



Office of Internal Audit

August 21, 2018

Dr. LaTanya Lowery, Chief Compliance Officer
The University of Texas of the Permian Basin
4901 E. University Boulevard
Odessa, Texas 79762

Dear Dr. Lowery:

We have completed our audit of the Title IX program. This audit was conducted in accordance with guidelines set forth in UTS129, the Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing*, and *Generally Accepted Government Auditing Standards* (GAGAS) as issued by the Comptroller General of the United States.

The purpose of our audit was to determine if UT Permian Basin (UTPB) policies and procedures conformed to UT System policies and federal requirements.

From our audit we noted one priority finding, four high risk findings, and one medium risk finding. These are discussed in detail in the attached report. Overall, while UTPB stated policies conform to UT System and federal requirements, actual procedures are not in conformance in the following areas: missing case files; incomplete case listings; and missing or incomplete documentation. Additionally, improvements need to occur with respect to maintaining consistent case file and reporting formats, and in updating Title IX information to students and employees.

We wish to express our appreciation to the management and staff of UTPB for the courtesy and cooperation extended to us during this audit.

Sincerely,

A handwritten signature in black ink that reads "Glenn Spencer".

Glenn Spencer, CPA
Chief Audit Executive

cc: Dr. Sandra Woodley, President
Mr. J. Michael Peppers, CPA, UT System Chief Audit Executive

The University of Texas

of the Permian Basin

Title IX Compliance Audit Report

August 2018



**Office of Internal Audit
4901 E. University Boulevard
Odessa, Texas 79762**

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Executive Summary

The UT Permian Basin (UTPB) Office of Internal Audit has completed its audit of the UTPB Title IX program. This audit was performed as part of our FY 2018 Audit Plan and was conducted in accordance with guidelines set forth in UTS129 and the Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing* and *Generally Accepted Government Auditing Standards* (GAGAS) as issued by the Comptroller General of the United States.

The objective of our audit was to determine if the UTPB policies and procedures related to Title IX are in compliance with UT System policies and federal requirements.

During the course of our audit, we noted the following, which resulted in one priority finding (Finding No. 1), four high risk findings, and one medium risk finding:

- No Title IX case files for the STEM Academy were made available (priority finding)
- Title IX case listings were incomplete
- A lack of organized supporting documentation
- No standard consistent reporting format
- Inconsistent record keeping
- Title IX procedures not followed regarding timelines and timeliness notifications
- Title IX procedures regarding notices and timeframes of notices not followed
- The UTPB Sexual Harassment/Sexual Misconduct Policy needs updating

Background

Under Title IX of the Education Amendments of 1972 and its implementing regulations, an institution that receives federal funds must ensure that no student suffers a deprivation of her or his access to educational opportunities on the basis of sex. The UTPB Sexual Harassment/Sexual Misconduct Policy is mirrored after the UT System Model Policy for Sexual Harassment/Sexual Misconduct. Both policies document the process for handling and investigating Title IX complaints in accordance with federal requirements. Those requirements are based on the Department of Education's Title IX regulations, 34 C.F.R. § 106.

Audit Objective

The objective of our audit is to determine if the UTPB policies and procedures related to Title IX are in compliance with UT System policies and federal requirements.

Scope and Methodology

The scope of the audit included a review of current procedures of the Title IX compliance function at UTPB. We performed a risk assessment to identify high-risk areas within the UTPB Title IX Program. Audit procedures included interviews with the Title IX Coordinator, Deputy Title IX Coordinator and other management; a review of the current UTPB Sexual Harassment/Sexual Misconduct Policy for alignment with Department of Education guidance; a review of Title IX Program communications to the university community, Title IX training; and consistency in maintenance of Title IX case file information and reporting; and testing a sample of cases for compliance with UTPB, UT System and Federal requirements.

Our audit was conducted in accordance with the Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing* and *Generally Accepted Government Auditing Standards* (GAGAS) as issued by the Comptroller General of the United States.

Ranking Criteria

All findings are ranked based on an assessment of risk factors, as well as the probability of a negative occurrence if the risk is not adequately mitigated. The criteria for the rankings are as follows:

Priority – An issue identified by an internal audit, if not addressed immediately, has a high probability to directly impact achievement of a strategic or important operational objective of a UT institution or the UT System as a whole.

High - A finding identified by internal audit that is considered to have a medium to high probability of adverse effects to the UT institution either as a whole or to a significant college/school/unit level.

Medium – A finding identified by internal audit that is considered to have a low to medium probability of adverse effects to the UT institution either as a whole or to a college/ school/unit level.

Low – A finding identified by internal audit that is considered to have minimal probability of adverse effects to the UT institution either as a whole or to a college/ school/unit level.

Audit Results

The audit work performed covered the entire 2017 fiscal year, as well as the 2018 fiscal year up through December 2017. There were a total of 28 cases listed by the Title IX Coordinator for this timeframe. Out of this amount, we tested a sample of 10 cases covering both fiscal years. We also tested two additional cases that were investigated by the Human Resources Director and which were not included on the list provided by the Title IX Coordinator.

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1. No Title IX Case Files for STEM Academy

There were four reported cases handled directly by the STEM Academy. We found that none of the four case files could be located, either at the STEM Academy or with the Title IX Coordinator. Consequently, we were unable to determine what actions, if any, had been taken in response to the listed complaints.

Assessed Level of Risk: Priority

Recommendation

The Title IX Coordinator should maintain original case files, or at a minimum, complete copies of all case files associated with the STEM Academy. UTPB/UT System policy places the responsibility for case documentation on the Title IX Coordinator, regardless of who actually performs the investigation. The UTPB Sexual Harassment/Sexual Misconduct Policy, Page 30, 2.23 states: *Documentation. The University shall confidentially maintain information related to complaints under this Policy, as required by law. The Title IX Coordinator will document each complaint or request for assistance under this Policy, whether made by a victim, a third party, or anonymously, and will review and retain copies of all reports generated as a result of investigations. These records will be kept confidential to the extent permitted by law. Any person who knowingly and intentionally makes an unauthorized disclosure of confidential information contained in a complaint or otherwise related to the investigation of a complaint under this Policy is subject to disciplinary action.*

Management Response

We concur that the Title IX Coordinator should be apprised of all Title IX concerns that are within the purview of UTPB. We also concur that the Title IX Coordinator should maintain a case file for Title IX concerns involving STEM Academy employees and students. Former management of the STEM Academy were not cooperative in reporting Title IX cases nor were STEM Academy staff responsive with supplying documentation when requested.

There has been a leadership change and moving forward, we anticipate that the working relationship between STEM Academy staff and faculty will be more cooperative with the UTPB Title IX Coordinator.

Beginning September 2018, the Title IX Coordinator will ensure the following:

- a) The Title IX Coordinator will implement monthly Title IX meetings with staff that have purview over any aspect of the Title IX process. These meetings will help ensure that Title IX processes are followed in accordance with state and federal regulatory guidelines and that the Title IX Coordinator is apprised of any Title IX concerns.
- b) The Title IX Deputy Coordinator for the STEM Academy will report any allegation of a Title IX violation to the UTPB Title IX Coordinator within 24-hours of a report.
- c) The STEM Academy Deputy Title IX Coordinator with the UTPB Title IX Officer or a trained UTPB Title IX Investigator will conduct any investigation of a Title IX allegation.
- d) Per UTPB Title IX reporting obligations, STEM Academy administrators, teachers and staff are designated as responsible employees. Responsible employees will be required to provide all documentation to Title IX Office staff in a timely manner, when requested.

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- e) UTPB Title IX Office staff will maintain copies of all cases associated with the STEM Academy (both hardcopy and electronic) in the Title IX Office. All files will be kept in a secured area in the Title IX Office.

Implementation Date

September 30, 2018

Persons Responsible for Implementation

Title IX Coordinator

2. Incomplete Case List

Generally speaking, the Title IX Coordinator has responsibility for overseeing the investigations of complaints involving students and the Human Resources Director investigates complaints involving faculty/staff. As a consequence, the Title IX Coordinator was not aware of at least two cases that the Human Resources Director had investigated. Accordingly, the case list provided by the Title IX Coordinator was incomplete and did not contain those cases. Additionally, the Human Resources Director indicated that there were other cases that the Title IX Coordinator was not aware of, but was unable to provide a listing of those cases.

Assessed Level of Risk: High

Recommendation

In order to fully account for all Title IX-related cases and ensure that proper responses/actions are occurring, the Title IX Coordinator should be notified of all Title IX-related complaints and should coordinate and oversee all investigations per UTPB/UT System policy, as previously noted under the recommendation to Finding No. 1.

Management Response

We concur that the Title IX Coordinator has responsibility for overseeing investigations and complaints involving students. We also concur that the Human Resources Director (who serves as a Deputy Title IX Coordinator) is the appointed lead on investigating complaints involving faculty/staff. Finally, we also concur that the Title IX Coordinator should be apprised of all Title IX complaints involving UTPB faculty, staff, or students. The Title IX Coordinator did ask for updates from the (now former) Human Resources Director. However, the Title IX Coordinator cannot control if an individual engages in deliberate actions by not providing notification of cases as they occur.

There have been recent leadership changes in Human Resources. UTPB has hired an interim Human Resources Director who has been extremely cooperative in reporting any faculty/staff Title IX concerns.

- a) The Title IX Coordinator will implement monthly Title IX meetings with staff that have purview over any aspect of the Title IX process. These meetings will help ensure that Title

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IX processes are followed in accordance with state and federal regulatory guidelines and that the Title IX Coordinator is apprised of any Title IX concerns.

- b) The Deputy Title IX Coordinator for Human Resources will report any allegation of a Title IX violation to the UTPB Title IX Coordinator within 24-hours of a report.
- c) The Deputy Title IX Coordinator for Human Resources with the UTPB Title IX Officer or a trained UTPB Title IX Investigator will conduct any investigation of a Title IX allegation.
- d) Per UTPB Title IX reporting obligations, UTPB administrators, faculty and staff are designated as responsible employees. Responsible employees will be required to provide all documentation to the Title IX Office staff in a timely manner, when requested.
- e) UTPB Title IX Office staff will maintain copies of all Title IX cases associated with the UTPB employees (both hardcopy and electronic) in the Title IX Office. All files will be kept in a secured area in the Title IX Office.
- f) Please note that until a permanent Director of Human Resources has been appointed, the Title IX Coordinator will address any faculty/staff Title IX concerns.

Implementation Date

September 30, 2018

Persons Responsible for Implementation

Title IX Coordinator

3. Incomplete Case File Information

A. Lack of organized supporting documentation

Supporting notes for interviews were not found in two case files.

B. Timelines & timeliness notifications

UTPB/UT System policy requires that if a complaint takes longer than 60 days to resolve, a justification for the delay is to be presented to and reviewed by the Title IX Coordinator or his/her supervisor. Also, according to policy, if the investigation and resolution exceeds 60 days, the University will notify all parties in writing of the reasons for the delay and the expected time frame adjustment. No documentary evidence of these actions taking place was provided.

C. Lack of required notices and/or tracking of required timeframe

Certain required notices are to be sent to complainants and respondents which require tracking for timeframes. UTPB policy requires the following: “The complainant and respondent are to be provided updates on the progress of the investigation and the issuance of the report, after the written report is completed, the respondent and complainant will be allowed to inspect the report or at the university's discretion, and provided letters summarizing the findings in the report which protect information required by law. If a letter is provided, it will contain enough detail to allow the complainant and respondent to comment on the adequacy of the investigation. Each will have 7 business days from the date of receipt to submit written comments regarding the investigation to the Title IX coordinator.”

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Documentation of this requirement and/or tracking of this requirement was not located in the case files.

Another requirement of the policy requires that within 7 business days after the deadline for receipt of comments from the complainant and respondent, the Title IX Coordinator or his or her designee will: “(1) request further investigation into the complaint; (2) dismiss the complaint if it is determined that no violation of policy or inappropriate conduct occurred; or (3) find that the Policy was violated. A decision that the Policy was violated shall be based on the record.” No evidence of tracking this timeframe existed in any of the case files.

An additional section of the policy (Section 2.1530) requires that the complainant and the respondent shall be informed concurrently in writing of the decision in accordance with section 6.5.G of the policy. Only one case that was reviewed contained this communication in the file.

Assessed Level of Risk: High

Recommendation

All supporting documentation should be maintained in case files. This includes discussion and interview notes, as well as evidence of all required notifications, such as emails or copies of written notifications. Lack of supporting documentation makes it difficult to verify the extent that UTPB has complied with institutional, UT System and federal requirements.

Management Response

Management concurs with this analysis. Until July/August 2018, the Title IX Office was understaffed, lacked sufficient resources and relied upon volunteers to meet policy requirements. With the addition of a Chief Compliance Officer and Title IX Officer for Investigations, the Title Coordinator will ensure that timelines, notifications, investigations, and resolutions, will be completed in a timely manner. Additionally, due to new 2018 OCR Title IX guidance, the 60-day mandated response has been removed. The Office of General Counsel at UT System has prepared a new template that reflects the change in the new OCR guidance mentioned above. UTPB is in the process of adopting the new changes.

All supporting documentation for Title IX files will be maintained in a secure area in the Title IX Office.

Implementation Date

September 30, 2018 for all cases going forward

Persons Responsible for Implementation

Title IX Coordinator

4. Inconsistent Report Format

The format and level of detail provided in final reports completed by the Title IX Coordinator and Human Resources Director were inconsistent with one another. Having one consistent

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reporting format helps ensure that investigations are conducted in a consistent manner and that the required elements of factual findings and conclusions are based on identical standards as required by policy.

Assessed Level of Risk: High

Recommendation

One standard report format template should be used for all Title IX investigation reports.

Management Response

We concur with this finding. However, The Title IX Coordinator followed the established report template that was issued by UT System attorney guidance. The Title IX Coordinator did apprise the (former Human Resources Director) of the correct template that should be used, but the former HR Director used the template inconsistently.

With the recent changes in leadership in the STEM Academy and UTPB Human Resources, the established report format will be used. Please note that the reporting format will be different for an inquiry/informal report and a full investigative report.

Implementation Date

September 30, 2018

Persons Responsible for Implementation

Title IX Coordinator

5. Inconsistent Case File Format

Record keeping for case investigation documentation was inconsistent. Some files are kept in original hard copy format, while others are scanned electronically and the original documents are shredded. Files involving faculty/staff are maintained in Human Resources, while files involving students are maintained elsewhere.

Assessed Level of Risk: High

Recommendation

It is important that the case file information is consistently maintained in one central location and organized in one consistent manner. It is recommended that one standard record keeping system and file organization method be applied consistently to all Title IX cases.

Management Response

The Title IX Coordinator and The Title IX Officer for Investigations will ensure that the Title IX Office maintains the original or, at a minimum, copies of all Title IX related case file documentation.

A tracking system will be implemented with cases beginning September 2018.

Implementation Date

October 31, 2018

Persons Responsible for Implementation

Title IX Coordinator

6. Improvement needed in communication of UTPB Policy to the University community

The UTPB Sexual Harassment/Misconduct Policy is not up-to-date and in need of editing. There are references to sections that do not exist, and incorrect headers and references. The policy is located in several places on the website; however, in some places it is a pasted version without page numbers. Outdated posters are used on campus with incorrect contact information, and brochures do not contain current information.

Assessed Level of Risk: Medium

Recommendation

The UTPB Sexual Harassment/Misconduct Policy should be edited and updated to ensure that it is clearly understood by the University community. The locations of the policy on the University website should also be reviewed to ensure that it is easy to find for students, faculty, and staff. All posters, brochures, and other printed materials should be updated.

Management Response

We concur with this finding and recommendation. The Title IX Coordinator will collaborate with the Office of Communication, Information Resources and Webmaster(s), to ensure that the content and location(s) of the UTPB Sexual Harassment/Misconduct Policy is updated as needed per UT System guidelines and is easily accessible. In addition, the Title IX Coordinator will collaborate with the Handbook of Operating Procedures Committee and request to be notified of any update related to the updating of the HOP.

The posters and brochures related to Compliance and/or Title IX reporting are currently being updated to reflect new personnel and contact information. The revised brochures have been distributed in all available training opportunities as the new school year started.

Implementation Date

December 31, 2018

Persons Responsible for Implementation

The Title IX Coordinator

Conclusion

While UTPB stated policies conform to UT System and federal requirements, actual procedures are not in conformance in the following areas: missing case files; incomplete case listings; and missing or incomplete documentation. Additionally, improvements need to occur with respect to maintaining consistent case file and reporting formats, and in updating Title IX information to students and employees.