Purpose of Submittal:
The purpose of this submittal is to provide the Board of Trustees with an overview of the Title IX Internal Audit, management’s response to the Title IX Internal Audit Report’s recommendations, and management’s plans for improving Western’s efforts in preventing and responding to sexual violence and sexual misconduct.
MEMORANDUM

TO: Sabah Randhawa, President
FROM: Antonia Allen, Director, Office of the Internal Auditor
DATE: September 26, 2018
SUBJECT: Title IX Discrimination Complaint Process - Limited Scope Review

At your request, the Office of the Internal Auditor (OIA) has completed a limited scope review of the practices related to the administration of Title IX sexual harassment and sexual violence discrimination complaints (Title IX complaints).

Background
Sue Guenter-Schlesinger, Vice Provost for the Equal Opportunity Office (EOO), among her other responsibilities, serves as the University’s Title IX Coordinator. The Title IX Coordinator provides advice and oversight on policies, preventive educational programs, resources and services required under Title IX, and also, oversees all complaints of sexual harassment and sexual violence, as well as identifies and addresses any patterns or systematic problems that arise during the review of complaints.

Title IX operations report to the President and as of June 30, 2018, included the following positions associated with Title IX complaint process: the Vice Provost for EOO, an Assistant Director for EOO (Vacant as of Fall 2017), and a Title IX Investigator (Hired January 2017, Resigned April 2018, and new hire June 2018).

Title IX of the Patsy T. Mink Education Opportunity Act of 1972 (Title IX) prohibits discrimination based on sex in any educational program or activity that receives financial support from the Federal government. Title IX is enforced by the U.S. Department of Education’s Office for Civil Rights (OCR). The OCR’s Dear Colleague Letter on Sexual Violence (April 4, 2011) clarified that sexual harassment includes sexual misconduct, sexual assault, and sexual violence and that these are all violations of civil rights laws and constitutes discrimination under Title IX for students and employees in educational institutions.

On September 22, 2017, the OCR withdrew previous statements of policy and guidance on sexual violence and instead issued a Dear Colleague Letter on Sexual Violence (April 4, 2011) while it engages in rulemaking on this topic. While OCR’s revised rulemaking is in process, Western Washington University (WWU) has chosen to continue to rely heavily, but not exclusively, on the previous guidance, included in OCR’s:

- Dear Colleague Letter on Sexual Violence (April 4, 2011), and
- Questions and Answers on Title IX and Sexual Violence (April 29, 2014)
There are two processes used by the EOO to resolve concerns of discrimination including sexual harassment: informal resolution and formal complaint.

- **Informal Resolution** - The Informal Resolution process occurs when the complainant discusses concerns with the party or parties involved and/or with the appropriate supervisor or department chair. The complainant may request that the EOO assist in this process and in seeking a satisfactory resolution. When this is requested, EOO’s informal resolution techniques include mediation and negotiation techniques. Informal resolution of a concern does not result in a finding or not of discrimination; rather it is intended to bring the parties together in resolving the concern to the aggrieved party’s satisfaction. The aggrieved party can at any time file a formal discrimination complaint.

- **Formal Complaint** - A formal complaint begins when the complainant or, EOO on the complainant’s behalf, submits a complaint form to the EOO that includes a written statement of the alleged act or acts of illegal discrimination. The EOO then conducts a formal investigation of the complaint and prepares a summary investigation report. The EOO provides the investigation report to the Student Conduct Officer for investigations with a student respondent and to the appropriate Vice President for an employee respondent. The Student Conduct Officer or Vice President applies sanctions based upon the findings included in the investigation report.

In the Fall of 2016, EOO was assigned sole responsibility for investigating sexual misconduct, student-on-student complaints. Previously the Office of Student Life (OSL) investigated the vast majority of Title IX discrimination complaints for cases involving student respondents, although students, faculty, and staff still had a right to file a Title IX discrimination complaint with the EOO. EOO administers the discrimination complaint process in accordance with WWU’s Discrimination Complaint Procedure (PRO-U1600.02A). WWU’s policies on Preventing and Responding to Sex Discrimination (POL-U1600.04) and Ensuring Equal Opportunity and Prohibiting Discrimination and Retaliation (POL-U1600.02) provide additional guidance on administering Title IX complaints, including cases of sexual misconduct, among other types of discrimination complaints based on protected characteristics.

According to the Discrimination Complaint Procedure, the University is committed to resolving complaints of illegal discrimination at the earliest and most informal level, conducting internal investigations in a timely and effective manner, adhering to the principles of due process in all investigations and hearings, and providing prompt corrective action if discrimination is found to have occurred. No individual shall be penalized or retaliated against in any way by a member of the University community for his or her participation in this complaint procedure.

During the period of review (September 1, 2016, through June 30, 2018) there were 33 discrimination formal complaint forms completed and submitted to EOO. The complaints were categorized as follows:

<table>
<thead>
<tr>
<th>Type of discrimination</th>
<th>Number of Complaint Forms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title IX (student-on-student or employee-on student sexual harassment)</td>
<td>21</td>
</tr>
<tr>
<td>Title VII of the Civil Rights Act of 1964 (employee-on-employee harassment)</td>
<td>3</td>
</tr>
<tr>
<td>National Origin/Race</td>
<td>4</td>
</tr>
<tr>
<td>Disability</td>
<td>2</td>
</tr>
<tr>
<td>The form was filled out in error</td>
<td>3</td>
</tr>
</tbody>
</table>

<p>| | |</p>
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<th></th>
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For the 21 Title IX complaint forms, the respondents/complainants were categorized as follows:

<table>
<thead>
<tr>
<th>Respondent-on-Complainant type</th>
<th>Number of Title IX Complaint Forms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee-on-Student</td>
<td>7</td>
</tr>
<tr>
<td>Student-on-Student</td>
<td>14</td>
</tr>
<tr>
<td>Total Title IX Complaint Forms</td>
<td>21</td>
</tr>
</tbody>
</table>

EOO initiated investigations for the 21 Title IX discrimination complaints received during the review period. As of June 30, 2018, 15 of the 21 investigation reports were completed.

**Objectives and Scope**

The objectives of this engagement were to determine how Title IX sexual harassment and sexual assault complaints have been administered by EOO for students, staff, and faculty and to compare WWU’s complaint administration practices to OCR’s guidance to identify opportunities for improvement.

The scope of this review was limited to include:

- Title IX sexual harassment and sexual assault complaints that originated after EOO was assigned sole responsibility for investigating student-on-student Title IX complaints in the Fall of 2016.
- The steps in the Title IX discrimination complaint process from the receipt of the formal complaint form to the imposition of sanctions.
- Analysis of WWU’s compliance with the following procedural elements that the OCR has identified as critical to achieving compliance with Title IX:
  1. Notice to students, and employees of the grievance procedures, including where complaints may be filed;
  2. Application of the procedures to complaints filed by students or on their behalf alleging sexual violence carried out by employees, other students, or third parties;
  3. Provisions for adequate, reliable, and impartial investigation of complaints;
  4. Designated and prompt time frames for the complaint process;
  5. Written notice to the complainant and alleged perpetrator of the outcome of the complaint.

The review did not include an analysis of WWU’s compliance with the following OCR-identified critical procedural element, as this element was deemed to occur after the imposition of sanctions and therefore outside the scope of the review:

- Provides assurance that the schools will take steps to prevent recurrence of any sexual harassment and remedy discriminatory effects on the complainant and others, if appropriate.

Our engagement procedures included the following:

- Developing an understanding of how Title IX complaints were administered during the review period by interviewing key staff and reviewing supporting documentation including complaint logs, complaint forms, investigation reports, and other supporting documentation.
- Developing an understanding of WWU’s policies and procedures, OCR’s guidance and other best practices for administering Title IX complaints.
• Analyzing whether WWU’s complaint practices and procedures include the in-scope OCR-identified critical procedural elements necessary to achieve Title IX compliance.

• Comparing WWU’s Title IX policies, procedures, and practices to OCR guidance for Title IX complaint administration to help identify opportunities for improvement.

The fieldwork took place from May through July 2018 and focused on events and transactions from September 1, 2016, through June 30, 2018.

Our test work and conclusions are based upon representations made to us by management, which were verified on a judgmental basis. OIA plans to perform a follow-up engagement in 2019.

Conclusions
During our engagement we noted opportunities for improvement of the administration of WWU’s Title IX discrimination complaint process by effective incorporation of the following critical elements:

• The application of the WWU’s complaint procedures to the complaints filed.

• Prompt time frames for the resolution of the complaint process.

• Written notice to the complainant and alleged perpetrator of the outcome of the complaint when the complainant is a student, and the respondent is an employee.

Nothing came to our attention to indicate that the other OCR-identified Title IX critical elements within the scope of this audit were not effectively incorporated into the administration of WWU’s Title IX discrimination complaint procedures.

Implementing the following recommendations should decrease the likelihood of internal control weaknesses in the Title IX discrimination complaint process in the future.

Recommendations

1. Update WWU’s Title IX Discrimination Complaint Procedures to reflect actual practices.

   WWU’s Discrimination Complaint Procedure (Procedure) was last revised on April 11, 2013. We found that the Procedure had not been updated to reflect certain actual practices. For example, the Procedure did not include details on the actual practice of how student-on-student sanctions are administered by the OSL and the Student Conduct Officer, although this information is contained in WWU’s policy on Preventing and Responding to Sex Discrimination (POL-16004.04). Another example of a needed update is that WWU’s procedure includes provisions for an EOO jurisdiction determination including providing an extra ten working days for this decision. In practice, there is no jurisdiction decision after the complaint form is filled out.

   A critical element of Title IX discrimination complaint procedures is the application of the procedures to the complaints filed. WWU’s complaint procedure applied to complaints should reflect the actual and prescribed procedures.

   Written procedures that do not accurately communicate current prescribed and actual practice could lead to miscommunication, training and consistency problems.

   The Vice Provost EOO has been working on updating the discrimination procedures but has not yet finalized the revisions.
We recommend that management finalize updates to WWU’s Title IX Discrimination Complaint Procedures to reflect actual and proscribed practices.

**Management Response:**
Management concurs with this recommendation. The Discrimination Complaint Procedure has been under revision for some time and the Equal Opportunity Office (EEO) has developed an initial draft, which is now being vetted with major stakeholders. Further vetting will occur with additional stakeholders before finalization of this Procedure no later than January 2019. This revision aims at accurately reflecting actual practices in both informal resolutions and formal investigations. It also provides a clear and more prompt time frame for all aspects of this process, which includes from the date a complaint is signed, through the initial sanctions/disciplinary actions. Further, it also more specifically outlines notification responsibilities of Deans, Vice Presidents, and the Office for Student Life (OSL)

2. **Ensure procedures and practice provide for prompt time frames for resolution of complaints.**

WWU’s Discrimination Complaint Procedure (PRO-U1600.02A) provides for up to 80 working days (WD) to complete the Title IX complaint process; including 60 working days to complete the investigation, and ten working days each for the EEO jurisdiction decision and disciplinary actions. A chronological view of the time frames specified in the Procedure is included below:

![Timeline Diagram](image)

Please see the chart below for a depiction of the number of working days it took to complete the entire investigation process for the 15 investigations started and completed during the review period. The horizontal line reflects the 80 working days that are provided in the Procedure to complete the investigation process.

![Working Days Chart](image)
The chart below provides information on the number of working days from formal complaint receipt to the investigation report for the 15 completed reports. Note that the horizontal line reflects the discrimination complaint procedural goal of completing investigation reports within 60 working days.

OCR’s Q&A on Title IX and Sexual Violence (April 29, 2014), identifies 60 calendar days as a prompt time frame for the entire investigation process which includes initial fact-finding through imposing sanctions.

Please see the chart below for a depiction of the number of calendar days that it took to complete the entire investigation process for the 15 investigations started and completed during the review period. The horizontal line reflects the 60 calendar days that are considered by OCR to be a prompt time frame for resolving complaints.
The OCR’s 2011 Dear Colleague Letter and 2014 Question and Answers on Title IX and Sexual Violence provide guidance that **60 calendar days** is a reasonably prompt time frame for completing investigations from receipt of the complaint to the imposition of sanctions. Please see excerpts of specific guidance references below:

**OCR’s Dear Colleague Letter (DCL) on Sexual Violence (April 4, 2011), Page 12:**

(C) Designated and Reasonably Prompt Time Frames

“...Based on OCR experience, a typical investigation takes approximately 60 calendar days following receipt of the complaint [Emphasis added]. Whether OCR considers complaint resolutions to be timely, however, will vary depending on the complexity of the investigation and the severity and extent of the harassment.”

**OCR’s Questions and Answers on Title IX and Sexual Violence (April 29, 2014), Page 31:**

F-8. What stages of the investigation are included in the 60-day time frame referenced in the DCL as the length for a typical investigation?

Answer: As noted in the DCL, **the 60-calendar day time frame** [Emphasis added] for investigations is based on OCR’s experience in typical cases. **The 60-calendar day time frame** [Emphasis added] refers to the **entire investigation process** [Emphasis added],...**including imposing sanctions** [Emphasis added]...Although this time frame does not include appeals, a school should be aware that an unduly long appeals process may impact whether the school’s response was prompt and equitable as required by Title IX. OCR does not require a school to complete investigations within 60 days; rather OCR evaluates on a case-by-case basis...OCR recognizes that the investigation process may take longer if there is a parallel criminal investigation or if it occurs partially during school breaks...Because timeframes for investigations vary and a school may need to depart from the timeframes designated in its grievance procedures, both parties should be given periodic status updates throughout the process.”

It should be noted, however, that both the OCR’s 2011 Dear Colleague Letter and the 2014 Question and Answers on Title IX and Sexual Violence guidance on prompt time frames has been withdrawn as of September 22, 2017 and current OCR interim guidance states, “There is **no fixed time frame** [Emphasis added] under which a school must complete a Title IX investigation. OCR will evaluate a school’s good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with a fair resolution.”

WWU’s Title IX designated investigation time frames may not be considered prompt if EOO does not identify how WWU’s investigation time frame goals were chosen and how the goals fit within the context of the available OCR Title IX guidance and WWU’s actual experience with needed time frames for Title IX investigations.

The Title IX Coordinator reported that the time frames in the discrimination complaint procedure were developed based upon a review of best practices at other universities. The Title IX Coordinator also reported that there have been difficulties completing investigations within the time frames outlined in our procedure due to staffing issues resulting from key Title IX staff turnover and vacancies, as well as, a general increase in the volume of discrimination complaints of all types, including formal complaints and informal resolutions. These factors have lead the EOO to lack capacity to address complaints in the desired prompt time frame.
We recommend that the Title IX Coordinator work with other WWU management to ensure that procedures and practice provide for prompt time frames for resolution of complaints by establishing reasonable, attainable and prompt time frame goals. The complaint resolution time frame goals should be set at a level that is challenging to attain, within the context of EOO’s experience with WWU’s Title IX complaint process, as well as, OCR’s guidance. We also recommend that management continue to document case activity including circumstances that prevent achievement of goal complaint resolution dates. Management should also continue to work towards obtaining sufficient staffing, process efficiencies, and other resources to enable completion of the investigation process within desired prompt time frames.

Management Response:
Management concurs with this recommendation. The revision of the Discrimination Complaint Procedure, which is anticipated to be completed no later than January 2019, will outline a clear, reasonable, and justifiable time frame that is sufficiently challenging in order to achieve prompt, yet thorough investigations of complaints. If there are any variances that would cause a significant deviation from the desired time frame, explanatory documentation will be maintained. This process starts from the date the complaint is signed through the initial sanctions/disciplinary actions. While current interim Office for Civil Rights guidance sets “no fixed time frame,” and given that complexities of complaints differ, EOO is aiming at defining a clear time frame that is defensible and also compels promptness. The addition of a second Title IX/Civil Rights investigator to the EO Office contributes to the capacity to meet prompt time frames. EOO is also currently reviewing Title IX software that contributes to efficiencies and enhances transparency.

With regard to student-on-student complaints, WAC 516-21-270(4) and (5) establishes that any student charged with a violation must have at least 3 days written notice of the conduct meeting. The determination made by the conduct officer must be made in writing, including the basis of the finding, any sanctions imposed, and information regarding the right to appeal. At least ten days of the total days outlined for the investigation should be designated to OSL to complete their processes. Enrollment and Student Services will ensure that at least one conduct officer is available year-round to expedite the processing of cases, effective immediately.

3. Ensure adequate communication of the outcome of complaints.

The OIA noted that for eight of the nine student-on-student Title IX complaints both the complainant and respondent received concurrent notifications of the outcome of the complaint process. In the remaining instance the OSL reported that they did not send out student conduct letters to the complainant and respondent because EOO did not provide an investigation report; instead, EOO provided a short memorandum stating that there was not a preponderance of evidence supporting the complaint. The short EOO memo also stated that the EOO, “refers this matter to the OSL for follow-up and consideration of sanctioning.” EOO had communicated to the OSL that a Memo rather than a Final Report would be issued since the complainant did not participate in the investigation, and since a police investigation had occurred, which this memorandum summarized.

For the six employee-on-student Title IX complaints reviewed, we did not note written communication regarding the outcome (i.e., sanctions) of the complaint process to the student complainant. The EOO office stated that they verbally communicated the findings in their report to both parties in these complaints and made available a copy of the Final Report to them. We did note
communications from the Provost/Vice-President of Academic Affairs to EOO, copying the employee’s supervisor, indicating the sanction. According to the Provost, Deans communicate sanctions to the respondents. Whether the Dean’s communication to the respondent is written or verbal depends on Section 19 of the WWU/UFWW Collective Bargaining Agreement. The Provost’s Office does not communicate with complainants. EOO also noted that the OSL does not copy EOO on communications regarding sanctions for student-on-student complaints.

Per section H-3 in OCR’s Q&A on Title IX and Sexual Violence (April 2014), “Title IX requires both parties to be notified, in writing, about the outcome of the complaint” [Emphasis added].” “For Title IX purposes, a school must inform the complainant as to whether or not it found that the alleged conduct occurred, any individual remedies offered or provided to the complainant or any sanctions imposed” [Emphasis added] on the perpetrator that directly relate to the complainant.”

The 2017 OCR Q&A interim Question 10, provides the following guidance regarding notifications of the outcome, “…notification must include any initial, interim, or final decision by the institution; any sanctions imposed by the institution; and the rationale for the result and the sanctions.”

WWU’s discrimination complaint provides that, “Within ten working days after receiving the investigative report, the appropriate Vice President or designee will determine appropriate actions in response to the findings. The Vice President’s response shall be documented in writing and provided to all appropriate parties” [Emphasis Added], including EOO.”

Inadequate communication of the outcome of Title IX complaints can lead to a lack of compliance with Title IX and the perception that the University is not being transparent about the results of the Title IX discrimination complaint process. Also, the OSL not providing Student Conduct Letters to EOO leads to administrative and recordkeeping inefficiencies.

For employee-on-student complaints, WWU’s procedure does not provide effective guidance by describing the distribution of the written notice of sanctions to “all appropriate parties.” WWU procedures should provide specific guidance on who and how complaint results will be distributed to the complainant and respondent. In practice, responsibility for communicating employee-on-student complaint results to the complainant has not been effectively assigned nor implemented. Also, complying with the bargaining agreement sometimes leads to verbal vs. the required written notification to the respondent. The OSL indicated they do not include EOO on the distribution of their student-on-student conduct letters because the letters are available in their Symphlicity student information database application where EOO can electronically access the letters.

We recommend that management ensure that there is adequate communication on the outcome of complaints. WWU’s discrimination complaint procedures should be updated to provide clarity on who specifically needs to receive the written notification of sanctions and who will provide these notifications. We also recommend that the OSL include EOO in the distribution of the student conduct sanction letters for ease of administration, recordkeeping, and compliance with the procedure.

Management Response:
Management concurs with this recommendation. The revised Discrimination Complaint Procedure, anticipated to be completed no later than January 2019, will ensure adequate notification regarding the outcome of complaints. The EOO will continue to notify the Complainant (the aggrieved individual filing the complaint) and Respondent (the individual against whom the complaint is filed) of investigation findings and provide a copy of the Final Investigative Report to both parties, the relevant Dean or Vice President,
as well as to OSL, in the case of student-on-student complaints. According to WAC 516-21-270, para. (5): OSL will notify the Respondent and Complainant (if applicable) "in writing of the determination made by the conduct officer, including the basis for any findings and sanctions. The notice includes information regarding the right to request an appeal." (See response to Recommendation #2 as well).

The revised Discrimination Complaint Procedure, anticipated to be completed no later than January 2019, will include notification to students and employees who are Complainants in cases where the Respondent is either Faculty or Staff. This notification will include any disciplinary actions taken with respect to the Respondent, by the appropriate academic Dean (in the case of a faculty respondent) or the Assistant VP for Human Resources and/or Vice President (in the case of a staff respondent). In practice, this will be implemented immediately.

OSL will provide EOO with copies of all decision letters sent to Complainants and Respondents, including original findings, results of appeals (either to the Dean of Students or to the Appeals Board), and letters permitting extensions of timelines, effective immediately.

After review of the final draft of this report, management provided the following summary management response to the Title IX Discrimination Complaint Process - Limited Scope Review.

**Management Summary Response:**
The University has decided to create a separate Title IX Office which will report directly to the University President. The Title IX Office will focus exclusively and comprehensively on sexual violence investigations and coordination and oversight of institutional policies, processes, and prevention efforts. The university will immediately commence a national search for a Title IX Coordinator to direct this office. Once the Title IX Coordinator is in place, the position will take over the activities being presently directed to the EOO in the management response to this review.

We thank you and the Equal Opportunity Office and the Office of Student Life personnel for their cooperation and assistance and appreciate your commitment to resolving the issues discussed during the course of our engagement. If you have any questions, please feel free to contact me at (360) 650-3435.

C:  
Brent Carbajal, Provost, Vice President for Academic Affairs  
Melynda Huskey, Vice President for Enrollment and Student Services  
Kerena Higgins, Assistant Attorney General  
Sue Guenter-Schlesinger, Vice Provost, Equal Opportunity & Employment Diversity  
Ted Pratt, Dean of Students  
Michael Sledge, Office of Student Life, Assistant Dean of Students  
Western Washington University Board of Trustees Finance, Audit, and Enterprise Risk  
Management Committee Members  
Deena Garza, Audit Manager, State Auditor’s Office  
File: 1818