

August 10, 2015

## Report on Title IX Compliance Audit #15-114

We have completed our audit of Title IX Compliance. This audit was performed at the request of the UTHealth Audit Committee and was conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing*.

### BACKGROUND

#### Regulation

In 1972, Congress passed Title IX of the Education Amendments to the Civil Rights Act of 1964 (Title IX) prohibiting discrimination on the basis of sex in education programs, activities and employment. This includes admissions, access to programs and courses, counseling and guidance, housing, financial assistance, employment, and athletics, among other areas. Title IX states:

*"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."*

Title IX applies to all forms of sexual discrimination, including harassment, misconduct, and violence. Title IX also provides legal protection against gender-based discrimination for both students and employees.

#### Guidance

##### Department of Education Basic Checklist for Title IX Compliance:

The Basic Checklist for Title IX Compliance is prepared by the Department of Education under Part 106 (nondiscrimination on the basis of sex in education programs or activities receiving federal financial assistance) to assist in meeting minimum requirements of the Title IX Regulations.

**The Office of General Counsel at UT System Model Policy:**

In April 2015, The Office of General Council (OGC) at the University of Texas System (UT System) released a new model policy in order to assist UT institutions in complying with the new guidance from the Department of Education's Office of Civil Rights (OCR).

**The White House Task Force Checklist:**

The White House Task Force to Protect Students from Sexual Assault was created in January 2014 to provide higher education institutions with best practices for preventing and responding to rape and sexual assault as well as improving transparency of government enforcement activities. The White house Task Force Checklist is a guide highlighting elements particularly important for institutions to consider when drafting sexual misconduct policies.

**Handbook of Operating Procedures (HOOP) Policy Number 59 - Sexual Misconduct:**

HOOP 59 defines the various forms of sexual misconduct and outlines the procedures for filing a complaint and/or reporting incidences of sexual misconduct, including sexual harassment and sexual assault. This policy pertains to members of the UTHealth community, including employees, contractors, faculty, students, residents, visitors, volunteers and applicants for admission and employment.

**Title IX Grievance Procedures Checklist:**

Title IX Grievance Procedure Checklist is an introductory manual, originally developed by the National Foundation for the Improvement of Education, revised and reprinted by the U.S. Department of Education, Office for Civil Rights, 1987. The publication provides suggestions, which schools may find useful in formulating and implementing grievance procedures for addressing allegations of discrimination, including allegations of harassment.

**OBJECTIVES**

The objective of this audit was to determine whether UTHealth is in compliance with Title IX.

**SCOPE AND METHODOLOGY**

Auditing and Advisory Services (A&AS) primarily focused on the processes and operational controls over Title IX compliance activities. Specifically, we reviewed and compared:

- HOOP 59 to the Model Policy provided by the OGC at UT System and the White House task force checklist,
- UTHealth administrative procedures to the Department of Education Basic Checklist for Title IX requirements, and
- UTHealth grievance procedures in place to Title IX Grievance Procedures Checklist
- Title IX investigations to OCR required processes.

## AUDIT RESULTS

### HOOP 59

In order to determine whether UHealth policies have been developed in accordance with Title IX regulations, A&AS obtained and compared the current HOOP 59 to the OGC Model Policy and the White House Task Force checklist for sexual misconduct. From our review, we determined HOOP 59 contained all of the required elements with the following exceptions.

- Reporting to Outside Entities
- Immediate Assistance
- Additional Conduct Violations
- Annual Reporting Notice
- Immunity

UHealth is in the process of updating HOOP 59. We discussed the items omitted from HOOP 59 with the Title IX Coordinator and the Office of Legal Affairs. The elements listed above will be addressed in HOOP 59 as follows:

**Reporting to Outside Entities:** UHealth management is in the process of developing a website specific to Title IX issues. This information will be included on the website once completed, along with a link in HOOP 59

**Immediate Assistance:** As stated above, UHealth management plans to include this information on the Title IX website with a link in HOOP 59. Additionally, this information will also be included in a pamphlet/flyer that will be provided to complainants. The pamphlet/flyer is currently under development.

**Additional Conduct Violations:** UHealth management will add a sentence to HOOP 59 as follows: "Any person who knowingly and intentionally interferes with an ongoing investigation under this policy will be subject to disciplinary action, up to and including termination or dismissal." Management will also add similar language to the disciplinary policies.

**Annual Reporting and Notice:** Notice is covered in the final section of HOOP 59 (Section III.I). It currently states that the university will provide notices "periodically." UHealth management will revise the wording to indicate "annually."

**Immunity** UHealth's legal officer has advised A&AS this language was included in the System model based on proposed legislation, which has not yet been passed by Congress. Additionally, the provision states a university "may" grant immunity, which indicates that it is optional. Accordingly, at this time, the language related to immunity will not be included in HOOP 59 policy.

### *UHealth Administrative Procedures*

A&AS obtained and reviewed documentation to determine whether UHealth is in compliance with the Department of Education Basic Checklist for Title IX Compliance. Title IX procedural

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requirements include: designation of a coordinator, notice of nondiscrimination, and publication of grievance procedures. A&AS obtained evidence to support:

- At least one Title IX coordinator has been designated to coordinate efforts to comply with Title IX, including investigations of any complaints;
- Students and employees have been notified of the institutional non-discrimination policy; and
- Grievance procedures for students and employees have been adopted and published.

Evidence obtained included copies of Student Inter-Council meeting minutes, Title IX Coordinator job description, UTHealth Financial Aid Assurance statement for non-discrimination, and awareness campaigns pertaining to UTHealth grievance procedures. We also obtained copies of and reviewed language related to non-discrimination statements on student catalogues, UTHealth's application for employment and application for admission.

Based on our testing, UTHealth has a well-publicized non-discrimination statement through HOOP 59; has appointed a Title IX Coordinator; and has adopted and published grievance procedures that allow adequate and reliable investigation of complaints. UTHealth also provides general training for campus community members regarding institutional policies and procedures

### *UTHealth Grievance Procedures*

In order to assess UTHealth's grievance procedures in place to handle complaints of discrimination, A&AS met with the team of administrators responsible for implementing the policies and procedures including those responsible for providing training, education and support services to the campus community. We also flowcharted UTHealth's grievance process in place and compared it to the Title IX Grievance Procedures Checklist.

Based on this comparison, we noted UTHealth currently has an investigative model designed to comply with Title IX and provide prompt resolution of complaints. UTHealth has also dedicated significant resources and personnel towards responding to discrimination and harassment as demonstrated by the Behavioral Intervention Team. The Behavioral Intervention Team, previously known as the STOP Team, is comprised of individuals who collectively work to provide effective institutional responses to incidents of sexual assault, intimate partner violence and stalking.

### *Title IX Investigations*

Title IX investigations are conducted in four phases:

**Collection:** The Title IX Coordinator gathers information on the alleged sexual misconduct and appoints one or more individuals to handle the investigation.

**Examination:** The investigator(s) review evidence presented by both the complainant and the respondent, interview witnesses and obtain testimonies in order to determine the nature of the allegation.

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**Analysis:** The investigator(s) explore the facts discovered in order to determine whether the allegations are substantiated.

**Reporting:** Upon completion of the investigation, the appointed investigator(s) will issue a written report to the Title IX Coordinator, who will review the report using a preponderance of evidence and take appropriate action.

UTHealth received seven allegations of sexual misconduct during fiscal year 2015 as of June 23, 2015. In order to determine whether controls around Title IX are in place and functioning as intended, we obtained redacted copies of supporting documentation for all seven reported allegations of sexual misconduct.

For complaints or reports other than those involving sexual assault, complainants may contact the Title IX Coordinator for assistance in resolving the complaint informally prior to initiating formal procedures. The OCR recognizes that in some limited circumstances, voluntary informal resolution may be an appropriate means of addressing some behaviors. Of the seven complaints received, three attained an informal resolution documented in writing by the Title IX Coordinator.

For the remaining four complaints, formal investigations were initiated. A formal complaint and the investigation process are initiated by the complainant's submission of a signed, written statement setting out the details of the conduct that is the subject of the complaint. For each of the formal complaints received, we reviewed and tested the investigation reports for compliance with the OCR required processes to determine whether:

- The school appropriately investigated or otherwise responded to allegations of sexual harassment;
- The school has taken interim measures during the investigation of a complaint;
- The school has taken appropriate steps to end the harassment once it's determined sexual harassment has occurred;
- The school has taken steps to eliminate any hostile environment that has been created; and
- The school has taken steps to prevent any retaliation against the person who made the complaint (or was the subject of the harassment), against the person who filed a complaint on behalf of a student, or against those who provided information as witnesses.

In the course of our review, we noted all allegations made by the complainant were appropriately investigated and final resolutions were made within the 60 day required timeframe. In addition, we noted during the investigation process, both parties were interviewed; the respondents were provided with a copy of the complaint and allowed 14 calendar days to respond in writing. Upon the conclusion of the investigation, both parties were informed in writing of the Title IX Coordinator's decision. They were also provided a summary report of the investigation including the facts discovered during the investigation and afforded an opportunity to appeal.

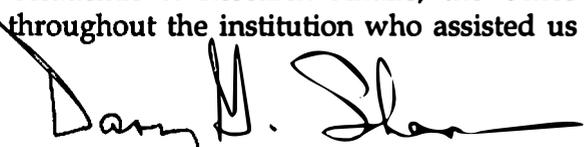
Based on our testing, the investigations were appropriately conducted within HOOP 59 Grievance procedures and the OCR required processes.

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**CONCLUSION**

Management has developed policies (with noted revisions to HOOP 59) and procedures to comply with the requirements of the Civil Rights Act of 1964 (Title IX)

We would like to thank the Office of Academic & Research Affairs, the Office of Human Resources and the individual managers throughout the institution who assisted us during our review.



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