

**HUSCH BLACKWELL**

**TITLE IX POLICY  
AND PROCEDURE  
REVIEW**

Ferris State University

JUNE  
2022

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Husch Blackwell completed a comprehensive policy and procedure audit for Ferris State University (the “University”) in May 2019 involving an assessment of the University’s Title IX Office and related sexual misconduct policies and procedures. The University revised several of its sexual misconduct policies and associated procedures in response to the audit report and subsequently made additional changes in connection with new federal compliance obligations. Husch Blackwell completed this follow-up policy and procedure review in June 2022.

This report begins with an overview of changes to Title IX legal requirements since the time of our last audit report. Next, we provide our analysis of the University’s sexual misconduct policies and procedures. The report closes with a summary of key take-aways from interviews with campus partners and our recommended action items.

## **I. Overview of Title IX Guidance**

Title IX of the Education Amendments of 1972 is a federal law that prohibits discrimination on the basis of sex in an institution’s programs and activities. Sexual harassment and sexual violence can constitute prohibited sex discrimination and are therefore also prohibited by Title IX. Title IX’s prohibition on sex discrimination applies to all campus community members and includes other participants in institutional programs and activities such as visitors or vendors.

In 2011, ED’s Office for Civil Rights (“OCR”) under the Obama administration issued a Dear Colleague Letter that fundamentally changed how most institutions viewed their Title IX obligations. This letter, along with a Q&A guidance document issued by OCR in 2014, outlined OCR’s interpretation of Title IX as it relates to sexual misconduct. These documents, and positions taken by OCR in various resolutions with institutions, essentially required institutions to create robust policies and procedures related to sexual misconduct.

In September 2017, the Trump administration’s OCR issued a letter<sup>1</sup> formally “withdrawing the statements of policy and guidance” reflected in the OCR’s 2011 Dear Colleague Letter and 2014 Q&A guidance document. The letter also announced ED’s intent to undergo a new public rulemaking process that would result in an “approach to student sexual misconduct that responds to the concerns of stakeholders and that aligns with the purpose of Title IX to achieve access to educational benefits.” The letter was accompanied by a document entitled “[Q&A on Campus Sexual Misconduct](#),”<sup>2</sup> intended to provide interim guidance related to ED’s enforcement positions.

As part of the public rulemaking process, OCR issued proposed rules on November 16, 2018<sup>3</sup> and provided a period for public notice and comment on the proposed rules through late January 2019. The Department of Education’s Final Rule was published on May 6, 2020<sup>4</sup> and the revised Title IX Regulation took effect August 14, 2020.

The revised Title IX Regulation (“final regulation” or “regulation”) is largely consistent with the proposed regulation published in 2018, including core provisions such as the requirement for live

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<sup>1</sup> Available at: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf>.

<sup>2</sup> Available at: <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>.

<sup>3</sup> Available at: <https://www.federalregister.gov/documents/2018/11/29/2018-25314/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>.

<sup>4</sup> Available at: <https://www2.ed.gov/policy/rights/guid/ocr/sexoverview.html>.

hearings and cross-examinations. The final regulation is heavily focused on elements of due process, including notice of allegations, access to evidence, the right to confront witnesses and accusers, and the right to appeal. The final regulation also mandates that formal complaints of sexual harassment be resolved pursuant to elaborate processes that necessitate greater expertise, training, documentation, and investments by institutions of higher education. Key concepts and requirements within the final regulation include:

- **PROGRAMMATIC APPLICATION:** The regulation clarifies that Title IX applies to an institution’s “education program or activity,” which includes physical locations and events over which the institution exercises “substantial control over both the respondent and the context in which the sexual harassment occurs.” The phrase “education program or activity” includes “any building owned or controlled by a student organization that is officially recognized” by a college or university.
- **OFF-CAMPUS CONDUCT:** The regulation and comments clarify that Title IX does not apply to sexual harassment that occurs off-campus, in a private setting, and that is not part of the institution’s education program or activity. Whether the institution chooses to address such off-campus, non-programmatic conduct through another policy, such as a student code of conduct, is up to the institution. The final regulation also sets a bright line rule that Title IX does not apply to sexual harassment that occurs outside the geographic boundaries of the United States.
- **SEXUAL HARASSMENT DEFINITION:** The term “sexual harassment” is defined by the regulation to include *quid pro quo* harassment, hostile environment harassment, sexual assault, domestic violence, dating violence and stalking. In defining hostile environment harassment, the regulation adopted the following definition: “conduct on the basis of sex” that is “unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.” By using the conjunctive “and”, this definition requires the hostile environment to be severe, pervasive, and objectively offensive, in contrast to the Title VII definition of hostile environment, which uses the disjunctive “or.” This may pose challenges where an employee files a complaint under a Title IX grievance process, and the employee also requests action by a human resources department under Title VII.
- **CONSENT:** The final regulation clarifies that it does not impose a mandatory definition of “consent” for purposes of sexual assault. This means schools retain discretion to set their own definitions, which may be influenced by state and/or local law.
- **CONSTITUTIONAL PROTECTIONS:** The final regulation contains numerous provisions designed to incorporate constitutional protections into the Title IX framework, including constitutional protections for free speech, due process, and religious liberty.
- **FORMAL COMPLAINTS:** A formal complaint is defined by the final regulation to mean a physical or electronic document signed by an alleged victim of sexual harassment or the Title IX Coordinator specifically requesting an investigation. The final regulation permits formal complaints that initiate the grievance process to be filed only by an alleged victim

or the Title IX Coordinator. However, the final regulation also includes the important caveat that, at the time of making a complaint, an alleged victim must be participating in or attempting to participate in the institution's education program or activity.

- **EMPLOYEE MATTERS:** The final regulation, including its detailed investigation and hearing procedures, apply with respect to complaints against students and employees. Thus, institutions must comply with the processes specified in the regulation to address concerns of sexual harassment by employees.
- **NOTICE OF SEXUAL HARASSMENT:** An institution must respond promptly and in a manner that is not "deliberately indifferent" when it has "actual knowledge" of sexual harassment. A University has "actual knowledge" when an institutional official with authority to institute corrective measures on behalf of the institution (which includes Title IX Coordinators) has notice of sexual harassment. This means that, under the final regulation, unless state or local law sets a broader reporting requirement, colleges and universities have discretion to relax mandatory reporting policies such that only certain officials who have authority to take corrective action must report sexual harassment to the Title IX Coordinator.
- **SUPPORTIVE MEASURES:** The final regulation explains that, upon receiving actual knowledge of sexual harassment, an institution must promptly contact the alleged victim and offer "supportive measures." In the event a formal complaint is filed, and an investigation is commenced, the supportive measures must also be offered to the respondent. Supportive measures are "non-disciplinary" in nature, as well as "reasonably available" "without fee or charge" and "designed to restore or preserve equal access" to the institution's education programs and activities "without unreasonably burdening the other party." The Title IX Coordinator is responsible for coordinating "effective implementation" of supportive measures. However, institutions may continue to designate individuals as deputy Title IX Coordinators to assist in these responsibilities.
- **INTERIM REMOVAL:** The final regulation clarifies that an institution still has the ability to remove a respondent "on an emergency basis" provided that the institution makes an "individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately after the removal."
- **NOTICE TO PARTIES:** Once a formal complaint is made, the institution must provide written notice to the parties of the investigation, describe the process to be utilized and disclose "sufficient details" regarding the complaint, including, if known, the identities of the parties, the conduct at issue and the date and location of the alleged incident. This written notice must include a statement that the respondent is presumed not responsible and that a determination will not be made until the conclusion of the grievance process. The notice must also advise the parties of their right to an advisor of their choice, who may be an attorney. The institution must also apprise the parties of any prohibitions on making false statements.

- **MANDATORY DISMISSAL:** The final regulation requires that at any point in the investigation, if the institution determines that the conduct alleged in the formal complaint, if assumed true, does not constitute sexual harassment; did not occur in the institution’s education program or activity; or did not occur against a person in the United States, then the institution must dismiss the complaint for purposes of its Title IX grievance procedure. The institution has discretion to address such conduct under another policy, such as a student code of conduct.
- **DISCRETIONARY DISMISSAL:** The final regulation states that an institution may dismiss a formal complaint at any time if: the complainant would like to withdraw the complaint; the respondent is no longer enrolled or employed by the institution; or specific circumstances prevent the institution from gathering evidence sufficient to reach a determination.
- **STANDARD OF EVIDENCE:** The new final regulation permits schools to use *either* a preponderance standard or a clear and convincing standard of evidence in resolving Title IX cases. However, whatever standard a school uses must be applied to both student and employee sexual harassment matters.
- **FACT AND EXPERT WITNESSES:** During the investigation, the parties must have equal opportunity to present witnesses, including both fact and expert witnesses, together with other inculpatory and exculpatory evidence.
- **CONFIDENTIALITY:** During the investigation, the institution may not restrict the ability of either party to discuss the allegations or to gather and present relevant evidence.
- **ADVISORS:** The final regulation clarifies that parties have the equal right to be accompanied by an advisor of their choice to interviews and meetings and that the advisor may, but does not have to be, an attorney. The institution retains the ability to limit the role of the advisor in interviews and meetings, provided it does so equally for both parties. It cannot, however, limit the advisor’s role in cross-examining the other party and witnesses at the hearing. If a party is unable to obtain an advisor, the institution must provide one free of charge for the purpose of conducting cross-examination for the party. The advisor provided does not have to be, but may be, an attorney.
- **NOTICE OF MEETINGS:** The final regulation requires the institution to provide written notice to the parties and witnesses of any interview, meeting, or hearing that the individual is expected to attend, with sufficient time for the party to prepare to participate, to include: the date, time, and location; the participants; and the purpose.
- **REVIEW OF EVIDENCE:** The institution must give the parties equal opportunity to inspect and review any evidence gathered during the investigation directly related to the allegations raised in the formal complaint, including inculpatory and exculpatory evidence and evidence the institution does not intend to rely upon in the hearing. Access must be given so that each party “can meaningfully respond to the evidence prior to the conclusion

of the investigation.” At a minimum, the institution must send the evidence to the party and the party’s advisor in electronic form and give them at least 10 days to submit a written response, which the investigator must consider before finalizing the investigation. The institution must make the evidence available again at any hearing, including for use in cross-examination.

- **INVESTIGATION REPORT:** The investigation must result in an investigation report that “fairly summarizes” the investigation that must be completed at least 10 days prior to the hearing and sent to each party and their advisor.
- **LIVE HEARING:** For all colleges and universities, the investigation must be followed by a live hearing during which a “decision-maker” must permit each party’s advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those bearing on credibility. The institution must make an audio or video recording of the hearing, or a transcript, and make it available to the parties for inspection and review.
- **CROSS EXAMINATION:** Cross-examination during the live hearing must be conducted “directly, orally and in real time” by the party’s advisor of choice and “never by a party personally.” This precludes institutions from requiring that cross-examination be conducted by pre-submitted written questions or that questions be posed by a hearing panel chair. If a party or witness refuses to submit to cross-examination, then the institution is required to ignore that person’s statement and reach a decision based on the remaining body of relevant evidence.<sup>5</sup>
- **WRITTEN DETERMINATION:** After the hearing, the decision-maker must issue a written determination of responsibility to the parties at the same time applying the institution’s chosen standard of evidence. The written determination must have several required elements, including:
  - Identification of the allegations at issue;
  - Description of the procedural steps taken throughout the case;
  - Findings of fact supporting the determination;
  - Conclusions regarding application of the Title IX policy;
  - A statement and rationale as to the determination for each allegation;
  - A statement of any disciplinary sanctions and whether any remedies will be provided to the complainant; and
  - A description of the procedures and permissible grounds for appeal.
- **APPEALS:** The final regulation mandates that either party be allowed to appeal the determination, or any dismissal of the complaint, on the following grounds: (1) procedural

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<sup>5</sup> On July 28, 2021, a federal district court in Massachusetts held that the portion of the Title IX Regulation excluding all statements not subject to cross-examination at a live hearing was arbitrary and capricious. *Victim Rights Law Center, et al. v. Miguel Cardona and Suzanne Goldberg* (D. Mass). The judge clarified his order on August 10, 2021, explaining that his decision both remanded that portion of the Title IX Regulation to the Department of Education for further explanation and vacated the provision effective July 28, 2021. The Department of Education issued guidance regarding this development on August 24, 2021, stating that the Department would immediately cease enforcement of the part of § 106.45(b)(6)(i) regarding the prohibition against statements not subject to cross-examination.

irregularity that affected the outcome; (2) new evidence not reasonably available “that could affect the outcome”; and (3) conflict of interest or bias by the institutional participants that affected the outcome. Although the final regulation does not specify that an appeal may be based on a challenge to the weight of the evidence, it does not foreclose other permitted grounds for appeal if they are equally available to both parties. The non-appealing party must be notified of the appeal and allowed to submit a written statement in response. The appeal decision-maker(s) cannot be the same as the hearing decisionmaker(s), Title IX Coordinator, or the investigator who worked on the case. The appeal must conclude with a written decision describing the appeal and the rationale for the result that is provided to the parties simultaneously.

- INFORMAL RESOLUTION:** The final regulation permits the voluntary use of an informal resolution process at any time after a formal complaint is filed and prior to a final determination. The parties must provide their voluntary consent in writing to participate in such a process. Prior to commencing an informal resolution process, the institution must have provided the parties with the required written notice of the allegations and a description of the parameters of the informal resolution process. The notice must include a statement that a party is permitted to withdraw from the informal resolution process and resume the formal process at any time prior to a resolution being reached. The regulation prohibits informal resolution in any case where an employee is accused of sexually harassing a student.
- RETALIATION:** The final regulation includes considerable detail on Title IX’s prohibition against retaliation, including that persons protected from retaliation include persons who “made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.”
- RECORD KEEPING:** The regulation requires an institution to maintain the complete records of each phase relating to the resolution of a formal complaint for a period of seven years, including any records of informal resolution.

The final regulation also articulates mandatory elements for the three phases of the institution’s Title IX grievance process: investigation, hearing, and appeal. All three phases of the grievance process must meet certain qualitative elements, including:

- Complainants (*i.e.*, alleged victims) and respondents (*i.e.*, alleged perpetrators) must be treated equitably.
- There must be an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence.
- There can be no presumptions of credibility based on a party’s status as complainant, respondent, or witness.

- All institutional participants (*e.g.*, Title IX Coordinator, investigator(s), and decision-maker(s)) in the process must be free of a conflict of interest or bias.
- There must be a presumption that the respondent is “not responsible for the alleged conduct” until a determination is made at the conclusion of the process.
- There must be reasonably prompt timeframes for completion of various phases of the process, including delays (after written notice to the parties) only based on “good cause.” However, the regulation does not specify a total number of days by which the grievance process must be completed.
- The procedures must specify the range of, or articulate a specific list of, potential disciplinary sanctions and remedies.
- The institution must not utilize procedures that invade legally recognized privileges (*e.g.*, attorney-client, priest-penitent, patient-counselor, etc.) unless the party holding the privilege has waived it.

On January 15, 2021, OCR published a two-part Q&A technical assistance document to help institutions understand and meet their obligations under the new Title IX regulation. That document is available at

<https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/index.html>. In July 2021, OCR published a Q&A document providing additional guidance about the Title IX regulation. That document is available at <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>.

On June 23, 2022, exactly fifty years after Title IX became the law of the land, the U.S. Department of Education released its latest and much anticipated Title IX Notice of Proposed Rulemaking as promised by the Biden administration. The latest proposed regulations would once again significantly alter the regulatory context of Title IX. Once the notice is published in the federal registrar, interested persons, including colleges and universities, will have 60 days to provide comments. The Department of Education will then evaluate those comments and may—or may not—modify the proposed regulations in response. Until such time as the proposed regulations become final, the current regulations outlined above remain in effect.

## **II. Title IX Compliance Analysis**

Below we will discuss core Title IX requirements and the University’s compliance with those requirements. Our review is based on the University’s Sexual Harassment Policy and Related Title IX Grievance Process (“Title IX Policy”); Code of Student Community Standards; Non-Discrimination Grievance Procedures; and information on the University’s website.

### **A. Outline of Title IX Requirements**

From a high-level perspective, the University is required under Title IX to:

- Disseminate a notice of nondiscrimination;

- Designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX (“Title IX Coordinator”); and
- Adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination, including sexual harassment and sexual violence.

Additionally, OCR has repeatedly indicated the importance of the following:

- Developing and implementing training and educational programs; and
- Ensuring ease of access and simplicity with an institution’s policies and procedures related to sexual misconduct.

These requirements are discussed in more detail below.

## **B. Notice of Nondiscrimination**

Title IX and other OCR-enforced statutes require institutions to publish a notice of nondiscrimination.<sup>6</sup> With regard to Title IX, the notice must advise prospective and current members of the institutional community of the following:

- The institution does not discriminate on the basis of sex in its educational programs or activities, including specifically employment and admissions;
- Title IX prohibits the institution from discriminating on the basis of sex in its educational programs and activities;
- The name or title, office address, email address, and telephone number of the designated Title IX Coordinator; and
- Inquiries concerning Title IX can be referred to the institution’s designated Title IX Coordinator or to OCR.

OCR encourages institutions to publish one combined notice encompassing all applicable regulatory requirements that contains (1) a statement of Nondiscrimination that specifies the basis for Nondiscrimination; and (2) identification by name or title, address, and telephone number of the employee or employees responsible for coordinating the compliance efforts. The regulations do not require that a recipient identify the pertinent regulations by title.<sup>7</sup>

The University has published a Non-Discrimination Statement on its website. While both the Non-Discrimination Grievance Procedures and the Title IX Policy contain contact information for OCR,

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<sup>6</sup> See 34 C.F.R. § 106.8; Dear Colleague Letter, “Notice of Nondiscrimination” (August 2010), available at <http://www2.ed.gov/about/offices/list/ocr/docs/nondisc.html>.

<sup>7</sup> A sample Notice of Nondiscrimination can be found in OCR guidance at: <https://www2.ed.gov/about/offices/list/ocr/docs/nondisc.html>.

we recommend adding the following sentence to the Non-Discrimination Statement as referenced in the model statement published by OCR: “For further information on notice of non-discrimination, visit <https://ocrcas.ed.gov/contact-ocr> for the address and phone number of the office that serves your area, or call 1-800-421-3481.”

### **C. Title IX Coordinator**

Title IX also requires institutions to designate at least one employee to coordinate its Title IX compliance efforts and to receive complaints of sex discrimination. The University has done this, as evidenced by its Non-Discrimination Statement, its Title IX Office website, and its sexual misconduct policies and procedures, including the Title IX Policy, all of which refer to the University’s Title IX Coordinator.

### **D. Policies and Procedures**

There are numerous standards related to Title IX that must be covered in an institution’s sexual harassment policies and procedures, as described in the final regulation noted above. In addition, the closely-related VAWA Regulation necessitates certain procedural standards being in place for complaints of dating violence, domestic violence, sexual assault, and stalking. We reviewed the Title IX Policy, Code of Student Community Standards, and Non-Discrimination Grievance Procedures to gauge whether they are compliant with applicable legal requirements and align with best practices at other institutions of higher education. Our assessment of the policy documents is set forth below.

The Title IX Policy is compliant with Title IX, the Title IX Regulation, and the VAWA Regulation.

The Code of Student Community Standards is compliant with the VAWA Regulation.<sup>8</sup> For purposes of additional clarity and ease of navigation between different policy documents, we offer the following observations and suggestions regarding the document:

- Definition of Responsible Employee (p. 9): Consider whether the term “Responsible Employee” still warrants inclusion in the Code since that concept is no longer present in the Title IX Regulations and the Title IX Policy has adopted alternate language to address employee reporting obligations.
- Definition of Title IX (p. 9): Consider adding a reference to the Title IX Coordinator in the list of offices that have adopted specific procedures for ending the discrimination, preventing its recurrence, and remedying the effects of the discrimination.
- Disciplinary Procedures for Individual Misconduct (p. 13): Consider adding an explicit reference to the Title IX Policy being the exclusive process for addressing complaints of

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<sup>8</sup> Because the Title IX Policy is the exclusive policy and procedure to address sexual harassment complaints falling within the scope of the Title IX Regulation and the Code of Student Community Standards addresses those complaints involving students that fall outside the coverage of the Title IX Regulations, the Code need not comply with the Title IX Regulation. The Code must, however, comply with the VAWA Regulation to the extent it applies to complaints alleging sexual assault, domestic violence, dating violence, or stalking.

sexual harassment involving students and occurring on campus and/or in the University's educational programs, or activities. The reference can also clarify that complaints that do not fall within the scope of the Title IX Policy are addressed through the procedures set forth in Section III of the Code.

- Rights of the Respondent (p. 17): Consider substituting "sexual violence" or other alternate term for "Title IX" since Section III does not address Title IX allegations, which are covered exclusively by the Title IX Policy. Consider also whether this clarification is necessary if the topic is sufficiently covered in Section III.
- Notice of Decision & Opportunity for Appeal (p. 18): Consider whether the reference to Title IX should be removed since the appeal rights in Title IX matters are adequately addressed in the Title IX Policy.
- Section III, Definitions: Consider adding the defined term "Sexual Misconduct" to encompass sexual harassment and sexual exploitation as defined in this section.
- Section III, Definition of Sexual Assault (p. 29): There is a footnote 3 cited here that does not appear in this portion of the document. This section should be reviewed to assure there are no additional footnote citations that should be removed.

The Non-Discrimination Grievance Procedure has not been revised since July 31, 2018. We recommend that it be updated to ensure it aligns with and appropriately references the Title IX Policy.<sup>9</sup> With respect to the document's compliance with the VAWA Regulation, we incorporate by reference the comprehensive analysis of the document contained in our May 2019 audit report.

We also note that the Board Policy on Sexual Assault (Subpart 8-6) and the Employee and Student Dignity Policy do not appear to have been updated since 2015. While the policies are high-level and general in nature, we encourage periodic review to ensure that their content and cross-references remain current with respect to any related policy changes.

## **E. Training and Education Programs**

The Title IX Regulation requires that all Title IX Coordinators, investigators, decisionmakers, and informal resolution facilitators receive training on various relevant aspects of the institution's Title IX policy and grievance process, including definitions of sexual harassment; the scope of the institution's education programs and activities; how to conduct investigations, hearings, appeals and informal resolutions (as applicable); and how to serve "impartially, including by avoiding prejudice of the facts at issue, conflicts of interest and bias." The training for decision-makers must include training on relevant technology to be used at any live hearing, relevance, and the permissible use of sexual history. The training provided to various institutional actors must be free of "sex stereotypes" and must promote "impartial investigations." The institution must also retain "all" materials used to train institutional participants in the various phases of the resolution process, including the Title IX Coordinator, investigators, and decision-makers. Institutions must make all

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<sup>9</sup> Several campus partners noted that a revision to the document is currently in process.

such training materials available on their website or, if they do not maintain a website, must make them available subject to inspection. We were easily able to locate copies of materials used to train Title IX personnel after May 2020 on the Title IX website.

With respect to other campus community members, OCR has continually conveyed the importance of training and educational programming in the realm of Title IX. We have provided an outline of VAWA and Title IX training and educational programming standards in Appendices A and B of this report for the University's reference. While some aspects of the outline may not be legally required given changing regulatory requirements, the content of the training described may still prove valuable while considering and developing programming for the University's campus community.

Requirements from the State of Michigan require that for all freshmen and incoming transfer students enrolled, the University provide an in-person sexual misconduct prevention presentation or course, which must include contact information for the Title IX office. For all students not considered freshmen or incoming transfer students, the University must provide an online or electronic sexual misconduct prevention presentation or course. Based on information received during campus partner interviews, the University complies with this requirement.

#### **F. Ease of Access and Simplicity**

OCR has also continuously advised that institutions must ensure their policies and procedures related to sexual misconduct are simple to understand and easy to access—particularly for students. The University's Title IX website is easy to navigate and contains links for numerous topics such as definitions, frequently asked questions, employee resources, and support resources. Given that multiple policies support Title IX compliance at the University, we recommend that the University ensure the policies are up to date and contain appropriate cross-references to one another. Numerous campus partners informed us that the University is currently developing “user-friendly” flow charts for all aspects of the sexual misconduct process to provide greater clarity about the process, especially for students. The Title IX Office is also developing an informal resolution process for complaints involving student respondents that it hopes will be a beneficial option for students who do not wish to participate in a formal investigation and hearing.

### **III. Information Received from Campus Partner Interviews**

We conducted ten interviews with campus partners who represent a wide range of community perspectives. Feedback from campus partners was uniformly positive and praised the good work being done. Representatives from offices across campus believe the University's policies are appropriate in scope, are clear and easy to find, and are implemented in a fair and consistent manner. Individuals also noted that investigations are well-done and thorough. While numerous campus partners noted that the investigation and adjudication process is slow, they surmised that may be caused by the procedural timelines embedded in the regulatory requirements and because of the need to ensure the process is thorough.

Since our last review, the University has comprehensively revised its policies and procedures. It has also identified external resources to assist with investigations and adjudications, which has helped manage the workload and augment existing internal expertise. Several individuals also

noted that the Title IX Office has strengthened its relationships with key internal partners, including the Athletic Department and Department of Public Safety. The Department of Public Safety also noted that the relationship and communication between the Title IX Office and external law enforcement has improved.

The University has expanded and strengthened its education and prevention efforts substantially since our last review. In January 2019, the University formed the Anti-Violence Alliance (AVA) utilizing an award from the State of Michigan's Campus Sexual Assault Grant Program. The AVA is focused on prevention, education, and awareness of sexual misconduct on campus and at the time of formation had approximately 30 students, faculty, and staff members. Members attended 27 hours of in-person content training and 8 hours of facilitation training during the program's inaugural year and have since continued to receive annual training. The student members of the AVA serve as peer educators and facilitate awareness and prevention programs including "Bringing in the Bystander." During the 2021 calendar year, the AVA hosted 45 events and opportunities for the University community to engage about sexual assault and sexual misconduct.

In February 2020, the University secured a second Campus Sexual Assault Grant Program award to continue to support the work of the AVA. This grant award funded a Violence Prevention Coordinator position to supervise the peer educators and advance the work of the AVA. It also provided funding to support greater collaboration with the local victim service provider and to conduct additional prevention programming within the Athletic Department. That same month, the University received a third Campus Sexual Assault Grant Program award to purchase additional security cameras for placement in/near residence halls.

In May 2020, the University signed a three-year partnership with the Michigan Coalition to End Domestic and Sexual Violence (MCEDSV). Through the partnership, the University is refining its "Bringing in the Bystander" program, continuing to fund its Violence Prevention Coordinator position, and funding its peer educator model. The partnership also helps fund the availability of community resources.

In October 2020, the University was awarded a three-year grant from the Office of Violence Against Women to support the creation of effective and comprehensive responses to dating/domestic violence, sexual assault, and stalking through prevention and intervention. The grant requires the University to implement a coordinated community approach involving administration, staff, faculty, students, departments, and community partners to enhance safety, support efforts to hold offenders accountable, and provide resources and services to victims/survivors. The grant requires specific deliverables from 5 program areas (Coordinated Community Response Team, Comprehensive Prevention, Student Conduct, Law Enforcement, and Victim Services) and requires the University to infuse all program areas with considerations for cultural competency, meeting Clery Act requirements, and establishing efforts to engage men in prevention.

The grant funding and initiatives described above have enabled the University to train more employees and students and increase student awareness around sexual misconduct issues. One campus partner noted that the University has also supplemented its formal training for employees with additional, targeted education when necessary. With that said, several campus partners

acknowledged that opportunities remain to improve student training and assure that students retain the information received and are not simply “checking the box.” In that regard, some suggested that more in-person training would be beneficial. One campus partner suggested that more frequent, shorter trainings might be more engaging for students. A second campus partner recommended the University conduct more outreach to students and ensure that programming reaches more than the same group of students. Several campus partners noted the need to integrate education about this topic into everyday work so that it is not a “special thing.”

Several campus partners expressed some level of dissatisfaction that current training requirements are not consistently enforced and advocated that this change. According to those campus partners, students are cautioned that they could be subject to a registration hold or be restricted from viewing their grades if they do not complete required training, but such consequences are not actually imposed. The campus partners also explained that consequences are generally not imposed for employees who fail to complete annual training on this topic. One campus partner noted that apart from the training that is integrated into the required onboarding process for new employees, other employees might not even be aware that annual sexual harassment training is required. Regardless of their perspective about this issue, all the campus partners interviewed acknowledged that mandatory training is a sensitive topic at the University and has been the subject of recurring conversation. Several campus partners explained that Title IX training is one of many important topics competing for training time and at least two campus partners questioned whether mandating and enforcing training for all topics would be effective or feasible.

Several campus partners raised a more significant concern about the separation between student and employee cases and the degree to which the Title IX Coordinator has information about and oversight for employee cases. Campus partners explained that the Title IX Office has primary responsibility for student cases, whereas Equal Opportunity has primary responsibility for employee cases. The directors of both offices have a good working relationship by all accounts and have regular meetings to share relevant information. Nevertheless, it appears that the Title IX Coordinator does not routinely receive information about employee reports that do not involve a formal complaint, nor does she always receive copies of employee investigation reports.

U.S. Department of Education regulations require that institutions designate and authorize at least one individual as Title IX Coordinator to coordinate its compliance efforts and assume certain responsibilities related to the response and adjudication of reports of sexual harassment. See 34 C.F.R. § 106.8(a). Such duties, however, may be delegated to one or more deputy coordinators. The Department of Education explained in its Preamble to the Regulations: “Nothing in the final regulations restricts the tasks that a Title IX Coordinator may delegate to other personnel, but the recipient itself is responsible for ensuring that the recipient’s obligations are met, including the responsibilities specifically imposed on the recipient’s Title IX Coordinator under these final regulations, and the Department will hold the recipient responsible for meeting all obligations under these final regulations.” Fed. Reg. Vol. 85, No. 97 (May 19, 2020) at 30463. At Ferris, the Director of Equal Opportunity is designated as a deputy Title IX coordinator and is charged with fulfilling the obligations of the Title IX Coordinator with respect to employee matters. Thus, while the University may wish to consider whether it would be beneficial to the University’s overall prevention and response framework for the Title IX Coordinator to have regular access to information about all reports of sex discrimination, the University’s structure does not pose a

compliance concern, provided there are no gaps in coverage with respect to the Title IX Coordinator's regulatorily defined responsibilities.<sup>10</sup>

Finally, as was the case during our prior review, campus partners expressed some concern about the level of resources allocated to the Title IX Office. Campus partners advocated for increased staffing and a recurring budget line for all components of the office. One campus partner expressed her desire to have institutional resources available to support one of the grant funded positions when the grants expire. Several campus partners expressed a desire to have additional internal investigators trained and ready to assist with employee matters to reduce reliance on outside investigators. One campus partner also identified a need for additional staff to assist with report intake. It is worth noting that despite these concerns about staffing levels, campus partners were uniform in their praise of the Title IX Coordinator and her office's work.

#### **IV. Conclusion and Recommendations**

The University has made substantial changes to its policies and procedures since our last review. Both the Title IX Policy and Code of Student Community Standards are compliant with applicable federal laws and regulations and appear to be well-regarded by the campus community. Moving forward, we recommend that the University review and consider making updates to other related policies, such as the Nondiscrimination Grievance Procedures, to ensure they reflect current practices and legal requirements.

The University has also enhanced its education and prevention work, consistently reaching more students and employees. We recommend the University continue its internal discussions about the feasibility of enforcing training requirements, particularly where such requirements may be required by current or prospective grants that help fund prevention and awareness programming initiatives.

We also recommend that the University consider whether the Title IX Coordinator is appropriately positioned within the University organizational structure to carry out the critical functions of her role. To the extent that the current structure is maintained, the University should carefully assess its handling of employee matters to ensure that the separation of duties does not pose a barrier to the Title IX Coordinator's general oversight responsibilities and to confirm there are no gaps in coverage between the Title IX Coordinator's regulatorily proscribed duties and the duties being performed by the Director of Equal Opportunity as a deputy Title IX coordinator.

In sum, our review affirms that the University has strong policies, procedures, prevention programs, and responses to address sexual misconduct and continues to strive to maintain an environment that is safe and free from obstacles that hinder the success of students, faculty, staff,

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<sup>10</sup> We also note that one individual suggested that it would be easier to integrate the Title IX Coordinator into employee matters if the Title IX Coordinator reported to someone outside of Student Affairs. The campus partner also suggested that a change in reporting lines, such as the creation of an office of equity and inclusion, might provide the Title IX Coordinator greater visibility on campus. A second campus partner echoed this suggestion and noted that although the Title IX and Equal Opportunity offices have a strong partnership, it "sometimes feels like they are in different places geographically and philosophically" given their different reporting lines. The campus partner suggested that in terms of partnership, proactive education, and building community around this topic, the two offices should be more closely aligned.

and visitors. While there are opportunities for continued progress, the University has done substantial work to build a compliant and effective Title IX program.

## Appendix A VAWA Educational Programming and Training Requirements

The Violence Against Women Act (“VAWA”) amendments to the Clery Act impose a variety of training obligations on institutions. The requirements are outlined below, and the institution should ensure that it is developing and providing this programming.

- Comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end dating violence, domestic violence, sexual assault and stalking that:
  - Are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome; and
  - Consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels.
  
- Primary prevention and awareness programs for all incoming students and new employees<sup>11 12</sup>, including:
  - A statement that the institution prohibits the offenses of domestic violence, dating violence, sexual assault, and stalking.
  - The definitions of domestic violence, dating violence, sexual assault, and stalking in the applicable jurisdiction.
  - The definition of consent, in reference to sexual activity, in the applicable jurisdiction.
  - Safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against a person other than the individual.
  - Information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks.
  - Other relevant VAWA information, including:

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<sup>11</sup> According to VAWA’s regulations “primary prevention programs” means “programming, initiatives, and strategies informed by research or assessed for value, effectiveness, or outcome that are intended to stop dating violence, domestic violence, sexual assault and stalking before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe directions.”

<sup>12</sup> According to VAWA’s regulations, “awareness programs” means “community-wide or audience-specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent violence, promote safety, and reduce perpetration.”

- A description of the steps, anticipated timelines, and decision-making process of the institution’s procedures.
  - The standard of evidence that will be used.
  - Possible sanctions and protective measures.
  - How the proceedings will be prompt, fair, and impartial.
  - That the proceedings will be conducted by officials who receive annual training.
  - Right to have an advisor of their choice during any part of the proceedings.
  - Simultaneous written notification of the outcome, appeal procedures, any changes to the result, and when the results are final.
  - The importance of preserving evidence.
  - How and to whom alleged offenses should be reported.
  - Options regarding law enforcement authorities, including notification of the victim’s option to notify law enforcement, that campus personnel will assist in doing so, and the option to decline to notify such authorities.
  - Information related to protection orders.
  - Information about accommodations and protective measures and how to request them.
  - Confidentiality protections.
  - Available resources for victims.
  - An explanation of the rights and options document.
- Ongoing prevention and awareness campaigns<sup>13</sup> for students and employees, including the information described in the bullet points just above.
- Annual training to institutional officials involved in implementing [the institution’s VAWA-related] procedures on the issues related to domestic violence, dating violence,

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<sup>13</sup> According to the VAWA Regulation, “ongoing prevention and awareness campaigns” means “programming, initiatives, and strategies that are sustained over time and focus on increasing understanding of topics relevant to and skills for addressing dating violence, domestic violence, sexual assault, and stalking, using a range of strategies with audiences throughout the institution...”.

sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

- Training for these officials should address, but not be limited to, the following topics:
  - Relevant evidence and how it should be used during a proceeding.
  - Proper techniques for questioning witnesses.
  - Basic procedural rules for conducting a proceeding.
  - Avoiding actual and perceived conflicts of interest.
- Because different officials may conduct different parts of the proceedings, it is not necessary for every official to receive every part of the training. For example, if certain officials conduct only the initial investigation, they do not need to receive training on how to conduct a hearing. However, institutions may train all selected officials on all related topics.

Appendix B  
Title IX Educational Programming and Training Standards

Title IX training and educational programming standards are outlined below. The training and education items required by the revised Title IX Regulation are noted as REQUIRED. Other items are not required but are recommended as reflecting best practice.

- Implementing training and awareness programs for all campus community members regarding Title IX's prohibition of Sexual Harassment (*i.e.*, sexual assault, *quid pro quo* sexual harassment, hostile environment sexual harassment, dating violence, domestic violence, and stalking), including the institution's policies, procedures, and sanctions related to these matters.
- Ensuring that training materials do not contain sex stereotypes. (REQUIRED)
- Ensuring that training materials promote impartial investigations and adjudication of formal complaints of Sexual Harassment. (REQUIRED)
- Providing training for employees with authority to take corrective action so they respond properly and are aware of Title IX issues, the school's procedures, etc.
- Ensuring that professional counselors, pastoral counselors, and non-professional counselors or advocates understand the extent to which they may keep a report confidential.
- Providing training to all employees likely to witness or receive reports of Sexual Harassment, including faculty and other instructors, law enforcement, administrators, counselors, general counsels, athletic coaches, health personnel, and resident advisors. Training for employees should include:
  - Practical information about how to prevent and identify Sexual Harassment, including same-sex 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 Harassment, including the use of nonjudgmental language.
  - The impact of trauma on victims.
  - As applicable, the person(s) to whom such misconduct must be reported.
- Ensuring that all persons implementing the grievance procedures (*i.e.*, Title IX coordinators, deputy coordinators, decision-makers, informal resolution facilitators, appeal

officers) have training about Sexual Harassment and the institution's grievance procedures. (REQUIRED). This training must include:

- The definition of Sexual Harassment under Title IX.
- The scope of the school's education program or activity.
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes (as applicable), covering how to serve impartially, avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- Any technology to be used at live hearings.
- Relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.
- For investigators: issues of relevance to create an investigation report that fairly summarizes relevant evidence.

As a best practice, this training should also include:

- Information on working with and interviewing persons subjected to Sexual Harassment.
- Information on specific types of conduct that would constitute Sexual Harassment.
- The proper standard of review for Sexual Harassment complaints.
- 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 Harassment.
- 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.
- Confidentiality.
- The effects of trauma, including neurobiological change.

- Cultural awareness training regarding how Sexual Harassment may impact students differently depending on their cultural backgrounds.
- Providing educational programming to students regarding Sexual Harassment that covers, at a minimum, the following topics:
  - Title IX and what constitutes Sexual Harassment, 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 Harassment complaints.
  - Disciplinary code provisions relating to Sexual Harassment and the consequences of violating those provisions.
  - Effects of trauma, including neurobiological changes.
  - The role alcohol and drugs often play in Sexual Harassment 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 Harassment.
  - How to report Sexual Harassment to campus or local law enforcement and the ability to pursue law enforcement proceedings simultaneously with a Title IX grievance.
  - Title IX's protections against retaliation.
  - Encouragement to report incidents of Sexual Harassment to appropriate school officials and law enforcement authorities.