



CAMPUS COUNSEL

A legal blog written for administrators, HR professionals, in-house counsel, and deans at colleges and universities

Baylor University's Title IX Admissions – True Contrition or Preemptive Strike?

JUNE 17, 2016

Last week, Baylor University engaged in an unprecedented move when it published on its own website the findings and recommendations of an outside law firm, hired by the University in August 2015 to conduct an “independent and external review” of Baylor’s “institutional response to Title IX and related compliance issues through the lens of specific cases.”

Based on a “high-level audit of all reports of sexual harassment or violence for three academic years” beginning in 2012, the outside law firm concluded that there was “fundamental failure by Baylor to implement Title IX and VAWA.” [The 13-page report](#) condemns Baylor’s efforts to implement Title IX as “slow, ad hoc, and hindered by a lack of institutional support and engagement by senior leadership” and its student conduct processes as “wholly inadequate to consistently provide a prompt and equitable response under Title IX.” Among the many inadequacies noted in the report: Baylor’s consistent failure to support complainants through the provision of interim measures, including failure “to take action to identify and eliminate a potential hostile environment, prevent its recurrence, or address its effects for individual complainants or the broader campus community”; “examples of actions by University administrators that directly discouraged complainants from reporting or participating in student conduct processes, or that contributed to or accommodated a hostile environment; and one instance of actual “retaliation against a complainant for reporting sexual assault.” In addition, the findings “reflect significant concerns about the tone and culture within Baylor’s football program as it relates to accountability for all forms of athlete misconduct.” (Hence, the termination of Baylor’s head football coach, Art Briles, on the day the findings were published).

Baylor has agreed “to take additional steps to address the deficiencies noted in the findings of fact” and has already adopted the outside law firm’s [comprehensive recommendations](#) for implementing them.

Client Tip: *While Baylor is displaying obvious contrition for its egregious Title IX failures, its decision to publish the findings and recommendations on its website may also be strategic. By taking responsibility for its Title IX failures, Baylor got to control the timing of the release to late-May, after the May 1 deadline for admitted applicants to decide whether to*

attend the University. Publishing the findings and recommendations may also be an attempt to minimize the scope of-if not completely eliminate-any investigation undertaken by the U.S. Department of Education's Office of Civil Rights ("OCR"). However, it is possible this strategy will backfire, as the findings can be used as evidence of deliberate indifference by the referenced complainants in private lawsuits against the University for monetary damages. Therefore, colleges should proceed with caution before following Baylor's lead in publishing reports and recommendations on their websites prior to OCR intervention.