

**REPORT OF THE SPECIAL INDEPENDENT COMMISSION
ON TITLE IX RESOURCES AND PROGRAMS
FOR THE
UNIVERSITY OF TENNESSEE**

JUNE 15, 2017

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I. INTRODUCTION AND OVERVIEW

A. PREFACE

This report is the result of more than six months of work by the four members of the Special Independent Commission (“Commission”) and represents their collectively considered, independent judgment on Title IX compliance across the University of Tennessee system.¹ While the Commission has had, and appreciates, the full cooperation of the UT System in performing its work -- particularly in making available documents for review and people for interviews -- the observations, conclusions, and recommendations in the Report are solely those of the Commission and reflect the full extent of the information considered.²

B. FORMATION, CHARGE, AND COMPOSITION OF THE SPECIAL INDEPENDENT COMMISSION

As part of the July 2016 settlement of a lawsuit,³ UT, among other things, agreed that its President would “appoint an independent commission, ... made up of independent, unaffiliated, nationally recognized individuals who have expertise on establishing and maintaining federal law compliance programs... [and that] [t]he commission will be charged with reviewing and recommending enhancements to the University of Tennessee System’s policies and programs relating to preventing, investigating, resolving, and otherwise addressing sexual misconduct incidents.”

¹ For reference throughout the Report the University of Tennessee System will be referred to as “UT” or “the System,” University of Tennessee Knoxville will be referred to as “UTK”, University of Tennessee Chattanooga as “UTC”, University of Tennessee Martin as “UTM”, University of Tennessee Health Science Center as “HSC”, University of Tennessee Space Institute as “SI”, University of Tennessee Institute of Agriculture as “IOA”, and the University of Tennessee Institute for Public Service as “IPS”. Abbreviations for statutes, regulations and agency guidance are set forth in Exhibit B.

² The Commission would like to thank Jane Pullum, Administrative Assistant to the President, for her assistance in scheduling numerous interviews and making the logistical arrangements necessary to allow the Commission to perform its work.

³ *Jane Does I, II, III, IV, V, VI and VII v. The University of Tennessee*, (U.S. Dist. Ct. for the Middle Dist. Of Tenn., No. 3:16-cv-00199).

In performing its review, the Commission focused on Title IX compliance issues related to policies and programs for prevention and response to sex and gender-based discrimination and sexual harassment across the UT System. Pursuant to its charge, the Commission focused specifically on the System's policies and programs regarding sexual assault, intimate partner violence - including dating violence and relationship violence ("IPV") - and stalking (collectively, "sexual misconduct" and/or "prohibited conduct").⁴

Consistent with its charge, the Commission did not review individual case files, including but not limited to the incidents associated with allegations contested in the lawsuit or pending OCR complaints, nor interview past or present complainants or respondents.⁵ However, the Commission did publicize and hold open listening sessions for the campus community, including students, on three separate campuses and remained available for informal, one-on-one discussions after each session. In these sessions and others, the Commission heard from students and representatives of students across the UT System, some of whom reported direct case involvement.

With respect to the Commission's independence, no Commission member was, prior to this engagement, in any way affiliated with UT or had prior educational, professional, or business dealings with UT. In addition, in performing its review, the Commission was given full and complete access to all documents and staff, faculty, and students it deemed necessary to complete its work. Brief biographies of the Commissioners are provided in Exhibit A.

C. STATUTES, REGULATIONS, AND AGENCY GUIDANCE APPLICABLE TO THE COMMISSION'S REVIEW

The Commission's evaluation of UT's Title IX program was performed in the context of complex and interrelated statutes, regulations, and agency guidance. A list of the statutes, regulations, and agency guidance, along with a brief note on the role agency guidance documents played in the Commission's review, is shown in Exhibit B. Also, while federal law generally governs the Title IX

⁴ Throughout this report, these terms (sexual assault, IPV, stalking and/or sexual misconduct) are used and intended generally to be read as consistent with those included in UT's policies and procedures which, in that context, may also individually or collectively be referred to as "Prohibited Conduct").

⁵ For purposes of its review, the Commission is only making recommendations with respect to the Title IX policies and procedures associated with sexual misconduct involving students. The Commission's scope of work did not include review of policies and procedures specific to cases where employees are alleged to have committed these acts (i.e., where employees are respondents), though many of the recommendations herein would have general applicability to prevention and response connected to those matters as well.

programs in the university setting, the Commission reviewed the contested hearing provisions of the Tennessee Uniform Administrative Procedures Act (Tenn. Code Ann. §§ 4-5-301 *et seq*; Tennessee Rules Chapters 1360-04-01; 1720-01-05) (collectively referred to as “TUAPA”), in the context of the 2011 DCL, along with the overlay of the January 17, 2017 State of Tennessee Office of the Attorney General Opinion No. 17-13 (“AG Opinion”), which can be found at <https://www.tn.gov/assets/entities/attorneygeneral/opinions/op17-003.pdf>.

D. INFORMATION-GATHERING PROCESS

In performing its review, the Commission examined relevant policies and procedures as well as related prevention, education, and training materials used on each of UT’s campuses and institutes.

The Commission additionally conducted 65 interviews and follow-up conversations with 52 administrators and staff engaged in oversight and direct facilitation of Title IX response and prevention efforts.

The Commission sought student and broader campus community perspectives during a series of focus groups and listening sessions on three campuses: UTK, UTC and UTM. This included conducting focus groups with student representatives of the Greek, residence hall, and student athlete communities at UTK.⁶

A list of information and materials reviewed is attached as Exhibit C. A list of all interviews, focus groups, and listening sessions is attached as Exhibit D.

II. EXECUTIVE SUMMARY

The Title IX policies and programs at UT have evolved over the last several years with the addition of staff, resources, and System support. Across all campuses, it is apparent to the Commission that there has been a focus on increasing awareness and understanding about sexual misconduct policies and procedures. This has included increasing efforts geared towards preventing incidents from occurring, and responding with compassion and care to incidents that do occur. Attention has been given to structural and staffing modifications and enhancements, updated policies and procedures, innovative and thoughtful prevention and training programs, increased focus on support and response measures for both complainants and respondents, additional tailored training

⁶ A representative of the Commission visited the HSC and SI campuses, but did not hold listening sessions during those visits. Additionally, the Commission did not visit the locations of IOA or IPS whose Title IX policies are covered under, and administered by, UTK, instead choosing to visit the locations with the largest student populations and/or those containing its own Title IX Coordinator.

opportunities within student organizations, and constructive relationships with campus and community law enforcement and victim advocacy organizations.

The dedication of the UT employees involved in all aspects of Title IX compliance at campuses across the System also was apparent to the Commission. Virtually every employee interviewed – across all levels of the UT system – articulated that appropriately, promptly, and thoroughly addressing Title IX matters in a balanced, trauma-informed, thoughtful, considered manner was a consistent goal, even in the face of challenges and resource constraints.

A diverse range of UT students on campuses across the System spoke to the Commission about their interest in deepening their understanding of sexual misconduct prevention and response, including wanting to enhance their understanding and ability to use bystander intervention strategies that may assist in preventing incidents from occurring.

The Commission found that, overall, the Title IX programs, policies, and materials across the System comprehensively address the elements contained in the statutory, regulatory, and guidance documents governing this area. That being said, the Commission also found opportunities for improvement, enhancement and refinement in many aspects of the Title IX program. By way of example, policies at campuses across the system are written in a legalistic style across more than 60 pages and incorporate separate student codes of conduct. The amount of cross-referencing from one document to another required to understand the policy and grievance procedures (i.e., student code of conduct to sexual misconduct policy) adds to the accessibility challenges.

While training, prevention and awareness efforts have increased on nearly all UT campuses over the last several years, there remain pockets on each campus where training could be more consistent or comprehensive for both students and employees. The Commission's interactions with students in particular revealed that it will be important moving forward to provide increased attention to practical trainings around key concepts like prohibited conduct, definitions of consent and incapacitation, identification of confidential and non-confidential resources, understanding of responsible employees/mandated reporting, and investigation processes. Additionally, the prevention and awareness programs at campuses other than UTK were noticeably less developed, particularly when compared to the innovative work performed by UTK's Center for Health Education & Wellness ("CHEW") in its efforts to provide mental health resources, improve and expand violence prevention work, and further develop existing bystander intervention and sexual related trainings. The CHEW staffing and resource support stands in marked contrast to the significant prevention and response infrastructure challenges faced by the rest of the System's Title IX offices.

With respect to case management, there are opportunities on every campus to clarify the processes and functional responsibilities of offices involved in case response, including those regarding both student support and investigations. While there exist campus-specific distinctions in case handling protocols throughout the System, a consistent theme emerged around the need to improve coordination and collaboration among the various offices and staff responsible for case management on each campus. In addition, across the System, case and matter response would benefit from the enhancement and development of after-hours support and resource availability, as well as continuing efforts to assure equity of treatment and resources available for both complainants and respondents.

The Commission's five major recommendations, explained in more detail throughout this report, are as follows:

1. Creation of a System-wide Title IX coordinating presence
2. Campus Title IX staffing and resource enhancements
3. Policy, grievance procedures, and student codes of conduct updates and modifications
4. Case management, care, and support enhancements
5. Education, prevention, and training enhancements

III. OBSERVATIONS AND RECOMMENDATIONS

A. OBSERVATIONS

As discussed above, the Commission noted throughout its work that the commitment of resources, people, and energy to the improvement of the Title IX program was a common theme among administrators at the System level, particularly at UTK. While the staff involved in Title IX compliance at other campuses and units understood their responsibilities and were dedicated to both prevention and response, their smaller staffs and comparatively constrained resources affected their ability to produce Title IX programs as thorough and robust as the Title IX Coordinators and others involved in Title IX response and prevention at those locations would have liked. This in no way reflects a lack of dedication and commitment by the people working in those areas at the other campuses and units. Indeed, in some instances, it was apparent that the smaller campus size allowed for a more personal, highly collaborative approach by

students, staff, and faculty to these complex and difficult issues. The smaller campuses often were able to produce effective results, particularly with respect to individual case response, despite resource constraints.

Where the lack of resources became more apparent on all campuses outside UTK was with respect to the prevention, training, and awareness efforts for students, staff, and faculty. A common theme among locations other than UTK, was a desire to have more assistance from those within the System, either from other campuses, which have already developed a best practice in some area, or from a resource within the System organization.

The UT System provides a governance and support overlay that loosely connects fairly autonomous campuses and other units. With respect to the question of enhanced System oversight of Title IX compliance, two constant themes emerged. First, that anything which appeared to dilute the unique identity or culture of a campus or unit would not be welcomed and second, a concern that if the System were involved it had the potential to add bureaucracy and slowness to campus Title IX efforts. That stated, staff at all campuses, particularly smaller campuses, recognized the potential benefit of leveraging best practices and resources (such as case tracking software, prevention and awareness campaign and training materials, training for Title IX staff, investigators, and hearing board members, website enhancement, and more) across the System in a way which maintained individual campus culture and identity without additional costs or bureaucracy. Indeed, many noted that leveraging these efforts on a System level would lead to greater efficiencies and cost benefits.

With respect to Title IX organizational structures on individual campuses, the Commission realizes that those structures reflect the manner in which the Title IX programs developed within those units and how functions such as student conduct, equity and diversity, health and wellness, and others have evolved over time. Title IX does not mandate any one approach, and in fact, there are a variety of models being used successfully at institutions across the county. The law merely requires schools to develop programs designed to effectively implement their Title IX obligations. The Commission's observation was that the variability of models among UT's campuses reflected the needs of those institutions. Accordingly, the Commission evaluated the effectiveness of the Title IX program structure at each campus as it currently exists to comply with the relevant state and federal requirements.

B. RECOMMENDATIONS

1. System-Wide Title IX Coordination

The Commission's most significant structural recommendation is to establish a Title IX coordinating presence at the System level.⁷ The goal of this position would not be to duplicate, usurp, or manage the Title IX Coordinators or programs at the individual campuses, nor interfere with the existing management and reporting relationships existing at the campus level.⁸ The individual campus Title IX Coordinators know best the cultural and organizational requirements of their campuses and they would continue to work within those structures.

The Commission envisions a role that would act in a matrix style across the System to: act as the Title IX Coordinator for the System; track best practices and legal developments; facilitate Title IX compliance and measure program effectiveness; collaborate with individual Title IX Coordinators to act as a resource for policy review and formation as well as providing a collegial peer off of which to bounce thoughts and ideas; facilitate cross-System communication on important Title IX issues; help leverage and disseminate best practices across the System; assist in working through interpersonal dynamics among Title IX cross-functional teams; act as a coach for less experienced Title IX related functions and provide a broader "big picture" view, and act as a trend spotter in the Title IX area.

Many of the specific recommendations in the following sections relate to tasks that key staff involved in the day-to-day administration of Title IX matters do not have the time or resources to do, or are challenged to accomplish in a timely manner. Indeed, many of those interviewed across all campuses expressed frustration at the limits of time within the scope of their roles and responsibilities in this and other areas within their portfolios.

The person who would fill this role ideally would be a behind-the-scenes, collegial, cooperative facilitator, charged to enhance the efficacy of the campus Title IX efforts within the constantly evolving legal landscape and development of best practices. In order to have the credibility to enable this position to be

⁷ While the Title IX Coordinator on the UTK campus is named on some documents as being the Title IX Coordinator for the UT System, her existing System role is to prepare the statewide Title IX implementation plan report. Interviews with key senior administrators indicated that there is neither the expectation, nor is she provided the program support necessary, to serve the UT System in the role being recommended herein.

⁸ The Commission recommends that campus Title IX Coordinators maintain their existing reporting and responsibility lines with a dotted line to the new System-wide Title IX Coordinator added to each.

accepted and respected by others throughout the System and campuses, they would need to have adequate experience in Title IX administration and the added skill of being viewed as a true collaborative resource and not an added layer of bureaucracy.

Recommendations:

The Commission envisions that the System Title IX Coordinator priorities would include:

- Serving as the Title IX Coordinator for the approximately 280 System employees.
- Assisting with the adoption, dissemination, and ongoing updating of legally compliant, Statements of Non-Discrimination, and system-wide Sexual Misconduct Policy and Grievance Procedures (allowing for necessary localization on each campus with respect to contacts, resources, and student conduct procedures).
- Assisting UT System and individual campus administrators by recommending resource allocations to campus Title IX Coordinators and related offices sufficient to ensure campus compliance with state and federal mandates under university policy.
- Facilitating and leveraging training opportunities for campus Title IX Coordinators, investigators, and hearing board members to ensure compliant, consistent matter and case investigation response across the System.
- Ensuring consistent, effective Title IX awareness and prevention trainings for employees and students, including assisting with developing new resources and leveraging existing best practice materials and resources used on various individual campuses across the System.
 - Providing opportunities to share prevention and training resources developed by UTK's CHEW across the system, allowing for appropriate campus-specific branding and localization of information, messaging and programming for students, staff and faculty.
- Being available as needed to assist campus Title IX Coordinators with case and investigation review to ensure compliant and consistent case management response.

- Leveraging case management resources available at some campuses for the benefit all (e.g., case tracking software).
- Developing an annual system-wide report detailing prevention, awareness and training efforts, case numbers and outcomes by campus, and briefing the UT Board of Trustees on an annual basis.
 - Using UTK's January – December 2016 "Sexual Misconduct, Relationship Violence, Stalking, and Retaliation Annual Report" as a model.
- Managing a centralized Title IX website for the System, and assisting with development of coordinated, consistent, compliant, and localized websites or sub-sections of the System website for each campus.
 - Assuring appropriate IT support for this work will be necessary at both the System and campus levels.

The Commission recommends consideration be given to placing the System Title IX Coordinator within the System's independent Office of Audit and Compliance to allow for appropriate authority and autonomy. The Commission further recommends that the System Title IX Coordinator establish a Title IX Compliance workgroup with key administrators across the System (i.e., Title IX Coordinators, counsel, Equity and Diversity, Conduct, Wellness and Prevention, etc.) convened regularly for professional development, training, and collaboration.⁹

2. Campus Title IX Staffing and Resource Enhancements

Each UT campus has a designated full-time employee serving as the campus Title IX Coordinator. All but one have additional areas of responsibility, including but not limited to overseeing institutional compliance with other Federal non-discrimination laws. As noted in recent OCR guidance, such assignments are not problematic provided the Title IX Coordinator has the capacity and the support to manage all assigned areas of responsibility effectively, including Title IX.¹⁰ In addition, the Title IX function should be sufficiently staffed to ensure that conflicts of interest do not exist within the program, e.g., instances where Title IX Coordinators may be responsible for investigating a complaint, while also providing support to the parties during the investigation. In interviews, each Title IX Coordinator conceded that they could use additional programmatic assistance

⁹ Many Title IX Coordinators and others interviewed described attending a 2016 Title IX Summit, convened in Nashville and including key administrators across the system, as a valuable professional development experience and one they would welcome attending on a regular basis.

¹⁰ 2015 DCL (p.3)

and most articulated that need as specific to ongoing support and prevention efforts, including with respect to the provision of interim support measures for students involved in case investigations.

Each Title IX Coordinator indicated that they have the independence, authority, training, and responsibility to oversee the Title IX program on their respective campus, and each has direct access to their most senior administrator (in some instances the Chancellor, in others the Executive Director), as needed. The Title IX Coordinators at UTM, UTK, and SI report directly to their institution's Chancellor or Executive Director, whereas the Title IX Coordinators at UTC and HS report to individuals with a direct reporting relationship to the institution's Chancellor. In discussions with campus community members, Title IX Coordinators have varying levels of visibility on each campus, depending on the size of the campus and their length of tenure.

Three institutions have assigned specific Deputy Title IX Coordinator responsibilities to campus employees by, and with responsibility for, certain school populations, e.g., athletics, students, and staff. Other Deputy Coordinators are assigned by their Title IX functional responsibility, e.g., Title IX investigator. Although it was reported that Deputy Coordinators are trained in compliance with legal expectations, Title IX Coordinators noted that additional training opportunities for these deputies would be helpful.

Despite recent improvements in staffing, the efficiency and effectiveness of each Title IX office would see additional improvement with increased staffing. The Title IX Coordinators at UTM, UTC and SI, for example, have relatively limited Title IX program assistance, and although UTK has added staff and enjoys the assistance of full-time dedicated prevention specialists, the Title IX Coordinator is also responsible for all the functions within the UTK Office of Equal Opportunity and the investigation of both student and employee complaints. Title IX office spaces vary as well. While the Commission found that the UTK Title IX office is appropriately located in a building with ample room for private conversations and confidential access, and the UTK CHEW offices are conveniently located adjacent to counseling services, the Title IX offices on the UTC and UTM campuses are housed in space that is not private or of sufficient size for the functions performed.

Title IX and Deputy Title IX Coordinator names, titles, contact information and areas of responsibility are included on campus websites, in the Title IX Policy, on some notices of non-discrimination and relevant brochures and other published materials distributed throughout each campus. Students, faculty and staff confirmed that Title IX and Deputy Coordinators are available to meet with students, as requested.

Recommendations:

- With assistance from the System Title IX Coordinator, evaluate Title IX Coordinator reporting lines annually to ensure that each has access to their most senior administrator on each campus, including a dotted line report where a direct reporting relationship does not exist and a dotted line report to the System Title IX Coordinator.¹¹
- Review all campus Notice of Non-Discrimination statements to confirm that they contain all appropriate Title IX Coordinator and OCR information, as required by Title IX regulations.
- Consider revisiting the descriptions of Deputy Title IX Coordinators assigned by population, e.g., students, athletics, staff, to ensure that their roles are fully defined and publicized.
- Continue to provide meaningful training opportunities, through the provision of financial support and coverage, to allow individuals involved in all aspects of Title IX compliance to attend off-site trainings and programming.
- Ensure that the Deputy Title IX Coordinator for Athletics on each campus with an athletics program have responsibility for athletic equity and sexual misconduct, and receive appropriate training in both areas.
- Consider the location of campus Title IX spaces, including Title IX Coordinator's office space, to determine if the location poses any barriers (i.e., lack of privacy) to community members accessing Title IX services.
- Consider enhanced prevention, investigation, and support resources, particularly for UTM, UTC, HS and SI.
- Clearly designate on each campus the person(s) responsible for the determination and implementation of interim measures.

¹¹ While recent OCR Guidance suggests that Title IX Coordinators should report to “the most senior leadership on each campus” including, e.g., university presidents. 2015 DCL (p. 2), Title IX does not mandate that Title IX Coordinators report directly to the senior administrator, but rather that they have sufficient independence and access. The Commission found that all Title IX Coordinators had access to their senior administrator.

- Consider providing ongoing and targeted opportunities for student conduct and Title IX offices to build on existing relationships to strengthen each campus's coordinated Title IX response efforts, including where cases raise overlapping issues.
- Ensure that those involved in the evaluation, investigation and adjudication of Title IX issues receive annual education and training, including being informed of Title IX's anti-retaliation provisions, specifically as it applies to their roles in the Title IX process.

3. Policy, Grievance Procedures, and the Student Codes of Conduct

a. General Considerations

UTK updated its Policy on Sexual Misconduct, Relationship Violence, Stalking and Retaliation, effective August 17, 2016. This Policy governs the System, UTK, IOA, and IPS ("UTK Policy"). The HSC (effective August 16, 2016), UTM (effective September 1, 2016) and UTC (effective, January 9, 2017) implemented a variation of the UTK Policy, called Policy on Sexual Misconduct, Relationship Violence, and Stalking.¹² The SI has a general non-discrimination policy and is in the process of drafting a more comprehensive Title IX policy (its Title IX website provides a link to the UTK Policy). Except for the SI policy, the language, approach, and formatting of all campus policies are similar. Each institution's policy has been adjusted, with the appropriate input of the Title IX Coordinator, to reflect campus staffing and individualized approaches to the investigation and resolution of complaints. The following discussion and recommendations apply to the common policy structure and policy language set forth in the UTK Policy, unless otherwise noted.

The UTK Policy is comprehensive and thorough. At 60-plus pages, not including critical information included by reference such as student conduct grievance procedures, it addresses Title IX sex discrimination and incorporates prohibitions against IPV and stalking, consistent with VAWA. A review of previous iterations clearly demonstrates that UTK and the System have invested significant time and energy to incorporate the vast landscape of Title IX, Clery, VAWA, and state law requirements. Individual Title IX Coordinators have appropriately customized the UTK Policy for their campuses. It is the Commission's understanding that this work is ongoing, both with respect to the Policy and the campus student codes of conduct. While the Commission is aware that the UTK student code of conduct

¹² The Commission was advised that the omission of the word "Retaliation" in the title of UTC, UTM and HS policies was inadvertent. Retaliation is prohibited in each policy.

has been revised and is awaiting final approval by the State of Tennessee, it is recommended that a plan be put in place to modify codes of conduct throughout the System where appropriate.

Students, faculty, and staff reported that due to its length and what many described as a legalistic approach, they found the UTK Policy to be difficult to navigate. For example, a reader must reference sometimes overlapping and confusing definitional sections contained in the body and appendices to understand important policy elements such as the nature of the conduct that is prohibited, confidentiality and associated limitations, as well as descriptions of how to report prohibited conduct and how those reports are resolved. This is particularly true with respect to employee reporting obligations. Per OCR guidance, schools must clearly define in their policies those employees who are required to report instances of sexual misconduct (“Responsible Employees”) and those employees who are confidential (“Confidential Employees”) for purposes of Title IX reporting. Responsible Employee reporting obligations may sometimes overlap with other obligations under the Clery Act or state law but it remains a distinct obligation under Title IX, with specific protocols. Under the UTK Policy, those with responsibilities to report under all relevant laws are called Mandatory Reporters which can be confusing for both those wishing to file a complaint and those with reporting obligations. This appears to be the natural consequence of sincere attempts to incorporate overlapping responsibilities under Title IX, Clery, VAWA, and relevant state laws into a single document.

Crafting a document that focuses on what each campus is seeking to prohibit by its policy, while ensuring that other reporting obligations are explained and delineated is necessary for overall Title IX compliance. The Commission heard from students that the UTK Policy’s reporting, confidentiality, consent and grievance procedures, including the rights and responsibilities of complainants and respondents as they move through the process, are not fully understood as currently outlined in the Policy.

The UTK Policy could be divided into two distinct sections: one that focuses on UT’s prohibitions on sexual misconduct, IPV, stalking and associated retaliation, and one that outlines grievance procedures and relevant timeframes for resolving complaints under the Policy, including appropriate descriptions of the individuals or offices responsible for each step in the process, e.g., investigations, conduct hearings, and recommendations for sanctioning, where necessary. Such a division of the existing document would serve the dual purposes of fairly placing the UT community on notice of its policy, including prevention and confidential resources, and grievance procedures as required by law and enable students, faculty, and staff to access important information in an accessible format.

The Commission recognizes the dramatic improvements already made to the current Policy and encourages stakeholders and staff to continue this important

work. To that end, the Commission suggests the following non-exhaustive list of recommendations for discussion and consideration.

Recommendations:

- Update each school's policies and grievance procedures consistent with Title IX and VAWA regulations and continue to streamline the system-wide Title IX policy with regional customization, allowing for minor, necessary localization regarding staffing, resources, and grievance procedures, including student code references. Solicit feedback from students, faculty and staff on policy clarity, understandability, and ease of navigation.
 - Define clearly all conduct that is prohibited. Expand existing definitions to include cyberstalking as a form of prohibited stalking behaviors and gender-based harassment as a form of prohibited sexual harassment.¹³
 - Clarify distinct reporting obligations using the designations set forth in the relevant statutes, e.g., Responsible Employee and Confidential Employee under Title IX, Campus Security Authority under Clery, and Mandatory Reporter for purposes of state law driven child abuse reporting requirements, while still ensuring that the Title IX Coordinator is apprised of Title IX issues and complaints, to allow for appropriate response, including focused remediation efforts where troubling patterns or systemic discrimination may be identified.
 - Emphasize the scope of confidentiality for those who hold state law privilege (e.g., when acting within their role) and for those designated as confidential per school policy but are not confidential by licensure. Consider potential implications of designating as confidential those who do not hold state law privilege for processes not involving UT.

¹³ "Title IX also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature. The Title IX obligations ... also apply to gender-based harassment" as discussed in the 2001 Revised Guidance, and the 2010 DCL on Harassment and Bullying, (p.7-8) (Title IX: Gender-Based Harassment), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>. See also the 2017 DCL (Rescinding the Dear Colleague Letter on Transgender Students, while noting that the guidance "...does not leave students without protections from discrimination, bullying, or harassment." [And that] ... "schools must ensure that all students, including LGBT students, are able to learn and thrive in a safe environment.").

- Require Responsible Employees to report all known and suspected instances of prohibited conduct, including reports made by third parties, to the Title IX Coordinator or designee, and describe the consequences of failing to report.
 - Consider allowing anonymous reporting on all campuses, with the understanding that investigation and response measures may be limited.
 - Ensure that all timeframe targets for major steps in the investigation and adjudication process are clearly defined, including OCR's 60-day target for complaint resolution, including student conduct hearings, and the unique circumstances that may ensue in cases where the TUAPA is invoked.
- Update campus student codes to provide seamless integration of the Title IX policies and practices on all campuses and to incorporate Title IX and VAWA elements into student codes where relevant.
 - Review policies, rules and expectations across campus (including, e.g., student-athlete codes of conduct and individual team rules or expectations), to assure consistency with the UTK Policy, including language regarding alcohol, amnesty, and expectations of confidentiality.
 - Update Title IX and Student Code of Conduct website links

b. Title IX and the TUAPA

Per state law, UT is required to make available administrative hearing procedures, as set forth in the TUAPA in certain cases, including sexual misconduct cases. Some have questioned whether UT can adequately provide a prompt and equitable adjudication of Title IX complaints, and otherwise comply with Title IX guidance regarding contested cases when the TUAPA is invoked. UTK's Policy provides that it will strive to complete the procedures for investigating and resolving a report involving a respondent who is a student "... within 60 days of receipt of a report of Prohibited Conduct." It further lists circumstances which might require adjustment of the time frames including assuring due process, complexity of allegations and the investigation, severity and extent of alleged misconduct, and the number and availability of parties and witnesses, among other reasons. This section also commits, consistent with Title IX guidance, to informing both complainants and respondents of any delays in

the time frames previously communicated and the reasons for any such delay along with the expected adjustment to the time frames required by the delay. Under the TUAPA, a hearing officer has 90 days following a hearing to issue an initial order. This three-month timeframe does not include the time necessary to investigate and hear a contested case.¹⁴ Accordingly, a TUAPA process usually takes longer to complete than a non-TUAPA student conduct proceeding and frequently exceeds the 60-day timeframe discussed in the 2011 DCL and the 2014 Q and A.

The Attorney General of the State of Tennessee issued the AG Opinion in response to a request from a Tennessee State Representative regarding several interpretive matters related to the TUAPA contested hearing provisions as they relate to Title IX related sexual misconduct by students at public institutions of higher education. The AG Opinion found that neither the due process clause, Title IX, nor the Clery Act imposes a specific time frame for completion of a TUAPA contested case, and also that neither Title IX nor the Clery Act preempts the TUAPA contested case provisions.

While Attorney General opinions are not binding on courts, they guide the university in how it will comply with state laws, and how those laws potentially conflict with, or are reconciled with, federal law. Accordingly, UT's position that the TUAPA does not conflict with, and is not preempted by, federal law with respect to its contested case process--or the time frames resulting from that process --is guided by reliance on the AG Opinion.

The Commission heard from many community members who, while acknowledging the due process attributes of the TUAPA, expressed frustration with the TUAPA process generally, particularly the time it takes to resolve a case. The Commission agrees that TUAPA proceedings require an elevated and extended system of care and support for complainants, respondents and other students who may be affected by the often-lengthy process, including witnesses, roommates and others.

Recommendations

- Consider the special importance of providing support to complainants and respondents, and the range of available and ongoing interim measures involved in TUAPA proceedings, as appropriate in light of the average length of the process.

¹⁴ (See Rule 1720-01-05-.01 (12) (g), Rules of the University of Tennessee (All Campuses), Procedure for Conducting Hearings in Accordance with the Contested Case Provisions of the Uniform Administrative Procedures Act).

- Evaluate the procedure by which continued involvement by respondents in extracurricular activities are evaluated during the pendency of an investigation and adjudication process to assure consistent and equitable treatment.

4. Case Management

a. Case Management: Care and Support

Upon notice, a school must take immediate and appropriate action to assess, investigate and take prompt and effective steps to eliminate, prevent, and address the prohibited behaviors that it finds. Throughout the process, institutions must provide an equity of rights and appropriate interim measures and support. Each campus within the System has developed its own protocols regarding case management, including those specific to protocols regarding immediate matter response and provision of support and care for the students involved. The Commission recommends that these protocols continue to be clarified and enhanced. This would include continued refinement and usage of consistent intake forms by staff who most frequently receive disclosures as well as greater focus on clarifying existing resources and developing additional resources available to students. This would also include continued development of collaborative case protocols regarding matters that merit threat assessment consideration, particularly in IPV and stalking matters, as has happened at UTK.

Enhancement of resources available at night and over the weekend when incidents of prohibited conduct often occur would be most beneficial. At UTK, students and staff reported familiarity with the well-publicized help line (974-HELP), but articulated concerns regarding failing to reach someone when calling that line at late hours and over the weekend. This also was cited by UTK RAs as a concern. Students on other campuses similarly articulated a lack of clarity about what resources are available to them at night and on weekends. This is an area where continuing to develop strong relationships with local and statewide confidential advocacy resources may be beneficial. This is also an area where providing enhanced clarity regarding the role of the police, both on campus and off-campus, would enhance System-wide response.

b. Case Management: Investigation and Adjudication

While a review of individual cases or case files was beyond the scope of the Commission's charge, the Commission examined the investigation and adjudication policies and procedures on each campus, interviewed staff who conduct and oversee the process on their campuses, and heard from students, faculty and staff who reported they had been involved in cases. The Commission's focus was on cases where students are respondents. Case investigation and adjudication protocols differ among campuses across the

System, with some investigations housed in the Title IX office while others are housed in student conduct. In cases where student respondents are charged with UTK Policy violations, the respondent has the right to invoke a hearing panel. All non-TUAPA hearing procedures are governed by student conduct codes enacted before the UTK Policy and recent Title IX guidance and VAWA amendments, went into effect. As of this writing, proposed amendments to the UTK student code of conduct await approval from the State of Tennessee.

The following recommendations are made specific to case management practices where students are respondents. They are generally applicable to all campuses within the system, and would be expected to be overseen generally by the campus Title IX Coordinators, in close collaboration with key campus partners and with the support of the System Title IX Coordinator.

Recommendations:

- Clarify roles of each office involved in sexual misconduct case response, clearly explaining those roles to staff, students, and faculty on each campus through enhanced and widespread materials and training.
- Ensure the existence of a functioning, regularly meeting Sexual Assault Response Team (“SART”) in place at each campus, chaired or co-chaired by the campus Title IX Coordinator (or appropriate Title IX Coordinator designee cloaked with adequate authority).
- Ensure support measures continue to be in place and clearly articulated to students involved in sexual misconduct cases, including continued development of enhanced and appropriately equivalent support resources for respondents, on par with the resources provided for complainants.
 - Focus specific efforts on clarifying the resources available at night and on the weekend, including detailing which are confidential and which are not.
- Clarify which office(s) hold responsibility and authority to implement and oversee interim measures and interim sanctions.
- Continue to ensure integration between Title IX and student conduct case management protocols, including but not limited to those triggering threat assessment review as well as investigation protocols for Title IX cases raising additional conduct concerns falling outside the scope of Title IX (i.e. cases raising conduct issues in addition to Title IX issues).

- Revisit staffing levels to ensure that cases are resolved by appropriately trained investigators using a preponderance of the evidence standard in a prompt and effective manner (generally speaking, 60 days or fewer), with equivalent support resources for complainants and respondents.
- Survey students engaged in investigations processes to assess areas for ongoing improvement (survey instrument should allow students to respond anonymously).

c. Cooperation with and Role of Law Enforcement and Off-Campus Sexual Assault and Domestic Violence Crisis Centers

The UT campuses have a collection of policies, agreements and memorandums between or among entities that were signed over the years, including agreements with law enforcement and outside support and advocacy organizations that are relevant to Title IX.¹⁵ Formal Memorandums of Understanding agreements (“MOU”s) are recommended by OCR, in order to define the roles, responsibilities and interplay among those with interest or responsibility for Title IX, including communication, coordination, prevention, response, and support. Some of the campuses have ongoing MOUs and agreements with agencies that provide support and advocacy, including UTK’s MOU with the Sexual Assault Center of East TN (September 2014), an External MOU between the UTC Campus Transformation Project and Victim Service Provider (2009) and an MOU among local law enforcement, the District Attorney and UTC Partnership for Families, Children and Adults Rape Crisis Center (March 2013). In addition, the UTK police have developed a detailed document protocol regarding trauma informed handling of complaints of sexual assault, including interaction with and reporting to Title IX.

Recommendations:

- Consider convening representatives from local law enforcement and Title IX on each campus to explore the drafting new, or updating existing campus MOUs consistent with Title IX, VAWA, and relevant privacy laws:
 - Ensure that MOUs with law enforcement clearly explain when a school will refer a matter and whether and how the school and law enforcement unit may share investigation notes and other information.

¹⁵ The MOU agreements reviewed are included in the list of materials reviewed, at Exhibit C.

- Describe how law enforcement employees receive copies of the school Title IX policies, including procedures for the adjudication and resolution of complaints of sexual misconduct.
 - Include language stating that law enforcement employees will tell complainants that they have the right to file a Title IX complaint with the university in addition to filing a criminal complaint, and that the police will identify complainant to the university only if the complainant consents.
 - Describe how Title IX and law enforcement share access to investigation notes and indicate whether officers are Responsible Employees/Mandatory Reporters.
 - Set forth specific protocols regarding notification of the university.
 - Include language describing sexual assault prevention efforts, protocols for trauma-informed response to reports of sexual assault, collaborative Title IX training.
- Consider exploring new, and strengthening existing partnerships with local victim and support agencies. Develop new, or ensure that current campus MOUs are consistent with Title IX, VAWA, and relevant privacy laws, and include the following:
 - Description of the Agency and the services it provides on and off campus.
 - Description of the relationship between the campus and the Agency and the respective roles and responsibilities of each party to the MOU.
 - Confidentiality.

5. Education and Prevention

a. General Considerations

In addition to the Commission's independent review of education and training programs and materials, including interviews with responsible staff across the System, these recommendations are informed in significant part by the feedback received by the Commission from a broad range of campus stakeholders,

including students, staff, and faculty, during the open listening sessions and focus groups held during the Commission's on-campus visits. The Commission would encourage campus Title IX Coordinators and related collaborative campus partners to continue to seek such feedback from the community on a regular basis regarding their perceptions and lived experiences and perspectives of Title IX prevention, resources and response on campus.

Significant efforts have been expended across the System to enhance and bolster training opportunities around Title IX for students, staff and faculty. The Commission would encourage the continuation of this important work, through consideration of the following education and prevention enhancements.

Recommendations:

- Provide annual Title IX training to the Board of Trustees and to all UT System employees.
- With assistance from the System Title IX Coordinator, ensure all UT staff involved in the Title IX process, from those providing support and resources to those involved in the investigations processes, including appeals, receive annual comprehensive trauma-informed Title IX training with content to include but not be limited to:
 - Relevant state and federal law.
 - Relevant UT policies and procedures.
 - Trauma-informed response to, and support for, complainants and respondents.
 - Campus-specific confidential and non-confidential resources.
 - Interim measures and sanctions.
 - Investigations.
 - Appeals.
- Provide training to campus police and to the extent possible, local law enforcement regarding Title IX, Clery and VAWA compliance.
- Enhance clarity of training for students, staff and faculty around UTK's Policy with particular focus on: definitions of prohibited conduct, including cyberstalking and gender-based sexual harassment,

investigation procedures, and confidential and non-confidential resources, including hours of operation.

- Additional development of campus-specific resource documents/handouts describing key policy provisions and resources may be helpful in connection with this aspect of continued training, including but not limited to brochures, flyers and enhanced web-based content.
- For students, focus additional training efforts on smaller-group, in-person, interactive activities that emphasize concepts of consent and incapacitation as defined within the relevant policies, as well as bystander intervention. Consider reevaluating the manner of covering sexual misconduct topics during freshman orientation to minimize the risk that important concepts will be missed in the deluge of information presented. Additional student-focused training enhancements for consideration include:
 - Increasing information related to IPV and Stalking prevention and response.
 - Further developing training efforts geared toward international and transfer students.
 - Developing additional mandatory training opportunities for graduate students that recognize their unique role both as students and, in some cases, as TAs/GAs with reporting and/or response obligations.
- For student organizations, including but not limited to students involved in intercollegiate athletics, club programs, and fraternity/sorority life:
 - Ensure that training and prevention activities are interactive and relevant to the specialized Title IX issues that may arise in these settings, including discussions regarding interim measures, steps to ensure prompt and effective reporting, confidentiality and need-to-know guidelines, as well as ongoing support, prevention, and leadership.
 - Implement targeted bystander training programs, ideally with peer facilitation.
 - Review materials prepared in these areas for consistency with broader campus messaging.

- Ensure that Title IX Coordinators or designated training specialists are consulted regarding programming provided to these groups, including outside speakers, to ensure consistency of messaging with other trainings provided to students across campus.
- For employees, continue efforts to mandate and enforce regular/ongoing training attendance for all UT employees, staff, and faculty. Additional employee-focused training enhancement for consideration include:
 - Ensuring appropriate training for adjunct faculty, part-time and temporary employees, and any employees hired outside the standard hiring cycle (i.e. midyear faculty hires).
 - Developing smaller-group, in-person training platforms in addition to continued enhancements to web-based and large-group learning platforms and presentations, particularly for those employees most likely to receive disclosures and for employees serving in management roles.
 - Conducting trainings at times during the year designed to effectively capture graduate assistants and volunteers, including personnel in athletics.
- Ensure connection among the Title IX Coordinator, case investigators and prevention specialists on each campus and System-wide so that case trends inform prevention work in real time.
- Consider desirability or feasibility of curriculum-based enhancements including adopting sample syllabus language regarding policy and resources and adding sexual misconduct and bystander intervention topics to first-year education programs.
- Developing protocols to address the provision of interim measures that may be implemented regarding continued participation in student organizations and activities, including athletics, pending the resolution of a case, especially where the TUAPA may be invoked. Consider identifying the office or persons responsible for making such decisions.
- Ensure that the Title IX Coordinator is available to provide assistance to the school's law enforcement unit employees regarding how to respond appropriately to reports of sexual violence, including discussing the distinctions between university and law enforcement investigations processes.

b. Student Organization-Specific Considerations

In its review, the Commission additionally looked more specifically at prevention efforts directed toward certain student organization populations, including fraternity and sorority life, intercollegiate athletics, and housing.

i. Fraternity and Sorority Life

With respect to efforts tailored specifically to the fraternity and sorority communities, students and staff across the System noted the unique opportunities and challenges present within this population, including but not limited to the presence of unofficial off-campus fraternity houses where a significant number of social events occur. These dynamics are complicated by national trends, which include fraternity and sorority organizations providing their own messaging to members around the organizations' expectations about Title IX response by members. This is an educational area across the UT System that merits further focused attention from administration, possibly in coordination with national organization leadership. Campus staff responsible for overseeing fraternity and sorority life expressed a desire to enhance ongoing programming and at UTK CHEW is in the process of developing materials and training specific to this community, in collaboration with student members within the community. Students involved in fraternity and sorority organizations indicated a willingness and desire to receive more advanced-level, in-person training, especially around prevention, bystander intervention, interplay between alcohol and other drugs and effective consent, and sexual misconduct. These students also reflected a desire for more interactive training opportunities where they could ask questions and discuss the challenges confronting them within their own communities and organizations. The Commission encourages the enhancement of ongoing efforts across the System, in coordination with the Title IX Coordinator, fraternity and sorority life staff, police, and prevention and wellness staff, to facilitate such interactive, in-person, skills-based trainings and discussion. Given the numbers of non-Greek students that articulated socializing in these settings, such training could have an impact on each campus far broader than the fraternity and sorority population itself.

ii. Athletics

The Commission found that while senior management and athletics department personnel at UTK, UTC, and UTM demonstrated a heightened awareness of the importance of Title IX prevention and compliance, continued targeted focus in this area should continue. Title IX Coordinators have conducted athletics staff and student training on each campus, albeit some more frequently than others. Student-athletes and athletics staff on each of the three campuses complete

trainings provided to students and employees generally, while also attending mandatory, enhanced training sessions in athletics. For example, the UTK football and men's basketball teams completed an intensive series of Title IX trainings during the 2016-2017 academic year. UTK recently contracted with a local counseling agency to place two training specialists in the department to create a focused in-house wellness program.

Although the athletics staff interviewed exhibited a thorough understanding of their individual reporting obligations, some confusion exists among students and staff regarding confidentiality and the reporting obligations of certain athletics employees, including certified athletics trainers and graduate assistants. The Commission strongly encourages Title IX Coordinators at UTK, UTC and UTM to work with the new athletics leadership to continue to prioritize education, prevention and response efforts in athletics for students and staff, coaches and department volunteers. This work should include development of protocols regarding Title IX programming, including the selection of outside speakers, the implementation of bystander training and other ongoing athletics-focused education initiatives. Title IX Coordinators are encouraged to work with athletics leadership to evaluate the design and efficacy of these programs.

In addition to the general recommendations set forth above, further considerations include:

- Conducting trainings at times during the year designed to effectively capture current student-athletes, first year players, and transfers, including protocols for the hosting of recruits and provisions of the NCAA Toolkit on Title IX, as appropriate.
- Reviewing the student-athlete transfer process to ensure that it addresses the recruitment of those who have been found responsible of sexual violence, dating and domestic violence, and violent stalking behaviors, and in the case of UTK, that it is consistent with conference expectations.
- Including Title IX nondiscrimination links on the athletics homepage and all recruiting sites.
- Consider including language regarding reporting obligations in individual job descriptions and employment contracts, including coaching contracts.

iii. Residential Life

The Commission found that significant training and response protocols are in place within housing departments across the System, with professional staff and

student employees generally well aware of reporting obligations and resources. UTK resident assistants (“RAs”) appreciated CHEW’s RA training programs, including commenting favorably on the more hands-on opportunities to act out scenarios and build specific skills around case and matter response. RA and housing staff across the System were clear about their on-call reporting obligations, but expressed challenges related to services available off-hours as well as their roles when interacting with friends or observing situations outside their official roles of duty. At UTK in particular, RAs also articulated that more focus would be helpful in terms of responding to students returning from unofficial social events off campus. RAs across the System also articulated needing greater access to training and other resource materials for residents in their buildings, including brochures and easy to understand handouts and prevention materials.

c. Ongoing Climate Assessment

The System is in the process of conducting a comprehensive Title IX climate survey. The Commission would recommend there be ongoing climate surveys as appropriate, seeking both quantitative and qualitative information regarding sexual misconduct from the campus community.

Recommendations:

- System Title IX Coordinator should assist in development of climate survey models.
- Ensure that assessments are consistent and allow UT to measure performance over time and across the UT System.
- Ensure that campus Title IX Coordinators are involved in the design, coordination, collection, and analysis of any climate assessment.¹⁶

IV. CONCLUSION

The Commission’s work over the past six months provided a window into vibrant centers of learning with enthusiastic and engaged students, faculty and staff. The Commission also had the opportunity to learn about the unique campus environments within the UT System. It is apparent that UT is dedicating resources and attention to ensuring campus environments free from discrimination and harassment based on sex, including sexual assault, intimate partner violence and stalking. President DiPietro and administrators across the

¹⁶ 2015 DCL (p. 4).

system articulated their desire to achieve a “best in class” Title IX program focused on both prevention and response. The Commission hopes that this Report will help UT in its ongoing efforts to achieve that goal.

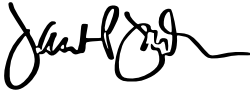
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