

Jan. 27, 2014

Summary of Title IX review report

Background

On July 24, 2013, Chancellor Philip P. DiStefano announced that CU-Boulder was the subject of an investigation by the U.S. Department of Education Office of Civil Rights (OCR) into a complaint concerning the university's handling of a sexual assault involving a student. On this same day, DiStefano called for an external review of the campus's policies and procedures regarding sexual harassment, sexual assault and compliance with Title IX. The university hired law firm Pepper Hamilton to conduct this review. Representatives from Pepper Hamilton, widely respected as national Title IX experts, visited the campus in September 2013 and interviewed 29 employees who are responsible for implementing the university's policies on sexual harassment and sex assault policies. Individuals impacted by sexual harassment or assault were also interviewed. On Jan. 23, 2014, Pepper Hamilton delivered its report to CU-Boulder.

What CU-Boulder is doing well

Pepper Hamilton largely praised CU-Boulder for its Title IX practices. Accolades from the report include the following:

- “We find that the University’s policies and practices satisfy current legal requirements. We observed a strong level of commitment and dedication demonstrated by the individual implementers we encountered.”
- “We are impressed with the University’s Title IX response team ... In particular, we note that the University currently has an effective investigative model designed to achieve adequate and reliable investigations and a streamlined adjudicative process designed to provide prompt resolution of reports.”

Recommendations

The report offers several recommendations on how CU-Boulder can become even better in its Title IX practices. There are three key recommendations that the university will begin acting on immediately. They are:

1. Create a new Title IX coordinator position with ultimate campuswide oversight for all complaints (rather than the current practice of separate coordinators for student and employee cases). The coordinator will report to a senior administrator in the chancellor’s cabinet.
2. Enhance coordination and communication among the university’s Title IX response team.
3. Increase existing training, education and prevention programming for students, faculty and staff required by Title IX and the Violence Against Women Act.

Next steps

The university plans to begin the hiring process for a Title IX coordinator in the next few weeks, with a goal of that person being hired this semester. The university will also consider appointing or hiring deputy Title IX coordinators, including one with oversight for training and education programming. The university will work closely with student leaders and faculty and staff advisory committees to address the report’s recommendations. While CU-Boulder has valuable Title IX resources on various websites, the university will follow the report’s recommendation to create a central webpage with policies and reporting resources.

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January 23, 2014

Via E-mail - catherine.shea@colorado.edu

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Re: Report of External Audit

Dear Ms. Shea:

In September 2013, the University of Colorado Boulder (University) engaged Pepper Hamilton LLP to provide an external audit of the University's policies and procedures regarding sexual harassment and sexual assault and provide advice regarding compliance with Title IX of the Education Amendments of 1972 (Title IX) and other relevant authority.

We completed a review of the University's written policies and procedures related to sexual harassment and sexual assault. In order to fully assess the effectiveness of those policies and procedures, we also met with the team of administrators responsible for implementing the policies and procedures, including administrators from many departments across campus responsible for providing training, education and support services to the campus community. A detailed explanation of the scope of our engagement, including documents reviewed and individuals consulted, is attached as Appendix I.

Our review included interviews with community members, however, we recommend that the University conduct a detailed climate assessment to directly engage with all

Catherine Shea
Page 2
January 23, 2014

community members, continue the dialogue on these critical issues and tailor the University's Title IX response system to the needs of the Boulder community.

An effective institutional response to issues of sexual misconduct integrates three concepts: compliance with the state and federal regulatory guidance and legal authority; an understanding of the dynamics of sexual harassment, sexual assault, intimate partner violence¹ and trauma; and the recognition of an institution's unique policies, procedures, personnel, resources, culture and climate. The goal of this integration is a holistic response that provides balanced attention to the needs of the parties, fair and impartial investigation, and prompt and equitable resolution. The institutional response must also include coordinated training and educational programming for students, staff and faculty.

To provide a framework for our recommendations, we have included in Appendix II a brief substantive overview of Title IX, the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (Clery Act), and the Campus Sexual Violence Elimination Act (Campus SaVE Act), three of the key federal mandates that govern the University's response to allegations of sexual harassment, sexual assault, intimate partner violence and stalking. The Campus SaVE Act, enacted in March 2013, provides specific mandates with respect to domestic violence, dating violence and stalking, and the federal government expects institutions to come into compliance with this new legislation by March 2014.

I. Summary of Recommendations

We find that the University's policies and practices satisfy current legal requirements. We observed a strong level of commitment and dedication demonstrated by the individual implementers we encountered. The University has dedicated significant resources and personnel to preventing and responding to discrimination and harassment, as demonstrated by the broad array of individuals and departments that collectively work to provide effective institutional responses to incidents of sexual harassment, sexual assault, intimate partner violence and stalking.

We are impressed with the University's Title IX response team, which incorporates: a dedicated victim advocate office; support services for participants in the process, including resources through Counseling and Psychological Services (CAPS), Wardenburg Psychological Health and Psychiatry (PHP) and the Faculty and Staff Assistance Program (FSAP); experienced and trained investigators; a standing review committee for bias, thoroughness and sufficiency of information to support investigative findings; and a separate disciplinary authority for the imposition of discipline. In particular, we note that the University currently has an effective investigative model designed to achieve adequate and reliable

¹ Intimate partner violence is an umbrella term that includes dating violence, domestic violence and other forms of relationship violence.

Catherine Shea
Page 3
January 23, 2014

investigations and a streamlined adjudicative process designed to provide prompt resolution of reports.

Nonetheless, we recommend that the University consider enhancing current policies, procedures and practices through the recommended changes to structure, policy, implementation, and educational programs outlined in this letter. These recommendations reflect both the evolving nature of the regulatory guidance and an understanding of effective practices across the country. The goal of these recommendations is to enhance effective implementation and improve the integration of processes and coordination of information. While this letter provides both specific and high level recommendations, it is not meant to provide an exhaustive discussion of each issue nor a complete cataloging of all existing programs and resources.

We have previously shared these recommendations with the University, initially during our campus visit in September 2013 and subsequently in communications with the Title IX Working Group and University Counsel. Throughout our interaction with the University, we found the Title IX Working Group and University administrators responsive to our requests for access to information and personnel, self-reflective in their participation with this audit and receptive to accepting and integrating our recommendations.

II. Recommendations re: Structure

A. Designate One Title IX Coordinator with Ultimate Oversight Responsibility

We recommend that the University identify and designate one individual to serve as the Title IX Coordinator with oversight responsibility over *all* Title IX-related complaints, and that a second (or more) coordinator be designated as a Deputy Title IX Coordinator. The Title IX Coordinator should report directly to a senior level administrator, and be accessible to students, staff and faculty.

The University currently has two designated Title IX Coordinators: C. Katherine Erwin, Director of the Office of Discrimination and Harassment, Title IX Coordinator for complaints related to faculty or staff respondents, and Christina Gonzales, Associate Vice Chancellor and Dean of Students, Title IX Coordinator for complaints related to student respondents. Dean Gonzales is serving in this role in an interim capacity.

According to the *1997 Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, set forth by the Department of Education's Office for Civil Rights (OCR), "[a] school must designate at least one employee to coordinate its efforts to comply with and carry out its Title IX responsibilities." (*1997 Guidance*, available at <http://www2.ed.gov/about/offices/list/ocr/docs/sexhar01.html>). OCR echoes this guidance in the April 4, 2011 Dear Colleague Letter (DCL) directing all educational institutions that receive federal funding to designate a Title IX Coordinator and to "notify all students and employees of the name or title and contact information of the person designated to coordinate the recipient's

Catherine Shea
Page 4
January 23, 2014

compliance with Title IX.” (DCL, p. 7). As the University has already done, an educational institution may choose to identify more than one Title IX Coordinator. When doing so, however, OCR recommends designating one Title IX Coordinator with ultimate oversight responsibility:

While a school may choose to have a number of employees responsible for Title IX matters, it is also advisable to give one official responsibility for overall coordination and oversight of all sexual harassment complaints to ensure consistent practices and standards in handling complaints.

(1997 Guidance, available at <http://www2.ed.gov/about/offices/list/ocr/docs/sexhar01.html>).

OCR echoes this guidance in the DCL:

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. (DCL, p. 7)

According to OCR, the role of the Title IX Coordinator is to oversee the University’s centralized review, investigation and resolution of reports of sexual harassment and misconduct under the University’s complaint processes. The Title IX Coordinator should be an integral part of guiding and overseeing the University’s response, but preferably should remain in an advisory and oversight role, rather than serve as the individual who determines policy violations, imposes the sanction or decides an appeal. By remaining in this oversight role, the Title IX Coordinator can serve as an active team member and participant in the process, facilitate adherence to policies and timeframes, and maintain equity, fairness and impartiality in the Title IX response. With respect to the chain of command and reporting structure, the Title IX Coordinator may directly supervise Title IX investigators, adjudicators, Deputy Title IX Coordinators and other implementers. However, the Title IX Coordinator may have a limited ability to exercise effective oversight if asked to oversee actions taken by the Title IX Coordinator’s direct supervisor. In other words, it may be difficult for a Title IX Coordinator to review actions taken by an individual who structurally is in a position of authority or power over the Title IX Coordinator. Hence the University must pay close attention to the reporting structure to assure that the Coordinator has unencumbered oversight authority over any individuals involved in the University’s Title IX response.

The Title IX Coordinator should also receive, review and maintain records of all Title IX-related complaints to identify and address any systemic problems and coordinate the University’s compliance with Title IX. According to the 1997 Guidance, “[c]oordination of

Catherine Shea
Page 5
January 23, 2014

recordkeeping (for instance, in a confidential log maintained by the Title IX coordinator) will also ensure that the school can and will resolve recurring problems and identify students or employees who have multiple complaints filed against them.” (1997 *Guidance*, available at <http://www2.ed.gov/about/offices/list/ocr/docs/sexhar01.html>). Both the Office of Discrimination and Harassment and the Office of Student Conduct currently track Title IX-related complaints, but this information is not currently maintained centrally. In addition, as specified in the DCL, the Coordinator’s role and responsibilities should be clearly defined and contact information should be easily accessible to students, faculty and staff. The Coordinator must have adequate training on what constitutes sexual harassment and sexual violence, and must thoroughly understand how the University’s grievance procedures work. The Coordinator should oversee all Title IX complaints, serve as a check and balance for the University and provide oversight to ensure that the University is compliant with the federal guidance as noted above. The Title IX Coordinator should also be available to meet with students, staff and faculty, including complainants, respondents and third parties.

Finally, the Title IX Coordinator should oversee the provision of Title IX-related training and educational programs for students, staff and faculty.

B. Consider the Use of Deputy Title IX Coordinators

In keeping with the current structure, which utilizes two individuals as part of the University’s Title IX response, the University should consider designating one or more Deputy Title IX Coordinators to serve in a supporting role to the Coordinator. The Deputy Coordinators may be appointed based on function and role (e.g., case management, education and prevention) or, in keeping with the current structure, based on the constituency served by the coordinator (e.g., faculty and staff or students). One goal in designating Deputy Title IX Coordinators is to provide sufficient representation across the University’s diverse population to allow campus constituents to easily access a trusted individual within their sphere of interaction. Another goal is to provide targeted representation to assist in the delivery of educational programming and setting of tone to shape culture and climate.

Regardless of the structure, each individual should have a clearly defined role and the University should improve existing protocols to better promote timely coordination of information and prompt responses to complaints. Given the challenges of a large state university, the use of thoughtfully placed Deputy Title IX Coordinators can ensure that appropriately trained individuals are available to receive reports of Title IX-related misconduct, provide information as to resources and procedural options, meet with complainants and respondents, and facilitate access to interim remedies and measures.

Catherine Shea
Page 6
January 23, 2014

C. Coordinate Resources between the Office of Discrimination and Harassment (ODH) and the Office of Student Conduct (OSC)

The University's Title IX response is currently based in two separate departments: the Office of Discrimination and Harassment (ODH) and the Office of Student Conduct (OSC). ODH responds to all claims of harassment and discrimination on campus, including sexual harassment or assault involving faculty and staff members as respondents. OSC responds to all student conduct issues, including sexual harassment or assault involving students as respondents. In this way, each department has responsibilities that are far broader than Title IX. ODH has a part-time director (who also serves as director of the Office of Labor Relations in Human Resources), a full-time manager, four investigators and part-time administrative support. OSC has an interim director and two full-time investigators (the second of which was added in late fall 2013).

Based on our limited assessment of the staffing and functioning of these offices, we observed effective teamwork practices in investigations and report-writing in ODH that enhanced the quality of the University's response. Because of limited personnel in OSC, however, this same level of teamwork and coordination is not available. Because the University relied upon one Title IX investigator on the student side, this investigator, although experienced and effective, bore the sole responsibility for all complaints involving a student as respondent. With the addition of a second full-time investigator, the University doubled its investigative capacity in OSC, although it does not mirror the number of available investigators in ODH.

Given the overlap in issues between ODH and OSC, we encourage the University to explore an alternative model that combines the strengths of ODH and OSC in a meaningful way, and allows all six investigators to work together in a manner that enhances the balanced allocation of personnel and resources. The purpose of this evaluation is to determine if there is a way to maintain each office's strengths while increasing the benefits of team responses given staffing disparities and overlap of student and staff issues. Collaboration between these offices can create one central response system to all incidents of discrimination and harassment.

Regardless of any change to existing structure, we recommend that the University develop routine pathways, through internal operating protocols and template forms, between the two offices for the timely coordination of information, consistency in approach and concerted attention to culture and climate.

D. Designate Individuals Responsible for Ongoing Support of Parties

We recommend that the University separate the support functions from the investigative functions. Under Title IX, the Clery Act and the Campus SaVE Act, an educational institution must consider interim remedies and accommodations to alleviate the presence of a hostile environment. These remedies may include, for example, no contact orders, residence modifications or academic accommodations. At the same time that these interim measures are

Catherine Shea
Page 7
January 23, 2014

enacted, an educational institution must conduct a careful assessment of the facts. A structure that relies upon one individual to coordinate support and accommodations and conduct a neutral gathering of the facts can negatively affect the perception of the neutrality and integrity of the investigation and create blurred lines of responsibility from the perspective of a complainant or a respondent. We recommend that the responsibility for implementing support services (for students, faculty and staff) be managed by an individual who is not directly involved in the investigation of an allegation. This structural adjustment will enhance the delivery of service and enhance a positive view of the process.

As such, we specifically recommend that the University identify and designate appropriate individuals in student affairs or residence life (for students) and human resources (for faculty and staff) to routinely provide interim remedies and responses. These remedies and responses should include mechanisms that address both individual and community safety, implement no contact orders, provide academic support, adjust academic schedules or living arrangements, provide referrals for counseling or emotional support, and allow for other equitable solutions or responses for both parties. The interim remedy response system should include uniform follow-up and check-in communications (both oral and written) with both the complainant and the respondent; use template forms to foster consistent communication while still tailoring the content to reflect individualized attention; and provide protocols for coordination of information as necessary between University departments. Such a system will ensure that all appropriate remedies are available, offered, and where appropriate, implemented on a consistent basis. The system should also ensure that protective remedies are strictly enforced and any violation receives a prompt and equitable response to protect individual and community safety.

We recognize that the University provides confidential advocacy services to victims through the Office of Victim Assistance (OVA). We also note that services are available to respondents through Counseling and Psychological Services (CAPS), Wardenburg Health Center's Psychological Health and Psychiatry (PHP) and the Faculty and Staff Assistance Program (FSAP), although these services are counseling-based, rather than direct advocacy. We encourage the University to consider whether there is a need for additional forms of respondent support services.

We also recommend that the University examine existing emergency and continuing care resources to identify any gaps in content or coverage. This includes an assessment of the extent to which resources are available outside of business hours (24/7 availability, evenings, weekends, and school breaks), the visibility and transparency to students, the types of resources, the level of training and/or sensitivity by staff, whether there are any conflicts between the assigned roles of individuals providing services who also bear other job responsibilities on campus, and whether there is a clear articulation and understanding of confidential resources versus reporting options.

Catherine Shea
Page 8
January 23, 2014

III. Recommendations re: Policy

A. Alignment between Discrimination and Harassment Policy and Student Code of Conduct

We recommend that the University review the *Discrimination and Harassment Policy*, the *Sexual Harassment Policy and Procedures* and the relevant portions of the *Student Code of Conduct* to align these policies with the law and institutional practice. In particular, we recommend that the University provide information in writing as to how these policies intersect with one another, and direction as to which policy would apply to a student, faculty or staff member, either as a complainant or a respondent. As these policies follow the same procedural outline, it may be appropriate to combine the policies into one uniform policy that applies to all community members and applies to all forms of discrimination and harassment.

B. Recommended Policy Revisions

We recommend changes to the *Discrimination and Harassment Policy*, *Sexual Harassment Policy and Procedures* and the relevant provisions in the *Student Code of Conduct*. This is not an exhaustive list, but is included to demonstrate the types of modifications we recommend in order to fully implement the regulatory guidance, to incorporate the impact of the unique dynamics of sexual harassment, sexual violence, intimate partner violence, stalking and related trauma, and to enhance ease of access, readability and clarity. In some cases, the recommendations are substantive, in some organizational, and in some the recommendations are meant to align the policies with current practices.

In general, the policies and procedures should include language that is non-judgmental, easily understood and well organized by concept and theme. We remain available to provide specific recommendations for revisions to policy, including suggested language and additional discussion for each of the following policy recommendations.

We recommend that the University consider the following revisions to policy:

1. Include the preponderance of the evidence standard as the burden of proof in the *Sexual Harassment Policy and Procedures* and *Discrimination and Harassment Policy and Procedures* to comply with the DCL (this standard is already used in practice).
2. Include the Title IX Coordinator's name, title, role, and contact information in the *Sexual Harassment Policy and Procedures*, *Discrimination and Harassment Policy and Procedures*, and *Student Conduct Code Policies and Procedures* as required by the DCL.

Catherine Shea
Page 9
January 23, 2014

3. Include the Deputy Title IX Coordinator's name, title, role, and contact information in the *Sexual Harassment Policy and Procedures, Discrimination and Harassment Policy and Procedures, and Student Conduct Code Policies and Procedures*.
4. Expand the discussion on the procedures to follow when the University receives a complaint in the *Sexual Harassment Policy and Procedures, Discrimination and Harassment Policy and Procedures and Student Conduct Code Policies and Procedures* to provide clarity for a complainant or respondent about expected steps and time frames for major stages of the process.
5. Expand the discussion of the investigation process for resolving complaints in the *Sexual Harassment Policy and Procedures, Discrimination and Harassment Policy and Procedures and Student Conduct Code Policies and Procedures* to include clear statements that describe the process followed for prompt, fair and impartial investigations conducted by investigators who receive annual training on issues related to sexual harassment, sexual assault, intimate partner violence and stalking.
6. Expand the discussion of the standing review committee in the *Sexual Harassment Policy and Procedures, Discrimination and Harassment Policy and Procedures and Student Conduct Code Policies and Procedures* to explicitly define the committee's role and capture its current scope, which includes a review for bias and impartiality, thoroughness of the investigation and sufficiency to support the finding.
7. Provide a discussion of the University's process and options for complainants who request assistance, but choose not to make a formal report in the *Sexual Harassment Policy and Procedures, Discrimination and Harassment Policy and Procedures, and Student Conduct Code Policies and Procedures*.
8. Provide an enhanced discussion of the University's commitment to encouraging bystander engagement and intervention, including options that individuals may use to prevent harm in the *Sexual Harassment Policy and Procedures, Discrimination and Harassment Policy and Procedures, and Student Conduct Code Policies and Procedures*.
9. Revise the definition of hostile environment sexual harassment in the *Sexual Harassment Policy and Procedures* to include "severe, persistent or pervasive" conduct to conform with the guidance from OCR.

Catherine Shea
Page 10
January 23, 2014

10. Expand the definition of stalking in the *Student Conduct Code Policies and Procedures* to include cyber-stalking.
11. Provide a discussion of the University's education programs, including primary prevention and ongoing programs, to promote awareness of rape, sexual assault, acquaintance rape, domestic violence, dating violence and stalking in the *Student Conduct Code Policies and Procedures* and *Sexual Harassment Policy and Procedures*.
12. Review the language regarding amnesty in the *Student Conduct Code Policies and Procedures*. The phrase "minor infractions by the complainant will be addressed informally whenever possible" may not provide the reader with a clear understanding that this concept is meant to include amnesty for student conduct code violations related to the personal ingestion of alcohol or other drugs. The goal of this revision is to remove potential barriers to reporting that may result from fear that candor about personal use of drugs or alcohol may result in a conduct violation.
13. Include a section that outlines the difference between privacy and confidentiality in the *Sexual Harassment Policy and Procedures*, *Discrimination and Harassment Policy and Procedures*, and *Student Conduct Code Policies and Procedures*.
14. Provide an enhanced discussion of a supervisor's obligation to report sexual harassment and sexual misconduct in the *Sexual Harassment Policy and Procedures*, *Discrimination and Harassment Policy and Procedures*, and *Sexual Assault and Sexual Harassment Response Protocol for Faculty, Staff and Student Employees* to assure that: the definition of supervisor adequately describes or identifies the individuals on campus who the University requires to share reports with ODH or OSC; all reporting obligations are integrated and clearly communicated (Title IX, Title VII, Campus SaVE Act, Clery Act, and child abuse mandatory reporting²); and the parameters are clear about what information must be shared and with whom. Moreover, the University should review the information provided in the *Sexual Assault and Sexual Harassment Response Protocol for Faculty, Staff and Student Employees* and the Office of Victim Assistance webpages on the *Mandatory Reporting Policy at Boulder* (<http://cuvictimassistance.com/issues/mandatory-reporting-policy-at-cu-boulder>) and *How to Handle Mandatory Reporting*

² We note that Colorado law imposes a statutory duty to report suspected child abuse upon some, but not all, University employees. The University, however, expects all employees and students to report suspected child abuse.

Catherine Shea
Page 11
January 23, 2014

(<https://cuvictimassistance.sqsp.com/issues/mandatory-reporting>) for consistency in tone, content and expectations. Although this information is covered in greater detail in training for supervisors, it is important to set clear expectations in policy and other written resources regarding sharing of information.

15. Adjust the language regarding the time frame for reporting in the *Sexual Harassment Policy and Procedures*, *Discrimination and Harassment Policy and Procedures*, and *Student Conduct Code Policies and Procedures*. Although it is appropriate to include information about how delayed reporting may impact the University's ability to respond promptly and effectively, the current language regarding the effect of an "unreasonable delay" may pose a potential barrier to reporting.
16. Include information regarding a complainant's options to: 1) notify local law enforcement, including on-campus and local police; 2) receive assistance from campus authorities in notifying law enforcement; and 3) autonomy to decline to notify law enforcement in the *Sexual Harassment Policy and Procedures*, *Discrimination and Harassment Policy and Procedures*, and *Student Conduct Code Policies and Procedures*.
17. Include a discussion of interim protective measures and the availability of reasonable accommodations, including language stating that a complainant will receive written notification of the availability of these interim measures whether or not a complainant chooses to report the incident to campus police or local law enforcement in the *Sexual Harassment Policy and Procedures*, *Discrimination and Harassment Policy and Procedures*, and *Student Conduct Code Policies and Procedures*.
18. Include a prohibition against use of prior sexual history of the complainant and an explanation of the very limited circumstances and procedures for its use in the adjudication process in the *Sexual Harassment Policy and Procedures*, *Discrimination and Harassment Policy and Procedures* and *Student Conduct Code Policies and Procedures*.
19. Include in the investigation section of policy a definition, procedures and clear standards for the use of pattern evidence or prior acts committed by the respondent in the *Sexual Harassment Policy and Procedures*, *Discrimination and Harassment Policy and Procedures* and *Student Conduct Code Policies and Procedures*.
20. Include a statement that the University will provide simultaneous written notice of the outcome (including any changes before it becomes final,

Catherine Shea
Page 12
January 23, 2014

procedures for appeal, and the final outcome) to both the complainant and respondent in the *Sexual Harassment Policy and Procedures, Discrimination and Harassment Policy and Procedures* and *Student Conduct Code Policies and Procedures*.

21. Consult an expert as to the physiological effects and range of function with respect to “blackout” and, if appropriate, consider removing the state of “blackout” from the definition of incapacitation in the *Student Conduct Code Policies and Procedures*. A “blackout” is typically defined as a period of partial or complete memory loss caused by the consumption of large amounts of alcohol, particularly if consumed rapidly. Depending on the facts and circumstances, a person who experiences a “blackout” may or may not be considered incapacitated (and therefore unable to give consent).

C. Expand Availability of Remedies-Based Options for Resolution

We recommend that the University expand the available procedural options for resolution of a report of sexual harassment or misconduct to include a remedies-based response (sometimes referred to as an “informal resolution.”) A remedies-based resolution focuses on the welfare of the complainant and the safety of the campus community, but does not typically involve disciplinary action against the respondent. The University currently uses remedies-based resolutions for complaints against staff and faculty, but it is less clear how often OSC uses this type of resolution for complaints against students. The more visible inclusion of a remedies-based form of resolution that codifies or expands existing practices enhances access for complainants or third parties who seek anonymity or confidentiality or for whom pursuing formal disciplinary action may be a barrier to reporting or moving forward with an investigation or disciplinary process.

A remedies-based approach provides the University with additional mechanisms for resolving conduct that may not rise to the level of prohibited conduct, but nonetheless is significant enough to warrant a Title IX response. The inclusion of a remedies-based resolution option allows the University to eliminate a hostile environment and tailor responses to the unique facts and circumstances of a particular incident, particularly in cases where there is not a broader threat to individual or campus safety.

Available remedies include: targeted or broad-based educational programming or training, direct communication with the respondent by the complainant, communication with the respondent by the Title IX coordinator or a University administrator, or other forms of restorative justice options. Remedies-based resolutions may consist of interim (or long-term) accommodations for complainant and do not necessarily require notification of the respondent. Participation in all remedies-based resolution should be voluntary, and a complainant should have the opportunity to end the process at any time. Moreover, mediation, although appropriate for many forms of Title IX conduct, is not appropriate for cases involving sexual assault.

Catherine Shea
Page 13
January 23, 2014

D. Evaluate the Role of the Disciplinary Authority

We recommend that the University evaluate the role of the disciplinary authority to maintain oversight and avoid conflicts in roles and responsibilities. With respect to student respondents, having one individual serve as both Title IX Coordinator and, as Dean of Students, the disciplinary authority, may pose a potential conflict that would preclude the Title IX Coordinator from exercising impartial oversight of the sanctioning process.

As to staff and faculty respondents, we recommend that the University consider including the Provost or Director of Human Resources in the sanctioning process for those cases that involve potential termination of employment or dismissal of a tenured faculty member for cause. While we encourage the University to continue to include a direct supervisor in sanctioning decisions, we recommend including a more senior administrator as appropriate given the potential severity and permanency of dismissal.

IV. Recommendations re: Implementation of the Title IX Response

A. Reporting

We recommend that the University clarify and coordinate the reporting responsibilities for campus employees to integrate the multiple reporting requirements and systems under the Clery Act (Campus Security Authority), Title IX (responsible employee), mandatory child abuse reporting (for designated health care professionals) and Colorado state law. The goal is to share all reports involving sexual harassment or misconduct with the University's Title IX Team for prompt and equitable assessment, investigation, and resolution of reports based on consistent standards designed to eliminate the harassment, prevent its recurrence and address its effects.

We also recommend that the University create consistent communications for core messages to remove barriers to reporting and build trust in the response processes, including setting expectations regarding privacy and autonomy for a complainant in reporting incidents of sexual assault. Equally as important, the University should provide education about the difference between confidential resources (health providers, counselors, clergy, and rape crisis counselors) and reporting options. These efforts will assist campus constituencies in making informed choices as to how – or if – they wish to report to a University employee who will be required to share the report with the Title IX Team.

B. Coordinated Institutional Response

Although a report may be made to a wide range of employees on campus, we recommend the University implement a coordinated and integrated institutional response by conducting a Title IX assessment for every complaint involving Title IX-related conduct. The

Catherine Shea
Page 14
January 23, 2014

goal is to provide an institutional response that is both compliant with law and sensitive to the unique issues attendant to an individual case of sexual harassment or misconduct.

As a first step, identify the members of the Title IX Team, including the selection of appropriate Deputy Title IX Coordinators. Team members should include, at a minimum, the Title IX Coordinator, any Deputy Title IX Coordinators and a representative from OSC, ODH, and the University of Colorado Police Department (CUPD).

Second, the Title IX Coordinator, working with the Title IX Team, should clearly identify and articulate the roles and responsibilities of each University employee/department involved in responding to an incident of sexual harassment or assault. This step includes discussing the primary responsibility of each department, the coordination and sharing of information between and among relevant departments, and the protocols to follow when there are overlapping responsibilities or conflicts in roles.

Next, we recommend drafting internal operating procedures that funnel all information to a centralized Title IX assessment, outline workflow steps, build mechanisms for timely coordination of information, and outline the institutional response sequence following a report. The University should also identify all potential first responders and create first responder protocols that provide consistent messages to reporting parties and relay consistent information to the Title IX Coordinator/team in a timely manner.

Further, we recommend that the University enhance consistent and compliant responses through the use of template forms and communications, checklists, careful documentation and record keeping of all reports, investigative responses, and informal and formal resolutions. The University should also develop the factors and decision trees to guide the consistent and thoughtful application of policy and process. This method will provide the Title IX team with confidence in identifying challenging issues, including timely warnings, how to proceed if a complainant requests confidentiality, the use of interim remedies and other responses (including suspension) and how to respond to retaliation. This approach will also enhance consistent institutional responses and avoid ad hoc decision-making.

C. Investigative Protocols

We note that the University currently has an effective investigative model designed to achieve adequate and reliable investigations. The University has identified experienced investigators. Consistent with OCR guidance, the University should continue its current practice of using impartial and skilled investigators to conduct Title IX investigations. The investigators should maintain their training in the dynamics of sexual harassment, sexual assault, intimate partner violence, and stalking. Annual training for investigators should also include refresher sessions on the impact of drugs and alcohol, evaluating consent, and evaluating credibility in the context of word-against-word assessments.

Catherine Shea
Page 15
January 23, 2014

In general, a good investigative protocol, which we observed in our review of the University's investigative practices, should include: forensic interviews of the parties and other witnesses who may provide corroboration, preservation and collection of any physical evidence (including social media) and a synthesized presentation of the facts for review by the disciplinary authority. Moreover, a complainant and a respondent should have an equal opportunity to present evidence and participate in the process.

We recommend the following enhancements to the University's investigative protocols:

1. A team of two investigators should conduct investigations, using a collaborative investigative model in interviews and documentation. While this has long been the practice in ODH, OSC has only recently acquired a second investigator and, depending on the volume of cases, may not be staffed to use two investigators for every interview. As referenced earlier, a model that combines the investigative resources of ODH and OSC may position the University to use an investigative team of two for all Title IX reports;
2. Each party should have the opportunity to review one's own statement, and to the extent permissible by FERPA, the investigative report, for accuracy and factual errors prior to the final resolution; and
3. Each party should have the opportunity to offer information to the disciplinary authority, either in person or in writing, about the impact of the incident or potential sanction. While the *Student Code of Conduct* includes this protocol for cases involving student respondents and the Colorado State Personnel rules provide this opportunity for respondents who are classified staff, there does not appear to be a formal mechanism for the same type of input for cases involving faculty or non-classified staff as respondents.

D. Coordination with Law Enforcement

We recommend enhancing communication and current practices to improve the coordination of information between CUPD, the investigating campus department (typically ODH or OSC) and the Title IX Team. CUPD should provide all complainants who make a report directly to the CUPD with information about Title IX resources and procedural options.

Catherine Shea
Page 16
January 23, 2014

CUPD should also notify OSC of all complaints received by the Department, consistent with Colorado law³.

Consistent with current practices, when a complaint is initially reported to OSC, ODH or another member of the Title IX Team, the designated Title IX team member should inform the complainant of the option to report incidents that may be criminal in nature to law enforcement. The University should also maintain consistent protocols and clear pathways for coordination of information that enable the University to take immediate steps to protect individual and community safety, assess for pattern and carry out Clery and Campus SaVE Act requirements, including inclusion of criminal incidents in the daily crime log and assessment for timely warning.

We recommend that the University reconcile its federal Title IX obligations to respond to allegations about which it knew or should have known with the state law that prevents CUPD from sharing the victim's name or other identifying information with OSC and the Title IX Coordinator when the victim does not consent to release of this information. Coordination between CUPD, OSC and ODH allows for effective and informed multi-disciplinary responses. Moreover, the sharing of witness statements and other investigative records, as permitted by law, will reduce the impact of multiple interviews on the complainant, respondent and other witnesses. We recommend that the University implement this approach consistent with FERPA and state law enforcement investigative record protections.

We understand that CUPD has an effective working relationship with the Boulder Police Department and local prosecutor's office. We recommend that CUPD continue to enhance this collaborative relationship to encourage continued partnership and coordinated responses to incidents of sexual assault that allow the University to carry out its Title IX obligations.

E. Central Web Page

We note the University has valuable information regarding sexual harassment and misconduct policies and procedures, victim resources, and reporting requirements dispersed across a variety of webpages. We recommend centralizing the information on the University's website and creating a Sexual Assault Resource page which details, among other key concepts: emergency resources for safety and medical care; the importance of preservation of evidence; on-campus and off-campus confidential resources; on-campus and off-campus reporting options; coordination with local law enforcement; procedural options for resolving a report on campus;

³ Colorado law provides that a "state institution of higher education police department shall redact the victim's name and identifying information unless the victim agrees otherwise in writing with respect to each administrator or behavioral intervention task force to which the police department intends to release the information." Colorado Revised Statutes 23-5-141 (Higher Education Campus Police Information Sharing) (2012).

Catherine Shea
Page 17
January 23, 2014

and the interim protective remedies or other interim measures or accommodations available to students, staff and faculty. This website should also include links to the University's policies and procedures and can serve as a central repository for prevention and education programming (both calendar and content). A thorough and thoughtful policy is of little value unless all community members can easily access the information in the policy with a search of the school's website that is keyed to respond to common terms.

The website should contain a Frequently Asked Questions (FAQ) document that provides a simplified way for community members to access information that is detailed in formal policies. We also recommend supplementing the FAQ with a flow chart that visually outlines the process from the perspective of the parties who may use the process. The combination of the Resource Page, FAQ document and flow chart provide organized resources and support, direct access to relevant policies, and a visual demonstration of the University's process. These efforts will enhance the University's commitment to consistent application of policies and procedures in receiving reports, conducting investigations, and seeking resolutions of sexual harassment and assault allegations.

V. Recommendations re: Training and Education

A. Designate One Individual with Oversight Responsibility for the Coordination of All University Training and Educational Programming.

We recommend the University designate one individual with oversight responsibility for all University training and educational programming and coordination of messaging and content across departments, including but not limited to ODH, OSC and the Wardenburg Health Center. The University may designate this individual as a Deputy Title IX Coordinator for Training but, with or without this designation, this individual should work closely with the Title IX Coordinator to promote consistent information that is both legally required and tailored to the needs of the University community.

B. Coordinate Existing Training and Educational Programs Given by ODH, OSC, OVA and Community Health

In addition to designating a single individual with oversight responsibility, we recommend that representatives from ODH, OSC, OVA, Community Health and other relevant stakeholders on campus form an Education and Prevention Committee to develop a coordinated approach to education and training. Education and prevention require an integrated communications plan to effectively share University policies, prevention efforts, reporting options and resources with all constituency members. The University currently provides a robust training and education program, but could benefit from coordination of information, consistency in message and the development of a campaign to highlight the importance of prevention and risk reduction, foster increased reporting, and emphasize protective measures, including the prohibition against retaliation.

Catherine Shea
Page 18
January 23, 2014

In addition, the communications plan should include a diversified portfolio of training modalities designed to reach all constituencies, including: in person (both small group and broader community presentations), through the use of technology (online training modules, email communications and updates and a dedicated web page), passive education (posters, pamphlets and prevention materials) and, as appropriate, integration into coursework.

As a foundational matter, Title IX requires training of *all* community members regarding what constitutes sexual harassment and sexual violence, the institution's policies and disciplinary procedures, and the consequences of violating those policies. (DCL, p. 14-15) Moreover, all implementers (persons involved in implementing the grievance procedures, including the Title IX Coordinator, investigators, and adjudicators) must have training or experience in responding to complaints of sexual harassment and sexual violence and in the institution's grievance procedures. (DCL, p. 12).

The University has made a concerted effort to fulfill this mandate. In connection with ongoing efforts, we recommend that all community members receive training on the University's policies and procedures regarding sexual harassment and misconduct, including the difference between confidential resources and reporting options. Community members should receive information about how to identify and report sexual harassment and sexual assault, either as a complainant or a third party. Training should include: the University's prohibition against retaliation and highlight emergency resources; the importance of preservation of evidence, confidential medical treatment and counseling resources; and the availability of interim accommodations. Finally, training should also clearly outline the investigative processes and grievance procedures based on the roles of the parties and the nature of the incident. We note that many, if not all, of these components, are in place in existing training and educational programs and would benefit from coordination.

We recommend that the University expand educational programs for students to include: an online summer program for *all* students; orientation for first year undergraduate, graduate and transfer students; and residential programming for all residential students within the first six weeks of school. We recommend that a portion of this training be mandatory. This decision reflects both a commitment to the content and an effective way to reach all of the University's constituents. In addition, we recommend expanding educational offerings to include information about issues of sexual violence, gender equity, tolerance and diversity, alcohol and substance abuse, intimacy, consent, the "hook up" culture, social media, bullying, hazing, classism, racism, gender identity and sexual orientation, and other issues that can impact campus culture and the development and education of students.

Graduate students, staff and faculty should receive additional information about the University's consensual relationships policy and the importance of maintaining appropriate professional boundaries.

Catherine Shea
Page 19
January 23, 2014

In addition to providing the campus-wide training to all students described above, we recommend the University consider expanding training by providing specialized training on sexual harassment, sexual assault, intimate partner violence and stalking to targeted populations, including graduate students, athletes and other travel programs, residential social organizations, and other student leaders. Heightened sensitivity to these issues can give students in leadership roles the tools to prevent, de-escalate, and respond to potentially harmful situations.

With respect to new employee training, we applaud the University's mandatory training for all staff and student employees within the first 30 days of employment and a refresher course for current employees every five years. However, we recommend that the University consider shortening the refresher course to at least every three years, rather than five years. This increase in frequency reflects the University's commitment to the prevention of sexual harassment, sexual assault, intimate partner violence and stalking by providing timely, relevant and accessible information.

In addition to the above, we recommend that the University continue its ongoing efforts to provide training and education to all individuals on campus who may be a "first responder," the first point of contact (e.g. faculty, coaches, resident advisors, and peer advisors), or a "responsible employee" under Title IX. These individuals should receive practical information as to: how to identify and report sexual harassment and violence; how to respond to a report by addressing immediate safety, health, and well-being concerns; how to access support and emergency assistance; and how to connect the reporting party to the designated trained professionals who oversee the Title IX centralized process.

In order to maintain the current practice of providing a wide variety of reporting options for faculty, staff and students – a practice that will continue through the expanded use of Deputy Title IX Coordinators – the University should provide training for all "responsible employees" to share any report received with the Title IX Team. As noted earlier, all constituents on campus should be provided with information about the difference between confidential resources and reporting options in order to make an informed choice about sharing information with an employee who will be required to share the report to the Title IX Team. This will allow for a consistent institutional response and allow the University to carry out its Title IX responsibilities. Sharing a report with the Title IX Team means both sharing identifying information about the parties and the incident with the Title IX Team and connecting the complainant or third party reporter with the Title IX Coordinator or designated Team member for follow up and assessment of next steps to eliminate the harassment, prevent its recurrence and address its effects.

For those charged with implementing the University's responses, including individuals involved in investigating and/or adjudicating complaints, we recommend providing detailed and specific annual training on the University's policies and grievance procedures for handling complaints of sexual harassment, sexual violence, intimate partner violence and stalking and the dynamics of those issues. The individuals should also receive annual training on

Catherine Shea
Page 20
January 23, 2014

how to conduct an investigation and adjudication process that protects the safety of individuals and promotes accountability.

C. Expand Educational Programming to Incorporate Campus SaVE Act

The Campus SaVE Act requires programming for students and employees that addresses domestic violence, dating violence, sexual assault and stalking. Although the federal government has not set forth specific requirements, education programs should include: the definitions of consent, domestic violence, dating violence, sexual assault, and stalking; primary prevention and awareness programs for all incoming students and new employees, including safe and positive options for bystander intervention; information on risk reduction to recognize warning signs of abusive behavior; and ongoing prevention and awareness programs for students and faculty.

The University is cognizant of the evolving federal requirements and has formed a task force to implement the new requirements under the Campus SaVE Act.

VI. Conclusions

We recognize that many of our recommendations require additional resources and adjustments to staffing. We recommend that the University identify synergies and underutilized resources to fulfill these recommendations. Although there are many grant opportunities available to educational institutions, effective Title IX responses require an investment in personnel and programming by the University.

As stated earlier, we are impressed with the University's dedication and commitment to these issues, and are confident in the University's ability to integrate these recommendations effectively. We remain available to discuss these recommendations, or at the request of the University, to assist in their implementation.

Sincerely,



Gina Maisto Smith



Leslie M. Gomez

Appendix I: Scope of Engagement

In conducting our assessment of policies and procedures, we reviewed the following documents:

- Policies:
 - Discrimination and Harassment Policy and Procedures
 - Sexual Harassment Policy and Procedures
 - Sexual Assault and Sexual Harassment Response Protocol for Faculty, Staff and Student Employees
 - Student Conduct Code 2012-2013
 - Student Conduct Code 2013-2014
 - Conflict of Interest in Cases of Amorous Relationships
- Resource Materials
 - Guidelines for Filing a Complaint of Sexual Assault or Sexual Harassment
 - Mandatory Reporting - How to Handle Mandatory Reporting
 - Stop Discrimination and Harassment, published by the Office of Discrimination and Harassment (ODH)
 - Student Rights and Responsibilities, published by the Office of Student Conduct (OSC), Office of Victim Assistance (OVA) and University of Colorado Police Department
 - Summary of ODH Resolution Process
 - Understanding Discrimination and Sexual Harassment Handout
- Training Materials:
 - Discrimination and Harassment Training Requirements
 - ODH Training PowerPoint – Discrimination and Harassment
 - Additional training materials provided by the University
- Reports Issued by the University
 - University of Colorado Boulder, Office of Discrimination and Harassment, Fiscal Year 2012-2013 Statistical Report
 - University of Colorado Boulder, Office of Discrimination and Harassment, Fiscal Year 2011-2012 Statistical Report
 - 2012 Annual Security and Fire Safety Report

Catherine Shea
Page 22
January 23, 2014

- Resumes and qualification for the University's Title IX Coordinators and investigators from ODH and OSC
- Title IX Advisor Interim Report by Nancy Hogshead-Maker, August 4, 2009

We also reviewed the relevant sections of the following University websites:

- Office of Discrimination and Harassment (ODH)
- Office of Student Conduct (OSC)
- Office of Victim Assistance (OVA)
- University of Colorado Police Department (CUPD)
- Human Resources
- Center for Multicultural Affairs
- Disability Services
- Counseling and Psychological Services
- Gay Lesbian Bisexual Transgender Queer Resource Center
- Office of the ADA Coordinator
- Wardenburg Psychological Health and Psychiatry (Wardenburg)
- Women's Resource Center

In addition to our review of written policies and procedures, we met with campus stakeholders tasked with implementing the University's policies and procedures regarding sexual harassment and sexual assault. The goal of these meetings was twofold: 1) to fully assess the structure, practices and personnel resources; and 2) to seek community engagement and feedback. We spoke with the following individuals:

- Philip DiStefano, Chancellor
- Catherine Shea, Chief of Staff, Office of the Chancellor
- Deb Coffin, Vice Chancellor for Student Affairs
- Robert Boswell, Vice Chancellor for Diversity, Equity and Community Engagement
- Candice Bowen, Assistant Vice Chancellor, Human Relations
- Donald A. Misch, M.D., Senior Assistant Vice Chancellor for Health and Wellness, Director, Wardenburg Health Center

Catherine Shea
Page 23
January 23, 2014

- Christina Gonzales, Associate Vice Chancellor and Dean of Students, Title IX Coordinator
- C. Katherine Erwin, Director, ODH, Title IX Coordinator
- Ceal Barry, Associate Athletics Director and Senior Woman Administrator
- Jessica Ladd-Webert, Director, OVA
- John Sleeman, Jr., Esq., Senior Associate Managing Counsel, University Counsel
- Michelle Krech, Esq., Attorney, University Counsel
- Jessica Doty, Interim Director, OSC
- Leslee Morris, Investigator, OSC
- Alexandra Tracy-Ramirez, Investigator, OSC
- Llen Pomeroy, Manager, ODH
- Megan Clark, Investigator/Training Coordinator, ODH, and co-chair, Chancellor's Committee on Women
- Amanda Griffin Linsenmeyer, Director, Women's Resource Center
- Emily Pleghaar, Assistant Director, Residence Life
- Scarlet Bowen, Director, GLBTQ Resource Center
- Molly Fortuna, Associate Director of Clinics and Outreach, Wardenburg
- Teresa Wroe, Community Health, Division of Wardenburg Health Center
- Lee Scriggins, MSW, Strategies and Communication Community Health, Wardenburg Health Center
- Melissa Zak, CUPD
- Robert Axmacher, CUPD
- Ron Burns, CUPD
- Melinda Pickerill, Faculty Chair,
- Samira Rajabi, Student Chair, Chancellor's Committee on Women
- Chris Bader, First Year Transition Specialist
- Additional individuals impacted by sexual harassment or assault, including a limited number of student complainants

Appendix II: Regulatory Framework

I. Title IX

Title IX of the Education Amendments of 1972¹ is a federal law that prohibits discrimination on the basis of sex in education programs and activities and in employment. Title IX applies to all colleges and universities that receive federal financial assistance, either directly or indirectly.

Title IX states that “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Although, Title IX is perhaps best known for its mission to achieve gender equity in athletic programming, Title IX’s protections are much broader in scope. It applies to all forms of sexual discrimination, including sexual harassment, sexual assault, and sexual violence. Title IX applies equally to students, staff, and faculty. It protects students and employees from sexual harassment by any school employee, student, or non-employee third party.

Title IX requires that a school publish a non-discrimination statement; appoint a Title IX Coordinator; adopt grievance procedures that are prompt and equitable and allow for adequate, reliable, and impartial investigation of complaints; provide education and prevention programs; provide general training for all campus community members as to the school's policies and procedures; and specific training for implementers and adjudicators relating to the school’s grievance procedures and its proper response to complaints of sexual harassment and sexual violence.

Title IX requires that a school’s grievance procedures be prompt and equitable. Policies must designate reasonably prompt timeframes for the major stages of the complaint process. Both the complainant and the respondent should be given periodic status updates, receive notification of the outcome, and be informed of his/her right to appeal. There should be mechanisms for remedies, which address both individual and community safety, implement no contact orders, provide academic support, adjust academic schedules or living arrangements, provide counseling or emotional support, and allow for other equitable solutions or responses for both parties. Grievance procedures should include an investigation that is adequate, reliable and fair, apply a preponderance of the evidence standard, and balance the rights of the complainant and respondent.

Under Title IX, if a school knows or reasonably should know about sexual harassment that creates a hostile environment, the school must eliminate the harassment, prevent its recurrence, and address its effects. As such, a school violates Title IX if it has “notice” of a sexually hostile environment and fails to take immediate and corrective action. A school is deemed to have notice if a responsible employee knew or, in the exercise of reasonable care, should have known about the harassment. A responsible employee includes any employee who:

Catherine Shea
Page 25
January 23, 2014

(1) has the authority to take action to redress the harassment; (2) has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees; or (3) a student could reasonably believe has the authority or responsibility to take action.

II. The Clery Act

The Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092(f), is a federal statute, enacted in 1990, that requires all schools that receive federal financial assistance—either directly or indirectly—to keep and publish information about crime on or near their campuses. The purpose of the Clery Act is to provide students, their families and employees with accurate, complete, and timely information about campus safety to better inform future decisions.

The Clery Act requires that schools report offenses and disclose statistics for crimes that were reported to the local police and campus security authorities. Reportable crimes include those that occurred on-campus, in or on on-campus buildings or property, or on public property within or immediately adjacent to and accessible from the school's campus. Furthermore, it is not necessary for the crime to have been investigated by the police or a campus security authority, nor must a finding of guilt or responsibility be made—as long as there is a reasonable basis for believing the information is not rumor or hearsay, it should be reported.

Under the Clery Act, the report must contain information about: (1) where the crime occurred, (2) the type of crime, (3) to whom the crime was reported, and (3) when the crime was reported. When reporting sex crimes, the offenses should be divided into two categories: forcible and non-forcible. Forcible sex offenses include (1) any sexual act that is directed against another person either forcibly and/or against that person's will or (2) non-forcibly or against the person's will and the victim is incapable of giving consent. Examples of forcible sex offenses are forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. Non-forcible sex offenses are those incidents of unlawful, non-forcible sexual intercourse. Examples of non-forcible sex offenses are incest and statutory rape.

Moreover, the Clery Act requires that the school's campus security authorities maintain a public daily crime log of all crimes reported to them. The log must include information about: (1) the nature of the crime, (2) the date of the crime, (3) the time of the crime, (4) the general location of the crime, and (5) the disposition of the complaint, if known. The log must be accessible to the public during normal business hours and remain open for 60 days, after which it must be made available upon request within two business days.

The Clery Act requires timely warning notification to the public of all Clery Act crimes that are reported to campus security authorities or local police and are considered by the school to represent a series of continuing threats to students and employees. Warnings are to be made as soon as the pertinent information is available, so as to effectively alert the community of a

Catherine Shea
Page 26
January 23, 2014

continuing threat to safety and aid in the prevention of similar crimes. The decision of whether to warn is to be made by the school on a case-by-case basis taking into consideration the nature of the crime, the threat of continuing danger, and the coordination with law enforcement. If the school concludes that a warning is appropriate, the warning should be made in a format that is reasonably likely to reach the entire campus community, i.e. via e-mail, intranet, text message, etc.

Finally, the Clery Act mandates that schools develop policies, procedures, and programs regarding sex offenses. The reporting procedures should outline the procedures that a student should follow if a sexual offense occurs, including who should be contacted, the importance of preserving evidence, and to whom the alleged offense should be reported. The school should also have procedures for disciplinary action, including an equal right to have persons present during the proceeding, to be informed of the outcome and the sanctions imposed, and to speak about the offense. Additionally, the policy should list the potential sanctions for offenses. The victim should be informed of his/her right to call both local and on-campus police, the availability of on- and off-campus counseling and mental health services, and the options for reasonable accommodations in changing academic and living situations after an alleged sexual assault incident.

III. Campus SaVE Act

On March 7, 2013, President Barack Obama signed a bill reauthorizing the Violence against Women Act. Included in the bill was the Campus Sexual Violence Elimination Act (“Campus SaVE Act”). The Campus SaVE Act requires that incidents of domestic violence, dating violence, sexual assault, and stalking be disclosed in annual campus crime statistic reports. It also requires that students or employees reporting victimization be provided with their written rights to: (1) be assisted by campus authorities if reporting a crime to law enforcement; (2) change academic, living, transportation, or working situations to avoid a hostile environment; (3) obtain or enforce a no contact directive or restraining order; and (4) have a clear description of their institution’s disciplinary process and range of possible sanctions. Students or employees reporting victimization should also receive contact information about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available both on-campus and in the community.

The Act further provides that, at a minimum, institutional disciplinary procedures covering domestic violence, dating violence, sexual assault, and stalking should include the following:

1. Disciplinary proceedings will have a prompt, fair, and impartial investigation and resolution and will be conducted by officials receiving annual training on domestic violence, sexual assault, and stalking;

Catherine Shea
Page 27
January 23, 2014

2. Both parties may have others present during the disciplinary proceeding and any related meeting, including an advisor of their choice; and
3. Both parties will receive written outcomes of all disciplinary proceedings at the same time.

The Act further requires educational institutions to provide programming for students and employees addressing the issues of domestic violence, dating violence, sexual assault and stalking. Education programs should include:

1. Primary prevention and awareness programs for all incoming students and new employees, including safe and positive options for bystander intervention;
2. Information on risk reduction to recognize warning signs of abusive behavior; and
3. Ongoing prevention and awareness programs for students and faculty.

The Act also established collaboration between the U.S. Departments of Justice, Education, and Health and Human Services to collect and disseminate best practices for preventing and responding to domestic violence, dating violence, sexual assault, and stalking.