

Report of External Title IX Review

Hesston College

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I. Introduction and Summary of Review

In November 2022, Hesston College engaged Cozen O'Connor to conduct an external review to assess legal compliance and enhance the effectiveness of the College's policies, procedures, and practices related to sexual and gender-based harassment and violence under Title IX and related provisions of the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (Clery Act), as amended by the Violence Against Women Reauthorization Act of 2013 (VAWA). The review was prompted, in part, by public accounts during fall 2022 criticizing the College's response to reports of sexual assault, both historically and more recently.¹ These accounts raised concerns that Hesston had mishandled reports of sexual misconduct, and that certain administrators engaged in a pattern of minimizing complainants' experiences and/or dissuading them from reporting.² The review was also informed by concerns expressed through on-campus student activism and advocacy, including a campus protest and the publication of a list of written demands by students in November 2022.

On September 30, 2022, Hesston College President Joseph Manickam announced to the Hesston community that the College would engage an unbiased, trauma-informed, external organization to audit, evaluate, and suggest improvements to the College's response procedures. In a November 18, 2022 email to the community, the College announced the engagement of Cozen O'Connor's Institutional Response Group. The email stated:

This outside audit will include conducting interviews and gathering feedback from employees, students, alumni, and other off campus constituency groups. This review will also include a study of cases of sexual and gender-based harassment and violence handled by the college during the past five years. We want to know what happened, where students were served well and where we fell short. The recommendations from this outside review, which we expect to receive in spring 2023, will help us ensure we are doing everything we can to support and protect our community.

In response to significant community interest, as well as a November 2022 demand by students to "release the complete findings of the Cozen O'Connor review to all students, faculty, staff, and alumni," the College committed to releasing Cozen O'Connor's report.

This report contains our candid observations, findings, and recommendations, which were informed by our review of relevant documents and our interviews with more than 50 individuals, including students, alumni, faculty members, staff, and administrators who are currently or were formerly affiliated with the College. Our review was also informed by information learned from discussions with representatives from two advocacy groups that have intersected with the College on these issues. In addition to our interviews, Cozen O'Connor reviewed the College's written policies and procedures, other available documentation regarding the implementation of the College's Title IX program, and all reports of sexual and gender-based violence reported to the

¹ See, e.g., <https://intoaccount.org/2022/09/26/sexual-violence-at-hesston-college/> ; <https://intoaccount.org/2022/11/21/students-demand-hesston-college-stop-enabling-sexual-violence/>.

² We recognize that individuals may choose to self identify as a victim or survivor. In the context of our work, we use the term "complainant" to refer to an individual who has reported experiencing harm. We use the term "respondent" to refer to an individual who has been accused of causing harm. These terms reflect the terms used in the current Title IX regulations. 34 C.F.R § 106.30.

College and maintained by the Title IX Office over a five year period (academic year 2017-2018 to academic year 2021-2022). The information we received as part of our fact-gathering process was both objective and subjective in nature. Our fact-gathering process integrated information gathered through our interviews about individual experiences and perspectives of individuals on campus with our review of the College's Title IX policies, case files, and other records.

Importantly, Cozen O'Connor had no prior relationship with the College, or any of the individuals interviewed in the review. The Cozen O'Connor team members who led this review also have no affiliation with the Mennonite Church or faith. The observations, findings, and recommendations expressed in this report are ours alone, and were not directed, limited, or altered by the College.

Our review evaluated the College's Title IX program through a number of lenses, including legal compliance and effectiveness. We find that the College generally satisfied the minimum regulatory requirements of Title IX: a written notice of non-discrimination, written grievance procedures, and the designation of a Title IX Coordinator to oversee and coordinate its Title IX obligations, although there are opportunities to improve in each of these areas. We also find that the College has engaged in intentional prevention, education, training, and awareness programming and has otherwise taken steps to more fully develop its Title IX program. Despite these efforts, we find that, in practice, the College has not effectively implemented its Title IX obligations and that in many instances, the College's response to reports of sexual and gender-based violence and harassment was inconsistent with the federal legal framework.

In particular, we find that the College:

- failed to consistently respond to and assess reports of sexual and gender-based harassment and violence;
- failed to provide complainants with consistent care, access to supportive measures, and information about procedural rights in response to a report; and
- improperly utilized informal resolutions to resolve concerns about sexual and gender-based harassment and violence.

Our analysis of individual cases, through our review of Title IX case files and information provided in interviews, reflected significant gaps in the subject matter expertise of certain administrators and resulting actions (and inactions) by the College that directly and negatively impacted, and reportedly caused additional harm to, student complainants. As discussed more specifically in this report, we observed:

- instances in which the Vice President of Student Life and former Title IX Coordinator did not recognize or identify some Title IX-related issues and reports of potential sexual or gender-based harassment or violence;
- instances where the responses by the former Title IX Coordinator lacked the required outreach, offer, and/or provision of supportive measures, and explanation of the process to enable informed decision making by a complainant on whether to file a formal complaint;

- instances where complainants were encouraged or required to participate in informal resolution processes without meeting the notice and mutual agreement requirements of Title IX;
- instances in which the Vice President of Student Life and the former Title IX Coordinator failed to respond to reports based on a misunderstanding or misapplication of the law; and
- instances in which College employees (both faculty and staff) failed to comply with their responsibility to report sexual and gender-based harassment and violence to the former Title IX Coordinator.

Our recommendations to the College, which are informed by these observations and findings, are intended to assist the College in rebuilding and sustaining an effective Title IX program. The recommendations generally fall into five categories:

- restoration, to address the past;
- continued investment in prevention, education, training, and professional development to prevent sexual and gender-based harassment and violence and enhance institutional responses to related reports and complaints;
- strengthening of institutional structures, policies, and practices to ensure College administrators are prepared to respond to reports appropriately;
- steps to foster increased reporting and remove barriers to coming forward; and
- effective practices to enhance responses to reports of sexual and gender-based harassment and violence.

We also offer an initial set of recommendations designed to ensure that the process for implementing the recommendations has the appropriate hallmarks of trust, accountability, visibility, and sustainability.

II. Overview of Engagement

A. Background and Qualifications

This review was conducted by Devon Riley, Leslie Gomez and Gina Maisto Smith, of Cozen O'Connor's Institutional Response Group, a practice group dedicated to helping institutions, including colleges and universities, prevent and better respond to sexual and gender-based harassment and violence. In the context of higher education, the Institutional Response Group brings to its work a unique background and skillset, cultivated by having a team of attorneys who have dedicated their professional careers to the response and evaluation of sexual and gender-based harassment and violence, child abuse, and other forms of interpersonal violence. As career child abuse and sexual assault prosecutors, we observed firsthand the need for improved systems and policies, expanded care and supportive resources, comprehensive training and education, and the development of fair, impartial, and trauma-informed processes for investigation and resolution. As educators, consultants, and advisors, our service to institutions is based on the depth and breadth

of our collective professional experience working with thousands of individuals impacted by interpersonal violence. Our advice and counsel are informed by a deep and nuanced understanding of the dynamics of sexual and gender-based harassment and violence, the impacts of trauma on individuals and communities, including faith-based communities, and the need to develop reporting and response systems that incorporate a trauma-informed lens. In this way, our focus is holistic and broad, rather than narrow and legalistic. Importantly, the Institutional Response Group does not engage in any litigation, either for or against colleges or universities. Rather, we remain committed to improving campus responses through a neutral, subject matter expert lens and by building the framework to develop compassionate, trauma-informed, fair and impartial, and legally compliant practices that tend to the individual needs of students and employees, protect campus safety, and promote accountability.

B. Holistic and Values-Based Approach

Cozen O'Connor's Institutional Response Group relies on a three-tiered, holistic framework in conducting its work. We recognize that in addition to complying with an ever-shifting legal and regulatory framework, an institution's response to sexual and gender-based harassment and violence must also be guided by other vital considerations, including psychological impacts (which require an understanding of the dynamics of sexual and gender-based harassment and violence, trauma, barriers to reporting, and other related concepts) and cultural context (an institution's unique policies, procedures, personnel, resources, culture, climate, and institutional values). We analyze institutional responses to sexual and gender-based harassment and violence through the lens of the *care-compliance continuum*, a term we have coined to capture the equal importance of care for our community members with compliance with the law. This balancing of priorities is enormously complex as higher education institutions seek to implement all aspects of Title IX in a manner consistent with institutional values and mission. The *care-compliance continuum* recognizes that legal requirements include the need for trauma-informed supportive measures, resources, and care for the individual; prompt, equitable, and procedurally fair investigation and resolution processes; and a formal legal structure with appropriate checks and balances to ensure that key elements of effective practices are set forth in policy, resourced in action, and monitored for effectiveness and sustainability.

In our work across the nation, we seek to bring a values-based approach premised on four key principles: humility, empathy, accountability, and collaboration. Humility is the recognition that “we don't know what we don't know” – about another person's lived experience, about an institution and its history, or about the unique context we are exploring – and the commitment to being open to lifelong learning at every level. Empathy is grounded in both humility and compassion. It is the recognition of our commitment to care for those we serve. We articulate the concept as “flipping the lens” – taking the time to learn about another's perspective by listening with an earnest intent to understand. Accountability is the expectation that individuals take responsibility for their own actions, to embrace the tension of difficult conversations or difficult concepts, and to have the courage to acknowledge and apologize for harm. Collaboration is the recognition that “together, we are better than the sum of our parts.” It is fostered through shared governance, multidisciplinary teams, and campus partnerships. These foundational principles are a critical part of both how we do our work and how educational institutions can more effectively prevent and respond to sexual and gender-based harassment and violence occurring on their campuses.

C. Investigative Approach

Cozen O'Connor conducted this review with a commitment to open-ended exploration of the issues and sought to follow the facts wherever they led. The review process integrated investigative protocols to support a neutral, impartial, and thorough review and to report the information gathered to the College in an objective, organized, synthesized, and dispassionate manner. Cozen O'Connor sought to gather all relevant information and rigorously tie our findings and observations to available contemporaneous documents and interviews.

During the course of the review, the College provided unfettered access to documents, information, and personnel, and was fully cooperative with all of Cozen O'Connor's requests. The College respected the impartiality of the external investigation process and took steps to reinforce the integrity of that process, including encouraging community members to meet with us and respecting the anonymity of the participating individuals. Cozen O'Connor was not engaged to defend the College in response to any litigation and, as noted above, members of the Institutional Response Group do not participate in any civil litigation, either for or against educational institutions. Also as noted above, Cozen O'Connor had no prior relationship with the College or the Mennonite community.

Consistent with the scope set forth by the College, we were not engaged to determine whether sexual or gender-based harassment or violence actually occurred as reported, either to Cozen O'Connor or to the College, or whether such conduct constituted a policy violation. Such an analysis would require individual fact-gathering in each report of sexual or gender-based harassment or violence, including interviews with complainants, respondents, and witnesses as to the specific nature of the reported incidents, and the gathering of physical or documentary evidence. Rather, we sought to understand the College's response to instances of *notice* of potential sexual or gender-based harassment and violence, typically through a report by a complainant, witness, or College employee. In doing so, we accepted as true the underlying incidents of sexual or gender-based harassment and violence for the purposes of our assessment. Our inquiry therefore focused on the experience of the individuals reporting their experiences to the College; the available reporting options; what happened when a report was made; whether there were any barriers to reporting; the perception of what would happen if a report was made; the experience of interacting with the College; and the resolution of the matter after a report was made. In this regard, our work was qualitative in nature and was strongly informed by the personal experiences of individuals. Our process was designed to capture complex, sensitive, and subjective experiences and impacts, and to evaluate the College's Title IX program in light of those experiences, the legal and regulatory framework, and College policy. We then supplemented these qualitative experiences with an analysis of available College Title IX records for the past five academic years.

As an additional caveat, we were not engaged to make or provide personnel recommendations to the College regarding College staff, faculty or administrators. We also do not speculate about intent as it relates administrative actions. Rather, we identify the legal requirement, share the relevant evidence and observations, and provide recommendations to correct, strengthen, or enhance College practices. In the instances identified in this report, even were we to presume that College administrators acted with good intent, the gaps in the College's responses to certain reports

cannot be justified or excused in light of the College’s Title IX obligations and commitment to care for its community members.

This report does not include encyclopedic reference to every fact or insight gleaned through interviews, documents, or lived experiences. Rather, in an effort to balance accessibility and ease of access for the broader community, we sought to identify and present broad themes, supported by illustrative examples, to serve as the evidence base for our recommendations.

D. Interviews

Cozen O’Connor conducted more than 50 individual witness interviews, which represented significant engagement given the size of the Hesston College community. Cozen O’Connor requested meetings with individuals who, by role, were or are responsible for implementing or overseeing the College’s Title IX program, including the President, the current Title IX Coordinator, the former Title IX Coordinator, the Vice President of Student Life, the Vice President of Academics, the Vice President of Finance and Auxiliary Services, the Athletics Director, the Assistant Athletic Director for Compliance and Eligibility, and Resident Directors.

The College’s former Title IX Coordinator, who served in the role from 2017 through 2022, was no longer an employee of the College at the time of the review and did not agree to be interviewed. We note, however, that the former Title IX Coordinator maintained meticulous and detailed notes in her Title IX case files, which greatly aided in our understanding of the College’s response in individual matters. Cozen O’Connor also requested meetings with College employees who, by role, intersect with some frequently with the College’s Title IX program. These College employees included the Coordinator of Student Success and faculty involved in student success, as well as the College’s designated confidential resources, including the campus pastor, the campus counselor, and a faculty member designated by the College in September 2022 to serve as a confidential resource.

In addition to implementers (those individuals directly responsible for overseeing and coordinating the College’s Title IX program) and other College employees, Cozen O’Connor requested meetings with all 8 of the students who signed the November 30, 2022 letter of demands, some of whom agreed to speak with us. Cozen O’Connor also held three opening listening sessions in January 2023 – one for students, one for faculty, and one for staff. These listening sessions were attended by 2 students, 10 faculty members, and 16 staff members, respectively. Following these listening sessions, and in response to the President’s emails to the community, as well as “word of mouth” encouragement from community members who attended the listening sessions, Cozen O’Connor met with an additional 5 current students, 18 staff members, 9 faculty members, and 8 alumni, including recent graduates. Cozen O’Connor also received written input (in lieu of an individual meeting) from one alum and one former staff member.

Finally, Cozen O’Connor met with representatives from Into Account and Mennonite Abuse Prevention, two community-based organizations unaffiliated with the College. Into Account provides advocacy support for survivors of interpersonal violence and abuse in the context of a faith tradition.³ Mennonite Abuse Prevention is an organization that “maintains a database of

³ See <https://intoaccount.org/survivors/>.

proven or credible cases in Anabaptist or other pacifist church traditions of allegation of sexual harassment or assault, boundary violations, abuse of power and related misconduct.”⁴

In each interview, we followed a consistent protocol to ensure that individuals were comfortable speaking with us. At the beginning of each interview, we described our role, the scope of our review, and how information shared with us would be used. We informed individuals that we would not share their identities with the College and that information would not be personally attributed to them; rather, we would de-identify quotes or information provided to us and aggregate themes and observations to protect individual privacy.⁵ We explained our understanding that the College intended to make our report publicly available. The process was designed to provide each individual a full and fair opportunity to share information, ask questions, and follow up with any additional information.

E. Document Review

Cozen O'Connor reviewed the College's written policies and procedures, including the Sex Discrimination and Other Forms of Sexual Misconduct Policy (Title IX Policy); the Student Handbook; Campus Community Standards; Alcohol and Drug Policy; the Faculty Handbook; Human Resources Policies; Equal Employment Opportunity and Non-Discrimination Policy; and the Workplace Accommodations Policy. We also reviewed the following materials, which were housed across various locations and maintained by various offices and custodians:

- All records of reports and resolutions (if applicable) of sexual and gender-based harassment and violence made to the former Title IX Coordinator from academic year 2017-2018 through academic year 2021-2022, as maintained in the Title IX Office (35 case files);
- Records of reports and resolutions (if applicable) of sexual and gender-based harassment and violence made since fall 2019 to the Vice President of Student Life;
- Email correspondence between the former Title IX Coordinator, the Vice President of Student Life, and known parties to reports of sexual and gender-based harassment and violence, as identified through the case review and a targeted email search;⁶
- The 2021 Annual Campus Security Report and Fire Safety Report (which includes Clery Act crime statistics for calendar years 2018, 2019, 2020, 2021);

⁴ See <https://www.themaplist.org/>.

⁵ In two instances, students disclosed incidents of sexual or gender-based harassment and violence during their interview, which they gave Cozen O'Connor permission to share with the College's Title IX Coordinator. In one additional instance, a student disclosed an incident of sexual or gender-based harassment and violence, but chose not to report the conduct to the College.

⁶ The College provided Cozen O'Connor with access to the Hesston College email accounts assigned to the Vice President of Student Life and former Title IX Coordinator. Cozen O'Connor identified search terms (party first name and last name) and conducted a search of those email accounts to identify emails and attachments that included the search terms. Cozen O'Connor reviewed the 29,016 emails identified through this search process to evaluate whether there was additional information maintained in these communications which would supplement the existing Title IX documentation.

- The 2021-2022 Title IX Summary Report;
- The 2017 Task Force for Sexual Misconduct and Interpersonal Safety Final Report and Recommendations;
- The 2019 Campus Climate Survey, conducted through Everfi;
- The 2022 Campus Climate Survey, conducted through Diverse Learning Environments;
- Email correspondence, notes, letters, videos, and audio recordings provided by various students, faculty, and staff; and
- Relevant media articles

F. Naming Conventions

Given the highly sensitive nature of this review, and in deference to the privacy of current and former campus community members in the context of a public report, this report generally does not identify by name any students, alumni, or faculty members. Administrators are also not explicitly named, except where their role is such that it would be difficult, if not impossible, to discuss their role publicly without identifying them. In structuring this review, Cozen O’Connor specifically sought to create a space where individuals – including students, staff, faculty, and administrators – could speak with us directly without their comments being shared for personal attribution. We have sought to present as much detail as necessary to understand the individual accounts shared in the report, but have made the conscious and explicit decision to protect the privacy of individuals involved in the reports as complainants or respondents. Given the extremely small size of the Hesston College community, both the student body and College employees, we viewed this approach as a necessary and important element of the commitment to individual privacy. In addition to recognized privacy considerations under federal law, we recognize that the decision to share one’s identity and experiences – and in what contexts – is an important part of individual agency and autonomy.

III. Public Communications related to the External Review

On September 26, 2022, Into Account wrote on their blog:

Into Account has received numerous reports from Hesston College students and employees who share that when they reported sexual violence to [the Vice President of Student Life], it was diminished, covered up, ignored, and mishandled. There is a clear pattern across these reports of [the Vice President of Student Life] and other Hesston officials purposefully minimizing survivors’ experiences to keep them from going through the Title IX complaint process. Some survivors were forced into mediation with their perpetrators, others were lied to about the details of Title IX policy by people in authority, and multiple survivors ended up dropping out of school as a result.⁷

⁷ <https://intoaccount.org/2022/09/26/sexual-violence-at-hesston-college/>.

On September 30, 2022, President Manickam announced to the Hesston community: (1) that the College would engage an unbiased trauma-informed external organization to audit, evaluate, and suggest improvements to the College’s response procedures; (2) the Vice President of Student Life would continue to serve in that role but would no longer meet with students directly or be involved in any student disciplinary issues; and (3) a biology professor would be appointed as an additional non-mandatory reporter to add gender diversity to the group of individuals classified as non-mandatory reporters. The President’s communication also included information related to available reporting options at the College and in the Hesston community, and affirmed the College’s commitment to providing a healthy and safe campus for all students, faculty, and staff.

On November 1, 2022, President Manickam emailed faculty and staff that the College had been “seeking proposals from unbiased trauma informed outside organizations to audit, evaluate and suggest improvements to the College’s processes and procedures for preventing and addressing sexual violence” on campus. The President affirmed the College’s “commitment to providing a welcoming, healthy and safe campus” and encouraged any member of the campus community who had experienced harassment, violence, or discrimination to make a report to the College. On November 2, 2022, the President sent a similar email to students.⁸

On November 18, 2022, in an email to the community, the College announced the engagement of Cozen O’Connor. The communication read:

This outside audit will include conducting interviews and gathering feedback from employees, students, alumni, and other off campus constituency groups. This review will also include a study of cases of sexual and gender-based harassment and violence handled by the college during the past five years. We want to know what happened, where students were served well and where we fell short. The recommendations from this outside review, which we expect to receive in spring 2023, will help us ensure we are doing everything we can to support and protect our community.

On November 21, 2022, students announced that they would hold a protest on December 2, 2022 and published the following demands:

1. *Hire another campus counselor, one being a woman.*
2. *Create a non-mandated reporter faculty position and contract with Into Account.*

⁸ On November 16, 2022, Harvey County Now published [an online article](https://harveycountynow.com/all-news/news/hesston-college-initiates-outside-review-of-policies-after-national-organizations-report-of-sexual-violence) about the College’s pending external review. The article reported that Hesston College’s Annual Campus Security and Fire Safety Report reported that the College received no reports of rape occurring on campus since 2018, “when two rapes were reported.” See <https://harveycountynow.com/all-news/news/hesston-college-initiates-outside-review-of-policies-after-national-organizations-report-of-sexual-violence>.

Cozen O’Connor did not conduct an audit of the College’s Clery Act crime reporting data. We note, however, that an educational institution’s Title IX statistics and Clery Act statistics often differ, as the Title IX statistics generally encompass a broader range and scope of conduct. In contrast, for a report of a Clery Act crime to be included in a campus’s crime statistics, it must involve a specifically-designated crime, be reported to a campus security authority, and occur within the college’s Clery Act “geography.” As part of our recommendations, we encourage the College to consider additional evaluation of its Clery functioning.

3. *Immediately hire a full time second RD [Resident Director] to permanently fill the, as of now temporarily filled, role and work with students to create third full time RD position.*
4. *Remove the Vice President of Student Life as an alternative to Title IX Coordinator for making reports of sexual misconduct in the Title IX policy.*
5. *First Year Experience (FYE) must include a standardized (the same across all professors) intensive/comprehensive curriculum unit to educate all students on Title IX policies, sexual violence, and bystander training.*
6. *Take predator Daniel Bender's [Hesston's founding president] portrait down or put up a plaque explaining his sexual misconduct during his presidency.*
7. *Make the current Campus Pastor a mandated reporter and require he goes through additional training on the Title IX process and trauma informed ways of interacting with students. Additionally, release the job description of campus pastor.*
8. *Conduct a student climate survey every year to hear from students about their safety starting in the Spring of 2023.*
9. *Expand supportive measures to include: enforcement of no contact orders for both parties, leaves of absence, and option of attending classes online.*
10. *Never have a survivor be in a room with their perpetrator during the Title IX process or an informal process.*
11. *Fire the current VP of Student Life.⁹*

On November 29, 2022, the President emailed the community to acknowledge the students' demands and the planned protest and to convey support for their advocacy efforts. In the email, the President also shared information about Cozen O'Connor's review, as well as contact information for individuals who wanted to contact Cozen O'Connor directly. The President invited members of the community to contact Cozen O'Connor, announced that there would be listening sessions, and confirmed that information shared with Cozen O'Connor would not be shared with the College with personal attribution.

On November 30, 2022, a student emailed the College community with information related to the planned protest as well as an updated list of demands, with an explanation for each demand. The list included a new demand, "Release the complete findings of the Cozen O'Connor review to all students, faculty, staff, and alumni." The email was signed by eight named students "and numerous students." On December 2, 2022, a group of approximately 60 students engaged in a peaceful protest on campus. During this protest, students exited Formation,¹⁰ gathered at the center of

⁹ The Vice President of Student Life resigned from the College effective April 12, 2023.

¹⁰ The 2022-23 Student Handbook provides the following information about Formation: "Formation Gatherings meet Mondays and Fridays from 11 to 11:30 a.m. and provide a time for the entire campus community to come together for thirty minutes to experience sharing of announcements and concerns, topical presentations, guest speakers, experiential activities or faith practices centered on a variety of themes which integrate intellectual and spiritual content." Student Handbook, p. 3.

campus, and shared their experiences of reporting sexual and gender-based harassment and violence with the College.¹¹

On December 7, 2022, President Manickam sent a campus-wide email announcing Cozen O'Connor's upcoming visit to campus (January 12-13, 2023). The email invited community members to schedule individual meetings or attend open sessions (one each for faculty, students, and staff) with Cozen O'Connor. The President wrote that individuals could also provide feedback to Cozen O'Connor by email or by scheduling a Zoom meeting in December or January. The President provided the following information specific to the review, again reinforcing that information provided to Cozen O'Connor would not be shared with the College with personal attribution:

Information shared with Cozen O'Connor will not be shared with the College with any personal attribution. Instead, Cozen O'Connor will seek to identify aggregate themes about strengths and challenges in our approach to the prevention and response to reports of sexual and gender-based harassment and violence and other forms of harassment and discrimination. I expect the review will be thorough, candid, and look forward to learning more about how we can better serve our students, faculty and staff. At the conclusion of the review, we will share and discuss the review's results with our campus community.

On December 15, 2022, the President sent a letter via email and mail to the College's Partners (a group of approximately 700 households that are within the College's annual giving society) sharing the same information that was provided in the December 7, 2022 email to the campus community.

Information related to the review, including an invitation to participate and the contact information for the Cozen O'Connor team, was also included in the January 6, 2023 alumni newsletter.

On January 9, 2023, the President emailed faculty and staff to remind them of Cozen O'Connor's January 12 and 13 campus visit. He again shared Cozen O'Connor's direct contact information, that information provided to Cozen O'Connor would not be shared with the College with personal attribution, and that the College intended to share and discuss the results of the review with the campus community. The President sent the same email reminder to students on January 11, 2023. Finally, on January 30, 2023, the President emailed the community one final time to invite them to participate in the review, provide Cozen O'Connor's contact information, and affirm the College's commitment to sharing the report with the community.

IV. Background and Other Contextual Information

Through our review, which included an analysis of publicly available information and news articles, we learned of the widely-held perception and distrust by many community members that Hesston College has not responded appropriately to recent incidents of sexual violence on campus, and that the College has not fully reckoned with historical allegations of sexual violence reportedly

¹¹ <https://anabaptistworld.org/hesston-students-protest-colleges-handling-of-sexual-assault-reports/>.

committed by former College employees.¹² Although the College has taken steps, as described below, to repair this perception and affirm its commitment to acknowledge and address incidents of sexual violence, we heard a continuing perception that the College has yet to account for, or hold itself accountable for, historical incidents of sexual abuse.

At the outset, it is important to note the reality that issues of sexual and gender-based harassment and violence do not exist in a vacuum. Rather, they are part of a broader institutional ecosystem that shapes the environment where abuse can occur, the mindset around reporting considerations, the framework for responses, and the potential for institutional accountability. The issues attendant to sexual and gender-based harassment and violence are inextricably intertwined in the broader context of a complex and evolving institution.

We also note that the legal and regulatory framework governing campus responses to sexual and gender-based harassment and violence has evolved significantly over the past 12 years, and, in particular, during the years under review here. In 2011, 2014 and 2015, the U.S. Department of Education issued a series of significant guidance documents that represented a dramatic change to the nation’s understanding of Title IX obligations in the campus context. Just as colleges were adjusting to these new frameworks, the Department issued new guidance documents in 2017 and rescinded prior guidance documents that shifted institutional approaches to a more procedurally robust framework. In May 2020, the Department then issued “final” Title IX regulations (Title IX Regulations) that formalized the 2017 guidance. These Title IX Regulations represented yet another seismic shift for campuses in terms of their compliance obligations. Most recently, the Department promulgated a Notice of Proposed Rulemaking (NPRM) in June 2022, with the intent to release revised Title IX regulations in May 2023 that will purportedly provide schools with more discretion in designing campus responses. These rapidly evolving and ever-shifting legal and regulatory frameworks have contributed to a tumultuous, legally dense, and complex Title IX regulatory regime.

We also recognize that for much of the time period under review, the College was navigating the operational and financial impacts of the COVID-19 pandemic. For higher education institutions, this disruption to normal campus operations required the development of additional policies, procedures, and protocols to ensure the physical health and safety of its community. For the College, this responsibility was shared, in part, by the former Title IX Coordinator (who also served as the Director of Human Resources) and the Vice President of Student Life.

A. The College’s Mission and Mennonite Connections

An important foundational principle for our review is Hesston College’s institutional mission and values, which are rooted in its Mennonite founding. According to Hesston’s Mission Statement, “Hesston College, a college of Mennonite Church USA, educates and nurtures each student within Christ-centered community, integrating thought, life and faith for service to others in the church and the world.”¹³ The College describes its “Vision” as “a transforming community where students, faculty and staff dedicate their intellect, passion and skill to a future where: Hope replaces

¹² See, e.g., <https://intoaccount.org/2022/09/26/sexual-violence-at-hesston-college/>; <https://anabaptistworld.org/hesston-students-protest-colleges-handling-of-sexual-assault-reports/>.

¹³ <https://www.hesston.edu/about/mission-vision-and-values/>.

despair; The poor are clothed and fed; The sick are made whole; Peace replaces war and conflict; Justice replaces oppression; Creation is renewed; and, The gospel is proclaimed.”¹⁴ In support of this Vision, Hesston commits to “strive for excellence in all we do . . . measure our results and aspire to greatness in all areas of college life.” Hesston also identifies and defines its core values of excellence, Christian community, culture, relationships, creativity, stewardship, joy, transparency and caring.¹⁵ In particular, caring is described as “Act with compassion and honesty, extending dignity and respect to all.”¹⁶

During the course of our review, we heard from many community members that the College’s affiliation with Mennonite traditions and faith have impacted their trust in the College’s ability and willingness to respond effectively to reports of sexual abuse. As reported to us in our review, and as documented publicly,¹⁷ the fundamental underpinnings of Mennonite traditions (and, more broadly, historic peace church traditions) and tenets may be, in certain respects, inconsistent with the underpinnings of Title IX’s legal framework, which requires a prescriptive framework for reporting, investigating and adjudicating incidents of sex and gender-based harassment and violence.

Chief among these underpinnings is the Mennonite community’s well-documented focus on reconciliation and forgiveness. We heard the perspective that the primacy of forgiveness plays a vital role in fostering and strengthening bonds within the Mennonite community, but that it can also serve as a deterrent to reporting for survivors of sexual violence (or for third parties who receive such a report), because the act of making an official report can be perceived as at odds with the act of forgiving one’s perpetrator. This is especially so where a report is made to an external authority — be it law enforcement or a college official — because Mennonite communities are often insular in nature, having maintained faith-based separatist communities for centuries that are defined by their small and disciplined congregations. We also understand that Mennonite society has traditionally patriarchal roots, which can contribute to heightened vulnerability for females, as well as barriers to reporting. In part because of these underlying dynamics, some members of the College community have reflected a healthy skepticism that reports of sexual violence are actually being made to the College. College community members have also expressed similar skepticism that any reports have been or will be handled in a prompt, equitable, and thorough manner consistent with the College’s legal and moral obligations.

We note that while Mennonite traditions and tenets inform the College’s mission and values, only around 15% of the current student body identifies as Mennonite. As the makeup of the College continues to evolve, it will be important to recognize the diversity of thought about key social issues. For example, we heard directly from students that they are or want to be informed about their rights and protections under Title IX and the rights and options granted to them by law. Many of these students have spent their adolescent years in and around the national conversation on sexual and gender-based violence and harassment and inherently expect more from the College –

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ See, e.g., <https://newsinteractive.post-gazette.com/coverings/mennonite-amish-sexual-abuse-forgiveness-in-their-communities/>; <https://horizon.hesston.edu/hesston-college-adds-task-force-to-list-of-sexual-abuse-safety-initiatives/>.

more information, more communication, more compassion, more sensitivity, more diversity of thought, and more accountability.

B. Historical Allegations

The distrust in College and Church processes has been informed and influenced by historical reports of flawed responses to sexual and gender-based harassment and violence. Our review of historical allegations of abuse was limited to those accounts that were shared with us following the open call to students, faculty, staff, and alumni to participate in our review. Those accounts, however, most of which are publicly available, contribute to the current understanding of culture and climate within the College as it relates to the effectiveness of its policies and procedures and its willingness to hold individuals accountable.

As part of our review, we received information — which we have not independently investigated or corroborated — relating to other historical reports of sexual abuse at the College dating back nearly a century. As noted above, and consistent with our scope, we did not conduct any investigation into whether the underlying conduct occurred as reported; rather, we share this information here only insofar as it informs campus perceptions. In some instances, the information in the reports below has been previously investigated and found to have occurred; in other instances, it has not. The information we received included:

- A documented account of incest committed by Hesston College Founding President D.H. Bender, who in 1930 confessed to incest with his teenage daughter a decade earlier.¹⁸ The Hesston Mennonite Church congregation excommunicated Bender but later reaccepted him upon hearing his confession. Bender's daughter, who was also asked to stand before the congregation to acknowledge her participation in the acts of incest, was subsequently dismissed from the College faculty because of her participation in the incest. Bender's confession and the response by the Hesston Mennonite Church have been previously documented in a 2009 publication, commissioned by the College to mark the College's first 100 years.¹⁹ As of 2023, Bender is featured on the College's website.²⁰ In 2022, a group of students asked that Bender's portrait be removed from the College's Administration Building. This request was reportedly denied because Bender was a "part of Hesston's history."²¹
- A report of sexual abuse of a minor by a music professor in the 1950s. The minor complainant later confessed to sinning with the professor, who left to teach at another college before returning to Hesston College in the 1960s. In 2012, Hesston College planned a homecoming event to honor the professor and other former music faculty members. Upon

¹⁸ <https://www.themaplist.org/the-map-list/daniel-henry-bender/>.

¹⁹ <https://www.hesston.edu/2009/09/4444/>.

²⁰ <https://www.hesston.edu/hesstoncollegetoday/article/the-%E2%80%9Cbig-trio%E2%80%9D-and-the-founders-quartet/>.

²¹ <https://anabaptistworld.org/hesston-students-protest-colleges-handling-of-sexual-assault-reports/>.

being informed by the complainant's husband of the professor's history of sexual abuse, College leaders uninvited the professor.

- Reports from multiple former male students in 1991 that a professor of music sexually assaulted them while on choir tours. The board member who received and elevated these reports resigned under protest after the then-College President concluded that it would be safe for the professor to continue working with students. The College subsequently announced the resignation of the professor.
- Multiple reports in the mid-1990s relating to sexual misconduct by the Dean of Students, including a report of an incident of "sexual violation" with a young man the Dean of Students had met when the complainant was a high school student at a Mennonite high school in Canada. The Dean of Students resigned and his credentials as a Mennonite minister were suspended by the Western District Conference Mennonite Church and South Central Conference of the Mennonite Church.²²

Numerous community members shared their belief that the College has not fully and adequately addressed these reported incidents of abuse or missteps in the College's prior responses.

As part of our review, we also spoke with an alumna who made a more recent report to the College. In December 2021, the alumna contacted the College to share information about a sexual encounter she had with one of her professors shortly after she graduated from the College in 1977. The alumna requested that the College inform the professor of her report to the College. When the College notified the professor, he acknowledged the sexual contact, but said that it had been consensual, that he had been in love with the complainant, and that there had been no power dynamics in play. The College's former Title IX Coordinator asked the professor to consider meeting with the complainant. The professor declined. The former Title IX Coordinator told the complainant there was nothing further that could be done beyond banning the professor from campus. The complainant informed the former Title IX Coordinator that she was aware of a second person who had "come forward" regarding the same professor, and the complainant requested that the Title IX Coordinator share her report and contact information with this second person. The former Title IX Coordinator declined to do so, telling the complainant that the two reports were not similar in nature.

The complainant also requested that the College publicly name the professor. The former Title IX Coordinator emailed the complainant in April 2022 that the College had "no plans to take any further action" other than to publicize the College's available reporting options. In explaining the College's rationale for declining to name the professor, the former Title IX Coordinator cited the "risk of litigation for defamation of character . . . which would be costly and possibly damaging to the institution," as well as the fact that "enough time [had] passed to make it impossible to prove misconduct." The complainant replied to this email expressing her disappointment with the College's decision, copying the President on her response. She wrote, in part:

Again, it brings to light the very natural instinct to attend to the survival of the institution over attending to and taking responsibility for the broader impact on the beloved community (especially on the vulnerable, usually women) which might lead to some deeper

²² <https://archive.org/details/mennonite1996111hous/page/n237/mode/2up>.

learning and systemic change. I imagine that again it felt like there wasn't really time to do this. I say, take the time. Put a stop to the monument and do the work. Discern next steps in a true Anabaptist manner. If it's serious enough to consult with an attorney, then it's serious enough to consult with experts in the moral arena, maybe women theologians, like at AMBS or others who have grappled deeply with issues of patriarchy, sexual misconduct, and the abuse of power. I am ultimately not as concerned about what the final decision is, as I am with how you arrived at that decision, and I want the determination to come with an explanation that is more thorough and ethically sound than simply it being a matter of avoiding litigation. From the start I have felt called to "break the silence" and in the process have had to face a lot of my own fears (and many other feelings, fundamentally rooted in survival), so maybe it's not that surprising that you are having to do the same. The reality is that breaking the silence needs to happen on so many levels, and we will undoubtedly keep encountering fear and denial as we do this work. It will require courage and moral fortitude.

The President did not acknowledge this email and the response by the former Title IX Coordinator did not come until June 2022, two months later (following an additional email from the complainant to the College in May 2022).²³ The length of time it took for the former Title IX Coordinator to reply, and the lack of an individualized response by the President, reinforced the complainant's belief that the College did not care about her or her experience.

C. Steps Taken by the College

In recent years, the College has taken a number of steps to confront its past and implement changes for the future. In June 2016, the College proposed the formation of a task force for the purpose of establishing policies and procedures to address sexual misconduct. In December 2016, the College's Interim President and Vice President of Finance announced the formation of the Sexual Misconduct and Interpersonal Safety Task Force (Task Force).²⁴ In the ensuing months, this Task Force — which consisted of four external members, three members of the College community, and an external facilitator — reviewed the College's policies and practices, personnel files, and professional literature, and also conducted focus groups, interviews with College employees, students, alumni, and professionals, and a survey.

The Task Force issued its Final Report and Recommendations in August 2017.²⁵ In the introduction to the Report, the Task Force stated that it had been formed “in acknowledgement of the college's past, and the current national and denominational landscape.” The authors of the Report alluded to the College's historical mishandling of reports of sexual abuse, writing:

²³ In the June 2022 email, the Title IX Coordinator confirmed that the College declined to publicly name the employee, apologized for not being able to provide the outcome that the complainant had requested, and thanked the complainant for sharing her experience with the College.

²⁴ <https://anabaptistworld.org/hesston-college-assembles-sexual-misconduct-task-force/>.

²⁵ <https://www.hesston.edu/2017/12/task-force-wraps-work-recommendations-improve-procedures-practices-related-sexual-misconduct/>.

Sadly, hearing from alumni and reading the HR files indicate that HC has not always responded appropriately to victims nor have they always held offenders accountable, so our recommendations also call for mourning and healing of the past.

* * *

Unfortunately, HC has a history of boundary crossings and sexual misconduct. They have not always had the policies and practices in place to keep its community members safe, and even when victims have spoken out, HC has not always responded appropriately.

The Task Force made a series of recommendations relating to the following six areas: providing training to raise awareness of sexual misconduct and options for complainants; establishing transparent reporting and investigating procedures; developing systems, policy, and personnel to manage issues of sexual misconduct; creating a system which supports victims; creating a system which holds offenders accountable; and forming a system of institutional accountability which prioritizes transparency and proactively mitigates future incidents of sexual misconduct. The Task Force Report stated, “It is our intent that the implementation of these recommended policies and practices will allow HC employees to model transparency and interpersonal safety for their students, as part of students’ education and preparation for the future.”

In the five-plus years since 2017, the College has in large part implemented the recommendations made by the Task Force.²⁶ Records reflect that students and employees were offered training on relevant issues; the College adopted a policy and procedures consistent with those outlined in the recommendations; the Title IX Coordinator function was moved out of Student Life; counseling and advocacy services were provided; biannual climate assessments were issued; and an annual report was published to the community. Some of the Task Force recommendations will be repeated and built upon in this review, including recommendations focused on training and awareness, as well as opportunities to seek input from and communicate with the community by way of climate assessments and annual reports. However, other recommendations from the 2017 Task Force were not consistent with effective practices in place at the time or are now moot given the changes in federal law, as much has changed since then in the legal landscape and national conversation related to these issues.

As another step to recognize the historical allegations of sexual abuse, in May 2022, the College installed a “Community Healing Circle” memorial on campus in May 2022. The Healing Circle, which was recommended by the Task Force in its 2017 Report, bears a plaque that reads:

With this Healing Circle, Hesston College acknowledges our past shortcomings and errors. We name and acknowledge the acts of violence that have broken the bonds of trust in our community. We resolve to listen and believe those who have experienced harm in

²⁶ One of the recommendations from the Task Force was that the College “prepare and maintain an ‘embargo list’ of individuals who HC has credible evidence of having committed sexual misconduct within the HC community, including at Hesston Mennonite Church.” The Task Force provided the College with a list of names to add to the “embargo list.” Because the College did not investigate the allegations as it related to the list of names provided, the College elected instead to create a list of individuals who are banned from campus based on reports received and investigated by the College from 2017 forward.

our community's care. We dedicate this circle as a space for individuals and groups to meditate, pray or converse together.

In the summer 2022 alumni newsletter, the College announced the dedication of the Healing Circle planned for fall 2022. The announcement provided:

In its final report, the [Task Force for Sexual Misconduct and Interpersonal Safety] recommended the creation of a physical memorial to acknowledge past shortcomings/errors in campus safety, and to mark the time when the college chose to do better as a community. The purpose of that memorial would be to create a physical acknowledgement of broken relationships and missteps in Hesston College's history and create a space for our community to interact in thoughtful ways, as individuals or small groups.

The announcement concluded by inviting individuals with relevant experiences to make reports to the College:

The Community Healing Circle represents one step in the College's continued commitment to evaluate and improve campus safety for students, faculty and staff. Hesston College invites individuals to report any past or recent incidents of misconduct that occurred to local law enforcement or a local advocacy support organization (Safehope for the region surrounding Hesston College). We also encourage past campus-related incidents be reported through our online reporting form on the College's campus safety pages.

As described in further detail below, despite ongoing efforts by the College since 2017, the College community still retains feelings of deep hurt and pain, as well as distrust of the administration as it relates to the College's *recent and current* response to sexual and gender-based harassment and violence. The feedback we received from community members reflected that the College's efforts to reckon with the past and develop effective policies and practices have not been successful in the eyes of the individuals with whom we met. As it relates to the College's response to historical allegations of sexual abuse, community members shared with Cozen O'Connor the following perspectives on the College's remedial measures:

- “There is no understanding of what the memorial is. It went up end of 2020. It's not more than two and a half years. But no one know what it is. Is that their response to awareness? But for what? I have no idea. Less than 1% of people know what it is.”
- “After the graduation speech from two years ago [in which the speaker referenced the College not hearing survivors of sexual assault], I thought this work would be done this summer. When I didn't hear of any investigation by the College into what was said in the graduation speech, I was not surprised by the activism.”

In this regard, the actions taken by the College to implement the Task Force recommendations – or their communications about their actions – were not sufficient to remedy or resolve continuing concerns about historical allegations of abuse.

D. Current Community Perspectives

In our meetings with campus constituents, they expressed skepticism regarding the College's current approach to Title IX, citing a perceived overreliance on compliance obligations and institutional protection. For example, we heard the following:

- “The former Title IX Coordinator buried things, she told people the wrong things. It was in service with not having the College be in trouble with the law because of a Title IX report.”
- “Title IX is more seen as a law than a way of life. It is ‘let’s do what we have to do to be in compliance with the law.’ I think that fear of being out of compliance with law drives us more than living in the community where you want to do the right thing.”

Through our interviews, we heard a recurring concern from students and employees that the administration's responses to sexual and gender-based harassment and violence have been designed to protect the institution, as opposed to the students. This narrative was reinforced by an internal email addressing personnel implications related to the Vice President of Student Life, which was inadvertently disseminated to all faculty and staff members. In the September 30, 2022 email, the President wrote, “In light of the allegations made at Hesston College and [the Vice President of Student Life] in particular, in mutual agreement with [the Vice President of Student Life], I have decided that [the Vice President of Student Life] will not be meeting with students or involved with any student discipline issues. This decision has been made to protect [the Vice President of Student Life] and the college.” The President shared with Cozen O'Connor that the email had been intended for members of Student Life, but that it was mistakenly disseminated to all College faculty and staff. He explained that the reference to protecting the Vice President of Student Life followed her reports to him that she was fearful for her physical safety in light of the public discourse.

One student who learned of the email told Cozen O'Connor, “I was very angry. Why are they more concerned about [the Vice President of Student Life's] safety and not ours? This is about our safety. It revealed students are not their top priority.” The President acknowledged that this perception exists, but explained to Cozen O'Connor that the message in the email was fact-specific, intended for a specific audience, and not representative of his more holistic view and prioritization of the safety of the entire community, including students.

Additional concerns shared by campus community members included observations about campus and institutional culture that impacted reporting and trust:

- “I also take issue personally with the school's attitudes and policies with sex in general, it is almost as if they pretend sex doesn't happen on campus. I have looked into and read studies that environments such as this creates more opportunity for predators.”
- “I see a lot of misogynistic behavior that I feel is damaging or not indicative of a safe environment.”
- “A staff member told a survivor it was her fault [sexual harassment] was happening. They said she should not be outside of her room late at night and to watch what you're wearing.”

- “The campus is full of discrimination. One faculty said women do not belong in leadership. There is not a culture of safety and equality and inclusion. They have a diversity, inclusion and equality committee and it only encompasses African Americans; it doesn’t include any other group or sexuality. The culture is horrible and not geared toward females.”
- “There is a theme of exceptionalism. We believe we are better than anyone around us, as well as other Mennonite institutions. We are better than them and we don’t have to follow the same rules.”
- “There is more of a willingness for student to speak up. There are not as many Mennonites on campus . . . 20 years ago we were 80-90% ethnic Mennonite. We all grew up drinking the same water. The majority of the faculty are still Mennonite and they are frustrated with the students. ‘Why can’t they be cool with this like we all were?’ If you believe what the students are saying is happening – not even the big cases that are crimes – even the real subtle stuff – if you admit that is wrong, it makes you look at your life and think your life was wrong, and they don’t want to look at it. To me, students are on the right side of this. It’s always been a high population of international students, but there is a definite shift in decrease of Mennonite population and increase in athlete population.”

When asked how the College got to this point of distrust, community members offered the following perspectives:

- “It was a long time coming. In my interactions with students, it was clear that things were not being taken seriously and processes were not in place that made them feel like they were being heard.”
- “We’ve been trying to sweep a lot of this under the rug for a lot of years so we can keep functioning. It’s caused a lot of people to leave Hesston. They do not feel heard.”
- “Students have never been asked to have a conversation. There was a magnified sense of institutional response rather than human personal response. . . . I wish we could be more human and personally engaging in the process.”
- “The common thing that comes to mind is lack of education or lack of effectively communicating.”
- “I don’t think leadership knows what sexual assault is. We have a lack of security and I believe we are a target for sexual predators.”

V. Relevant Legal and Policy 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 1972²⁷ (Title IX), and the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act²⁸ (Clery Act or Clery), as amended by Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA).²⁹ Effective institutional responses demand a coordinated and integrated approach to Title IX, Clery

²⁷ Title IX is codified starting at 20 U.S.C. § 1681.

²⁸ 20 U.S.C. § 1092(f).

²⁹ Pub. L. 113-4, Violence Against Women Act of 2013 (Mar. 7, 2013).

and state law. To effectively fulfill care and compliance obligations, higher education institutions must have current, comprehensive, and coordinated policies and procedures that integrate the applicable regulatory framework and the unique dynamics of discrimination, harassment, and trauma as they impact individuals and communities in the distinctive context of each educational institution. They must also periodically evaluate policies, procedures, and practices for effectiveness and continued legal compliance. We include an overview of the legal requirements in Appendix I.

VI. Effective Practices

As a foundational matter, an effective institutional response integrates three concepts:

- (1) Compliance with federal and state regulatory guidance and legal authority;
- (2) An understanding of the dynamics of sexual and gender-based harassment and violence, trauma, barriers to reporting, and other related concepts; and
- (3) A recognition of an institution's unique policies, procedures, personnel, resources, culture, climate, and institutional values.

To be effective, the response must coordinate roles and responsibilities of personnel in diverse departments, provide mechanisms for the timely sharing of information, provide balanced attention to the needs of the parties, address individual and campus safety, assure fair and impartial investigations, and facilitate prompt and equitable resolutions. 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, internally consistent, 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 and resources, share information, and facilitate informed decision-making and consistent documentation;
- 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 seek confidential assistance, and reporting options (which trigger an institution's Title IX obligations, like campus Title IX offices, campus police, and responsible employees);

- 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, balance complainant autonomy and agency and risk to campus safety, facilitate compliance with Title IX and Clery responsibilities, and evaluate the appropriate institutional response;
- Protocols for the identification, implementation, enforcement and documentation of supportive measures;
- Separation of roles related to support and advocacy functions from roles related to impartial investigative and adjudicative processes (while both functions can exist within the same office, the same individual should not conduct both intake and support functions as well as the investigation itself);
- Reliable, impartial, objective, and thorough grievance processes for investigations and hearings, conducted by neutral, experienced, and trained investigators and decision-makers, that incorporate the procedural requirements of notice and an opportunity to be heard;
- Regular communication with the parties and transparency about processes to build and maintain the trust of individual stakeholders and the community;
- Evidence-based, mandatory, and ongoing training, education and prevention programs;
- Centralized record keeping and documentation for reported incidents to allow for tracking and monitoring of patterns and assessing campus climate; and
- Periodic assessment to evaluate the effectiveness of campus policies and procedures and ensure sustainability.

VII. Compliance with Core Elements of the Title IX Regulations

As noted above, the Title IX regulations require that the University publish a non-discrimination statement, appoint a Title IX Coordinator, and adopt grievance procedures that are prompt and equitable. In the sections that follow, we describe our observations of the College’s compliance with each of these core requirements.

A. Notice of Non-Discrimination

The College maintains a written notice of non-discrimination within its Course Catalog.³⁰ The notice of non-discrimination includes most of the legally required elements; however it omits any reference to sex as a protected characteristic. In addition, the placement of the notice, under “Legal

³⁰ <https://www.hesston.edu/catalog/legal-notice/>.

Notices,” renders it less visible and accessible to students, faculty, and staff. On a separate webpage, under “Certification” in the College’s student enrollment application, the College maintains a different version of the notice of non-discrimination. While this notice of non-discrimination includes reference to “sex/gender” as a protected characteristic, it does not include reference to the U.S. Department of Education’s Office for Civil Rights (OCR).

B. Title IX Coordinator

During the time period of our review, which included five academic years, the College designated an administrator as the Title IX Coordinator. From 2017 to 2022, the College’s Title IX Coordinator also served as the College’s Human Resources Director. As of July 2022, the College separated these functions and the current Title IX Coordinator, who began in July 2022, no longer serves as the Human Resources Director, although she does serve as the Disability Coordinator.

Under the Title IX Regulations, the guidance documents, and effective practices, the Title IX Coordinator should be sufficiently positioned within the institutional organizational structure, sufficiently resourced to carry out care and compliance responsibilities, sufficiently trained and experienced, and free from conflicts of interest.

The Title IX Coordinator initially reported to the Vice President of Student Life until 2017, when the reporting line was shifted to the Vice President of Finance and Auxiliary Services. The current Title IX Coordinator reports to the Vice President of Academics. Based on the information gathered in our review, the former and current Title IX Coordinator each had sufficient documented training for their role under the legal requirements of Title IX. Pursuant to the 2017 Task Force recommendations, the College invested in training and professional development for both the former and current Title IX Coordinator. According to the College’s website, between June 2020 and October 2020, the former Title IX Coordinator received training through the Association of Title IX Administrators, the Kansas Independent Colleges Association, and various law firms.³¹

The former and current Title IX Coordinator also had access to external legal counsel to provide legal advice and guidance on Title IX, the Clery Act, and related state and local laws. The former Title IX Coordinator developed a robust “Processing Document” that included a training calendar and a mapping of the Title IX Coordinator’s responsibilities when a report implicating the Title IX Policy is made to the College. The document is largely compliant with federal law and effective practices, and reflects a detailed understanding of Title IX responsibilities. In addition, the former Title IX Coordinator provided regular trainings to campus partners and constituents and engaged in awareness programming efforts. The current Title IX Coordinator has continued to develop the Title IX training program to raise awareness. The Title IX Office has also been relocated to Smith Center, an area intended to balance accessibility and privacy.

³¹ Federal regulations governing Title IX require that “[a]ll materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process . . . must . . . [be made] publicly available on its website . . .” 34 C.F.R. § 106.45(b)(10)(D).

C. The College's Title IX Policy

The College's Sex Discrimination and Other Forms of Sexual Misconduct Policy (Title IX Policy) governs the College's response to sexual and gender-based harassment and violence.³² The Title IX Policy, which has been in effect since August 13, 2020, was developed to implement the 2020 Title IX Regulations. The Title IX Policy prohibits sexual misconduct in all of its forms, and applies to "all persons who participate in the college's educational programs and activities, including students, administrators, faculty, staff, and those who come onto campus, including visitors, alumni, vendors, guests, and prospective students." Sexual misconduct includes sexual assault, sexual harassment, domestic violence, dating violence, stalking, sex discrimination, and retaliation, all of which are defined terms within the Title IX Policy.

The Title IX Policy invites anyone who believes they have experienced sexual misconduct to report to the Title IX Coordinator or Vice President of Student Life, to a faculty or staff member, or to report through the College's online reporting system, which includes an anonymous reporting option. The Title IX Policy states that "the majority of faculty and staff" are required to report a concern of sexual misconduct to the Title IX Coordinator, but it does not identify specifically which faculty and staff members have this "responsible employee" reporting responsibility. The Title IX Policy further provides that the College is only on actual notice when reports are forwarded to the Title IX Coordinator or the Vice President of Student Life.³³ The Title IX Policy specifically provides, "These two individuals [the Title IX Coordinator and the Vice President of Student Life] are trained to communicate to you your rights, our obligations as an institution, discuss the resources available to you, or to point you to someone who can provide additional assistance you may need."

The Title IX Policy also outlines the distinction between a *report* to the College (which is a precursor to outreach by the Title IX Coordinator, an evaluation, and, if appropriate, provision of reasonably available supportive measures and information related to the option of filing a formal complaint) and a *formal complaint* (which is a precursor to an investigation and hearing or informal resolution). The Title IX Policy provides:

When receiving a *report*, Hesston College will:

- Respect a complainant's choice not to file a formal complaint when doing so is in the best interest of the parties involved as well as the college community.

³² Prior to August 13, 2020, the College's applicable policy shared the same title, but differed from the current policy in that it provided that reports should be provided only to the Title IX Coordinator (*i.e.*, rather than the Title IX Coordinator or the Vice President of Student Life), policy violations were determined by the Student Development Counsel (as opposed to the Title IX Panel), and did not include the procedural requirements set forth in the 2020 Title IX Regulations.

³³ Given that the Vice President of Student Life has sanctioning authority, this approach is consistent with the current Title IX Regulations, which state, "*Actual knowledge* means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient." 34 C.F.R. § 106.30 (a).

- If a formal complaint is filed, provide a neutral, unbiased, impartial, and objective investigation and hearing to determine if this policy was violated.
- Utilize a Title IX Coordinator, investigator, hearing officer, and appeals officer who are free of conflicts of interest and bias.
- Follow college procedures without material deviation.
- Treat everyone who participates in the investigation with dignity and respect.
- Ensure both the complainant and respondent have equal opportunities to participate in the investigation by being interviewed, identifying witnesses, and providing evidence.
- Pursuant to Department of Education regulations, the college will presume that the respondent is not responsible for the alleged conduct unless and until a determination of responsibility is made at the end of the processes specified in this policy.
- Recognize that the college has the burden of collecting evidence and proving any violation of policy; that burden is not on those involved in the investigation.
- Provide equitable procedural protections to all parties.
- Determine if the respondent more likely than not violated the policy and provide a written notice of such determination to the complainant and the respondent.
- Provide the complainant and the respondent an opportunity to review relevant evidence gathered in the formal investigation if they so choose. Give them 10 days to respond with any additional information relevant to the investigation.
- Provide the complainant and the respondent an opportunity to review the draft investigation report and give them 10 days to respond with any additional information relevant to the investigation before the investigation report is finalized.
- Take appropriate action for any policy violation, including disciplinary and remedial measures.

The Title IX Policy also provides:

- Parties may have an advisor of choice accompany them to a meeting pursuant to the process, and if necessary, the College will provide an advisor for the hearing to conduct cross-examination;
- A complainant or bystander reporting an incident that may also violate the College's alcohol and/or drug use policies will not be subject to a conduct action;

- A respondent may be removed from a program or activity if, following an individualized safety and risk analysis, there is a determination that an immediate threat to the physical health or safety of a student or individuals related to the allegations justifies removal (respondent may appeal the determination to remove);
- An overview of informal resolution;
- Following an investigation, a hearing panel will determine policy violations by applying a preponderance of the evidence standard and a written determination of outcome will be simultaneously provided to the parties;
- A list of possible sanctions identified as “remedies”;
- Either party may appeal the outcome from a hearing on three stated grounds; and
- Knowingly filing a false report is subject to discipline.

Given the anticipated revisions to the Title IX Regulations in May 2023, we do not make specific recommendations about revisions to the current Title IX Policy. Based on our preliminary review, and for the reasons articulated in this report, we recommend that the Title IX Policy be immediately revised to remove the Vice President of Student Life from the following provision: “However, the college has actual knowledge of a report only when it is reported to the Title IX Coordinator or the Vice President of Student Life. These two individuals are trained to communicate to you your rights, our obligations as an institution, discuss the resources available to you, or to point you to someone who can provide additional assistance you may need.”

With respect to our assessment of the implementation of Title IX, we evaluated the College’s response to reports of sexual and gender-based harassment and violence through the frameworks of the law and the Title IX Policy, as described above.

We find that Hesston College generally complies with the core legal requirements under the Title IX Regulations related to the notice of non-discrimination, written grievance procedures, and designation of a Title IX Coordinator. However, based on our review of case files, as well as feedback received through our interviews, the College has had significant challenges in implementing an effective Title IX program that demonstrates care for its community members and that takes sufficient steps under the law to respond to reports of sexual and gender-based harassment and violence.

VIII. Observations about Implementation of the College’s Title IX Program

Our review evaluated the College’s Title IX program through a number of lenses, including legal compliance and effectiveness. As noted above, we find that the College generally satisfied the minimum requirements of Title IX: a written notice of non-discrimination, written grievance procedures, and the designation of a Title IX Coordinator to oversee and coordinate its Title IX obligations, although there are opportunities to improve in each of these areas. We also find that the College has engaged in intentional prevention, education, training and awareness programming, and has otherwise taken steps to more fully develop its Title IX program. Despite

these efforts, we find that, in practice, the College has not effectively implemented its Title IX obligations and that, in many instances, the College's response to reports of sexual and gender-based harassment and violence was inconsistent with the federal legal framework.

In particular, we find that the College:

- failed to consistently respond to and assess reports of sexual and gender-based harassment and violence;
- failed to provide complainants with consistent care, access to supportive measures, and information about procedural rights in response to a report; and
- improperly utilized informal resolutions to resolve concerns about sexual and gender-based harassment.

Our analysis of individual cases, through our review of Title IX case files and information provided in interviews, reflected significant gaps in the subject matter expertise of certain administrators and resulting actions (and inactions) by the College that directly and negatively impacted and reportedly caused additional harm to student complainants. As discussed more specifically in this report, we observed:

- instances in which the former Title IX Coordinator and the Vice President of Student Life did not recognize or identify some Title IX-related issues and reports of potential sexual or gender-based harassment or violence;
- instances where the responses by the former Title IX Coordinator lacked the required outreach, offer and/or provision of supportive measures, and explanation of process to enable informed decision making by a complainant on whether to file a formal complaint;
- instances where complainants were encouraged or required to participate in informal resolution processes without meeting the notice and mutual agreement requirements of Title IX;
- instances in which the former Title IX Coordinator and the Vice President of Student Life failed to respond to reports based on a misunderstanding or misapplication of the law; and,
- instances in which College employees (both faculty and staff) failed to comply with their responsibility to report sexual and gender-based harassment and violence to the former Title IX Coordinator.

The following sections detail the evidence base for these findings, which come from the synthesis of qualitative accounts of individual experiences in reporting, information shared by College administrators that corroborated those accounts, and our own review of extensive Title IX records from a five year period.

A. Prevention, Education, and Training

Title IX and the Clery Act require that all students, staff, and faculty receive training and education about issues related to sexual and gender-based harassment and violence. Under the Title IX Regulations, that training must include notice of the educational institution's grievance procedures and grievance process, how to report or file a complaint of sexual or gender-based harassment and violence, and how the educational institution will respond. Under the Clery Act, as amended by VAWA, colleges and universities must develop education, primary prevention, and awareness programs for all incoming students and new employees, and ongoing prevention and awareness campaigns for students and faculty.³⁴ The VAWA amendments also require education programs to promote awareness of rape, acquaintance rape, sexual assault, domestic violence, dating violence and stalking.³⁵

Both Title IX and the Clery Act have heightened training requirements for implementers. For example, since 2015, the Clery Act has required that campus grievance procedures be conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking, and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability. The current Title IX Regulations also require that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process receive training on the definition of sexual harassment in the Title IX Regulations, the scope of the institution's education program or activity, how to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Decision-makers must also receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, and investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Title IX also requires that the Title IX Coordinator document trainings provided and received. Similar documentation expectations exist under the Clery Act.

The provision of prevention, education, and training is generally an area where the College has met the legal requirements. Since 2018, the former and current Title IX Coordinator have tracked and documented the training content, the intended audience, the attendees, and the dates of all Title IX trainings. The former and current Title IX Coordinator have also been proactive in tracking and identifying issues of concern and revising programmatic offerings and awareness campaigns to address potential gaps.

1. Students

Since 2018, students have received training as a part of the First Year Experience (FYE), which is a required course for all incoming first year students. Two class sessions are allocated to Title IX. The first class focuses on healthy relationships and is taught by the campus counselor or someone with a similar background. The second class, taught by the Title IX Coordinator, covers the Title

³⁴ Section 304 of VAWA, 34 C.F.R. § 668, Violence Against Women Reauthorization Act of 2013 (Mar 7, 2013).

³⁵ *Id.*

IX Policy, prohibited conduct, and consent. Students in FYE also receive an online training via an external vendor, Vector Solutions (formerly SafeColleges).

In 2016 and Spring 2022, the College partnered with the Prevention Intervention Network (PIN) to provide bystander awareness training to students. PIN is a student group at Goshen College “that aims to empower bystanders to intervene and stop sexual assault, harassment and rape.” This program was provided by students for students, with a focus on peer to peer learning. Students reported to Cozen O’Connor appreciating the PIN training and said it heightened their awareness of important issues.

As it relates to the effectiveness of student education, students with whom we spoke exhibited an understanding of the types of conduct prohibited by Title IX, as well as the available reporting channels to initiate an investigation. Students exhibited significantly less understanding, however, that the Title IX Office also served as a resource for supportive measures and assistance. The overarching sentiment expressed to us by community members was that seeking support through the Title IX Office was not a viable option for most because of the pervasive distrust within the community of the College’s Title IX program. In this regard, the training provided to students has not effectively communicated the full range of supportive measures and resources available within the Title IX Office.

2. Employees (Including Responsible Employees)

Faculty and staff members receive annual training on Title IX and reporting requirements, either online through SafeColleges, or in person from the Title IX Coordinator (consisting of a 20 minute presentation offered in the fall).

Available records show that since August 2018, resident directors, resident assistants, and ministry assistants have received annual training from the Title IX Coordinator on bystander intervention and the Title IX Policy, including an overview of its scope and the resolution process, as well as definitions of sexual misconduct and consent. In addition, in the spring of 2022, the former Title IX Coordinator provided additional targeted training on reporting requirements for senior leadership after learning that some employees, including senior leaders and faculty, were not forwarding reports to the Title IX Coordinator as required by the Title IX Policy.

We also learned that athletic staff believe there is insufficient training of coaches and athletic staff regarding responding to reports and properly routing them to the Title IX Coordinator, and that more training and professional development is needed overall.

In talking with community members, we learned that the training provided to employees was not perceived as valuable or effective. They cited several problems, including the short time allotted (20 minutes), the online format (versus in person engagement), and the high level nature of the content (versus deeper engagement with the topics). Their sentiment was that attendees did not “get anything out of it.” Given the issues identified in this review, there is a need for greater training and professional development for all College employees.

3. Individuals Responsible for Implementing Title IX

Training provided to the College's current and former Title IX Coordinators is discussed above, in Section VII.B. The available records reflect that these individuals received sufficient external training consistent with their roles and responsibilities.

Notably, however, the Vice President of Student Life did not receive sufficient Title IX training, despite her integral, forward-facing role in responding to Title IX-related reports. She reportedly received annual training from the former Title IX Coordinator, as well as a two hour training on the 2020 regulations presented by an external law firm, but otherwise received no external or formal training on the requirements of Title IX.

The Title IX Panel (responsible for adjudicating Title IX related complaints) has also received annual training, and our review of the slide deck provided to the Title IX Panel in 2021 reflects that the training covered the Title IX Policy, including an overview of its scope and the resolution process, as well as definitions of sexual misconduct and consent, and a section titled, "What does being trauma-informed mean?" At the same time, we learned from an individual who served on the College's Title IX Panel prior to 2020 that they received minimal training on process, did not receive training on the dynamics of interpersonal violence, and felt unprepared to adjudicate such matters. To the extent that the College continues to utilize a Title IX Panel in future processes, there is a need for enhanced training and professional development for panel members.

4. Awareness Campaign

In addition to prevention and education programming, the College has proactively engaged in awareness programming. The 2019-2020 and 2020-2021 student directories included an inside cover page on campus safety that provided information about what constitutes sex discrimination, sexual harassment, and sexual misconduct; contact information for the former Title IX Coordinator, the Vice President of Student Life, and confidential resources (on and off campus); a link to an online reporting form; and information about emergency medical and law enforcement resources.

In 2021, in response to the former Title IX Coordinator and certain members of senior leadership learning that students did not feel comfortable making reports to the College, the College launched a poster campaign for students. Posters were placed in residence halls and bulletin boards across campus. The posters included contact information for the Title IX Coordinator, on-campus confidential resources, medical resources, and law enforcement. The series of posters were intended to target different audiences. Posters titled "Keeping You Safe" and "How Can we Support You" were geared toward complainants. A poster titled "What if I Hurt Someone" was tailored toward respondents. And a poster titled "How Can You Support Others" was tailored toward supporters of complainants and respondents. Each poster was posted for a set duration of time, and was then replaced with the next in the series. The College's current poster, "Contact Us," highlights the circumstances in which one may choose to contact the Title IX Coordinator or confidential resources. In addition, posters reading, "I am a mandatory reporter" were created and distributed for faculty and staff to inform them of their reporting responsibilities. The poster provides relevant reporting information.

Additionally, the College created and distributed campus safety resource cards to faculty and staff to assist them in carrying out their reporting requirements. The resource card is a wallet-sized, accordion-folded document in which half of the document contains information on what types of conduct are prohibited, what to do when one receives a report (e.g., listen with openness and empathy, reiterate your support, and inform the Title IX Coordinator), and how to respond when one receives a report. The other half of the document contains information about resources which can be torn off and given to the student. Prior to 2021, the College also provided employees with a “Quick Reference Guide” that contained the same information.

5. Campus Climate Survey

To better understand prevalence and inform prevention and education efforts, the College has also conducted campus climate surveys in 2016, 2019, and 2022. We reviewed the results of the campus climate surveys from 2019 and 2022. 20% of the students completed the 2019 survey (72% of whom identified as female) and 31% of the students completed the 2022 survey (67% of whom identified as female). The 2019 survey also referenced some of the data from the 2016 survey.

Close to 7% of the survey respondents in 2016, and 4% of the survey respondents in 2019 and 2022, reported being sexually assaulted while a student at the College. 17% of the survey respondents in 2016 and 19% of the survey respondents in 2019 reported that a friend or acquaintance told them of an unwanted sexual experience since the start of the academic year.³⁶

The 2019 survey revealed that most students viewed the College’s administration as committed to acting on issues regarding sexual assault, which showed little change from the 2016 survey. Over 90% of the 2019 survey respondents reported feeling safe at the College, which was consistent with the 2016 data. Over 80% of the survey respondents in 2016 and 2019 reported knowing where to report sexual assault, where to seek confidential support, where to seek accommodations, and having confidence in the College’s ability to follow the procedures necessary to address reports of sexual assault fairly.

The 2022 survey asked respondents to rate their satisfaction with the College on “outcome of administrative responses to incidents of campus emergencies, discrimination, and sexual assaults.” Of the survey respondents, 9 reported feeling very satisfied with the College’s responses to incidents of sexual assaults, 11 reported feeling satisfied, 25 reported being neutral, 7 reported feeling dissatisfied, and 1 reported feeling very dissatisfied. On the question of the College’s response to incidents of discrimination, 10 reported feeling satisfied, 26 reported being neutral, 5 reported being dissatisfied, and 1 reported being very dissatisfied. On the College’s response to campus emergencies, 10 reported feeling very satisfied, 17 reported feeling satisfied, 25 reported being neutral, 2 reported feeling dissatisfied, and 0 reported feeling very dissatisfied.

On the timeliness of administrative responses to incidents of sexual assaults, 23 reported feeling very satisfied or satisfied, 27 reported being neutral, 7 reported feeling dissatisfied, and 0 reported feeling very dissatisfied. On the timeliness of administrative responses to incidents of discrimination, 26 reported feeling very satisfied or satisfied, 27 reported feeling neutral, 5 reported feeling dissatisfied, and 1 reported feeling very dissatisfied. On the timeliness of

³⁶ This question was not asked in the 2022 survey.

administrative responses to campus emergencies, 33 reported feeling very satisfied or satisfied, 23 reported being neutral, 2 reported feeling dissatisfied, and 0 reported feeling very dissatisfied.

In sum, we find that the College has engaged in intentional prevention, education, training and awareness programming and otherwise taken steps to more fully develop its Title IX program, but that there is still a need for additional investment in prevention, education, and, most significantly, training for College implementers and employees regarding their Title IX obligations and responsibilities. This investment in training will be essential in changing the nature and perception of the College's responses.

B. Role of the Vice President of Student Life³⁷

At the outset, it is important to note that the current Title IX Policy defines the College as being on "actual notice" when either the Title IX Coordinator or the Vice President of Student Life receives a report of potential sexual and gender-based harassment or violence.³⁸ This is consistent with the current Title IX Regulations. The Title IX Policy identifies the Vice President of Student Life as being one of two individuals at the College "who is trained to communicate to you your rights, our obligations as an institution, discuss the resources available to you, or to point you to someone who can provide additional assistance you may need." In practice, this has meant that the Vice President of Student Life has routinely received reports that required her to conduct intake meetings, provide information to complainants about supportive measures, procedural rights and campus resources, and evaluate the conduct to determine if it should be forwarded to the Title IX Coordinator.

This "deputy" role of the Vice President of Student Life, while permissible under Title IX, was concerning because, as detailed above, the Vice President of Student Life had insufficient training that would have prepared her for her role. Her lack of subject-matter expertise and training left her ill-equipped to recognize and identify reports of Title IX prohibited conduct, understand the complexities and dynamics of sexual and gender-based harassment and violence, and oversee legally compliant responses generally. In cases that would not meet Title IX's jurisdictional and scope requirements, the Vice President of Student Life also oversaw the student conduct response pursuant to the College's Student Life policies. Based on information available from our review of 35 Title IX case files, the Vice President of Student Life's actions and decision making were overseen by the former Title IX Coordinator. However, there was a blurring of the lines between the Vice President of Student Life's dual roles that led to a lack of clarity about whether the institutional response was following the Title IX Policy or the Student Life policies. Because the Vice President of Student Life had responsibilities for non-Title IX student discipline, as well as

³⁷ As noted above, the Vice President of Student Life resigned from the College, effective April 12, 2023.

³⁸ Federal regulations mandate the following actions by institutions who are subject to Title IX when they receive "actual notice" of such reports: "A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures as defined in §106.30, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint." 34 C.F.R. Part 106.44.

her delegated duties under Title IX, it was sometimes unclear to Cozen O'Connor whether she was following the Title IX Policy or a less formal policy.

Our review of Title IX case files reflects that, in practice, the former Title IX Coordinator and the Vice President of Student Life consulted with each other when they received reports; and often, depending on which of the two received the initial report, that person would serve as the lead on the communications with the complainant. Although our review of files reflected that reports made to the Vice President of Student Life were being shared with the former Title IX Coordinator, it was reported to us that this communications practice led complainants and the community to believe that the reports to the Vice President of Student Life were not being forwarded to the Title IX Coordinator. This practice also created confusion as to defined roles, as it was unclear to Cozen O'Connor, and ostensibly to campus community members as well, when the Vice President of Student Life was operating in her capacity as Vice President of Student Life, as opposed to when she was fulfilling her Title IX responsibilities under the law and the College's Policy.

In speaking with Cozen O'Connor, some community members expressed their belief that the College's efforts to comply with Title IX and serve students were undertaken in good faith, but that mistakes and missteps occurred as a result of a lack of training and understanding of the issues. A common refrain shared by campus community members was that the wrong people were in key roles. For example, one individual, in referencing the Vice President of Student Life, said, "I don't think she has purposeful intent to say the wrong thing to be doing this – but maybe she should not be doing this in this capacity – I don't think she was trained or had the right information and knowledge. I don't think she had malicious intent to do what she did, but she did hurt a lot of people."

C. Misapplication of the Law

In some instances, the failure to elevate reports to the Title IX Coordinator can be attributed to a failure to recognize and identify conduct as a potential form of sexual and gender-based harassment and violence, including sexual assault, dating violence, domestic violence, and stalking. In other instances, the failure of the Title IX Coordinator or Vice President of Student Life to take action can be attributed to misapplication of the law. Under both circumstances, failing to recognize or identify reported information as potential sexual or gender-based harassment or violence does not relieve the College of its Title IX obligations. Those obligations continue to exist, even if the conduct is not identified or is misconstrued.³⁹

The Title IX obligation to respond to a report of sexual or gender-based harassment or violence is not limited by jurisdiction, scope, or timing considerations. If the educational institution has notice through the Title IX Coordinator – or as here, another designated administrator (the Vice President of Student Life) – of potential sexual or gender-based harassment or violence, the College must respond to the report to determine if it falls within its education program or activity. Importantly, Title IX places no limitation on who may make a report of sexual or gender-based violence or

³⁹ Although not the subject of our review, we recognize that improperly identifying or failing to report conduct also has implications for the accurate, complete, and timely reporting of campus crime statistics under the Clery Act.

harassment or when that report must be made.⁴⁰ While there are limits on who may file a formal complaint, the obligation to respond to a report does not have those same constraints. Further, the preamble to the Title IX Regulations specifically provides that “there is no time limit on a complainant’s decision to file a formal complaint.”⁴¹

We heard a number of concerns by complainants that they were told their reports were not timely and that, therefore, their procedural options were limited. For example, in our review of Title IX case files, we located a notation from the Title IX Coordinator that a complainant who reported sexual assault was told by an administrator that “there wasn’t much that could happen given the length of time that passed.” That administrator in that instance did not forward the report to the Title IX Coordinator. The Title IX case file reflected the following note from the Title IX Coordinator:

I interrupted at this point and told [Complainant] that that is not true. I told her that we could investigate and yes, that could be difficult given the timeframe, but that we could also have discussed supportive measures, such as not having them work together (which they’ve done this entire time up until this week). I also told her that we could have worked with her on counseling or anything on that list I sent her, or more if she had ideas, but I said we absolutely could have discussed something.

This example highlights the misinformation that may have been provided to complainants, especially in the event that they did not later meet with the Title IX Coordinator to clarify procedural options.

Another complainant shared with Cozen O'Connor that she was told by the former Title IX Coordinator that her report of conduct from the previous semester was “not brought in time,” despite the fact that both the complainant and the respondent were still enrolled at the College. Here, the documentation in the Title IX case file in this matter stated that, at the end of the meeting with the Title IX Coordinator, the complainant “only want[ed] to make a report, she [didn’t] want a formal complaint. She fe[lt] that she [would] make a formal complaint, but she said she isn’t quite there yet, and hope[d] that speaking to [the campus counselor] will help.” There was no documentation in the file regarding whether the Title IX Coordinator viewed the report as timely.⁴² We make no finding with respect to this case, but flag it as an example of the importance of communicating clear information to complainants, orally and in writing, to ensure that their Title IX rights are fully understood.

As described more fully in Section VIII.F below, the College also received a report from a complainant’s friends involving potential sexual or dating violence. The complainant withdrew from the College shortly after the report was made. The College made no outreach to the complainant despite the report of potential sexual or gender-based harassment or violence. The

⁴⁰ 34 C. F. R. § 106.44(a). Pursuant to the Title IX regulations, formal complaints, which initiate an investigation, may be filed by a complainant who, at the time the formal complaint is filed, is participating in or attempting to participate in an education program or activity. 34 C. F. R. § 106.30.

⁴¹ 85 Fed. Reg. 30130 (May 19, 2020).

⁴² We recognize that there is sometimes a disconnect between individuals’ recollections about representations made in an intake meeting.

explanation provided to Cozen O'Connor by implementers for failing to make required outreach to the complainant was that they believed that because the complainant returned home and planned to withdraw from the College, "Title IX did not apply." This represents a fundamental misunderstanding of Title IX's requirements to conduct outreach in response to a report. Further, even had this matter involved a formal complaint, which has the heightened jurisdictional requirement that the complainant, at the time the formal complaint is filed, be participating in or attempting to participate in an education program or activity, the College would have been able to accept the formal complaint, as this provision has been interpreted by OCR to include students who are on a leave of absence from the educational institution or who have already graduated.⁴³

Similarly, the obligation to respond to a report to provide information about supportive measures and resolution options is not contingent on whether the identity of the respondent is known. In one example, when the Title IX Coordinator and Vice President of Student Life received a report of potentially pervasive sexual harassment, the corresponding Title IX case file reflected a determination that "for it to be a Title IX, we must identify who is involved." Rather than provide supportive measures or other steps to address the underlying conduct or support the complainant through the Title IX Office, the matter was addressed in Student Life by resident directors who offered to relocate the complainant to a different residence hall room; by a resident assistant who provided an informational training to resident students regarding consent, incapacitation, and the Good Samaritan policy; and by the College more broadly in terms of investing in additional safety measures. While this approach sought to assist the complainant and take some remedial actions, it was contrary to the College's Title IX obligations. Based on the file review, the College was in receipt of a report of sexual harassment that occurred within the education program and activity. While the identity of the respondent may inform jurisdictional limitations on the ability to pursue discipline, the College was on actual notice of potential sexual harassment and the Title IX Coordinator was required to contact the complainant to discuss supportive measures and resolution options.⁴⁴ The complainant in this matter shared with Cozen O'Connor that she was told by the College that "her situation was not big enough or problematic enough for Title IX to do anything because of what Trump did [referring to the 2020 Title IX Regulations]."

⁴³ The preamble to the Title IX Regulations elaborates on the meaning of the phrase, "participating in or attempting to participate in an education program or activity":

A complainant who has graduated may still be "attempting to participate" in the recipient's education program or activity; for example, where the complainant has graduated from one program but intends to apply to a different program, or where the graduated complainant intends to remain involved with a recipient's alumni programs and activities. Similarly, a complainant who is on a leave of absence may be "participating or attempting to participate" in the recipient's education program or activity; for example, such a complainant may still be enrolled as a student even while on leave of absence, or may intend to re-apply after a leave of absence and thus is still "attempting to participate" even while on a leave of absence. By way of further example, a complainant who has left school because of sexual harassment, but expresses a desire to re-enroll if the recipient appropriately responds to the sexual harassment, is "attempting to participate" in the recipient's education program or activity.

85 Fed. Reg. 30138 (May 19, 2020). Furthermore, a Title IX Coordinator may always sign a formal complaint, in lieu of the complainant filing one, to initiate a formal or informal resolution. *Id.*

⁴⁴ We note that the Title IX case file reflects that the Complainant was offered a room relocation through Student Life, but other potential supportive measures to ensure her safety and address her concerns were not documented as required by Title IX. For example, the College could have provided access to counseling, referral to external law enforcement, or other safety planning assistance.

D. Responsible Employee Considerations

In addition to reports to the Title IX Coordinator or Vice President of Student Life, the Title IX Policy provided that reports could be made to faculty or staff or through the College's online reporting system, which includes an anonymous reporting option. As noted above, the Title IX Policy states that "the majority of faculty and staff" are required to report a concern of sexual misconduct to the Title IX Coordinator, but it does not identify specifically which faculty and staff members are considered responsible employees (*i.e.*, individuals who are required to report sexual and gender-based harassment and violence to the Title IX Coordinator).

We observed that some employees who had legal obligations to forward reports to the Title IX Coordinator mistakenly believed that they were supposed to make those reports to their supervisor or to the Vice President of Student Life, rather than the Title IX Coordinator. Other employees shared that they did not know to whom they were supposed to forward the reports and therefore did not make any report. Some employees with whom we met did not recall ever receiving training on where to forward reports. One employee described their knowledge as "self-taught" on the Title IX response. This individual reportedly advised students on the Title IX process, but during our interview with this employee, Cozen O'Connor observed a misunderstanding of key aspects of the required process on the part of the employee.

Based on the information we gathered during our review, we observed an across the board failure by individuals responsible for forwarding reports to the Title IX Coordinator. Specifically, we learned of numerous instances where resident directors, faculty, staff, and senior leadership did not forward reports of sexual and gender-based harassment or violence to the Title IX Coordinator.

In some instances, reports were not forwarded to the Title IX Coordinator because an employee did not recognize the underlying conduct as prohibited Title IX conduct. For example, one student reported to a College employee at the end of an academic year that her boyfriend called her more than 100 times in a matter of hours, threatened to "go to her house and damage her character," and hacked into her social media accounts. The employee reported to us that they recalled the conversation, but did not recognize the conduct as stalking. The student returned to the College in August following summer break; upon returning, the student's parent contacted the then-Dean of Students to report their concern and the report was forwarded to the former Title IX Coordinator, who made outreach, provided supportive measures, and issued a restriction on contact.

In other instances, the reporter either did not know to forward a report or chose to not forward a report. We are aware from our review of case files of one instance in which the responsible employee, upon learning of an incident from a student, instructed that student to make a report to the Title IX Coordinator (as opposed to the responsible employee making the outreach to the Title IX Coordinator directly). We also learned of another instance where employees reported an incident to their supervisor, as opposed to the Title IX Coordinator, and believed that doing so satisfied their reporting obligations. The corresponding Title IX file did not reflect that the supervisor subsequently reported the underlying incident to the Title IX Coordinator either, which further highlights why responsible employees themselves are required to forward reports directly to the Title IX Coordinator.

Finally, we learned from a former volunteer that he observed an employee patting students on their butts, putting his arms around students' shoulders, and engaging in casual explicit conversations about kissing with students, on a daily basis. This former volunteer reported his observations to the employee's supervisor in spring 2016. The supervisor became angry with the former volunteer for raising the complaint and referred the former volunteer to the campus counselor. One month after making the report to the employee's supervisor, the former volunteer was terminated by the employee for "incompatible views." Based on our review of case files, there were no documented reports involving the employee in the Title IX Office, which suggests that the supervisor did not forward the report as required under Title IX.

E. Barriers to Reporting

The College has a current student population of around 325 students, 70% of whom are first and second year students, and 144 employees. The qualities that draw students to a smaller sized school (e.g., everyone knows everyone, close relationships, tight knit communities) are the same qualities that may inhibit reporting and impact effective implementation of Title IX. Issues related to privacy, autonomy, access to resources, and implementation of supportive measures (e.g., no contact orders, room and academic schedule changes, etc.) can be harder to navigate and implement within a smaller student body. Attending a small school in a small town where "everyone knows everyone" can be an impediment to reporting and steps must be taken to foster increased reporting, address barriers to reporting, and protect the privacy of individuals who choose to make a report to the Title IX Office.

An administrator shared with us that, despite robust training and educational programming, students experienced barriers to reporting sexual and gender-based violence. The administrator explained:

We did ask, "Why do students not feel comfortable reporting?" One of the issues is we are a small campus and there is a fear of retaliation. And we started the Lattes with Louise podcast at chapel, we created safety posters around campus that we put up one at a time. I would say, it's not that we didn't know that things were happening, it's that we would hear things happening, and nothing would get reported. We knew we had a gap. That was step one in wanting to fill the gap. The gap along with the narrative that was being fueled. It's not that we didn't know, it's that we didn't know what to do.

We spoke with five students and one alumna who had personal experience making a report of sexual and gender-based harassment and violence to the College. These individuals expressed disappointment, hurt, and frustration with the College's response. They reported feeling ignored and minimized by the College. The recurring narrative of their experiences – as well as those who relayed second-hand information based in part on stories passed down from class year to class year – reflected a pervasive distrust and resentment of the former Title IX Coordinator and the Vice President of Student Life, the College's administrators responsible for administering the College's Title IX program.

The following are perspectives shared by these individuals. Each comment is attributed to a different individual:

- “If you are the victim, the burden is placed on you to forgive and forget. It is made to sound like it’s your responsibility to reconcile the behavior.”
- “Someone in that role [Title IX Coordinator] should be someone people want to talk to, and I didn’t want to talk to her ever again.”
- “[There are] not many people to talk to. The people we talked to were not helpful at all. The campus pastor saying my situation was not problematic enough. Or [the Vice President of Student Life] trying to do it herself. It was hurtful [the Vice President of Student Life] did not hand it off to Title IX. I didn’t make a subsequent report because I knew it would not go anywhere.”
- “They say they always have the side of the victim. Those are nice words, but that is not what happens on campus. The campus pastor told me about this Trump law – because of how he changed the law, Trump made it so that the victims aren’t protected anymore. Because of the guidelines – that’s why they couldn’t do anything to him.”
- “A lot of what I experienced with admin and professors was the faith portion. They really pushed to forgive. That is really sore for me. I was never allowed to be mad. They pushed so much forgiveness. I was told about counseling options, but I was never followed up with again. I was under suicide watch, but no one came to check on me.”
- “I feel like I had a certain naiveté about both the abuse and then this idea of the college – from a branch of the church – and its commitments to justice. I thought institutions were leaps and bounds ahead of where they were. I am embarrassed by how naïve I was. . . . I feel a deep sense of betrayal.”

We also spoke with several students who did not have direct experiences making reports, but who shared the following perceptions based on second-hand knowledge and general community perceptions:

- “I see Title IX as a last resort because it won’t be pretty.”
- “There was a fear among survivors that they would not be taken seriously enough.”
- “A close friend reported sexual assault. Watching her come forward and get shut down was hard to watch. It hurt her a lot. For her to keep telling me that these adults were shying her away from reporting and trying to dismiss what happened to her. I walked with another friend [as well] as she worked with Student Life. Throughout her journey, watching her get beat down, there was not a ton of support for her [from the College].”
- “I’ve also heard from other friends that reaching out to people in administration, even the President, regarding sexual assault on campus and Title IX policies and the environment, and being brushed off or not taken seriously enough to where any meaningful action is taken.”
- “A student said that she does not want [the Vice President of Student Life] anywhere near this [report because she] will not follow procedure; she will attempt to recast it as a ‘relationship problem.’”
- “Even if [reports] would make it to [the former Title IX Coordinator], she would not interview students or collect evidence.”

We also heard from complainants that they felt “dissuaded” by some staff members from pursuing resolutions through Title IX. Indeed, one staff member acknowledged to Cozen O’Connor having shared the following perspective with students: “Title IX is not very human friendly; I did not say what I thought of the process, but I did say it is going to be a long hard road.” We heard other staff members echo the sentiment that the resolution process outlined in the Title IX Regulations is long, onerous, unfriendly, and difficult on complainants. Most staff members who shared these perspectives with us recognized that also sharing them with complainants may have influenced a complainant’s decision to pursue a Title IX resolution. Moreover, the impact on the complainant who may feel discouraged from making a report is compounded by the lost opportunity to receive supportive measures by the Title IX Office that are designed to restore a complainant’s access to the institution’s education programs and activities. Suppressing reports, even unintentionally, also inhibits the Title IX Coordinator from being able to gather information that is necessary to track patterns, inform prevention efforts, target training and education programming, and holistically serve the community.

F. Response to Reports (Outreach and Supportive Measures)

As noted in the discussion on the legal framework, the current Title IX Regulations require that upon receipt of a report by the Title IX Coordinator of sexual harassment that occurred in the College’s education program or activity against a person in the United States, the College is obligated to respond in a manner that is not deliberately indifferent.⁴⁵ The Title IX Regulations specifically require that upon receipt of a report of potential sexual and gender-based harassment and violence, “[t]he Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures . . . , consider the complainant’s wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.”⁴⁶ The Title IX Regulations also include detailed documentation requirements related to the provision of supportive measures.

As discussed above, in some instances, reports were not elevated to the Title IX Coordinator by the Vice President of Student Life or responsible employees. In this section, we focus on reports that were shared with the former Title IX Coordinator, but for which the Title IX Coordinator did not consistently conduct outreach and offer supportive measures and information about how to file a formal complaint.

In reviewing the Title IX case files, we observed instances in which the former Title IX Coordinator received a report of potential sexual or gender-based harassment or violence from a third party (a faculty or staff member responsible for reporting) and evaluated the report only on the information contained in the responsible employee report, without contacting the complainant for additional information. Moreover, in those cases, the files do not contain any documentation that the former Title IX Coordinator contacted the complainant to discuss the availability of supportive measures or inform them of the process for filing a formal complaint, as is required under Title IX. Similarly, the files do not contain any documentation showing that the Title IX

⁴⁵ 34 C.F.R. § 106.44.

⁴⁶ *Id.*

Coordinator sought additional information from the complainant or others that could have led to a more informed decision on whether the conduct constituted potential sexual or gender-based harassment and violence under Title IX.

As one example, upon receiving a report of potential dating violence from a faculty member, the former Title IX Coordinator did not send outreach to the complainant and only communicated the availability of supportive measures to the faculty member. Further, as discussed in section VII.H below regarding informal resolutions, the former Title IX Coordinator inappropriately approved a meeting between the complainant, the respondent, a faculty member, and the campus counselor to “have a discussion.” 19 days later, the complainant emailed the former Title IX Coordinator on her own to request a no contact order. In response to the complaint’s outreach, the former Title IX Coordinator requested to meet with the complainant, and at that meeting, the former Title IX Coordinator, for the first time, outlined the resolution options and supportive measures available to the complainant. Without the complainant’s proactive efforts, these resolution options and supportive measures would not have been offered to the complainant by the Title IX Coordinator, as required by the Title IX Regulations.

In another example of potential dating violence and sexual assault, we spoke with several individuals involved in the resolution of the matter. According to the Title IX file, the report to the Vice President of Student Life and the Title IX Coordinator involved information about “a written apology for a sexual incident” by the complainant’s former intimate partner and a visibly distraught student who detailed feeling afraid of their former intimate partner. The Title IX file did not reflect any outreach from the Title IX Coordinator to meet with the complainant or reporting students, to learn more about the circumstances of the report, or to assess whether the underlying conduct would fall within the College’s Title IX Policy. Further, there was no documentation of any outreach to the complainant to discuss the availability of supportive measures or inform them of the process for filing a formal complaint. Instead, as discussed below, the Title IX Coordinator and Vice President of Student Life determined that this matter could be resolved by “a highly structured circle process.”

As a third example, we received information regarding potential sexual assault and dating violence involving a complainant who withdrew from the College. According to the complainant’s friends, they shared with a confidential resource (who had no reporting obligation) that the complainant had been sexually assaulted and that the friends had directly witnessed instances of violence that had made them fearful of the respondent. According to one of the reporting friends, the confidential resource informed the friends that they would inquire about next steps with the Title IX Coordinator. The Title IX file reflects that the confidential resource contacted the Vice President of Student Life and shared information about dating violence, but did not share information about the sexual assault. Other information provided to Cozen O’Connor by an administrator reflects that, “Some friends of [the complainant] were concerned about her because she was acting different. They surmised it was sexual assault.” In follow-up communications with the Title IX Coordinator, the Vice President of Student Life and the confidential resource shared additional information with the Title IX Coordinator that there had been sexual contact, but that they understood it to have been consensual (which was inconsistent with what the friend told Cozen O’Connor had been reported to the counselor). Despite having information about potential sexual and dating violence, the file does not reflect any documentation that the Title IX Coordinator sought to speak to the third party reporters directly to understand and reconcile the conflicting

information, but rather that she determined the report was “a potential safety concern under Student Life.”

The Title IX file for this matter further reflects that the Vice President of Student Life received information that the day prior to receiving the report from the complainant’s friends, a professor noted that the complainant was “catatonic” in class and referred her to the campus counselor for assistance. Due to the complainant’s distress, the complainant returned home. When the complainant requested to complete the semester online, her request was denied.⁴⁷ She ultimately withdrew from the College. Despite knowing the identity of the complainant, that the complainant was in distress, and that the complainant had potentially experienced sexual and/or dating violence, there was no record that *anyone* from the College reached out to the complainant to offer supportive measures, discuss procedural options, or even attempt to understand what may have occurred. The complainant’s friends, as well as a College administrator, confirmed that the complainant never received outreach from the College. As noted above, in Section VII.C, the explanation provided to Cozen O'Connor by one College administrator was that they believed that because the complainant returned home and planned to withdraw from the College, “Title IX did not apply.”

Pursuant to the Title IX Regulations, when a report of sexual assault is received by the Title IX Coordinator, the Title IX Coordinator is obligated to contact the complainant and discuss the availability of supportive measures and the option of filing a formal complaint, regardless of the enrollment status of the complainant.⁴⁸ That was not done here. In this particularly egregious example, the College abdicated its Title IX obligations. The College’s response to this report also failed to encompass effective Student Life practices and did not prioritize individual safety, care, and support. Regardless of whether there was a Title IX component to this matter, the College should have contacted the complainant to offer support and understand the reasons for her sudden departure from campus.

Notably, although neither the former Title IX Coordinator nor the Vice President of Student Life contacted the complainant, they did make outreach to the respondent. Notes from the available files reflect that the implementers felt “very strongly” about getting the respondent’s “side of the story,” despite never having gotten the complainant’s account. According to the file and the implementers involved in the response, a College administrator met with the respondent, informed him of the allegations, and instructed him to stay away from the complainant and her friends. As described in Section VIII.I below, these actions by College administrators raised concerns about privacy and potential retaliation against the complainant and her friends.

G. Failure to Understand the Dynamics of Sexual and Interpersonal Violence

As reported to us, the College employees responsible for implementing the College’s Title IX program did not receive sufficient (and in some cases, any) training on the dynamics of

⁴⁷ The request was denied by the designated College official responsible for approving and denying online course requests, who was not aware of the potential Title IX implications. In this instance, permitting the complainant to complete the semester online should have been considered as a reasonably available and appropriate supportive measure.

⁴⁸ 34 C.F.R. §106.44.

interpersonal violence. This lack of training and understanding of the issues necessarily impacted the nature of their decision-making and potentially compounded the trauma experienced by the community members whom implementers were seeking to assist. We heard from community members about instances in which the College's response was not trauma-informed and lacked care and sensitivity in its response.⁴⁹ The following examples highlight the importance of understanding the dynamics of interpersonal violence, as it informs tone in communication, the nature of a response to a report, and the awareness of the impact language can have on others.

We heard repeatedly that individuals felt dismissed when making a report or discussing an incident with the College. We heard that complainants felt "blamed" by the College for the sexual harassment they experienced. Multiple students reported that employees told them, "Do not be out of your room late; do not wear flashy things." One employee reportedly told a student to not wear specific clothes. Another employee shared that female students have been told by an employee in a leadership role with students, "I want to encourage you to not go to a guy's room alone." In our assessment, there were varying degrees of recognition by employees that these comments to female students were inappropriate.

We also heard concerns about the former Title IX Coordinator's tone in speaking with complainants. A coach who accompanied a player to a meeting with the former Title IX Coordinator shared, "It was not a conversation in which [the complainant] felt comfortable. It was rather callous, matter of fact, no empathy, or 'I'm sorry this happened.' It was just, 'This is the situation, this is what you have to do.' She explained [process] rather than trying to make [the complainant] feel comfortable."⁵⁰

As another example, two students shared with us their experience conveying to the President their disappointment in the College's response to an earlier report of sexual assault. One of the students described feeling "dismissed" by the President because he directed them to talk to specific administrators on campus. The student said, "To get that response was painful and really hurt." As part of the review, we asked the President about this conversation. He shared that the conversation occurred during international travel, when he was distracted by the task of ensuring the safety of everyone who was traveling home. He shared that he "wishes he could go back and re-listen" to the students in the conversation. The President also shared that he is mindful of how his conduct impacted those students, that it guides his interactions with students now, and that he "appreciates what learnings have already come" through this review.

⁴⁹ We also heard about instances in which the College's response to reports of racial discrimination and harassment did not reflect an awareness of the issues. Individuals shared their perspective that the College's Student Development Committee, which was responsible for adjudicating student conduct matters, was uninformed and ill-equipped to be addressing issues related to racial discrimination and harassment. It is our understanding from the College that beginning in December 2022, the College began outsourcing student conduct adjudicatory matters to external professionals.

⁵⁰ We note that this example is not uncommon for many Title IX Offices, and that it can be challenging for a Title IX Coordinator to be perceived as neutral and impartial, while also demonstrating care and empathy. The reality is that a Title IX Coordinator must remain neutral to oversee the prompt and equitable response to a report of sexual and gender-based harassment or violence and cannot serve as an advocate for one party or another. That neutrality is often perceived as uncaring.

These examples highlight the need for additional training and awareness on the dynamics of interpersonal violence, as well as guidance on how to receive a disclosure of sexual or gender-based harassment and violence in a way that is supportive of the individual making the disclosure.

H. Use of Informal Resolutions

As noted above, in several instances of reported dating violence and sexual assault, the College sought to resolve the matter using informal or restorative resolution options. While this is not prohibited by the current Title IX Regulations, there is a prescriptive process by which informal resolution must be structured and documented. As evidenced by the examples described in this section, those processes were not followed by the College.

Prior to August 2020, the available Title IX guidance provided that participation in an alternative form of resolution must be voluntary.⁵¹ Under guidance documents issued in 2011 and 2014, it was required that a complainant be able to request an end to the voluntary resolution and initiate an investigation at any time.⁵² Under this same guidance, OCR provided that while an institution may offer mediation in appropriate cases, mediation should not be used in cases involving sexual assault.⁵³ In addition, OCR directed that an institution should not compel a complainant to engage in mediation, to directly confront a respondent, or to participate in any particular form of alternative resolution.⁵⁴ OCR observed that given OCR's understanding that Title IX calls for "a balanced and fair process that provides the same opportunities to both parties,"⁵⁵ a respondent should have the same rights in an informal process as those prescribed for the complainant.

In its 2017 Q&A document, OCR clarified that informal resolution *may* be appropriate if all parties voluntarily agree to participate, after receiving full disclosure of the allegations and their options for formal resolution, and the school determines the particular complaint is appropriate for informal resolution.⁵⁶ OCR also removed the exception to mediation for sexual assault complaints and provided that "the school may facilitate an informal resolution, including mediation, to assist the parties in reaching a voluntary resolution."⁵⁷ OCR shared its expectation that the institution maintain records of all reports and conduct referred for alternative resolution, and ensure that the resolution is completed within an appropriate time frame following the initial report.

As of August 2020, the Title IX Regulations imposed more prescriptive requirements, stating that an educational institution "may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment."⁵⁸ The Title IX

⁵¹ 2017 U.S. Department of Education Q&A on Campus Sexual Misconduct, at 4.

⁵² 2011 U.S. Department of Education Dear Colleague Letter (DCL), at 8.

⁵³ *Id.*

⁵⁴ 2011 DCL, at 8.

⁵⁵ 2014 U.S. Department of Education Q&A on Title IX and Sexual Violence, at 26.

⁵⁶ 2017 Q&A, at 4.

⁵⁷ *Id.*

⁵⁸ 34 C.F.R. § 106.45(b)(9).

Regulations provide that, an educational institution “may not require the parties to participate in an informal resolution process” and “may not offer an informal resolution process unless a formal complaint is filed.”⁵⁹ The Title IX Regulations do provide that an educational institution “may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication” if the following conditions are met: 1) the institution “provides to the parties a written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, . . . [the party’s] right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;” 2) the parties provide “voluntary, written consent to the informal resolution process;” and 3) the informal resolution process not be used to resolve allegations that an employee sexually harassed a student.⁶⁰

In every example of informal resolution used by the College over the five academic years for which we reviewed files, we found no documentation that the required steps (pre-2017, 2017 to 2020, or post-2020) were taken. In many instances, we found no documentation that the complainant was informed of their resolution options, including the option to file a formal complaint and pursue an investigation, and no documentation confirming that the informal resolution option was voluntary and agreed to by all parties.

In the matter described above, where the Title IX Coordinator and Vice President of Student Life had notice of potential dating violence and sexual assault based on “a written apology for a sexual incident” from a former intimate partner, the Title IX file contains one page of notes, reflecting that the Vice President of Student Life would conduct “a highly structured circle process for both [students].” We received the following explanation from a College administrator involved in the decision to proceed this way: “There were not student code of conduct violations on the table; it was a ‘let’s try to resolve a situation.’ What we needed was for them to share a campus. It was never disciplinary.”

Cozen O'Connor reviewed an audio recording of the “highly structured circle process” (also referred to as a “guided conversation”) that occurred in this matter. The conversation began with an acknowledgment from the College that both parties had experienced harm and an overview of the purpose of the meeting, namely so that each party could share their experience and identify what they needed to continue moving forward. In the meeting, one of the students expressed ongoing fear and reported, “I don’t feel safe.” An employee who was present for this meeting shared with Cozen O'Connor that they attempted to intervene and questioned the appropriateness of the meeting as the student was upset and fearful. The meeting continued and ended with the parties agreeing to abide by a no-contact order. Notably, even following the disclosures of fear made during this meeting, this matter was not referred back to the Title IX Coordinator to assess whether the known information constituted dating violence. Rather, the student was dismissed from the meeting and the matter was considered resolved.

⁵⁹ *Id.*

⁶⁰ 34 C.F.R. § 106.45(b)(9)(i-iii).

As reported to us, the negative impact on the students was compounded by the decision to informally “talk it out” with one another in a loosely structured format, rather than address the admitted conduct to hold the respondent accountable. Individuals involved in the matter described to Cozen O'Connor that they felt “required” to participate in the face-to-face meeting between the parties. Indeed, an implementer present at the guided conversation acknowledged that there was an “invitation” to participate, but that the parties may have felt obligated to attend.⁶¹

Pursuing a face-to-face informal resolution between the parties without explicit written consent, sufficient training, and appropriate safeguards reflected a lack of understanding of the dynamics of interpersonal violence. Failure by the implementers of the guided conversation to recognize these dynamics in the design of the informal resolution process reportedly compounded the trauma to the individuals involved. We heard from numerous individuals that the complainant was negatively impacted by the dynamics of the circle process and the College’s insufficient response to the conduct at issue.

We understand from individuals with whom we met that reconciliation is a core value in the Mennonite faith. However, the College’s approach in this case, which prioritized the resolution of reports of interpersonal violence consistent with the Mennonite faith, but without the voluntary and informed participation of the parties, was inconsistent with its federal Title IX obligations. While restorative justice is, and can be, an appropriate and welcome resolution option in matters involving sexual or interpersonal violence, the process must be voluntary, carefully structured, and implemented by individuals with sufficient training and expertise to navigate the complex issues involved. As noted above, the Vice President of Student Life, who participated in the resolution of matters that involved Title IX conduct, had insufficient training, and, in particular, had no documented training in the use of informal resolution under the Title IX Regulations or the former guidance.

As one former faculty member shared, “The reconciliation process is part of Mennonite faith; it’s in our DNA, but I would be hard-pressed to find where [reconciliation] falls into a sexual violence scenario. Not in the short term. It’s one thing when a kid breaks a \$200 bat, it’s a very different thing when talking sexual violence.” The experiences we heard as part of this review – of students being further traumatized by pressure to engage in swift reconciliation efforts, or not reporting at all because they do not want to be prematurely asked to offer forgiveness – reflects the challenges of using a forgiveness-based reconciliation approach in a manner that is not nuanced, informed by the law, or steeped in an understanding of the dynamics of sexual and interpersonal violence and trauma.

Students, alumni, staff, faculty, and former employees shared the following perspectives on the culture of forgiveness and the use of informal resolution options at the College as it relates to addressing sexual and gender-based violence and harassment. Each of the quotes below is from a different individual:

⁶¹ The correspondence that was sent to the students inviting them to participate in the guided conversation reflected that they had one day’s notice of the meeting and that, while they were not expressly mandated to attend and participate, they were not told they did not have to participate.

- “We need more of an approach of support and comfort and validation instead of doing what we can to forgive.”
- “I think this thing of ‘we are a Mennonite school, and we have these certain values’ was sometimes getting in the way of addressing these cases appropriately. I think our stance on forgiveness was really hurtful for survivors.”
- “I think there is some theology of ours [Mennonite] that makes it very difficult to confront sexual abuse head on. As a strong identity of our martyr background, there is a heritage of suffering that somehow it is communicated as there is something virtuous in suffering.”
- “They are thinking they are doing restorative justice, but it is not what they are really doing. People have to agree to do it. I think they think they are being Mennonite, but their idea of restorative justice is wrong in how it’s being applied.”
- “They were trying to reconcile and please everyone as opposed to dealing with the situation.”
- “The College protects predators in the conflict resolution method.”
- “This needs a sense of urgency. We cannot continue having the approach of ‘oh there is an issue, let’s try to mitigate’ but really we don’t get to the root of the issue and take and flush things out.”

I. Privacy and Potential Implications for Retaliation

The Title IX Regulations provide a framework that distinguishes between a report and a formal complaint, with the expectation that the complainant’s report will remain private unless and until a decision has been made, following the formal complaint, to pursue informal or formal resolution. At that time, the Title IX Regulations require that written notice be sent to both parties.

Section 106.71 of the Title IX Regulations, which includes the definition of retaliation, specifically states that the educational institution “must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness” except as required by law to carry out any investigation, hearing, or proceeding under Title IX.

The Title IX Regulations and accompanying preamble also explicitly acknowledge principles of complainant agency and autonomy in choosing how to proceed following a report of sexual or gender-based harassment and violence. Title IX provides that complainants may seek supportive measures from the College even when formal or informal resolution is not sought and the respondent is not notified of the matter.⁶²

⁶² 34 C.F.R. § 106.44(a) provides, “The Title IX Coordinator must . . . inform the complainant of the availability of supportive measures with or without the filing of a formal complaint.” Further, in the accompanying preamble, OCR wrote, “The Department agrees with commenters who urged the Department to recognize the importance of a survivor’s autonomy and control over what occurs in the aftermath of a sexual harassment incident. The Department thus desires to restrict situations where a grievance process is initiated contrary to the wishes of the complainant to situations where the Title IX Coordinator (and not a third party) has determined that signing a formal complaint even without a complainant’s participation is necessary because not initiating a grievance process against the

In our review of Title IX records, we identified instances in which the College did not abide by complainants' requests for confidentiality, or the College otherwise informed the respondent of the allegations when no investigation was requested. For example, we reviewed a case in which the College informed a respondent of the reported allegations, including information that could potentially reveal the identity of the complainant and witnesses, when all that was requested by the complainant were supportive measures. We also heard from a friend of a complainant about an incident in which the complainant did not want to proceed with an investigation, and the College informed the respondent's coach of the allegation. We also heard from community members that the College did not closely guard private information related to reports, and would discuss them with individuals who did not feel they were in the "need to know" category.

We also note that the Q&A on the College's Title IX website imprecisely answers the question, "Will the respondent know my identity?" The answer provided in the Q&A states, "Yes. To ensure a thorough formal investigation is conducted, a respondent will be told the name of the complainant, and witnesses may be told the names of parties involved. The respondent has a right to know the identity of the complainant."⁶³ However, the response to this question requires more nuance; while the information provided is accurate with respect to the notice requirements under a formal investigation, the opposite is true when there is no formal complaint. The response also reflects a lack of understanding of the importance of complainant agency and autonomy, an important element of being trauma-informed. The current wording of the Q&A can also present a barrier to reporting for an individual who may be seeking help, but may not want the respondent to know of their report.

From a retaliation perspective, there are important reasons to maintain the privacy of individuals involved in making reports to a Title IX Office. Sharing information about the identities of individuals who make a report can chill reporting and discourage individuals from coming forward to disclose serious concerns. Moreover, sharing information about the identities of individuals can also lead to potential retaliation against those reporters. For example, as noted in Section VIII.F, following a report of potential dating and sexual violence in which the complainant withdrew from the College, the Vice President of Student Life informed the respondent of the report and shared information that may have led to the identification of the students who reported the conduct on behalf of the complainant. While it is unclear whether the College informed the respondent of the individual identities of the complainant's friends, who did not want their identity known, the sharing of information about the report raised concerns for the students about their safety.⁶⁴

In that case, the sharing of information also created the fear of potential retaliation in the complainant's friends. The friend who made the report to the College told Cozen O'Connor that they believed the respondent knew they were the ones who had made the report. The student described being concerned about attending class with the respondent:

respondent would be clearly unreasonable in light of the known circumstances." 85 Fed. Reg. 30122 (May 19, 2020).

⁶³ See <https://www.hesston.edu/campus-safety/q-and-a/>.

⁶⁴ The administrator involved in the disposition of this matter denied sharing the identities of the complainant's friends with the respondent.

Another friend who made the report had a class with him. She was sitting in front of him and he kept staring at her and trying to make contact, so she asked simply to be moved behind him. Her request was denied to her as well because they said that would go against guidelines – it would mean that they believed her. We did not think that was fair. Then he tried to make contact with me multiple times, I ended up having to request an emotional support dog because I was feeling like I needed one for protection. At the end of the day, nothing happened to [the respondent] and [the complainant] was forgotten about.

One of the friend’s parents contacted the College expressing concern about their daughter’s safety in light of the complainant’s experience and their daughter’s report to the College. Despite not connecting with the reporting students directly to gather more information or understand the concerns, the Vice President of Student Life replied to the parents, in pertinent part, “I can assure you that we have dealt with the situation in a manner in which all students involved are feeling safe and supported.” Cozen O’Connor’s targeted email search revealed that within weeks of the outreach from the parents, the reporting student again contacted the College to express her fear. She wrote, “I’m sorry but when I reported not feeling safe nothing changed so none of these good words [from a Title IX awareness initiative] will change my opinion. All great words but I didn’t see the facts.”

When this message was forwarded to the Title IX Coordinator and the Vice President of Student Life, they decided that the employee who received the message from the student should conduct the outreach to the student to learn more about why she did not feel safe. It is unclear whether outreach was made to the student as there was no additional email correspondence on the matter and the student’s report and the College’s subsequent response was not included in the Title IX file. It is not clear why the Title IX Coordinator did not identify the student’s report as potential retaliation for making the initial report and request to meet with the student to learn more information to assess whether it should be addressed pursuant to the College’s Title IX Policy or in some other way.

J. Insufficient Responses

Of the 35 Title IX case files we reviewed, only three cases proceeded to a formal investigation. We heard about and reviewed numerous examples of institutional responses that fell short of the Title IX obligation to respond to a report in a reasonable and legally compliant manner.

In the case of the student who reported pervasive sexual harassment in which the respondent was unknown, described in Section VIII.C above, as part of the College’s response, the administrator asked student resident assistants and resident directors to “catch respondents in the act.” The administrator overseeing the response created a group text with the complainant and two resident directors, who currently serve as liaisons to the Hesston Police Department, which is the campus security for the College, in order to notify them in a timely way should an incident occur. At the same time, a resident assistant informed the Title IX Coordinator and the Vice President of Student Life that the resident assistant was “worried about [the complainant] mentally because she’s doing some victim-blaming.” According to the Title IX file, the resident assistant offered to “stake out” the location while the complainant showered to offer her a sense of safety. The supportive measures offered included changing the complainant’s residence hall room, but the Title IX file did not reflect that counseling was contemplated or offered to the complainant. This response reflects an unsophisticated and uninformed response to issues of campus safety and potential

emotional trauma. Deferring the College’s responsibilities to resident assistants and directors to do fact-gathering and “stake-outs” does not constitute a meaningful response to concerns about potential sexual harassment. The nature of the College’s response in this instance left students feeling unsafe and unheard. With respect to this case, a former faculty member commented, “Hesston has broken boundaries. When the frontline in the dorm is a 19 year old kid, boundaries are broken.”

More broadly, we heard extensively from students and faculty that they felt overwhelmed by having to function as the only support mechanism for complainants because the Title IX Office was not providing reasonably available supportive measures as required by law. As described to us by the reporting friend in the case discussed above, “We were worried [about the complainant] to a point where we could not leave her alone, even for a second during the day.”

We also heard a perception that respondents at the College have received more support from the College than complainants. As an example, community members told us about a dating violence case in which a respondent appeared to receive support from the College for rehabilitation, whereas the complainant received little from the College by way of remediation. This case was resolved in Student Life because the complainant declined to file a formal complaint. The case file states that “[Respondent’s] involvement in the unhealthy relationship with another student resulted in a violation of the Hesston College Community Standards.” Upon learning that the complainant was transferring to a different institution as a result of this experience, an implementer who oversaw the resolution wrote, “I don’t think I understood the magnitude until just now.”

Finally, we heard from multiple faculty members about scenarios in which students cried to them that the College “swept [their reports of sexual harassment or sexual assault] under the rug.” In one instance, it was reported that a respondent had to write an apology note, but the complainant still had to attend class with the respondent. In these cases, there was no corresponding Title IX file and the complainants did not seek to speak with us to share additional information to corroborate or further understand what happened.

K. Additional Observations about the Intersection with Athletics

Currently, close to 50% of the student population (170 students) are student-athletes. We heard a recurring narrative that male student athlete respondents receive preferential treatment; however, our review of the files did not provide a sufficient factual basis to evaluate that narrative. Some community members shared experiences in which they perceived that student athletes respondents received supportive measures that other respondents would not have received. As there were so few cases in which respondents were notified of reports in order to seek supportive measures, there was an insufficient body of available data from which to draw a meaningful conclusion about this perception. We share the reported concern here to inform future training and education programming, and ensure equity in resolution of formal complaints.⁶⁵

⁶⁵ We also heard concerns that the College had engaged in a pattern of “minimizing or ignoring concerns about racist and gender-based harassment and violence on the Hesston College campus” because the College appointed the Athletic Director to serve as the Interim Dean of Students. See January 19, 2023 Into Account blog post, “Hesston College Administration Needs a Reckoning,” <https://intoaccount.org/2023/01/19/hesston-college-administration/>.

IX. Engendering Trust and Moving Forward

Some community members shared with Cozen O'Connor their perspective that the students who were protesting about Title IX issues wanted to “take down the College.” The students with whom we spoke shared the opposite sentiment. They explained that they wanted Hesston to be a safe community in which they could thrive. We observed a similar desire by faculty and staff to want to do the right thing.

We believe there is a significant need for ongoing communication and restorative initiatives to help the College community foster increased trust. Engendering trust starts with every individual action, and with every community member holding themselves and their fellow community members accountable. The responsibility for moving forward as an institution is a shared one, wherein administrators, faculty, staff, the Board, and students all play a vital role in preventing sexual and gender-based harassment and violence. While the College can provide the framework in terms of policies, procedures, and practices, as well as educational programming, achieving cultural change requires a community effort. The student activism was a critical step in bringing these issues to the foreground. In the same vein, the College’s decision to conduct this review and share the findings publicly is a significant indicator of the College’s openness to learning how to do better. Commitment to meaningful change on the part of the College must be the next step.

We are exceedingly grateful to the many students, alumni, faculty, and staff invested in this work – and to the many who are committed to continuing to build trust, develop collaborative relationships, and reinforce community, care, and compassion for one another.

X. Recommendations

The recommendations below are intended to support, enhance, and expand the College’s actions to prevent sexual and gender-based harassment and violence, and to provide meaningful institutional responses that demonstrate care and empathy, and promote accountability and responsibility in the context of a fair and impartial investigation and adjudication process. The recommendations are also designed to close the trust gap at the College.

Our recommendations are based on legal compliance requirements and effective practices, and are informed by the information gathered in this review. We encourage the College to evaluate and prioritize the recommendations, to identify the individuals best suited to drive effective implementation, to make decisions about the allocation of resources, and to identify the order of operations for institutional actions. We also encourage the College to continue to identify and implement tailored, evidence-based, and effective actions over time that strengthen College policies, systems, and culture. In this regard, the College’s work will never be static. With the rapidly evolving legal framework, the enhanced understanding of sexual and gender-based harassment and violence, and an evergreen population of students, the College must have the

Following the publication from Into Account, staff and students requested to meet with Cozen O'Connor to share their perspective on the information addressed in the article. In those meetings, we explained that these concerns were outside of our scope and that we were not engaging in fact gathering for issues that may fall within the scope of the College’s Title IX or Human Resources functions. We include reference to this article and community feedback here to reflect a perspective by some that the College’s appointment of individuals to critical roles may reflect a lack of care for the community.

flexibility and nimbleness to keep pace with changes in the law and understanding of the dynamics of sexual misconduct.

Our recommendations fall into five main categories, informed by our observations from this review: restorative approaches to address past harms; continued investment in prevention, education, training and professional development to prevent and better respond to sexual and gender-based harassment and violence; strengthening of institutional structures, policies, and practices to ensure College administrators are prepared to respond to reports appropriately; steps to foster increased reporting; and effective practices to enhance responses to reports should misconduct occur. We also offer a set of recommendations designed to ensure that the process for implementing the recommendations has the appropriate hallmarks of trust, accountability, visibility, and sustainability.

A. Restorative Approaches

1. Acknowledge, apologize, and address reported harms through the lens of restorative practices:
 - a. Take action, consistent with institutional values, to demonstrate accountability and commitment to sustained improvement.
 - b. Evaluate appropriate restorative opportunities for impacted individuals that may include, for example: individual meetings and rapprochements between complainants and College administrators, if welcomed by complainants; identifying a day of acknowledgement and recognition; hosting an annual speaker series on issues related to sexual and gender-based harassment and violence, social justice, diversity and inclusivity, civil rights, and equity; or other innovative and tailored opportunities.
 - c. Incorporate explicit consideration of the memorial into restorative opportunities.
2. Make concerted outreach to students whose reports were not resolved to discuss tailored and reasonably available remedial measures and resolution through the Title IX Office, if still applicable and available.
3. Publish a process for bestowing or removing honorifics, naming rights, and marketing materials and apply that process to individuals identified in the historical allegations of abuse section, with communication of those efforts as appropriate in order to reinforce institutional values, accountability, and integrity in a manner that is tangible, visible, and restorative.
4. Assess and respond, in writing, to the list of demands submitted by students.

B. Prevention, Education, Training, and Professional Development

1. Identify and evaluate sustainable models for a holistic and effective prevention and education program focused on holistic wellness, including coordinated

attention to mental health, sexual and gender-based harassment and violence, alcohol and other drugs, and suicide prevention.

2. Develop a coordinated and systemic approach to education and prevention that builds upon the ongoing work of the Title IX Office, as follows:
 - a. Ensure that the Title IX Coordinator maintains oversight responsibility for coordination and vetting of all College training and educational programming related to and required by Title IX, the Clery Act, Kansas state law, and other regulatory bodies.
 - b. Continue to categorize all constituencies (students, faculty, and staff) to prioritize and tailor training needs, timing and content, and assign/delegate responsibility for meeting those training needs in a coordinated and timely manner.
 - c. Publicize training calendar and opportunities for ongoing community engagement and professional development,
 - d. Ensure that all education and training materials are clearly written, accessible, and consistent with current law, guidance, and policy.
 - e. Consider holistic and multi-disciplinary programming to address issues of sexual and gender-based harassment and violence, gender equity, diversity and inclusivity, alcohol and substance abuse, discrimination and harassment, microaggressions and other issues that can impact campus culture and the development and education of students.
3. In coordination with existing efforts, provide professional development and educational sessions to all Board members, members of senior leadership, and members of faculty leadership in Title IX law and requirements that specifically addresses the issues identified in this report, including the importance of ensuring appropriate oversight of Title IX functions, ensuring that employees have sufficient training and experience for their roles, consistently following policy and procedures, prioritization of training on process and dynamics of interpersonal violence, and how to promote accountability through trauma-informed and effective practices.
4. Continue to provide integrated, in-person (if possible), annual training to all employees, which addresses reporting responsibilities for campus employees under Title IX, the Clery Act, child abuse reporting, and other aspects of Kansas state law.
5. Supplement training with interactive training materials based on case studies and provide opportunities for the development of shared language designed to improve understanding, shift the culture around reporting, and demystify concerns that may cause barriers to reporting by responsible employees.

6. Continue to issue climate surveys every two years and develop a detailed action plan in response to information learned through the survey.
7. Ensure that continued prevention and education efforts continue to incorporate information learned through climate surveys, review of the patterns, trends, and issues of concern arising on campus.
8. Ensure that all implementers receive professional development and training, as required by the Title IX Regulations and the Clery Act, to ensure that they are prepared to fully carry out their roles and responsibilities.

C. Reporting

1. Continue to publicize reporting options through a campaign focused on giving permission to share concerns, addressing cultural barriers to reporting, reinforcing individual agency and autonomy, and educating about the available supportive measures and procedural options following a report.
2. In addition to the recommended expanded training regarding responsible employee reporting responsibilities, consider how to best shift culture and understanding around the ethos and philosophy behind centralized reporting to the Title IX Coordinator solely, including, for example:
 - a. Continuing efforts to streamline and encourage reporting of concerns for early intervention, including through the College's online reporting form.
 - b. Incorporating messaging that focuses on the desire to provide all available resources and supports to individuals regardless of the door through which they enter.
 - c. Supplementing existing materials and expanding web content regarding confidential resources and reporting options with visual aids (flowcharts and infographics) and collateral resources for faculty and staff.
 - d. Developing clear articulation of employee reporting responsibilities and the ethos behind those requirements.
 - e. Reviewing policy language regarding employee reporting responsibilities to include the philosophical underpinning behind the requirement, what occurs after the reporting, and clear accountability for failure to report.
3. Continue to promote confidential and care based options, including the confidential advocate, the campus counselor, and the campus pastor.

D. Actions to Strengthen Culture, Structure, and Operations

1. Title IX Office

- a. Continue to proactively promote the Title IX Office to raise awareness and visibility.
- b. Structure internal functions and develop internal protocols and processes to support the prompt and equitable response to reports (intake and initial assessment):
 - i. Develop internal protocols and checklists for intake and outreach, oversight of supportive measures, and decision-making around emergency removal, determination whether to move forward without the complainant, and determination whether to pursue an informal resolution.
 - ii. To the extent possible, separate intake/outreach/case management functions from investigation functions.
 - iii. Develop protocol for notification of and coordination with campus confidential advocate.
- c. Ensure effective oversight of the Title IX Office to ensure reports are responded to promptly and effectively (for example, by ensuring that the supervisor has visibility and access to individual reports and resolutions, timeliness, outcomes, trends and patterns).
- d. Continue to provide the Title IX Office with access to outside Title IX counsel to consult, on an as needed basis, for support in this highly complex and evolving environment.
- e. Subscribe to a robust records management system for all reports and resolutions (preferably an integrated enterprise-level reporting system) to track required information and institutional responses in a searchable format (supportive measures, communications, time frames, investigations, adjudications, sanctions).
- f. Develop and consistently use template communications for all key aspects of the Title IX processes.
- g. Incorporate exit interviews or exit surveys for complainants and respondents to seek feedback and evaluate effectiveness of implementation.
- h. Conduct an annual policy review, potentially facilitated by an external subject matter expert, that incorporates lessons learned each academic

year, includes updates in law and effective practices, and provides the opportunity for input from campus community members.

- i. Disseminate an annual report that shares de-identified aggregate data about reported conduct and resolutions (potentially with a lag in the data to best protect anonymity) and updates on prevention and education programming and initiatives (already slated for release this fall).

2. Community Partners

- a. Review and prioritize outsourcing campus safety and security responsibilities to ensure alignment with effective practices.
- b. Increase accessibility of campus counselor:
 - i. Consider increasing hours on campus (currently three days a week).
 - ii. Consider contracting with or hiring a second counselor for gender diversity.
- c. Prioritize hiring and retention of employees with developed skill sets and experience that match the position descriptions (in Title IX, Student Life, and other departments, as appropriate).
- d. Invest in professional development of employees to be able to carry out their responsibilities (in Title IX, Student Life, and other departments, as appropriate).

3. Coordination of Institutional Response

- a. Consider establishing a standing representative advisory committee, including faculty, staff, students, Board members, and alumni, to serve as ambassadors to represented constituencies and provide insight and feedback on the completion of recommendations.
- b. Create a Title IX multi-disciplinary team for initial assessment of reports of sexual or gender-based harassment or violence, case management, and effective documentation that includes the Title IX Coordinator and other campus implementers with core responsibilities for providing care and resources, implementing conduct processes involving students and employees, and implementing Title IX and the Clery Act.
- c. Develop business processes and accompanying internal diagrams to map the response process for all forms of sexual and gender-based harassment and violence, other forms of discrimination and harassment,

boundary violations, microaggressions and other conduct that might not rise to the level of a policy violation

4. Consider consulting with external Clery Act experts to conduct an external review and provide technical assistance to the College regarding Clery Act responsibilities, including a data review of the accuracy of the College's Clery Act crime statistics.

E. Ensuring Effectiveness of Recommendations

1. Designate a multi-disciplinary and representative committee of implementers to support the implementation of the recommendations.
2. Ensure that the implementation committee has sufficient authority and training, and sits within a responsive reporting structure to support effective implementation of the recommendations.
3. Identify a project leader with subject matter expertise (or access to subject matter expertise) to chair the implementation committee, facilitate implementation of the recommendations, communicate progress and updates with the campus community, and track and monitor completion.
4. As a first step, the implementation committee should identify and articulate shared goals, triage and prioritize the recommendations, and develop a calendar for action items and communications.
5. As part of the implementation process, implement a RACI decision-making project management model that identifies who is responsible (R) and accountable (A) for each aspect of the implementation plan, who is consulted (C) and informed (I) for context and feedback, and how progress will be tracked and success measured to drive collaborative, reliable and effective results.
6. Ensure that all implementation committee members receive training regarding the legal and regulatory framework, effective practices nationally, and the key findings of this report.
7. Provide at least one update each semester on the progress toward completion of the recommendations, either in community letters or through a dedicated website that tracks progress.

Appendix I: Overview of Legal and Regulatory Framework

I. Title IX

Title IX is a federal civil rights law that provides that “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”⁶⁶ Title IX prohibits discrimination on the basis of sex in all of an institution’s programs and activities, including education and employment.⁶⁷ Title IX applies to all forms of sex discrimination, including sexual and gender-based harassment and violence.⁶⁸ Title IX is accompanied by implementing regulations, which require that an institution publish a non-discrimination statement;⁶⁹ appoint a Title IX coordinator;⁷⁰ and adopt grievance procedures that are prompt and equitable.⁷¹ The implementing regulations (Title IX Regulations) are promulgated by the U.S. Department of Education’s Office for Civil Rights (OCR); the Title IX Regulations have the force of law and are enforced by OCR.⁷²

The standards applied by OCR in evaluating compliance have evolved significantly over the past twelve years as OCR has issued – and rescinded – multiple guidance documents: including the April 4, 2011 Dear Colleague Letter; the April 29, 2014, Questions and Answers on Title IX and Sexual Violence; the April 24, 2015 Dear Colleague Letter on Title IX Coordinators; the September 22, 2017 Dear Colleague Letter, and the September 22, 2017 Questions & Answers on Campus Sexual Misconduct. These seismic shifts in the legal and regulatory framework have shaped campus responses to sexual and gender-based harassment and violence, often requiring significant shifts in policies, definitions, jurisdiction, scope, and institutional requirements.

Significantly, in May 2020, after an extensive rulemaking process, OCR released revised Title IX Regulations, which for the first time incorporated detailed provisions for responding to sexual

⁶⁶ 20 U.S.C. § 1681(a). The Equal Protection Clause of the Fourteenth Amendment dictates that “no state shall ... deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Am. XIV. Consistent with the Equal Protection Clause, a number of statutes and regulations have arisen to safeguard individuals against discrimination on the basis of sex, including Title IX and Title VII.

⁶⁷ See generally 20 U.S.C. § 1681 *et seq.*; 34 C.F.R. Part 106.

⁶⁸ See e.g. 34 C.F.R. § 106.44 (setting forth an institution’s obligation to respond to allegations of sexual harassment). Also 34 C.F.R. § 106.30 (“Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following: (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct; (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or (3) ‘Sexual assault’ as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).”)

⁶⁹ 34 C.F.R. § 106.8(b).

⁷⁰ 34 C.F.R. § 106.8(a).

⁷¹ 34 C.F.R. § 106.8(c).

⁷² These implementing regulations are codified at 34 C.F.R. Part 106.

harassment into the law, rather than continuing to rely on shifting guidance documents.⁷³ The Title IX Regulations, on their face, also purported to elevate complainant agency and autonomy, but given the complexities of the required intake, investigation, and hearing processes, they have been perceived by many as creating barriers for complainants to participate in a process to conclusion. These complexities have included a heightened standard for emergency removal of a student respondent, restrictions on supportive measures that might impact a respondent, lengthy investigative and hearing processes caused by the complex evidentiary requirements, and the requirement that the parties submit to cross-examination at the hearing for substantive information to be considered. As noted above, in June 2022, following another change in Federal and OCR leadership, OCR issued a new NPRM.⁷⁴ An initial review of the proposed regulations suggests that OCR now seeks a middle approach between the two poles of former guidance – retaining the legal prescriptions, but also returning discretion to educational institutions in a number of areas, including more protective forms of supportive measures and relaxed hearing processes. It remains to be seen what provisions may be incorporated into the new Title IX Regulations, as well as what changes may be required in campus processes.

We share this history because it is relevant to understand the shifts in OCR guidance and Title IX Regulations that have impacted campus responses over the five years of cases we reviewed. The rapidly evolving framework requires higher education institutions to be nimble, facile in developing and updating policies, and well-steeped in subject matter expertise to be able to adjust and adopt new models every several years.

Under the current Title IX regulations, when an educational institution is on notice of sexual harassment within its education program or activity in the United States, the Title IX Coordinator must: 1) promptly contact the complainant to discuss the availability of supportive measures; 2) consider the complainant’s wishes with respect to supportive measures; 3) inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and 4) explain to the complainant the process for filing a formal complaint. While educational institutions have long provided interim measures, the heightened process and standards for documentation are new, as is the requirement that a complainant file a formal complaint to move forward with a formal or informal resolution.

If a formal complaint meets designated jurisdictional requirements, the educational institution must initiate a grievance process that complies with the grievance process detailed in the Title IX Regulations. That grievance process must include a prompt and equitable investigation with written notice of the allegations, equal opportunity to participate in the investigation, the opportunity to view all evidence directly related to the allegations and respond in writing to that evidence, and the opportunity to view a written investigation report and respond in writing. At the conclusion of the grievance process, the educational institution must provide a live hearing with

⁷³ The preamble to the August 2020 Title IX regulations notes, “These final regulations impose, for the first time, legally binding rules on recipients with respect to responding to sexual harassment.” Title IX Regulations, Preamble, 85 F.R. 30029 (May 19, 2020).

⁷⁴ See <https://www.ed.gov/news/press-releases/us-department-education-releases-proposed-changes-title-ixregulations-invites-public-comment>.

cross-examination of each party and witness conducted by the other party’s advisor. If a party does not have an advisor present at the live hearing, the school must provide one without fee or charge to that party. The regulations, as written, required that if a party or witness does not submit to cross-examination at the live hearing, the decision-maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility. This element of the regulations was vacated following a determination by a Federal court that the exclusion of statements not subject to cross-examination was arbitrary and capricious.⁷⁵ OCR subsequently confirmed that, “In practical terms, a decision-maker at a postsecondary institution may now consider statements made by parties or witnesses that are otherwise permitted under the regulations, even if those parties or witnesses do not participate in cross-examination at the live hearing, in reaching a determination regarding responsibility in a Title IX grievance process.”⁷⁶

II. The Clery Act

The Clery Act is a federal statute enacted in 1990 that requires all public and private postsecondary institutions that participate in any of the federal financial aid programs under Title IV of the Higher Education Act of 1965⁷⁷ to keep and publish information about crime on or near their campus.⁷⁸ The purpose of the Clery Act is to provide students, their families, and employees with accurate, complete, and timely information about campus safety to better inform future decisions.⁷⁹ The Clery Act requires that schools report offenses and disclose statistics for crimes that were reported to the local police or campus security authorities (CSA) in their annual security reports.⁸⁰

The Clery Act also requires timely warning notifications to the campus community of an enumerated set of Clery Act crimes reported to CSAs or local police that pose a serious or continuing threat to students and employees.⁸¹ Finally, the Clery Act mandates that schools develop policies, procedures and programs regarding sexual assault, dating violence, domestic violence, and stalking, including procedures they will follow once an incident of domestic violence, dating violence, sexual assault, or stalking is reported.⁸² These procedures must include

⁷⁵ *Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021).

⁷⁶ August 24, 2021 Update on Court Ruling about the Department of Education’s Title IX Regulations, <https://content.govdelivery.com/accounts/USED/bulletins/2ee0a5d>. While this represents a vast improvement in the Title IX regulations, relying upon statements which have not been subject to cross examination may pose risk in light of federal and state court civil decisions. When choosing to permit consideration of statements not subject to cross-examination, the University should consider developing evidentiary frameworks that assess whether such statements have a sufficient indicia of reliability to be considered substantively, even in the absence of cross-examination.

⁷⁷ 20 U.S.C. § 1001 *et seq.*

⁷⁸ *See generally* 20 U.S.C. § 1092(f); 34 C.F.R. § 668.46. In addition to reports on crime and dating violence, the Clery Act also requires institutions to submit reports on fire prevention procedures, missing person procedures, and on-campus safety procedures.

⁷⁹ 34 C.F.R. § 668.46.

⁸⁰ 20 U.S.C. §1092(f)(1)(F); 34 C.F.R. § 668.46(c).

⁸¹ 20 U.S.C. § 1092 (f)(3); 34 C.F.R. § 668.46(e).

⁸² 20 U.S.C. § 1092 (f)(8); 34 C.F.R. § 668.46(b)(11).

a clear statement that the proceedings will entail a prompt, fair, and impartial investigation and resolution.⁸³

Additionally, the VAWA provisions of the Clery Act require post-secondary institutions to include in their annual security report a statement of policy regarding the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking.⁸⁴ The statement must include a description of the institution's educational programs and campaigns that promote awareness of domestic violence, dating violence, sexual assault, and stalking.⁸⁵ Primary prevention and awareness programs must be provided to all incoming students and new employees, and ongoing prevention and awareness campaigns must be provided for students and faculty.

Of particular relevance, the Clery Act requires that a school's written policy contain:

- a list of all possible sanctions and the range of protective measures that the school may impose following a final determination of sexual assault, domestic violence, dating violence, or stalking;⁸⁶
- procedures for institutional disciplinary action in cases of alleged domestic violence, dating violence, sexual assault or stalking, including:⁸⁷
 - a prompt, fair and impartial investigation and resolution;
 - conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual assault and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;
 - assurances that the accuser and the accused are entitled to the same opportunities to have others present during an institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice;
 - Simultaneously inform both the accuser and the accused, in writing, of: the outcome of any institutional disciplinary proceeding that arises from an allegation of domestic violence, dating violence, sexual assault or stalking; the institution's procedures for the accused and the victim to appeal the results of the institutional disciplinary proceeding, of any change to the results that occurs prior to the time that such results become final; and when such results become final.⁸⁸

⁸³ 34 C.F.R. § 668.46 (k)(2)(i).

⁸⁴ 34 C.F.R. § 668.46(j).

⁸⁵ *Id.*

⁸⁶ 34 C.F.R. § 668.46 (k)(1)(iii) and (iv).

⁸⁷ 34 C.F.R. § 668.46 (b)(11)(ii).

⁸⁸ 34 C.F.R. § 668.46(j).

- information regarding the importance of preserving evidence;⁸⁹
- identification of the administrator to whom alleged offenses should be reported;⁹⁰
- options regarding notifying law enforcement and campus authorities about alleged offenses, including the option to be assisted by campus authorities in notifying law enforcement authorities or to decline to notify authorities;⁹¹ and
- individuals' rights and the school's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil or tribal court.⁹²

Educational institutions must also notify individuals regarding: on and off-campus counseling, health, mental health, victim advocacy and legal assistance programs; interim remedies that are available regardless of whether an individual chooses to report an alleged crime to campus police or law enforcement; and a written explanation of an individual's rights and options when a student or employee reports that they have been a victim of on or off-campus domestic violence, dating violence, sexual assault, or stalking. VAWA also requires schools to prohibit retaliation, intimidation, threats, coercion, or any other type of discrimination against any individual for reporting domestic violence, dating violence, sexual assault, or stalking.

⁸⁹ 34 C.F.R. § 668.46 (b)(11)(ii)(A).

⁹⁰ 34 C.F.R. § 668.46 (b)(11)(ii)(B).

⁹¹ 34 C.F.R. § 668.46 (b)(11)(ii)(C)(1)(2) and (3).

⁹² 34 C.F.R. § 668.46 (b)(11)(ii)(D).