

**SOUTH DAKOTA BOARD OF REGENTS**

**Planning and Resource Development**

**AGENDA ITEM: 5 - G**

**DATE: March 30 – April 1, 2016**

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**SUBJECT: Margolis Healy & Associates System-wide Title IX Readiness Assessment Review**

As noted in the informational item presented at the December 2015 Board of Regents (BOR) meeting, Margolis Healy and Associates (MHA) conducted a system-wide Title IX readiness assessment of the Regental system. This project, conducted during the summer and fall 2015, has included a comprehensive review of BOR policies, institutional policies and processes, training programs, complaint documentation, investigative files, communication materials and various other materials that the institutions provided for review.

In February 2016, MHA provided a Title IX readiness assessment draft report for each institution and the system office. The reports are broken down into subsections that outline observations and recommendations relating to various Title IX compliance areas. Through their analysis, MHA found that there was noteworthy attention on the issue of Title IX on each of the institutions they visited, and that each institution had devoted substantial staff time to training of those responsible for overseeing aspects of Title IX.

Below you will find a summary of the primary observations for the Regental system regarding policies, processes and compliance with the Violence Against Women Act (VAWA), Clery Act and Title IX (TIX). Mr. Michael Webster, Margolis Healy & Associates Director of Regulatory Compliance, is here today to discuss the system report findings and answer any questions that the Board may have.

**Title IX Coordinators (TIXCs)**

MHA reported that at some institutions the TIXCs are doing the bulk of investigations. OCR guidance warns institutions to avoid potential conflicts of interest, and recommends that the role of the TIXC is to ensure that policies and regulations are followed, but should rarely investigate TIX claims. This presents challenges primarily for the smaller institutions with limited resources. BOR is currently working with the Title IX leadership from the institutions to identify whether a model that allows either formal or informal sharing of investigators between institutions

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**RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR**

Information and discussion.

is a feasible solution.

The report also suggests each institution create a formal TIX committee composed of various divisions across the institution to advise the TIXC on policy issues. In addition, there is a recommendation that the TIXCs meet regularly to discuss issues, share ideas and leverage the expertise in the system. The BOR Title IX Coordinator, Ms. Kayla Bastian, has started facilitating regularly scheduled TIXC calls to discuss training, compliance issues, policies, and processes and to share ideas and best practices. Ms. Kayla Bastian and Ms. Molly Weisgram are planning a TIXC retreat for summer 2016.

### **System Support of the TIX Program**

MHA notes that the system office could provide support in several areas relating to consistency in processes. They suggest that the creation of scripts, checklists, draft letters, templates and other tools that could be located in a central repository may help facilitate the TIX investigation process. In addition, the report recommends that BOR could add value by providing the campuses with the following support and training:

1. Develop a Memorandum of Understanding (MOU) framework for the institutions to build upon, and help guide the institutions to developing an MOU that comprehensively addresses how best to service complainants within the campus disciplinary system and the criminal justice system;
2. A system template for the Notice of Rights and Options;
3. A system Notice of Non-Discrimination to be used consistently across all institutions;
4. Lead a review of Clery Act compliance across the Regental system;
5. Targeted training for Title IX Coordinators, investigators and Clery Act reporters;
6. Lead an effort to develop an empirically sound Title IX climate assessment survey;
7. Identify sources of confusion by Title IX Coordinators in linking BOR policies to campus processes.

### **Title IX Policy Review**

MHA provides feedback on SDBOR Title IX policies. The primary policies reviewed were BOR Policy 1.17, 1.17.1, 1:18 and 3.4. General feedback states that the policies are overly legalistic and difficult to translate to procedures that are easily understood by the staff administering them.

### **BOR Policy 1.17 – Harassment including Sexual Harassment**

MHA recommends that this policy be modified to include elements that are typically seen in sexual assault related policies at other institutions, for example, a statement that the policy applies to assaults that occur off campus if there are any on-campus effects from the assault. The report also notes that the policy covers not only harassment based on characteristics protected by law, but also covers harassment “on other grounds”, and recommend narrowing the scope and include only harassment based on protected characteristics. In addition, the policy should have a clearer statement regarding non-retaliation.

### **BOR Policy 1.17.1 – Prevention of Sexual Assault, Domestic Violence, & Stalking**

MHA notes that this policy does not contain information that is often found in sexual assault related policies, but they found it commendable that the policy included the new VAWA regulations. Recommendations were made to change the title of the policy to include “prohibition” and not just prevention, additionally, the policy should include an all-inclusive list of sanctions as required by the regulation.

### **BOR Policy 1.18 – Human Rights Complaint Procedures**

MHA makes primarily editorial recommendations regarding the technical language and changes to phrases used in the policy. In addition, the report suggests that the disciplinary section should have an all-inclusive list of disciplinary actions to be compliant with federal guidelines. In addition, they recommend some minor language changes, for example, using the term “accused” instead of “respondent”.

### **BOR Policy 3.4 – Student Conduct Code**

The report recommends that the student code should clarify whether or not mediation or informal resolution could be used in cases relating to TIX allegations. In addition, the report noted that the student code provides a right of cross-examination and note that OCR guidance strongly discourages direct cross examination of complainants by respondents in sexual violence cases, and advises SDBOR to determine whether it wishes to add language excepting sexual violence cases from the “direct cross examination” procedure. Ms. Weisgram and Mr. Costa have been leading a working group to make revisions to BOR Policy 3.4 – Student Conduct Code and proposed changes have been made to incorporate the MHA recommendations.

Ms. Weisgram, Mr. Costa and Ms. Bastian have also started an internal review of BOR Policies 1:17, 1:17:1, and 1:18, and are in the process of establishing working groups with campus representation. The working groups will include individuals from human resources, campus

security, Clery Act reporters and Title IX coordinators to review and revise BOR Policies 1:17, 1:17:1, and 1:18.