

An aerial photograph of a mountain slope. The foreground and middle ground are covered in green and brown vegetation. A large, white, stylized letter 'Y' is painted on a grassy area in the center of the image. The background shows a steep, rocky mountain peak under a clear blue sky.

Report of the Advisory Council on Campus Response to Sexual Assault

BRIGHAM YOUNG UNIVERSITY

7 OCTOBER 2016

Report of the Advisory Council on Campus Response to Sexual Assault

BRIGHAM YOUNG UNIVERSITY

7 OCTOBER 2016

Table of Contents

1	Executive Summary
2	Organization and Management
3	Investigation and Discipline
3	Victim Assistance
4	Campus Culture and Climate
5	Introduction
7	Methods
8	Background
12	Findings
12	Organization and Management
14	Investigation and Discipline
16	Victim Assistance
18	Campus Culture and Climate
20	Recommendations
20	Organization and Management
22	Investigation and Discipline
24	Victim Assistance
27	Campus Culture and Climate
29	Conclusion
30	Appendix: Amnesty Statement Draft
32	References

EXECUTIVE SUMMARY

Brigham Young University is a religious institution committed to “the balanced development of the total person”—intellectually, physically, socially, spiritually, and emotionally—in an environment “sustained by those moral virtues which characterize the life and teachings of the Son of God” (BYU Mission Statement). Sexual assault and dating/domestic violence violate fundamental principles of the gospel of Jesus Christ, which principles are integral to BYU’s educational environment. Furthermore, the university’s primary concern is the safety and well-being of its students and the overall well-being of the campus community. Therefore, the elimination of sexual assault and dating/domestic violence on campus is mandated by the precepts of our faith, consistent with our institutional purpose, and essential to protecting our students.

In the spring of 2016 the university was publicly criticized for its management of some sexual-assault cases and for its process surrounding Title IX investigations. Specifically, concerns were raised about the role of the Honor Code Office in Title IX investigations as well as the nature of the investigations and the resources available to victims. To address these issues, BYU president Kevin J Worthen organized the Advisory Council on Campus Response to Sexual Assault with a charge to

- ♦ identify changes that will help BYU work toward the elimination of sexual assault on campus and
- ♦ determine how to better handle the reporting process for victims of sexual assault as sensitively and compassionately as possible and consistent with the federal equity law known as Title IX and with the requirements of the U.S. Department of Education’s Office for Civil Rights (OCR).

This charge also included a directive to consider relevant structural changes within the university, examine the processes and structure of the Title IX program at BYU, review resources and information for students involved in sexual misconduct (which includes stalking, sexual harassment, dating/domestic violence, and sexual assault—all behaviors covered by BYU’s Sexual Misconduct Policy), and study the relationship between BYU’s Title IX program and its Honor Code Office. While the focus of our study was on campus response to sexual assault, our recommendations apply to all forms of sexual misconduct.

The advisory council included

- ♦ Dr. Janet S. Scharman (chair), BYU’s student life vice president and a licensed psychologist;
- ♦ Dr. Ben Ogles, the dean of BYU’s College of Family, Home, and Social Sciences; a professor of psychology; and a licensed psychologist;
- ♦ Dr. Sandra Rogers, BYU’s international vice president and a professor of nursing; and
- ♦ Dr. Julie Valentine, a BYU nursing professor whose research focuses on sexual assault.

As a council, we took a broad approach in our evaluation of BYU-related sexual misconduct cases and BYU’s implementation of Title IX policies. We gathered information from prior victims of sexual assault, campus organizations, community partners, relevant literature, outside experts, and the campus community. Our efforts included a review of Title IX policies and structures at other universities, current federal guidelines, extant research on sexual assault, and emerging best practices. Additionally, the university created a website to gather feedback from BYU students, faculty, and staff as well as from members of the community.

It appears that all universities are struggling to develop effective methods to address the serious problem of sexual assault, and we found that proven, widely accepted models do not yet exist. As we reflected on how best to meet the needs of our students and campus, we found helpful guidance for creating a campus response to sexual assault in Peter Lake's "Four Corners of Title IX Compliance," which structures the many related issues into four areas:

1. Organization and Management
2. Investigation and Discipline
3. Victim Assistance
4. Campus Culture and Climate

In the full report, we examine in detail the university's policies, structures, and practices within these four areas. This executive summary includes a brief review of our key recommendations, outlined below according to Lake's four corners. The overarching goal of these recommendations is to create a safe campus environment in which all students can excel.

Organization and Management

1. Create a new, full-time Title IX coordinator position (with corresponding budget support) that reports to a vice president. The current coordinator has many other university responsibilities competing for time and attention; the current coordinator also reports to the dean of students, who oversees the Honor Code Office as well.
2. Create a Title IX Office in a physically separate location from the Honor Code Office and the Dean of Students Office. The office should include a receptionist (with corresponding budget support), which could be a new full-time position or two part-time positions.
3. Create a new victim advocate / confidential advisor position (with corresponding budget support) outside the Title IX Office. This position would be housed in Counseling and Psychological Services and would be available to provide information and help to sexual-assault victims regarding support resources and reporting options.
4. Designate an individual to be a Title IX advisor to respondents of sexual-assault reports. (A respondent is an individual accused of perpetrating an assault.)
5. Consider designating additional deputy Title IX coordinators for other areas of campus where sexual-assault reports may surface.
6. Provide additional budget for the ongoing training of Title IX coordinators, advocates, advisors, compliance committee members, and others involved in sexual-assault response, support, and investigations.
7. Adopt a formal assessment process in which the Title IX coordinator reviews interview notes and investigative reports to ensure appropriate trauma-informed response to victims and effective implementation of Title IX principles.

Investigation and Discipline

1. Review and clarify written communication that is provided to complainants and respondents during their first contact with Title IX personnel, including investigators.
2. Add to the Sexual Misconduct Policy an amnesty statement regarding possible Honor Code violations occurring at or near the time of a reported sexual assault.
3. Ensure that the Title IX Office does not share information with the Honor Code Office except in the following circumstance: When a BYU student respondent accused in a sexual-assault case is found responsible for violating BYU's Sexual Misconduct Policy, the Title IX Office may share information about that student respondent with the Honor Code Office for the limited purpose of allowing it to determine disciplinary action; in such cases, the Title IX Office will redact the names of complainants, victims, and witnesses from all information before the information is shared.

Victim Assistance

1. Develop written protocols on victim interview techniques to reflect trauma-informed principles.
2. Enhance training on subjects such as the neurobiology of trauma for all involved with the response, support, and investigation of sexual assault.
3. Highly publicize an enhanced education campaign about resources for victims of sexual assault and/or interpersonal violence, including information on confidential resource providers, forensic medical examinations, health-care choices, reporting processes and options, crisis intervention, and therapy support.
4. Consider collecting ongoing feedback from individuals who participate in Title IX investigations through voluntary postinvestigation surveys.
5. Complete and expand online information at titleIX.byu.edu.
6. Continue to provide easily accessible instructions for reporting an incident to the Title IX Office.
7. Consider designating Women's Services and Resources full-time staff as confidential sources for reporting sexual-assault issues.
8. Clearly identify and differentiate confidential and nonconfidential resources for victims.
9. Strengthen BYU's relationships with relevant resource providers in the community. This may include assigning members of the Title IX Compliance Committee or other personnel to serve as liaisons to specific organizations.
10. Improve awareness of and access to existing information for victims regarding zero tolerance of retaliation.

Campus Culture and Climate

1. Consider administering a campus-climate survey(s) to gather data regarding perceptions of sexual assault, incidents of sexual misconduct, incident characteristics of any sexual assault, and perceptions of the Title IX investigation process for those who have participated in an investigation. Survey results would establish a baseline for tracking.
2. Expand the role of the Title IX Compliance Committee to include, among other duties, consulting with the Title IX Office on evidence-based prevention and risk-reduction strategies.
3. Share with officials of The Church of Jesus Christ of Latter-day Saints the findings of the advisory council regarding ecclesiastical leaders' varied responses to sexual-assault reports.

We hope that these recommendations will help the university better protect its students, enabling them to develop their full potential in a positive, safe environment. This report and these recommendations, however, are just a beginning, and this issue will merit sustained attention from the university community.

INTRODUCTION

At Brigham Young University, the educational objectives extend beyond the development of intellectual knowledge and abilities. Indeed, the university's stated mission is "to assist individuals in their quest for perfection and eternal life." Such an expansive and lofty mission requires significant attention to "the full realization of human potential" and "the balanced development of the total person" (BYU Mission Statement). Deeply ingrained in the university's identity and purpose, then, is a concern for the intellectual, emotional, social, physical, and spiritual well-being of its students.

This concern for the total person demands a corresponding commitment to creating an environment that is edifying, secure, and safe—one that is "sustained by those moral virtues which characterize the life and teachings of the Son of God" and in which "all relationships . . . reflect devout love of God and a loving, genuine concern for the welfare of our neighbor" (BYU Mission Statement).

Sexual misconduct (which includes stalking, sexual harassment, dating/domestic violence, and sexual assault—all behaviors covered by BYU's Sexual Misconduct Policy) destroys such an environment, violates core doctrines of The Church of Jesus Christ of Latter-day Saints (the university's sponsoring institution), and causes significant trauma for the victim—intellectually, emotionally, socially, physically, and spiritually. With concern for any in the BYU community who have had to deal with this trauma, in May 2016 BYU president Kevin J Worthen organized the Advisory Council on Campus Response to Sexual Assault with a charge to

- ♦ identify changes that will help BYU work toward the elimination of sexual assault on campus and
- ♦ determine how to better handle the reporting process for victims of sexual assault as sensitively and compassionately as possible and consistent with the federal equity law known as Title IX and with the requirements of the U.S. Department of Education's Office for Civil Rights.

This charge also included a directive to consider relevant structural changes within the university, the process for determining whether and how information is used, and the relationship between BYU's Title IX Office and its Honor Code Office.

The advisory council included

- ♦ Dr. Janet S. Scharman (chair), BYU's student life vice president and a licensed psychologist;
- ♦ Dr. Ben Ogles, the dean of BYU's College of Family, Home, and Social Sciences; a professor of psychology; and a licensed psychologist;
- ♦ Dr. Sandra Rogers, BYU's international vice president and a professor of nursing; and
- ♦ Dr. Julie Valentine, a BYU nursing professor whose research focuses on sexual assault.

Ex officio members of the council included Sarah Campbell, university counsel for compliance, and Carri Jenkins, assistant to the president for university communications. Staff support was given by Betty Johnson and Christian Faulconer; Jeff McClellan provided editorial assistance with the written report.

As a council, we have carefully studied this issue over several months. This report presents our methods, relevant background information, our findings, and our recommendations.

Definitions: In this report, as in the BYU Sexual Misconduct Policy and in national Title IX literature, the term *complainant* refers to a person who believes he or she has been subjected to an incident of sexual misconduct or sexual assault and makes a report. The term *respondent* describes an individual accused in a case of sexual misconduct or sexual assault and is the person responsible for the alleged misconduct. *Sexual misconduct*, as used in this document, includes sexual harassment, stalking, domestic violence, dating violence, and sexual assault. Although there is no physical Title IX office at BYU, we use the term *Title IX Office* throughout this document to refer to the collection of personnel who transact all Title IX functions and operations at the university, including investigations of sexual misconduct.

METHODS

In our evaluation of BYU-related sexual misconduct cases and BYU's implementation of Title IX policies, we took a broad approach, consulting a variety of individuals, organizations, and resources, including the following:

Campus Organizations. We met with representatives from Counseling and Psychological Services (CAPS), the Honor Code Office, the Title IX Office, University Police, Women's Services and Resources, the J. Reuben Clark Law School, and the Office of the General Counsel. These meetings highlighted current policies and practices and provided specific opportunities for individuals to make suggestions and provide feedback.

Victims and Complainants. Julie Valentine met individually—in person, by phone, or by video conference—with more than 15 individuals who had experienced sexual assault, some of whom had reported their experiences to the Title IX Office.

Community Partners. We conducted conversations with representatives from community organizations that have worked with BYU student victims of sexual assault.

Relevant Literature. We read selections from the current research literature about sexual assault, campus climate surveys, and Title IX implementation. We also consulted various essays and online resources (such as the White House's Not Alone website). In addition, Sarah Campbell, with the assistance of interns, compiled for our review portions of Title IX policies from approximately 80 institutions around the country.

Outside Experts. At our invitation, two experts on sexual assault, Dr. David Lisak and Dr. Lindsay Orchowski, visited campus and provided consultation regarding Title IX implementation, campus response to sexual assault, and the prospect of a campus-climate survey.

Campus Community. Early in the research process BYU created a public website (feedback2016.byu.edu) to gather suggestions for our council as well as information about experiences with sexual assault and the reporting of that assault to on-campus offices. Nearly 3,200 comments were shared through the website by students, staff, faculty, alumni, community members, and content experts (e.g., law-enforcement officials, attorneys, health-care providers, counselors, victim advocates, etc.). In addition, some individuals called, sent letters or emails, or visited directly with members of the advisory council. We reviewed all of the information obtained.

BACKGROUND

As a religious educational institution—founded, supported, and guided by The Church of Jesus Christ of Latter-day Saints—Brigham Young University places high priority on maintaining an educational environment that is spiritually strengthening as well as intellectually enlarging. The university mission statement includes, as a prime directive, the development of the total person; therefore, the emotional, spiritual, physical, and social well-being of BYU's students is of as much concern as the intellectual growth it seeks to foster.

Sexual assault and dating/domestic violence are abhorrent offenses that violate every principle of creating such an environment. These offenses also defy sacred doctrines—such as moral agency, the sanctity of the body, and the sacredness of marriage and sexual intimacy—that are central to the Church's belief system. Most concerning, they inflict severe and significant trauma on victims. Sexual misconduct cannot be tolerated at BYU; the safety and well-being of BYU students are of utmost concern for the university administration.

BYU has long had a system to foster a safe campus environment that is consistent with the ideals and principles of the Church. In addition to a campus police force, the university has a code of conduct for its students and employees. The BYU Honor Code was first developed by students in 1948; now shared with all Church schools (and titled the Church Educational System Honor Code), it is a commitment to conduct that emphasizes the integrity, character development, and spiritual, physical, and social well-being of students. These standards of conduct include a commitment to reserve sexual relationships for marriage.

Over the years, the Honor Code Office has been developed to help students live by the standards of the Honor Code. In addition to education and advocacy efforts, Honor Code Office personnel are called upon when students violate the standards. Their role in such cases is to do everything possible to help students keep their commitment to live by the Honor Code and stay in school. The Honor Code Office exercises leniency when possible, though occasionally significant consequences—such as suspension or expulsion—are appropriate to match the seriousness of the violation.

For many years, sexual misconduct complaints for BYU students were handled by the Honor Code Office and for BYU employees by the Equal Opportunity Office, following university policy at the time.

In an April 2011 Dear Colleague Letter, the U.S. Department of Education reiterated and clarified with greater detail that the federal equity law known as Title IX—a 1972 statute that prohibits sex discrimination in all programs of a school receiving federal money—applies to cases of sexual assault. In the succeeding five years, extensive regulatory guidance regarding Title IX has come in the form of additional documents from the Department of Education as well as in recommendations from the newly created White House Task Force to Protect Students from Sexual Assault.

According to federal guidance and interpretation of law, if an institution knows or reasonably should know about sexual misconduct that creates a hostile environment (such as sexual assault or dating/domestic violence), the institution must take immediate action to eliminate the misconduct, prevent its recurrence, and address its effects. In other words, Title IX now requires higher-education institutions to promptly investigate cases of sexual misconduct to determine what occurred and then take appropriate steps to resolve

the situation. This institutional investigation is a separate process from any criminal investigation and must follow specific procedural requirements set forth under Title IX and related federal laws.

BYU, like other universities across the nation, has been updating policies and procedures to better respond to incidents of sexual assault. The following list represents some significant developments at BYU during the past five years:

Appointing a New Title IX Coordinator. Prior to 2011 BYU's general counsel, Mike Orme, served in the role of Title IX coordinator. After the release of the April 2011 Dear Colleague Letter from the Department of Education, the university recognized the need to have a Title IX coordinator without a potential conflict of interest who could be more available to meet with students and oversee Title IX compliance. In summer 2011 Dr. Sarah Westerberg, an associate dean of students, was appointed to this position and given the associated responsibilities while retaining her previous position and responsibilities. Among other duties, BYU's Title IX coordinator maintains a confidential log of complaints received, assigns investigations, coordinates training, and monitors trends and patterns in an effort to address all forms of sex discrimination. Westerberg has continued to report to the dean of students, who also oversees the Honor Code Office and who reports to the student life vice president.

Naming Additional Title IX Personnel. Westerberg attended Title IX coordinator training in 2012 and subsequently proposed a structure and next steps for Title IX implementation at BYU. Pursuant to that proposal, the university named several deputy Title IX coordinators to oversee specific areas. In summer 2012 an Honor Code counselor, Melba Latu, was identified as a Title IX investigator for cases involving BYU students. Initially Latu retained her position as an Honor Code counselor and maintained an Honor Code caseload while simultaneously investigating Title IX reports.

Hiring a Full-Time Deputy Title IX Coordinator. The Violence Against Women Reauthorization Act of 2013 outlined additional requirements for higher education institutions related to policies, procedures, and training for sexual-violence prevention and response. Additionally, there was a rapid increase in the Title IX caseload at BYU. In response, Latu was hired into a full-time position as a Title IX investigator and deputy Title IX coordinator for students and moved from the Honor Code Office to the Dean of Students Office suite.

Establishing a Compliance Committee. Also in 2013, BYU's Executive Risk Management and Compliance Committee (ERMCC) chartered the Title IX Compliance Committee to help oversee the university's Title IX-related activities.

Hiring a Second Full-Time Deputy Title IX Coordinator. In fall 2014, after requesting and receiving a full-time position through the university's resource-planning process, the university hired John Kwarm as a deputy Title IX coordinator for training and education. (As of mid-2016 there are five deputy Title IX coordinators, two of whom work full-time with Title IX while the other three perform Title IX responsibilities in conjunction with their other university assignments. Those assignments are with campus police, equal opportunity employment, and athletics compliance. An additional deputy coordinator has been proposed to work with students participating in international study programs, and another has been proposed to deal with complaints involving a faculty member.)

Beginning Training and Education Efforts. In fall 2014 the Title IX Office also received, through resource planning, its own budget resources, including funds to allow Title IX personnel to receive annual training as well as funds for developing training and awareness events on campus. Early in 2015 a calendar of prevention and awareness activities was rolled out, including participation in national campaigns, such as It's On Us and Sexual Assault Awareness Month, as well as a variety of events highlighting issues such as bystander intervention, healthy dating, and the university's Sexual Misconduct Policy. BYU also developed an online training program about sexual violence prevention that is regularly distributed to all enrolled students. Additionally, the university developed and distributed written information to assist victims of sexual assault.

Developing a Sexual Misconduct Policy. While BYU was in the process of developing a formal sexual misconduct policy, the university's new Title IX personnel began investigating sexual-assault reports, following the requirements of the April 2011 Dear Colleague Letter as closely as possible and conferring regularly with university legal counsel. In April 2014 the university approved the first version of its Sexual Misconduct Policy—which replaced, in part, its policy titled “Unlawful Gender Discrimination, Unlawful Sexual Harassment and Inappropriate Gender-Based Behavior”—and the Title IX Office immediately began to follow this newly implemented policy. The Sexual Misconduct Policy was revised in 2015 and will continue to be evaluated and updated to better assist students and employees and to satisfy legal requirements.

Creating a Title IX Case-Tracking System. As soon as the Title IX Office was organized, Title IX personnel began tracking their casework by using an existing tracking system created for Honor Code cases. A firewall was created within the system to separate the two sets of investigations and their related information. In 2014 the university's Office of Information Technology began a rewrite of the Honor Code tracking system and the Title IX Office requested its own separate system. This independent system is fully operational as of mid-2016.

On May 1, 2014, in an effort to bring more transparency to its Title IX enforcement activities, the U.S. Department of Education's Office for Civil Rights (OCR) released a list of 55 colleges and universities that it was investigating. As of September 2016 the OCR had 277 open investigations at 214 postsecondary institutions, with some institutions having multiple investigations. The risks of noncompliance for schools under investigation are high and include reputational and financial damages, not to mention the potential loss of federal financial assistance in all its forms. On August 4, 2016, BYU was formally notified that an OCR investigation was being initiated following a student complaint in April 2016.

In recent years Title IX issues have made frequent appearance in the headlines of top national news outlets, from lawsuits by students against their universities to Title IX investigations of schools that are found deficient in policies and procedures. Legislation, regulation, and guidance pertaining to Title IX and sexual violence continue to be released at a steady pace. The number of federal investigations being opened far exceeds the number being resolved. And the topic of sexual-assault response has become all-consuming for colleges and universities as they seek to maintain a safe environment for students; respond to complaints of sexual assault in a prompt, equitable, and sensitive manner; and meet the demands of the law.

During the spring of 2016, several current and former BYU students publicly raised concerns about BYU's process for investigating and responding to reports of sexual assault, which they felt had a chilling effect on

victims and led to improper punishment of victims for related violations of the school's Honor Code. The formation of this advisory council was in response to these concerns.

Although our report is largely focused on sexual assault, we recognize that sexual misconduct also includes stalking, sexual harassment, and dating/domestic violence. These offenses are equally abhorrent to our campus community. The findings and recommendations contained within this report apply to improving campus response to all forms of sexual misconduct.

FINDINGS

Most universities are currently struggling to develop effective methods to address sexual assault on campus and to respond appropriately to federal guidance interpreting Title IX. As such guidance has evolved in recent years, most notably with the April 2011 Dear Colleague Letter and the April 2014 Questions and Answers on Title IX and Sexual Violence document, we found that proven, widely accepted models for following such guidance do not yet exist.

We did find helpful guidance for creating a campus response to sexual assault in the “Four Corners of Title IX Compliance,” a model developed by Peter Lake, the director of Stetson University’s Center for Excellence in Higher Education Law and Policy. (The model was outlined in Kattner, 2015; all references to the model in this report are quoted from Kattner’s text.) The four corners of Lake’s model are

1. Organization and Management
2. Investigation and Discipline
3. Victim Assistance
4. Campus Culture and Climate

Underlying this model are three foundational principles (Kattner, 2015):

- ♦ Compliance is a process, not an end state.
- ♦ Title IX compliance efforts benefit everyone on campus.
- ♦ Sincere efforts to fulfill Title IX’s mission—to eliminate barriers to educational opportunities caused by sex discrimination—matter as much as technical compliance.

We elected to use this model to organize our findings and recommendations.

Organization and Management

According to Lake’s Four Corners model, there are five key steps to the effective organization and management of Title IX efforts (Kattner, 2015):

1. Appoint a Title IX coordinator. Consider making the position a dedicated, cabinet-level position, separate from counsel and other administrative areas to avoid conflicts of interest.
2. Protect the coordinator from interference with the coordinator’s faithful performance of the job duties.
3. Ensure that the institution has the resources necessary to conduct the required employee training.
4. Have a clear organizational chart and a solid understanding of who provides what services. This clarity will help employees and victims, who should be able to choose whom to contact and what type of help to receive.
5. Be sure there are mechanisms for ongoing assessment, including internal and external audits.

We identified the following findings related to the organization and management of Title IX at BYU.

1. The Violence Against Women Reauthorization Act of 2013 created additional requirements for universities related to sexual violence, with short timelines for compliance. The need for rapid response contributed to BYU's decision to use an existing structure to meet these and related Title IX requirements.
2. The university gave Title IX duties (with the related federally mandated training) to individuals with other responsibilities:
 - a. An associate dean of students was appointed Title IX coordinator while retaining all the responsibilities of being an associate dean, including international and multicultural student services, student life technology services, and Women's Services and Resources.
 - b. Honor Code Office counselors/investigators were asked to investigate Title IX reports as well as Honor Code cases.
 - c. Employees in human resources, athletics, and University Police were named deputy Title IX coordinators while maintaining their original assignments.
3. Honor Code Office personnel and Title IX personnel both report to the dean of students. The dean of students, CAPS, and University Police all report to the student life vice president. The organizational reporting lines (direct and indirect) were clear.
4. As a result of the dual assignments of Title IX personnel, Title IX and Honor Code cases overlapped and some communication between the two offices occurred. Additionally, dual assignments, office locations, and investigation systems contributed to confusion and perceptions of more sharing of information than may have actually occurred. In particular:
 - a. Although Title IX personnel have not been housed within the Honor Code Office since 2013, the associate dean of students who serves as the Title IX coordinator has office space within the Dean of Students Office next to the associate dean who has Honor Code responsibilities. A Title IX investigator has an office in that same suite. Hence, a student involved in both a Title IX investigation and an Honor Code investigation may visit multiple offices in the same suite and could assume, as some reported, that their Title IX case had been sent directly to the Honor Code Office.
 - b. The Honor Code Office and the Title IX Office previously used the same tracking system for casework. Although a firewall separated the two databases, some Honor Code cases were mislabeled as Title IX cases.
5. Because of dual assignments, employees may have brought perspectives, biases, attitudes, methodologies, and assumptions from their previous assignments to their new Title IX duties. Some students reported a lack of sensitivity during the investigation of their Title IX reports, which may be due in part to this issue.
6. Effective sexual-assault response requires both investigation and support. Students involved in Title IX cases indicated that it can be difficult for the person who is conducting the investigation to also be the person who is supposed to offer support. While Title IX investigators did take steps to offer help to

victims (change in classes, change in housing, etc.), for some victims the methods in the investigation were not perceived as supportive.

7. Student victims generally perceive CAPS personnel to be sensitive and understanding.
8. Students were often confused about the process, options, and resources for dealing with sexual assault.
9. Title IX personnel have recognized some of these challenges and have begun to make changes. Consequently, it is possible that a student complaint from several years ago may have accurately described a situation at that time, though the problem has already been addressed.
10. We received a few comments indicating that some respondents accused in Title IX investigations believed they had been unfairly accused/treated. A few others who had not been part of the investigatory process wanted to make sure we addressed fairness for those who were accused of sexual assault. Title IX regulations require that the process for addressing complaints of sexual assault be equitable for both parties (complainants and respondents).
11. BYU has a Title IX Compliance Committee with a charter from the university's Executive Risk Management and Compliance Committee (ERMCC), BYU's executive oversight body for university compliance. One of the responsibilities of the Title IX Compliance Committee is to "provide advice and guidance to the ERMCC, Human Resource Services, Faculty Relations, Athletics, and Student Life on the design and operation of the Title IX compliance program." The complete charter for the committee can be found online (see Brigham Young University, 2013).
12. While it was obvious that over time processes related to Title IX were evaluated and changes were made, there was no formal plan for ongoing assessment or internal/external audits.
13. BYU has a large number of international opportunities for students. These opportunities (study abroad, field study, internships, mentored research experiences, etc.) are managed in the David M. Kennedy Center for International Studies. The security analyst for the university's international activities is charged with helping students who have been sexually assaulted abroad to offer support (especially in terms of engaging with local authorities and embassy personnel), connections for counseling, etc. The assaults are always reported to the Title IX Office.

Investigation and Discipline

Lake's model includes four key steps related to investigation and discipline (Kattner, 2015):

1. Ensure that your systems provide procedural and substantive due process.
2. Make policy and procedure information easy to find and understand. Avoid legal jargon when possible while respecting the need to make your systems visibly compliant with regulatory mandates.
3. Do not treat accused students as mere sources of evidence or presume their culpability.
4. Do not ask complainants to focus on improving your Title IX response system—unless that is what they want to do—at a time when that system should be helping them.

We identified the following findings related to Title IX investigation and discipline at BYU.

1. BYU has a lengthy and rather complex Sexual Misconduct Policy. While the language of the policy tends to be rather legally oriented and difficult to understand (thus presenting room for improvement), it does provide a process that is fair (provides for impartial investigation with opportunities for both parties to present evidence) and “violation based” (see Sokolow, Schuster, Lewis, & Swinton, 2016).
2. Many interviewees and responders to the website made a strong case for the need to provide complainants with some sort of protection or amnesty from potential Honor Code Office sanctions in order to promote the reporting of sexual assault. Some individuals indicated that they were assaulted but never reported the incident because they were worried about being investigated by the Honor Code Office. This worry was expressed frequently and often existed whether or not the individual had committed any Honor Code violations at or near the time of the incident. Some individuals said that they had reported their assault to the Title IX Office or the Honor Code Office (not knowing where to report) but felt that their behavior was being investigated because of the circumstances of the incident. This questioning of their behavior occurred at a time when they felt they should have received support. Similar feedback about the “chilling effect” of the current Sexual Misconduct Policy’s direction for “separate” handling of any Honor Code violations by the complainant was provided by the Faculty Advisory Council. As the policy now stands, individuals reporting sexual misconduct could potentially have their reports investigated twice—once by the Title IX Office and once by the Honor Code Office—depending on the circumstances of the incident and the outcome of the Title IX investigation.
3. The resolution process (including discipline) for sexual-assault cases is handled outside the Title IX Office (by the Honor Code Office in cases in which the respondent is a BYU student) and appears to be consistent with current guidance from the Department of Education and other opinions (e.g., Gertner, 2015). The process is timely, provides opportunity for accommodations for the complainant/victim, uses the preponderance of the evidence standard, provides for impartial investigation with opportunities for both parties to present evidence, and uses the standard university body (the Honor Code Office in cases in which the respondent is a student) to determine sanctions for the respondent when necessary.
4. It became apparent in spring 2016 that there is significant confusion about how the Title IX Office and the Honor Code Office relate to each other in responding to sexual assault. This confusion was frequently evident in comments both in interviews and on the feedback website. The proximity of office space and the shared reporting line through the dean of students make it difficult for students and staff to differentiate the activities, purposes, and functions of the two offices. We heard strong sentiment across the board that the two offices should be separated structurally and functionally. Importantly, information given to the Title IX Office should not be shared with the Honor Code Office.
5. Every university has a mechanism to address student conduct issues. At BYU, the Honor Code Office fills that role. The process outlined in BYU’s Sexual Misconduct Policy calls for the Honor Code Office to administer the resolution phase (including any needed disciplinary action) of any investigation governed by the Sexual Misconduct Policy in which a BYU student is the respondent. The policy also states that any Honor Code violations by a student complainant “will be addressed separately” from the Title IX investigation. Some collaboration, therefore, between the Title IX Office and the Honor Code Office is in fact according to policy.
6. In interviews with student victims of sexual assault and with mental-health professionals working with these students, we learned that students did not feel that they were given enough information about the Title IX investigation process; students reported feeling confused and uninformed. They

also complained about the timeliness of information; that is, they reported feeling lost and uncertain while waiting to learn what was happening or what was going to happen in the process. Such confusion and lack of information can be especially challenging for students who are already in a state of crisis from an assault. With cases in which information was transferred from the Title IX Office to the Honor Code Office, students were unaware that information would be shared and did not sign a consent form for the sharing of information. Even though the current policy clearly indicates that the resolution phase of cases in which the respondent is a student will be handled by the Honor Code Office, students expressed surprise and discomfort with what to them appeared to be a sudden and unexpected involvement of another office. This suggests to us that greater clarification and timeliness of procedural information may be needed.

Victim Assistance

Lake identifies four key steps for victim assistance (Kattner, 2015):

1. With training, create employees who are trauma-aware by discussing retraumatization and the range of emotions and behaviors to be anticipated with victims of sexual trauma.
2. Assess your resources through a victim's eyes. Is a point of access appropriate, respectful, and easy to find and use?
3. Empower victims to choose how they seek redress and to whom they turn for support. Be clear about who can offer confidentiality—and who cannot—and how different responders handle sexual-assault reports.
4. Protect victims from retaliation.

We identified the following findings related to victim assistance at BYU.

1. In our investigation we heard from victims, faculty, staff, and community members about instances when Title IX personnel made insensitive comments to victims; these concerns were echoed by CAPS personnel, University Police officers, and individuals at the local rape crisis center. One recent victim gave positive comments about Title IX personnel, stating that he felt supported throughout the investigation. The majority of recent victims and community members interviewed in this investigation, however, felt that the focus of the Title IX Office has been to determine if the sexual assault is a false report, with minimal focus on helping the victim. One victim reported that a Title IX officer told her not to bring a support person to her interviews, as this would impede the investigation.
2. Title IX personnel told us that over the past two years they have participated in several training programs on the neurobiology of sexual-assault trauma, including training through the Association of Title IX Administrators (ATIXA). The investigators said that as their knowledge of sexual-assault trauma has improved, they believe they have become much more sensitive in their interactions with victims. The coordinator of Women's Services and Resources has also completed specialized training. However, there are others who could benefit from participation in training programs.
3. We did not hear many complaints about interactions between victims and employees in other offices. We heard overwhelmingly positive comments about CAPS from several victims. We also received

positive feedback regarding University Police. CAPS personnel and BYU law enforcement officers report that they are well educated in working with victims of sexual-assault trauma.

4. Students commonly access information about resources related to sexual assault via the internet (Carretta, Burgess, & DeMarco, 2015). From the BYU homepage (byu.edu) students can access information about the Title IX Office by searching for “sexual assault,” “rape,” or “Title IX.” In addition, a direct link to the Title IX Office (titleix.byu.edu) is listed under “Favorites” at the bottom of the homepage. The Title IX website includes a variety of information:
 - a. Contact information for Title IX personnel
 - b. Three online training modules: “Sexual Misconduct Awareness,” “Positive Bystander Intervention,” and “What Victims of Sexual Assault Need to Know” (including medical attention, the need for help, Title IX Office contact information, possible interim measures, grievance procedures, confidentiality issues, and campus and community resources)
 - c. A list of campus and community resources
 - d. A two-page information document titled “Information for Victims,” which includes similar information to that contained in the “What Victims of Sexual Assault Need to Know” training module
 - e. A calendar of past and upcoming events, by semester
 - f. Links to three university policies: the Sexual Misconduct Policy, the Child Protection Policy, and the Sex Offender Policy
 - g. Information on reporting an incident to the Title IX Office in person, by phone, by email, or by postal service, as well as information on anonymous reporting options through EthicsPoint, a third-party-administered compliance hotline portal whereby reports can be submitted online or by phone
5. Our review of the website and information materials, coupled with our victim interviews, revealed some deficiencies:
 - a. Victims stated that they found the two-page “Information for Victims” handout to be confusing and lacking in information regarding the process of reporting to the Title IX Office. Students said they were given the handout in the Title IX Office following reporting an incident and that this document constituted their victim-assistance information.
 - b. One victim stated that she felt unable to access community resources because she did not have a car and lived on campus. She did not know whom to contact to discuss how to address this barrier.
 - c. The “Links,” “Engaged Bystander,” and “Employee Training” pages on the website all say “coming soon” and have no other information.
 - d. The “Articles” page on the website contains three articles related to campus violence from the campus newspaper, *The Daily Universe*, but it has no outside articles or links.

- e. In the “Resources” section of the website, the confidential communicator options (CAPS, outside community advocates, and national advocacy groups) are not clearly separated and designated.
 - f. Despite the creation and online posting of a one-page flowchart describing the process described in the Sexual Misconduct Policy, students and faculty have expressed concern regarding the difficulty of understanding the Sexual Misconduct Policy.
 - g. Although there is a “Report an Incident” button at the top of every page within the Title IX website, it is in the same color scheme (white and blue) as the overall website. This does not make this important link stand out on the website.
6. In our investigation we found that victims were unclear about their options for reporting a sexual assault, and they did not know where to turn for support in making decisions about reporting an assault. The majority of victims stated that they did not feel supported in the Title IX process.
 7. One victim told us that she reported her assault to Women’s Services and Resources, expecting to receive confidential advice, but because Women’s Services and Resources is not designated as a confidential resource for victims, the personnel there were required to report the incident to the Title IX Office.
 8. Community partners in Utah County told us that they do not feel there is collaboration between campus and community resources. They would like to be more involved in helping student victims of sexual assault and in developing a greater presence in the campus community as confidential resource providers.
 9. The Sexual Misconduct Policy contains information about protecting victims from retaliation. Likewise, the “Information for Victims” document describes BYU’s prohibition of retaliation and encourages those who feel they have been retaliated against to contact the Title IX coordinator. However, the “What Victims of Sexual Assault Need to Know” training module does not contain information about retaliation. Two victims reported that they lived in fear that the suspects of their assaults would hurt them. They did not feel protected during or after the Title IX investigation. One victim reported that her questions regarding her protections during the investigation were not addressed; she said that she lost a scholarship due to her poor academic performance from stress and fear during this time. No interviewed victims reported retaliation, but some victims did report fear of retaliation.

Campus Culture and Climate

Lake offers five key steps for the campus culture and climate aspect of Title IX (Kattner, 2015):

1. Tell your campus in plain language about your Title IX work.
2. Conduct campus climate surveys and checks.
3. Integrate Title IX with other campus health and wellness initiatives and your academic mission.
4. Ensure that men play vital roles in prevention and response efforts.
5. Seek out and use evidence-based prevention strategies.

We identified the following findings for BYU's campus culture and climate related to sexual assault.

1. In our research we learned that there is much work to be done with regard to campus culture and climate. Many individuals both on and off campus have misunderstandings about Title IX, the responsibilities of the Title IX Office, the role of the Honor Code Office, and legal issues surrounding sexual misconduct. Many students, faculty, staff, and community members do not understand the federal regulation, the university policy, or current research on sexual assault.
2. BYU has never conducted a sexual-assault campus-climate survey like that recommended by the White House Task Force to Protect Students from Sexual Assault (2014b). Although such surveys are not legally required, many universities have conducted them to assess campus climate and to ascertain the incidence of sexual assault among students. Since we have not conducted a similar survey, we have little information regarding the extent of the problem at BYU, the attitudes of students, and how education and prevention efforts could be most helpful.
3. From the feedback website and interviews with prior victims, we learned that many individuals who experience unwanted sexual contact do not report their experiences. We heard a variety of reasons that victims may not report an assault:
 - a. They fear potential Honor Code sanctions (whether they violated the Honor Code or not).
 - b. They didn't understand at the time that what happened to them was an assault.
 - c. They feel shame, guilt, or doubt about their role in the assault.
 - d. They are afraid no one will believe them.
 - e. They think it will be too difficult to work through the reporting process.

These findings align with research that suggests only a portion of victims eventually report an assault (Orchowski & Gidycz, 2015; Orchowski, Untied, & Gidycz, 2013; Sabina & Ho, 2014; Wilson & Miller, 2016). Although the information we gained in our research suggests that there are unreported assaults involving BYU students, we do not have broadly representative data regarding the incidence of assault or characteristics associated with those assaults.

4. The Title IX Office has been designated as the primary entity responsible for informing the campus about sexual assault. They have a calendar of events around a variety of topics (such as bystander intervention and healthy relationships), some of which have been connected to evidence-based prevention strategies. By and large, however, much more could be done to expand the reach of information and prevention efforts on campus, including greater use of evidence-based strategies and better coordination with other campus entities. Some campus organizations have attempted to do their own education and prevention work, but they complain that their efforts have been blocked by the Title IX Office since it has primary responsibility for this work. Others, such as the ROTC, have helped for two years with the Voices of Courage campaign and last year with the It's On Us campaign. A number of recent awareness events have also been cosponsored with Women's Services and Resources.
5. Although the university does not have stewardship for ecclesiastical functions, students indicate that reporting sexual violence to ecclesiastical leaders has led to varied experiences. Because student ecclesiastical congregations are such an important part of the campus climate, we note this finding as reported by students; we did not interview ecclesiastical leaders as part of our work.

RECOMMENDATIONS

Based on the findings outlined above, we make the following recommendations. As with the findings, we organize our recommendations according to Peter Lake's "Four Corners of Title IX Compliance" (see Kattner, 2015).

Organization and Management

- 1. Create a new, full-time Title IX coordinator position (with corresponding budget support) that reports to a vice president. The current coordinator has many other university responsibilities competing for time and attention; the current coordinator also reports to the dean of students, who oversees the Honor Code Office as well.**

Title IX requirements cover many areas. We believe it is difficult for someone with an already heavy assignment in student life to also be the Title IX coordinator. The 2015 Dear Colleague Letter on Title IX coordinators included this observation: "Designating a full-time Title IX coordinator will minimize the risk of a conflict of interest and in many cases ensure sufficient time is available to perform all the role's responsibilities" (Office for Civil Rights, 2015).

Accordingly, we recommend a new FTE be allocated for a Title IX coordinator. In addition to salary and benefits, budget should be sufficient to cover training and conferences, travel, supplies, and computer needs.

We also acknowledge the perception of shared information and decision making within the Dean of Students Office between Title IX and Honor Code personnel. Although we recognize the challenges of having distinct reporting lines for these entities, we ask that serious consideration be given to separating the reporting line of the Title IX Office from that of the Honor Code Office. We recommend that the Title IX coordinator report directly to the student life vice president and not to the dean of students. This will help to create a separation between the two offices.

- 2. Create a Title IX Office in a physically separate location from the Honor Code Office and the Dean of Students Office. The office should include a receptionist (with corresponding budget support), which could be a new full-time position or two part-time positions.**

Every effort should be made to separate the Honor Code Office from the Title IX Office—physically as well as structurally and procedurally. The Title IX suite should have space for the coordinator, two investigators, and a receptionist.

We also recommend a receptionist for the Title IX Office. We think it is best not to use students for this role. The position could be split between two half-time positions and not require an additional FTE request. Funds will be necessary to cover supplies and computer needs.

- 3. Create a new victim advocate / confidential advisor position (with corresponding budget support) outside the Title IX Office. This position would be housed in Counseling and Psychological Services and would be available to provide information and help to sexual-assault victims regarding support resources and reporting options.**

Confidential advocacy services are considered a key component of campus sexual-assault response by the White House's Not Alone program and victim advocacy organizations (White House Task Force to Protect Students from Sexual Assault, 2014a). Federal legislation has been proposed that would require all universities to provide a confidential advocate for victims of sexual assault (H. R. 1490, 114th Congress, 2015–2016).

We recommend creating a position for a full-time victim advocate / confidential advisor to be a resource for victims of sexual assault. Placing this confidential advisor in CAPS will clearly designate its status as a confidential resource. The advisor's role would be to explain reporting options and non-reporting options, support victims in the decision-making process about whether to report an assault, and support victims throughout the Title IX investigation.

The creation of this position and contact information for these services must be well publicized throughout campus to create an approachable, easy-to-find point of access. Students would be advised to contact the confidential advisor following a sexual assault. Confidential advocacy services must be available 24/7, so night and weekend coverage should be provided by the CAPS on-call therapist.

The majority of student sexual-assault victims do not formally report their assaults (Fisher, Daigle, Cullen, & Turner, 2003; Carretta, Burgess, & DeMarco, 2015; Gonzalez & Feder, 2016). By establishing a confidential advisor for victims of sexual assault, we hope more victims will receive information and support and will choose to formally report the assault.

4. Designate an individual to be a Title IX advisor to respondents of sexual-assault reports.

To comply with the Title IX regulation that both complainants and respondents in sexual-assault cases be treated equitably and fairly, respondents need to have access to counselors/advisors who can guide and assist them during the investigation process.

5. Consider designating additional deputy Title IX coordinators for other areas of campus where sexual-assault reports may surface.

Deputy Title IX coordinators have already been designated in athletics, human resources, and University Police. It may be helpful to have additional deputy coordinators in other areas of campus. For instance, there may be a need for one to work with faculty members. In addition, designating the security analyst(s) in the David M. Kennedy Center as a deputy Title IX coordinator(s) may facilitate compliance with Title IX reporting regulations and minimize the number of times a victim must recount the details of the sexual assault. This coordinator would also offer internationally appropriate advice and help connect the student who has experienced sexual assault with relevant resources when the student returns home or to campus.

6. Provide additional budget for the ongoing training of Title IX coordinators, advocates, advisors, compliance committee members, and others involved in sexual-assault response, support, and investigations.

As we have recommended the possible expansion of the number of individuals who would need/benefit from Title IX training, a commensurate budget for ongoing training for all of them is necessary.

7. Adopt a formal assessment process in which the Title IX coordinator reviews interview notes and investigative reports to ensure appropriate trauma-informed response to victims and effective implementation of Title IX principles.

To ensure the quality of the interview process and to evaluate the effectiveness of the training within the Title IX Office, we recommend an assessment process through which the Title IX coordinator can monitor the interview techniques of Title IX investigators with victims, witnesses, complainants, and respondents. This monitoring may include recording interviews or reviewing notes and reports.

We recommend that the assessment process not be limited to employees of the Title IX Office but that it expand to include other employees involved in the reporting or investigation process and who receive training on sexual-assault trauma and interview techniques.

This assessment process will facilitate another important evaluation: In our consultation with David Lisak, he stated that the personality of the investigator is a crucial element of developing a strong Title IX Office that supports victims. This factor cannot be measured through evaluation of policies and procedures, but rather it entails discovering information about personnel and their interactions with complainants and respondents.

Investigation and Discipline

1. Review and clarify written communication that is provided to complainants and respondents during their first contact with Title IX personnel, including investigators.

Although the Sexual Misconduct Policy outlines the process of an investigation, it is difficult to navigate. In addition, victims stated that they found the two-page “Information for Victims” document (which was given to them when they contacted the Title IX Office about an incident) to be confusing and lacking in information. We suggest that a plainly written document be developed to give victims, complainants, and respondents the key information they need about the investigation process, confidentiality, amnesty, etc.

2. Add to the Sexual Misconduct Policy an amnesty statement regarding possible Honor Code violations occurring at or near the time of a reported sexual assault.

Thomas-Card and Eichele (2016) provide the following guidance: “Choosing to report a sexual assault is a big decision for a victim/survivor. Many factors influence whether one chooses to file a report or not and with whom to file that report. If alcohol or drugs are involved, having an amnesty policy for victim/survivors is essential to establish both with the college/university and also campus security.”

The establishment of amnesty or leniency clauses in sexual misconduct policies is a controversial issue. Some argue that complainants should ultimately be held accountable for any violations of university policies or the Honor Code. Because most victims of sexual assault are reluctant to report (Rennison, Dragiewicz, & DeKeseredy, 2013; Orchowksi, Meyer, & Gidycz, 2009; Mitchell & Peterson, 2008), removing as many barriers as possible is extremely important. Indeed, in his visit to campus, David Lisak indicated that increasing reporting is the “Holy Grail” of sexual assault intervention and prevention.

We have two primary reasons for favoring measures that may increase reporting:

- a. We cannot provide help and assistance to individuals who do not report, and we want to help as many victims as possible.
- b. Since as many as 60 percent of all perpetrators are serial perpetrators (Lisak & Miller, 2002), we want to be able to create a safer campus by intervening quickly with those who violate the Sexual Misconduct Policy.

The sexual misconduct policies of many universities include some variety of amnesty, immunity, or leniency clause. Most of these policies refer to underage drinking or drug use, but some refer to other types of student conduct. Some have limits on the amnesty depending on the circumstances (e.g., at or near the time of the assault or circumstances that include a safety risk).

As an advisory council we reviewed many other university amnesty clauses, consulted with our visiting experts, and considered the recommendations received through our interviews, through the feedback website, and in relevant literature. We also vigorously discussed the implications for such a statement at BYU, where we have a unique mission and Honor Code representing the principles of our faith. We debated whether our charge was broad enough that we should draft an amnesty clause or simply recommend that the university adopt one, knowing that others at the university would need to implement that recommendation, if accepted. In the end, we decided to provide key principles that may guide the creation of such a clause as well as a draft statement that could be used as a starting point. Those key principles and the draft statement are included in the appendix of this document.

We recognize that university policy is changed through a prescribed process that includes seeking feedback from faculty, staff, and student representatives. As a result, we are realistic about the fact that the amnesty statement draft included in this document is likely to be different from what is included in the final revision to the Sexual Misconduct Policy. Yet we feel strongly enough about this recommendation that we decided to clearly represent our thoughts regarding the essential elements to include in a revision of the policy.

- 3. Ensure that the Title IX Office does not share information with the Honor Code Office except in the following circumstance: When a BYU student respondent accused in a sexual-assault case is found responsible for violating BYU's Sexual Misconduct Policy, the Title IX Office may share information about that student respondent with the Honor Code Office for the limited purpose of allowing it to determine disciplinary action; in such cases, the Title IX Office will redact the names of complainants, victims, and witnesses from all information before the information is shared.**

In addition to the structural and physical separation of the Title IX and Honor Code Offices suggested in the first section of this report, we recommend no overlap in functional operation and complete separation of databases and operations, including confidentiality of all information gathered through the Title IX investigation process.

When a Title IX investigation is complete, and if the respondent is a student and the preponderance of evidence suggests that the respondent has violated the Sexual Misconduct Policy, we propose that the Title IX Office provide information to the Honor Code Office regarding the respondent only; the name(s) of the complainant and/or victim as well as witnesses would be redacted from all documentation. When the resolution has been determined, the Honor Code Office would provide the information to the Title IX Office which would then communicate the decision and appeal steps to the complainant and/or victim. The Honor Code Office would communicate the outcome to the respondent. If the

respondent appeals and information is required from the complainant and/or victim, that communication would again come from the Honor Code Office to the Title IX Office and then to the complainant and/or victim. In this way, the name(s) of the complainant and/or victim would never be communicated outside of the Title IX Office without consent.

In some instances, a complainant may want information about a sexual misconduct case under the domain of the Title IX program to be shared with the Honor Code Office. This sharing of information about the complainant would only occur if instigated by the complainant and a written request from the complainant was received by the Title IX Office.

Victim Assistance

1. Develop written protocols on victim interview techniques to reflect trauma-informed principles.

Given the frequent criticisms of the Title IX investigative process, we recommend developing a structured interview template that guides appropriate interviewing.

2. Enhance training on subjects such as the neurobiology of trauma for all involved with the response, support, and investigation of sexual assault.

Victims of sexual assault must be treated with sensitivity and care, especially throughout the investigation process. Thomas-Card and Eichele (2016) offer the following guidance for investigators:

“As much as possible, officials taking a report must monitor their language and questioning style, as a victim/survivor can easily feel like the interviewer is blaming the victim/survivor for the sexual assault. Acknowledging the nature of the questions and carefully monitoring tone, nonverbal communication, and restricting any judgmental comments beyond the line of questioning will help the victim/survivor feel more at ease through the questioning process.”

Given the highly sensitive nature of this work, we recommend enhanced training for investigators to help them learn trauma-informed interviewing techniques. In addition, we recommend thorough, ongoing training on the neurobiology of sexual-assault trauma for all employees within the Title IX Office, Women’s Services and Resources, University Police, and CAPS. The university should also assess the need to train additional personnel, such as other employees in student services, Title IX Compliance Committee members, and faculty members who are more likely to receive sexual-assault reports (women’s studies, psychology, and nursing).

Among other issues, this training should address

- ◆ the art of supportive interviewing in investigations,
- ◆ the neurobiology of trauma,
- ◆ trauma-informed practices for interacting with victims of sexual assault, and
- ◆ how assault affects a person’s ability to describe the event.

A variety of training options are available, from printed materials to online resources to in-person training programs. We specifically recommend that the Title IX coordinator and investigators attend

training such as the Four Corners of Title IX Regulatory Compliance. We also recommend that selected BYU employees receive training from organizations such as the Utah Coalition Against Sexual Assault (UCASA) or the Center for Women and Children in Crisis, both of which provide a 40-hour advocacy training program. The 40-hour advocacy training program is based on national guidelines and is recommended for all disciplines working with victims of sexual assault (Office for Victims of Crime, 2015; Utah Coalition Against Sexual Assault, 2016).

3. Highly publicize an enhanced education campaign about resources for victims of sexual assault and/or interpersonal violence, including information on confidential resource providers, forensic medical examinations, health-care choices, reporting processes and options, crisis intervention, and therapy support.

All victims, regardless of their decision to report assaults to the Title IX Office, need to have easily accessible information on resources following sexual misconduct. An educational and promotional campaign highlighting campus and community victim resources must take a broad approach to educate all students, faculty, and staff. Information on victim resources must be highly publicized, as we want victims to feel supported and to understand their options for reporting and their resources for receiving confidential help.

4. Consider collecting ongoing feedback from individuals who participate in Title IX investigations through voluntary postinvestigation surveys.

To aid in ongoing evaluation of the services, support, and investigations related to sexual-assault cases, we recommend seeking feedback from those who participate in investigations through a voluntary survey offered after the conclusion of the Title IX investigation. The survey could explore experiences with the reporting process, communications, interactions with Title IX staff, and other aspects of the investigation.

5. Complete and expand online information at titleIX.byu.edu.

We recommend expanding and completing the online resources on BYU's Title IX website. Information should be added to those sections with minimal to no information, as noted in the findings of this report.

Student focus groups have been helpful in the past as revisions and updates to the website have been implemented.

6. Continue to provide easily accessible instructions for reporting an incident to the Title IX Office.

We recommend that the "Report an Incident" button on the BYU Title IX website be designed to be more visually noticeable. In addition, information about what to do following a sexual assault should be well publicized around campus to both students and faculty.

7. Consider designating Women's Services and Resources full-time staff as confidential sources for reporting sexual-assault issues.

In our investigation, we discovered that there was confusion about the confidential status of the Women's Services and Resources personnel. We recommend that the full-time employees in this office be designated as confidential sources for reporting, allowing students to consult this office and receive

referrals and resources without resulting in the disclosure of their personally identifiable information without their consent.

Even a university employee designated as a confidential source will have some obligations to report nonidentifying information under federal law (including providing statistical information such as the nature, date, time, and general location of incidents); however, the point of designating a confidential source is to prevent personally identifiable information from being disclosed without a student's consent (Office for Civil Rights, 2014).

8. Clearly identify and differentiate confidential and nonconfidential resources for victims.

We recommend that campus and community resources on the Title IX website and in the "Information for Victims" document be divided into confidential and nonconfidential categories with the confidential resources listed first.

9. Strengthen BYU's relationships with relevant resource providers in the community. This may include assigning members of the Title IX Compliance Committee or other personnel to serve as liaisons to specific organizations.

Many resources on campus and off campus can assist in providing support for sexual-assault victims and in fulfilling the many requirements of Title IX. Community resources could provide training, participate in Sexual Assault Awareness Month activities, and have a stronger campus presence to provide information and support for students. We recommend that representatives from BYU's Title IX Office actively participate with community organizations such as the Utah County Sexual Assault Response Team. We recognize that BYU's environment is unique, yet the university can benefit from being connected and from collaborating where possible. Especially when BYU students are using community resources, the university can do a better job of working with these organizations.

10. Improve awareness of and access to existing information for victims regarding zero tolerance of retaliation.

Although information on retaliation is provided in the university's Sexual Misconduct Policy as well as in the "Information for Victims" document, we recommend that student and faculty training be modified to include a strongly worded statement that BYU will not tolerate any form of retaliation. Additionally, we recommend that the information about retaliation in the "Information for Victims" document be enhanced and highlighted with a bold header. Although no interviewed victims reported actual retaliation, some expressed fear of retaliation and a lack of understanding about their options to prevent retaliation. By including information on retaliation clearly and openly in training and documentation, we hope the fear of retaliation will be decreased.

Campus Culture and Climate

- 1. Consider administering a campus-climate survey(s) to gather data regarding perceptions of sexual assault, incidents of sexual misconduct, incident characteristics of any sexual assault, and perceptions of the Title IX investigation process for those who have participated in an investigation. Survey results would establish a baseline for tracking.**

A variety of actions can be taken to improve BYU's campus climate and culture relative to sexual assault, but the first and most important action is to assess that climate and culture. With the results of such an assessment, the university could tailor prevention efforts to our unique situation and then monitor progress in future surveys.

The White House Task Force to Protect Students from Sexual Assault (2014b) encouraged universities to conduct a campus-climate survey and provided a tool kit to help with such a survey. Many universities have since completed a survey, and when the OCR investigates a university's handling of sexual-assault cases, one of the seven common requirements to come from the investigation is that the university conduct regular campus-climate surveys (Mangan, 2016). Researchers are also joining the chorus to recommend these surveys (e.g., Van Brunt, Murphy, & O'Toole, 2015). Finally, prospective legislation could require universities to regularly conduct campus-climate surveys (Vendituoli, 2014).

In addition to all these reasons to conduct a survey, we believe a survey will provide BYU with vital information for our efforts to create a safer campus, including a better understanding of campus attitudes about sexual assault, the pervasiveness of sexual assault among our students as well as the nature and characteristics of assaults, and student perceptions of campus information and resources regarding sexual assault.

To further explore this recommendation, we formed a subcommittee to develop a campus-climate survey and associated materials and methods that could be used to conduct a campus-wide survey of students. The subcommittee consisted of Rosemary Thackeray (health sciences), Jennie Bingham (CAPS), Bob Ridge (psychology), and Eric Jenson (institutional assessment), with Ben Ogles from the advisory council serving as committee chair. In early September 2016 the university's Institutional Review Board for Human Subjects (IRB) approved the proposed campus-climate survey study. A pilot study, which was also approved by the IRB, has now been conducted with nine students. The subcommittee will soon be meeting to make final modifications to the survey and recruitment emails based on feedback from the students in the pilot study. Once these changes are complete, the revised survey and recruitment emails will be forwarded to the IRB for approval and the survey will be ready for distribution in the event that this recommendation is approved by the university administration.

The survey includes the following topics, among others:

- ◆ general campus climate
- ◆ campus climate specific to harassment and sexual assault
- ◆ participation in training regarding sexual assault
- ◆ knowledge of resources for sexual assault
- ◆ attitudes toward the Title IX and Honor Code Offices

- ◆ experiences of unwanted sexual contact, including incident characteristics
- ◆ experiences of intimate partner violence
- ◆ demographic characteristics

Our survey was based mostly on the revised survey recommended by the Campus Climate Survey Validation Study (CCSVS) funded by the Department of Justice's Bureau of Justice Statistics. The CCSVS survey was tested extensively and contains items from many published instruments such as the Rape Myth Scale and the Sexual Experiences Survey. A summary of the CCSVS results, along with the entire report, can be found on the Department of Justice website (U.S. Department of Justice, 2016).

2. Expand the role of the Title IX Compliance Committee to include, among other duties, consulting with the Title IX Office on evidence-based prevention and risk-reduction strategies.

By expanding the role of the Title IX Compliance Committee, we believe the university can better integrate prevention efforts into campus health and wellness initiatives, engage more men in prevention efforts, and integrate evidence-based prevention efforts into Title IX work. In addition, this group can work together to better inform the campus about procedures for handling sexual misconduct on campus as well as about the role of the Title IX Office. The committee is already broadly representative, but careful consideration of the membership may suggest a few changes to involve key organizations so that information and prevention efforts can be more multidisciplinary and integrated across campus. This committee can also form subcommittees for specific initiatives that may need to be tailored to BYU's unique culture (e.g., bystander campaigns or consent initiatives).

3. Share with officials of The Church of Jesus Christ of Latter-day Saints the findings of the advisory council regarding ecclesiastical leaders' varied responses to sexual-assault reports.

CONCLUSION

As we have conducted this study and developed this report, we have been grateful for the cooperation, the openness, and the sincere devotion to helping victims that has been demonstrated by so many members of the campus community. Our hearts ache for those who suffer the devastating psychological, emotional, spiritual, physical, and other wounds inflicted through sexual assault. Our deepest desire is to create an environment that eliminates such situations as much as possible and compassionately supports and guides victims through their recovery process.

We have learned much about how our campus responds to sexual misconduct, and we have formulated some key recommendations, outlined above, that we believe will make a significant difference in the safety of our students. In addition, we have three broad recommendations:

1. Although we have gained significant insight into this issue on campus, we have learned that there is much more for us still to learn and that there is much we still do not understand. Our attention to this issue as a campus is heightened now, and we ask that the university remain alert and continue to study and to learn. A campus culture and climate study will be a significant aid to that effort.
2. We began this process with two goals: (a) to learn how we can eliminate sexual misconduct on campus and (b) to discover ways to improve the reporting and investigation process. We have realized that those two goals are in reverse order. We must have better reporting of sexual assault before we can eliminate sexual assault and other forms of sexual misconduct. We ask that the university do what is necessary to encourage and facilitate victims or others in reporting sexual assault and dating/domestic violence.
3. This report is a beginning. This issue is rapidly evolving both here on our campus and in the broader world of higher education. Federal regulations are changing quickly, and both government agencies and education officials are working hard to find the right solutions. The formation of this advisory council indicates that BYU is also working hard to find the right solutions for our campus. As we gain more information about sexual misconduct on campus and more experience responding to it, we strongly urge continual review and attention to improve our processes and efforts. As experts and regulators in the field similarly learn more, gain new perspectives, and develop new strategies, we encourage the university to continue to study and learn from emerging best practices and revised regulations.

As an educational community that seeks to follow Jesus Christ, we at this university place the highest emphasis on compassionate attention to the safety and well-being of our students. To succeed in our mission to help young people develop the full range of human potential, we must have an environment that is free of sexual misconduct and that is supportive, loving, and sensitive to the needs of any who have been abused. These priority objectives merit our determined and sustained attention. We must be, as was Jesus Christ, both unflinching in our condemnation of such behavior and compassionate in our care for any affected by sexual assault and dating/domestic violence.

APPENDIX: AMNESTY STATEMENT DRAFT

The advisory council recommends the following key principles for inclusion in an amnesty statement that may be incorporated into BYU's Sexual Misconduct Policy.

Critical Components of an Amnesty Clause

- ♦ The importance of the BYU Honor Code
- ♦ Introduction about encouraging the reporting of sexual misconduct
- ♦ Names of reporting students will not be given to the Honor Code Office
- ♦ Reporters of assault given amnesty/immunity and will not be subject to university discipline
- ♦ Amnesty extends to witnesses
- ♦ Amnesty extends beyond drug and alcohol violations to other policy or rule violations
- ♦ Amnesty limited to "at or near the time of the incident"
- ♦ Exception to amnesty: if the health or safety of others is at risk
- ♦ The university may initiate support, counseling, or education for those who have violated Honor Code principles

We recommend that the following paragraph in the current Sexual Misconduct Policy be replaced with an amnesty statement. An amnesty statement draft is included below as a starting point for creating a final statement.

Current Policy

In order to protect their own and others' safety, individuals who believe they have been subjected to Sexual Misconduct should make a report even if they have simultaneously been involved in other violations of university policy, such as use of alcohol or drugs. Violations of university policy or the Church Educational System Honor Code do not make a victim at fault for sexual violence or other forms of Sexual Misconduct and will be addressed separately from the Sexual Misconduct allegation.

Amnesty Statement Draft

BYU exists to provide an educational environment consistent with the ideals and principles of the restored gospel of Jesus Christ. The BYU Honor Code and its observance by the campus community are essential components of BYU's religious mission.

At BYU, being a victim of sexual misconduct is never a violation of the Honor Code. Brigham Young University strongly encourages the reporting of all incidents of sexual misconduct and will provide appropriate services to victims. Sexual misconduct includes dating violence, domestic violence, sexual harassment,

sexual assault, and stalking. BYU's goal is to maintain a safe, respectful campus climate, free of sexual misconduct.

The university recognizes that victims or witnesses of sexual misconduct might be hesitant to report an incident to university officials if there are Honor Code violations, such as alcohol use, drug use, or consensual sexual activity outside marriage occurring at or near the time of the sexual misconduct. To help address this concern and to encourage the reporting of sexual misconduct, names of victims or witnesses reporting sexual misconduct will not be shared by the Title IX Office with the Honor Code Office, unless at the request and written permission of the reporting student or if the health or safety of others is at risk.

Moreover, neither a reporting victim nor a witness in an incident of sexual misconduct will be subjected to university discipline for an Honor Code violation occurring at or near the time of the reported sexual misconduct unless the health or safety of others is at risk. However, with victims or witnesses who have violated the Honor Code the university reserves the right to initiate discussions regarding therapy options and educational programs, such as addiction-recovery programs, to fulfill its commitment to help students and benefit the campus community.

To encourage the reporting of sexual misconduct, the university will also offer leniency for other Honor Code violations that are not directly related to the incident but which may be discovered as a result of the investigatory process. Such violations will generally be handled so that the student can remain in school while appropriately addressing these concerns.

REFERENCES

- Brigham Young University. (1981, November 4). BYU mission statement. Retrieved from http://aims.byu.edu/mission_statement
- Brigham Young University. (2013, November 25). Title IX Compliance Committee Charter. Retrieved from https://compliance.byu.edu/sites/compliance.byu.edu/files/Title%20IX%20Compliance%20Committee%20Charter%2011-25-13_o.pdf
- Carretta, C. M., Burgess, A. W., & DeMarco, R. (2015). To tell or not to tell. *Violence Against Women, 21*, 1145–1165. doi: 10.1177/1077801215590672
- Church Educational System. (2015, November 9). Church Educational System Honor Code. Retrieved from <https://policy.byu.edu/view/index.php?p=26>
- Fisher, B. S., Daigle, L. E., Cullen, F. T., & Turner, M. G. (2003). Reporting sexual victimization to the police and others: Results from a national-level study of college women. *Criminal Justice and Behavior, 30*, 6–38. doi: 10.1177/0093854802239161
- Gertner, N. (2015, Winter). Sex, lies, and justice: Can we reconcile the belated attention to campus sexual assaults with due process? *The American Prospect, 26* (1), 32–37.
- Gonzalez, H. B., & Feder, J. (2016, April 15). Sexual violence at institutions of higher education. *Congressional Research Service*, R43764.
- H. R. 1490. (2015–2016). 114th Congress. Survivor outreach and support campus act. Retrieved from <https://www.congress.gov/bill/114th-congress/house-bill/1490>
- Jeanne Clery Act. (1992). The federal campus sexual assault victims' bill of rights. Retrieved from <http://clerycenter.org/federal-campus-sexual-assault-victims'-bill-rights>
- Kattner, T. (2015, May 13). The four corners of Title IX compliance [Web log post]. Retrieved from <http://www.campuslawconsidered.com/articles/title-ix/the-four-corners-of-title-ix-compliance/>
- Lisak, D., & Miller, P. M. (2002). Repeat rape and multiple offending among undetected rapists. *Violence and Victims, 17*, 73–84. doi:10.1891/vivi.17.1.73.33638
- Mangan, K. (2016, February 8). A closer look at 7 common requirements in resolved federal sex-assault inquiries. *The Chronicle of Higher Education*. Retrieved from <http://chronicle.com/article/A-Closer-Look-at-7-Common/235220>
- Mitchell, C., & Peterson, B. (2008). Rape in Utah 2007: A survey of Utah women. Utah Commission on Criminal and Juvenile Justice. Retrieved from <http://nomoresecrets.utah.gov/Documents/RapeinUtah2007.pdf>
- Office for Civil Rights, U.S. Department of Education. (2011, April 4). Dear Colleague Letter: Sexual Violence. Retrieved from <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>

- Office for Civil Rights, U.S. Department of Education. (2014, April 29). Questions and Answers on Title IX and Sexual Violence. Retrieved from <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>
- Office for Civil Rights, U.S. Department of Education. (2015, April 24). Dear Colleague Letter: Title IX Coordinators. Retrieved from <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>
- Office for Victims of Crime. (2015). Victim Assistance Training. Retrieved from https://www.ovcttac.gov/views/TrainingMaterials/dspOnline_VATOnline.cfm
- Orchowski, L. M., & Gidycz, C. A. (2015). Psychological consequences associated with positive and negative responses to disclosure of sexual assault among college women: A prospective study. *Violence Against Women, 21*, 803–823. doi:10.1177/1077801215584068
- Orchowski, L. M., Meyer, D. H., & Gidycz, C. A. (2009). College women's likelihood to report unwanted sexual experiences to campus agencies: Trends and correlates. *Journal of Aggression, Maltreatment & Trauma, 18*, 839–858. doi: 10.1080/10926770903291779
- Orchowski, L. M., Untied, A. S., & Gidycz, C. A. (2013). Factors associated with college women's labeling of sexual victimization. *Violence and Victims, 28*, 940–958. doi:10.1891/0886-6708.VV-D-12-00049
- Rennison, C. M., Dragiewicz, M., & DeKeseredy, W. S. (2013). Context matters: Violence against women and reporting to police in rural, suburban, and urban areas. *American Journal of Criminal Justice, 38*, 141–159. doi: 10.1007/s12103-012-9164-4
- Sabina, C., & Ho, L. Y. (2014). Campus and college victim responses to sexual assault and dating violence: Disclosure, service utilization, and service provision. *Trauma, Violence, & Abuse, 15*, 201–226. doi:10.1177/1524838014521322
- Sokolow, B. A., Schuster, S. K., Lewis, W. S., & Swinton, D. C. (2016). Complying with Title IX by unifying all civil rights-based policies and procedures. In S. C. Wooten & R. W. Mitchell (Eds.), *The crisis of campus sexual violence: Critical perspectives on prevention and response* (pp. 113–124). New York: Taylor & Francis.
- Thomas-Card, T., & Eichele, K. (2016). Comprehensive college- or university-based sexual violence prevention and direct services program: A framework. In S. C. Wooten & R. W. Mitchell (Eds.), *The crisis of campus sexual violence: Critical perspectives on prevention and response* (pp. 149–168). New York: Taylor & Francis.
- U.S. Department of Justice. (2016, January 21). Understanding the campus climate survey validation study final technical report [Web log post]. Retrieved from <https://www.justice.gov/opa/blog/understanding-campus-climate-survey-validation-study-final-technical-report>
- Utah Coalition Against Sexual Assault (UCASA). (2016). Advocacy training. Retrieved from <http://www.ucasa.org/advocacy-training/>

- Van Brunt, B., Murphy, A., & O'Toole, M. E. (2015). The dirty dozen: Twelve risk factors for sexual violence on college campuses (DD-12). *Violence and Gender*, 2, 145-160. doi:10.1089/vio.2015.0014
- Vendituoli, M. (2014, July 31). Senate bill asks colleges to do more to combat sexual assault. *The Chronicle of Higher Education*. Retrieved from <http://chronicle.com/article/Senate-Bill-Asks-Colleges-to/147991>
- White House Task Force to Protect Students from Sexual Assault. (2014a). Key components of sexual assault crisis intervention/victim services resources. Retrieved from <https://notalone.gov/assets/intervention-resources.pdf>
- White House Task Force to Protect Students from Sexual Assault. (2014b, April). The First Report of the White House Task Force to Protect Students from Sexual Assault. Retrieved from <https://www.notalone.gov/assets/report.pdf>
- Wilson, L. C., & Miller, K. E. (2016). Meta-analysis of the prevalence of unacknowledged rape. *Trauma, Violence, & Abuse*, 17, 149-159. doi:10.1177/1524838015576391

