



April 30, 2021

VIA E-MAIL

Gina M. Smith

Direct Phone 215-665-5540

Direct Fax 215-717-9520

gsmith@cozen.com

Leslie Gomez

Direct Phone 215-665-5546

Direct Fax 215-717-9524

lgomez@cozen.com

Maureen P. Holland

Direct Phone 215-665-5548

Direct Fax 215-717-9528

mholland@cozen.com

Dr. Richard D. Muma
Interim President
Wichita State University
1845 Fairmount
Wichita, KS 67260-0205

Dr. Blake Flanders
President and CEO
Kansas Board of Regents
1000 SW Jackson Street, Suite 520
Topeka, KS 66612-1368

Re: External Title IX Audit

Dear Dr. Muma and Dr. Flanders:

In May 2020, Wichita State University and the Kansas Board of Regents jointly engaged Cozen O'Connor to conduct an external audit of the University's Title IX program, including policies, procedures, and practices.¹ The purpose of the audit was to assess legal compliance and enhance the effectiveness of policies, procedures and practices related to sexual and gender-based harassment and violence under Title IX of the Education Amendments of 1972 and related provisions of the Jeanne Clery Disclosure of Campus Security Policy and Campus

¹ The timing of this engagement was impacted by a number of factors, including business interruptions caused by the COVID-19 pandemic, the resignation of former WSU President Jay Golden, and the release of new Title IX regulations in May 2020.

Affairs, Student Conduct and Community Standards, Student Involvement Team, WSU We Support U, Office of Diversity and Inclusion, Administration, and Leadership.

During the fall semester (2020), we interviewed more than 30 campus constituents and stakeholders, including the Executive Vice President and Provost (now Interim President); the Senior Vice President and Executive Director of the National Institute for Aviation Research; the Vice President for Student Affairs; the Vice President Chief Diversity Officer and Director of Military and Veteran Affairs; the Vice President of Strategic Communications and Chief Marketing Officer; the Interim Vice President for Regional Engagement and Economic Development; the Associate Vice President for Strategic Enrollment Management; the Executive Director, Government Relations and Strategy, and Executive Director to the Board of Trustees; the President of WSU Tech; the Executive Director of HR; the Executive Chief of Staff and Executive to the President; the Office of Institutional Equity and Compliance (OIEC) Executive Director, Title IX Coordinator, and EO Coordinator; the Chief and Operations Captain of University Police; the Associate Dean of Students; the Executive Director of Housing and Residence Life; the Associate Vice President for Student Affairs; the Dean of Students; the Assistant Vice President for Student Affairs, Assessment and Student Retention; the Associate Director for Student Conduct; the Assistant Vice President of Counseling and Wellness; the Assistant Director of Counseling and Prevention Services; the Prevention and Outreach Coordinator; the Director of Student Health Services; the Director of Athletics; the Faculty Athletics Representative; the Senior Women's Administrator; the President of the Faculty

already encompassed in this report, we will supplement this letter with any additional observations and recommendations.

We have incorporated feedback from the survey, as well as the individual discussions held to date, into our observations and recommendations set forth in this report.

II. Legal and Regulatory Framework

The institutional response to sexual and gender-based harassment and violence is governed by a complex federal and state legal and regulatory framework. The federal framework is based on two primary statutes: Title IX of the Education Amendments of 1972⁴ (Title IX), and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act⁵ (Clery), as

opportunity to confront one's accuser in cases involving credibility determinations. Given these changes in the guidance, and in some instances the law, OCR's enforcement approach has varied significantly between recent administrations. Most recently, on May 6, 2020, OCR promulgated revised Title IX regulations, which took effect on August 14, 2020. Those regulations shifted Title IX frameworks for institutional responses – they both restricted the scope of conduct that constitutes potential sexual harassment under Title IX, and expanded the procedural protections required in the grievance processes for responding to reports and formal complaints of sexual harassment.

Under the current Title IX regulations, when a school is on notice of sexual harassment within its

impartial investigations, and facilitate a prompt and equitable resolution. The institutional response must also include coordinated and ongoing training and educational programming for students and employees (both staff and faculty).

Key elements of an effective institutional response include:

Adherence to coordinated and accessible policies and procedures;

An independent and fully empowered Title IX Coordinator with sufficient authority and resources to effectively navigate oversight and compliance responsibilities;

A coordinated multi-disciplinary response team to provide support, resources and accommodations and to facilitate informed decision-making;

A centralized reporting, response, investigation, and resolution process to ensure consistent application of policies and procedures;

Clear communication about the difference between confidential resources (with legally-protected and privileged communications, like counseling and health services) where individuals can see confidential assistance, and reporting options (which trigger an institution's Title IX obligations, like campus Title IX offices, campus police, and responsible employees), and;

Coordination of employee reporting obligations under Title IX, Clery, mandatory child abuse reporting, and other federal and state provisions to assure that all individuals are aware of how and where information that is shared with an employee will be disclosed;

An initial assessment in each report designed to evaluate known facts and circumstances, take interim steps to protect the complainant and the campus community, facilitate compliance with Title IX and Clery responsibilities, and identify the appropriate institutional response;

Protocols for the identification, implementation, enforcement and documentation of supportive measures;

Separation of support and advocacy functions from impartial investigative and adjudicative processes;

Reliable, impartial, objective, and thorough investigations and hearings by experienced and trained investigators and decision-makers;

Procedures for resolution that recognize the balance between complainant autonomy and agency and fair and impartial procedures that incorporate the procedural requirements of notice and an opportunity to be heard;

Regular communication with the parties and transparency about processes to maintain the trust of individual stakeholders and the community;

Consistent training, education and prevention programs;

subcommittee devoted to sexual violence prevention. This collaborative work is an important element of a prevention program; it does not, however, satisfy the need for a full-time prevention and education coordinator.

We understand that the University has recently received a Department of Justice grant, which will provide funding for a prevention and education coordinator for 3 years. We encourage the University to use this time to identify a funding stream and internal structure for a full-time, grant-funded specialist tasked with overseeing all programming and coordinating with the Prevention Services Advisory Board, student groups, volunteers and other personnel. We also encourage the University to consider how to incorporate a more formalized Health Promotion and Education program within Student Health.

We recommend the following:

1. Require completion of Title IX training for all incoming students and identify a mechanism to incentivize completion, rather than penalize non-completion. Foundational online training can be supplemented with additional programming for targeted populations for campus residents, athletes, the Greek community, student-employees, and student leaders (many of which already receive additional and programming based on their role).
2. Consider incorporating prevention and awareness programming into the first-year seminar for new students.
3. Track and monitor training completion of Title IX training for staff and faculty.
4. Provide Title IX training for senior leaders, supervisors, and managers regarding their role in reporting, in fostering a culture and climate of accountability and responsibility, and in promoting and supporting the independence of OIEC.
5. Enhance the availability of Title IX training for all campus community members.

With respect to its intersection with OIEC, we recognize the need to carefully consider the overlap between bias response and investigation into a potential hostile environment under 3.06 or 3.47. This distinction should be communicated clearly through both processes and on University websites to reinforce trust in the integrity and accessibility of each process.

We recommend the following:

1. Coordination of bias incident response protocols with OIEC as it relates to jurisdiction and applicability of supportive measures and investigative processes.
2. Proactive education and communication with the campus community, as well as training and education regarding resources available through each process.

2. Employee Relations

In a related area, we heard frustration that matters involving employee misconduct that did not rise to the level of a policy violation under 3.06 or 3.47 did not receive consistent responses when referred back to Human Resources or direct supervisors for follow up investigation and disciplinary response. Recognizing that we were not asked to evaluate the University's Human Resources program, we are not assessing the effectiveness of the University's employee relations functions, but rather, sharing feedback received regarding insufficient or ineffective responses to lower level workplace misconduct. This is particularly true with respect to faculty misconduct, where immediate supervisors may not have the sufficient resources, training, or processes to conduct a fact-finding investigation, assess what corrective action, if any, is appropriate, evaluate intersections with legal requirements, and maintain consistent documentation for progressive discipline, performance appraisal processes, and identification of patterns.

We recommend the following:

1. Review and revise, as necessary, policies and procedures regarding workplace misconduct that does not rise to the level of a policy violation under 3.06 and 3.47.
2. Ensure that employee misconduct is appropriately documented in a manner that allows the University to appropriately track and monitor patterns and concerns.

V. Conclusion and Next Steps

This letter provides a summary of our high-level observations and recommendations. It does not purport to encompass all of our observations, insights gathered from review of documents and discussions with campus constituents, but rather, to prioritize recommendations for effective implementation of Title IX.

We are available to assist the University in implementing these recommendations and evaluating how information from the survey or this review might be shared with the campus community.

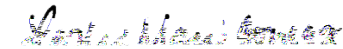
We appreciate the opportunity to serve Wichita State University and the Kansas Board of Regents.

Sincerely,

COZEN O'CONNOR



By: Gina Maisto Smith



By: Leslie M. Gomez



By: Maureen P. Holland

CC: Stacia Boden, General Counsel, Wichita State University
Julene Miller, General Counsel, Kansas Board of Regents