

MEMORANDUM

To: Board of Trustees

From: Campus Affairs Title IX Working Group

Date: June 2014

Background

This Working Group was formed to review issues relating to Title IX compliance at Wesleyan and to provide support relating to a report commissioned by Wesleyan and conducted and authored by Pepper Hamilton LLP (the “Pepper Hamilton Report”). The purpose of the Pepper Hamilton Report was to determine (1) whether Wesleyan was in compliance with Title IX requirements; and (2) assess any further measures that would be necessary either to ensure compliance or establish a best-in-class proactive approach.

The Pepper Hamilton Report concluded that Wesleyan was in compliance with Title IX requirements. However, the Pepper Hamilton Report also contained a number of useful suggestions for further coordination and activity.

Objectives

As noted above, the focus of the Working Group has been twofold:

First, to ensure that the University establishes and maintains an appropriate, robust approach to the broad array of issues arising out of Title IX. As one Trustee has characterized the University’s efforts – this should be an arena in which Wesleyan should strive not only to be compliant but also to be best-in-class, consistent with Wesleyan’s commitment to academic freedom/access and diversity and tolerance.

Second, to ensure that the University has appropriate resources and that the Board's commitment to compliance in this area is evinced through allocation of resources and attention. In connection with these efforts, the Working Group met during the regularly scheduled Board meetings and telephonically between meetings. During those meetings, we examined the activities underway with a particular attention to ensuring that the overlapping activities were well coordinated and that additional focus be paid to communicating the University's policies in this important arena. Our student representative Kate Cullen was helpful pointing to communication efforts that resonated with students. Clarifying the role of the University President and the engagement of law enforcement, as well as establishing an overall coordinator in cases of alleged abuse, were key changes that arose out of the post-Pepper Hamilton review.

Attached to this overview is a report prepared at the Working Group's request that summarizes the considerable work with which the University has been engaged in connection with the various Title IX efforts. The memorandum reflects Antonio Farias' specific commitments with respect to managing both the timeline and the deliverables. Also, attached is the Pepper Hamilton Report.

Finally, the relationship between Title IX and fraternities or other similar same sex entities which control resources and/or significantly influence campus life are important components of the University's ongoing Title IX analysis and should be carefully reviewed in that light, as well as others.

Members of the Working Group include:

- Trustees
 - Karen Freedman
 - Tracey Gardner
 - David Resnik
 - Amy Schulman, Working Group Chair

- From the University, the following members of the Working Group participated actively:
 - David Winakor (GC)
 - Kate Cullen (WSA)
 - Antonio Farias (V.P. for Equity & Inclusion/ Title IX Officer)
 - Laurie Nussdorfer (F)
 - Alton Wang (WSA)
 - Michael Whaley (F)
 - Nicole Brenner

Board of Trustees Title IX Working Group
MEMORANDUM

TO: Karen Freedman, Chair, Board of Trustee Campus Affairs

FROM: Amy Schulman, Chair, Board of Trustee Title IX Working Group

DATE: May 22, 2014

RE: Title IX Working Group Report to Full Board

Attachments: A. Pepper Hamilton Report
B. Wesleyan University Title IX Policy & Education Committee Structure

A. Background: As part of Wesleyan's commitment to equity and inclusion, Wesleyan and the Board of Trustees conducted a comprehensive review of the university's efforts both to comply with Title IX and how to ensure excellence related to issues of access and gender equality at Wesleyan. Because of the dynamic and evolving nature of Title IX and evolving federal updates, as well as various personnel changes, the overall system relating to Title IX while compliant, lacked certain procedural coordinates and this at times resulted in inefficiency, duplication or inadvertent inattention. In May 2013, Pepper Hamilton LLP was retained to provide an external audit of Wesleyan's policies and procedures pertaining to the full spectrum of sexual harassment and sexual misconduct in order to ascertain what if any compliance gaps existed under Title IX, the Clery Act, and the Campus SaVE Act.

At the outset, we note that Wesleyan has conducted significant work in this arena. A number of significant policy and practice alterations have occurred. These past and ongoing efforts include, but were not limited to:

1. Current Title IX Status:

Appropriately, management of the Title IX, Clery Act, and Campus SaVE Act compliance policies and procedures are centralized under the Office of Equity & Inclusion (OEI), with the Vice President for Equity & Inclusion serving as the Title IX Officer.

2. Staffing and Resources: Hiring a Sexual Assault Resource Coordinator.

This position consists of a full-time member of Wesleyan's Counseling and Psychological Services (CAPS), who serves as the "point person" coordinating support for survivors of sexual violence. The Coordinator also collaborates with the Director of WesWELL, the SART student intern, relevant student groups, and other Student Affairs staff to provide on-going education and training for students, faculty and staff.

3. Education and Prevention:

- a. Training of the Res Life student staff was re-formatted in 2012 to incorporate more bystander intervention skill-building work, especially on issues involving high-risk alcohol use and sexual violence. Follow up training has been provided to the staff and is ongoing. The Bystander Intervention skill building continues to be an important focus.
- b. Mandatory new student orientation session on sexual violence was modified in 2012. It now includes:
 - i. (a) “We Speak, We Stand” featured a student cast and incorporated a bystander intervention focus. Two distinct peer-theater pieces addressed sexual assault prevention and high-risk alcohol use.
 - ii. (b) new students participate in small residentially-based discussions about the performances where they also receive information about sexual assault and alcohol use.
 - iii. (c) the Dean of Students sends an e-mail to all students at the beginning of each semester with links to Wesleyan’s sexual violence resources and policy. Similarly, the Vice President for Student Affairs sends the same information to faculty and staff annually at the beginning of the academic year, with a reminder about their reporting obligations. In this fashion, the topic of sexual assault and violence is integrated into orientation and is an ongoing part of community discussion.
- c. CAPS and WesWELL developed and are continuing to offer healthy relationship workshops for students. These skill-building sessions address setting boundaries, communication, conflict resolution and negotiation.
- d. The bystander intervention program launched this spring specifically addresses intervening in situations that may escalate to sexual violence.
- e. Information sessions for faculty were piloted in Spring 2012 and these will be expanded in the coming year.

4. Policy, Reporting and Adjudication: In the spring of 2011, the Department of Education’s Dear Colleague Letter signaled a significant change in the scope, scale and tenor of DOE regulation of sexual assault issues in the Title IX context. At the time of the letter’s issuance, Wesleyan was largely compliant with even this new guidance (ex. standard of proof). Prior to 2012, the University had made all necessary revisions to its policies and practices to be fully compliant with the Dear Colleague Letter.

5. Community Resources and Collaboration: Wesleyan’s partnership with the Women & Family Center and with the Connecticut Sexual Assault Crisis Service (ConnSACS) continues. These community organizations have provided training to our SART team and other campus groups, and continue to be valuable community resources for survivors.

Throughout this academic year, a number of students have opted to report alleged assaults to the Middletown Police (MPD) for criminal investigation. As we've supported students through this process, it has become apparent that strengthening our relationship with MPD and some cross-training would benefit all parties, especially survivors. This will be a priority in the coming year now that we've hired a new Public Safety Director and aligns with latest updates to VAWA & Campus SAve Act guidance.

B. Pepper Hamilton Title IX Audit: University administrators and Board of Trustees commissioned a review by Title IX compliance experts at Pepper Hamilton to benchmark Wesleyan and provide feedback to help it become best in class. The assessment of policies and procedures consisted of review of the following documents:

- a. Policy on Discrimination and Harassment
- b. Discrimination and Harassment at Wesleyan Policies, Procedures and Standards of Conduct (web and written policies – Student Affairs and Human Resources)
- c. University Standard and Regulations for Student Conduct generally, Non-Academic Conduct and Sexual Misconduct and Assault.
- d. Handbook of Policies and Procedures for Administrative Staff
- e. Wesleyan University Incident Reporting Policy
- f. Human Resources Investigation Guidelines
- g. Sample position description / hiring protocols
- h. Sexual Assault Prevention and Response (Health Services web page)
- i. Office of Affirmative Action web page
- j. Wesleyan University Sexual Assault Response Options (chart)
- k. Emergency Procedures for Residential Life Student Staff
- l. Office of Public Safety: Sexual Assault Awareness (web page)
- m. Office of Student Affairs web page
- n. Health Services web page
- o. Counseling and Psychological Services web page
- p. WSA Sexual Violence Task Force Campus Report & Recommendations May 2010
- q. Wesleyan Sexual Violence Task Force Recommendations for Improving Wesleyan's Response to Sexual Violence December 2010
- r. Representative records regarding three student conduct reports from 2012-2013

In addition, the audit team met with campus stakeholders, individually and in groups, from across the University, including those who are tasked with implementing the University's policies and procedures in order to ascertain proper protocols, practices, and resources were being engaged in an effective manner that was responsive to continuous improvement.

C. Pepper Hamilton Findings:

The audit concluded that the University's policies and procedures on sexual harassment and sexual misconduct meet current legal requirements, commending the university for the speed with which is able to adapt to the changing Title IX landscape. Because of the evolving nature of Title IX, Clery Act, and Campus SaVE, the audit team concluded that continued oversight and revising of policies, procedures and formal structure be worked into the everyday practice of ensuring compliance. The audit recommendations and findings centered on six core areas that are being centrally managed by the Vice President for Equity & Inclusion/Title IX Officer and the Title IX Policy & Education Committee:

1. Strategically implementing a coordinated institutional response for every report of sexual harassment or misconduct (completed in Fall 2013);
2. Creating consistent communication of core messages to remove barriers to reporting and build trust in process, including setting expectations regarding privacy and autonomy for a complainant in reporting incidents of sexual misconduct (ongoing);
3. Drafting a unified policy that applies to all forms of sexual harassment and misconduct and to all members of the Wesleyan community (ongoing assessment);
4. Ensuring adequate and reliable investigations (ongoing assessment);
5. Ensuring balanced and comprehensive support services (ongoing assessment); and,
6. Expanding training and primary prevention programming and education (ongoing assessment).

D. New Issues and Next Steps:

1. In April of 2014, the White House Task Force to protect students from sexual violence issued its first report which mirrored, expanded and elaborated on issues raised in the Dear Colleague Letter.
2. New legislation has been introduced at the State and Federal levels that will a) increase reporting requirements for universities, b) further regulate existing processes and c) potentially increase Federal enforcement funding.
3. The June 23, 2014 start date of the new Director for Equity Compliance/Deputy Title IX Coordinator in the Office of Equity & Inclusion will provide both investigative, educational training, as well as train-the-trainer capabilities.
4. The March 2014 updates to the Campus SaVE Act amends the campus crime provisions of the Higher Education Act, and expands the information Wesleyan must incorporate into our annual crime reports to include acts of domestic violence, dating violence and stalking. In addition, national origin and gender

identity must also be reported under Clery Act. Implementation of these amendments must be done no later than October 1, 2014.

5. The University continues to evaluate and re-evaluate its adjudicative model in light of regulatory changes and experience and may change its hearing model to an investigator and sole adjudicator model (without hearing).
6. The Board has begun an in depth discussion of fraternities and other same-sex organizations and their role at Wesleyan in the context of housing or student life. The theme and principals of Title IX are expected to play a role in this analysis.
7. Further policy and structural enhancements have been tasked to the newly created Title IX Policy & Education Committee. Below is a list of action items with those not completed:
 - a. Broaden Distribution and Accessibility of Policy (September 2014)
 - b. Centralize Sexual Misconduct Resource Page (September 2014)
 - c. Conduct Title IX Assessment in Every Case/Complaint (ongoing)
 - d. Choose and Assess Investigative Model (Summer/Fall assessment with potential for January 2015 rollout)
 - e. Review and ensure that advocate role adequately functioning (September 2014)
 - f. Formalize and Enhance Interim Remedy System (ongoing)
 - g. Analyze and Consider Redesign of Appeals Process (September 2014)
 - h. Conduct Climate Assessment (September 2014)
 - i. Conduct Continuous Training and Educational Programs (September 2014, ongoing)
 - j. Formalize relationship with Middletown Police Department through MOU pertaining to cross training and timely communication channels.
8. In addition, the WSA submitted a memo to the Title IX Working Group on May 15, 2014, titled "Recommended Policy Changes to Help Eradicate Sexual Assault at Wesleyan," from which some salient points regarding the following categories will be addressed by the Title IX Policy & Education group.
 - a. Code of Non-Academic Conduct pertaining to Title IX and Sexual Violence Policies.
 - b. The Judicial Reporting Process
 - c. Education Efforts
 - d. Campus Resources
 - e. Alcohol Policies

With the formal representation of the WSA Title IX liaison and SART student intern sitting as permanent members of the Title IX Policy & Education Committee, we are confident the continued voice of the students will be incorporated into policy and education decisions.

The Title IX Policy & Education Committee has also been tasked with conducting a self-assessment of Wesleyan University's policies and practices on a yearly basis in order to ascertain the university's compliance and adherence to the most effective practices across cohort schools. As part of an ongoing and comprehensive communication and educational campaign, the Title IX Officer will provide a campus-wide State of Title IX as part of the broader State of Equity & Inclusion report, beginning in September 2014.

E. Conclusion:

The committee has full confidence that the structural framework, short and long-range improvement strategies, and oversight of full compliance with Title IX, Clery Act, and Campus SaVE Act are in place and that Wesleyan has positioned itself to lean in and continue to develop a best in class posture with regards to Title IX and its impact of broader issue of gender equity on campus. The Title IX Working Group has accomplished its tasking. Given the working group's expertise on matters of federal compliance and best in class understanding of Title IX and gender equity as it pertains to college campuses, the members remain an asset to the Board, to be called upon as needed, as federal guidelines change and/or related aspects pertaining to gender equity arise. Finally, the relationship between Title IX and fraternities or other similar same sex entities which control resources and/or significantly influence campus life are important components of the University's ongoing Title IX analysis and should be carefully reviewed.

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September 28, 2013

Joshua S. Boger, Chair
The Board of Trustees
Wesleyan University
Middletown, CT 06459

Re: Report of External Audit

Dear Mr. Boger:

In May 2013, Wesleyan University engaged Pepper Hamilton to provide an external audit of the University's policies and procedures regarding sexual harassment and sexual misconduct and provide advice regarding compliance with Title IX and other relevant authority.

We completed a review of the University's written policies and procedures related to sexual harassment and sexual misconduct. In order to fully assess the efficacy of those policies and procedures, we also met with the team of administrators and faculty responsible for implementing the policies and procedures. In addition, we reviewed student conduct and Public Safety records for three sexual misconduct allegations adjudicated during the 2012-2013 academic year.

We note that the University has many talented and dedicated individuals on campus who are effectively responding to incidents of sexual harassment and misconduct. Our recommendations seek to enhance the effectiveness of current practices by:

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- Strategically implementing a coordinated institutional response for every report of sexual harassment or misconduct;
- Creating consistent communication of core messages to remove barriers to reporting and build trust in process, including setting expectations regarding privacy and autonomy for a complainant in reporting incidents of sexual misconduct;
- Drafting a unified policy that applies to all forms of sexual harassment and misconduct and to all members of the Wesleyan community;
- Ensuring adequate and reliable investigations;
- Ensuring balanced and comprehensive support services; and,
- Expanding training and primary prevention programming and education.

We have already shared many of these conclusions with the University, both during our campus visits and in subsequent communications with the University's interim Title IX Coordinator, Dean of Students, and General Counsel. This letter, which outlines our findings and recommendations, is not intended to provide an exhaustive discussion of each issue, but rather, to identify key areas of focus for the University.

In June, in addition to our overall observations and recommendations, we reviewed relevant policies in the 2012-2013 University Standard and Regulations, and made specific line edits and suggested revisions for inclusion in the 2013-2104 University Standard and Regulations.

We note that in response to our ongoing consultation and recommendations, the University has already taken steps to enact many of our recommendations.

I. Scope of Engagement

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

- Policy on Discrimination and Harassment
- Discrimination and Harassment at Wesleyan Policies and Procedures (web page)
- Standards of Conduct: Discrimination and Harassment (Academic Affairs)
- 2012-2013 University Standard and Regulations:
 - Standards of Conduct
 - Student Conduct
 - The Code of Non-Academic Conduct

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- Discrimination and Harassment
- Sexual Misconduct and Assault
- Handbook of Policies and Procedures for Administrative Staff
- Article XVIII Non-Discrimination
- Wesleyan University Incident Reporting Policy
- Human Resources Investigation Guidelines
- Sample position description
- Sexual Assault Prevention and Response (Health Services web page)
- Office of Affirmative Action web page
- Wesleyan University Sexual Assault Response Options (chart)
- Emergency Procedures for Residential Life Student Staff
- Office of Public Safety: Sexual Assault Awareness (web page)
- Office of Student Affairs web page
- Health Services web page
- Counseling and Psychological Services web page
- May 21, 2013 Letter from Sonja Manjon to Michael Roth
- WSA Sexual Violence Task Force Campus Report & Recommendations May 2010
- Wesleyan Sexual Violence Task Force Recommendations for Improving Wesleyan's Response to Sexual Violence December 2010
- Representative records regarding three student conduct reports from 2012-2013

In addition to our review of written policies and procedures, we met with campus stakeholders, individually and in groups, from across the University, including those who are tasked with implementing the University's policies and procedures. The goal of these meetings was to assess structure, practices, personnel and resources and to seek community engagement and feedback.

Our meetings occurred on campus on May 29, July 7 and July 8, 2013. Our community engagement included meetings and/or working sessions with the following individuals and groups:

- President Michael Roth
- Rob Rosenthal, Provost and Vice President for Academic Affairs
- Karen Anderson, Associate Provost
- Sonja Manjon, former Title IX Coordinator/Chief Diversity Officer
- Marina Melendez, Interim Chief Diversity Officer/Title IX Coordinator and Class Dean 2014
- David Winakor, General Counsel and Secretary of the University

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- Tony Bostick, Associate Director, Public Safety
- Michael Whaley, Vice President for Student Affairs
- Rick Culliton, Assistant Vice President for Student Affairs/Dean of Students
- Scott Backer, Associate Dean of Students
- Maureen Isleib, Associate Director of Residential Life
- Liliana Carrisquillo, Residential Life
- David Phillips, Class Dean 2016
- Louise Brown, Dean for Academic Advancement and Class Dean 2017
- Renee Johnson-Thornton, Dean for Diversity and Student Engagement
- Cheryl-Ann Hagner, Graduate Student Services
- Laura Borhman, Center for the Americas
- Julia Hicks, Director of Human Resources
- Pat Melley, Director of Human Resources
- Patricia Stephenson Gordon, Affirmative Action Specialist
- Jennifer D'Andrea, Director of Counseling and Psychological Services
- Larry Antosz, Counseling and Psychological Services
- Alysha B. Warren, Sexual Violence Resource Coordinator
- Sandra Frimel, Health Services
- David Leipziger Teva, Director of Religious and Spiritual Life and University Jewish Chaplain
- Rev. Tracy Mehr-Muska, Protestant Chaplain
- Mike Whalen, Athletics
- Kate Mullen, Athletics
- Gale Lackey, Athletics

We note that we have reached our conclusions as to implementation without the contextual information that could be gained by meeting with complainants and respondents who have participated in the process, or by conducting student forums to assess climate and culture. This assessment of the implementation of sexual misconduct policies and procedures is based on an understanding of institutional practices, our decades-long experiences with complainants and respondents, and our experience with similarly-situated institutions and processes.

II. The Context

Over the past several years, colleges and universities across the country have engaged in external audits to assess policies, procedures, systems, organizational structures and personnel to ensure compliance with complicated regulatory guidance and improve implementation and effective

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institutional responses. The impetus for this renewed focus stems from the April 4, 2011 Dear Colleague Letter (“DCL”), a guidance document from the Department of Education’s Office for Civil Rights (“OCR”). The DCL directed colleges and universities to review their policies and implement changes as needed to ensure compliance with Title IX of the Education Amendments of 1972. This mandate served as a call to action for many campuses, leading to revised policies with an emphasis on key concepts such as the preponderance of the evidence standard, bilateral rights for complainants and respondents, protections for complainants in hearing processes, equitable investigative practices, and the inclusion of timeframes.

The DCL coincided with a growing public awareness about the issue of sexual assault on college campuses. Fueled by several high profile examples of alleged missteps by university administrators in response to incidents of sexual misconduct, the public discourse focused the nation’s attention on sexual assault, institutional responsibility and the culture of silence that has historically shrouded sexual misconduct in the campus setting. Over the past two years, university officials have experienced an unprecedented wave of complaints about institutional responses by sexual assault victims across the nation. These complaints have led to a recalibration of the institutional lens, shifting the focus from questions of “mere legal compliance” to questions about how to more “effectively implement” compliance requirements in a manner that integrates the human needs of those affected by sexual harassment and violence and provides a coordinated institutional responses. The first person accounts shared by students, which have been widely circulated through social and public media, have served as a catalyst on many campuses to change the conversation from one of mere compliance to one of compliance, compassion and continuity of care.

The legislation and guidance in this area is continually evolving. On March 7, 2013, President Barack Obama signed a bill to reauthorize the Violence against Women Act, including the Campus Sexual Violence Elimination Act (“Campus SaVE Act”). A primary focus of the Campus SaVE Act is the expansion of policy and training requirements regarding intimate partner violence (including stalking, domestic violence and dating violence) and an emphasis on primary prevention and education, including bystander intervention. In addition, as recently as April 24, 2013, OCR issued a new Dear Colleague Letter, decrying retaliation and urging schools to ensure compliant practices. Thus, the changing landscape of the regulatory guidance gives institutions yet another opportunity to check and correct their footing to ensure policies and procedures are compassionate, consistent, clear and compliant.

As a result of these combined factors, scores of institutions across the nation are continuing to take a hard look at existing practices – moving beyond mere compliance toward effective implementation that is rooted in compassion and care and an informed and sensitive understanding of the impact of sexual violence on individuals and communities. The goal of this

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approach is to foster trust in the institutional response, increase reporting and allow schools to provide outcomes that can be respected and accepted by the entire campus community. In assessing the effectiveness of policies and procedures, we integrate a review of the legal mandates (including Title IX, the Clery Act, and the Campus SaVE Act); the dynamics of sexual assault, sexual harassment and other forms of interpersonal violence; and the unique culture, climate, policies and procedures, personnel, resources, and underlying values of the institution.

Successful implementation processes must marry these three distinct concepts to develop a coordinated and integrated institutional response – a response that is principled and intentional. This integrated approach is designed to achieve both compliance and the laudatory goal of *tending* to our students, faculty and staff.

Designing a coordinated and integrated approach requires an understanding of the concomitant responsibilities colleges and universities must fulfill. To provide a framework for our recommendations, we have included in Appendix I a brief substantive overview of Title IX, the Clery Act, and the Campus SaVE Act, three of the key federal mandates that govern an institution's response to sexual harassment, sexual assault and other forms of sexual misconduct in the campus setting.

III. Findings and Recommendations

We find that the University's policies and procedures on sexual harassment and sexual misconduct meet current legal requirements. We recommend, however, as at many institutions, that the University consider revisions to policy, structure, and process in order to enhance effective implementation and ensure comprehensive training.

A. Policy

We recommend drafting a single uniform policy that applies to all forms of sexual harassment and misconduct and to all members of the Wesleyan community (students, staff, faculty and third parties), *or*, if maintaining separate policies, ensure that a statement is added to each to explain how they intersect with one another, and how community members can determine which policy applies. We note that Wesleyan has already made several significant changes to the existing student conduct policies following our review and written feedback earlier this summer.

The use of a uniform sexual harassment and misconduct allows for a consistent institutional response, alignment in student, staff and faculty grievance procedures, clarity of language and ease of use and access for all constituents. A coordinated policy should provide clear and easily accessible information to students, staff, and faculty regarding the purposes and scope of the

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policy, definitions of sexual harassment and more specific forms of prohibited conduct, confidential resources, reporting options, options for resolution (informal and formal) and appeals processes.

The University's policy should be widely distributed and easily accessible to students, faculty and staff in both written and electronic form. The policies and procedures should be written in language that is non-judgmental, easily understood, and well organized by concept and theme.

We also recommend the centralization of information on the University's website in a Sexual Assault Resource Page which details, among other key concepts, emergency resources for safety and medical care, the importance of preservation of evidence, on-campus and off-campus confidential resources, on-campus and off-campus reporting options, coordination with local law enforcement, procedural options for resolving a report on campus, and the interim protective remedies or other interim measures or accommodations available to students, staff and faculty. This website should also include links to the University's policies and procedures and can serve as a central repository for prevention and education programming (both calendar and content). A thorough and thoughtful policy is of little value unless all community members can easily access the information in the policy with a simple internet search keyed to respond to common terms.

This Resource Page should be supplemented with a Frequently Asked Questions ("FAQ") document that provides a simplified way for community members to access information that is detailed in formal policies. The FAQ should also be supplemented with a flow chart that visually outlines the process from the perspective of the parties. The combination of the Resource Page, FAQ and flow chart provide organization of resources and support, easy access to relevant policies, and a conceptual demonstration of the University's commitment to consistent application of policies and procedures in receiving reports, conducting investigations, and seeking resolutions of sexual misconduct allegations.

B. Structure

We recommend that the University identify a permanent Title IX Coordinator, implement a coordinated and integrated centralized response team (Title IX Team), enhance the investigative model used to assess and evaluate allegations, ensure balanced access to resources by complainants and respondents, and implement broad-based training about sexual assault awareness, confidential resources and reporting options, and the duty to report as a University employee.

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1. Title IX Coordinator

We recommend maintaining a dedicated Title IX Coordinator position. As the University considers applicants for the position of Title IX Coordinator, we encourage the University to consider the unique role this individual serves on campus. The Title IX Coordinator must have excellent oral and written communication skills, experience and training in the dynamics of sexual harassment and sexual violence, and sufficient gravitas to occupy a position of respect and authority on campus. The Title IX Coordinator should also have a strong background in working with students. In particular, we note the following considerations:

- The Title IX Coordinator is typically a full-time, dedicated position, although some Title IX Coordinators also serve as diversity officers.
- We recommend that the Coordinator have a direct report to the President or another senior level administrator to reflect the University's commitment to the independence of the position.
- The Coordinator should oversee the University's centralized review, investigation and resolution of reports of sexual harassment and misconduct under the University's complaint processes to coordinate the University's compliance with Title IX and other relevant authority.
- The Coordinator should serve as a check and balance for the school's Title IX procedures and should provide oversight of the University's investigation, grievance procedures, adjudication, sanctions and appeals.
- The Coordinator should receive, store, and review all complaints to identify and address any systemic problems.
- The Coordinator should assess student activities periodically to ensure that the practices and behaviors of the students do not violate the policies on sexual harassment and violence.
- The Coordinator should oversee the University's education, prevention, and training programs regarding sexual misconduct.
- The Coordinator should have access to campus law enforcement records.
- The Coordinator should monitor the campus climate and provide appropriate educational programming or take other action as appropriate.
- The Coordinator should implement remedies appropriate to the individual and the community.
- The Coordinator should be available to meet with students as needed.
- The Title IX Coordinator should be supported by Deputy Title IX Coordinators, who will each serve a specific role in the implementation of the University's response.

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2. Deputy Title IX Coordinators

We recommend that the University designate one or more Deputy Title IX Coordinators to support the Coordinator. The goal in designating Deputy Title IX Coordinators is to ensure adequate representation across the University's diverse campus to allow campus constituents to easily access a trusted individual within their sphere of interaction. For example, it may be appropriate to appoint Deputy Title IX Coordinators for students, athletics, graduate students, and employees. We recognize that this was a key goal of the University's Sexual Assault Response Team ("SART"), although the current SART is much larger in size and scope than the suggested structural addition of one to three Deputy Title IX Coordinators. Moreover, we envision the Deputy Title IX Coordinators as active participants and decision-makers in the Title IX team response to a report.

The Deputy Title IX Coordinators can receive reports of sexual misconduct, provide information as to resources and procedural options, meet with complainants and respondents, and facilitate access to interim remedies and measures. The Deputy Title IX Coordinator can also assist in assessing climate in the constituency within their purview

The Deputy Title IX Coordinators can also lead education and training efforts at the department or program level. As part of a train the trainer program, the Title IX Coordinator can provide consistent programming and educational tools to the Deputy Title IX Coordinators, who are then positioned to implement training for their designated population.

3. Title IX Team and Assessment

We recommend that the University implement a coordinated and integrated institutional response by conducting a Title IX assessment in every case. In essence, each report, no matter where or how it is received, should immediately be shared with a central review team of professionals to ensure a prompt and equitable review, investigation and resolution. The use of a centralized process ensures consistent application of the policy to all individuals and allows the University to respond promptly and equitably to eliminate the harassment, prevent its recurrence and eliminate its effects. The centralized review process should involve an interdepartmental team, led by the Title IX Coordinator, which may include Deputy Title IX Coordinators, student affairs/student conduct, human resources, public safety, health and counseling services and other necessary University personnel.

The members of the Title IX teams should be clearly identified, including the selection of appropriate Deputy Title IX Coordinators. The University has already identified many key stakeholders through its expansive SART. The Title IX team, however, is a core group of

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administrators tasked with carrying out the initial assessment, implementing interim protective measures and accommodations, and ensuring fair and impartial investigation and adjudication.

As a first step, the Title IX Coordinator, working with the Title IX team, should clearly identify and articulate the roles and responsibilities of each University employee involved in responding to an incident of sexual harassment or assault. This step also includes discussion about the primary responsibility of each department, the coordination and sharing of information between and among relevant departments, and the protocols that should be followed where there are overlapping responsibilities or conflicts in roles.

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

Finally, the University should strive for consistent and compliant responses through the use of template forms and communications, checklists, and careful documentation and record keeping. The University should also consider building in decision trees regarding timely warning, how to proceed if a complainant requests confidentiality, the use of interim remedies and other responses (including suspension), how to respond to retaliation, and other key determinations to ensure a consistent institutional response, rather than an ad hoc response to each incident.

4. Investigator

We recommend that the University identify an investigative model and choice of investigator to ensure adequate and reliable investigation. In particular, we recommend ensuring that the investigation is conducted by an experienced, impartial team of two individuals, that the investigation be University-led, rather than student-driven, and that investigative and support functions be kept separate. Given the climate and context as it relates to Public Safety, this may involve hiring a new dedicated employee within student affairs or the Title IX Office, or deciding to engage external investigators on a contract or as needed basis.

A competent Title IX investigation should be conducted by skilled investigators trained in the dynamics of sexual assault, counter-intuitive victim behaviors, intimate partner violence, the impact of drugs and alcohol, and evaluating consent. Investigators should be trained in how to evaluate a credibility case, including an understanding of demeanor, interest, detail, corroboration and known patterns of human behavior. Investigators should remain neutral and impartial. While both a complainant and a respondent should have an equal opportunity to

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present evidence and be heard, given the complexities of a sexual misconduct investigation, the burden of conducting the investigation should not rest solely on the complainant or respondent. A good investigative protocol should include: forensic interview practices, interviews with the parties as well as other witnesses who may provide corroboration (or lack thereof), preservation and collection of any physical evidence (including social media) and a synthesized presentation of the facts for review by the adjudicator.

5. Support

We recommend that the University review the role of the advocate on campus to ensure appropriate supervision and utilization of this valuable resource.

We recommend that the University designate an appropriate resource(s) to serve as an advocate for a respondent. Potential resources exist within the Office of Religious Spiritual Life.

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

We recommend that the University enhance systems to routinely provide interim remedies and responses. There should be mechanisms for remedies that address both individual and community safety, implement no contact orders, provide academic support, adjust academic schedules or living arrangements, provide counseling or emotional support, and allow for other equitable solutions or responses for both parties. The interim remedy response system should build in uniform follow-up and check in communications (both oral and written) with both the complainant and the respondent, use template forms, and provide protocols for coordination of information as necessary between University departments. Such a system will ensure that all appropriate remedies are available, offered, and where appropriate, implemented on a consistent basis. The system should also ensure that protective remedies are strictly enforced and any violation responded to promptly and equitably to protect individual and community safety.

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6. Appeals Procedures

We recommend that the University consider designating senior level administrators, rather than the President, to review and decide appeals. The role of the President at an educational institution is unique, and an institution may be better served by concentrating the responsibility for resolving appeals with individuals who are closer to the daily supervision and management of students, staff and faculty.

C. Climate Assessment

We recommend that the University conduct a climate assessment that seeks to identify any challenges in the current campus climate that affect the educational or employment environment or create barriers to reporting. This includes: an assessment of the relationship between Public Safety and the student body; an evaluation of the role of alcohol on campus and the efficacy of existing alcohol policies; and, an assessment of any areas of risk for students. In assessing climate, we recommend that the University consider seeking input from all constituencies, including both undergraduate and graduate students. A canvassing of all campus community members serves a critical role in identifying key issues, assessing campus climate as required by OCR, and building buy-in, investment and support from all constituencies. It also demonstrates the University's commitment to addressing issues of sexual violence directly and openly.

D. Training and Educational Programs

We recommend that the University build upon existing training and educational programs with a focus on:

- Providing targeted education and information about policies, procedures, resources and reporting options, including where to seek confidential assistance, how to report sexual harassment or misconduct, and the scope of procedural options for resolving a complaint;
- Creating consistent communication and expectations on campus regarding privacy, reporting, autonomy, and trust in process;
- Communicating on and off campus resources and delineating the difference between confidential resources and reporting options;
- Providing primary prevention and awareness programs for all students and employees, including safe and positive options for bystander intervention and information on risk reduction to recognize warning signs of abusive behavior in the context of sexual violence and intimate partner violence;
- Providing balanced training to investigators and the sexual misconduct hearing board; and,

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- Clarifying the reporting responsibilities of campus employees re: Clery, Title IX, and mandatory reporting of child abuse.

Title IX requires training of *all* community members, with a focus on implementers and adjudicators. We recommend that all community members receive training on the College's policies and procedures regarding sexual harassment and misconduct, the requirement to share reports through a centralized and consistent process, and any mandatory child abuse reporting obligations. Students and staff should receive information about how to identify and report sexual harassment, either as a complainant or a third party. Training should include the University's prohibition against retaliation. Training should also highlight emergency resources, the importance of preservation of evidence, confidential medical and counseling resources and the availability of interim accommodations. Finally, training should also clearly outline the investigative processes and grievance procedures that apply based on the role of the parties and the nature of the incident.

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

In order to maintain the current practice of providing a wide variety of reporting options for faculty, staff and students – a practice that will be continued through the use of Deputy Title IX Coordinators – all "responsible employees" must be trained to share any report received with the Title IX Team. Equally as important, all constituents on campus must be educated about the difference between confidential resources (health providers, counselors, clergy members and certified rape crisis counselors) and reporting options so that they may make an informed choice as to how – or if – they wish to report to a University employee who will be required to share the report to the Title IX Team.

Ensuring that all reports are assessed through a central and trained team of professionals requires comprehensive training across campus for all "responsible employees" that teaches the importance of sharing sexual harassment or misconduct reports with the Title IX Team in a timely manner. It also requires education and training for all campus community members to communicate the consistent steps that will be taken following a report to a "responsible employee" on campus as compared to the choice of seeking assistance from a designated confidential resource. Responsible employees under Title IX include any employee who has the

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duty to take action in response to an allegation of sexual harassment, the *authority* to take action, or any individual a student could *reasonably believe* has that duty or authority. Most colleges and universities interpret the term “responsible employee” to include all faculty, staff, administrators, student employees (i.e. resident advisors) and even student volunteers who are responsible for the welfare of other students

For those charged with implementing the College’s responses, including individuals involved in investigating and/or adjudicating complaints, we recommend providing more detailed and specific training on the school’s policies and grievance procedures for handling complaints of sexual harassment and sexual violence, and the dynamics of sexual harassment and violence. As outlined above, a thorough and reliable investigation is critical to the fair and equitable resolution of reports. It is imperative that any investigator designated by the University have training and/or experience in conducting an effective investigation, forensic interviewing, investigative protocols, evaluating credibility, and gathering corroborating information or evidence. The assigned investigators must also have an understanding of the dynamics of sexual assault, harassment and intimate partner violence, including both victim and offender behaviors. In addition, all hearing board members – whether faculty, staff, or student – should receive a consistent level of training that addresses, among other key concepts, the dynamics of sexual assault, good hearing practices, asking questions, evaluating credibility, the application of preponderance of the evidence, and sanctioning. University officials designated to decide appeals must also receive appropriate training.

E. Resources

Finally, we recommend that the University identify appropriate resources to fund these recommendations. Although there are many grant opportunities available to colleges and universities, effective Title IX responses require investment in personnel and programming by the institution.

IV. Conclusion

In conclusion, we would like to express our appreciation for the opportunity to share our recommendations. We have been impressed with the professionalism, dedication and commitment of the Wesleyan faculty and staff and applaud their commitment to student welfare and an educational and working environment free from sexual harassment and discrimination.

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We remain available to discuss these recommendations, or at the request of the University, to assist in their implementation.

Sincerely,



Gina Maisto Smith



Leslie M. Gomez

CC: President Michael Roth
David Winakor, General Counsel and University Secretary

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Appendix I: Regulatory Framework

I. Title IX

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

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

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

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

Under Title IX, if a school knows or reasonably should know about sexual harassment that creates a hostile environment, the school must eliminate the harassment, prevent its

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recurrence, and address its effects. As such, a school violates Title IX if it has “notice” of a sexually hostile environment and fails to take immediate and corrective action. A school is deemed to have notice if a responsible employee knew or, in the exercise of reasonable care, should have known about the harassment. A responsible employee includes any employee who: (1) has the authority to take action to redress the harassment; (2) has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees; or (3) a student could reasonably believe has the authority or responsibility to take action.

II. The Clery Act

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

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

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

Moreover, the Clery Act requires that the school’s campus security authorities maintain a public daily crime log of all crimes reported to them. The log must include information about: (1) the nature of the crime, (2) the date of the crime, (3) the time of the crime, (4) the general

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location of the crime, and (5) the disposition of the complaint, if known. The log must be accessible to the public during normal business hours and remain open for 60 days, after which it must be made available upon request within two business days.

The Clery Act requires timely warning notification to the public of all Clery Act crimes that are reported to campus security authorities or local police and are considered by the school to represent a series of continuing threats to students and employees. Warnings are to be made as soon as the pertinent information is available, so as to effectively alert the community of a continuing threat to safety and aid in the prevention of similar crimes. The decision of whether to warn is to be made by the school on a case-by-case basis taking into consideration the nature of the crime, the threat of continuing danger, and the coordination with law enforcement. If the school concludes that a warning is appropriate, the warning should be made in a format that is reasonably likely to reach the entire campus community, i.e. via e-mail, intranet, text message, etc.

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

III. Campus SaVE Act

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

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mental health, victim advocacy, legal assistance, and other services available both on-campus and in the community.

The act further provides that, at a minimum, institutional disciplinary procedures covering domestic violence, dating violence, sexual assault, and stalking should ensure:

1. Disciplinary proceedings will have a prompt, fair, and impartial investigation and resolution and will be conducted by officials receiving annual training on domestic violence, sexual assault, and stalking;
2. Both parties may have others present during the disciplinary proceeding and any related meeting, including an advisor of their choice; and
3. Both parties will receive written outcomes of all disciplinary proceedings at the same time.

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

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

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

Wesleyan Title IX Policy & Education Committee

Committee Next Steps:

- Establish Clear Roles
- Develop Comprehensive Strategy
- Communications Fully Integrated
- Clean separation between Support/Investigation
- Develop Campaign Calendar
- Train SART & Title IX Team
- ID Community Partners
- Consistency of Lexicon
- ID and Train Student Advisory Committee (SAC)
- Balance Between Complainant/Respondent
- Streamline Reporting
- Clear Web/lit presence
- Non Judicial Remedies for Individual and Community

Judicial:

- Investigation
- Hearing/
Sanction
- Appeal

Support:

- Advocacy
- Accountability
- Process
- Manage Expectations

