included long breaks where members could talk to each other more freely. Even though journalists, protesters, and students' lawyers would also be in the breakout spaces, pockets of private conversations could nevertheless take place. Numerous participants cite the breaks, especially those spent sharing a meal, as important opportunities to build trust and communicate their insight and feelings about the issues raised in the meetings.

Getting together with a few members of the review team, often the next day or shortly thereafter, to deconstruct the all-team meeting and check in on one another also proved to be an important method through which team members build trust and enhanced communication. One participant provides insight on the emotional, intellectual, and physical toll the all-team meetings took and the significance of meeting informally in smaller groups afterward to come down from them:

To be able to, even the day after, to have coffee with someone, so [the review team] meeting is starting at nine, we don't get done until four, we have lunch, and my brain is just about to explode, just about to explode. You've heard a billion and a half words today and my head's going to explode. It's not that I particularly struggled with anything, it was just a lot, it was a long time to keep your attention as close to 100 as you can. To be able to go with one or two people and have coffee the next day, just think, what did you hear?, what did YOU hear?, cause I know what I heard. I think I know what I heard, did you hear this too? And to be able to check in with one another. And at lunch for a few moments every now and again, you'd hear people going, I hope I didn't hurt your feelings, or thank you so much for your support of my position. So we had a few moments where we could kind of be human with one another. I think too one of the things that professionals don't do in this business well enough is take care of themselves and really take, so you need a break from that intense group work and we'd break into our smaller groups and have our pat on the back and cry moments and that kind of thing.

Because the meetings were long and intense and the scrutiny was high, breaks provided a safer environment in which to communicate and let one's guard down. As another participant explains:

A lot happened during the breaks, a lot of conversation happened during those refreshment breaks and I think a lot of that conversation, some of it was related to the policy but some of it was just people getting to know each other. And I think the development of the personal relationships that happened had everything to do with the work being more collegial.

To some members, the breaks were strategic opportunities to address a select few and advance certain issues, whether that be checking in on their wellbeing or forming alliances on certain issues. Others did not consciously recognize the importance of the breaks at the time, but did anticipate them:

So much stuff happened on the breaks because we would be in the spotlight and everybody would be “being” and then the spotlight would go away and you go, “can you believe, omg, do you believe they said that, what are we going to do about that?” And then we would [...] come back, but then we would reengage in a way that made it work well. It’s funny, I hadn’t thought about that, I looked forward to the breaks because the breaks were where I could say what I really thought and I did look forward to the breaks a lot.

Breaks were repeatedly upheld as important catalysts for discussion and building trust among Tundell’s team members.

This crystallizing of relationships and establishing trust among the team members took time. Most Tundell participants speak of the rough start lasting approximately three meetings. They attribute this turbulence to the negative campus climate existing around these issues at the time, the shutting down of student voices in the meetings as powerful administrators attempted to control the conversation, the presence of certain decision makers on the team vested in past policies and reluctant to move forward in a different direction, and an unclear vision of the team’s end product. Initially charged with reviewing policy and protocols to expose deficiencies and suggest improvements, many team members felt their broad charge provided an opportunity to do more, to actually draft the revisions and transform existing policy and programming. After a particularly brutal third meeting, the committee was derailed. As the chair recounts:

The first two meetings went very smoothly, it was a lot of background work, a lot of what’s kind of happening at the federal level, what’s happening on campus, and where do we need to go and sort of like mapping the terrain for folks and everybody played so nicely and everybody was a just good meeting responder. And then I think it was literally like the third meeting was when the gloves came off and I think I had an agenda where we were going to start actually exploring this very specific thing and get to some answers. And everybody just pushed back and I think it was supposed to be a 6-hour meeting and it was a day-long meeting and I don’t think we got much past welcomes and introductions before everybody said, “yeah I don’t trust this process, I don’t believe the university is actually going to listen to what we have to say, I’m not sure my contributions are going to be meaningful in this space because I don’t feel empowered.” And we just heard that.

In this meeting, Tundell's idea champion and facilitator let the anger and disagreement play out for part of the meeting, then connected the team back by voicing the concerns she heard and focusing on members' shared values and goals.

I think at one point after the first big gush of that [the discord at the third meeting] and it seemed to subside and I thought, okay that's very meaningful and we need to move and do something to address all of that, and for now let's look back at our agendas, see where we can go and figure this out, and it just felt like we can't do anything on the agenda, we need to keep going down this path and see what people need to keep saying to us and so we did. We spent the whole meeting letting people say what I'm concerned about, what I don't trust, what I need to feel I can contribute. And so before we could get to the expertise we needed to build this feeling of safety, security, value for every individual member of that [team].

A turning point came in the fourth meeting. Strategizing on how to move the team forward, it was at this meeting that the idea champion introduced the process of modified consensus (discussed in chapter 5). This tool provided a means to connect team members' individual input in the team's revisions and reform. Decisions would not be made unilaterally, but rather as a collective unit with all voices supported and heard.

Once all that spilled out [the feelings of mistrust voiced at the third meeting], we came back the following meeting and said, okay here's the deal. We'll do this by consensus. And we will not append anyone's name to a decision that somebody doesn't vote for. So if we don't get to consensus and we have to go yes, no, dissent, affirm kinds of decisions, we'll mark that in our recommendations and you can write a dissenting opinion much like in a supreme court and attach that to the document.

Members recognized the fourth meeting and decision making by consensus as a defining moment that gave power to all team members and shifted the climate from one of hostility to one of working together with renewed confidence in the revision process.

This example helps to illustrate one of the challenges Tundell's facilitator overcame in building trust: reestablishing that everyone's voice be heard in the meetings. From turbulent and mistrustful beginnings, she created an environment where all members, regardless of their institutional position or positional authority, felt their opinion was important to the deliberations.

The facilitator managed the resentment, anger, emotions, pain, and numerous factions in the room by establishing a tone of civility “even when we were in vehement disagreement.” Overwhelmingly, participants from all three institutions expressed that each team member had the opportunity to contribute to the team’s process and be heard. They did not perceive any one group as carrying more clout than another. This is an especially surprising finding given the convergence of two of the study’s guiding frameworks. First, that compliance professionals, especially lawyers, who carry the responsibility of interpreting and diffusing law throughout the organization have inherent authority in organizational influence (Daane, 1985; Edelman, 2016; Edelman et al., 2011; Edelman et al., 1999; Munn, 1998; Sitkin & Bies, 1994). Second, that legalistic decision criteria often takes priority over other organizational, interpersonal, and social factors relevant to organizational decision making (Bies & Tyler, 1993; Feldman & Levy, 1994; Foote, 1984; McLendon & Hearn, 2006; Sitkin & Bies, 1994; Turkington, 1986). These participants’ experiences contradict those assertions. This study’s participants, none of whom represented the universities’ legal interests and most of whom were not legally trained, perceived themselves as legitimate decision makers influencing university policy. Members with less positional authority, such as students and junior administrators, expressed feeling respected and validated as contributors to the process. The team members’ perceptions of cross-professional collaboration and understanding with lawyers, both in-house general counsel and external consultants, proved to be an essential element in reaching common goals and avoiding problems.

Relationship Between Lawyers and Subject-Matter Experts

Participants almost unilaterally extolled the importance of legal counsel in the protocol and policy revision process. “Having the experts at the table in terms of what we needed to do legally was helpful.” Participants expressed that legal counsel, for the most part, provided

necessary information to the team on what post DCL legal standards were understood to be. Lawyers neither dominated conversations nor attempted to steer team members in particular directions. At some points, they had the strongest voice in the conversation, while other times they sat back and listened. Members qualify the few times lawyers were more dominant at the meetings as being important in those moments. One participant from Adhemar frames it as follows:

There was, again, really a need for legal compliance to have a strong voice at the table but I would not say that it was an overwhelming voice and certainly I felt as someone who was bringing the expertise of working with survivors of sexual assault and that voice was respected at the table in that my contributions did really shape a lot of the final choices of our interim policy and of our final policy.

Adhemar's most vocal dissenter, who expressed that her own personal dealings with post DCL complaints felt more legalistic and rigid than before the revisions, did not experience any power imbalances or legalistic behavior from lawyers on the review team.

I think everybody's very well aware that legal counsel was in the room and that was important and their voice mattered in the conversation. [...] I think we worked so well with general counsel that they're pretty used to us pushing back on them and I do remember some pretty robust active discussions [especially around] what is the right thing to do versus what would least expose the university to any risk? [...] I didn't feel that we were being told by the lawyers what we needed to do. The lawyers in the room did not dominate the meetings, they were one of the voices at the table.

This collaborative, interdisciplinary relationship between lawyers, subject-matter experts, faculty, students, and other campus constituents exemplifies the shift in legal thinking at the center of the proactive law framework: That to move beyond minimal compliance and transform legal issues into organizational and social opportunity, dialogue between legal and non-legal professionals from across the organization must be enhanced. General counsel's role proved to be a vital component in Adhemar's development of creative solutions within legally appropriate boundaries. Participants' accounts of collaboration between general counsel and members with

subject-matter expertise, working together to innovatively examine a multiplicity of issues implicated in campus sexual assault, provide evidence of Adhemar's interdisciplinary decision making model underlying the team's ability to achieve organizational goals while creating benefits for itself, students, the campus community, and society at large.

The relationship with lawyers on Tundell's review team was structurally different than at Adhemar. Similarly to Adhemar, there were legally trained members, not practicing as lawyers or representing the university in legal matters, on the review teams. Rather, these professionals merited a place at the review team table because of their non-legal professional role at the university, for example as senior administrators in equity, diversity, or student affairs divisions. Tundell had representation from its general counsel's office on the review team. It also had outside legal consultants. Tundell was the only one of the three participating institutions to hire legal consultants to provide the review team with information and advice collected from their expertise in developing policies nationwide with universities in response to post DCL compliance requirements. Tundell hired the legal consultants before the review team had formed. The consultants had an opportunity to meet with campus constituents to understand campus issues and concerns before the work of the review team began, conducting focus groups and public discussions. They brought this information to the review team, which provided a starting point for the review team to understand what constituents felt was broken, what had gone wrong with previous policy, and how the university might move forward. There was also some speculation among members that the consultants were hired to control the negative media frenzy over institutional missteps and Office for Civil Rights Title IX complaints.

Tundell's review team chair had initially hoped the consultants would lead the team. She realized, however, within the first few meetings "it became clear that wasn't going to be what the

group would accept, [... it] was clear that I needed to run the meetings.” Initially team members did not trust the consultants. Possibly as a result of the media spotlight or constituent mistrust that university interests were being prioritized over student interests, the member from the general counsel’s office maintained a low profile on the team. Often the chair, consultants, and general counsel met separately to make sense of the legal ambiguities raised in order to bring a more considered understanding of the legal issues to the team. As the chair describes:

If they [the lawyers on the review team] didn’t agree about what kind of things we could agree to in the room, there was no meeting to be had. If your lawyers aren’t at least on the same page going into a room, then we can’t get anywhere as a [review team] ‘cause we can’t establish what I call the playing field. We don’t know where our boundaries are if we’re all saying, “but the feds say this, but our state policy says this and where are we?” So we started having some pre-game meetings basically with the policy side of the house and this kind of became real transparent to the task force because we started cleaning up our shop a little bit because the rest of the task force would just have to sit back if we didn’t all agree on what the playing field or prescribed structure we’re operating within was. And so we would have these small policy group meetings every other week or so where we’d say, okay we’re coming up on the need to talk about hearings and then we’d have to say, “what does the federal government say about hearings, what does our state policy say about hearings, how do we frame this for the task force so it’s understandable,” because the last thing the non-lawyer facilitator wants to be is the person standing in front of the room going, “I don’t know, can somebody just tell us,” which is where I found myself once or twice. And I found that they won’t just tell you in a meeting because there are lots of varying opinions on that, so we started falling into alignment with this sort of like, okay let’s talk before the meeting, are there any issues that we need to make sure we fully understand, is there any opinion we need to get from somebody else, do we need to think this through, and then we could bring it to the [review team] and then we would know what we were trying to do. But that was how I think we balanced the legal opinion piece. I got them [the lawyers] to a space, but we got to a space where they would at least fight this out beforehand. And then we would have some kind of robust discussion about what we [the review team] were trying to do.

The consultants largely framed the legal parameters for the team’s consideration. Members report not feeling constrained by those boundaries. As one member recalls:

I think it allowed the whole committee to get educated as we went along so the attorneys really did a good job of saying, here’s where we are and here’s where this has to be. We sort of had a push and pull balance between here’s what we would like ideally as a committee from our various backgrounds, what we think are best for students, on one hand, and what we have to do legally. And those weren’t necessarily always in

opposition, as much as possible we found places where those things worked or we figured out within the bounds of the law how much we could move to a place where we could do not only what was legally required but go beyond that to serve students best. And so that balance was just so important moving forward. As I said, I think it also helped that diversity of different folks around the table to get on the same page because at the end of the day, it wasn't like we were saying, we can have apples or oranges, it was sort of like, okay we're going to have apples, we have Fuji and we have Gala. And so the boundaries were smaller so within that, the decisions that we had to make weren't infinite and we were able to say, okay here's what we have to do, how can we gild this a little bit to make it better?

This perspective was similarly held throughout the team. As another member relates:

In terms of the lawyers in the room, I think they provided legal advice when we were perhaps going down a route that we weren't allowed to go down per the law but I think it very much came back to the setup at the start which was, here are the parameters that we have around each issue, you can decide between 1-2-3 or anywhere between 1-2-3, but you can't really go beyond that in any direction and I think the [review team] and the attorneys on the [review team] did a really great job of not necessarily prescribing this is what you need to do and instead said, well look this is what the federal law says we need to do and we can think about how we might want to do that from a structural standpoint, but this is what we have to do.

Members felt that the consultants held no greater power than anyone else on the team. Rather, they provided a range of allowable options. Another team member added this perspective:

[The consultants were] more of that voice like, you can't do that or we have to do this, or we're not sure about those people making a decision play around this right now or let's get some more information for you so that you can be fully informed. So they were more of the people, other than the chair, who were kind of saying, here's what you can and can't do. Like we hear you and understand your values and what you're trying to get to and here's the limits of that.

Having the consultant's legal expertise and familiarity with policy developments from the higher education field provided a "tremendous opportunity to mine all of that expertise for solutions."

Solutions, according to Tundell participants, that helped move the group beyond merely considering minimal DCL compliance obligations toward a much-needed "truth and reconciliation" process for its campus. By "digging into layers of [...] hard, complicated issues," the review team produced a revised policy through a process that structurally met many of the

conditions identified in this study's conceptual framework as necessary to producing innovative and transformative results. Conditions evident in Tundell's post DCL revision process included input from a wide inclusion of partners (McGlynn, Westmarland, & Godden, 2012) who are knowledgeable about, and maintain an investment in, addressing campus sexual misconduct (Shankar, 2016; Taylor & Varner, 2009) and are key players in the development process (Wandersman, Duffy, Flaspohler, Noonan, Lubell, Stillman, & Saul 2008). In addition, the team functioned in an environment that sought clarity on the issues, shared information throughout the process, promoted transparency among members and campus stakeholders, and maintained flexibility as it considered options (Koss, et al., 2014; McGlynn et al., 2012; Siedel, 2002; Siedel & Haapio, 2010, 2011; Wandersman et al, 2008).

Glensborough's experiences with legal counsel was more removed. Initially, the university's general counsel did not have a representative on the review team. As the team's idea champion explains:

Prior to the DCL, any student affairs work, unless it was a lawsuit that was imminent, general counsel just didn't have the time to pay much mind to what was going on in student affairs. [...] This [Title IX and DCL compliance] isn't their expertise. You're left to doing a lot on your own.

Until structural changes began to materialize as university leaders took steps to address DCL compliance obligations, Glensborough's review team worked largely independently from university legal counsel. Even when this structural change led to the appointment of a general counsel at the flagship campus to coordinate all the compliance initiatives across the system, this designated leader had little expertise in such matters. Trusting in the progress and expertise of Glensborough's review team, their idea champion conveys that this newly appointed head was "relatively hands-off," accepting that "you understand this better than I do, you have the support of [other campus leaders]." Glensborough's idea champion worked on expanding this

professional rapport with the general counsel heading the reform efforts. Similar to accounts from Tundell, the greatest inroads in building this relationship occurred during breaks or outside of meetings when the conversation could revolve around personal stories, such as children or holidays. Letting their guards down, these professionals - coming from very different perspectives - could then try to take another look at one of the reform issues and talk it through, reconsidering options. This approach took time and was described as “exhausting”. However, it also materialized in structural transformations, leaving Glensborough’s idea champion to reflect: “No one’s really given up on the idea, or given up on the practice, of trying to be sure this is done the right way.”

Once a local general counsel was appointed to the review team, this representative reportedly “wouldn’t go to the meetings, he kept sending law fellows.” Moreover, he reportedly did not read the team’s documents in advance and was taken aback by all of the proposed changes - endorsed by team members and vetted with faculty, staff, and students - once a vote before faculty council for ratification was being called. The review team’s idea champion and doer, who had been hired to bring Glensborough within DCL compliance and was making inroads locally and at a broader system level reforming policies, revamping protocols, re-envisioning training and response practices, and improving delivery of services, recalls the general counsel team members telling him “this over-professionalization of your field is totally unnecessary.” This left the idea champion feeling that “our attorneys just don’t get student affairs.”

Fast forward through two years of intense work across the system’s campuses to better address issues of sexual assault and understand the scope of obligations universities have to address as a result of intensifying regulatory oversight (Clery, VAWA, Campus SaVE, FERPA),

the relationship between general counsel and student affairs has changed. Legal counsel “quickly had to shift when [top university leaders were] telling all the counsel, “this [current efforts addressing the issues] isn’t going anywhere” Since then, Glensborough’s general counsel and the review team idea champion have forged a better relationship. Reportedly, the same general counsel member is “now sort of singing our praises, saying all you guys are the experts on this, you ought to go on a consulting tour.” Part of this successful turn around may be due to the review team’s idea champion and doer’s commitment to analyzing and communicating developing compliance and conduct issues through a legal lens in addition to the educational process generally favored in student affairs practice. He recognizes the importance of being able to “speak the lawyer’s language” and conveying an understanding other institutional pressures at play, such as media and communications, expenditure realities, and board of trustee concerns. From a pre DCL culture of legal counsel not being terribly involved in student affairs matters to a greater post DCL presence, evidence from Glensborough’s study participants points to general counsel being only peripherally involved in the organizational transformations that have taken place. Instead, the compliance professionals with greater subject-matter expertise, national presence, and drive to move the university forward to exceed compliance minimums appear to have been more dominant contributors to post DCL institutional policy and programming reform.

Conclusion

Universities frequently function under a collaborative decision making model among faculty, administrators, students, even external stakeholders (Bess & Dee, 2012). Findings presented in this chapter add to our understanding of cross-departmental collaboration among legal and non-legal professionals that promote boundary spanning institutional governance. From

a legal catalyst applying pressure on universities to reexamine their sexual violence policies and protocols, the three participating institutions in this study demonstrate that thoughtful examination of the issues and contemplation of actions the university could take crosses traditionally held legal and student affairs silos. Collaborations between competent legal counsel and professionals with subject-matter expertise across the organization developed forward thinking solutions taking a broader range of considerations into account. The expertise and judgment of scholars and practitioners engaged in multiple dimensions of campus sexual violence provide not only a clearer understanding of the scope of factors involved, but insight into the usefulness and shortcomings of the university's existing policies and practices, as well as their alignment with institutional values and agreement with national standards.

Collaborations across the three universities occurred both strategically and organically. Strategically, critical personnel were chosen as members of the DCL compliance review teams. Leaders on the team were deliberate about building trust and establishing shared goals. Organically, relationships developed between certain members. As team members discerned their colleagues' motivations and moved through areas of agreement and disagreement, alliances took shape. Although trust was slow to develop among most factions, the pressure to produce solutions that responded to their particular campus' needs propelled them forward. Surprisingly, participants from non-legal backgrounds report feeling that the institutional interest of minimizing future legal problems and risks for the university did not take priority over developing strategies and solutions that considered students' interests or campus safety. Lawyers were not perceived to have a stronger voice or greater power on the team than non-lawyer members. By supporting a wide range of expertise - from conduct to counseling, prevention to health services - these three universities promoted an advanced understanding of issues involved

in addressing and combating campus sexual assault beyond a legalistic compliance perspective, improving how their university understands and responds to issues of campus sexual violence.

Balancing diverse concerns underlying the multiple issues implicated in campus sexual violence is complicated. It involves more than having an updated code, some investigators, and resources to provide to students. While conflicting values and interests often seem to be pitted against each other - with institutional concern over risk management, as opposed to student interests, dominating public discourse for example (Baker, 2014a; Baker, 2014b; Kingkade, 2014, 2015; New, 2016b; Newman & Sander, 2014; Russell, 2015; U.S. Senate Subcommittee on Financial & Contracting Oversight, 2014; Yoffe, 2014) - I did not find evidence of this tension from the study participants. Rather, the teams' interdisciplinary collaborations – with high levels of partner involvement and institutional embeddedness - provide evidence of a process that moved each institution beyond minimal DCL compliance toward advancing desirable institutional and societal outcomes. The change that results within the boundaries of the collaboration, however, does not always diffuse beyond that. The following chapter examines specific changes advanced by the review teams, the diffusion of these practices, and the intended and unintended positive effects that have resulted from universities' post DCL efforts to address and combat campus sexual violence.

Chapter 7 – Driving Institutional Change

In addition to explaining the relationship of actors as leaders in advancing organizational innovation and the use of collaboration through interpersonal interactions to realize institutional and societal interests while constructing compliance, institutional theory articulates a framework for understanding how organizational actions drive field transformation. The main form of organizational change considered in institutional theory is that of isomorphic convergence (DiMaggio & Powell, 1983; Greenwood et al., 2002; Levy, 2006; Scott, 2001). With successful deliberations resulting in innovative practices, other institutions begin to examine practices they perceive as legitimate. New norms diffuse when these practices are adopted by other organizations within the field. Transformation within fields is accelerated when a form of crisis, such as the DCL, begins to break down the current order, or arrangements, within the field (Fligstein, 2001b).

The focus of this research study was to examine the dynamic processes undertaken by three universities, through its institutional actors, to interpret and respond to a manner of crisis presented in the form of contentious compliance obligations. Beyond simply responding to minimal DCL requirements, the intent of the study was to understand how these three universities used the legal catalysts and subsequent review to advance forward-thinking results to enhance opportunity for the institution and its students. The review teams' actions and responses contributed to change occurring on campus. The policy and protocol review processes in response to the DCL were the means, or methods, that enabled the review teams to achieve

innovative results. The results were the ends, or outcomes, of these processes. Although this was a study that examined ‘means’ rather than analyzing ‘ends’, specific results that the review teams achieved are presented in this chapter in order to comprehend their significance in exceeding compliance requirements and driving change.

The review teams’ creative, collaborative, skillful negotiation processes have produced policies and practices associated with local and institutional structural elaboration. This chapter highlights a selection of innovative outcomes resulting from the review teams’ deliberations and policy negotiation further to the DCL, discussing both intended and unintended benefits arising from these outcomes. While the national conversation continues to emphasize what universities are getting wrong, raising issues of goal displacement, mission drift, and appropriateness of universities fulfilling this quasi-criminal justice, investigative, and judicial role (Kelderman, 2014; Kingkade, 2016; Koss, et al., 2014; New, 2016a, 2016b; Vendituoli, 2014b; Wilson, 2014a, 2015a, 2015b; Yoffe, 2014), evidence from this study supports that forward-thinking university responses, undertaken by actors operating within them, not only shape norms as they construct the meaning of DCL compliance, but contribute a public benefit, fulfilling some of the DCL’s public policy objectives.

Embracing Specialized Practices Informed by Non-Traditional Sources: Glensborough’s Trauma-Informed, Forensic Investigation Techniques

Evidence corroborating contemplation of issues beyond basic compliance to enhance opportunity for the institution and its students is found throughout the three universities in different areas. Glensborough, for example, significantly raised standards of practice by instigating specialized and widespread training of student affairs personnel in interview and investigation techniques. Revised DCL investigation practice at Glensborough focused on innovative, research-based methods incorporating an understanding of the neurobiology of

trauma with forensic investigation techniques. Drawing from an ever-increasing body of knowledge from cognitive science, Glensborough partnered with forensic medical practitioners to advance proactive, culturally competent, trauma-informed methods to inform university practices.

Priding itself on being “heavily focused on the quality of the investigation,” Glensborough has invested in training both conduct personnel and senior administrators in student affairs “in the very best investigative techniques” to improve methods of forensic interviewing. Glensborough has adopted aspects of highly specialized methods, initially designed to prepare CIA and FBI personnel in interview and interrogation techniques, incorporating them into a higher education setting. For example, improving their understanding of behavioral analysis, reading body language, and awareness of words used in the interview, has enabled them to better recognize features of sexual perpetrators. By integrating such practices into the university environment, Glensborough is seeking to brake away from outdated, one dimensional training and practice methods, such as the typical rational interview method colloquially dubbed ‘just the facts, Ma’am,’ in which a description of the suspect, the time frame of the events, and other factual pieces of information are pieced together. Rather, the methods Glensborough has adopted incorporate a broader three dimensional technique in which the level of fear a person experienced, their perception of danger, social media activity, and sensory details associated with the event (such as sounds and smells), are all collected as evidence to form part of the investigatory package. Because traumatic events can diminish and distort cognitive memory, this emerging method stresses the importance of collecting physiological evidence stored in the brainstem in addition to physical and testimonial evidence, with specialized interview techniques needed to properly retrieve and report such evidence (Campbell, 2014; Strand, 2012). These

science-based and trauma-informed practices in which the harmed student's welfare is at the center of the investigation have been recognized by the United States government as best practice in the multi-level investigatory practices of campus police and sexual assault educators, practitioners, and community partners involved in the complexity of issues impacting the sexual assault of college-age students (Busch-Armendariz, Sulley, & Hill, 2016; Not Alone, 2016). Such practices have recently been adopted as the focus of an innovative training curriculum by the National Center for Campus Public Safety, a new organizational association for Title IX officers and university administrators established by the U.S. Department of Justice in partnership with an external campus-safety consulting firm (Brown, 2016).

In elevating their standard of practice to be informed of, integrate, and disseminate forensic interview techniques supporting the scientifically proven neurobiology of trauma, members of Glensborough's review team have consciously challenged and shattered long held rape myths as they expand their organizational protocols and processes addressing campus sexual assault. As Derek relates, Glensborough's new approach incorporates emerging thinking in higher education on the growing importance of threat assessment and mental health considerations:

There are old school student development practices that would have talked to women about going out, party-safe tactics, drink smart, walk with friends, that sort of stuff. In this work, you just can't approach student conduct Title IX investigations from that traditional student affairs background. So we've had to create our own expertise from other areas and from multiple discipline areas. We could spend a lot of time talking about how the world of mental health is influencing our work now and so we're spending a lot of time learning about threat assessment and risk analysis and we apply that when we're talking about whether or not we have an ongoing risk with the respondent.

By integrating threat assessment of alleged perpetrators, assessing their danger to complainants and the community, and conducting trauma informed interviews, Derek relates that new facts are discovered in the investigation phase that would have been missed in pre DCL "old school

student development practices.” In order to advance its compliance actions beyond minimal DCL standards, Glensborough has adopted multidisciplinary and specialized practices informed by non-traditional sources (such as behavioral consultation and the neurobiology of trauma) to inform their sexual violence investigation and hearing protocols. Research from the University of Texas Austin’s Institute of Domestic Violence & Sexual Assault describes such an approach as replacing tradition with science (Busch-Armendariz et al., 2016). While to some this may seem like an obvious direction in which to proceed, participants spoke of such advances being on the cutting-edge. In fact, many universities continue to engage in “old school” mentalities and investigations, creating a chilling effect around allegations of sexual violence. Cases of students feeling stonewalled by their university’s responses, hampered in moving forward through the school’s Title IX channels, blamed for their behavior preceding the incident (e.g. style of dress, alcohol consumed), even receiving threats that proceeding with filing a complaint would jeopardize their standing at the university, continue. Recent high profile examples of such action can be seen from incidences coming to light at Baylor University (Kelderman & Wilson, 2016), Brigham Young University (Healy, 2016; Vertuno, 2016), and Stanford University (Kadnavy, 2016).

Expanding Student Agency and Institutional Accountability: Adhemar’s Adoption of an Advisory Panel, Resolution by Agreement, and Systematic Evaluations

Adhemar’s most noteworthy contributions to innovative practice center around students’ involvement in the process, resolution, and follow-up of sexual violence investigations and hearings. Prior to the DCL, investigation of an alleged incident of sexual violence did not generally move forward unless the harmed student wanted to move forward. Adhemar felt it was being true to its student-centered values by empowering students to take the lead on whether to

file a complaint or otherwise proceed through university channels. The release of the 2011 DCL raised doubt as to the proper way to address this issue. Guidance from the DCL stipulated that:

Regardless of whether a harassed student, his or her parent, or a third party files a complaint under the school's grievance procedures or otherwise requests action on the student's behalf, a school that knows, or reasonably should know, about possible harassment must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation.

Adhemar's review team describes the post DCL understanding of this aspect of the guidance as one in which universities narrowly interpreted the DCL as requiring universities to move forward investigating all incidents, regardless of harmed students' desires to proceed, citing the protection of the campus community at all costs, reflecting "a real swing far into the world of compliance over more nuanced readings [of the DCL]." Adhemar's review team felt the DCL "likely allowed for campuses to balance survivor interest and needs and rights with campus safety." In an effort to balance its student-centered values and institutional compliance obligations, Adhemar's review team carefully debated the issue and possible actions it could take. As Leslie explains:

We wanted to have there be a mechanism, an approach, so that when we were taking action that was not aligned with the desires of the student who was harmed, that we were at minimum being very deliberative about that choice, that it was not a knee-jerk reaction, that we had a conscious and conscientiousness deliberation as an institution about what kinds of harms or risks that action might take place upon the survivor and whether those harms or risks were outweighed by the need to address potential community safety concerns.

The team recommended a new organizational structure to evaluate such cases. An advisory panel would be created, convening whenever such decisions had to be made. The panel would review the situation with the Title IX coordinator and recommend appropriate next steps in balancing Adhemar's student-centered values (such as the harmed student's interests, needs, and rights in their request for anonymity or desire to not move forward lodging a complaint) with due process concerns and issues of campus safety. The panel would recommend whether the process needed

to move forward despite the student's wishes and suggest appropriate measures for the Title IX coordinator to consider. Ultimately, the decision to proceed rested with the Title IX coordinator.

Leslie elaborates on why creating such a panel moved Adhemar beyond minimal DCL compliance toward a more proactive and accountable consideration of the issues:

I think certainly our [advisory] panel provides institutional advantage in that that very difficult decision about whether or not to move forward with an investigation even in the absence of survivor desire is a really fraught one and I think that it is good that there is an institutional record of the kinds of deliberations that we undergo prior to making that decision, that it's not one that's taken lightly and that we really are focusing pretty strongly on what the student's experience is going to be were we to move forward with that decision and what other kinds of efforts outside of the investigation can the institution do, so really holding ourselves accountable for all the pieces of the Dear Colleague Letter, not just the investigations but what other kinds of interventions, what other kinds of climate-based actions can we be taking to address this issue, even the absence of not being able to follow through with an investigation, I think that that is really helpful as well.

Adhemar's early adoption of an advisory panel model to examine and account for the reasons underlying difficult institutional decisions may be one of the isomorphic processes being adopted by other universities. As Minn explains:

The [advisory] panel that we created [... is] a really novel way to pause and reflect on what we're hearing from a survivor. That's something that Leslie and I dreamed up and then vetted with the group, and everybody we've ever talked to liked it and I think I now understand that other schools are copying that and so I'm personally really proud of that. I know that that was my idea and Leslie's idea and if other people are doing it, I think that's great, I think we did it because we thought it would work for our students and I continue to think it's a good model. Like I said, I'm really proud of that.

Adhemar's innovative practices also extend to its involvement of complainant and respondent students in the sanctioning process. Whereas prior to the DCL conduct personnel determined sanctioning, the review team recommended that complainants, respondents, and other affected parties collaborate, through the university's conduct resolution division, on the final sanctions. Though the student voice is not a determinative one, it has "real weight," an unusual element in determining sanctions. Leslie regards this uncommon practice as one "which

speaks to our commitment to an educational approach that has worked.” Driven to be “a part of that leading voice” on best practices, Adhemar is seeking to expand research informed practices around sanctioning “to create a body of practice around this issue [... that] will compel us as a field to get better at addressing this work.”

In addition to increased agency having input determining sanctions in their own case, students are also being asked “to share information about their experience with the process and their experience with the outcome.” Adhemar requests this feedback after final resolution of all formal university processes to accomplish a number of goals. First, the university is interested in gaining a deeper understanding of students’ experiences and perceptions of the process. This insight is then used to bolster university responses and expand available interventions in support of maintaining educational approaches within the compliance guidance. Finally, the university is adopting structured and deliberate methods to expand research informed practices arising out of an actual body of sexual misconduct cases, which was lacking prior to the DCL because of the limited number of cases reported and facility addressing crimes of a sexual nature.

Building in methods of evaluating policy and process to determine their effectiveness for students are also proactive initiatives Adhemar has introduced further to the review team’s deliberations and recommendations. The first layer of evaluation built into the revised sexual misconduct policy was for the Title IX office to produce an annual report to the community concerning the university’s efforts to address campus sexual violence. While the Clery Act mandates that universities share information in an annual security report on campus crimes and outline policies and procedures relevant to support students involved in acts of sexual violence (Clery Center for Security on Campus, 2016), DCL requirements do not. Once a university has adopted and published a Title IX policy and complaint procedure, it can let the policy sit idly

until an event (such as an external Office for Civil Rights investigation, or internal review) brings attention back to it. The DCL recommends that universities review its policies and procedures to ensure they adequately address Title IX obligations, but offers no guidance on the timeframe or method to do so. External analysts recommend “periodic” or annual reviews to ensure the policies continue to encompass all of the necessary changes in law (Atkins, 2013; Smith & Gomez, 2013). Adhemar’s review team incorporated an annual review clause in its revised policy to assess the policy’s effectiveness and reflect on lessons learned through its actual application. Martin describes Adhemar’s commitment to annually review the policy as “mak[ing] sure that it [the revised policy] is not a one shot deal, that it’s part of the fabric of what it means to be in this community.” This evaluation tool has helped Adhemar determine which parts of the policy are meeting student needs and which parts may be failing. The reports generated are expected to advance difficult dialogues with the campus community and inform higher education practice. Leslie characterizes the climate leading up to the release of the first annual report:

I expect there will be quite a bit of scrutiny as there is for pretty much anything around this issue these days. And we’ll get tough questions, there will be challenges to some of the information that’s presented. And for me, anyway, all of that is to the good. It’s okay for us to be having vigorous dialogue about difficult issues, that’s kind of like what we’re supposed to be here to do.

Engaging the campus community in such ongoing conversations around sexual violence is one of the necessary elements in achieving substantial and sustainable change in eradicating campus sexual violence (Solovay, 2015).

Rebuilding Community Trust by Prioritizing the Process: Tundell’s Commitment to Accountability

Akin to successes achieved at Adhemar and Glensborough, Tundell’s review team also advanced innovative and expansive policy and programming on its campus as a result of the

review team's extensive review process. Multiple review team members spoke of the team uniting around shared values of social justice and "fairly quickly as a group settling on a model supporting justice." Tundell had been the subject of a contentious Title IX complaint, played out under the spotlight of national media attention and an outspoken and strengthening student activist movement. Research participants describe the culture leading up to the review team being charged as "punitive," "unsympathetic to survivors," "antagonistic," and "provocative." While the DCL might have been the official instigator to examine the university's sexual violence policies and practices, numerous participants perceived the media attention and the Title IX complaints as the true catalysts prompting the university to take action in addressing issues related to campus sexual assault.

As a result of the contentious environment, Tundell's leadership felt a need to restore trust with constituents, proving that it was not rhetoric when it espoused having students' best interests at heart. To rebuild confidence in the administration, Tundell's executive leaders and chair of the review team took explicit steps to commit to a transparent, community-driven DCL review process, fulfilling the university's longstanding tradition of student involvement in co-creating policy. Vanessa, an administrator in student affairs, elaborates on student's participation:

At our campus, students are very central, both because it is a campus for students - we're educating students - but our students are central because they also, we allow them to have a significant footprint into these types of decisions. You also will note that there were several students that were on the committee and I don't see, at least in my experience, task forces that are comprised with that many students on them as well.

Vanessa provides additional insight into the administration's motivation to advance transparency:

I think there were so many stakeholders that had voiced a displeasure with the interim policy. [...] There was a very small group of people who got together to write a policy

that would help us get in compliance with the DC letter they put together. But there was a feeling that it wasn't transparent. It didn't have enough voice, enough input, enough buy-in from the campus. People felt alienated, I think, by it. So we went through a year of [Office for Civil Rights] complaints, [Department of Justice] visits, and hearing our students say: "I don't even know where this came from, what's going on?" Okay, so we almost went into kind of the opposite extreme. So we start with small committee trying to do this work in which students were really upset about it, and our community was really upset about, ended up at least having some amount of displeasure and to this we have to be able, I think the reaction was, we have to be able to demonstrate we are getting widespread input and opinion and be able to make our work as transparent as possible because our community, the way things work at [Tundell], people want to know. And so either they're going to know because we share it with them or they're going to know because they're going to file their Freedom of Information request, records requests, and then it makes it sometimes not look like, makes it look like we're trying to hide stuff and so we wanted, we kind of shifted the pendulum and said, alright we're going to make it as open and transparent as possible. I don't know that that would necessarily be the model for every single kind of major policy or need to be in compliance with regulations, I don't know that that's the case that that model would work for everything that we do on our campus, but it definitely fit the bill for this scenario.

The process became as important as the outcome. The fact that the review team developed one of the earlier affirmative consent models coming out of a large, public, flagship university¹⁴ or instigated a strong investigator model to allow time for fact gathering at the front end of any potential charge¹⁵ or influenced the creation of a resource office to help students navigate the system of complex processes and find solutions that fit their needs, can all be interpreted as successful outcomes generated by the review team. But it is in the way they were achieved that Tundell's team made the greatest contributions to meeting the university's compliance obligations while advancing institutional values and desirable social outcomes.

¹⁴ before either California or New York had passed their affirmative consent state laws (in 2014 and 2015 respectively); although private colleges such as Antioch College and Grinnell College had such models in place since 1993 and 2012 respectively (All Things Considered, 2014; Wilson, 2014b).

¹⁵ under state law, once a charge is brought, students have the right to bring lawyers into the process, changing the educational and equity environment, as in many cases complainants could not afford a lawyer whereas respondents could.

Tundell recognized that it had both a sexual violence problem on campus and mistrust of it effectively and fairly addressing such misconduct when it occurred. In response to the DCL, Title IX complaints, and negative fallout, it invested extensive resources to address constituent concerns and rebuild trust. The university developed a new website devoted to sexual assault issues on campus, as many schools were doing. Whereas research into universities' sexual assault policies and the content of its websites offering information on those policies, resources, prevention, and processes has found universities falling short of compliance obligations and proposed guidelines (Lund & Thomas, 2015; Schwartz, McMahon, & Broadnax, 2015; Streng & Kamimura, 2015), Tundell provided clear and specific information aimed at student audiences that met suggested best practices set forth in the White House Task Force's recommendations (Not Alone, 2015). In addition to the website serving as a primary source of information for students, faculty, and staff, initial conversations informing the review team's work were held across the university to engage in dialogue on campus climate and ways to improve climate and violence issues. Community meetings, open forums, updated blogs from administrators, and online suggestion venues to provide input were some of the ways Tundell enabled a range of constituents to participate and remain engaged in the review team's actions. As Quinn articulated, "it's not just a legal issue, it's also a human rights issue, it's also a social justice issue, it's also a communications issue," requiring the review team to have sufficient breadth and expertise to understand and address multiple components of the issue. The review team felt that despite such complexity, it could still frame the issue "and give it to the community for input and resolution." Quinn elaborates on this community-driven approach:

I really think that the lesson of the task force for me was, you can take a thorny and an emerging and highly contentious legal issue and still give it to community members to solve. You just have to be clear about the structure and be clear about what the parameters are. And so for me, I've been saying quite publicly, we turned over a problem

for our community to solve and said, help: What should the university do? You think it through and tell us. And that worked.

This method, according to participants, preserves the “unique characters and spirits” of each institution “to make sure our universities don’t become McDonald’s franchises,” in other words, every university applying the same “cookie-cutter” policy and education initiatives despite vastly different populations and needs.

One of the characteristics of Tundell’s review team was that its participants regarded weaving principles of social justice into compliance responses as complementing their charge, rather than being in conflict with it. A number of participants attributed the review team’s ability to be creative in its style and regain the community’s trust as it constructed compliance to a merging of inter-connected factors. As Quinn conveys:

[We had a] unique confluence of having an engaged community, activists on campus, resources and time to do it, a [president] who was willing to charge a task force, [...] getting] ahead of everybody a little bit, [and being given space and time to] establish our culture on our own. And who knows how that chemistry all worked. I think we had kind of a unique confluence of things that led us to say, we’re going to do it. [...] Everybody thinks their campus is a great place and I think we’re a great place, and I think we had the right people in the room to do it and the time and space and resource allocations to really do it right.

Review team members spoke of the review process having integrity. There wasn’t an imposition by any one person or group as to how things should go. The process was open for everyone to see. This level of transparency and accountability, coupled with the commitment of the review team members to regard the DCL and Title IX “as the floor, not the ceiling,” enabled Tundell to deliver substantive solutions as it transformed attitudes and impacted campus culture in its construction of compliance.

Organizational Transformation

As institutions begin to disseminate their novel practices, many advances are mimicked by other institutions and become more mainstream. Some universities, such as the ones in this study, are engaging in innovation and experimentation to stimulate substantive change. Among the widespread changes occurring throughout universities, there is evidence that new compliance positions are being created, new educational programs are being rolled out for students, staff, and faculty, web sites are being redesigned, surveys are being administered, parents are being invited to informational webinars, high-level administrators are sending memos to university communities detailing commitments to the effort, student codes of conduct are being rewritten, new hotlines for reporting sexual misconduct are being created, and procedures for the investigation and adjudication of reported incidents are being redesigned (Armstrong, 2016).

Transformation in organizational approaches advancing the DCL's public policy objectives of confronting campus sexual harassment and violence, promptly and equitably addressing its effects, and preventing its recurrence (Dear Colleague Letter, 2011) can be seen through this study's three institutions in a number of areas. Participants from each university spoke of the review team's considerations of due process and, despite student-centered policies that recognize disparities facing harmed students, maintaining a fair and impartial process for all students involved. The teams purposely consulted with a broad range of constituents and drew on expansive expertise across campus to increase their understanding of diverse constituent needs, and have those needs reflected more than ever in the new policies, programming, and services available. Examples of this include attention by members to the vulnerabilities inherent to certain student populations, such as increased levels of sexual violence experienced by members of the LGBTQ community or unique barriers faced by students with disabilities. Where representatives

of certain groups could not be at the table (with participants noting absences in the room from Latinx,¹⁶ African American, and Native students, for example, as well as leadership from Greek Life), committee members were intentional about reaching out to these constituent groups outside of the review team meetings.

Participants attributed the support of top university leaders as an influence in the organization's transformation. Whereas pre DCL university presidents, chancellors, and provosts were often silent on the issue, delegating its handling to student affairs for example, support from this level of university leadership was more visible post DCL. Each institution's leader publicly supported the review team's efforts. One of the institutions had a president leave and another begin during the review team's tenure. Throughout the transition institutional support remained high, as one participant observed:

I felt like that at least one of the unique things that I've seen here was that both the leaving [president] and the one that was coming in were both very outspoken and very public in sharing their support of this work and their commitment to this work, which I think gave the committee that much more faith that what they were doing was going to be meaningful. I think it also gave our campus community a sense that this isn't just a pocket issue for one entity. If the [president] is speaking about it, it really is something big. So we talked a lot about that top down leadership and I felt like that voice was definitely present.

Infusing personnel and financial resources to support the review team and fund conduct, prevention, education, investigation, counseling, and compliance initiatives was also regarded as a welcome and necessary signal of each university taking issues of campus sexual assault seriously. Both the public top down support and increases in resources signaled shifts in institutional commitment to addressing and reducing campus sexual violence. Although participants spoke of a more measured investment in investigation and conduct work over

¹⁶ in order to escape implicit gender binaries and include all possible gender and sexual identities, the term 'Latinx' is gaining legitimacy in academic use (Logue, 2015; Scharron-del Rio & Aja, 2015).

prevention and education, they nevertheless bore witness to shifts taking place in institutional thinking because of the changed post DCL compliance landscape. One of the biggest shifts participants spoke of was the shift in culture concerning attitudes: Attitudes surrounding acceptable behavior, rape myths, accountability of groups not always held responsible for its systemic contributions to the problem (primarily perceived as athletics and fraternities), and institutional accountability of its legal – and ethical – obligations to “do better.” These shifts are the result not only of the review teams’ efforts to increase communication and awareness on campus around issues of sexual violence, but of external environmental forces affecting universities, including increased activism and media attention of issues.

Cultural Shifts

Positive cultural shifts were seen occurring at all three institutions. Participants overwhelmingly noted the increase in campus discussions about issues of sexual violence that had not been occurring prior to the DCL. A senior advisor in academic affairs at Tundell relayed that pre DCL, “this [sexual violence] was not talked about at all, that a young woman would not talk about it and certainly not to a faculty member, a male faculty member.” This administrator later observed the campus now sees “faculty being sensitive to it and being aware of it.” Though this sensitivity and awareness sometimes falls short, and changing attitudes takes time, as she explains by way of this example:

I had a colleague who, last year, was working with a young woman whose female professor said: “Well I have lots of students deal with bad stuff, why couldn’t you take your exam?” This was a kid who was just assaulted. This was coming from a woman. But I think again on a cultural societal level even if it’s just the campus community culture and individually you don’t - Rome was not built in a day - as they say. [...] Societal and cultural change happens slowly, and I do believe it is happening.

Despite cases such as this exemplifying a lack of understanding of the effects of violence and trauma on students, she nonetheless communicates that the environment has undergone significant change, with increased conversations affecting a growing awareness:

We hear from faculty all the time and when I first started in this office, you very rarely heard from faculty, you only heard from the absolute jackasses about stupid stuff once in a while. I hear from faculty all the time, “I’m really worried about this student in my class.” It’s that ripple effect that I think is really important, that sense of awareness.

A review team colleague confirms this shift, adding that the team has tried to “challenge our population to think beyond just the female survivor, male aggressor.” Providing insight into one of the hidden benefits of team membership, the establishment of a network of experts across campus that colleagues can turn to, Jackson expresses confidence in the post DCL transformation occurring on campus:

I had a call from a faculty member the other day, he was like, I have a student, this is her situation, what can I tell her? I like that the faculty and staff are reaching out and kind of going, “I’m not sure what to do but I hear you’re the guy who can help me.” And even a few people that I’ve talked to, they’re sure like, “Oh thank God, someone is here to deal with this.” It’s not because they want to get rid of it, it’s because they were maybe feeling stuck before, but now they know who to go to and [...] with the team if I don’t have the answer I know other people they can go to and kind of go, “Here’s sort of the constellation for this issue, what can we do? and who can I refer this person to? or how can we get that support for the faculty member, for that student, for whatever the situation is?” So that’s how it’s advanced things I think.

Evidence of conversations across disciplines and divisions has also increased, as one conduct professional from Glensborough explains:

The med school is just now starting to ask more questions about what we do. They’ve had a couple of cases come up that they needed help on. And so the professional schools, and traditionally on this campus have been stand-alone entities, their own little castles, and it’s been this compliance stuff that’s opened their doors up and so again, it’s part of that whirlwind but whereas all these associate deans and assistant deans would never have talked to student affairs before, you know the central student affairs office here, now they’re all calling my office saying, we need your help.

Even fraternities, perhaps in an attempt to improve their reputation and ensure their survival, have reached out to campus officials to be part of the solution. While some fraternities have resisted the move toward being allies, participants spoke of changes in attitude from fraternities as being a remarkable transformation resulting from the policy revisions and reform.

As the College and University Professional Association for Human Resources has advocated to its members, the entire campus community must be involved in ongoing conversations about sexual violence to advance cultural transformations.

In order to facilitate culture change on campus, institutions must go above and beyond the minimum requirements of VAWA, Title IX and Clery Act laws. We must fully engage our entire campus communities in ongoing conversations around sexual violence. The topic can no longer be viewed as taboo, but must instead be exposed and explored. Only by weaving dialogue and training into the fabric of our institutions can we create real, lasting change, uniting students, faculty and staff in the campaign to eradicate sexual violence on college campuses. (Solovay, 2015)

Study findings support such discussions occurring in new circles and increasing in breadth and depth across campus. Participants also viewed the rise in sexual misconduct complaints and requests for services as evidence of the universities having established a post DCL culture where people felt comfortable coming forward. At these progressive campuses, there has been a shift in accepting evidence from the neurobiology of trauma and integrating it into response protocols, as well as examining and taking more seriously the links to cultural contributors of “rape culture,” such as excessive drinking and partying. But participants still speak of having a long way to go. Some reference the all-powerful athletic culture as a barrier to truly eradicating sexual violence, with the athletic program’s image and revenue generation trumping sexual assault concerns. Others cite the lack of a national conversation occurring around “the equity and equality of women and men and the LGBT community, and it all play[ing] together.” Conversations of healthy sexuality and healthy relationships are considered deficient. Models of healthy

relationships are missing in the conversation, with current conversations focusing on “the bad stuff, not the good stuff.” Despite these reservations, that increased awareness and discussion has occurred on campus since the DCL’s release is evident. Seeping beyond university campuses, such attention appears to be provoking public discourse and creating a societal benefit.

Public Good

Results from this study provide evidence that university understanding and shaping of DCL compliance is contributing to societal gains beyond campus. Numerous participants spoke of campuses normalizing sexual violence conversations and increasing awareness, understanding, commitment, and action around the issues as transformations that are reaching a new generation of students. Once these students graduate, this exposure will transcend into their own relationships and expectations in the workplace. Discussing the policy’s effects on students, participants noted students’ increasing awareness around issues of consent, and that this understanding is a “lifelong skill” students will carry with them beyond campus. As one participant explained:

We are training folks and expecting folks to behave differently, identify perpetrate behavior before it happens, do bystander intervention work, change the culture so that we don’t have a culture of violence, and if you move those folks through that sort of intense training system that we’re building on our campus and then they go out in the rest of the world, I expect them to be employers who take sexual harassment seriously, people who don’t hurt kids, people who will step in as an active bystander when bad things happen, and I think that permeable barrier between people who have that expectation on campus and then go out into the rest of society will infiltrate the rest of the world and create more of a culture of prevention and higher expectations for us all as humans and so that’s what I am happy about, people will leave here and then be employers who don’t tolerate sexual harassment on any level in the workplace, support their kids in being healthy, non-bullying kids.

It is not only the students’ exposure to previously “taboo” conversations that is creating a public benefit. Media coverage of student activism has “moved the dial” to opening up positive conversations for “advocates on both sides of [the issue].” Participants relayed stories of their

experiences with supporters of harmed students and responding students who had changed their thinking around the “mistreatment of women, of partners, whoever it may be” as “something that we should not be doing, period.” The shift in institutional culture from focusing on legally compliant measures to developing an awareness of underlying contributing factors and taking measures to address them, has also impacted the public-at-large’s conceptions about what a safe campus experience entails. Some participants remain doubtful, however, that changes in attitude and the breakdown of barriers occurring on campus has transcended into society. Others recount positive experiences with third party affiliates that have a connection with the university or with students. Talk of sexual violence issues has infiltrated these entities, for example businesses where students undergo internships, which are affected by the universities’ new policies. The entities’ interactions with the university have extended this circle of awareness outside campus. Review team members speak of this exposure spreading, creating ripples that serve to normalize the conversation around sexual assault and raise the bar concerning sexual equality.

Perhaps a tipping point has been reached. Bruce describes an analogy of falling dominoes to illustrate:

It [the problem of campus sexual assault] is really in a place now where it’s very hard to deny and I think more and more people are getting, feeling comfortable with saying yes, we have that problem too and not feeling like they’re out there and carrying the banner all by themselves. So yeah, it feels, I mean we’ve got a long way to go, we definitely have a long way to go. But it feels, I think when I was talking about the universities falling and then military it just had that sense of here go the dominoes. It’s been set up for a long time, those dominoes have been in place, people have been fighting to get those dominoes to fall, they haven’t fallen, and then all of a sudden they all start to fall. And when they all start to fall, I mean having been alive as long as I have now I’ve seen it happen a few other times where you’re just like wow, that’s the tipping point and now it’s going and I think we’ve passed the tipping point as a culture. So we still have a lot to go but I think we’re, unless something dramatic happens [...] culturally to take the focus off, I would see it just taking it nationally and hopefully being an issue that we have a lot more control over ten years from now than we do now.

Arguably, one of the greatest public benefits these findings support is that people previously impervious to the notion that sexual assault is occurring on university campuses can no longer deny the existence of crimes of a sexual nature. While there is plenty of debate in the public discourse as to the best means to address it, one thing is clear: the transformations that have occurred on campus as a result of the DCL and related regulations, the review team's work, student activism, and public pressure have "peeled back a layer of immunity in this generation." Given that public controversy still exists on the topic, "maybe they don't like that."

Conclusion

Although public discourse around the DCL has often been negative, suggesting that universities are mishandling their treatment of sexual violence cases and should not be addressing crimes of a sexual nature in the first place, we see through the discussion in this chapter that a number of positive changes contributing to both organizational advancement and the public good have resulted from university efforts to comply with DCL obligations. This chapter provides empirical evidence that law can be used as a positive force within organizations to shape desirable social and institutional outcomes. By examining the intended and unintended benefits originating in a legal, cultural, and social issue of critical importance to campus life, a better understanding has emerged of universities' abilities to shape (through their actors) the construction of lawful responses that advance transformative institutional and social change. Some of the compliance actions observed in this study have become institutionalized by way of organizational mimicry and normative practice. These include an increased focus on trauma informed practices, creating new student advocate positions, entering into formal agreements with community partners to better address students' needs and extend services, and adopting affirmative consent standards, among others.

Universities' post DCL efforts to address and combat campus sexual violence have positively contributed not only to educational practice, but to the promotion of public good. While this chapter provides helpful insight into ways university actors were able to use the law as a positive force within organizations to shape not only compliance and institutional goals, but also desirable social and institutional outcomes, the case study nature of this research does not generate field-level conclusions. However, the participants' descriptions of the expansive thinking and novel concepts the teams developed indicate positive transformations have been occurring in this contentious area. These important developments are vital to advancing our understanding of how universities can construct legal responses that both comply with complex laws and regulations affecting institutional life, while also advancing institutional interests, educational mission, and public good (Edelman, 1990, 1992, 2007; Edelman et al., 2010; Meyer, Ramirez, Frank, & Schofer, 2007; Meyer & Rowan, 1978). With the heavily regulated higher education environment showing no signs of subsiding, universities are likely to be thrust into new and developing roles as their legal obligations shift. The means emanating from this study – of fostering effective leadership, developing collaborative environments, and transforming challenges into opportunities for the organization – provide insight that can help university leaders guide their institution through the legal, social, educational, and cultural implications inherent in compliance responses.

Chapter 8 – Conclusion and Implications

There is a dynamic process that takes place in the construction of universities' sexual harassment and violence policies. Because of the relative newness of interpreting and responding to the 2011 DCL as I conceptualized this study, scarce research was available to inform higher education scholars and practitioners of that process. Five years after its release, research is emerging to inform our understanding of many of the major components underlying issues of campus sexual assault. For the most part, this wave of research updates and expands upon issues previously studied, reexamined from a contemporary post DCL context. This updated research addresses understanding the causes of sexual violence (Franklin, Bouffard, & Pratt, 2012), identifying risk factors (Gidycz, McNamara, & Edwards, 2012; Gilmore, Lewis, & George, 2015; Jordan, 2014; Pryor & Hughes, 2013), exploring the consequences of trauma on students (Chang et al., 2015; Jordan et al., 2014; Mason & Lodrick, 2013), evaluating prevention options (Buchholz, 2015; Henriksen, Mattick, & Fisher, 2016; Katz & Moore, 2013; Thomas-Card & Eichele, 2016), examining organizational response through an analysis of information available on university websites (Englander, McCoy, & Sherman, 2016; Lund & Thomas, 2015), and surveying campus climate and incident rates (Cantor et al., 2015; Krebs et al., 2016; McMahon et al., 2015).

There are few studies in this recent research surge that address the organizational dynamics and behavior underlying university responses to compliance obligations. Emergent studies suggest researchers are undertaking analyses of the development and implementation of

university policies and protocols (Shankar, 2016), investigating the alignment of proactive and reactive policies addressing prevention (Field, 2016), evaluating symbolic versus substantive compliance efforts (Badke, Porter, Garrick, Armstrong, Levitsky, 2016), and scrutinizing patterns of policy and programming response (Armstrong & Levitsky).¹⁷ While this developing body of research indicates increased scholarly attention to the topic, empirical research of the process universities undertake and the mechanisms relied on as its actors negotiate policy and construct compliance remains wanting. The purpose of this research study was to examine the dynamic processes undertaken by three universities in their review and negotiation of policy and programming, resulting from contentious and ambiguous compliance requirements, as they advanced forward-thinking responses that enhanced opportunity for the institution and its students. The institutions participating in this study did more than check DCL compliance boxes. Each developed a holistic approach, questioning current models and seeking answers on the best ways to develop thoughtful, nuanced policies to better respond to, and prevent, sexual assault.

This study was premised on circumstances in which an outside legal force, the 2011 DCL, affected the organization, and those in it, creating opposition in the university's legal culture and environment. While the DCL proved to be an important catalyst for examining and revising university policies and protocols, this study's findings reveal that it was not only the DCL that caused the universities to take action. Rather, many participants regarded the negative media attention their university was receiving as a more pressing incentive driving university actions. Influencing developing compliance standards and mediating the laws' effects on their organizational interests, these three universities took additional measures beyond minimal

¹⁷ Preliminary results from the Shankar, Field, Badke et al., and Armstrong & Levitsky studies have been, or are scheduled to be, presented at professional conferences. The studies have yet to be published.

compliance to align policies, procedures, and programming with institutional values while addressing legal obligations. Although all three participant institutions relied on committee structures to examine and respond to DCL obligations and challenges, each instituted different decision making models. From Tundell's modified consensus, to Adhemar's co-chairs having the final say based on team recommendations, to Glensborough's multi-layered, hierarchical, system structure, all study participants felt that their voices were heard as they made substantive contributions to the process. Leadership flourished at many levels, indicating the importance of change agents involved in different aspects of the review and reform process. Dissenting voices, for example, provided alternative perspectives on issues and helped diffuse power dynamics. Collaboration among subject-matter experts led to the universities' consideration of a number of important issues contemplated by the legislation. To reduce incidents of sexual violence, for example, underlying issues affecting campus culture were reconsidered in new ways. Deeply held misogynistic attitudes, often found in privileged sub-cultures such as athletics and fraternities, were increasingly scrutinized. Diffusion of such considerations can be seen in the recent condemnations of Harvard's Final Clubs (Fahs, 2016) and the University of Michigan's fraternity party culture (Jesse, 2015). Other organizational shifts are evident in the proliferation of new titles and offices, negotiation of roles, reconciliation of power and politics, and variations in shared governance.

Shaping Institutional Actions

Findings from this study support institutional theory's understanding of the internal negotiation of process and strategy to explain organizational adaptation in uncertain environments, and its contention that organizations are shaped as much by their cultural environments as by rational calculations and technical imperatives (DiMaggio & Powell 1983;

Meyer & Rowan, 1977; Rowan & Miskel, 1999; Scott & Davis, 2007; Selznick, 1949, 1957, 1996; Sitkin & Bies, 1994; Suchman & Edelman, 1996). Having to comply with the DCL provides the technical imperative in this case. We see from Tundell and Adhemar that university leaders' first rational response was to convene a small team of experts behind closed doors to make the changes in response to the new regulations. Glensborough's pattern mimics this reaction as well. Glensborough's interview participants were not privy to the details of these initial meetings. However their accounts of Glensborough's response provide insight into the university's delayed start and disjointed efforts initially addressing the DCL.

The cultural environments at each university demanded that more in-depth, transparent actions materialize. Adhemar's culture was driven by a history of community owned conduct processes developed and reviewed by students, staff, and faculty. Adhemar's community would not tolerate "fiat changes." Motivated by community values and national leadership advancing an in-depth understanding of campus sexual assault, Adhemar responded to its cultural environment by entering into an extended community vetting and dialogue process. This enabled institutional leaders to co-create with campus constituents innovative policies and practices that upheld community values of fairness, due process, empowerment, student choice, and an educational focus while meeting the university's legal obligations. Tundell found itself in a hostile environment with its constituents not trusting that the institution had student interests at heart as it crafted a DCL response. Motivated by an Office for Civil Rights Title IX complaint and mistrust of the university's ability to equitably, impartially, and effectively respond to incidents of sexual violence, Tundell's climate created a pressure that galvanized leaders into listening and responding to student concerns. Glensborough's idea champions played powerful roles in shaping the cultural norms that influenced Glensborough's institutional actions of

moving beyond minimal DCL compliance to invest in resources and personnel needed to increase the university's competence. In doing so, the new direction these leaders took created a national presence as leading experts in adopting trauma informed practices.

With laws and guidance that regulate educational environments often ambiguous, as was the case with the DCL, universities are afforded wide latitude to construct responses to the law in ways that address conflicting pressures, environmental demands, and self-interest. Through a collaborative decision making approach involving expertise cultivated throughout the university, and significant input from students and community members, the university review teams strategically shaped institutional responses to broad DCL mandates. Teams upheld values of public good by fostering substantive solutions that delivered on the DCL's public policy goals of reducing incidents of sexual violence, preventing its recurrence, and promptly and equitably addressing its effects. Review team members' actions shaped not only legal compliance, but have resulted in imitation, emulation, and structural elaboration within the field of higher education.

Adhemar, a frontrunner in establishing a full time confidential advocate for students experiencing sexual violence in the university community, provides a good example of such institutional isomorphism. Given the widely recognized reality that reporting rates of campus sexual assault do not correlate to the prevalence of the crime, confidential advocates are recognized as fulfilling an important role providing emotional support, assistance with navigating academic responsibilities, access to appropriate medical care, explaining reporting options, and connecting students with counseling and crisis intervention services. This confidential advocate model, distinct from the roles of university investigator or process advisor, is considered an emerging best practice and has been spreading throughout the field (Association

of Title IX Administrators, 2015).¹⁸ Basing good practice on research informed decisions, such as evidence supporting that students who work with a confidential advocate experience less negative outcomes, distress, self-blame, guilt, depression, and are more likely to seek additional medical, legal, or counseling assistance (Campbell, 2006, as cited in Association of Title IX Administrators, 2015; Wasco et al., 1999, as cited in Association of Title IX Administrators), professional associations advocate universities adapt such a model “because it is the right thing to do” (Association of Title IX Administrators, 2015). Two pieces of pending legislation may also make it the legally required ‘thing to do’. The Survivor Outreach and Support on Campus Act (S.O.S. Campus Act) would require universities appoint a confidential, independent advocate to assist and represent the interests of students who have experienced sexual assault, even if student interests conflicted with those of the university. The Campus Accountability and Safety Act (CASA) would extend the services to cases of alleged sexual harassment, domestic violence, dating violence, sexual assault, and stalking.

Findings from this study also advance the socio-legal framework that organizations create symbolic structures articulating compliance through legitimate forms of legal rhetoric and due process. All three universities immediately appointed a Title IX coordinator, for example, symbolically complying with one of the more clearly defined DCL mandates. However, developing the scope of their role, understanding their responsibilities in relation to existing job requirements, eliminating potential conflicts of interest, deciding in which division the position should be based, even determining what interests they represent (institutional or student?) all took time to develop.

¹⁸ Examples of this emerging model can be found at Berkley, UC Santa Barbara, UC Santa Cruz, and the University of Colorado Boulder, among others.

All three participating universities in the study created new organizational structures to address DCL rhetoric. Whether in the form of an advisory panel to provide guidance to the Title IX coordinator on contentious matters (Adhemar), a coordinating office to unify university education, prevention, and response initiatives (Glensborough), or a student complaint office where a process advisor could assist students with reporting options and procedures (Tundell), each university has responded differently to substantively impact the students it serves. It is too early to determine which of the many measures these universities have developed may become expected compliance standards. Although the principles behind some, such as Glensborough's trauma-informed sexual assault investigation approach, have subsequently been advanced through new training curricula for university administrators and police officers, providing evidence of proactive organizational responses shaping the compliance framework (Brown, 2016; Busch-Armendariz et al., 2016; Not Alone, 2016). In addition to new training and investigation strategies, there is evidence of new organizational structures taking shape across the field.¹⁹ Resource-strapped universities that cannot offer such range of services have been encouraged to develop MOUs with local community advocacy organizations (Association of Title IX Administrators, 2015; White House Task Force, 2015), a course of action embraced early on at Glensborough. Based on socio-legal application of organizationally constructed symbols of compliance, these emerging institutional actions are likely to be regarded by courts as possible standards as they interpret emerging Title IX compliance litigation.

From these examples, we can see how organizational responses shape the construction of compliance. Although the DCL only mandated that universities appoint a Title IX coordinator to

¹⁹ see, among others, Harvard University's Office for Sexual and Gender-Based Dispute Resolution; Ohio State University's Office of University Compliance and Integrity; Penn State's Title IX Office; and the University of California Santa Cruz's CARE Office.

manage campus sexual violence efforts, all three of the participant universities hired additional compliance professionals. From investigators to process advocates, confidential advisors to prevention specialists, the realm of diverse individuals within and around organizations addressing and managing compliance is growing. These organizational actors have each “captured” an aspect of compliance, shaping it to fit the institution’s goals. Their shaping of that process – investigation, adjudication, prevention, and communication - helps “enact” the meaning of the law. For example, whether an expectation of compliance entails an adjudication model of an appropriately trained single fact finder or a panel of representatives from the university community may be determined by which models are adopted by other universities and become cultural norms, as well as which models compliance professionals or governing bodies interpret as more valuable. Responses perceived as legitimate will spread throughout the field, guiding the change process and constructing the meaning of compliance. To gain legitimacy, universities will emulate other organizations operating in ways they consider prestigious or exemplary. This has occurred within the past few years through the innovative training, adjudication, counseling, and prevention practices advanced by Glensborough, Adhemar, and Tundell’s actors.

Answering the Study’s Research Questions

This study’s over-arching purpose was to better comprehend the dynamic processes of understanding and responding to ambiguous and contentious compliance requirements while enhancing opportunity for the institution and its students. By addressing the following research questions, the study has provided insight into the organizational environment in which the interesting negotiation of social, organizational, and legal influences takes place.

How is Institutional Policy Negotiated Around an Ambiguous, Multi-Interest, Regulatory Prompt?

Findings from this study indicate that institutional policy is negotiated in different stages. First, the universities took initial steps to respond to the regulation to bring it “in sync” with the most recent legal requirements and reduce its vulnerability to compliance violations and liability. From the three participating institutions in this research, that step was conducted behind closed doors with only a handful of top university leaders. Second, the university commenced a more in depth examination of the issues the regulation raised. These universities did so by creating sexual violence, DCL, or Title IX review teams. Each team was given a broad charge to review the university’s existing policies and recommend areas of improvement based on the new regulation.

Each of these universities had review teams that expanded this charge. Bringing together subject-matter experts to address and improve upon the university’s actions in areas of concern to them and their professional identities created an environment where “the right people” merged to command new attention to the problem. Thinking of the DCL changes as opportunities, these faculty, staff, administrators, students, and community members were driven to positively impact practice by overhauling the university’s sexual assault and/or gender violence policies and practices. Each of the universities in this study provided support from the highest levels of university leadership: backing the teams’ efforts, giving them leeway to be flexible in their process, listening to their concerns, providing time and space away from campus to debate and deliberate, managing intense internal and external pressures demanding fast and exceptional results, and filling personnel gaps where possible through new hires.

Throughout this second phase of policy negotiation, listening to people on the front lines, meeting with members of different schools and divisions, and fielding student questions and concerns were important to Tundell and Adhemar’s teams. Extensive outreach and incorporation

of the opinions voiced helped ensure the institutions adhere to its values of the process being community driven, co-created, student-centered, educational, balanced, fair, and responding to multiple constituencies. In part motivated by criticism of the first stage of policy negotiation being secretive and excluding community input, conscious effort went into making this second phase highly transparent. In this regard, as well as in their consideration of decision making strategies, the review team co-chairs signaled attentiveness to the negotiation process, not just the policy document outcome. Little evidence emerged from Glensborough exhibiting such institutional values. ‘Old school’ participants provide evidence of closed discussions with little accountability, transparency, or student or staff input. ‘New school’ participants with less institutional baggage took measures to break down these constructions, actively strengthening collaboration across campus to increase understanding of the post DCL ‘new order’ and attain significant ‘buy-in’ of the new protocols being developed in response to DCL mandates.

Dominant themes that emerged from the data that enabled team members across the institutions to overcome tension, ambiguity, and pressure from different constituents to successfully negotiate policy that not only advanced innovative and substantive solutions but created improvements for the institution and society were leadership and collaboration. Review team members provided crucial leadership expertise in multiple places to contribute to the success of the institution’s protocol, policy, and programming review process. Leadership exhibited from the top ranks of the university through the team chairs, and into the facilitation and “grunt work” of meeting with and synthesizing tremendous amounts of community input, is a core contributor of the successful negotiation processes undertaken at these three universities. Including a wide range of constituents who had both knowledge and expertise reaching across the institution also accounts for the organizations’ successful outcomes. Team members

recognized and overcame power dynamics, nontraditional viewpoints, and competing interests to work collaboratively to negotiate policy that benefited their own interests, those of the university, individual students, and society. Such contributions demonstrate that university members are not simply rational actors responding to top-down laws and regulations. Rather, actors cutting across the institution are involved in the social constructions that influence legal meaning. Institutional actors are shown to have wide discretion in how they respond to ambiguous compliance directives. The involvement of actors with subject-matter expertise is essential to comprehensively understanding and addressing multiple organizational issues. The findings also reinforce that constituents with competing interests can work collaboratively to advance innovation, and not “sell out” educational models when pressured by external compliance forces.

How do Multiple Interests Shape Understanding of the Issue?

Multiple interests contributed to the universities having a broader understanding of issues contributing to campus sexual violence, promptly and equitably addressing its effects, and ways of preventing its recurrence. Considering these many complex issues from diverse perspectives proved helpful in moving the organization beyond minimal DCL compliance obligations to effect substantive change in addressing campus sexual violence. Cross-departmental insight promoted boundary-spanning strategies as institutional policy was negotiated. Because DCL guidance was vague, universities, and the individuals working within them, had the opportunity to shape how some of those guidelines should be interpreted. While the ultimate decision maker on this will be the Office for Civil Rights as the results of its investigations define acceptable forms of compliance, these three universities’ actions have already shown diffusion throughout the field and influenced federal policy makers. Each of the three participating universities has

either advised the White House Task Force to Protect Students from Sexual Violence or senate sub-committees debating and introducing related campus gender violence legislation. This advice has helped to shape definitions of key terms, guidelines for interim supportive measures for students, development of education and prevention programs, training expectations, and community partnerships designed to help universities better address and combat issues of campus sexual violence.

Student interests, both through campus activism and involvement in the reform process, helped to keep universities accountable to its main constituent. Student affairs professionals asserted their interests through informed and convincing perspectives, ensuring student development values and an educational component in adjudication would not be lost in a sea of regulatory legal compliance. Lawyers ensured the universities were acting within legally permissible parameters and verified that proposed reform measures balanced multiple rights and interests. Collaboration among legal and non-legal professionals proved strong. Though disagreements arose between various viewpoints presented, participants almost unanimously spoke of the equality of voices and perspectives in the deliberations. While legal counsel had a necessary role to play in the protocol and policy revision process, it did not dominate the team's direction, providing instead information and framing of legal considerations, rather than a decree of the reform that should be undertaken. Ultimately, input from multiple interests enabled the university to consider the layers of complexity involved from many vantage points. This diversity contributed to a greater understanding of alternative perspectives and expanded options that might otherwise have gone unaddressed.

The role lawyers played shaping an understanding of the issues is perhaps one of the more unexpected findings from this study. The study's conceptual framework highlights the

lawyer's vital role filtering legal information for the organization, diffusing knowledge of legal issues throughout the organization, and constructing the meaning of the law (Edelman, 2016; Edelman et al., 2011; Edelman, et al., 1999). Fitting into this mold proved strongest at Adhemar, where in-house general counsel conducted much of the framing for the team to know what was and was not legally permissible. Tundell's external legal consultants also provided such parameters in consultation with its review team. As members of the review teams, lawyers worked along side university colleagues to interpret the DCL and co-construct solutions suitable for the university's particular constituents and community needs. Glensborough's lawyers were initially less involved in the co-construction of policies and programming in response to DCL. Glensborough, having the smallest general counsel's office of the three schools and seemingly the least interaction with student affairs divisions pre DCL, seemed to involve its lawyers in the review process much later. One participant alluded to the lawyers meeting separately from the review team to better understand and coordinate compliance obligations. With legal counsel making sense of the DCL's ambiguity, other compliance professionals from student affairs divisions suggested programming solutions, diffusing their professional knowledge and expertise throughout the organization. Each group's valuable perspectives contributed to the review team's success by shaping a deeper review and comprehension of the issues needed to effect change.

None of the study participants expressed feeling shut out of any of the review team discussions or decision-making. Where a student was silenced early on in the process by a senior administrator who tried to "put her back in her place," team members rallied around her, influencing the dynamic of the team valuing all contributions. Even the dissenters, who clearly expressed some concern about the administration's mindset that might hinder substantive change, nonetheless appreciated the review process and the interpersonal relationships that

fostered their success. It is possible that there were review team members who felt silenced or who did not support the process or outcomes. Such individuals may have been among those who chose not to participate in this study. From the triangulated research data, however, study participants provide overwhelming evidence of a collaborative, professional experience in which multiple layers of leadership were crucial to the teams' success.

What Influences the Compliance Outcomes Chosen?

Because this research study examined the organizational processes involved in the review teams arriving at innovative solutions, rather than the benefits of the solutions themselves, the soundness of one outcome chosen over another (such as an adjudication model of a single fact finder versus a panel) was not studied. Themes underlying the reasons for choosing one outcome over another, however, were evident in the data. What emerged from the study as a primary motivator in choosing a given outcome was the institution's agenda. One determinant of the agenda was the institution's values. Each university was committed to ensuring a safe, equal, and socially just educational environment. They exhibited this commitment through an openness to hearing and incorporating student views and expert opinions on relevant matters. For example, at one of Tundell's meetings where a powerful university administrator attempted to silence a student member, other team members called out the power dynamic and buttressed her importance to the team. Upholding the value of student contributions in the review, especially where students expressed dissenting views, helped the university live up to its rhetoric that it was listening to student concerns, and bridging the gaps of a socially just ideology.

Challenging "old school" power and politics, "new school" insights also influenced outcomes the team adopted. The DCL and its related organizational reviews seemed to usher in a new wave of thinking: That the playing field had changed. Old ways of responding to issues of

campus sexual assault were increasingly regarded as insufficient to address the new demands being placed upon universities. As a result, new approaches supported by research and backed by professional organizations, were instrumental in influencing the teams' deliberations. Idea champions often guided the teams toward alternatives, with facilitators supporting an environment that robustly debated the issues. Many members of the review teams were involved in issues related to sexual assault practice before the DCL was issued. Because of their extensive involvement, they had a fairly well developed knowledge base, laying the groundwork that enabled their universities to "hit the ground running" once the DCL was released.

Having the right people at the table suggests that the compliance outcomes chosen are at least partially influenced by insight into what the Office for Civil Rights might be looking for in terms of compliance. Team members from all three institutions had interacted with federal policy leaders in the development of standards and best practice recommendations. They later also interacted with the Office for Civil Rights when the department was on campus as part of its investigations, establishing networks they could contact later for additional interpretation. Despite the ambiguous and contentious post DCL compliance environment universities found themselves in, members from Tundell, Adhemar, and Glensborough had insight into, and had potentially influenced, federal policy. These institutions were able to draw upon this insight to shape their compliance outcomes. According to Suchman and Edelman's (1996) socio-legal conceptualization, these organizational responses - influenced by the internal construction of the law ('what does Title IX compliance entail?') - subsequently influence practice norms used to determine acceptable organizational responses to the law ('based on what universities have demonstrated works, this is what compliance entails'). By incorporating knowledge of federal policy makers' ideals into their own policies and practice, these universities' actors are shaping

the construction of compliance – establishing informal practice norms addressing what it means to remedy campus sexual violence, prevent its recurrence, and promptly and equitably address its effects.

In What Ways are Strategies on Preventive Solutions Developed?

Institutional participants in this research study developed strategies on preventive solutions by developing a broad understanding of the issues as they relate to a comprehensive range of university considerations. These considerations include knowledge of traditional and non-traditional needs, alternative services, and ways to improve education and prevention efforts (as opposed to focusing all of its strategies on conduct and adjudication issues). Drawing on professional expertise and community voices, the universities followed up on its interim policies with carefully considered review and revision of affected policies and programming. Review team members ensured proposed initiatives were informed by research and included subject-matter experts among the decision makers. If the team did not possess expertise on a particular issue, it sought it out. Tundell and Adhemar, in particular, went out of their way to listen to colleagues, student groups, staff working “in the weeds,” and constituents from highly affected groups (such as athletics, housing, and fraternities, for example) across campus. It then took explicit steps to incorporate the input, creating drafts, seeking feedback, and making further revisions. Tundell took the process even further by holding open meetings of the review team deliberations and sharing policy drafts to increase transparency and accountability. Tundell also demonstrated flexibility in adapting to the feedback, for example incorporating a new decision making model of modified consensus to address concerns of the institution’s commitment to a thorough and fair review.

Staying abreast of preventive solutions as the legal and cultural environments continue to shift requires the involvement of practitioners who “live and breathe” this work and are committed to “protecting the rights of all the parties involved.” Such advocates of ongoing attention to university policies and procedures to improve practice stress the importance of having a range of solutions available to fit their student population and the unique scenarios that arise. Given the intensity of gender violence based work, universities must support these professionals to avoid burn out. Having practitioners and researchers staying well connected to professional organizations that influence the issues, attending conferences to confer with colleagues from other institutions, making good use of resources by adequately staffing relevant units, and being open to exploring emerging research and practice are all ways participants felt supported by their institution as they sought to advance preventive solutions.

How is Space for Innovation, Collaboration, and/or Proactivity Created in the Decision Making Process?

The primary component identified in this study as necessary to establishing the space in which review team members could creatively deliberate and think “out of the box” was creating an environment of trust. This started from the top, with key university administrators publicly supporting the review team’s work. Beyond what could be regarded as ‘lip service’, review team members spoke of the chair having the president’s ear, and speaking with the president about the team’s progress and challenges. Presidents, in turn, acted on any major concerns. This deliberate support was especially important given the contentious climate and pressure to produce in which the team was operating. The chair, idea champions, and facilitators from the team also had to build trust among team members to address issues of power and politics. This took months to bring about, as the teams worked through positioning tactics to establish shared values for the work. With moral and structural support in place, participants also spoke of flexibility being a

key element necessary to support an innovative environment. Flexibility was demonstrated through meeting agendas (switching topics depending on the need for further clarity or push back), membership (people leaving or being added at various stages), review process mechanics (decision making becoming a co-created model based on consensus; or requiring additional revisions to a draft based on constituent input), and adapting changes in the adjudication process to suit different scenarios.

Bringing diverse voices into the conversation also created trust. This was most evident at Tundell and Adhemar, which brought a richness of opinion to the group by bringing in people with different gender identities, racial backgrounds, age, status, life experiences, socio-economic levels, disabilities, and understandings of trauma. In an effort to prevent serving a single mindset as a community and to bring in as many voices as possible, Tundell and Adhemar also conducted extensive outreach across campus, with team members also individually reaching out to colleagues whose constituents were not on the committee, to ensure that anyone who wished to contribute to the issues could do so. Glensborough, with its more complicated structure of teams and committees at local and system levels, did not appear to accomplish the same level of outreach. Glensborough balanced an openness and inclusivity on its campus with system level review that welcomed only Glensborough's idea champions to the table. Politics and positioning were more apparent at Glensborough than with the other two institutions, with Glensborough having been traditionally excluded from system level decision-making. By proactively addressing concerns "coming down the pike," Glensborough's review team developed local protocols and programming brought about largely at a grass roots level by the commitment, expertise, and vision of its members. Glensborough was able to demonstrate positive impacts on

practice and a growing reputation as innovators in the field, which enabled Glensborough's idea champions to break down traditional structural barriers to influence system level decisions.

Viewing the study's findings through Siedel (2002) and Siedel and Haapio's (2010, 2011) four-step model examining how organizations create environments that promote innovative responses to legal compliance, we see that all three universities first created a shared understanding of the legal, cultural, and environmental issues involved (step 1: clarity). At Tundell, this was established through information sharing in the early meetings and check-ins by constituents across campus to capture the full extent of what the community wanted to address and the allowable legal parameters in which the team could act. At Adhemar and Glensborough, it involved a more insulated discussion among team members to better understand the parameters before opening it up to outside discussion.

In the proactive four-step model, the second step involves responding to the new legal obligations imposed (step 2: reactive). Adhemar and Tundell each issued an interim policy (created behind closed doors) to address immediate compliance concerns, such as the change in evidentiary requirement. Taking this interim step allowed for more deliberative examination through the ensuing review process. Glensborough did not produce an interim policy. Rather, it hired new personnel and repositioned existing ones to oversee and overhaul any necessary compliance changes. Its reaction was slow and messy as it disjointedly tried to bring its outdated policies into compliance. In addressing the third step, implementing strategies to prevent the legal problem from recurring (step 3: preventive), each school initially viewed 'the legal problem' as a violation of DCL compliance and Title IX obligations, which could undermine the university's existing protocols and programming, as well as create a risk management imperative. Their prevention strategies all focused on the review teams analyzing the

universities' current policies and responses and making recommendations aligned with the new regulatory requirements. Because of the membership of the teams and their commitment to creating positive, substantive change impacting student's wellbeing and reducing sexual assault, review team members expanded the preventive lens to a proactive one, in which they could interpret the DCL requirements as minimal obligations, and expand practice beyond such minimums. As the review process matured and ambiguities in the DCL became somewhat clearer, the 'legal problem' the teams were trying to prevent shifted more from a DCL compliance issue to an eradication of campus sexual assault issue. Team members successfully implemented strategies at this stage that addressed broad university goals, such as serving student needs, creating a fair and impartial system, and avoiding legal liability.

Finally, in step four of the proactive law model, organizations foster collaboration and innovation to take into account not only legal obligations, but other considerations of importance to the organization and society (step 4: promotive). This is the crux of what sets apart institutions that simply comply with minimal legal obligations with those that exceed expectations and make positive contributions beyond minimal legal requirements. Adhemar, Glensborough, and Tundell all supported collaborative decision making by valuing a range of perspectives, including non-traditional perspectives in legal decision making such as those from students and student affairs personnel. Each review team respected the multiple viewpoints for the expertise and insight they brought. While not all decisions were arrived at collaboratively, with Adhemar's co-chairs having the final say in their model for example, all team members felt their opinions were heard throughout the process and included in the final outcomes. By taking into account not only the university's legal obligations, but other considerations of importance to the organization and society, namely reducing gender violence to affect change in campus sexual assault, review team

members confronted issues that had only been on the periphery of the discussion, such as excessive drinking, party culture, gender identity, and mysogony, expanding the scope of issues they regarded as necessary to address in universities' long-standing problem of campus sexual misconduct.

Contributions to Theory

Institutional theory shaping this study, particularly new institutional theory, emphasizes the skillful performance of select actors in envisioning new ideas, using rules and resources to achieve those ideas, and inducing cooperation to motivate others (DiMaggio, 1988; Fligstein, 2001b; Giddens, 1984). The main contribution of this research study in advancing this insight is in providing additional empirical evidence of the important role actors play in transforming various aspects of organizational life. In this case, actors from across the university displayed distinct and necessary skills throughout the revision process. These were most evident in framing the compliance review and policy construction process, setting the agenda necessary to accomplish the work, facilitating interpersonal dynamics to overcome power imbalances and include a breadth of constituent voices, and engaging in robust action to conduct the review and revision tasks.²⁰ This study's emphasis on actors was necessary to better understand how the institutional construction of compliance takes place and whose contributions influence the university moving beyond basic DCL compliance.

Relying on a proactive law conceptualization to examine how universities create environments that promote innovative responses to legal compliance, this research demonstrates that decision makers can move beyond a reactive response to legal obligations toward reframing

²⁰ Each of these sub-areas of strategic action has its own developed literature (“framing” – Snow, Rochford, Worden & Benford, 1992; “agenda setting” – Lukes, 1974; “brokering” – Gould, 1993; and “robust action” – Padgett & Ansell, 1992).

legal problems as opportunities for the organization to create substantive contributions to practice. Cultivating teamwork and a collaborative, cross-professional, flexible process enabled each university to achieve transformative organizational strategies in solving challenges raised by the DCL, legal, and cultural environments. Although concepts within institutional theory such as isomorphism and socio-legal construction of compliance help scholars of higher education understand the process of organizational change and structural elaboration resulting from DCL and Title IX mandates, there are nevertheless shortcomings of applying this theory to examine decision making in higher education related to the legal environment. One of the shortcomings is that the socio-legal view of the exogeneity (determined outside the boundaries of the organization) and endogeneity (influenced by the internal meaning attributed by organizations) of law do not adequately address numerous other influences affecting the law's development.

In the "old" institutional, exogenous view, law is a coercive and determinative downward force that organizations either comply with or risk sanctions for noncompliance. It is a 'top down' model. The "new" institutional, endogenous view theorizes that organizations develop symbolic responses, through policies, programs, and structural elaboration, in response to the law. These responses become taken-for-granted, expected forms of compliance. This is a 'bottom up' model where the meaning of the ambiguous law evolves through the organization's articulation and resolution of problems (Edelman, 2016; Suchman & Edelman, 1996). Both of these concepts are one-directional relationships (top down or bottom up).

This study provides evidence that these perspectives fail to adequately account for the internal and external pressures that contribute to the construction and interpretation of the law. Though the DCL provided one catalyst prompting universities to address and respond to new legal mandates, the results of this research indicate that other external factors proved to be equal

or greater incentives instigating universities to act. Status and reputation, tainted by negative media, drove damage control. Tundell and Adhemar, both elite schools, were early adopters of DCL reform, having had knowledgeable internal experts in place to address emerging DCL issues. These institutions invested financial and personnel resources to “hit the ground running” to quickly address DCL obligations and contain negative publicity. Glensborough, not considered as elite as the two other participating schools and without the same media fallout, took more time to examine the issues - behind closed doors - before rallying its experts. Initially concerned with ensuring it met the new compliance requirements, as its review progressed, its “idea champions” and “doers” proved to move the university beyond minimal compliance to address more trauma-informed and culturally competent aspects involved in responses to campus sexual assault. Early adopters helped to infuse knowledge into the public sphere. Actors from these universities contributed to professional organizations’ understanding of the issues, shaping field level interpretation and response. Media attention influenced public opinion. This research found that such multi-directional pressures influence the internal, endogenously created meaning of the law. Their influence is not adequately recognized, however, in the top-down, bottom-up models relied on in socio-legal conceptualizations.

Implications for Practice

This research demonstrates that although fraught with challenges and uncertainty in how best to proceed, creating or revising institutional policy in response to legal mandates that satisfy legal obligations and create value can be accomplished in a proactive and restorative manner. At its core, leadership, collaboration, and transparency greatly impact the project’s success. In addition to the leadership roles adopted within the teams themselves, top university officials must visibly and unmistakably back the process. This can be facilitated through such actions as

the university president publicly supporting the importance of the issue and the review team's work, the institution committing sufficient human and financial resources to address the team's recommendations, as well as ensuring protected time away from one's regular job responsibilities to devote to the team's charge. This protected time involves using off-site meeting space complete with numerous breaks, fresh meals, and ample snacks, all of which may seem rudimentary, but enable participants frequent breaks to talk in small gatherings away from the larger setting. Such breaks enable members to get to know one another, develop relationships, build trust, find common ground, and release the mounting pressure of the intense meetings and contentious cultural environment. But the protected time also extends to providing an infrastructure that supports team members focusing on high level policy issues while someone back at the office covers the day-to-day workload of the unit. Not all universities have such an infrastructure, with directors lacking staff to meet with students, or being the only person able to respond to urgencies. One of the study's contributions to practice is the understanding that the team's success is tied to the resource infrastructure available to it. It is not sufficient for the university to simply appoint a team to review the situation at hand and wait passively for the team to produce results. Rather, university leaders must take an active role promoting and sustaining the team, both through moral support and an infrastructure where sufficient time and mental space can be freed up for review team members to be physically and mentally present to vigorously engage in the team's charge.

This research demonstrates that when making far-reaching policy changes universities benefit from multiple contributions from various groups across campus in the policy negotiation and decision making process. By calling on diverse groups to represent their constituents' viewpoints, the university captures the pulse of the community and can incorporate their

feedback to have more voices heard, enabling agency by various groups across campus into policy decisions while enhancing collaboration, trust, and transparency in the process. The university must still create accountability to demonstrate that it is critically examining the ideas raised, incorporating constituent feedback when appropriate and communicating to the community its courses of action. This study's review team members were satisfied that the teams had solicited feedback from diverse campus constituents. Many expressed, however, the desire that more student voices be represented directly at the table. Adhemar had two students on the team, Tundell four, and Glensborough initially none (though two were added as the review progressed). The student members interviewed felt pressure being the sole representative on the committee for their constituency (one representative for all undergraduates, for example). With review team members overwhelmingly expressing that students were central to the process and provided valuable input, and universities espousing a belief in co-created outcomes, universities might satisfy questions of trust and transparency by involving more students as members of such decision making teams.

Findings from the study also reveal that key administrative units lacked adequate representation on the review teams. Student affairs practitioners in adjudication, prevention, and counseling were represented across all three teams. Members expressed a desire to have more representation at the table from staff involved in additional aspects of the issues. A range of professionals whose expertise was needed to address process questions around accommodations, training, investigations, resources, or procedures, for example, were absent to some degree on all of the teams. Though members admit that involving everyone of significance would make the process unruly, they felt that notable absences limited the team's ability to fully address all aspects of the issues, including benefiting from non-traditional or adversarial views points. In

making choices around who to include on future review teams, universities must consciously and deliberately weigh the benefits of membership to the team's charge and goals, versus the availability of consulting with certain groups as needed.

Another implication and recommendation for practice is to ensure that the new policy and programming rollout is made part of the review team's charge. Review team members were satisfied that their institutions perceived their undertaking as an evolving process and had given them a long-term approach to develop solutions. Many expressed that once the policy was revised and submitted for approval, the review process was considered complete. Proceeding through the necessary administrative channels for approval, momentum for the new policy was lost, however. The energy that went into revising the policy was not met with sufficient resources to rollout the policy. In many cases, its launch faltered. Participants felt the policy was not well explained, supported, or promoted. Many expressed feeling their long and hard work had been diminished as the institution let the opportunity to create a strong impact on students slip away. Resulting from this insight is a recommendation for practice that the university more consciously and deliberately formulate a dissemination plan in conjunction with the review process. A dissemination team might work collaboratively with the review team, even sharing certain members for greater fluidity and continuity. Ultimately, if the dissemination falls short, the revised policy and new protocols will go unnoticed by most students and miss the mark of creating an impact on their attitudes and behavior around campus sexual assault.

The final implication for practice offered is for the university to build relationships through national professional organizations, conferences, and advocacy in gender equity and violence issues to encourage its champions to expand their expertise and networks. Adhemar and Glensborough developed proactive responses in the contentious post DCL environment in large

part due to their champions' high involvement in professional organizations, not just as members but active contributors to leadership, policy development, and emerging best practice. These champions were aware of expected compliance changes and were in a position, when the DCL was released, to "hit the ground running" to lead change on campus. While champions at Tundell were not as involved in the national scene pre DCL, the university addressed the post DCL turmoil on its campus by partnering with consultants having national expertise examining campus sexual violence obligations and best practice. All three universities wanted to contain both public relation and compliance damage, and take steps to remedy them. Each was able to proceed proactively because of champions at the institution, or hired to fill this need, who had a heads-up of the important issues. This enabled the universities to have a jump start on its response and action. Cultivating this expertise must be done before the triggering event occurs. It is recommended that universities invest in champions, in their professional development, in leadership opportunities, and devise a method to assess and integrate promising information the champions uncover.

Implications for Research

This research demonstrates that conducting an effective post DCL sexual assault policy review is fraught with challenges. The process is long and arduous, involving a tremendous commitment of university resources, personnel, and expertise. Tundell and Adhemar have committed to reviewing the policy annually, in part because the review team members know the environment continues to be in flux and policies need to evolve, incorporating not only new legal and cultural expectations, but emerging best practices. Revising university policy, procedures, and protocols, however, is but one aspect of complying with the DCL. Articulating student rights and responsibilities in university policies and codes of conduct is an activity most universities

have experience with. If these three promising examples of proactive responses to the DCL had difficulty negotiating policy, how will universities be able to address the even more ambiguous, complicated climate and causal issues underlying campus sexual assault? DCL obligations extend not only to promptly and equitably addressing the effects of sexual violence, but preventing its recurrence, with a goal to eliminate it altogether. The three participating universities invested greater effort and resources in policy revision over prevention improvement, though certainly much has been done at each advancing prevention and education initiatives as well. With review team members espousing the value of universities adopting this cross-institution, collaborative, team approach as it considers moving forward with other important boundary-spanning campus issues, applying the policy review model to prevention efforts is reasonable. Universities would benefit from additional research into how to best support such teams' success. This research has demonstrated that building strong relationships, taking the time to understand different perspectives, encouraging communication, and creating transparency all contribute to the success of the teams. Having leaders and champions that harness information and ideas beyond campus also adds to the ability to move beyond minimal standards into a space of innovation and creativity. Future research could add to our knowledge of other contributing elements that empower some organizations to move beyond merely responding to a catalyst to proactively transforming traditional expectations.

Additional research into the advantageous composition of review teams would also be beneficial. Were teams with high level administrators who had knowledge and experience across different units but did not work directly with students on a daily basis more effective in bringing about successful results than teams with more mid-level administrators, who generally have less power on campus but more experience working "in the weeds?" What is the tipping point after

which the team becomes too large and unwieldy? What proportion of student voices adds value to the deliberations? Establishing a body of research specific to higher education characteristics, values, and issues would help equip university leaders with research-informed models they could draw on when catalysts (such as crises or new regulations) require universities to take swift action. A one-size-fits-all model clearly would not work. Tundell, Adhemar, and Glensborough's different models each met their community's needs, but might not be effective elsewhere. More research is needed to know what would be effective in different settings and why. Such knowledge of process could then be used to better support each university's values and goals. One way to accomplish research of this nature would be to conduct a field-level study of other universities' processes of reviewing their Title IX policies and procedures post DCL. Learning from their successes and failures could better inform effective decision making practices.

A field-level study of other universities' post DCL Title IX policies and procedures would not only enhance our knowledge of process, but could also be used to understand what other institutions are doing to comply with DCL/Title IX, and what has influenced the courses of action they took. With institutional theory arguing that responses perceived as legitimate will spread throughout the field, guiding the change process and construction of compliance, such a study could uncover which practices have been imitated and have diffused throughout the field and how normative context shaped interpretation and practice. Insight into why those practices gained legitimacy and which ones fizzle out would then better inform our understanding of what is regarded as adequate versus outstanding response. Once researchers know what is happening across the field in terms of compliance, we can then begin to ask what is driving these responses and what might be holding universities back. Such research could drive universities' systematic transformation of gender-identity, party culture, and violence related challenges universities are

likely to address as the next agenda in the federal government and student activists' movement of responding, preventing, and eliminating sexual violence on campus.

Although this research has established the importance of understanding different perspectives and ensuring diversity in review team membership, there is a void in the research as to how sexual assault and its consequences affect traditionally marginalized populations. The existing research and narrative on campus sexual assault predominantly addresses the situation of middle-class white women. A more comprehensive understanding of the situational context in which sexual violence is experienced by additional students - international, disabled, male, LGBTQ, Native, Muslim, African American, and Latinx, among others - and their post-assault actions and consequences is needed for universities to design the most appropriate and effective responses, services, and prevention programming to serve all of its students (Badejo, 2016; Krebs, Barrick, Lindquist, Crosby, Boyd, & Bogan, 2011; Linquist, Barrick, Krebs, Crosby, Lockard, & Sanders-Phillips, 2013; Milam, 2015). The absence of research in this area creates a discernable gap in team members' abilities to fully support the entire university community as it seeks to clarify, respond, prevent, and promote sexual violence policies that move the institution beyond minimal compliance obligations to fully understanding and addressing sexual violence and its aftermath in an effort to eradicate it for all students.

An unexpected finding from the study involved the extent of collaboration and support among lawyers and non-lawyer participants from the review team in creating strategies that moved the institution from a focus on compliance to one of innovation, strength, and transformation. Unfortunately, no lawyers agreed to be interviewed for this study, therefore the results from this research are one sided. Perspectives in this study were primarily those of student affairs professionals and student members on the teams. Additional research could address the

perspectives of lawyers as well. With suggestions in the research that legally and non-legally trained decision makers interpret and transmit legal rules differently within organization (Sitkin & Bies, 1994), insight into the lawyers' perceptions of collaboration and power would be helpful in providing additional data, from a relatively untapped source, to support or refute the study's conceptual framework, and the proactive law movement's contention, that decisions undertaken collaboratively, benefiting from the expertise and judgment of professionals within the organization in addition to the traditional services of competent legal counsel, contribute to the organization's ability to construct innovative responses to legal compliance beyond expected norms.

A final suggestion for future research would be to conduct a longitudinal study of the three institutions to study developments over a number of years. The review team outcomes could be examined to see which ones succeeded, which were emulated, and which became standardized norms in the field. It would be beneficial to understand the reasoning underlying why some succeeded whereas others failed. How did external influences and pressures (such as student activism or the Office for Civil Rights' agenda) contribute to their fate? Where did the strongest pressures originate, and why? In addition, researching internal factors (such as the existence of champions, institutional support, resources, or lawsuits, for example) that impacted the initiatives' success or demise would expand our knowledge of the dynamics that contribute to university actors' construction and interpretation of important social, cultural, and legal issues. Given that establishing a comprehensive and responsive sexual violence policy is only one of the many legal obligations universities must address under the DCL guidance and Title IX law, how did these universities address its other responsibilities to put an end to campus sexual violence, or until that is accomplished, prevent its recurrence and address its effects? How are universities'

efforts at addressing campus party and drinking cultures fairing? Have they brought athletics and Greek Life into the process to ensure their voices also have significant meaning in developing solutions, if so how? How have efforts to further the DCL's goals materialized on campus and why is this important? In order to understand the law's capacity as a tool for social change, additional research is needed to analyze which compliance efforts triumphed, what actors were involved in creating them, how stakeholders competed or collaborated in the construction of compliance, and why certain views and actions prevailed.

In addition to further research examining the review teams' proactive outcomes and additional responses specific to DCL/Title IX compliance obligations, process issues concerning their handling of other subjects would also be interesting to study. Was the collaborative, transparent model used in the DCL review applied to the universities' examinations of subsequent legally generated issues? If so, how was it modified? If not, what took its place? How did universities construct compliance involving different legal matters? Did these same universities continue to exceed compliance minimums? Were they leaders in other areas of socio-legal concern? If not, why? Given the influence of university goals and values on the actions it takes, developing a body of research examining how legal mandates are causing university decision makers to act would significantly advance the field's understanding of how regulations and changes in law affect university functioning, mission, service to students, and whether they have come to value the appearance of legitimacy in creating symbols of compliance over substantive actions advancing student interests and creating a public benefit.

Conclusion

Universities have the opportunity to use a change in law as a catalyst to design procedures and reframe issues to move beyond basic compliance toward strengthening campus

culture and values. Examining this issue through the organizational process of how universities acted to understand and address their legal responsibilities, the study offers insight into the interpersonal dynamics and organizational investment required to think broadly about the law to implement policies that become a source of institutional and societal opportunity and advancement as universities shape the law's meaning.

This research looked at how a change in law prompts shifts in organizational practice. Through its actors, universities constructed DCL compliance. Despite universities operating in a highly legalized environment in which concerns for risk management are often regarded as dominating social and educational values, this research provides evidence to the contrary, namely that educating and protecting students remained in the forefront of the universities' policy reviews and proposed compliance solutions. The three universities in this study, well-resourced and with highly specialized staff engaged in professional associations and policy reform, had champions in place to help guide their universities through the chaotic post DCL period. Each university brought together a wide inclusion of subject-matter experts to collaboratively examine its policies and protocols in response to the new legal mandate. The three participating schools demonstrated that organizational actors have wide latitude in responding to ambiguous laws with a variety of policies and programs. While it is too soon to know which ones will ultimately diffuse throughout the field and become expected best practice, there is evidence of new organizational structures adopted by these universities being imitated.

By providing evidence of how university actors can shape the construction of compliance while maintaining university's identity and goals, this study provides university leaders with insight into how higher education professionals can think broadly about changes in law to develop policies and programs that enhance institutional opportunity and advance public

benefits. In the wake of ambiguous and contentious external legal requirements, this research demonstrates that universities can elevate decision-making processes and policy outcomes by affirming normative values of academe within the scope of new compliance obligations. Looking at the process of policy negotiation resulting from a change in the university's legal environment, this study benefits university scholars and practitioners by expanding our understanding of theories and cultural practices that can be used to advance transformative policies and facilitate institutional change at the intersection of legal, cultural, and social issue of critical importance to campus life.

Appendices

Appendix A: Dear Colleague Letter on Sexual Violence, April 4, 2011

Appendix A



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

April 4, 2011

Dear Colleague:

Education has long been recognized as the great equalizer in America. The U.S. Department of Education and its Office for Civil Rights (OCR) believe that providing all students with an educational environment free from discrimination is extremely important. The sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and, in the case of sexual violence, is a crime.

Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX. In order to assist recipients, which include school districts, colleges, and universities (hereinafter "schools" or "recipients") in meeting these obligations, this letter¹ explains that the requirements of Title IX pertaining to sexual harassment also cover sexual violence, and lays out the specific Title IX requirements applicable to sexual violence.² Sexual violence, as that term is used in this letter, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape,

¹ The Department has determined that this Dear Colleague Letter is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), available at:

http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/012507_good_guidance.pdf.

OCR issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights, under the civil rights laws and implementing regulations that we enforce. OCR's legal authority is based on those laws and regulations. This letter does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to us at the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202.

² Use of the term "sexual harassment" throughout this document includes sexual violence unless otherwise noted. Sexual harassment also may violate Title IV of the Civil Rights Act of 1964 (42 U.S.C. § 2000c), which prohibits public school districts and colleges from discriminating against students on the basis of sex, among other bases. The U.S. Department of Justice enforces Title IV.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX.

The statistics on sexual violence are both deeply troubling and a call to action for the nation. A report prepared for the National Institute of Justice found that about 1 in 5 women are victims of completed or attempted sexual assault while in college.³ The report also found that approximately 6.1 percent of males were victims of completed or attempted sexual assault during college.⁴ According to data collected under the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092(f), in 2009, college campuses reported nearly 3,300 forcible sex offenses as defined by the Clery Act.⁵ This problem is not limited to college. During the 2007-2008 school year, there were 800 reported incidents of rape and attempted rape and 3,800 reported incidents of other sexual batteries at public high schools.⁶ Additionally, the likelihood that a woman with intellectual disabilities will be sexually assaulted is estimated to be significantly higher than the general population.⁷ The Department is deeply concerned about this problem and is committed to ensuring that all students feel safe in their school, so that they have the opportunity to benefit fully from the school's programs and activities.

This letter begins with a discussion of Title IX's requirements related to student-on-student sexual harassment, including sexual violence, and explains schools' responsibility to take immediate and effective steps to end sexual harassment and sexual violence. These requirements are discussed in detail in OCR's *Revised Sexual Harassment Guidance* issued in 2001 (*2001 Guidance*).⁸ This letter supplements the *2001 Guidance* by providing additional guidance and practical examples regarding the Title IX requirements as they relate to sexual violence. This letter concludes by discussing the proactive efforts schools can take to prevent sexual harassment and violence, and by providing examples of remedies that schools and OCR may use to end such conduct, prevent its recurrence, and address its effects. Although some examples contained in this letter are applicable only in the postsecondary context, sexual

³ CHRISTOPHER P. KREBS ET AL., THE CAMPUS SEXUAL ASSAULT STUDY: FINAL REPORT xiii (Nat'l Criminal Justice Reference Serv., Oct. 2007), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>. This study also found that the majority of campus sexual assaults occur when women are incapacitated, primarily by alcohol. *Id.* at xviii.

⁴ *Id.* at 5-5.

⁵ U.S. Department of Education, Office of Postsecondary Education, Summary Crime Statistics (data compiled from reports submitted in compliance with the Clery Act), available at <http://www2.ed.gov/admins/lead/safety/criminal2007-09.pdf>. Under the Clery Act, forcible sex offenses are defined as any sexual act directed against another person, forcibly and/or against that person's will, or not forcibly or against the person's will where the victim is incapable of giving consent. Forcible sex offenses include forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. 34 C.F.R. Part 668, Subpt. D, App. A.

⁶ SIMONE ROBERS ET AL., INDICATORS OF SCHOOL CRIME AND SAFETY: 2010 at 104 (U.S. Dep't of Educ. & U.S. Dep't of Justice, Nov. 2010), available at <http://nces.ed.gov/pubs2011/2011002.pdf>.

⁷ ERIKA HARRELL & MICHAEL R. RAND, CRIME AGAINST PEOPLE WITH DISABILITIES, 2008 (Bureau of Justice Statistics, U.S. Dep't of Justice, Dec. 2010), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/capd08.pdf>.

⁸ The *2001 Guidance* is available on the Department's Web site at <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>. This letter focuses on peer sexual harassment and violence. Schools' obligations and the appropriate response to sexual harassment and violence committed by employees may be different from those described in this letter. Recipients should refer to the *2001 Guidance* for further information about employee harassment of students.

harassment and violence also are concerns for school districts. The Title IX obligations discussed in this letter apply equally to school districts unless otherwise noted.

Title IX Requirements Related to Sexual Harassment and Sexual Violence

Schools' Obligations to Respond to Sexual Harassment and Sexual Violence

Sexual harassment is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual violence is a form of sexual harassment prohibited by Title IX.⁹

As explained in OCR's *2001 Guidance*, when a student sexually harasses another student, the harassing conduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the school's program. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. Indeed, a single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. For instance, a single instance of rape is sufficiently severe to create a hostile environment.¹⁰

Title IX protects students from sexual harassment in a school's education programs and activities. This means that Title IX protects students in connection with all the academic, educational, extracurricular, athletic, and other programs of the school, whether those programs take place in a school's facilities, on a school bus, at a class or training program

⁹ Title IX also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature. The Title IX obligations discussed in this letter also apply to gender-based harassment. Gender-based harassment is discussed in more detail in the *2001 Guidance*, and in the 2010 Dear Colleague letter on Harassment and Bullying, which is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

¹⁰ See, e.g., *Jennings v. Univ. of N.C.*, 444 F.3d 255, 268, 274 n.12 (4th Cir. 2006) (acknowledging that while not an issue in this case, a single incident of sexual assault or rape could be sufficient to raise a jury question about whether a hostile environment exists, and noting that courts look to Title VII cases for guidance in analyzing Title IX sexual harassment claims); *Vance v. Spencer Cnty. Pub. Sch. Dist.*, 231 F.3d 253, 259 n.4 (6th Cir. 2000) ("[w]ithin the context of Title IX, a student's claim of hostile environment can arise from a single incident" (quoting *Doe v. Sch. Admin. Dist. No. 19*, 66 F. Supp. 2d 57, 62 (D. Me. 1999))); *Soper v. Hoben*, 195 F.3d 845, 855 (6th Cir. 1999) (explaining that rape and sexual abuse "obviously qualify[ed] as...severe, pervasive, and objectively offensive sexual harassment"); see also *Berry v. Chi. Transit Auth.*, 618 F.3d 688, 692 (7th Cir. 2010) (in the Title VII context, "a single act can create a hostile environment if it is severe enough, and instances of uninvited physical contact with intimate parts of the body are among the most severe types of sexual harassment"); *Turner v. Saloon, Ltd.*, 595 F.3d 679, 686 (7th Cir. 2010) (noting that "[o]ne instance of conduct that is sufficiently severe may be enough," which is "especially true when the touching is of an intimate body part" (quoting *Jackson v. Cnty. of Racine*, 474 F.3d 493, 499 (7th Cir. 2007))); *McKinnis v. Crescent Guardian, Inc.*, 189 F. App'x 307, 310 (5th Cir. 2006) (holding that "the deliberate and unwanted touching of [a plaintiff's] intimate body parts can constitute severe sexual harassment" in Title VII cases (quoting *Harvill v. Westward Commc'ns, L.L.C.*, 433 F.3d 428, 436 (5th Cir. 2005))).

sponsored by the school at another location, or elsewhere. For example, Title IX protects a student who is sexually assaulted by a fellow student during a school-sponsored field trip.¹¹

If a school knows or reasonably should know about student-on-student harassment that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.¹² Schools also are required to publish a notice of nondiscrimination and to adopt and publish grievance procedures. Because of these requirements, which are discussed in greater detail in the following section, 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.

Schools may have an obligation to respond to student-on-student sexual harassment that initially occurred off school grounds, outside a school's education program or activity. If a student files a complaint with the school, regardless of where the conduct occurred, the school must process the complaint in accordance with its established procedures. Because students often experience the continuing effects of off-campus sexual harassment in the educational setting, schools should consider the effects of the off-campus conduct when evaluating whether there is a hostile environment on campus. For example, if a student alleges that he or she was sexually assaulted by another student off school grounds, and that upon returning to school he or she was taunted and harassed by other students who are the alleged perpetrator's friends, the school should take the earlier sexual assault into account in determining whether there is a sexually hostile environment. The school also should take steps to protect a student who was assaulted off campus from further sexual harassment or retaliation from the perpetrator and his or her associates.

Regardless of whether a harassed student, his or her parent, or a third party files a complaint under the school's grievance procedures or otherwise requests action on the student's behalf, a school that knows, or reasonably should know, about possible harassment must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. As discussed later in this letter, the school's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve the school of its independent Title IX obligation to investigate the conduct. The specific steps in a school's

¹¹ Title IX also protects third parties from sexual harassment or violence in a school's education programs and activities. For example, Title IX protects a high school student participating in a college's recruitment program, a visiting student athlete, and a visitor in a school's on-campus residence hall. Title IX also protects employees of a recipient from sexual harassment. For further information about harassment of employees, see *2001 Guidance* at n.1.

¹² This is the standard for administrative enforcement of Title IX and in court cases where plaintiffs are seeking injunctive relief. See *2001 Guidance* at ii-v, 12-13. The standard in private lawsuits for monetary damages is actual knowledge and deliberate indifference. See *Davis v. Monroe Cnty. Bd. of Ed.*, 526 U.S. 629, 643, 648 (1999).

investigation will vary depending upon the nature of the allegations, the age of the student or students involved (particularly in elementary and secondary schools), the size and administrative structure of the school, and other factors. Yet as discussed in more detail below, the school's inquiry must in all cases be prompt, thorough, and impartial. In cases involving potential criminal conduct, school personnel must determine, consistent with State and local law, whether appropriate law enforcement or other authorities should be notified.¹³

Schools also should inform and obtain consent from the complainant (or the complainant's parents if the complainant is under 18 and does not attend a postsecondary institution) before beginning an investigation. If the complainant requests confidentiality or asks that the complaint not be pursued, the school should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the school should inform the complainant that its ability to respond may be limited.¹⁴ The school also should tell the complainant that Title IX prohibits retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs.

As discussed in the *2001 Guidance*, if the complainant continues to ask that his or her name or other identifiable information not be revealed, the school should evaluate that request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. Thus, the school may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the complainant's age; whether there have been other harassment complaints about the same individual; and the alleged harasser's rights to receive information about the allegations if the information is maintained by the school as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99.¹⁵ The school should inform the complainant if it cannot ensure confidentiality. Even if the school cannot take disciplinary action against the alleged harasser because the complainant insists on confidentiality, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence. Examples of such steps are discussed later in this letter.

Compliance with Title IX, such as publishing a notice of nondiscrimination, designating an employee to coordinate Title IX compliance, and adopting and publishing grievance procedures, can serve as preventive measures against harassment. Combined with education and training programs, these measures can help ensure that all students and employees recognize the

¹³ In states with mandatory reporting laws, schools may be required to report certain incidents to local law enforcement or child protection agencies.

¹⁴ Schools should refer to the *2001 Guidance* for additional information on confidentiality and the alleged perpetrator's due process rights.

¹⁵ For example, the alleged harasser may have a right under FERPA to inspect and review portions of the complaint that directly relate to him or her. In that case, the school must redact the complainant's name and other identifying information before allowing the alleged harasser to inspect and review the sections of the complaint that relate to him or her. In some cases, such as those where the school is required to report the incident to local law enforcement or other officials, the school may not be able to maintain the complainant's confidentiality.

nature of sexual harassment and violence, and understand that the school will not tolerate such conduct. Indeed, these measures may bring potentially problematic conduct to the school's attention before it becomes serious enough to create a hostile environment. Training for administrators, teachers, staff, and students also can help ensure that they understand what types of conduct constitute sexual harassment or violence, can identify warning signals that may need attention, and know how to respond. More detailed information and examples of education and other preventive measures are provided later in this letter.

Procedural Requirements Pertaining to Sexual Harassment and Sexual Violence

Recipients of Federal financial assistance must comply with the procedural requirements outlined in the Title IX implementing regulations. Specifically, a recipient must:

- (A) Disseminate a notice of nondiscrimination;¹⁶
- (B) Designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX;¹⁷ and
- (C) Adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee sex discrimination complaints.¹⁸

These requirements apply to all forms of sexual harassment, including sexual violence, and are important for preventing and effectively responding to sex discrimination. They are discussed in greater detail below. OCR advises recipients to examine their current policies and procedures on sexual harassment and sexual violence to determine whether those policies comply with the requirements articulated in this letter and the *2001 Guidance*. Recipients should then implement changes as needed.

(A) Notice of Nondiscrimination

The Title IX regulations require that each recipient publish a notice of nondiscrimination stating that the recipient does not discriminate on the basis of sex in its education programs and activities, and that Title IX requires it not to discriminate in such a manner.¹⁹ The notice must state that inquiries concerning the application of Title IX may be referred to the recipient's Title IX coordinator or to OCR. It should include the name or title, office address, telephone number, and e-mail address for the recipient's designated Title IX coordinator.

The notice must be widely distributed to all students, parents of elementary and secondary students, employees, applicants for admission and employment, and other relevant persons. OCR recommends that the notice be prominently posted on school Web sites and at various

¹⁶ 34 C.F.R. § 106.9.

¹⁷ *Id.* § 106.8(a).

¹⁸ *Id.* § 106.8(b).

¹⁹ *Id.* § 106.9(a).

locations throughout the school or campus and published in electronic and printed publications of general distribution that provide information to students and employees about the school's services and policies. The notice should be available and easily accessible on an ongoing basis.

Title IX does not require a recipient to adopt a policy specifically prohibiting sexual harassment or sexual violence. As noted in the *2001 Guidance*, however, a recipient's general policy prohibiting sex discrimination will not be considered effective and would violate Title IX if, because of the lack of a specific policy, students are unaware of what kind of conduct constitutes sexual harassment, including sexual violence, or that such conduct is prohibited sex discrimination. OCR therefore recommends that a recipient's nondiscrimination policy state that prohibited sex discrimination covers sexual harassment, including sexual violence, and that the policy include examples of the types of conduct that it covers.

(B) Title IX Coordinator

The Title IX regulations require a recipient to notify all students and employees of the name or title and contact information of the person designated to coordinate the recipient's compliance with Title IX.²⁰ The coordinator's responsibilities include overseeing all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints. The Title IX coordinator or designee should be available to meet with students as needed. If a recipient designates more than one Title IX coordinator, the notice should describe each coordinator's responsibilities (*e.g.*, who will handle complaints by students, faculty, and other employees). The recipient should designate one coordinator as having ultimate oversight responsibility, and the other coordinators should have titles clearly showing that they are in a deputy or supporting role to the senior coordinator. The Title IX coordinators should not have other job responsibilities that may create a conflict of interest. For example, serving as the Title IX coordinator and a disciplinary hearing board member or general counsel may create a conflict of interest.

Recipients must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the recipient's grievance procedures operate. Because sexual violence complaints often are filed with the school's law enforcement unit, all school law enforcement unit employees should receive training on the school's Title IX grievance procedures and any other procedures used for investigating reports of sexual violence. In addition, these employees should receive copies of the school's Title IX policies. Schools should instruct law enforcement unit employees both to notify complainants of their right to file a Title IX sex discrimination complaint with the school in addition to filing a criminal complaint, and to report incidents of sexual violence to the Title IX coordinator if the complainant consents. The school's Title IX coordinator or designee should be available to provide assistance to school law enforcement unit employees regarding how to respond appropriately to reports of sexual violence. The Title IX coordinator also should be given access to school law enforcement unit investigation notes

²⁰ *Id.* § 106.8(a).

and findings as necessary for the Title IX investigation, so long as it does not compromise the criminal investigation.

(C) Grievance Procedures

The Title IX regulations require all recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of sex discrimination complaints.²¹ The grievance procedures must apply to sex discrimination complaints filed by students against school employees, other students, or third parties.

Title IX does not require a recipient to provide separate grievance procedures for sexual harassment and sexual violence complaints. Therefore, a recipient may use student disciplinary procedures or other separate procedures to resolve such complaints. Any procedures used to adjudicate complaints of sexual harassment or sexual violence, including disciplinary procedures, however, must meet the Title IX requirement of affording a complainant a prompt and equitable resolution.²² These requirements are discussed in greater detail below. If the recipient relies on disciplinary procedures for Title IX compliance, the Title IX coordinator should review the recipient's disciplinary procedures to ensure that the procedures comply with the prompt and equitable requirements of Title IX.²³

Grievance procedures generally may include voluntary informal mechanisms (*e.g.*, mediation) for resolving some types of sexual harassment complaints. OCR has frequently advised recipients, however, that it is improper for a student who complains of harassment to be required to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the school (*e.g.*, participation by a trained counselor, a trained mediator, or, if appropriate, a teacher or administrator). In addition, as stated in the *2001 Guidance*, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. Moreover, in cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis. OCR recommends that recipients clarify in their grievance procedures that mediation will not be used to resolve sexual assault complaints.

²¹ *Id.* § 106.8(b). Title IX also requires recipients to adopt and publish grievance procedures for employee complaints of sex discrimination.

²² These procedures must apply to all students, including athletes. If a complaint of sexual violence involves a student athlete, the school must follow its standard procedures for resolving sexual violence complaints. Such complaints must not be addressed solely by athletics department procedures. Additionally, if an alleged perpetrator is an elementary or secondary student with a disability, schools must follow the procedural safeguards in the Individuals with Disabilities Education Act (at 20 U.S.C. § 1415 and 34 C.F.R. §§ 300.500-300.519, 300.530-300.537) as well as the requirements of Section 504 of the Rehabilitation Act of 1973 (at 34 C.F.R. §§ 104.35-104.36) when conducting the investigation and hearing.

²³ A school may not absolve itself of its Title IX obligations to investigate and resolve complaints of sexual harassment or violence by delegating, whether through express contractual agreement or other less formal arrangement, the responsibility to administer school discipline to school resource officers or "contract" law enforcement officers. See 34 C.F.R. § 106.4.

Prompt and Equitable Requirements

As stated in the *2001 Guidance*, OCR has identified a number of elements in evaluating whether a school’s grievance procedures provide for prompt and equitable resolution of sexual harassment complaints. These elements also apply to sexual violence complaints because, as explained above, sexual violence is a form of sexual harassment. OCR will review all aspects of a school’s grievance procedures, including the following elements that are critical to achieve compliance with Title IX:

- Notice to students, parents of elementary and secondary students, and employees of the grievance procedures, including where complaints may be filed;
- Application of the procedures to complaints alleging harassment carried out by employees, other students, or third parties;
- Adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence;
- Designated and reasonably prompt time frames for the major stages of the complaint process;
- Notice to parties of the outcome of the complaint;²⁴ and
- An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

As noted in the *2001 Guidance*, procedures adopted by schools will vary in detail, specificity, and components, reflecting differences in the age of students, school sizes and administrative structures, State or local legal requirements, and past experiences. Although OCR examines whether all applicable elements are addressed when investigating sexual harassment complaints, this letter focuses on those elements where our work indicates that more clarification and explanation are needed, including:

(A) Notice of the grievance procedures

The procedures for resolving complaints of sex discrimination, including sexual harassment, should be written in language appropriate to the age of the school’s students, easily understood, easily located, and widely distributed. OCR recommends that the grievance procedures be prominently posted on school Web sites; sent electronically to all members of the school community; available at various locations throughout the school or campus; and summarized in or attached to major publications issued by the school, such as handbooks, codes of conduct, and catalogs for students, parents of elementary and secondary students, faculty, and staff.

(B) Adequate, Reliable, and Impartial Investigation of Complaints

OCR’s work indicates that a number of issues related to an adequate, reliable, and impartial investigation arise in sexual harassment and violence complaints. In some cases, the conduct

²⁴ “Outcome” does not refer to information about disciplinary sanctions unless otherwise noted. Notice of the outcome is discussed in greater detail in Section D below.

may constitute both sexual harassment under Title IX and criminal activity. Police investigations may be useful for fact-gathering; but because the standards for criminal investigations are different, police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX. Conduct may constitute unlawful sexual harassment under Title IX even if the police do not have sufficient evidence of a criminal violation. In addition, a criminal investigation into allegations of sexual violence does not relieve the school of its duty under Title IX to resolve complaints promptly and equitably.

A school should notify a complainant of the right to file a criminal complaint, and should not dissuade a victim from doing so either during or after the school's internal Title IX investigation. For instance, if a complainant wants to file a police report, the school should not tell the complainant that it is working toward a solution and instruct, or ask, the complainant to wait to file the report.

Schools should not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own Title IX investigation and, if needed, must take immediate steps to protect the student in the educational setting. For example, a school should not delay conducting its own investigation or taking steps to protect the complainant because it wants to see whether the alleged perpetrator will be found guilty of a crime. Any agreement or Memorandum of Understanding (MOU) with a local police department must allow the school to meet its Title IX obligation to resolve complaints promptly and equitably. Although a school may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, once notified that the police department has completed its gathering of evidence (not the ultimate outcome of the investigation or the filing of any charges), the school must promptly resume and complete its fact-finding for the Title IX investigation.²⁵ Moreover, nothing in an MOU or the criminal investigation itself should prevent a school from notifying complainants of their Title IX rights and the school's grievance procedures, or from taking interim steps to ensure the safety and well-being of the complainant and the school community while the law enforcement agency's fact-gathering is in progress. OCR also recommends that a school's MOU include clear policies on when a school will refer a matter to local law enforcement.

As noted above, the Title IX regulation requires schools to provide equitable grievance procedures. As part of these procedures, schools generally conduct investigations and hearings to determine whether sexual harassment or violence occurred. In addressing complaints filed with OCR under Title IX, OCR reviews a school's procedures to determine whether the school is using a preponderance of the evidence standard to evaluate complaints. The Supreme Court has applied a preponderance of the evidence standard in civil litigation involving discrimination under Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e *et seq.* Like Title IX,

²⁵ In one recent OCR sexual violence case, the prosecutor's office informed OCR that the police department's evidence gathering stage typically takes three to ten calendar days, although the delay in the school's investigation may be longer in certain instances.

Title VII prohibits discrimination on the basis of sex.²⁶ OCR also uses a preponderance of the evidence standard when it resolves complaints against recipients. For instance, OCR’s Case Processing Manual requires that a noncompliance determination be supported by the preponderance of the evidence when resolving allegations of discrimination under all the statutes enforced by OCR, including Title IX.²⁷ OCR also uses a preponderance of the evidence standard in its fund termination administrative hearings.²⁸ Thus, in order for a school’s grievance procedures to be consistent with Title IX standards, the school must use a preponderance of the evidence standard (*i.e.*, it is more likely than not that sexual harassment or violence occurred). The “clear and convincing” standard (*i.e.*, it is highly probable or reasonably certain that the sexual harassment or violence occurred), currently used by some schools, is a higher standard of proof. Grievance procedures that use this higher standard are inconsistent with the standard of proof established for violations of the civil rights laws, and are thus not equitable under Title IX. Therefore, preponderance of the evidence is the appropriate standard for investigating allegations of sexual harassment or violence.

Throughout a school’s Title IX investigation, including at any hearing, the parties must have an equal opportunity to present relevant witnesses and other evidence. The complainant and the alleged perpetrator must be afforded similar and timely access to any information that will be used at the hearing.²⁹ For example, a school should not conduct a pre-hearing meeting during which only the alleged perpetrator is present and given an opportunity to present his or her side of the story, unless a similar meeting takes place with the complainant; a hearing officer or disciplinary board should not allow only the alleged perpetrator to present character witnesses at a hearing; and a school should not allow the alleged perpetrator to review the complainant’s

²⁶ See, e.g., *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 99 (2003) (noting that under the “conventional rule of civil litigation,” the preponderance of the evidence standard generally applies in cases under Title VII); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 252-55 (1989) (approving preponderance standard in Title VII sex discrimination case) (plurality opinion); *id.* at 260 (White, J., concurring in the judgment); *id.* at 261 (O’Connor, J., concurring in the judgment). The 2001 *Guidance* noted (on page vi) that “[w]hile *Gebser* and *Davis* made clear that Title VII agency principles do not apply in determining liability for money damages under Title IX, the *Davis* Court also indicated, through its specific references to Title VII caselaw, that Title VII remains relevant in determining what constitutes hostile environment sexual harassment under Title IX.” See also *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007) (“We look to case law interpreting Title VII of the Civil Rights Act of 1964 for guidance in evaluating a claim brought under Title IX.”).

²⁷ OCR’s Case Processing Manual is available on the Department’s Web site, at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

²⁸ The Title IX regulations adopt the procedural provisions applicable to Title VI of the Civil Rights Act of 1964. See 34 C.F.R. § 106.71 (“The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference.”). The Title VI regulations apply the Administrative Procedure Act to administrative hearings required prior to termination of Federal financial assistance and require that termination decisions be “supported by and in accordance with the reliable, probative and substantial evidence.” 5 U.S.C. § 556(d). The Supreme Court has interpreted “reliable, probative and substantial evidence” as a direction to use the preponderance standard. See *Steadman v. SEC*, 450 U.S. 91, 98-102 (1981).

²⁹ Access to this information must be provided consistent with FERPA. For example, if a school introduces an alleged perpetrator’s prior disciplinary records to support a tougher disciplinary penalty, the complainant would not be allowed access to those records. Additionally, access should not be given to privileged or confidential information. For example, the alleged perpetrator should not be given access to communications between the complainant and a counselor or information regarding the complainant’s sexual history.

statement without also allowing the complainant to review the alleged perpetrator’s statement.

While OCR does not require schools to permit parties to have lawyers at any stage of the proceedings, if a school chooses to allow the parties to have their lawyers participate in the proceedings, it must do so equally for both parties. Additionally, any school-imposed restrictions on the ability of lawyers to speak or otherwise participate in the proceedings should apply equally. OCR strongly discourages schools from allowing the parties personally to question or cross-examine each other during the hearing. Allowing an alleged perpetrator to question an alleged victim directly may be traumatic or intimidating, thereby possibly escalating or perpetuating a hostile environment. OCR also recommends that schools provide an appeals process. If a school provides for appeal of the findings or remedy, it must do so for both parties. Schools must maintain documentation of all proceedings, which may include written findings of facts, transcripts, or audio recordings.

All persons involved in implementing a recipient’s grievance procedures (*e.g.*, Title IX coordinators, investigators, and adjudicators) must have training or experience in handling complaints of sexual harassment and sexual violence, and in the recipient’s grievance procedures. The training also should include applicable confidentiality requirements. In sexual violence cases, the fact-finder and decision-maker also should have adequate training or knowledge regarding sexual violence.³⁰ Additionally, a school’s investigation and hearing processes cannot be equitable unless they are impartial. Therefore, any real or perceived conflicts of interest between the fact-finder or decision-maker and the parties should be disclosed.

Public and state-supported schools must provide due process to the alleged perpetrator. However, schools should ensure that steps taken to accord due process rights to the alleged perpetrator do not restrict or unnecessarily delay the Title IX protections for the complainant.

(C) Designated and Reasonably Prompt Time Frames

OCR will evaluate whether a school’s grievance procedures specify the time frames for all major stages of the procedures, as well as the process for extending timelines. Grievance procedures should specify the time frame within which: (1) the school will conduct a full investigation of the complaint; (2) both parties receive a response regarding the outcome of the complaint; and (3) the parties may file an appeal, if applicable. Both parties should be given periodic status updates. Based on OCR experience, a typical investigation takes approximately 60 calendar days following receipt of the complaint. Whether OCR considers complaint resolutions to be timely, however, will vary depending on the complexity of the investigation and the severity and extent of the harassment. For example, the resolution of a complaint involving multiple incidents with multiple complainants likely would take longer than one involving a single incident that

³⁰ For instance, if an investigation or hearing involves forensic evidence, that evidence should be reviewed by a trained forensic examiner.

occurred in a classroom during school hours with a single complainant.

(D) Notice of Outcome

Both parties must be notified, in writing, about the outcome of both the complaint and any appeal,³¹ *i.e.*, whether harassment was found to have occurred. OCR recommends that schools provide the written determination of the final outcome to the complainant and the alleged perpetrator concurrently. Title IX does not require the school to notify the alleged perpetrator of the outcome before it notifies the complainant.

Due to the intersection of Title IX and FERPA requirements, OCR recognizes that there may be confusion regarding what information a school may disclose to the complainant.³² FERPA generally prohibits the nonconsensual disclosure of personally identifiable information from a student’s “education record.” However, as stated in the *2001 Guidance*, FERPA permits a school to disclose to the harassed student information about the sanction imposed upon a student who was found to have engaged in harassment when the sanction directly relates to the harassed student. This includes an order that the harasser stay away from the harassed student, or that the harasser is prohibited from attending school for a period of time, or transferred to other classes or another residence hall.³³ Disclosure of other information in the student’s “education record,” including information about sanctions that do not relate to the harassed student, may result in a violation of FERPA.

Further, when the conduct involves a crime of violence or a non-forcible sex offense,³⁴ FERPA permits a postsecondary institution to disclose to the alleged victim the final results of a

³¹ As noted previously, “outcome” does not refer to information about disciplinary sanctions unless otherwise noted.

³² In 1994, Congress amended the General Education Provisions Act (GEPA), of which FERPA is a part, to state that nothing in GEPA “shall be construed to affect the applicability of title VI of the Civil Rights Act of 1964, title IX of Education Amendments of 1972, title V of the Rehabilitation Act of 1973, the Age Discrimination Act, or other statutes prohibiting discrimination, to any applicable program.” 20 U.S.C. § 1221(d). The Department interprets this provision to mean that FERPA continues to apply in the context of Title IX enforcement, but if there is a direct conflict between the requirements of FERPA and the requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions. See *2001 Guidance* at vii.

³³ This information directly relates to the complainant and is particularly important in sexual harassment cases because it affects whether a hostile environment has been eliminated. Because seeing the perpetrator may be traumatic, a complainant in a sexual harassment case may continue to be subject to a hostile environment if he or she does not know when the perpetrator will return to school or whether he or she will continue to share classes or a residence hall with the perpetrator. This information also directly affects a complainant’s decision regarding how to work with the school to eliminate the hostile environment and prevent its recurrence. For instance, if a complainant knows that the perpetrator will not be at school or will be transferred to other classes or another residence hall for the rest of the year, the complainant may be less likely to want to transfer to another school or change classes, but if the perpetrator will be returning to school after a few days or weeks, or remaining in the complainant’s classes or residence hall, the complainant may want to transfer schools or change classes to avoid contact. Thus, the complainant cannot make an informed decision about how best to respond without this information.

³⁴ Under the FERPA regulations, crimes of violence include arson; assault offenses (aggravated assault, simple assault, intimidation); burglary; criminal homicide (manslaughter by negligence); criminal homicide (murder and

disciplinary proceeding against the alleged perpetrator, regardless of whether the institution concluded that a violation was committed.³⁵ Additionally, a postsecondary institution may disclose to anyone—not just the alleged victim—the final results of a disciplinary proceeding if it determines that the student is an alleged perpetrator of a crime of violence or a non-forcible sex offense, and, with respect to the allegation made, the student has committed a violation of the institution’s rules or policies.³⁶

Postsecondary institutions also are subject to additional rules under the Clery Act. This law, which applies to postsecondary institutions that participate in Federal student financial aid programs, requires that “both the accuser and the accused must be informed of the outcome³⁷ of any institutional disciplinary proceeding brought alleging a sex offense.”³⁸ Compliance with this requirement does not constitute a violation of FERPA. Furthermore, the FERPA limitations on redisclosure of information do not apply to information that postsecondary institutions are required to disclose under the Clery Act.³⁹ Accordingly, postsecondary institutions may not require a complainant to abide by a nondisclosure agreement, in writing or otherwise, that would prevent the redisclosure of this information.

Steps to Prevent Sexual Harassment and Sexual Violence and Correct its Discriminatory Effects on the Complainant and Others

Education and Prevention

In addition to ensuring full compliance with Title IX, schools should take proactive measures to prevent sexual harassment and violence. OCR recommends that all schools implement preventive education programs and make victim resources, including comprehensive victim services, available. Schools may want to include these education programs in their (1) orientation programs for new students, faculty, staff, and employees; (2) training for students who serve as advisors in residence halls; (3) training for student athletes and coaches; and (4) school assemblies and “back to school nights.” These programs should include a

non-negligent manslaughter); destruction, damage or vandalism of property; kidnapping/abduction; robbery; and forcible sex offenses. Forcible sex offenses are defined as any sexual act directed against another person forcibly or against that person’s will, or not forcibly or against the person’s will where the victim is incapable of giving consent. Forcible sex offenses include rape, sodomy, sexual assault with an object, and forcible fondling. Non-forcible sex offenses are incest and statutory rape. 34 C.F.R. Part 99, App. A.

³⁵ 34 C.F.R. § 99.31(a)(13). For purposes of 34 C.F.R. §§ 99.31(a)(13)-(14), disclosure of “final results” is limited to the name of the alleged perpetrator, any violation found to have been committed, and any sanction imposed against the perpetrator by the school. 34 C.F.R. § 99.39.

³⁶ 34 C.F.R. § 99.31(a)(14).

³⁷ For purposes of the Clery Act, “outcome” means the institution’s final determination with respect to the alleged sex offense and any sanctions imposed against the accused. 34 C.F.R. § 668.46(b)(11)(vi)(B).

³⁸ 34 C.F.R. § 668.46(b)(11)(vi)(B). Under the Clery Act, forcible sex offenses are defined as any sexual act directed against another person forcibly or against that person’s will, or not forcibly or against the person’s will where the person is incapable of giving consent. Forcible sex offenses include forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. Non-forcible sex offenses include incest and statutory rape. 34 C.F.R. Part 668, Subpt. D, App. A.

³⁹ 34 C.F.R. § 99.33(c).

discussion of what constitutes sexual harassment and sexual violence, the school's policies and disciplinary procedures, and the consequences of violating these policies.

The education programs also should include information aimed at encouraging students to report incidents of sexual violence to the appropriate school and law enforcement authorities. Schools should be aware that victims or third parties may be deterred from reporting incidents if alcohol, drugs, or other violations of school or campus rules were involved.⁴⁰ As a result, schools should consider whether their disciplinary policies have a chilling effect on victims' or other students' reporting of sexual violence offenses. For example, OCR recommends that schools inform students that the schools' primary concern is student safety, that any other rules violations will be addressed separately from the sexual violence allegation, and that use of alcohol or drugs never makes the victim at fault for sexual violence.

OCR also recommends that schools develop specific sexual violence materials that include the schools' policies, rules, and resources for students, faculty, coaches, and administrators. Schools also should include such information in their employee handbook and any handbooks that student athletes and members of student activity groups receive. These materials should include where and to whom students should go if they are victims of sexual violence. These materials also should tell students and school employees what to do if they learn of an incident of sexual violence. 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.

Remedies and Enforcement

As discussed above, if a school determines that sexual harassment that creates a hostile environment has occurred, it must take immediate action to eliminate the hostile environment, prevent its recurrence, and address its effects. In addition to counseling or taking disciplinary action against the harasser, effective corrective action may require remedies for the complainant, as well as changes to the school's overall services or policies. Examples of these actions are discussed in greater detail below.

Title IX requires a school to take steps to protect the complainant as necessary, including taking interim steps before the final outcome of the investigation. The school should undertake these steps promptly once it has notice of a sexual harassment or violence allegation. The school should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow students to change academic or living situations as appropriate. For instance, the school may prohibit the alleged perpetrator from having any contact with the complainant pending the results of the school's investigation. When taking steps to separate the complainant and alleged perpetrator, a school should minimize the burden on the

⁴⁰ The Department's Higher Education Center for Alcohol, Drug Abuse, and Violence Prevention (HEC) helps campuses and communities address problems of alcohol, other drugs, and violence by identifying effective strategies and programs based upon the best prevention science. Information on HEC resources and technical assistance can be found at www.higheredcenter.org.

complainant, and thus should not, as a matter of course, remove complainants from classes or housing while allowing alleged perpetrators to remain. In addition, schools should ensure that complainants are aware of their Title IX rights and any available resources, such as counseling, health, and mental health services, and their right to file a complaint with local law enforcement.⁴¹

Schools should be aware that complaints of sexual harassment or violence may be followed by retaliation by the alleged perpetrator or his or her associates. For instance, friends of the alleged perpetrator may subject the complainant to name-calling and taunting. As part of their Title IX obligations, schools must have policies and procedures in place to protect against retaliatory harassment. At a minimum, schools must ensure that complainants and their parents, if appropriate, know how to report any subsequent problems, and should follow-up with complainants to determine whether any retaliation or new incidents of harassment have occurred.

When OCR finds that a school has not taken prompt and effective steps to respond to sexual harassment or violence, OCR will seek appropriate remedies for both the complainant and the broader student population. When conducting Title IX enforcement activities, OCR seeks to obtain voluntary compliance from recipients. When a recipient does not come into compliance voluntarily, OCR may initiate proceedings to withdraw Federal funding by the Department or refer the case to the U.S. Department of Justice for litigation.

Schools should proactively consider the following remedies when determining how to respond to sexual harassment or violence. These are the same types of remedies that OCR would seek in its cases.

Depending on the specific nature of the problem, remedies for the complainant might include, but are not limited to:⁴²

- providing an escort to ensure that the complainant can move safely between classes and activities;
- ensuring that the complainant and alleged perpetrator do not attend the same classes;
- moving the complainant or alleged perpetrator to a different residence hall or, in the case of an elementary or secondary school student, to another school within the district;
- providing counseling services;
- providing medical services;
- providing academic support services, such as tutoring;

⁴¹ The Clery Act requires postsecondary institutions to develop and distribute a statement of policy that informs students of their options to notify proper law enforcement authorities, including campus and local police, and the option to be assisted by campus personnel in notifying such authorities. The policy also must notify students of existing counseling, mental health, or other student services for victims of sexual assault, both on campus and in the community. 20 U.S.C. §§ 1092(f)(8)(B)(v)-(vi).

⁴² Some of these remedies also can be used as interim measures before the school's investigation is complete.

- arranging for the complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant’s academic record; and
- reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the complainant being disciplined.⁴³

Remedies for the broader student population might include, but are not limited to:

Counseling and Training

- offering counseling, health, mental health, or other holistic and comprehensive victim services to all students affected by sexual harassment or sexual violence, and notifying students of campus and community counseling, health, mental health, and other student services;
- designating an individual from the school’s counseling center to be “on call” to assist victims of sexual harassment or violence whenever needed;
- training the Title IX coordinator and any other employees who are involved in processing, investigating, or resolving complaints of sexual harassment or sexual violence, including providing training on:
 - the school’s Title IX responsibilities to address allegations of sexual harassment or violence
 - how to conduct Title IX investigations
 - information on the link between alcohol and drug abuse and sexual harassment or violence and best practices to address that link;
- training all school law enforcement unit personnel on the school’s Title IX responsibilities and handling of sexual harassment or violence complaints;
- training all employees who interact with students regularly on recognizing and appropriately addressing allegations of sexual harassment or violence under Title IX; and
- informing students of their options to notify proper law enforcement authorities, including school and local police, and the option to be assisted by school employees in notifying those authorities.

Development of Materials and Implementation of Policies and Procedures

- developing materials on sexual harassment and violence, which should be distributed to students during orientation and upon receipt of complaints, as well as widely posted throughout school buildings and residence halls, and which should include:
 - what constitutes sexual harassment or violence
 - what to do if a student has been the victim of sexual harassment or violence
 - contact information for counseling and victim services on and off school grounds
 - how to file a complaint with the school
 - how to contact the school’s Title IX coordinator

⁴³ For example, if the complainant was disciplined for skipping a class in which the harasser was enrolled, the school should review the incident to determine if the complainant skipped the class to avoid contact with the harasser.

- what the school will do to respond to allegations of sexual harassment or violence, including the interim measures that can be taken
- requiring the Title IX coordinator to communicate regularly with the school’s law enforcement unit investigating cases and to provide information to law enforcement unit personnel regarding Title IX requirements;⁴⁴
- requiring the Title IX coordinator to review all evidence in a sexual harassment or sexual violence case brought before the school’s disciplinary committee to determine whether the complainant is entitled to a remedy under Title IX that was not available through the disciplinary committee;⁴⁵
- requiring the school to create a committee of students and school officials to identify strategies for ensuring that students:
 - know the school’s prohibition against sex discrimination, including sexual harassment and violence
 - recognize sex discrimination, sexual harassment, and sexual violence when they occur
 - understand how and to whom to report any incidents
 - know the connection between alcohol and drug abuse and sexual harassment or violence
 - feel comfortable that school officials will respond promptly and equitably to reports of sexual harassment or violence;
- issuing new policy statements or other steps that clearly communicate that the school does not tolerate sexual harassment and violence and will respond to any incidents and to any student who reports such incidents; and
- revising grievance procedures used to handle sexual harassment and violence complaints to ensure that they are prompt and equitable, as required by Title IX.

School Investigations and Reports to OCR

- conducting periodic assessments of student activities to ensure that the practices and behavior of students do not violate the school’s policies against sexual harassment and violence;
- investigating whether any other students also may have been subjected to sexual harassment or violence;
- investigating whether school employees with knowledge of allegations of sexual harassment or violence failed to carry out their duties in responding to those allegations;
- conducting, in conjunction with student leaders, a school or campus “climate check” to assess the effectiveness of efforts to ensure that the school is free from sexual harassment and violence, and using the resulting information to inform future proactive steps that will be taken by the school; and

⁴⁴ Any personally identifiable information from a student’s education record that the Title IX coordinator provides to the school’s law enforcement unit is subject to FERPA’s nondisclosure requirements.

⁴⁵ For example, the disciplinary committee may lack the power to implement changes to the complainant’s class schedule or living situation so that he or she does not come in contact with the alleged perpetrator.

- submitting to OCR copies of all grievances filed by students alleging sexual harassment or violence, and providing OCR with documentation related to the investigation of each complaint, such as witness interviews, investigator notes, evidence submitted by the parties, investigative reports and summaries, any final disposition letters, disciplinary records, and documentation regarding any appeals.

Conclusion

The Department is committed to ensuring that all students feel safe and have the opportunity to benefit fully from their schools' education programs and activities. As part of this commitment, OCR provides technical assistance to assist recipients in achieving voluntary compliance with Title IX.

If you need additional information about Title IX, have questions regarding OCR's policies, or seek technical assistance, please contact the OCR enforcement office that serves your state or territory. The list of offices is available at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>. Additional information about addressing sexual violence, including victim resources and information for schools, is available from the U.S. Department of Justice's Office on Violence Against Women (OVW) at <http://www.ovw.usdoj.gov/>.⁴⁶

Thank you for your prompt attention to this matter. I look forward to continuing our work together to ensure that all students have an equal opportunity to learn in a safe and respectful school climate.

Sincerely,

/s/

Russlynn Ali
Assistant Secretary for Civil Rights

⁴⁶ OVW also administers the Grants to Reduce Domestic Violence, Dating Violence, Sexual Assault, and Stalking on Campus Program. This Federal funding is designed to encourage institutions of higher education to adopt comprehensive, coordinated responses to domestic violence, dating violence, sexual assault, and stalking. Under this competitive grant program, campuses, in partnership with community-based nonprofit victim advocacy organizations and local criminal justice or civil legal agencies, must adopt protocols and policies to treat these crimes as serious offenses and develop victim service programs and campus policies that ensure victim safety, offender accountability, and the prevention of such crimes. OVW recently released the first solicitation for the Services, Training, Education, and Policies to Reduce Domestic Violence, Dating Violence, Sexual Assault and Stalking in Secondary Schools Grant Program. This innovative grant program will support a broad range of activities, including training for school administrators, faculty, and staff; development of policies and procedures for responding to these crimes; holistic and appropriate victim services; development of effective prevention strategies; and collaborations with mentoring organizations to support middle and high school student victims.

Appendix B: Questions and Answers on Title IX and Sexual Violence, April 29, 2014



Appendix B

UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

Questions and Answers on Title IX and Sexual Violence¹

Title IX of the Education Amendments of 1972 (“Title IX”)² is a federal civil rights law that prohibits discrimination on the basis of sex in federally funded education programs and activities. All public and private elementary and secondary schools, school districts, colleges, and universities receiving any federal financial assistance (hereinafter “schools”, “recipients”, or “recipient institutions”) must comply with Title IX.³

On April 4, 2011, the Office for Civil Rights (OCR) in the U.S. Department of Education issued a Dear Colleague Letter on student-on-student sexual harassment and sexual violence (“DCL”).⁴ The DCL explains a school’s responsibility to respond promptly and effectively to sexual violence against students in accordance with the requirements of Title IX.⁵ Specifically, the DCL:

- Provides guidance on the unique concerns that arise in sexual violence cases, such as a school’s independent responsibility under Title IX to investigate (apart from any separate criminal investigation by local police) and address sexual violence.

¹ The Department has determined that this document is a “significant guidance document” under the Office of Management and Budget’s Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), available at www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf. The Office for Civil Rights (OCR) issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights, under the civil rights laws and implementing regulations that we enforce. OCR’s legal authority is based on those laws and regulations. This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202.

² 20 U.S.C. § 1681 *et seq.*

³ Throughout this document the term “schools” refers to recipients of federal financial assistance that operate educational programs or activities. For Title IX purposes, at the elementary and secondary school level, the recipient generally is the school district; and at the postsecondary level, the recipient is the individual institution of higher education. An educational institution that is controlled by a religious organization is exempt from Title IX to the extent that the law’s requirements conflict with the organization’s religious tenets. 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a). For application of this provision to a specific institution, please contact the appropriate OCR regional office.

⁴ Available at <http://www.ed.gov/ocr/letters/colleague-201104.html>.

⁵ Although this document and the DCL focus on sexual violence, the legal principles generally also apply to other forms of sexual harassment.

- Provides guidance and examples about key Title IX requirements and how they relate to sexual violence, such as the requirements to publish a policy against sex discrimination, designate a Title IX coordinator, and adopt and publish grievance procedures.
- Discusses proactive efforts schools can take to prevent sexual violence.
- Discusses the interplay between Title IX, the Family Educational Rights and Privacy Act (“FERPA”),⁶ and the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (“Clery Act”)⁷ as it relates to a complainant’s right to know the outcome of his or her complaint, including relevant sanctions imposed on the perpetrator.
- Provides examples of remedies and enforcement strategies that schools and OCR may use to respond to sexual violence.

The DCL supplements OCR’s *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, issued in 2001 (*2001 Guidance*).⁸ The *2001 Guidance* discusses in detail the Title IX requirements related to sexual harassment of students by school employees, other students, or third parties. The DCL and the *2001 Guidance* remain in full force and we recommend reading these Questions and Answers in conjunction with these documents.

In responding to requests for technical assistance, OCR has determined that elementary and secondary schools and postsecondary institutions would benefit from additional guidance concerning their obligations under Title IX to address sexual violence as a form of sexual harassment. The following questions and answers further clarify the legal requirements and guidance articulated in the DCL and the *2001 Guidance* and include examples of proactive efforts schools can take to prevent sexual violence and remedies schools may use to end such conduct, prevent its recurrence, and address its effects. In order to gain a complete understanding of these legal requirements and recommendations, this document should be read in full.

Authorized by

/s/

Catherine E. Lhamon
Assistant Secretary for Civil Rights

April 29, 2014

⁶ 20 U.S.C. §1232g; 34 C.F.R. Part 99.

⁷ 20 U.S.C. §1092(f).

⁸ Available at <http://www.ed.gov/ocr/docs/shguide.html>.

**Notice of Language Assistance
Questions and Answers on Title IX and Sexual Violence**

Notice of Language Assistance: If you have difficulty understanding English, you may, free of charge, request language assistance services for this Department information by calling 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), or email us at: Ed.Language.Assistance@ed.gov.

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A. A School's Obligation to Respond to Sexual Violence

A-1. What is sexual violence?

Answer: Sexual violence, as that term is used in this document and prior OCR guidance, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (*e.g.*, due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX.

A-2. How does Title IX apply to student-on-student sexual violence?

Answer: Under Title IX, federally funded schools must ensure that students of all ages are not denied or limited in their ability to participate in or benefit from the school's educational programs or activities on the basis of sex. A school violates a student's rights under Title IX regarding student-on-student sexual violence when the following conditions are met: (1) the alleged conduct is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's educational program, *i.e.* creates a hostile environment; and (2) the school, upon notice, fails to take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.⁹

A-3. How does OCR determine if a hostile environment has been created?

Answer: As discussed more fully in OCR's *2001 Guidance*, OCR considers a variety of related factors to determine if a hostile environment has been created; and also considers the conduct in question from both a subjective and an objective perspective. Specifically, OCR's standards require that the conduct be evaluated from the perspective of a reasonable person in the alleged victim's position, considering all the circumstances. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. Indeed, a single or isolated incident of sexual violence may create a hostile environment.

⁹ This is the standard for administrative enforcement of Title IX and in court cases where plaintiffs are seeking injunctive relief. See *2001 Guidance* at ii-v, 12-13. The standard in private lawsuits for monetary damages is actual knowledge and deliberate indifference. See *Davis v. Monroe Cnty Bd. of Educ.*, 526 U.S. 629, 643 (1999).

A-4. When does OCR consider a school to have notice of student-on-student sexual violence?

Answer: OCR deems a school to have notice of student-on-student sexual violence if a responsible employee knew, or in the exercise of reasonable care should have known, about the sexual violence. See question D-2 regarding who is a responsible employee.

A school can receive notice of sexual violence in many different ways. Some examples of notice include: a student may have filed a grievance with or otherwise informed the school's Title IX coordinator; a student, parent, friend, or other individual may have reported an incident to a teacher, principal, campus law enforcement, staff in the office of student affairs, or other responsible employee; or a teacher or dean may have witnessed the sexual violence.

The school may also receive notice about sexual violence in an indirect manner, from sources such as a member of the local community, social networking sites, or the media. In some situations, if the school knows of incidents of sexual violence, the exercise of reasonable care should trigger an investigation that would lead to the discovery of additional incidents. For example, if school officials receive a credible report that a student has perpetrated several acts of sexual violence against different students, that pattern of conduct should trigger an inquiry as to whether other students have been subjected to sexual violence by that student. In other cases, the pervasiveness of the sexual violence may be widespread, openly practiced, or well-known among students or employees. In those cases, OCR may conclude that the school should have known of the hostile environment. In other words, if the school would have found out about the sexual violence had it made a proper inquiry, knowledge of the sexual violence will be imputed to the school even if the school failed to make an inquiry. A school's failure to take prompt and effective corrective action in such cases (as described in questions G-1 to G-3 and H-1 to H-3) would violate Title IX even if the student did not use the school's grievance procedures or otherwise inform the school of the sexual violence.

A-5. What are a school's basic responsibilities to address student-on-student sexual violence?

Answer: When a school knows or reasonably should know of possible sexual violence, it must take immediate and appropriate steps to investigate or otherwise determine what occurred (subject to the confidentiality provisions discussed in Section E). If an investigation reveals that sexual violence created a hostile environment, the school must then take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its

effects. But a school should not wait to take steps to protect its students until students have already been deprived of educational opportunities.

Title IX requires a school to protect the complainant and ensure his or her safety as necessary, including taking interim steps before the final outcome of any investigation.¹⁰ The school should take these steps promptly once it has notice of a sexual violence allegation and should provide the complainant with periodic updates on the status of the investigation. If the school determines that the sexual violence occurred, the school must continue to take these steps to protect the complainant and ensure his or her safety, as necessary. The school should also ensure that the complainant is aware of any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance, and the right to report a crime to campus or local law enforcement. For additional information on interim measures, see questions G-1 to G-3.

If a school delays responding to allegations of sexual violence or responds inappropriately, the school's own inaction may subject the student to a hostile environment. If it does, the school will also be required to remedy the effects of the sexual violence that could reasonably have been prevented had the school responded promptly and appropriately. For example, if a school's ignoring of a student's complaints of sexual assault by a fellow student results in the complaining student having to remain in classes with the other student for several weeks and the complaining student's grades suffer because he or she was unable to concentrate in these classes, the school may need to permit the complaining student to retake the classes without an academic or financial penalty (in addition to any other remedies) in order to address the effects of the sexual violence.

A-6. Does Title IX cover employee-on-student sexual violence, such as sexual abuse of children?

Answer: Yes. Although this document and the DCL focus on student-on-student sexual violence, Title IX also protects students from other forms of sexual harassment (including sexual violence and sexual abuse), such as sexual harassment carried out by school employees. Sexual harassment by school employees can include unwelcome sexual advances; requests for sexual favors; and other verbal, nonverbal, or physical conduct of a sexual nature, including but not limited to sexual activity. Title IX's prohibition against

¹⁰ Throughout this document, unless otherwise noted, the term "complainant" refers to the student who allegedly experienced the sexual violence.

sexual harassment generally does not extend to legitimate nonsexual touching or other nonsexual conduct. But in some circumstances, nonsexual conduct may take on sexual connotations and rise to the level of sexual harassment. For example, a teacher repeatedly hugging and putting his or her arms around students under inappropriate circumstances could create a hostile environment. Early signs of inappropriate behavior with a child can be the key to identifying and preventing sexual abuse by school personnel.

A school's Title IX obligations regarding sexual harassment by employees can, in some instances, be greater than those described in this document and the DCL. Recipients should refer to OCR's *2001 Guidance* for further information about Title IX obligations regarding harassment of students by school employees. In addition, many state and local laws have mandatory reporting requirements for schools working with minors. Recipients should be careful to satisfy their state and local legal obligations in addition to their Title IX obligations, including training to ensure that school employees are aware of their obligations under such state and local laws and the consequences for failing to satisfy those obligations.

With respect to sexual activity in particular, OCR will always view as unwelcome and nonconsensual sexual activity between an adult school employee and an elementary school student or any student below the legal age of consent in his or her state. In cases involving a student who meets the legal age of consent in his or her state, there will still be a strong presumption that sexual activity between an adult school employee and a student is unwelcome and nonconsensual. When a school is on notice that a school employee has sexually harassed a student, it is responsible for taking prompt and effective steps reasonably calculated to end the sexual harassment, eliminate the hostile environment, prevent its recurrence, and remedy its effects. Indeed, even if a school was not on notice, the school is nonetheless responsible for remedying any effects of the sexual harassment on the student, as well as for ending the sexual harassment and preventing its recurrence, when the employee engaged in the sexual activity in the context of the employee's provision of aid, benefits, or services to students (*e.g.*, teaching, counseling, supervising, advising, or transporting students).

A school should take steps to protect its students from sexual abuse by its employees. It is therefore imperative for a school to develop policies prohibiting inappropriate conduct by school personnel and procedures for identifying and responding to such conduct. For example, this could include implementing codes of conduct, which might address what is commonly known as grooming – a desensitization strategy common in adult educator sexual misconduct. Such policies and procedures can ensure that students, parents, and

school personnel have clear guidelines on what are appropriate and inappropriate interactions between adults and students in a school setting or in school-sponsored activities. Additionally, a school should provide training for administrators, teachers, staff, parents, and age-appropriate classroom information for students to ensure that everyone understands what types of conduct are prohibited and knows how to respond when problems arise.¹¹

B. Students Protected by Title IX

B-1. Does Title IX protect all students from sexual violence?

Answer: Yes. Title IX protects all students at recipient institutions from sex discrimination, including sexual violence. Any student can experience sexual violence: from elementary to professional school students; male and female students; straight, gay, lesbian, bisexual and transgender students; part-time and full-time students; students with and without disabilities; and students of different races and national origins.

B-2. How should a school handle sexual violence complaints in which the complainant and the alleged perpetrator are members of the same sex?

Answer: A school's obligation to respond appropriately to sexual violence complaints is the same irrespective of the sex or sexes of the parties involved. Title IX protects all students from sexual violence, regardless of the sex of the alleged perpetrator or complainant, including when they are members of the same sex. A school must investigate and resolve allegations of sexual violence involving parties of the same sex using the same procedures and standards that it uses in all complaints involving sexual violence.

Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation. Similarly, the actual or perceived sexual orientation or gender identity of the parties does not change a school's obligations. Indeed, lesbian, gay, bisexual, and transgender (LGBT) youth report high rates of sexual harassment and sexual violence. A school should investigate and resolve allegations of sexual violence regarding LGBT students using the same procedures and standards that it

¹¹ For additional informational on training please see the Department of Education's Resource and Emergency Management for Schools Technical Assistance Center – Adult Sexual Misconduct in Schools: Prevention and Management Training, available at http://rems.ed.gov/Docs/ASM_Marketing_Flyer.pdf.

uses in all complaints involving sexual violence. The fact that incidents of sexual violence may be accompanied by anti-gay comments or be partly based on a student's actual or perceived sexual orientation does not relieve a school of its obligation under Title IX to investigate and remedy those instances of sexual violence.

If a school's policies related to sexual violence include examples of particular types of conduct that violate the school's prohibition on sexual violence, the school should consider including examples of same-sex conduct. In addition, a school should ensure that staff are capable of providing culturally competent counseling to all complainants. Thus, a school should ensure that its counselors and other staff who are responsible for receiving and responding to complaints of sexual violence, including investigators and hearing board members, receive appropriate training about working with LGBT and gender-nonconforming students and same-sex sexual violence. See questions J-1 to J-4 for additional information regarding training.

Gay-straight alliances and similar student-initiated groups can also play an important role in creating safer school environments for LGBT students. On June 14, 2011, the Department issued guidance about the rights of student-initiated groups in public secondary schools under the Equal Access Act. That guidance is available at <http://www2.ed.gov/policy/elsec/guid/secletter/110607.html>.

B-3. What issues may arise with respect to students with disabilities who experience sexual violence?

Answer: When students with disabilities experience sexual violence, federal civil rights laws other than Title IX may also be relevant to a school's responsibility to investigate and address such incidents.¹² Certain students require additional assistance and support. For example, students with intellectual disabilities may need additional help in learning about sexual violence, including a school's sexual violence education and prevention programs, what constitutes sexual violence and how students can report incidents of sexual

¹² OCR enforces two civil rights laws that prohibit disability discrimination. Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits disability discrimination by public or private entities that receive federal financial assistance, and Title II of the American with Disabilities Act of 1990 (Title II) prohibits disability discrimination by all state and local public entities, regardless of whether they receive federal funding. See 29 U.S.C. § 794 and 34 C.F.R. part 104; 42 U.S.C. § 12131 *et seq.* and 28 C.F.R. part 35. OCR and the U.S. Department of Justice (DOJ) share the responsibility of enforcing Title II in the educational context. The Department of Education's Office of Special Education Programs in the Office of Special Education and Rehabilitative Services administers Part B of the Individuals with Disabilities Education Act (IDEA). 20 U.S.C. 1400 *et seq.* and 34 C.F.R. part 300. IDEA provides financial assistance to states, and through them to local educational agencies, to assist in providing special education and related services to eligible children with disabilities ages three through twenty-one, inclusive.

violence. In addition, students with disabilities who experience sexual violence may require additional services and supports, including psychological services and counseling services. Postsecondary students who need these additional services and supports can seek assistance from the institution's disability resource office.

A student who has not been previously determined to have a disability may, as a result of experiencing sexual violence, develop a mental health-related disability that could cause the student to need special education and related services. At the elementary and secondary education level, this may trigger a school's child find obligations under IDEA and the evaluation and placement requirements under Section 504, which together require a school to evaluate a student suspected of having a disability to determine if he or she has a disability that requires special education or related aids and services.¹³

A school must also ensure that any school reporting forms, information, or training about sexual violence be provided in a manner that is accessible to students and employees with disabilities, for example, by providing electronically-accessible versions of paper forms to individuals with print disabilities, or by providing a sign language interpreter to a deaf individual attending a training. See question J-4 for more detailed information on student training.

B-4. What issues arise with respect to international students and undocumented students who experience sexual violence?

Answer: Title IX protects all students at recipient institutions in the United States regardless of national origin, immigration status, or citizenship status.¹⁴ A school should ensure that all students regardless of their immigration status, including undocumented students and international students, are aware of their rights under Title IX. A school must also ensure that any school reporting forms, information, or training about sexual violence be provided in a manner accessible to students who are English language learners. OCR recommends that a school coordinate with its international office and its undocumented student program coordinator, if applicable, to help communicate information about Title IX in languages that are accessible to these groups of students. OCR also encourages schools to provide foreign national complainants with information about the U nonimmigrant status and the T nonimmigrant status. The U nonimmigrant status is set

¹³ See 34 C.F.R. §§ 300.8; 300.111; 300.201; 300.300-300.311 (IDEA); 34 C.F.R. §§ 104.3(j) and 104.35 (Section 504). Schools must comply with applicable consent requirements with respect to evaluations. See 34 C.F.R. § 300.300.

¹⁴ OCR enforces Title VI of the Civil Rights Act of 1964, which prohibits discrimination by recipients of federal financial assistance on the basis of race, color, or national origin. 42 U.S.C. § 2000d.

aside for victims of certain crimes who have suffered substantial mental or physical abuse as a result of the crime and are helpful to law enforcement agency in the investigation or prosecution of the qualifying criminal activity.¹⁵ The T nonimmigrant status is available for victims of severe forms of human trafficking who generally comply with a law enforcement agency in the investigation or prosecution of the human trafficking and who would suffer extreme hardship involving unusual and severe harm if they were removed from the United States.¹⁶

A school should be mindful that unique issues may arise when a foreign student on a student visa experiences sexual violence. For example, certain student visas require the student to maintain a full-time course load (generally at least 12 academic credit hours per term), but a student may need to take a reduced course load while recovering from the immediate effects of the sexual violence. OCR recommends that a school take steps to ensure that international students on student visas understand that they must typically seek prior approval of the designated school official (DSO) for student visas to drop below a full-time course load. A school may also want to encourage its employees involved in handling sexual violence complaints and counseling students who have experienced sexual violence to approach the DSO on the student's behalf if the student wishes to drop below a full-time course load. OCR recommends that a school take steps to ensure that its employees who work with international students, including the school's DSO, are trained on the school's sexual violence policies and that employees involved in handling sexual violence complaints and counseling students who have experienced sexual violence are aware of the special issues that international students may encounter. See questions J-1 to J-4 for additional information regarding training.

A school should also be aware that threatening students with deportation or invoking a student's immigration status in an attempt to intimidate or deter a student from filing a Title IX complaint would violate Title IX's protections against retaliation. For more information on retaliation see question K-1.

¹⁵ For more information on the U nonimmigrant status, see <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/questions-answers-victims-criminal-activity-u-nonimmigrant-status>.

¹⁶ For more information on the T nonimmigrant status, see <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status>.

B-5. How should a school respond to sexual violence when the alleged perpetrator is not affiliated with the school?

Answer: The appropriate response will differ depending on the level of control the school has over the alleged perpetrator. For example, if an athlete or band member from a visiting school sexually assaults a student at the home school, the home school may not be able to discipline or take other direct action against the visiting athlete or band member. However (and subject to the confidentiality provisions discussed in Section E), it should conduct an inquiry into what occurred and should report the incident to the visiting school and encourage the visiting school to take appropriate action to prevent further sexual violence. The home school should also notify the student of any right to file a complaint with the alleged perpetrator’s school or local law enforcement. The home school may also decide not to invite the visiting school back to its campus.

Even though a school’s ability to take direct action against a particular perpetrator may be limited, the school must still take steps to provide appropriate remedies for the complainant and, where appropriate, the broader school population. This may include providing support services for the complainant, and issuing new policy statements making it clear that the school does not tolerate sexual violence and will respond to any reports about such incidents. For additional information on interim measures see questions G-1 to G-3.

C. Title IX Procedural Requirements

Overview

C-1. What procedures must a school have in place to prevent sexual violence and resolve complaints?

Answer: The Title IX regulations outline three key procedural requirements. Each school must:

- (1) disseminate a notice of nondiscrimination (see question C-2);¹⁷
- (2) designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX (see questions C-3 to C-4);¹⁸ and

¹⁷ 34 C.F.R. § 106.9.

¹⁸ *Id.* § 106.8(a).

(3) adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee sex discrimination complaints (see questions C-5 to C-6).¹⁹

These requirements apply to all forms of sex discrimination and are particularly important for preventing and effectively responding to sexual violence.

Procedural requirements under other federal laws may also apply to complaints of sexual violence, including the requirements of the Clery Act.²⁰ For additional information about the procedural requirements in the Clery Act, please see <http://www2.ed.gov/admins/lead/safety/campus.html>.

Notice of Nondiscrimination

C-2. What information must be included in a school's notice of nondiscrimination?

Answer: The notice of nondiscrimination must state that the school does not discriminate on the basis of sex in its education programs and activities, and that it is required by Title IX not to discriminate in such a manner. The notice must state that questions regarding Title IX may be referred to the school's Title IX coordinator or to OCR. The school must notify all of its students and employees of the name or title, office address, telephone number, and email address of the school's designated Title IX coordinator.²¹

Title IX Coordinator

C-3. What are a Title IX coordinator's responsibilities?

Answer: A Title IX coordinator's core responsibilities include overseeing the school's response to Title IX reports and complaints and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. This means that the Title IX coordinator must have knowledge of the requirements of Title IX, of the school's own policies and procedures on sex discrimination, and of all complaints raising Title IX issues throughout the school. To accomplish this, subject to the exemption for school counseling employees discussed in question E-3, the Title IX coordinator must be informed of all

¹⁹ *Id.* § 106.8(b).

²⁰ All postsecondary institutions participating in the Higher Education Act's Title IV student financial assistance programs must comply with the Clery Act.

²¹ For more information on notices of nondiscrimination, please see OCR's Notice of Nondiscrimination (August 2010), available at <http://www.ed.gov/ocr/docs/nondisc.pdf>.

reports and complaints raising Title IX issues, even if the report or complaint was initially filed with another individual or office or if the investigation will be conducted by another individual or office. The school should ensure that the Title IX coordinator is given the training, authority, and visibility necessary to fulfill these responsibilities.

Because the Title IX coordinator must have knowledge of all Title IX reports and complaints at the school, this individual (when properly trained) is generally in the best position to evaluate a student's request for confidentiality in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students. A school may determine, however, that another individual should perform this role. For additional information on confidentiality requests, see questions E-1 to E-4. If a school relies in part on its disciplinary procedures to meet its Title IX obligations, the Title IX coordinator should review the disciplinary procedures to ensure that the procedures comply with the prompt and equitable requirements of Title IX as discussed in question C-5.

In addition to these core responsibilities, a school may decide to give its Title IX coordinator additional responsibilities, such as: providing training to students, faculty, and staff on Title IX issues; conducting Title IX investigations, including investigating facts relevant to a complaint, and determining appropriate sanctions against the perpetrator and remedies for the complainant; determining appropriate interim measures for a complainant upon learning of a report or complaint of sexual violence; and ensuring that appropriate policies and procedures are in place for working with local law enforcement and coordinating services with local victim advocacy organizations and service providers, including rape crisis centers. A school must ensure that its Title IX coordinator is appropriately trained in all areas over which he or she has responsibility. The Title IX coordinator or designee should also be available to meet with students as needed.

If a school designates more than one Title IX coordinator, the school's notice of nondiscrimination and Title IX grievance procedures should describe each coordinator's responsibilities, and one coordinator should be designated as having ultimate oversight responsibility.

C-4. Are there any employees who should not serve as the Title IX coordinator?

Answer: Title IX does not categorically preclude particular employees from serving as Title IX coordinators. However, Title IX coordinators should not have other job responsibilities that may create a conflict of interest. Because some complaints may raise issues as to whether or how well the school has met its Title IX obligations, designating

the same employee to serve both as the Title IX coordinator and the general counsel (which could include representing the school in legal claims alleging Title IX violations) poses a serious risk of a conflict of interest. Other employees whose job responsibilities may conflict with a Title IX coordinator's responsibilities include Directors of Athletics, Deans of Students, and any employee who serves on the judicial/hearing board or to whom an appeal might be made. Designating a full-time Title IX coordinator will minimize the risk of a conflict of interest.

Grievance Procedures

C-5. Under Title IX, what elements should be included in a school's procedures for responding to complaints of sexual violence?

Answer: Title IX requires that a school adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints of sex discrimination, including sexual violence. In evaluating whether a school's grievance procedures satisfy this requirement, OCR will review all aspects of a school's policies and practices, including the following elements that are critical to achieve compliance with Title IX:

- (1) notice to students, parents of elementary and secondary students, and employees of the grievance procedures, including where complaints may be filed;
- (2) application of the grievance procedures to complaints filed by students or on their behalf alleging sexual violence carried out by employees, other students, or third parties;
- (3) provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence;
- (4) designated and reasonably prompt time frames for the major stages of the complaint process (see question F-8);
- (5) written notice to the complainant and alleged perpetrator of the outcome of the complaint (see question H-3); and
- (6) assurance that the school will take steps to prevent recurrence of any sexual violence and remedy discriminatory effects on the complainant and others, if appropriate.

To ensure that students and employees have a clear understanding of what constitutes sexual violence, the potential consequences for such conduct, and how the school processes complaints, a school's Title IX grievance procedures should also explicitly include the following in writing, some of which themselves are mandatory obligations under Title IX:

- (1) a statement of the school's jurisdiction over Title IX complaints;
- (2) adequate definitions of sexual harassment (which includes sexual violence) and an explanation as to when such conduct creates a hostile environment;
- (3) reporting policies and protocols, including provisions for confidential reporting;
- (4) identification of the employee or employees responsible for evaluating requests for confidentiality;
- (5) notice that Title IX prohibits retaliation;
- (6) notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;
- (7) notice of available interim measures that may be taken to protect the student in the educational setting;
- (8) the evidentiary standard that must be used (preponderance of the evidence) (*i.e.*, more likely than not that sexual violence occurred) in resolving a complaint;
- (9) notice of potential remedies for students;
- (10) notice of potential sanctions against perpetrators; and
- (11) sources of counseling, advocacy, and support.

For more information on interim measures, see questions G-1 to G-3.

The rights established under Title IX must be interpreted consistently with any federally guaranteed due process rights. Procedures that ensure the Title IX rights of the complainant, while at the same time according any federally guaranteed due process to both parties involved, will lead to sound and supportable decisions. Of course, a school should ensure that steps to accord any due process rights do not restrict or unnecessarily delay the protections provided by Title IX to the complainant.

A school's procedures and practices will vary in detail, specificity, and components, reflecting differences in the age of its students, school size and administrative structure, state or local legal requirements (*e.g.*, mandatory reporting requirements for schools working with minors), and what it has learned from past experiences.

C-6. Is a school required to use separate grievance procedures for sexual violence complaints?

Answer: No. Under Title IX, a school may use student disciplinary procedures, general Title IX grievance procedures, sexual harassment procedures, or separate procedures to resolve sexual violence complaints. However, any procedures used for sexual violence complaints, including disciplinary procedures, must meet the Title IX requirement of affording a complainant a prompt and equitable resolution (as discussed in question C-5), including applying the preponderance of the evidence standard of review. As discussed in question C-3, the Title IX coordinator should review any process used to resolve complaints of sexual violence to ensure it complies with requirements for prompt and equitable resolution of these complaints. When using disciplinary procedures, which are often focused on the alleged perpetrator and can take considerable time, a school should be mindful of its obligation to provide interim measures to protect the complainant in the educational setting. For more information on timeframes and interim measures, see questions F-8 and G-1 to G-3.

D. Responsible Employees and Reporting²²

D-1. Which school employees are obligated to report incidents of possible sexual violence to school officials?

Answer: Under Title IX, whether an individual is obligated to report incidents of alleged sexual violence generally depends on whether the individual is a responsible employee of the school. A responsible employee must report incidents of sexual violence to the Title IX coordinator or other appropriate school designee, subject to the exemption for school counseling employees discussed in question E-3. This is because, as discussed in question A-4, a school is obligated to address sexual violence about which a responsible employee knew or should have known. As explained in question C-3, the Title IX coordinator must be informed of all reports and complaints raising Title IX issues, even if the report or

²² This document addresses only Title IX's reporting requirements. It does not address requirements under the Clery Act or other federal, state, or local laws, or an individual school's code of conduct.

complaint was initially filed with another individual or office, subject to the exemption for school counseling employees discussed in question E-3.

D-2. Who is a “responsible employee”?

Answer: According to OCR’s *2001 Guidance*, a responsible employee includes any employee: who has the authority to take action to redress sexual violence; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee; or whom a student could reasonably believe has this authority or duty.²³

A school must make clear to all of its employees and students which staff members are responsible employees so that students can make informed decisions about whether to disclose information to those employees. A school must also inform all employees of their own reporting responsibilities and the importance of informing complainants of: the reporting obligations of responsible employees; complainants’ option to request confidentiality and available confidential advocacy, counseling, or other support services; and complainants’ right to file a Title IX complaint with the school and to report a crime to campus or local law enforcement.

Whether an employee is a responsible employee will vary depending on factors such as the age and education level of the student, the type of position held by the employee, and consideration of both formal and informal school practices and procedures. For example, while it may be reasonable for an elementary school student to believe that a custodial staff member or cafeteria worker has the authority or responsibility to address student misconduct, it is less reasonable for a college student to believe that a custodial staff member or dining hall employee has this same authority.

As noted in response to question A-4, when a responsible employee knows or reasonably should know of possible sexual violence, OCR deems a school to have notice of the sexual violence. The school must take immediate and appropriate steps to investigate or otherwise determine what occurred (subject to the confidentiality provisions discussed in Section E), and, if the school determines that sexual violence created a hostile environment, the school must then take appropriate steps to address the situation. The

²³ The Supreme Court held that a school will only be liable for money damages in a private lawsuit where there is actual notice to a school official with the authority to address the alleged discrimination and take corrective action. *Gebser v. Lago Vista Ind. Sch. Dist.*, 524 U.S. 274, 290 (1998), and *Davis*, 524 U.S. at 642. The concept of a “responsible employee” under OCR’s guidance for administrative enforcement of Title IX is broader.

school has this obligation regardless of whether the student, student’s parent, or a third party files a formal complaint. For additional information on a school’s responsibilities to address student-on-student sexual violence, see question A-5. For additional information on training for school employees, see questions J-1 to J-3.

D-3. What information is a responsible employee obligated to report about an incident of possible student-on-student sexual violence?

Answer: Subject to the exemption for school counseling employees discussed in question E-3, a responsible employee must report to the school’s Title IX coordinator, or other appropriate school designee, all relevant details about the alleged sexual violence that the student or another person has shared and that the school will need to determine what occurred and to resolve the situation. This includes the names of the alleged perpetrator (if known), the student who experienced the alleged sexual violence, other students involved in the alleged sexual violence, as well as relevant facts, including the date, time, and location. A school must make clear to its responsible employees to whom they should report an incident of alleged sexual violence.

To ensure compliance with these reporting obligations, it is important for a school to train its responsible employees on Title IX and the school’s sexual violence policies and procedures. For more information on appropriate training for school employees, see question J-1 to J-3.

D-4. What should a responsible employee tell a student who discloses an incident of sexual violence?

Answer: Before a student reveals information that he or she may wish to keep confidential, a responsible employee should make every effort to ensure that the student understands: (i) the employee’s obligation to report the names of the alleged perpetrator and student involved in the alleged sexual violence, as well as relevant facts regarding the alleged incident (including the date, time, and location), to the Title IX coordinator or other appropriate school officials, (ii) the student’s option to request that the school maintain his or her confidentiality, which the school (*e.g.*, Title IX coordinator) will consider, and (iii) the student’s ability to share the information confidentially with counseling, advocacy, health, mental health, or sexual-assault-related services (*e.g.*, sexual assault resource centers, campus health centers, pastoral counselors, and campus mental health centers). As discussed in questions E-1 and E-2, if the student requests confidentiality, the Title IX coordinator or other appropriate school designee responsible for evaluating requests for confidentiality should make every effort to respect this request

and should evaluate the request in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students.

D-5. If a student informs a resident assistant/advisor (RA) that he or she was subjected to sexual violence by a fellow student, is the RA obligated under Title IX to report the incident to school officials?

Answer: As discussed in questions D-1 and D-2, for Title IX purposes, whether an individual is obligated under Title IX to report alleged sexual violence to the school's Title IX coordinator or other appropriate school designee generally depends on whether the individual is a responsible employee.

The duties and responsibilities of RAs vary among schools, and, therefore, a school should consider its own policies and procedures to determine whether its RAs are responsible employees who must report incidents of sexual violence to the Title IX coordinator or other appropriate school designee.²⁴ When making this determination, a school should consider if its RAs have the general authority to take action to redress misconduct or the duty to report misconduct to appropriate school officials, as well as whether students could reasonably believe that RAs have this authority or duty. A school should also consider whether it has determined and clearly informed students that RAs are generally available for confidential discussions and do not have the authority or responsibility to take action to redress any misconduct or to report any misconduct to the Title IX coordinator or other appropriate school officials. A school should pay particular attention to its RAs' obligations to report other student violations of school policy (*e.g.*, drug and alcohol violations or physical assault). If an RA is required to report other misconduct that violates school policy, then the RA would be considered a responsible employee obligated to report incidents of sexual violence that violate school policy.

If an RA is a responsible employee, the RA should make every effort to ensure that *before* the student reveals information that he or she may wish to keep confidential, the student understands the RA's reporting obligation and the student's option to request that the school maintain confidentiality. It is therefore important that schools widely disseminate policies and provide regular training clearly identifying the places where students can seek confidential support services so that students are aware of this information. The RA

²⁴ Postsecondary institutions should be aware that, regardless of whether an RA is a responsible employee under Title IX, RAs are considered "campus security authorities" under the Clery Act. A school's responsibilities in regard to crimes reported to campus security authorities are discussed in the Department's regulations on the Clery Act at 34 C.F.R. § 668.46.

should also explain to the student (again, before the student reveals information that he or she may wish to keep confidential) that, although the RA must report the names of the alleged perpetrator (if known), the student who experienced the alleged sexual violence, other students involved in the alleged sexual violence, as well as relevant facts, including the date, time, and location to the Title IX coordinator or other appropriate school designee, the school will protect the student's confidentiality to the greatest extent possible. Prior to providing information about the incident to the Title IX coordinator or other appropriate school designee, the RA should consult with the student about how to protect his or her safety and the details of what will be shared with the Title IX coordinator. The RA should explain to the student that reporting this information to the Title IX coordinator or other appropriate school designee does not necessarily mean that a formal complaint or investigation under the school's Title IX grievance procedure must be initiated if the student requests confidentiality. As discussed in questions E-1 and E-2, if the student requests confidentiality, the Title IX coordinator or other appropriate school designee responsible for evaluating requests for confidentiality should make every effort to respect this request and should evaluate the request in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students.

Regardless of whether a reporting obligation exists, all RAs should inform students of their right to file a Title IX complaint with the school and report a crime to campus or local law enforcement. If a student discloses sexual violence to an RA who is a responsible employee, the school will be deemed to have notice of the sexual violence even if the student does not file a Title IX complaint. Additionally, all RAs should provide students with information regarding on-campus resources, including victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance. RAs should also be familiar with local rape crisis centers or other off-campus resources and provide this information to students.

E. Confidentiality and a School's Obligation to Respond to Sexual Violence

E-1. How should a school respond to a student's request that his or her name not be disclosed to the alleged perpetrator or that no investigation or disciplinary action be pursued to address the alleged sexual violence?

Answer: Students, or parents of minor students, reporting incidents of sexual violence sometimes ask that the students' names not be disclosed to the alleged perpetrators or that no investigation or disciplinary action be pursued to address the alleged sexual violence. OCR strongly supports a student's interest in confidentiality in cases involving sexual violence. There are situations in which a school must override a student's request

for confidentiality in order to meet its Title IX obligations; however, these instances will be limited and the information should only be shared with individuals who are responsible for handling the school's response to incidents of sexual violence. Given the sensitive nature of reports of sexual violence, a school should ensure that the information is maintained in a secure manner. A school should be aware that disregarding requests for confidentiality can have a chilling effect and discourage other students from reporting sexual violence. In the case of minors, state mandatory reporting laws may require disclosure, but can generally be followed without disclosing information to school personnel who are not responsible for handling the school's response to incidents of sexual violence.²⁵

Even if a student does not specifically ask for confidentiality, to the extent possible, a school should only disclose information regarding alleged incidents of sexual violence to individuals who are responsible for handling the school's response. To improve trust in the process for investigating sexual violence complaints, a school should notify students of the information that will be disclosed, to whom it will be disclosed, and why. Regardless of whether a student complainant requests confidentiality, a school must take steps to protect the complainant as necessary, including taking interim measures before the final outcome of an investigation. For additional information on interim measures see questions G-1 to G-3.

For Title IX purposes, if a student requests that his or her name not be revealed to the alleged perpetrator or asks that the school not investigate or seek action against the alleged perpetrator, the school should inform the student that honoring the request may limit its ability to respond fully to the incident, including pursuing disciplinary action against the alleged perpetrator. The school should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. This includes retaliatory actions taken by the school and school officials. When a school knows or reasonably should know of possible retaliation by other students or third parties, including threats, intimidation, coercion, or discrimination (including harassment), it must take immediate

²⁵ The school should be aware of the alleged student perpetrator's right under the Family Educational Rights and Privacy Act ("FERPA") to request to inspect and review information about the allegations if the information directly relates to the alleged student perpetrator and the information is maintained by the school as an education record. In such a case, the school must either redact the complainant's name and all identifying information before allowing the alleged perpetrator to inspect and review the sections of the complaint that relate to him or her, or must inform the alleged perpetrator of the specific information in the complaint that are about the alleged perpetrator. See 34 C.F.R. § 99.12(a) The school should also make complainants aware of this right and explain how it might affect the school's ability to maintain complete confidentiality.

and appropriate steps to investigate or otherwise determine what occurred. Title IX requires the school to protect the complainant and ensure his or her safety as necessary. See question K-1 regarding retaliation.

If the student still requests that his or her name not be disclosed to the alleged perpetrator or that the school not investigate or seek action against the alleged perpetrator, the school will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the student who reported the sexual violence. As discussed in question C-3, the Title IX coordinator is generally in the best position to evaluate confidentiality requests. Because schools vary widely in size and administrative structure, OCR recognizes that a school may reasonably determine that an employee other than the Title IX coordinator, such as a sexual assault response coordinator, dean, or other school official, is better suited to evaluate such requests. Addressing the needs of a student reporting sexual violence while determining an appropriate institutional response requires expertise and attention, and a school should ensure that it assigns these responsibilities to employees with the capability and training to fulfill them. For example, if a school has a sexual assault response coordinator, that person should be consulted in evaluating requests for confidentiality. The school should identify in its Title IX policies and procedures the employee or employees responsible for making such determinations.

If the school determines that it can respect the student's request not to disclose his or her identity to the alleged perpetrator, it should take all reasonable steps to respond to the complaint consistent with the request. Although a student's request to have his or her name withheld may limit the school's ability to respond fully to an individual allegation of sexual violence, other means may be available to address the sexual violence. There are steps a school can take to limit the effects of the alleged sexual violence and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the student complainant. Examples include providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; providing training and education materials for students and employees; changing and publicizing the school's policies on sexual violence; and conducting climate surveys regarding sexual violence. In instances affecting many students, an alleged perpetrator can be put on notice of allegations of harassing behavior and be counseled appropriately without revealing, even indirectly, the identity of the student complainant. A school must also take immediate action as necessary to protect the student while keeping the identity of the student confidential. These actions may include providing support services to the student and changing living arrangements or course schedules, assignments, or tests.

E-2. What factors should a school consider in weighing a student's request for confidentiality?

Answer: When weighing a student's request for confidentiality that could preclude a meaningful investigation or potential discipline of the alleged perpetrator, a school should consider a range of factors.

These factors include circumstances that suggest there is an increased risk of the alleged perpetrator committing additional acts of sexual violence or other violence (e.g., whether there have been other sexual violence complaints about the same alleged perpetrator, whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence, whether the alleged perpetrator threatened further sexual violence or other violence against the student or others, and whether the sexual violence was committed by multiple perpetrators). These factors also include circumstances that suggest there is an increased risk of future acts of sexual violence under similar circumstances (e.g., whether the student's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group). Other factors that should be considered in assessing a student's request for confidentiality include whether the sexual violence was perpetrated with a weapon; the age of the student subjected to the sexual violence; and whether the school possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence).

A school should take requests for confidentiality seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including the student who reported the sexual violence. For example, if the school has credible information that the alleged perpetrator has committed one or more prior rapes, the balance of factors would compel the school to investigate the allegation of sexual violence, and if appropriate, pursue disciplinary action in a manner that may require disclosure of the student's identity to the alleged perpetrator. If the school determines that it must disclose a student's identity to an alleged perpetrator, it should inform the student prior to making this disclosure. In these cases, it is also especially important for schools to take whatever interim measures are necessary to protect the student and ensure the safety of other students. If a school has a sexual assault response coordinator, that person should be consulted in identifying safety risks and interim measures that are necessary to protect the student. In the event the student requests that the school inform the perpetrator that the student asked the school not to investigate or seek discipline, the school should honor this request and inform the alleged perpetrator that the school made the decision to go forward. For additional information on interim measures see questions G-1 to G-3. Any school officials responsible for

discussing safety and confidentiality with students should be trained on the effects of trauma and the appropriate methods to communicate with students subjected to sexual violence. See questions J-1 to J-3.

On the other hand, if, for example, the school has no credible information about prior sexual violence committed by the alleged perpetrator and the alleged sexual violence was not perpetrated with a weapon or accompanied by threats to repeat the sexual violence against the complainant or others or part of a larger pattern at a given location or by a particular group, the balance of factors would likely compel the school to respect the student's request for confidentiality. In this case the school should still take all reasonable steps to respond to the complaint consistent with the student's confidentiality request and determine whether interim measures are appropriate or necessary. Schools should be mindful that traumatic events such as sexual violence can result in delayed decisionmaking by a student who has experienced sexual violence. Hence, a student who initially requests confidentiality might later request that a full investigation be conducted.

E-3. What are the reporting responsibilities of school employees who provide or support the provision of counseling, advocacy, health, mental health, or sexual assault-related services to students who have experienced sexual violence?

Answer: OCR does not require campus mental-health counselors, pastoral counselors, social workers, psychologists, health center employees, or any other person with a professional license requiring confidentiality, or who is supervised by such a person, to report, without the student's consent, incidents of sexual violence to the school in a way that identifies the student. Although these employees may have responsibilities that would otherwise make them responsible employees for Title IX purposes, OCR recognizes the importance of protecting the counselor-client relationship, which often requires confidentiality to ensure that students will seek the help they need.

Professional counselors and pastoral counselors whose official responsibilities include providing mental-health counseling to members of the school community are not required by Title IX to report *any* information regarding an incident of alleged sexual violence to the Title IX coordinator or other appropriate school designee.²⁶

²⁶ The exemption from reporting obligations for pastoral and professional counselors under Title IX is consistent with the Clery Act. For additional information on reporting obligations under the Clery Act, see Office of Postsecondary Education, *Handbook for Campus Safety and Security Reporting* (2011), available at <http://www2.ed.gov/admins/lead/safety/handbook.pdf>. Similar to the Clery Act, for Title IX purposes, a pastoral counselor is a person who is associated with a religious order or denomination, is recognized by that religious

OCR recognizes that some people who provide assistance to students who experience sexual violence are not professional or pastoral counselors. They include all individuals who work or volunteer in on-campus sexual assault centers, victim advocacy offices, women’s centers, or health centers (“non-professional counselors or advocates”), including front desk staff and students. OCR wants students to feel free to seek their assistance and therefore interprets Title IX to give schools the latitude not to require these individuals to report incidents of sexual violence in a way that identifies the student without the student’s consent.²⁷ These non-professional counselors or advocates are valuable sources of support for students, and OCR strongly encourages schools to designate these individuals as confidential sources.

Pastoral and professional counselors and non-professional counselors or advocates should be instructed to inform students of their right to file a Title IX complaint with the school and a separate complaint with campus or local law enforcement. In addition to informing students about campus resources for counseling, medical, and academic support, these persons should also indicate that they are available to assist students in filing such complaints. They should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. This includes retaliatory actions taken by the school and school officials. When a school knows or reasonably should know of possible retaliation by other students or third parties, including threats, intimidation, coercion, or discrimination (including harassment), it must take immediate and appropriate steps to investigate or otherwise determine what occurred. Title IX requires the school to protect the complainant and ensure his or her safety as necessary.

In order to identify patterns or systemic problems related to sexual violence, a school should collect aggregate data about sexual violence incidents from non-professional counselors or advocates in their on-campus sexual assault centers, women’s centers, or

order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor. A professional counselor is a person whose official responsibilities include providing mental health counseling to members of the institution’s community and who is functioning within the scope of his or her license or certification. This definition applies even to professional counselors who are not employees of the school, but are under contract to provide counseling at the school. This includes individuals who are not yet licensed or certified as a counselor, but are acting in that role under the supervision of an individual who is licensed or certified. An example is a Ph.D. counselor-trainee acting under the supervision of a professional counselor at the school.

²⁷ Postsecondary institutions should be aware that an individual who is counseling students, but who does not meet the Clery Act definition of a pastoral or professional counselor, is not exempt from being a campus security authority if he or she otherwise has significant responsibility for student and campus activities. See fn. 24.

health centers. Such individuals should report only general information about incidents of sexual violence such as the nature, date, time, and general location of the incident and should take care to avoid reporting personally identifiable information about a student. Non-professional counselors and advocates should consult with students regarding what information needs to be withheld to protect their identity.

E-4. Is a school required to investigate information regarding sexual violence incidents shared by survivors during public awareness events, such as “Take Back the Night”?

Answer: No. OCR wants students to feel free to participate in preventive education programs and access resources for survivors. Therefore, public awareness events such as “Take Back the Night” or other forums at which students disclose experiences with sexual violence are not considered notice to the school for the purpose of triggering an individual investigation unless the survivor initiates a complaint. The school should instead respond to these disclosures by reviewing sexual assault policies, creating campus-wide educational programs, and conducting climate surveys to learn more about the prevalence of sexual violence at the school. Although Title IX does not require the school to investigate particular incidents discussed at such events, the school should ensure that survivors are aware of any available resources, including counseling, health, and mental health services. To ensure that the entire school community understands their Title IX rights related to sexual violence, the school should also provide information at these events on Title IX and how to file a Title IX complaint with the school, as well as options for reporting an incident of sexual violence to campus or local law enforcement.

F. Investigations and Hearings

Overview

F-1. What elements should a school’s Title IX investigation include?

Answer: The specific steps in a school’s Title IX investigation will vary depending on the nature of the allegation, the age of the student or students involved, the size and administrative structure of the school, state or local legal requirements (including mandatory reporting requirements for schools working with minors), and what it has learned from past experiences.

For the purposes of this document the term “investigation” refers to the process the school uses to resolve sexual violence complaints. This includes the fact-finding investigation and any hearing and decision-making process the school uses to determine: (1) whether or not the conduct occurred; and, (2) if the conduct occurred, what actions

the school will take to end the sexual violence, eliminate the hostile environment, and prevent its recurrence, which may include imposing sanctions on the perpetrator and providing remedies for the complainant and broader student population.

In all cases, a school's Title IX investigation must be adequate, reliable, impartial, and prompt and include the opportunity for both parties to present witnesses and other evidence. The investigation may include a hearing to determine whether the conduct occurred, but Title IX does not necessarily require a hearing.²⁸ Furthermore, neither Title IX nor the DCL specifies who should conduct the investigation. It could be the Title IX coordinator, provided there are no conflicts of interest, but it does not have to be. All persons involved in conducting a school's Title IX investigations must have training or experience in handling complaints of sexual violence and in the school's grievance procedures. For additional information on training, see question J-3.

When investigating an incident of alleged sexual violence for Title IX purposes, to the extent possible, a school should coordinate with any other ongoing school or criminal investigations of the incident and establish appropriate fact-finding roles for each investigator. A school 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. If the investigation includes forensic evidence, it may be helpful for a school to consult with local or campus law enforcement or a forensic expert to ensure that the evidence is correctly interpreted by school officials. For additional information on working with campus or local law enforcement see question F-3.

If a school uses its student disciplinary procedures to meet its Title IX obligation to resolve complaints of sexual violence promptly and equitably, it should recognize that imposing sanctions against the perpetrator, without additional remedies, likely will not be sufficient to eliminate the hostile environment and prevent recurrence as required by Title IX. If a school typically processes complaints of sexual violence through its disciplinary process and that process, including any investigation and hearing, meets the Title IX requirements discussed above and enables the school to end the sexual violence, eliminate the hostile environment, and prevent its recurrence, then the school may use that process to satisfy its Title IX obligations and does not need to conduct a separate Title IX investigation. As discussed in question C-3, the Title IX coordinator should review the disciplinary process

²⁸ This answer addresses only Title IX's requirements for investigations. It does not address legal rights or requirements under the U.S. Constitution, the Clery Act, or other federal, state, or local laws.

to ensure that it: (1) complies with the prompt and equitable requirements of Title IX; (2) allows for appropriate interim measures to be taken to protect the complainant during the process; and (3) provides for remedies to the complainant and school community where appropriate. For more information about interim measures, see questions G-1 to G-3, and about remedies, see questions H-1 and H-2.

The investigation may include, but is not limited to, conducting interviews of the complainant, the alleged perpetrator, and any witnesses; reviewing law enforcement investigation documents, if applicable; reviewing student and personnel files; and gathering and examining other relevant documents or evidence. While a school has flexibility in how it structures the investigative process, for Title IX purposes, a school must give the complainant any rights that it gives to the alleged perpetrator. A balanced and fair process that provides the same opportunities to both parties will lead to sound and supportable decisions.²⁹ Specifically:

- Throughout the investigation, the parties must have an equal opportunity to present relevant witnesses and other evidence.
- The school must use a preponderance-of-the-evidence (*i.e.*, more likely than not) standard in any Title IX proceedings, including any fact-finding and hearings.
- If the school permits one party to have lawyers or other advisors at any stage of the proceedings, it must do so equally for both parties. Any school-imposed restrictions on the ability of lawyers or other advisors to speak or otherwise participate in the proceedings must also apply equally.
- If the school permits one party to submit third-party expert testimony, it must do so equally for both parties.
- If the school provides for an appeal, it must do so equally for both parties.
- Both parties must be notified, in writing, of the outcome of both the complaint and any appeal (see question H-3).

²⁹ As explained in question C-5, the parties may have certain due process rights under the U.S. Constitution.

Intersection with Criminal Investigations

F-2. What are the key differences between a school's Title IX investigation into allegations of sexual violence and a criminal investigation?

Answer: A criminal investigation is intended to determine whether an individual violated criminal law; and, if at the conclusion of the investigation, the individual is tried and found guilty, the individual may be imprisoned or subject to criminal penalties. The U.S. Constitution affords criminal defendants who face the risk of incarceration numerous protections, including, but not limited to, the right to counsel, the right to a speedy trial, the right to a jury trial, the right against self-incrimination, and the right to confrontation. In addition, government officials responsible for criminal investigations (including police and prosecutors) normally have discretion as to which complaints from the public they will investigate.

By contrast, a Title IX investigation will never result in incarceration of an individual and, therefore, the same procedural protections and legal standards are not required. Further, while a criminal investigation is initiated at the discretion of law enforcement authorities, a Title IX investigation is not discretionary; a school has a duty under Title IX to resolve complaints promptly and equitably and to provide a safe and nondiscriminatory environment for all students, free from sexual harassment and sexual violence. Because the standards for pursuing and completing criminal investigations are different from those used for Title IX investigations, the termination of a criminal investigation without an arrest or conviction does not affect the school's Title IX obligations.

Of course, criminal investigations conducted by local or campus law enforcement may be useful for fact gathering if the criminal investigation occurs within the recommended timeframe for Title IX investigations; but, even if a criminal investigation is ongoing, a school must still conduct its own Title IX investigation.

A school should notify complainants of the right to file a criminal complaint and should not dissuade a complainant from doing so either during or after the school's internal Title IX investigation. Title IX does not require a school to report alleged incidents of sexual violence to law enforcement, but a school may have reporting obligations under state, local, or other federal laws.

F-3. How should a school proceed when campus or local law enforcement agencies are conducting a criminal investigation while the school is conducting a parallel Title IX investigation?

Answer: A school should not wait for the conclusion of a criminal investigation or criminal proceeding to begin its own Title IX investigation. Although a school may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, it is important for a school to understand that during this brief delay in the Title IX investigation, it must take interim measures to protect the complainant in the educational setting. The school should also continue to update the parties on the status of the investigation and inform the parties when the school resumes its Title IX investigation. For additional information on interim measures see questions G-1 to G-3.

If a school delays the fact-finding portion of a Title IX investigation, the school must promptly resume and complete its fact-finding for the Title IX investigation once it learns that the police department has completed its evidence gathering stage of the criminal investigation. The school should not delay its investigation until the ultimate outcome of the criminal investigation or the filing of any charges. OCR recommends that a school work with its campus police, local law enforcement, and local prosecutor's office to learn when the evidence gathering stage of the criminal investigation is complete. A school may also want to enter into a memorandum of understanding (MOU) or other agreement with these agencies regarding the protocols and procedures for referring allegations of sexual violence, sharing information, and conducting contemporaneous investigations. Any MOU or other agreement must allow the school 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.

The DCL states that in one instance a prosecutor's office informed OCR that the police department's evidence gathering stage typically takes three to ten calendar days, although the delay in the school's investigation may be longer in certain instances. OCR understands that this example may not be representative and that the law enforcement agency's process often takes more than ten days. OCR recognizes that the length of time for evidence gathering by criminal investigators will vary depending on the specific circumstances of each case.

Off-Campus Conduct

F-4. Is a school required to process complaints of alleged sexual violence that occurred off campus?

Answer: Yes. Under Title IX, a school must process all complaints of sexual violence, regardless of where the conduct occurred, to determine whether the conduct occurred in the context of an education program or activity or had continuing effects on campus or in an off-campus education program or activity.

A school must determine whether the alleged off-campus sexual violence occurred in the context of an education program or activity of the school; if so, the school must treat the complaint in the same manner that it treats complaints regarding on-campus conduct. In other words, if a school determines that the alleged misconduct took place in the context of an education program or activity of the school, the fact that the alleged misconduct took place off campus does not relieve the school of its obligation to investigate the complaint as it would investigate a complaint of sexual violence that occurred on campus.

Whether the alleged misconduct occurred in this context may not always be apparent from the complaint, so a school may need to gather additional information in order to make such a determination. Off-campus education programs and activities are clearly covered and include, but are not limited to: activities that take place at houses of fraternities or sororities recognized by the school; school-sponsored field trips, including athletic team travel; and events for school clubs that occur off campus (*e.g.*, a debate team trip to another school or to a weekend competition).

Even if the misconduct did not occur in the context of an education program or activity, a school must consider the effects of the off-campus misconduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity because students often experience the continuing effects of off-campus sexual violence while at school or in an off-campus education program or activity. The school cannot address the continuing effects of the off-campus sexual violence at school or in an off-campus education program or activity unless it processes the complaint and gathers appropriate additional information in accordance with its established procedures.

Once a school is on notice of off-campus sexual violence against a student, it must assess whether there are any continuing effects on campus or in an off-campus education program or activity that are creating or contributing to a hostile environment and, if so, address that hostile environment in the same manner in which it would address a hostile environment created by on-campus misconduct. The mere presence on campus or in an

off-campus education program or activity of the alleged perpetrator of off-campus sexual violence can have continuing effects that create a hostile environment. A school should also take steps to protect a student who alleges off-campus sexual violence from further harassment by the alleged perpetrator or his or her friends, and a school may have to take steps to protect other students from possible assault by the alleged perpetrator. In other words, the school should protect the school community in the same way it would had the sexual violence occurred on campus. Even if there are no continuing effects of the off-campus sexual violence experienced by the student on campus or in an off-campus education program or activity, the school still should handle these incidents as it would handle other off-campus incidents of misconduct or violence and consistent with any other applicable laws. For example, if a school, under its code of conduct, exercises jurisdiction over physical altercations between students that occur off campus outside of an education program or activity, it should also exercise jurisdiction over incidents of student-on-student sexual violence that occur off campus outside of an education program or activity.

Hearings³⁰

F-5. Must a school allow or require the parties to be present during an entire hearing?

Answer: If a school uses a hearing process to determine responsibility for acts of sexual violence, OCR does not require that the school allow a complainant to be present for the entire hearing; it is up to each school to make this determination. But if the school allows one party to be present for the entirety of a hearing, it must do so equally for both parties. At the same time, when requested, a school should make arrangements so that the complainant and the alleged perpetrator do not have to be present in the same room at the same time. These two objectives may be achieved by using closed circuit television or other means. Because a school has a Title IX obligation to investigate possible sexual violence, if a hearing is part of the school's Title IX investigation process, the school must not require a complainant to be present at the hearing as a prerequisite to proceed with the hearing.

³⁰ As noted in question F-1, the investigation may include a hearing to determine whether the conduct occurred, but Title IX does not necessarily require a hearing. Although Title IX does not dictate the membership of a hearing board, OCR discourages schools from allowing students to serve on hearing boards in cases involving allegations of sexual violence.

F-6. May every witness at the hearing, including the parties, be cross-examined?

Answer: OCR does not require that a school allow cross-examination of witnesses, including the parties, if they testify at the hearing. But if the school allows one party to cross-examine witnesses, it must do so equally for both parties.

OCR strongly discourages a school from allowing the parties to personally question or cross-examine each other during a hearing on alleged sexual violence. Allowing an alleged perpetrator to question a complainant directly may be traumatic or intimidating, and may perpetuate a hostile environment. A school may choose, instead, to allow the parties to submit questions to a trained third party (*e.g.*, the hearing panel) to ask the questions on their behalf. OCR recommends that the third party screen the questions submitted by the parties and only ask those it deems appropriate and relevant to the case.

F-7. May the complainant's sexual history be introduced at hearings?

Answer: Questioning about the complainant's sexual history with anyone other than the alleged perpetrator should not be permitted. Further, a school should recognize that the mere fact of a current or previous consensual dating or sexual relationship between the two parties does not itself imply consent or preclude a finding of sexual violence. The school should also ensure that hearings are conducted in a manner that does not inflict additional trauma on the complainant.

Timeframes

F-8. What stages of the investigation are included in the 60-day timeframe referenced in the DCL as the length for a typical investigation?

Answer: As noted in the DCL, the 60-calendar day timeframe for investigations is based on OCR's experience in typical cases. The 60-calendar day timeframe refers to the entire investigation process, which includes conducting the fact-finding investigation, holding a hearing or engaging in another decision-making process to determine whether the alleged sexual violence occurred and created a hostile environment, and determining what actions the school will take to eliminate the hostile environment and prevent its recurrence, including imposing sanctions against the perpetrator and providing remedies for the complainant and school community, as appropriate. Although this timeframe does not include appeals, a school should be aware that an unduly long appeals process may impact whether the school's response was prompt and equitable as required by Title IX.

OCR does not require a school to complete investigations within 60 days; rather OCR evaluates on a case-by-case basis whether the resolution of sexual violence complaints is prompt and equitable. Whether OCR considers an investigation to be prompt as required by Title IX will vary depending on the complexity of the investigation and the severity and extent of the alleged conduct. OCR recognizes that the investigation process may take longer if there is a parallel criminal investigation or if it occurs partially during school breaks. A school may need to stop an investigation during school breaks or between school years, although a school should make every effort to try to conduct an investigation during these breaks unless so doing would sacrifice witness availability or otherwise compromise the process.

Because timeframes for investigations vary and a school may need to depart from the timeframes designated in its grievance procedures, both parties should be given periodic status updates throughout the process.

G. Interim Measures

G-1. Is a school required to take any interim measures before the completion of its investigation?

Answer: Title IX requires a school to take steps to ensure equal access to its education programs and activities and protect the complainant as necessary, including taking interim measures before the final outcome of an investigation. The school should take these steps promptly once it has notice of a sexual violence allegation and should provide the complainant with periodic updates on the status of the investigation. The school should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow the complainant to change academic and extracurricular activities or his or her living, transportation, dining, and working situation as appropriate. The school should also ensure that the complainant is aware of his or her Title IX rights and any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance, and the right to report a crime to campus or local law enforcement. If a school does not offer these services on campus, it should enter into an MOU with a local victim services provider if possible.

Even when a school has determined that it can respect a complainant's request for confidentiality and therefore may not be able to respond fully to an allegation of sexual violence and initiate formal action against an alleged perpetrator, the school must take immediate action to protect the complainant while keeping the identity of the complainant confidential. These actions may include: providing support services to the

complainant; changing living arrangements or course schedules, assignments, or tests; and providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred.

G-2. How should a school determine what interim measures to take?

Answer: The specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. A school should consider a number of factors in determining what interim measures to take, including, for example, the specific need expressed by the complainant; the age of the students involved; the severity or pervasiveness of the allegations; any continuing effects on the complainant; whether the complainant and alleged perpetrator share the same residence hall, dining hall, class, transportation, or job location; and whether other judicial measures have been taken to protect the complainant (*e.g.*, civil protection orders).

In general, when taking interim measures, schools should minimize the burden on the complainant. For example, if the complainant and alleged perpetrator share the same class or residence hall, the school should not, as a matter of course, remove the complainant from the class or housing while allowing the alleged perpetrator to remain without carefully considering the facts of the case.

G-3. If a school provides all students with access to counseling on a fee basis, does that suffice for providing counseling as an interim measure?

Answer: No. Interim measures are determined by a school on a case-by-case basis. If a school determines that it needs to offer counseling to the complainant as part of its Title IX obligation to take steps to protect the complainant while the investigation is ongoing, it must not require the complainant to pay for this service.

H. Remedies and Notice of Outcome³¹

H-1. What remedies should a school consider in a case of student-on-student sexual violence?

Answer: Effective remedial action may include disciplinary action against the perpetrator, providing counseling for the perpetrator, remedies for the complainant and others, as well as changes to the school's overall services or policies. All services needed to remedy the hostile environment should be offered to the complainant. These remedies are separate from, and in addition to, any interim measure that may have been provided prior to the conclusion of the school's investigation. In any instance in which the complainant did not take advantage of a specific service (*e.g.*, counseling) when offered as an interim measure, the complainant should still be offered, and is still entitled to, appropriate final remedies that may include services the complainant declined as an interim measure. A refusal at the interim stage does not mean the refused service or set of services should not be offered as a remedy.

If a school uses its student disciplinary procedures to meet its Title IX obligation to resolve complaints of sexual violence promptly and equitably, it should recognize that imposing sanctions against the perpetrator, without more, likely will not be sufficient to satisfy its Title IX obligation to eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects. Additional remedies for the complainant and the school community may be necessary. If the school's student disciplinary procedure does not include a process for determining and implementing these remedies for the complainant and school community, the school will need to use another process for this purpose.

Depending on the specific nature of the problem, remedies for the complainant may include, but are not limited to:

- Providing an effective escort to ensure that the complainant can move safely between classes and activities;

³¹ As explained in question A-5, if a school delays responding to allegations of sexual violence or responds inappropriately, the school's own inaction may subject the student to be subjected to a hostile environment. In this case, in addition to the remedies discussed in this section, the school will also be required to remedy the effects of the sexual violence that could reasonably have been prevented had the school responded promptly and appropriately.

- Ensuring the complainant and perpetrator do not share classes or extracurricular activities;
- Moving the perpetrator or complainant (if the complainant requests to be moved) to a different residence hall or, in the case of an elementary or secondary school student, to another school within the district;
- Providing comprehensive, holistic victim services including medical, counseling and academic support services, such as tutoring;
- Arranging for the complainant to have extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty; and
- Reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the sexual violence and the misconduct that may have resulted in the complainant being disciplined.³²

Remedies for the broader student population may include, but are not limited to:

- Designating an individual from the school's counseling center who is specifically trained in providing trauma-informed comprehensive services to victims of sexual violence to be on call to assist students whenever needed;
- Training or retraining school employees on the school's responsibilities to address allegations of sexual violence and how to conduct Title IX investigations;
- Developing materials on sexual violence, which should be distributed to all students;
- Conducting bystander intervention and sexual violence prevention programs with students;
- Issuing policy statements or taking other steps that clearly communicate that the school does not tolerate sexual violence and will respond to any incidents and to any student who reports such incidents;

³² For example, if the complainant was disciplined for skipping a class in which the perpetrator was enrolled, the school should review the incident to determine if the complainant skipped class to avoid contact with the perpetrator.

- Conducting, in conjunction with student leaders, a campus climate check to assess the effectiveness of efforts to ensure that the school is free from sexual violence, and using that information to inform future proactive steps that the school will take;
- Targeted training for a group of students if, for example, the sexual violence created a hostile environment in a residence hall, fraternity or sorority, or on an athletic team; and
- Developing a protocol for working with local law enforcement as discussed in question F-3.

When a school is unable to conduct a full investigation into a particular incident (*i.e.*, when it received a general report of sexual violence without any personally identifying information), it should consider remedies for the broader student population in response.

H-2. If, after an investigation, a school finds the alleged perpetrator responsible and determines that, as part of the remedies for the complainant, it must separate the complainant and perpetrator, how should the school accomplish this if both students share the same major and there are limited course options?

Answer: If there are limited sections of required courses offered at a school and both the complainant and perpetrator are required to take those classes, the school may need to make alternate arrangements in a manner that minimizes the burden on the complainant. For example, the school may allow the complainant to take the regular sections of the courses while arranging for the perpetrator to take the same courses online or through independent study.

H-3. What information must be provided to the complainant in the notice of the outcome?

Answer: Title IX requires both parties to be notified, in writing, about the outcome of both the complaint and any appeal. OCR recommends that a school provide written notice of the outcome to the complainant and the alleged perpetrator concurrently.

For Title IX purposes, a school must inform the complainant as to whether or not it found that the alleged conduct occurred, any individual remedies offered or provided to the complainant or any sanctions imposed on the perpetrator that directly relate to the complainant, and other steps the school has taken to eliminate the hostile environment, if the school finds one to exist, and prevent recurrence. The perpetrator should not be notified of the individual remedies offered or provided to the complainant.

Sanctions that directly relate to the complainant (but that may also relate to eliminating the hostile environment and preventing recurrence) include, but are not limited to, requiring that the perpetrator stay away from the complainant until both parties graduate, prohibiting the perpetrator from attending school for a period of time, or transferring the perpetrator to another residence hall, other classes, or another school. Additional steps the school has taken to eliminate the hostile environment may include counseling and academic support services for the complainant and other affected students. Additional steps the school has taken to prevent recurrence may include sexual violence training for faculty and staff, revisions to the school's policies on sexual violence, and campus climate surveys. Further discussion of appropriate remedies is included in question H-1.

In addition to the Title IX requirements described above, the Clery Act requires, and FERPA permits, postsecondary institutions to inform the complainant of the institution's final determination and any disciplinary sanctions imposed on the perpetrator in sexual violence cases (as opposed to all harassment and misconduct covered by Title IX) not just those sanctions that directly relate to the complainant.³³

I. Appeals

I-1. What are the requirements for an appeals process?

Answer: While Title IX does not require that a school provide an appeals process, OCR does recommend that the school do so where procedural error or previously unavailable relevant evidence could significantly impact the outcome of a case or where a sanction is substantially disproportionate to the findings. If a school chooses to provide for an appeal of the findings or remedy or both, it must do so equally for both parties. The specific design of the appeals process is up to the school, as long as the entire grievance process, including any appeals, provides prompt and equitable resolutions of sexual violence complaints, and the school takes steps to protect the complainant in the educational setting during the process. Any individual or body handling appeals should be trained in the dynamics of and trauma associated with sexual violence.

If a school chooses to offer an appeals process it has flexibility to determine the type of review it will apply to appeals, but the type of review the school applies must be the same regardless of which party files the appeal.

³³ 20 U.S.C. § 1092(f) and 20 U.S.C. § 1232g(b)(6)(A).

I-2. Must an appeal be available to a complainant who receives a favorable finding but does not believe a sanction that directly relates to him or her was sufficient?

Answer: The appeals process must be equal for both parties. For example, if a school allows a perpetrator to appeal a suspension on the grounds that it is too severe, the school must also allow a complainant to appeal a suspension on the grounds that it was not severe enough. See question H-3 for more information on what must be provided to the complainant in the notice of the outcome.

J. Title IX Training, Education and Prevention³⁴

J-1. What type of training on Title IX and sexual violence should a school provide to its employees?

Answer: 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. Training for employees should include practical information about how to prevent and identify sexual violence, including same-sex sexual violence; the behaviors that may lead to and result in sexual violence; the attitudes of bystanders that may allow conduct to continue; the potential for revictimization by responders and its effect on students; appropriate methods for responding to a student who may have experienced sexual violence, including the use of nonjudgmental language; the impact of trauma on victims; and, as applicable, the person(s) to whom such misconduct must be reported. The training should also explain responsible employees' reporting obligation, including what should be included in a report and any consequences for the failure to report and the procedure for responding to students' requests for confidentiality, as well as provide the contact

³⁴ As explained earlier, although this document focuses on sexual violence, the legal principles apply to other forms of sexual harassment. Schools should ensure that any training they provide on Title IX and sexual violence also covers other forms of sexual harassment. Postsecondary institutions should also be aware of training requirements imposed under the Clery Act.

information for the school's Title IX coordinator. A school also should train responsible employees to inform students of: the reporting obligations of responsible employees; students' option to request confidentiality and available confidential advocacy, counseling, or other support services; and their right to file a Title IX complaint with the school and to report a crime to campus or local law enforcement. For additional information on the reporting obligations of responsible employees and others see questions D-1 to D-5.

There is no minimum number of hours required for Title IX and sexual violence training at every school, but this training should be provided on a regular basis. Each school should determine based on its particular circumstances how such training should be conducted, who has the relevant expertise required to conduct the training, and who should receive the training to ensure that the training adequately prepares employees, particularly responsible employees, to fulfill their duties under Title IX. A school should also have methods for verifying that the training was effective.

J-2. How should a school train responsible employees to report incidents of possible sexual harassment or sexual violence?

Answer: Title IX requires a school to take prompt and effective steps reasonably calculated to end sexual harassment and sexual violence that creates a hostile environment (*i.e.*, conduct that is sufficiently serious as to limit or deny a student's ability to participate in or benefit from the school's educational program and activity). But a school should not wait to take steps to protect its students until students have already been deprived of educational opportunities.

OCR therefore recommends that a school train responsible employees to report to the Title IX coordinator or other appropriate school official any incidents of sexual harassment or sexual violence that may violate the school's code of conduct or may create or contribute to the creation of a hostile environment. The school can then take steps to investigate and prevent any harassment or violence from recurring or escalating, as appropriate. For example, the school may separate the complainant and alleged perpetrator or conduct sexual harassment and sexual violence training for the school's students and employees. Responsible employees should understand that they do not need to determine whether the alleged sexual harassment or sexual violence actually occurred or that a hostile environment has been created before reporting an incident to the school's Title IX coordinator. Because the Title IX coordinator should have in-depth knowledge of Title IX and Title IX complaints at the school, he or she is likely to be in a better position than are other employees to evaluate whether an incident of sexual

harassment or sexual violence creates a hostile environment and how the school should respond. There may also be situations in which individual incidents of sexual harassment do not, by themselves, create a hostile environment; however when considered together, those incidents may create a hostile environment.

J-3. What type of training should a school provide to employees who are involved in implementing the school's grievance procedures?

Answer: All persons involved in implementing a school's grievance procedures (*e.g.*, Title IX coordinators, others who receive complaints, investigators, and adjudicators) must have training or experience in handling sexual violence complaints, and in the operation of the school's grievance procedures. The training should include information on working with and interviewing persons subjected to sexual violence; information on particular types of conduct that would constitute sexual violence, including same-sex sexual violence; the proper standard of review for sexual violence complaints (preponderance of the evidence); information on consent and the role drugs or alcohol can play in the ability to consent; the importance of accountability for individuals found to have committed sexual violence; the need for remedial actions for the perpetrator, complainant, and school community; how to determine credibility; how to evaluate evidence and weigh it in an impartial manner; how to conduct investigations; confidentiality; the effects of trauma, including neurobiological change; and cultural awareness training regarding how sexual violence may impact students differently depending on their cultural backgrounds.

In rare circumstances, employees involved in implementing a school's grievance procedures may be able to demonstrate that prior training and experience has provided them with competency in the areas covered in the school's training. For example, the combination of effective prior training and experience investigating complaints of sexual violence, together with training on the school's current grievance procedures may be sufficient preparation for an employee to resolve Title IX complaints consistent with the school's grievance procedures. In-depth knowledge regarding Title IX and sexual violence is particularly helpful. Because laws and school policies and procedures may change, the only way to ensure that all employees involved in implementing the school's grievance procedures have the requisite training or experience is for the school to provide regular training to all individuals involved in implementing the school's Title IX grievance procedures even if such individuals also have prior relevant experience.

J-4. What type of training on sexual violence should a school provide to its students?

Answer: To ensure that students understand their rights under Title IX, a school should provide age-appropriate training to its students regarding Title IX and sexual violence. At the elementary and secondary school level, schools should consider whether sexual violence training should also be offered to parents, particularly training on the school's process for handling complaints of sexual violence. Training may be provided separately or as part of the school's broader training on sex discrimination and sexual harassment. However, sexual violence is a unique topic that should not be assumed to be covered adequately in other educational programming or training provided to students. The school may want to include this training in its orientation programs for new students; training for student athletes and members of student organizations; and back-to-school nights. A school should consider educational methods that are most likely to help students retain information when designing its training, including repeating the training at regular intervals. OCR recommends that, at a minimum, the following topics (as appropriate) be covered in this training:

- Title IX and what constitutes sexual violence, including same-sex sexual violence, under the school's policies;
- the school's definition of consent applicable to sexual conduct, including examples;
- how the school analyzes whether conduct was unwelcome under Title IX;
- how the school analyzes whether unwelcome sexual conduct creates a hostile environment;
- reporting options, including formal reporting and confidential disclosure options and any timeframes set by the school for reporting;
- the school's grievance procedures used to process sexual violence complaints;
- disciplinary code provisions relating to sexual violence and the consequences of violating those provisions;
- effects of trauma, including neurobiological changes;
- the role alcohol and drugs often play in sexual violence incidents, including the deliberate use of alcohol and/or other drugs to perpetrate sexual violence;
- strategies and skills for bystanders to intervene to prevent possible sexual violence;
- how to report sexual violence to campus or local law enforcement and the ability to pursue law enforcement proceedings simultaneously with a Title IX grievance; and
- Title IX's protections against retaliation.

The training should also encourage students to report incidents of sexual violence. The training should explain that students (and their parents or friends) do not need to determine whether incidents of sexual violence or other sexual harassment created a

hostile environment before reporting the incident. A school also should be aware that persons may be deterred from reporting incidents if, for example, violations of school or campus rules regarding alcohol or drugs were involved. As a result, a school should review its disciplinary policy to ensure it does not have a chilling effect on students' reporting of sexual violence offenses or participating as witnesses. OCR recommends that a school inform students that the school's primary concern is student safety, and that use of alcohol or drugs never makes the survivor at fault for sexual violence.

It is also important for a school to educate students about the persons on campus to whom they can confidentially report incidents of sexual violence. A school's sexual violence education and prevention program should clearly identify the offices or individuals with whom students can speak confidentially and the offices or individuals who can provide resources such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance. It should also identify the school's responsible employees and explain that if students report incidents to responsible employees (except as noted in question E-3) these employees are required to report the incident to the Title IX coordinator or other appropriate official. This reporting includes the names of the alleged perpetrator and student involved in the sexual violence, as well as relevant facts including the date, time, and location, although efforts should be made to comply with requests for confidentiality from the complainant. For more detailed information regarding reporting and responsible employees and confidentiality, see questions D-1 to D-5 and E-1 to E-4.

K. Retaliation

K-1. Does Title IX protect against retaliation?

Answer: Yes. The Federal civil rights laws, including Title IX, make it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws. This means that if an individual brings concerns about possible civil rights problems to a school's attention, including publicly opposing sexual violence or filing a sexual violence complaint with the school or any State or Federal agency, it is unlawful for the school to retaliate against that individual for doing so. It is also unlawful to retaliate against an individual because he or she testified, or participated in any manner, in an OCR or school's investigation or proceeding. Therefore, if a student, parent, teacher, coach, or other individual complains formally or informally about sexual violence or participates in an OCR or school's investigation or proceedings related to sexual violence, the school is prohibited from retaliating (including intimidating, threatening, coercing, or in any way

discriminating against the individual) because of the individual's complaint or participation.

A school should take steps to prevent retaliation against a student who filed a complaint either on his or her own behalf or on behalf of another student, or against those who provided information as witnesses.

Schools should be aware that complaints of sexual violence may be followed by retaliation against the complainant or witnesses by the alleged perpetrator or his or her associates. When a school knows or reasonably should know of possible retaliation by other students or third parties, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. Title IX requires the school to protect the complainant and witnesses and ensure their safety as necessary. At a minimum, this includes making sure that the complainant and his or her parents, if the complainant is in elementary or secondary school, and witnesses know how to report retaliation by school officials, other students, or third parties by making follow-up inquiries to see if there have been any new incidents or acts of retaliation, and by responding promptly and appropriately to address continuing or new problems. A school should also tell complainants and witnesses that Title IX prohibits retaliation, and that school officials will not only take steps to prevent retaliation, but will also take strong responsive action if it occurs.

L. First Amendment

L-1. How should a school handle its obligation to respond to sexual harassment and sexual violence while still respecting free-speech rights guaranteed by the Constitution?

Answer: The DCL on sexual violence did not expressly address First Amendment issues because it focuses on unlawful physical sexual violence, which is not speech or expression protected by the First Amendment.

However, OCR's previous guidance on the First Amendment, including the 2001 Guidance, OCR's July 28, 2003, Dear Colleague Letter on the First Amendment,³⁵ and OCR's October 26, 2010, Dear Colleague Letter on harassment and bullying,³⁶ remain fully in effect. OCR has made it clear that the laws and regulations it enforces protect students from prohibited discrimination and do not restrict the exercise of any expressive activities or speech protected under the U.S. Constitution. Therefore, when a school works to prevent

³⁵ Available at <http://www.ed.gov/ocr/firstamend.html>.

³⁶ Available at <http://www.ed.gov/ocr/letters/colleague-201010.html>.

and redress discrimination, it must respect the free-speech rights of students, faculty, and other speakers.

Title IX protects students from sex discrimination; it does not regulate the content of speech. OCR recognizes that the offensiveness of a particular expression as perceived by some students, standing alone, is not a legally sufficient basis to establish a hostile environment under Title IX. Title IX also does not require, prohibit, or abridge the use of particular textbooks or curricular materials.³⁷

M. The Clery Act and the Violence Against Women Reauthorization Act of 2013

M-1. How does the Clery Act affect the Title IX obligations of institutions of higher education that participate in the federal student financial aid programs?

Answer: Institutions of higher education that participate in the federal student financial aid programs are subject to the requirements of the Clery Act as well as Title IX. The Clery Act requires institutions of higher education to provide current and prospective students and employees, the public, and the Department with crime statistics and information about campus crime prevention programs and policies. The Clery Act requirements apply to many crimes other than those addressed by Title IX. For those areas in which the Clery Act and Title IX both apply, the institution must comply with both laws. For additional information about the Clery Act and its regulations, please see <http://www2.ed.gov/admins/lead/safety/campus.html>.

M-2. Were a school's obligations under Title IX and the DCL altered in any way by the Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, including Section 304 of that Act, which amends the Clery Act?

Answer: No. The Violence Against Women Reauthorization Act has no effect on a school's obligations under Title IX or the DCL. The Violence Against Women Reauthorization Act amended the Violence Against Women Act and the Clery Act, which are separate statutes. Nothing in Section 304 or any other part of the Violence Against Women Reauthorization Act relieves a school of its obligation to comply with the requirements of Title IX, including those set forth in these Questions and Answers, the 2011 DCL, and the *2001 Guidance*. For additional information about the Department's negotiated rulemaking related to the Violence Against Women Reauthorization Act please see <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/vawa.html>.

³⁷ 34 C.F.R. § 106.42.

N. Further Federal Guidance

N-1. Whom should I contact if I have additional questions about the DCL or OCR's other Title IX guidance?

Answer: Anyone who has questions regarding this guidance, or Title IX should contact the OCR regional office that serves his or her state. Contact information for OCR regional offices can be found on OCR's webpage at <https://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>. If you wish to file a complaint of discrimination with OCR, you may use the online complaint form available at <http://www.ed.gov/ocr/complaintintro.html> or send a letter to the OCR enforcement office responsible for the state in which the school is located. You may also email general questions to OCR at ocr@ed.gov.

N-2. Are there other resources available to assist a school in complying with Title IX and preventing and responding to sexual violence?

Answer: Yes. OCR's policy guidance on Title IX is available on OCR's webpage at <http://www.ed.gov/ocr/publications.html#TitleIX>. In addition to the April 4, 2011, Dear Colleague Letter, OCR has issued the following resources that further discuss a school's obligation to respond to allegations of sexual harassment and sexual violence:

- Dear Colleague Letter: Harassment and Bullying (October 26, 2010), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>
- *Sexual Harassment: It's Not Academic* (Revised September 2008), <http://www2.ed.gov/about/offices/list/ocr/docs/ocrshpam.pdf>
- *Revised Sexual Harassment Guidance: Harassment of Students by Employees, Other Students, or Third Parties* (January 19, 2001), <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>

In addition to guidance from OCR, a school may also find resources from the Departments of Education and Justice helpful in preventing and responding to sexual violence:

- Department of Education’s Letter to Chief State School Officers on Teen Dating Violence Awareness and Prevention (February 28, 2013)
<https://www2.ed.gov/policy/gen/guid/secletter/130228.html>
- Department of Education’s National Center on Safe Supportive Learning Environments
<http://safesupportivelearning.ed.gov/>
- Department of Justice, Office on Violence Against Women
<http://www.ovw.usdoj.gov/>

Appendix C: Dear Colleague Letter on Title IX Coordinators, April 24, 2015

Appendix C



Notice of Language Assistance Dear Colleague Letter on Title IX Coordinators

Notice of Language Assistance: If you have difficulty understanding English, you may, free of charge, request language assistance services for this Department information by calling 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), or email us at: Ed.Language.Assistance@ed.gov.

Aviso a personas con dominio limitado del idioma inglés: Si usted tiene alguna dificultad en entender el idioma inglés, puede, sin costo alguno, solicitar asistencia lingüística con respecto a esta información llamando al 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o envíe un mensaje de correo electrónico a: Ed.Language.Assistance@ed.gov.

給英語能力有限人士的通知: 如果您不懂英語，或者使用英語有困難，您可以要求獲得向大眾提供的語言協助服務，幫助您理解教育部資訊。這些語言協助服務均可免費提供。如果您需要有關口譯或筆譯服務的詳細資訊，請致電 1-800-USA-LEARN (1-800-872-5327) (聽話障人士專線：1-800-877-8339)，或電郵：Ed.Language.Assistance@ed.gov。

Thông báo dành cho những người có khả năng Anh ngữ hạn chế: Nếu quý vị gặp khó khăn trong việc hiểu Anh ngữ thì quý vị có thể yêu cầu các dịch vụ hỗ trợ ngôn ngữ cho các tin tức của Bộ dành cho công chúng. Các dịch vụ hỗ trợ ngôn ngữ này đều miễn phí. Nếu quý vị muốn biết thêm chi tiết về các dịch vụ phiên dịch hay thông dịch, xin vui lòng gọi số 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), hoặc email: Ed.Language.Assistance@ed.gov.

영어 미숙자를 위한 공고: 영어를 이해하는 데 어려움이 있으신 경우, 교육부 정보 센터에 일반인 대상 언어 지원 서비스를 요청하실 수 있습니다. 이러한 언어 지원 서비스는 무료로 제공됩니다. 통역이나 번역 서비스에 대해 자세한 정보가 필요하신 경우, 전화번호 1-800-USA-LEARN (1-800-872-5327) 또는 청각 장애인용 전화번호 1-800-877-8339 또는 이메일주소 Ed.Language.Assistance@ed.gov 으로 연락하시기 바랍니다.

Paunawa sa mga Taong Limitado ang Kaalaman sa English: Kung nahihirapan kayong makaintindi ng English, maaari kayong humingi ng tulong ukol dito sa impormasyon ng Kagawaran mula sa nagbibigay ng serbisyo na pagtulong kaugnay ng wika. Ang serbisyo na pagtulong kaugnay ng wika ay libre. Kung kailangan ninyo ng dagdag na impormasyon tungkol sa mga serbisyo kaugnay ng pagpapaliwanag o pagsasalin, mangyari lamang tumawag sa 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o mag-email sa: Ed.Language.Assistance@ed.gov.

Уведомление для лиц с ограниченным знанием английского языка: Если вы испытываете трудности в понимании английского языка, вы можете попросить, чтобы вам предоставили перевод информации, которую Министерство Образования доводит до всеобщего сведения. Этот перевод предоставляется бесплатно. Если вы хотите получить более подробную информацию об услугах устного и письменного перевода, звоните по телефону 1-800-USA-LEARN (1-800-872-5327) (служба для слабослышащих: 1-800-877-8339), или отправьте сообщение по адресу: Ed.Language.Assistance@ed.gov.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

April 24, 2015

Dear Colleague:

I write to remind you that all school districts, colleges, and universities receiving Federal financial assistance must designate at least one employee to coordinate their efforts to comply with and carry out their responsibilities under Title IX of the Education Amendments of 1972 (Title IX), which prohibits sex discrimination in education programs and activities.¹ These designated employees are generally referred to as Title IX coordinators.

Your Title IX coordinator plays an essential role in helping you ensure that every person affected by the operations of your educational institution—including students, their parents or guardians, employees, and applicants for admission and employment—is aware of the legal rights Title IX affords and that your institution and its officials comply with their legal obligations under Title IX. To be effective, a Title IX coordinator must have the full support of your institution. It is therefore critical that all institutions provide their Title IX coordinators with the appropriate authority and support necessary for them to carry out their duties and use their expertise to help their institutions comply with Title IX.

The U.S. Department of Education's Office for Civil Rights (OCR) enforces Title IX for institutions that receive funds from the Department (recipients).² In our enforcement work, OCR has found that some of the most egregious and harmful Title IX violations occur when a recipient fails to designate a Title IX coordinator or when a Title IX coordinator has not been sufficiently trained or given the appropriate level of authority to oversee the recipient's compliance with Title IX. By contrast, OCR has found that an effective Title IX coordinator often helps a recipient provide equal educational opportunities to all students.

OCR has previously issued guidance documents that include discussions of the responsibilities of a Title IX coordinator, and those documents remain in full force. This letter incorporates that existing OCR guidance on Title IX coordinators and provides additional clarification and recommendations

¹ 34 C.F.R. § 106.8(a). Although Title IX applies to any recipient that offers education programs or activities, this letter focuses on Title IX coordinators designated by local educational agencies, schools, colleges, and universities.

² 20 U.S.C. §§ 1681–1688. The Department of Justice shares enforcement authority over Title IX with OCR.

as appropriate. This letter outlines the factors a recipient should consider when designating a Title IX coordinator, then describes the Title IX coordinator’s responsibilities and authority. Next, this letter reminds recipients of the importance of supporting Title IX coordinators by ensuring that the coordinators are visible in their school communities and have the appropriate training.

Also attached is a letter directed to Title IX coordinators that provides more information about their responsibilities and a Title IX resource guide. The resource guide includes an overview of the scope of Title IX, a discussion about Title IX’s administrative requirements, as well as a discussion of other key Title IX issues and references to Federal resources. The discussion of each Title IX issue includes recommended best practices for the Title IX coordinator to help your institution meet its obligations under Title IX. The resource guide also explains your institution’s obligation to report information to the Department that could be relevant to Title IX. The enclosed letter to Title IX coordinators and the resource guide may be useful for you to understand your institution’s obligations under Title IX.

Designation of a Title IX Coordinator

Educational institutions that receive Federal financial assistance are prohibited under Title IX from subjecting any person to discrimination on the basis of sex. Title IX authorizes the Department of Education to issue regulations to effectuate Title IX.³ Under those regulations, a recipient must designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX and the Department’s implementing regulations.⁴ This position may not be left vacant; a recipient must have at least one person designated and actually serving as the Title IX coordinator at all times.

In deciding to which senior school official the Title IX coordinator should report and what other functions (if any) that person should perform, recipients are urged to consider the following:⁵

A. Independence

The Title IX coordinator’s role should be independent to avoid any potential conflicts of interest and the Title IX coordinator should report directly to the recipient’s senior leadership, such as the district superintendent or the college or university president. Granting the Title IX coordinator this

³ The Department’s Title IX regulations, 34 C.F.R. Part 106, are available at <http://www.ed.gov/policy/rights/reg/ocr/edlite-34cfr106.html>.

⁴ 34 C.F.R. § 106.8(a).

⁵ Many of the principles in this document also apply generally to employees required to be designated to coordinate compliance with other civil rights laws enforced by OCR against educational institutions, such as Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; 34 C.F.R. § 104.7(a), and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131–12134; 28 C.F.R. § 35.107(a).

independence also ensures that senior school officials are fully informed of any Title IX issues that arise and that the Title IX coordinator has the appropriate authority, both formal and informal, to effectively coordinate the recipient's compliance with Title IX. Title IX does not categorically exclude particular employees from serving as Title IX coordinators. However, when designating a Title IX coordinator, a recipient should be careful to avoid designating an employee whose other job responsibilities may create a conflict of interest. For example, designating a disciplinary board member, general counsel, dean of students, superintendent, principal, or athletics director as the Title IX coordinator may pose a conflict of interest.

B. Full-Time Title IX Coordinator

Designating a full-time Title IX coordinator will minimize the risk of a conflict of interest and in many cases ensure sufficient time is available to perform all the role's responsibilities. If a recipient designates one employee to coordinate the recipient's compliance with Title IX and other related laws, it is critical that the employee has the qualifications, training, authority, and time to address all complaints throughout the institution, including those raising Title IX issues.

C. Multiple Coordinators

Although not required by Title IX, it may be a good practice for some recipients, particularly larger school districts, colleges, and universities, to designate multiple Title IX coordinators. For example, some recipients have found that designating a Title IX coordinator for each building, school, or campus provides students and staff with more familiarity with the Title IX coordinator. This familiarity may result in more effective training of the school community on their rights and obligations under Title IX and improved reporting of incidents under Title IX. A recipient that designates multiple coordinators should designate one lead Title IX coordinator who has ultimate oversight responsibility. A recipient should encourage all of its Title IX coordinators to work together to ensure consistent enforcement of its policies and Title IX.

Responsibilities and Authority of a Title IX Coordinator

The Title IX coordinator's primary responsibility is to coordinate the recipient's compliance with Title IX, including the recipient's grievance procedures for resolving Title IX complaints. Therefore, the Title IX coordinator must have the authority necessary to fulfill this coordination responsibility. The recipient must inform the Title IX coordinator of all reports and complaints raising Title IX issues, even if the complaint was initially filed with another individual or office or the investigation will be conducted by another individual or office. The Title IX coordinator is responsible for coordinating the recipient's responses to all complaints involving possible sex discrimination. This responsibility includes monitoring outcomes, identifying and addressing any patterns, and assessing effects on the campus climate. Such coordination can help the recipient avoid Title IX violations, particularly violations involving sexual harassment and violence, by preventing incidents

from recurring or becoming systemic problems that affect the wider school community. Title IX does not specify who should determine the outcome of Title IX complaints or the actions the school will take in response to such complaints. The Title IX coordinator could play this role, provided there are no conflicts of interest, but does not have to.

The Title IX coordinator must have knowledge of the recipient's policies and procedures on sex discrimination and should be involved in the drafting and revision of such policies and procedures to help ensure that they comply with the requirements of Title IX. The Title IX coordinator should also coordinate the collection and analysis of information from an annual climate survey if, as OCR recommends, the school conducts such a survey. In addition, a recipient should provide Title IX coordinators with access to information regarding enrollment in particular subject areas, participation in athletics, administration of school discipline, and incidents of sex-based harassment. Granting Title IX coordinators the appropriate authority will allow them to identify and proactively address issues related to possible sex discrimination as they arise.

Title IX makes it unlawful to retaliate against individuals—including Title IX coordinators—not just when they file a complaint alleging a violation of Title IX, but also when they participate in a Title IX investigation, hearing, or proceeding, or advocate for others' Title IX rights.⁶ Title IX's broad anti-retaliation provision protects Title IX coordinators from discrimination, intimidation, threats, and coercion for the purpose of interfering with the performance of their job responsibilities. A recipient, therefore, must not interfere with the Title IX coordinator's participation in complaint investigations and monitoring of the recipient's efforts to comply with and carry out its responsibilities under Title IX. Rather, a recipient should encourage its Title IX coordinator to help it comply with Title IX and promote gender equity in education.

Support for Title IX Coordinators

Title IX coordinators must have the full support of their institutions to be able to effectively coordinate the recipient's compliance with Title IX. Such support includes making the role of the Title IX coordinator visible in the school community and ensuring that the Title IX coordinator is sufficiently knowledgeable about Title IX and the recipient's policies and procedures. Because educational institutions vary in size and educational level, there are a variety of ways in which recipients can ensure that their Title IX coordinators have community-wide visibility and comprehensive knowledge and training.

⁶ 34 C.F.R. § 106.71 (incorporating by reference 34 C.F.R. § 100.7(e)).

A. Visibility of Title IX Coordinators

Under the Department’s Title IX regulations, a recipient has specific obligations to make the role of its Title IX coordinator visible to the school community. A recipient must post a notice of nondiscrimination stating that it does not discriminate on the basis of sex and that questions regarding Title IX may be referred to the recipient’s Title IX coordinator or to OCR. The notice must be included in any bulletins, announcements, publications, catalogs, application forms, or recruitment materials distributed to the school community, including all applicants for admission and employment, students and parents or guardians of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient.⁷

In addition, the recipient must always notify students and employees of the name, office address, telephone number, and email address of the Title IX coordinator, including in its notice of nondiscrimination.⁸ Because it may be unduly burdensome for a recipient to republish printed materials that include the Title IX coordinator’s name and individual information each time a person leaves the Title IX coordinator position, a recipient may identify its coordinator only through a position title in printed materials and may provide an email address established for the position of the Title IX coordinator, such as TitleIXCoordinator@school.edu, so long as the email is immediately redirected to the employee serving as the Title IX coordinator. However, the recipient’s website must reflect complete and current information about the Title IX coordinator.

Recipients with more than one Title IX coordinator must notify students and employees of the lead Title IX coordinator’s contact information in its notice of nondiscrimination, and should make available the contact information for its other Title IX coordinators as well. In doing so, recipients should include any additional information that would help students and employees identify which Title IX coordinator to contact, such as each Title IX coordinator’s specific geographic region (*e.g.*, a particular elementary school or part of a college campus) or Title IX area of specialization (*e.g.*, gender equity in academic programs or athletics, harassment, or complaints from employees).

The Title IX coordinator’s contact information must be widely distributed and should be easily found on the recipient’s website and in various publications.⁹ By publicizing the functions and responsibilities of the Title IX coordinator, the recipient demonstrates to the school community its commitment to complying with Title IX and its support of the Title IX coordinator’s efforts.

⁷ 34 C.F.R. § 106.9.

⁸ 34 C.F.R. § 106.8(a).

⁹ 34 C.F.R. § 106.9.

Supporting the Title IX coordinator in the establishment and maintenance of a strong and visible role in the community helps to ensure that members of the school community know and trust that they can reach out to the Title IX coordinator for assistance. OCR encourages recipients to create a page on the recipient's website that includes the name and contact information of its Title IX coordinator(s), relevant Title IX policies and grievance procedures, and other resources related to Title IX compliance and gender equity. A link to this page should be prominently displayed on the recipient's homepage.

To supplement the recipient's notification obligations, the Department collects and publishes information from educational institutions about the employees they designate as Title IX coordinators. OCR's Civil Rights Data Collection (CRDC) collects information from the nation's public school districts and elementary and secondary schools, including whether they have civil rights coordinators for discrimination on the basis of sex, race, and disability, and the coordinators' contact information.¹⁰ The Department's Office of Postsecondary Education collects information about Title IX coordinators from postsecondary institutions in reports required under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act and the Higher Education Opportunity Act.¹¹

B. Training of Title IX Coordinators

Recipients must ensure that their Title IX coordinators are appropriately trained and possess comprehensive knowledge in all areas over which they have responsibility in order to effectively carry out those responsibilities, including the recipients' policies and procedures on sex discrimination and all complaints raising Title IX issues throughout the institution. The resource guide accompanying this letter outlines some of the key issues covered by Title IX and provides references to Federal resources related to those issues. In addition, the coordinators should be knowledgeable about other applicable Federal and State laws, regulations, and policies that overlap with Title IX.¹² In most cases, the recipient will need to provide an employee with training to act as its Title IX coordinator. The training should explain the different facets of Title IX, including regulatory provisions, applicable OCR guidance, and the recipient's Title IX policies and grievance procedures. Because these laws, regulations, and OCR guidance may be updated, and

¹⁰ OCR began collecting this information through the CRDC for the 2013-2014 school year. More information about the CRDC is available at <http://www.ed.gov/ocr/data.html>.

¹¹ The Department will begin collecting this information in 2015. More information about the Clery Act data collection is available at <http://www.ed.gov/admins/lead/safety/campus.html>.

¹² See, e.g., the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g, and its implementing regulations, 34 C.F.R. Part 99; and the Clery Act, 20 U.S.C. § 1092(f), and its implementing regulations, 34 C.F.R. Part 668. These documents only address an institution's compliance with Title IX and do not address its obligations under other Federal laws, such as the Clery Act.

recipient policies and procedures may be revised, the best way to ensure Title IX coordinators have the most current knowledge of Federal and State laws, regulations, and policies relating to Title IX and gender equity is for a recipient to provide regular training to the Title IX coordinator, as well as to all employees whose responsibilities may relate to the recipient's obligations under Title IX. OCR's regional offices can provide technical assistance, and opportunities for training may be available through Equity Assistance Centers, State educational agencies, private organizations, advocacy groups, and community colleges. A Title IX coordinator may also find it helpful to seek mentorship from a more experienced Title IX coordinator and to collaborate with other Title IX coordinators in the region (or who serve similar institutions) to share information, knowledge, and expertise.

In rare circumstances, an employee's prior training and experience may sufficiently prepare that employee to act as the recipient's Title IX coordinator. For example, the combination of effective prior training and experience investigating complaints of sex discrimination, together with training on current Title IX regulations, OCR guidance, and the recipient institution's policies and grievance procedures may be sufficient preparation for that employee to effectively carry out the responsibilities of the Title IX coordinator.

Conclusion

Title IX coordinators are invaluable resources to recipients and students at all educational levels. OCR is committed to helping recipients and Title IX coordinators understand and comply with their legal obligations under Title IX. If you need technical assistance, please contact the OCR regional office serving your State or territory by visiting <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm> or call OCR's Customer Service Team at 1-800-421-3481; TDD 1-800-877-8339.

Thank you for supporting your Title IX coordinators to help ensure that all students have equal access to educational opportunities, regardless of sex. I look forward to continuing to work with recipients nationwide to help ensure that each and every recipient has at least one knowledgeable Title IX coordinator with the authority and support needed to prevent and address sex discrimination in our nation's schools.

Sincerely,

/s/

Catherine E. Lhamon

Assistant Secretary for Civil Rights

Appendix D: Letter of Interest Emailed to Potential Study Participants

September 17, 2014

Dear -----,

I am a doctoral candidate in the higher education program at the University of Michigan conducting my dissertation research on ways universities develop responses to outside legal pressures.

My study examines the interplay between the complex institutional considerations of compliance obligations, legal risks, shared governance, and institutional vision through the quickly evolving area of federal oversight on **campus sexual violence and misconduct**. My research is designed to look beyond institutional policies to examine the mechanisms that enable university decision makers to develop expansive policies that not only advance institutional interests and risk management obligations, but might also serve to address the public good. The intent of my research is to examine how institutional policy is negotiated around an ambiguous, multi-interest regulatory prompt. It is not to inquire into individual cases, outcomes, or the efficacy of specific policies.

I am writing to explore whether you might consider being interviewed for my study. Using the U.S. Department of Education's Office for Civil Rights 2011 Dear Colleague Letter on campus sexual violence as a starting point, I am conducting case studies at three universities to examine institutional decision-making in response to changes to Title IX. In order to successfully examine the nuances from a broad range of perspectives, I will be interviewing stakeholders engaged in multiple dimensions of the issue. This may include Title IX coordinators, student affairs professionals, general counsel, faculty and student working groups, campus climate advisory committee members, counseling professionals, public safety directors, athletic directors, and other contributors to the review and development of the university's sexual misconduct protocols. Such a study is important to the field of higher education in order to expand our understanding of how institutions respond to their growing responsibilities under Title IX and other regulations. Knowing more about such responses will help to shape normative practices currently being redefined as universities are thrust into the role of investigators and adjudicators of serious crimes.

Your participation in this study would entail one 60-75 minute interview. If you are currently involved in reviewing and updating the University's protocols on sexual misconduct and felt comfortable with my observing any meetings addressing the issue, I would welcome the opportunity to observe (but not participate) in such meetings. Any observations would be at your discretion. Neither the University nor individuals participating in the study will be identified in my study write up. Instead, pseudonyms will be created and data reported in such a way as to

assure anonymity. The University of Michigan Institutional Review Board has determined that this research is exempt from IRB oversight.

Thank you for your time in reading this letter and considering my request. I would be delighted to talk with you further about this study and learn more about your work in this area. Email is the best way to reach me (larakov@umich.edu) to set up a time to talk or meet. I will follow up with you in a few days to determine your interest in participating in this study.

Very best wishes,

Lara

Lara Kovacheff Badke, JD
Ph.D. Candidate, Center for the Study of Higher and Postsecondary Education
Research Associate, The National Forum on Higher Education for the Public Good
University of Michigan

Appendix E: Interview Protocol

Intro

1. How would you describe your role at the University with respect to matters relating to campus sexual misconduct?
2. How did you become involved in the University's response to the Dear Colleague Letter?
3. What did you understand the University's values to be surrounding campus sexual misconduct at the time of the Dear Colleague Letter review?

Clarity

4. How did the University's review team define what it was being asked to do (goals and objectives)?
5. How did the team address ambiguities in interpreting the Dear Colleague Letter?

Compliance

6. Would you please describe for me the process that the team went through to respond to the Dear Colleague Letter directives?
7. Can you explain the policy/model created?
8. How does this model enhance the University's response and prevention of campus sexual assault and harassment?
9. What alternative models or courses of action did the team consider?
10. Why did the one chosen ultimately prevail?

Intragroup relations

11. Can you walk me through the team's dynamics as it addressed options?
12. How would you characterize the collaborative nature of the review team?

13. Can you give me a sense of how the diverse stakeholder groups at the table contributed to the policy's development?
14. Would you elaborate on any interests that seemed to carry more weight?

Prevention

15. How did the University's framing of campus sexual misconduct change following the review?
16. Have any new strategies emerged that might help the institution learn from this experience?
17. Can you describe any deliberations regarding populations in the university community who may present non-conventional needs? (examples of these populations could include the LGBTQ community or male survivors of sexual assault).

Re-framing

18. Can you describe any opportunities that have been created for the University to reflect on its response to the Dear Colleague Letter directives?
19. How do you think this University's response/model differs from those of peer institutions?
20. Do these differences provide any advantage over institutions that may have addressed the issue differently?

Concluding questions

21. Can you think of examples in which the University has made positive advances in response to a legal imperative?
22. How have such developments improved higher education practice?
23. How might these responses have contributed to the public good?

Appendix F: Select Examples of Open Coding, Axial Coding, and Selective Coding

Emergent theme from literature (deductive analysis): fulfilling legal requirements (compliance)		
Open Coding (inductive analysis): initial themes from data	Axial Coding creating categories from connections among themes	Selective Coding developing patterns by relating subordinate and sub- categories to core categories
balancing rights & obligations relationship building conflict, tension collaboration lawyers' roles resolution of conflicts decision making model senior officers' authority ego/ self-serving interests dominant voices self-awareness heated debate compromise all voices heard pushing constituent's agenda review team composition controversy case-by-case flexibility constituent input media/ public image/ reputation going beyond compliance cross campus expertise focused/deliberative mindset importance of getting it right prior relationships/high trust constituent feedback important committed actors/players consultants as guides moving past status quo	<i>Review teams formed following "interim" response</i> <ul style="list-style-type: none"> - team composition - power - dynamics - ego - privilege - representation - collaboration - compromise - trust - decision models - institutional support - media/PR/ image - member dedication - student orientation <i>Relationships</i> <ul style="list-style-type: none"> - importance - trust - flexibility - buy-in - coalition building - managing group dynamics/ power/ expectations/ world views/ spotlight - facilitating discussions <i>Resources</i> <ul style="list-style-type: none"> - time - personnel - new hires - institutional support - prevention vs. response 	interpersonal dynamics critical in creating and putting into practice forward thinking policies and protocols

Emergent theme from literature (deductive analysis):
creating practices that provide institutional legitimacy/advantage

<p align="center">Open Coding (inductive analysis): initial themes from data</p>	<p align="center">Axial Coding creating categories from connections among themes</p>	<p align="center">Selective Coding developing patterns by relating subordinate and sub- categories to core categories</p>
<p>long-term approach organic process flexibility/ adaptability evolution in thinking disjointedness (silos) ongoing effort significant constituent input time demands (2 years) transparency information sharing pitfalls student activism hard work not black & white: lots of grey shifting culture lack of resources creating balance no built-in reflection advancing public good unintended consequences expanding knowledge expanding research opportunity for growth law enforcement attitudes students coming forward shifts in campus climate national dialogues on issues opportunity to advance change champions already in place no/little reflection applicability to other issues de-stigmatize sex assault disc creation of new positions DCL provided needed push</p>	<p><i>Process buy-in</i></p> <ul style="list-style-type: none"> - Student centered - Fair and impartial - Institutionally supported - Community vetted - Constituent informed - Broad expertise - Transparent - Research informed - Sharing info <p><i>Cultural shift</i></p> <ul style="list-style-type: none"> - discussions in new circles (i.e.: male faculty) - education more prevalent - links to underlying cultural contributors (Greek Life, drinking, partying) - awareness of neurobiology of trauma - reduction in victim blaming - more complaints, trust in system, better services 	<p align="center">intended/ unintended cultural and societal transformations</p>

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