

UA Title IX Compliance Scorecard Metrics February 2016

This rubric authored by the UA Title IX work team (comprised of the UAA, UAF and UAS Title IX Coordinators and professional staff with Title IX responsibilities), identifies key compliance requirements. For compliance purposes, the team captured, and each campus is measuring, its performance against the requirements articulated in federal law, Office of Civil Rights (OCR) guidance and Dear Colleague Letters (DCL) issued by OCR.

Across the nation, best practices in Title IX are emerging through guidance provided by the White House (*Not Alone* report, April 2014), OCR Settlement Agreements with other universities (Montana, Michigan State, Tufts, Virginia, Harvard, etc.), professional associations such as ATIXA, and research conducted by Rutgers and others.

The work team members are individually advocating on their campuses for adoption of many of the emerging best practices; eventually those best practices may become metrics added to this scorecard, though not required to be compliant with the law. The UA Title IX work team members will monitor the emerging best practices and bring the practices to the attention of the work team and their campus leadership for possible funding and adoption.

The current scorecard is focused primarily on legal compliance and peripherally on best practice.

Required for Compliance

1. Key Board Policy and University Regulations' Ability to Support Compliance; Pol. 01.02, Pol. 04.02, Pol. 04.08, Pol. 09.02

Grievance procedures providing for the prompt and equitable resolution of student and employee complaints is required pursuant to 34 CFR 106.8(b). Some Board of Regents Policy and University Regulation are not current with Title IX requirements, and have significant impact on the campuses' ability to comply with Title IX. OCR Sexual Harassment Guidance, January, 2001, requires that grievance procedures applicable to sexual harassment complaints should be written in language appropriate to the age of the school's students, easily understood, and widely disseminated.

An assessment of those Policies and Regulations' ability to support campus Title IX obligations follows:

P01.02 Discrimination and Title IX

Red:	Non-compliant
Yellow:	Compliant but cumbersome or impedes compliance
Green:	Compliant, easily understandable and supports Title IX compliance

P04.02 Sexual Harassment

Red:	Non-compliant
Yellow:	Compliant but cumbersome or impedes compliance

Green: Compliant, easily understandable and supports Title IX compliance

P04.08 Employee Discipline

Red: Non-compliant
Yellow: Compliant but cumbersome or impedes compliance
Green: Compliant, easily understandable and supports Title IX compliance

P09.02 Student Code of Conduct

Red: Non-compliant
Yellow: Compliant but cumbersome or impedes compliance
Green: Compliant, easily understandable and supports Title IX compliance

2. University Title IX Procedures

Procedures identified as required under OCR Guidance and as minimum requirements under the Michigan State University Resolution Agreement, Aug 2015.

Rating:

Red: 0% to 50% (0-12)
Yellow: 50% to 90% (13-22)
Green: 90% (23 or more)

Criteria:

- Procedures apply to complaints alleging all forms of sex discrimination against employees, students, and third parties
- Procedure and how to file a complaint is easily understood, easily located and widely distributed, including the name or title, office address, email address, and telephone number for the individual with whom complaints may be filed
- Provisions for the prompt adequate, reliable and impartial investigation of complaints, including the opportunity for the parties to present witnesses and other evidence and to have similar and timely access to information being considered in the grievance process
- Reasonably prompt timeframes for the major stages of the grievance process, including provisions for extension of time, that apply equally to the parties
- Written notice of the outcome of the complaint, and any appeals to all parties including the respondent, alleged victim and if different, the complainant
- Assurance that the university will take prompt and effective steps to end the sexual or gender-based harassment, assault and sexual or violence; eliminate any hostile environment; prevent its recurrence; and remedy the discriminatory effects on the victim and others

- ❑ If the procedures allow parties to have a representative at proceedings, both parties will have an equal opportunity to present
- ❑ Notice of the opportunity for both parties to appeal the findings, if the procedure allows appeals; and for both parties to participate equally in the appeal process
- ❑ Appropriate definitions and examples of what types of actions may constitute sex discrimination, including a clear and consistent definition of what does and does not constitute consent
- ❑ A statement clarifying that policy and procedures addressing complaints of sex discrimination apply to all university programs and activities including those conducted off-campus
- ❑ Explicit statement that where relevant, if off-campus misconduct did not occur in the context of a University program or activity, the University will consider the effects of off-campus conduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity
- ❑ A statement that all employees, other than non-professional counselors or advocates and those employees legally regarded as confidential resources, are expected to promptly report sexual and gender-based harassment, assault and violence that they observe or learn about
- ❑ A provision explaining that the complainant has the right to decline to participate in an investigation, appear in a proceeding with the respondent present, or otherwise confront the respondent during the grievance process, including during any hearing or appeal
- ❑ Statement that the University has an obligation to promptly take steps to investigate or otherwise determine what occurred and then to take appropriate steps to resolve the complaint when it knows or reasonably should know about possible discrimination (from any source); regardless of whether the complainant declines to participate in the process. It will also contain a statement that the University will seek to balance a complainant's request for anonymity or not to participate in an investigation with its broader obligation to campus safety; and that the University will respond to complaints, reports, or information about incidents of sex discrimination to stop prohibited sex discrimination, eliminate any hostile environment, take steps to prevent the recurrence of the sex discrimination, and address any effects on campus or in the context of any University programs and activities regardless of location
- ❑ If the policy permits the University to act as the complainant for purposes of hearings and appeals, a provision ensuring that the actual complainant is permitted to provide input into whether the University appeals a decision under the grievance process
- ❑ Provisions clarifying that any informal resolution process set forth in the procedures will only be used if the parties voluntarily agree to do so; that the complainant will not be required to resolve the problem directly with the respondent; and a statement that there will be instances when the informal resolution process is inappropriate (e.g., mediation is prohibited in cases of sexual assault, and in cases involving a student complaining of sexual harassment against an employee in a position of authority over the student); and that both parties must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process

- Statement that the preponderance of the evidence standard will be used for investigating alleged sex discrimination, including sexual and gender-based harassment, assault and violence complaints and making findings related to the allegations
- Procedure for promptly and effectively notifying both complainants and respondents of the initiation of an investigation; the potential policy violation(s) at issue; the right to participate in the investigation; the timeframe for responding; and that the investigation may proceed without the participation of either party
- Provision notifying complainants that they may pursue a complaint with the University and the police simultaneously; that the University may need to briefly suspend the fact-finding aspect of a Title IX investigation at the request of law enforcement while the law enforcement agency is in the process of gathering evidence; that the University will maintain regular contact with law enforcement to determine when it may begin its investigation; that the University will promptly resume its investigation as soon as notified by the law enforcement agency that it has completed the evidence gathering process, or sooner if the University determines that the evidence gathering process will be lengthy or delayed; and that the University will not delay its investigation until the ultimate outcome of the criminal investigation
- Provision indicating that the University will implement appropriate interim measures during any law enforcement agency's investigative period when the University has temporarily deferred its investigation, to assist and protect the safety of the complainant(s) and the campus community and to prevent retaliation
- Statement that the University will notify complainants, in writing, that interim measures are available during the University's investigation, and during any student conduct process, including appeals, to protect and support the complainant (such as University-enforced no contact orders, changes in class schedules, counseling, other mental health services, academic assistance, the ability to retake or withdraw from courses without penalty, etc.); where and how to request such interim measures; that the University will take steps to ensure that appropriate interim measures are taken or provided; and that the University will take steps to ensure, where possible and as supported by the available information, that such interim measures minimize the burden on the complainant
- With respect to confidentiality of the parties: an assurance that the complaint and investigation will be kept confidential to the extent possible; a statement that if the complainant asks that his or her name not be disclosed to the respondent or that no investigation be pursued, it may limit the scope of the University's response; a statement that Title IX prohibits retaliation, and that the University will take steps to prevent retaliation and will take strong responsive actions if retaliation occurs; a statement that if the complainant continues to ask that his or her name not be disclosed, the University will take all reasonable steps to investigate and respond to the complaint consistent with the request as long as doing so does not prevent the University from responding effectively to the harassment and preventing the harassment of others; a statement that the University will evaluate any confidentiality request in the context of its responsibility to provide a safe and nondiscriminatory environment for all members of the University community; and a statement that the factors that the University may consider in this regard include the seriousness of the alleged harassment, the age of the individual harassed, whether there

have been other complaints or reports of harassment against the alleged harasser, and the rights of the accused individual to receive information about the accuser and the allegations if a formal proceeding with sanctions may result

- Assurance that the University will not allow conflicts of interest (real or reasonably perceived) by those investigating or adjudicating complaints
- Statement that possible disciplinary sanctions that might result from a finding of sexual harassment, sexual assault or sexual violence may include suspension, expulsion or termination; and a statement of the types of remedies that the University can provide to complainants and others as a result of sexual and gender-based harassment, assault or violence
- Statement that retaliation and retaliatory harassment is prohibited against any individual who files a sex discrimination complaint with the University or participates in a complaint investigation in any way; and a clear explanation of how retaliation or retaliatory harassment can be reported to the University
- Statement that in cases where sexual or gender-based harassment, assault, or sexual or violence is found to have occurred, the University will determine appropriate, enforceable sanctions reasonably calculated to stop the harassment and prevent its recurrence; and the University will not negotiate a settlement with the employee or student for lesser actions that would not be reasonably calculated to end the sexual and gender-based harassment, assault and violence; eliminate the hostile environment; prevent its recurrence; and remedy the discriminatory effects on the complainant and others as appropriate

3. Published Notice of Nondiscrimination

Campuses must publish Notices of Nondiscrimination in accordance with 34 CFR 106.9(a) annually or following appointment of new chancellor or president. 34.CFR 106.9(a) prescribes where and how the notification must be made, and has very specific requirements.

Rating:

- Red: Not published or incorrect information.
- Yellow: Published with correct information.
- Green: Published with correct information; annually; and through all specified avenues applicable

Criteria:

- Title IX Coordinator contact info
 - Title—on print materials.
 - Name—on web.
 - Phone number
 - Office Address
 - Email
- OCR website address or link
- State inquiries concerning the application of Title IX can be referred to the Coordinator or OCR
- Is broadly published, EXAMPLES
 - Website

- Promotional Materials
- Handbooks
- Unions
- Professional Organizations
- Application forms
 - Employment
 - Admission
 - Also: K-12, gym memberships
- Other university publications
- Newspaper/newsletter
 - Student
 - Local Newspaper (community)
 - Alumni
- Magazines
- Memo to university community members
 - Student each semester
 - Staff, faculty annually and when hired
 - Alumni annually

4. Published Anti-Harassment Statement

Campus must Issue a statement to the university community, including students, employees and third parties associated with the university.

2011 DCL: The Clery Act requires postsecondary institutions to develop and distribute a statement of policy that informs students of their options to notify proper law enforcement authorities, including campus and local police, and the option to be assisted by campus personnel in notifying such authorities. The policy also must notify students of existing counseling, mental health, or other student services for victims of sexual assault, both on campus and in the community. 20 U.S.C. §§ 1092(f)(8)(B)(v)-(vi).

Rating:

- Red: Not published or incorrect information or inconsistent w/ Clery.
- Yellow: Published with correct information, consistent w/ Clery.
- Green: Published with correct information and publicized annually through all listed avenues applicable, consistent w/ Clery.

Criteria delineated in Michigan State Agreement:

Publish in:

- University newspaper
- Website

Must state:

- Policy prohibits sex discrimination including sexual and gender-based harassment, assault and violence.

- Clearly communicate that the school does not tolerate sexual harassment and violence
- Include that TIX protects all students and employee, including lesbian, gay, bisexual, and transgender (LGBT) from sex discrimination.
- Encourage any student, employee or third party who believes he or she has been subjected to sex discrimination to report the incident.
- Note the university's commitment to conducting a prompt and equitable investigation and immediately and appropriately address any violations of policy.
- Inform community members how to report allegations
- Provide contact information of TIXC
- Discuss interim measures.
- Discuss protection against retaliation.
- Inform university community members of the responsibility to take prompt and effective steps to end the sexual and gender-based harassment, assault and violence; eliminate the hostile environment; prevent its recurrence; and, as appropriate, remedy its effects.
- Encourage students and staff to work together to prevent acts of sex discrimination of any kind.
- Highlight resources available to individuals who have been subjected to sex discrimination, including sexual and gender-based harassment, assault and violence.
- Explain that the university will complete investigations in a prompt and equitable manner
- Explain that students and employees found to have engaged in acts of sex discrimination will be promptly disciplined. Discipline may include, if warranted, suspension, expulsion or termination.

5. Title IX Coordinator

Campuses must appoint a Title IX Coordinator in accordance with 34-CFR-106.8(a), and the position may not be left vacant. The Title IX office must be sufficiently staffed to accomplish compliance requirements. Title IX Coordinator and other Title IX personnel shall have sufficient initial and regular on-going training so as to meet compliance criteria.

Rating:

- Red: No designated coordinator, or Coordinator is in a position with possible conflicts of interest.
- Yellow: Coordinator has other duties without conflict of interest, or newly designated/not yet fully trained.
- Green: Appointed with an accurate position description w/o conflicts, fully trained, full-time position, qualification, time, authority, reports to a senior leader, has qualifications and training, mechanism is in place that they receive notice of all reports, they monitor outcomes, they have internal knowledge of policies and are involved in creation of policies.

Criteria:

Title IX Coordinator

- Campus has designated at least one employee with ultimate oversight to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or

alleging any actions which would be prohibited by this part (34-CFR-106.8). This position may not be left vacant; a recipient must have at least one person designated and actually serving as the Title IX Coordinator at all times (DCL 2015 pg.2).

- The Title IX Coordinator reports directly to senior leadership (DCL 2015 pg.2).
- The Title IX Coordinator does not have other job responsibilities that may create a conflict of interest. For example, designating a disciplinary board member, general counsel, dean of students, superintendent, principal, or athletics director as the Title IX Coordinator may pose a conflict of interest (DCL 2011 pg.7 & DCL 2015 pg.3). Designating a full-time Title IX Coordinator will minimize the risk of a conflict of interest (2014 Q&A, DCL 2015 pg.3).
- TIXC has the qualifications, authority, and time to address all complaints throughout the institution, including those raising Title IX issues (DCL 2015 pg.3).
- Title IX Coordinator and Deputy Coordinators receive sufficient initial training and regular mandatory (in-person or on-line) training. This training content will include, at minimum: the handling of complaints or other reports of sexual harassment, sexual assault and sexual violence, the University's grievance procedures, and confidentiality requirements (DCL 2011 pg. 7; Harvard 2014).
- Title IX Coordinator is informed of all reports and complaints raising Title IX issues, even if the complaint was initially filed with another individual or office or the investigation will be conducted by another individual or office (DCL 2015 pg.3).
- TIXC monitors outcomes, identifies and addresses any patterns, and assesses effects on the campus climate (DCL 2015 pg.3).
- Title IX Coordinator has knowledge of the recipient's policies and procedures on sex discrimination and is involved in the drafting and revision of policies and procedures to help ensure that they comply with the requirements of Title IX (DCL 2015 pg.3).
- When a campus is considering relying on one of the exceptions to the non-discrimination general rule, Title IX Coordinators are involved in every stage and work with school officials and legal counsel to help determine whether the exception is applicable and, if so, properly executed (Title IX Resource Guide 2015 pg.1).

- Campus Title IX Personnel**
- Office has investigatory staff sufficient to investigate cases in a timely manner.
 - o (DCL 2011 pg. 9-10, Harvard 2014)
- Office has sufficient administrative staff to avoid delays in the investigative process.
- Title IX personnel shall have sufficient regular mandatory (in-person or online) training to investigate and process cases appropriately and in a timely manner. This training content will include, at minimum: the handling of complaints or other reports of sexual harassment, sexual assault and sexual violence, the University's grievance procedures, and confidentiality requirements (Harvard 2014; Tufts 2014).
- Community campuses have Title IX contacts with sufficient regular mandatory (in person or online) training to act as effective representatives. This training content will include, at minimum: the handling of complaints or other reports of sexual harassment, sexual assault and sexual violence, the University's grievance procedures, and confidentiality requirements (Harvard 2014; Tufts 2014).

Key Metrics, Concepts and Construction of the Title IX Coordinator appointment are in further accordance with:

- 20-USC-S.1681-1688

- Dear Colleague Letter of the U.S. Dept. of Education/Office of Civil Rights (April 24, 2015) <http://www.ed.gov/ocr/letters/colleague-201504-title-ix-coordinators.pdf>
- Harvard Law School Resolution Agreement December 13, 2014. Complaint No.01-11-2002 <http://www2.ed.gov/documents/press-releases/harvard-law-agreement.pdf>
- Letter to Title IX Coordinators (April 24, 2015) <http://www.ed.gov/ocr/docs/dcl-title-ix-coordinators-letter-201504.pdf>
- Title IX Resource Guide, U.S. Dept. of Education/Office of Civil Rights, April 2015
- Tufts University Compliance Resolution April 28, 2014, Complaint No.01-10-2089 <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/01102089-a.html>

6. Professional Development for Staff with Title IX Responsibilities

Title IX Coordinators must have the full support of their institutions to effectively coordinate the university's compliance with Title IX. Because educational institutions vary in mission, composition and size, there are a variety of ways to provide adequate and sufficient institutional support to ensure legal compliance with Title IX. Campus Police, Dean of Students office employees, Human Resources employees and other professionals with the authority/responsibility to address Title IX matters for the institution require training. (DCL 2011, pg.4; DCL 2015 pg.6-8).

Rating:

- Red: No training, or training lacks required metrics components.
- Yellow: Annual training standards as per these metrics with < 90% participation.
- Green: Annual training standards as per these metrics with > 90% participation.

Criteria:

- all professional employees with Title IX responsibilities are appropriately trained to be
 - sufficiently knowledgeable about Title IX to include: different facts of Title IX, regulatory provisions, applicable OCR guidance (DCL 2015 pg. 6-8)
 - sufficiently knowledgeable about UA BOR policies, University regulations and university policies with respect to Title IX policies and grievance procedures (DCL 2015 pg.6-8).
 - sufficiently knowledgeable about laws & policies that may overlap with Title IX (e.g, FERPA, VAWA/Clery, 34-CFR parts 99 and 668) (DCL 2015 pg.6-8).

- ensured that all professional employees with Title IX responsibilities are appropriately trained initially and receive regular additional ongoing training as it relates to the university's obligations under Title IX (DCL 2015 pg.6-8). For example, additional specific training programming may be required for:
 - investigative & adjudicative personnel
 - campus health center staff and Victim Advocates
 - human resources personnel
 - student services/residential life personnel

Metrics derived and developed in accordance with:

- 20-USC-S.1681-1688

- DCL 2011. Dear Colleague Letter of the U.S. Dept. of Education/Office of Civil Rights (April 4, 2011).
- DCL 2015. Dear Colleague Letter of the U.S. Dept. of Education/Office of Civil Rights (April 24, 2015)
<http://www.ed.gov/ocr/letters/colleague-201504-title-ix-coordinators.pdf>
- Letter to Title IX Coordinators (April 24, 2015)
<http://www.ed.gov/ocr/docs/dcl-title-ix-coordinators-letter-201504.pdf>
- Title IX Resource Guide, U.S. Dept. of Education/Office of Civil Rights, April 2015

7. Training for Students, Faculty and Staff

January 2001 OCR Revised Sexual Harassment Guidance, Section VIII *Prevention*, identifies training for administrators, teachers, staff and age-appropriate classroom information for students as helpful to ensure “that they understand what types of conduct can cause sexual harassment and that they know how to respond.” Training is required as an element of compliance. In April, 2014, OCR released additional Q & A guidance to identify required training elements and is very specific on the elements. Criteria below are extracted from Section J Title IX Training, Education and Prevention, J-1-What type of training on Title IX and sexual violence should a school provide to its employees?”:

Rating:

- Red: No training, education or prevention strategy
- Yellow: Perform all criteria activities, but not every year, OR
Perform some criteria activities, every year
- Green: Perform all criteria annually, with indicia of learning outcomes

Criteria [items which must be addressed in the training curriculum per April 2014 OCR Q&A Guidance]:

- Responsible employees with the authority to address sexual violence know how to respond appropriately to reports of sexual violence, including what should be included in a report and consequences for failure to report; procedure for responding to students’ requests for confidentiality.
- Responsible employees know how to inform students of the responsible employees’ reporting obligations
- Responsible employees know how to inform students of the students’ option to request confidentiality and available confidential advocacy, counseling or other support services.
- Responsible employees know how to inform students of their right to file a Title IX complaint with the school and that students can report a crime to campus or local law enforcement.
- Other responsible employees know that they are obligated to report sexual violence to appropriate school officials.
- All other employees understand how to respond to reports of sexual violence.
- Confidential employees know the extent to which they may keep a report confidential.
- All employees likely to witness or receive reports of sexual violence are provided training.
- How to prevent and identify sexual violence, including same-sex violence.
- The behaviors that may lead to and result in sexual violence
- The attitudes of bystanders that may allow the conduct to continue

- The potential for revictimization by responders and its effects on students
- Appropriate methods for responding to a student who may have experienced sexual violence, including the use of non-judgmental language
- The impact of trauma on victims
- The Title IX Coordinator contact information in order to report sexual misconduct.
- Training is provided on a regular basis
- The School can verify that training is effective.
- [Campus] has campus-wide awareness program(s) to promote education, awareness, and prevention of sexual misconduct.
- [Campus] training/awareness materials incorporate information on what constitutes sexual misconduct, what to do and how to report, information on available resources, how to contact the Title IX Coordinator, and measures the school will take upon receiving a report.
- [Campus] incorporates sexual misconduct education in orientation programs for new *Students*
- [Campus] incorporates sexual misconduct education in orientation programs for new *Faculty*
- [Campus] incorporates sexual misconduct education in orientation programs for new *Staff*
- [Campus] has a sexual misconduct education training program for Residence Life staff
- [Campus] has a campus-wide awareness program to promote its amnesty policies for non-violent violations of campus policy in order to encourage sexual misconduct reporting.
- [Campus] has a sexual misconduct education program for student athletes, coaches and athletic administrators.
- [Campus] promotes, distributes and delivers sexual misconduct awareness materials and trainings via numerous avenues and media, in a variety of places designed to reach students, faculty and staff, such as student life programming, newsletters, campus policies, rules, resources, handbooks, websites, notifications, and brochures.
- [Campus] training curricula are appropriate to the unique information needed by different campus community segments, including “students”, “responsible employees”, “residence life staff”, “all employees”, “student code of conduct adjudicators”, “investigators”, “Title IX Coordinators” and other.
- Training incorporates definition of consent, including examples.
- Training incorporates how the school will analyze whether conduct was unwelcome under Title IX
- Training incorporates how the school will analyze whether conduct created a hostile environment.
- Training incorporates information on all reporting options available, information on formal reporting, confidential disclosure options and any time frames set by the school for reporting.
- Information about the grievance procedures.
- Information about the disciplinary code provisions relating to sexual violence and the consequences of violating the provisions.
- Effects of trauma, including neurobiological changes as a result of trauma
- The role that alcohol and drugs frequently play in sexual violence incidents, including the deliberate use of alcohol and/or other drugs to perpetrate sexual violence
- Bystander strategies and skills to intervene and prevent possible sexual violence
- How to report sexual violence to campus or local law enforcement and the ability to pursue law enforcement proceedings simultaneously with a Title IX grievance;
- Information on amnesty policies in the student code of conduct, and reassurance that use of alcohol or drugs never makes the survivor at fault for sexual violence.
- Title IX’s protections against retaliation

8. Responsible Employee Notification

Responsible employees are those employees who have the authority to take action to redress the harassment, who have the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or *an individual who a student could reasonably believe has this authority or responsibility* (OCR 2001 Guidance)

Appropriate employees must be notified of their status as Responsible Employees and trained in the duties and obligations of a responsible employee. Students and employees should have clear information about obligations of responsible employees. (2014 OCR Q&A)

Rating:

- Red: No notification or training (see Training Metric in this document for required training elements); no information made available to students and employees about responsible employee obligations.
- Yellow: Employees have been identified and notified but not trained; or greater than two years since efforts are made to re-notify; and no mechanism to inform students and employees about responsible employee obligations.
- Green: Define and notify responsible employee within 30 days of employment, annual re-notification; mechanism/training to notify students and employees of responsible employee obligations.

Criteria:

- Identify which employees are responsible employees
- Inform all responsible employees of their designation
- Inform students and staff members which employees are responsible employees and the obligations of a responsible employee
- Train responsible employees in their reporting requirements (see Scorecard Training Metric for required training elements.)

Not Required for Compliance

9. Climate Survey

Not required by law but identified as a best practice in White House Task Force report. OCR Settlement Agreements are requiring climate surveys (see below references).

Key concepts and best practices taken from the White House Task Force report *Not Alone* April 2014 and from the Rutgers Violence Against Women and Children (VAWC) 2015 report to the White House Task Force.

According to the *Not Alone* document, legislative or administrative options to require schools to conduct a survey will be explored in 2016.

Rating:

- Red: No climate survey climate survey in past two years
- Yellow: Survey performed within past year, no cross-functional university “student campus climate committee” UVA 2015, MSU 2015
- Green: Annual assessment (survey and focus group), generate and implement improvements, include student leaders, no cross-functional “student campus climate committee” UVA 2015, MSU 2015

Criteria:

- [Campus] has created an evidence based student survey to identify and prioritize needs (per WH Guidance April 2014 and Rutgers 2015 report)
- [Campus] has involved student leaders to inform survey content and to help assess the effectiveness of campus efforts to eliminate sexual harassment and violence, and how to use survey information to take proactive steps (DCL 2011, page 18)
- Climate survey has been approved by the Institutional Review Board (IRB) (Rutgers 2015).
- [Campus] has conducted an initial survey to benchmark climate. Year _____
- [Campus] will conduct the survey [annually, bi-annually??], at a time in the academic year to encourage maximum student participation (WH Guidance April 2014)
- [Campus] has designated a cross-functional advisory board, including student leaders, with the expertise and authority to analyze survey results, generate and implement solutions.

10. Unified Tracking System – Not required by 34 CFR 106 *et seq.*, but identified as a best practice in at least two OCR settlement agreements. The inclusion of this element in the scorecard grades campus response to a *best practice*, but is presently not required of UA for compliance unless OCR incorporates this requirement into UA’s audit findings.

Campuses are able to track cases. Key concepts, metrics and best practices identified from Montana Settlement Agreement, University of Virginia Settlement Agreement.

Rating:

- Red: Local tracking occurs, but information is shared inconsistently
- Yellow: Universities’ tracking system(s) exist, but they are not fully unified and lack best practices
- Green: System-wide unified tracking system with all identified best practice elements, with sufficient administrative support to maintain systems

Criteria:

Campus has instituted a system for tracking and reviewing reports (including reports that do not result in the filing of a discrimination complaint), investigations, interim measures, and resolutions of student

and employee conduct that may constitute sex-based harassment to ensure that such reports are adequately, reliably, promptly, and impartially investigated and resolved. The following information is entered into an electronic, confidential database or spreadsheet:

- Date of complaint
- Nature of the complaint or other report (e.g., bystander or mandatory employee report)
- Name of the complainant or that the complaint was anonymous
- Name of the person(s) who received the complaint or made the report
- Name(s) of the accused
- Name(s) of the person(s) assigned to investigate the complaint
- Name(s) of person assigned to take any interim measures
- Name(s) of person assigned to bring disciplinary charges (where relevant)
- Interim measures taken, if any
- The date of the findings
- The date of any hearing
- The dates of any appeals
- A summary of the findings at the initial stage
- A summary of findings at the hearing stage
- A summary of findings at the appeal stage
- Any actions taken on behalf of the alleged victim
- Any disciplinary or other actions taken against the accused

11. Prevention and Awareness Programs

Not required by law but identified as a best practice in Sept. 2015 OCR Settlement with UVA

Rating:

- Red: No prevention strategy.
- Yellow: Perform all prevention criteria, not every year, OR
Perform some prevention criteria, every year, OR
Perform some prevention criteria and have prevention coordinator.
- Green: Perform all prevention criteria, with recorded indicia of learning outcomes and have a prevention coordinator

Criteria:

- Campus has developed a comprehensive prevention and awareness program?

The program discusses:

- Connection between alcohol and sexual violence (OCR Q&A p.41)
- Risk Reduction (VAWA)
- Bystander Intervention (VAWA)/ (OCR Q&A p.41)
- How to ID and prevent Sexual Violence (OCR Q&A p.38)
 - o Same-sex violence (OCR Q&A p.38)
- Sexual Assault (VAWA)
- Dating Violence (VAWA)
- Domestic Violence (VAWA)
- Stalking (VAWA)

- Potential for revictimization by responders and its effects on students (staff/faculty required) (OCR Q&A p.41)
- Frequency of prevention and awareness programming: on a regular basis

12. MOUs with Law Enforcement

Not required by law but identified as a best practice MOU's are considered a recommendation and best practice, but are not required as part of compliance as of January 2016. OCR does note that campus police should have MOUs with local law enforcement. Recommendation and best practices taken from OCR Q&A on Title IX and Sexual Violence, 2011 Dear Colleague Letter & OCR Michigan State University Resolution Agreement.

Rating:

- Red: Existing MOU(s) does/do not allow school to meet Title IX obligations or
- Yellow: Existing MOU(s) is/are partially compliant with OCR requirements
- Green: Existing MOU(s) is/are consistent with OCR requirements and comply with FERPA and other applicable privacy laws

Compliance:

- Existing MOU between campus police and local law enforcement must ensure that actions taken by campus police are enforceable off campus.
- Must allow the school to meet Title IX obligation to resolve complaints promptly and equitably
- Must comply with FERPA and other applicable privacy laws
- Must be reviewed annually

Best Practice Criteria:

- Campus Police should enter into MOU's with local law enforcement. Any MOU must comply with requirements above.
- Include protocols and procedures for:
 - referring allegations of sexual violence to each party in the MOU
 - sharing information, including obtaining relevant evidence that could be determinative of outcomes in cases.
 - conducting contemporaneous investigations
 - requests for University to delay and subsequently resume fact-finding process to allow for completion of evidence gathering stage of criminal investigation
 - providing notification to reporting party that they can pursue a criminal action with the police and a sexual harassment complaint through the university at the same time regarding the same incident.

13. Victim and Respondent Support

Not required by law but identified as a best practice in White House Task Force report.

Campus provides support and advocacy for both reported victims and respondents. (Key concepts, metrics, and best practices taken from the White House Task Force report *Not Alone*, April 2014)

Rating:

- Red: No victim advocate
No respondent advocate
- Yellow: Advocates may be available as needed, may not be trained in internal policies, and may not be available on-campus
- Green: Victim advocate exists and is trained in internal policies
Respondent advocate exists and is trained in internal policies

Criteria:

Reported Victim Services:

- [Campus] has an MOU with a local rape crisis center for 24-hour services and ongoing victim support.
- [Campus] has a victim advocate available who has a “confidential” status and is not required to report assaults to school officials.
- [Campus] has a victim advocate who is trained in understanding the dynamics of sexual assault and trauma.
- [Campus] has an advocate who can implement requested school resources and accommodations for the victim.
- [Campus] has an advocate who is knowledgeable of the school grievance and disciplinary process and can explain and help *the victim* navigate the process.
- [Campus] has an advocate who can be present with the victim during Title IX investigative interviews.

Services for the Accused (not specifically mentioned in *Not Alone*, but may be an addition to ensure equity):

- [Campus] has an advocate who is knowledgeable of the school grievance and disciplinary process and can explain and help *the accused* navigate the process.
- [Campus] has an advocate who can implement requested school resources and accommodations for *the accused*.

14. Recurring Review of Program Response

Not required by law but identified as a best practice for continuous quality improvement.

Rating:

- Red: No tracking of information and no reporting
- Yellow: Having total statistics without analysis and no action plan, limited report
- Green: Annual report reflecting assessments, statistics re: incidents, plans for improvement.

Criteria:

- Annual review and assessment of:
 - All informal and formal complaints of gender-based discrimination
 - Climate survey results
- Consult with any advisory committees/working groups developed to address gender-based discrimination on campus
- Compare and analyze data from current year as compared to past years for:
 - Increases or decreases in number and severity of incidents
 - Any emerging patterns or trends

Propose recommendations for improvements to anti-harassment efforts and establish timelines for implementation