Assessment of Ramapo College of New Jersey’s Sexual Misconduct Policy and Resolution Procedures

Phases One and Three

July 1, 2015

FINAL REPORT

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Background on D. Stafford & Associates

D. Stafford & Associates (DSA) is a professional consulting firm specializing in campus safety, campus security, and law enforcement issues on college and university campuses, including specialization in Clery Act and Title IX compliance issues. Services offered by the company include comprehensive audits of Clery compliance records and the institutional process/methodology in place to appropriately comply with the Clery Act; assessment, rewrite or formulation of sexual harassment and sexual misconduct policies and procedures that demonstrate compliance with the Clery Act and Title IX; external investigations of sexual misconduct on behalf of institutions; assessment or rewrites of institutional emergency response policies and procedures, including the facilitation of table top or full scale exercises in compliance with the requirements of Higher Education Opportunity Act (Clery); search services for the positions of Chief of Police, Director of Public Safety, Clery Compliance Officers, and Title IX Coordinators; and training, both on site at client institutions as well as in courses offered at various locations around the United States, on all facets of safety and security issues facing higher education administrators. DSA is poised to aid clients in reaching compliance with the many complex and nuanced requirements of Title IX and the Clery Act.

DSA is available to assist Ramapo with implementation of the recommendations contained in this report, including but not limited to: Campus Security Authority Online Training Program; Responsible Employee Online Training Program; and Title IX investigatory training.

Background on Federal Law and Regulatory Guidance—Intersection Between Title IX and the Clery Act: A Helpful Overview

The Jeanne Clery Disclosure of Campus Security and Crime Statistics Act (the “Clery Act” or “the Act”) is a twenty-five year old federal law named for Jeanne Clery, a first year college student at Lehigh College (PA) who was raped and murdered in her residence hall room in 1986. The law requires colleges and universities who receive federal financial aid to disclose certain crimes reported to certain employees and local police occurring in particular geographical areas on an annual basis and was intended to promote campus safety and security awareness. Since the passage of the original law in 1990, the Act has been amended six times, most recently in 2013 when the Violence Against Women Reauthorization Act (VAWA), specifically, in Title III, Section 304, was passed and the final regulations were released in 2014. As a result of the amendments to the Clery Act, institutions now have even more significant and complex requirements with regard to compliance in several areas, but especially as it relates to policies, procedures and reporting requirements with regard to sexual assaults on campus.

There are three requirements each institution of higher education who receives Title IV funding must understand and incorporate to ensure they are meeting the requirements of the Act. These three requirements are: 1) whether or not a there was a Clery-reportable offense (there are 15 identified by the U.S. Department of Education) 2) reported to a Campus Security Authority (CSA) and, 3) that occurred in the institution’s Clery-reportable geographic area (there are three categories defined by the U.S. Department of Education (ED) to consider when assessing whether or not a location falls within an institution’s geography.) Hence, institutions will be out of compliance if they have not appropriately identified their CSAs and Clery-reportable geography, advised the CSAs of their duty to report the Clery crimes (including sexual assault), and trained the CSAs on how and to whom to report.
Title IX of the Education Amendments of 1972 ("Title IX") states 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."\(^1\) The law doesn’t just apply to higher education, rather it provides that no person be discriminated against on the basis of sex in any educational program or activity associated with an elementary, middle school, high school, school district or higher educational program that receives federal financial aid. Sexual harassment that creates a hostile environment is a form of discrimination and a violation of Title IX.\(^2\)

The U.S. Department of Education lays out specific Title IX requirements for responding to sexual harassment/sexual violence. These guidelines are comprehensive and should be reviewed in full by all colleges and universities (annually) to ensure compliance. In general, the broad themes offered by the U.S. Department of Education include\(^3\):

1. If sexual harassment/violence has occurred, a school must take prompt and effective steps to end the sexual harassment/violence, prevent its recurrence, and address its effects, whether or not the sexual violence is the subject of a criminal investigation.
2. A school must take steps to protect the complainant as necessary, including interim steps taken prior to the final outcome of the investigation.
3. A school’s grievance procedure must provide for students to file complaints of sex discrimination, including complaints of sexual violence. These procedures must include an equal opportunity for both parties to present witnesses and other evidence and the same appeal rights.
4. A school’s grievance procedures must use the preponderance of the evidence standard to resolve complaints of sex discrimination.
5. A school must notify both parties, simultaneously, of each outcome of the complaint.

Title IX isn’t about protecting one sex over another. Rather, it is about protecting all persons regardless of their sex from discrimination while in pursuit of their education, hence allowing all persons to benefit from the school’s programs and activities. And, the law is broad. According to ED, protection from sex-based discrimination in programs and activities associated with the institution protects both the students attending the institution as well as the employees who work there and include, but are not limited to: admissions, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, housing and employment (to include hiring, firing, demotion, promotion, sabbatical decisions, parenting

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1 See U.S. Department of Education, Office of Civil Rights at http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html

2 The applicable legal standards described herein are more fully discussed in “OCR’s 2011 Dear Colleague Letter on Sexual Violence,” which is available at http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html (Apr. 4, 2011). See also “OCR’s 2010 Dear Colleague Letter on Harassment and Bullying,” which is available at http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html (Oct. 26, 2010); “OCR’s Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties” at http://www.ed.gov/about/offices/list/ocr/docs/shguide.html (Jan. 19, 2001).

3 See footnotes 2 and 5 as sources of this information.
benefits, etc.). When a school accepts federal financial aid—any amount and to any unit of the institution—the requirements of Title IX are triggered for the entire institution.

**Geography**

Title IX does not make mention of geography and requires institutions to investigate or otherwise determine what occurred when an incident of sexual harassment (including sexual violence) is reported, no matter where an incident takes place. The goal of the inquiry is to determine, regardless of where the conduct occurred, whether the conduct was sexual in nature, unwelcome, and whether or not it occurred in the context of an educational program or activity OR is likely to have continuing effects on campus or in an off-campus educational program or activity. This is particularly important to note as institutions should be assessing all complaints to determine if the reported conduct has the potential to create an ongoing hostile environment on campus or in an off-campus educational program or activity associated with the institution. If the institution determines that there could be continuing effects related to the off-campus conduct reported, then it has a duty to respond in accordance with its’ established policies and procedures.

The following example of a possible complaint will provide a better understanding and note the Clery Act and Title IX implications. Kelly is a student at ABC College in Silver Spring, MD, and complains to the Title IX Coordinator at her institution that she was sexually assaulted on spring break in Florida by another ABC College student, John Doe. The incident being reported is a Clery-reportable offense and is being reported to a CSA, but it is not reported to have occurred in your Clery-reportable geography, hence no duty exists to capture the statistic or to assess for purposes of issuing a Timely Warning Notice. However, the Title IX Coordinator would have a duty, in this example, to investigate or otherwise determine what occurred in the reported incident because both the complaining party and the accused party are students at the same institution, the complaining party does have the potential to experience the continuing effects of the sexual harassment (sexual assault), and the off campus conduct does have the potential to create a hostile environment on campus, especially given the egregious nature of what is being reported. The Title IX Coordinator should follow the established policies and procedures for responding to and resolving complaints of sex-based discrimination and should take steps to protect the complainant, the same as if the reported conduct had occurred on campus.

**Reporting Requirements for Employees**

Title IX and the Clery Act both require certain employees to report information reported to them to the reporting structure of the institution. The Department of Education defines who Campus Security Authorities (CSAs) are in the *The Handbook for Campus Safety and Security Reporting*, but the Office for Civil Rights provides no such exhaustive list of who is “in” and “out” for purposes of reporting incidents of sexual misconduct under Title IX (see Table A on page 6 for a list of CSAs as provided by the aforementioned Handbook and broad categories listed for Responsible Employees). The Office for Civil Rights defines a “Responsible Employee” (RE) as any employee who:

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4 See the U.S. Department of Education’s Office for Civil Rights [http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html](http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html)

5 See the U.S. Department of Education, Office for Civil Rights *Questions and Answers on Title IX and Sexual Violence* located at [http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf](http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf)

6 See the Department of Education, Office for Civil Rights *Questions and Answers on Title IX and Sexual Violence* located at [http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf](http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf)
has the authority to take action to redress sexual violence;
who has been given the duty to report to appropriate school officials about incidents of sexual violence or any other misconduct by students; OR
whom a student could reasonably believe has this authority or responsibility.7

Consequently, it is up to each institution to determine who their REs are, to notify them of their duties under Title IX, and to appropriately train them. (The same would hold true for employees who are determined to be CSAs.)

Under Title IX, REs are those employees (full time, part time and volunteers) who are designated by the institution to report incidents of sexual misconduct to the reporting structure of the institution, to include the Title IX Coordinator.8 “Sexual Misconduct” is frequently used as an umbrella term by colleges and universities in their institutional policies prohibiting sex-based discrimination and has become a bit of a buzz word around the nation. The term is, at minimum, describing acts of sexual harassment and sexual assault, which may be a violation of state or federal criminal law, but are also violations of students’ and employees’ civil rights and violations of the institution’s code of conduct and employee handbooks. Sexual misconduct involves verbal, nonverbal and physical acts of a sexual nature that are unwelcome and have the potential to create a hostile environment on campus.

So that schools may take prompt steps to stop the harassment, prevent its’ recurrence and remedy the effects (all requirements of Title IX), if personally identifiable information is shared with a RE regarding an incident of sexual assault, that identifying information must be shared with the Title IX Coordinator. It is important to note that since Campus Police or Public Safety Officers are employees of the institution, identifying information about the complainant, respondent, and incident shared with those Officers must be shared with the Title IX Coordinator. If the public safety unit is a sworn law enforcement entity, OR local law enforcement is criminally investigating, and the complainant is cooperating with a criminal investigation, then the Title IX (administrative) investigation can pause for up to 10 days to allow law enforcement9 to conduct initial fact-finding in the matter (not complete the entire investigation.) When initial fact-finding

7 Ibid.
8 Each institution of higher education who receives federal financial aid is required to designate at least one individual for oversight of complaints of sex-based discrimination. This individual is typically referred to as the institution’s Title IX Coordinator. The Department of Education has stated that an institution can have multiple coordinators as long as individuals’ titles clearly designate the segment of the campus community in which their oversight responsibility pertains. For example, it is not unusual for an institution to have multiple individuals working to comply with the requirements of Title IX; however, some individuals will only oversee student complaints and resolution processes while others oversee complaints and resolution processes specific to faculty. Some institutions also may also choose to appoint an administrator to oversee complaints of staff, third parties, vendors, or other visitors. When annually notifying your community of the availability of a policy and resolution procedure to handle complaints of sex-based discrimination, the institution should also identify the Coordinators and explain which Coordinator is in place to respond to complaints based on the reporting party’s status as faculty, staff, student, third party, etc.

9 The administrative investigation can pause for 3-10 days pursuant to any criminal investigation being conducted by sworn law enforcement, to include those conducted by campus, local, state, or federal law enforcement. The applicable legal standards described herein are more fully discussed in “OCR’s 2011 Dear Colleague Letter on Sexual Violence,” which is available at http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html (Apr. 4, 2011).
is concluded, then the Title IX Coordinator should be advised so that the administrative investigation into the complaint can begin.11

Table A

<table>
<thead>
<tr>
<th>Clery Act Campus Security Authorities</th>
<th>Title IX Responsible Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ Campus Law Enforcement and Public Safety</td>
<td>✓ Faculty/Teachers</td>
</tr>
<tr>
<td>✓ Resident Assistants, Resident Directors, and Community Directors</td>
<td>✓ Law enforcement unit employees</td>
</tr>
<tr>
<td>✓ Dean of Students Office (Leaders in Student Affairs and Housing)</td>
<td>✓ Administrators</td>
</tr>
<tr>
<td>✓ Athletic Directors and Coaches (including Assistant AD’s and Assistant Coaches)</td>
<td>✓ Counselors</td>
</tr>
<tr>
<td>✓ Faculty or Staff Advisors to Student Organizations on Campus</td>
<td>✓ General Counsel employees</td>
</tr>
<tr>
<td>✓ Access Monitors</td>
<td>✓ Health personnel</td>
</tr>
<tr>
<td>✓ Contract Security Officers and Event Security Officers</td>
<td>✓ Resident advisors</td>
</tr>
<tr>
<td>✓ Staff who provide safety escorts on campus (professional and student staff)</td>
<td></td>
</tr>
<tr>
<td>✓ Staff in the Student Activities Office (handling extracurricular activities)</td>
<td></td>
</tr>
<tr>
<td>✓ Coordinator of Greek Affairs (or related positions)</td>
<td></td>
</tr>
<tr>
<td>✓ Administrators at Branch/Satellite/Separate Campuses</td>
<td></td>
</tr>
<tr>
<td>✓ Study Abroad Coordinators</td>
<td></td>
</tr>
<tr>
<td>✓ Title IX Coordinator(s)</td>
<td></td>
</tr>
<tr>
<td>✓ Director of the Student Health Center</td>
<td></td>
</tr>
</tbody>
</table>

Incidents of Domestic Violence, Dating Violence and Stalking

Under the Clery Act, institutions now must capture and report statistics for the offenses of domestic violence, dating violence and stalking. The U.S. Department of Education advises institutions that even if the offenses are not violations of state law in the applicable jurisdiction

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10 The “administrative” investigation means any investigation conducted by the school that is not criminal in nature. Some schools refer to their administrative investigations as “civil rights/Title IX investigations,” some refer to them as “sexual misconduct investigations, and “while others refer to them as “conduct investigations.” The term “administrative” is meant to refer to all of these.

11 This information is referenced in OCR’s 2011 Dear Colleague Letter on Sexual Violence, which is available at http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html
that incidents that meet the definitions as provided by ED are in fact “Clery crimes” for purposes of complying with the Clery Act.\textsuperscript{12}

Title IX requires institutions to evaluate complaints of unwanted verbal, nonverbal and physical conduct of a sexual nature and to determine if they have been perpetrated against a person based on their sex. Sexual harassment and sexual assault are fairly straightforward in terms of administrators identifying these acts as potential violations of Title IX, however the offenses of domestic violence, dating violence, and stalking are not so straightforward. When is an incident of dating violence perpetrated against a person based on their sex? When should an institution utilize their sexual misconduct policy and procedures for resolution of that complaint versus the student code of conduct? It is important to note that the offenses of sexual assault, domestic violence, dating violence and stalking are all power and control crimes, and consequently, many intersections exist between them. As a result of the challenges that exist in determining when one of the four offenses was perpetrated against a person based on their sex as well as because of the recent amendments to the Clery Act, some institutions are choosing to add the offenses of domestic violence, dating violence, and stalking as prohibited conduct in their institutional sexual misconduct policy. There are benefits to doing so in that Title IX mandates the “preponderance of the evidence” standard in cases of sex-based discrimination. Therefore, if an institution wraps all four offenses into their sexual misconduct policy and applies the evidentiary standard of preponderance, then they can be assured that the proper standard of evidence is being used for civil rights investigations that may involve Clery crimes that are determined to be sex-based. They can also train their employees to report any of the four to the institution’s Title IX Coordinator and subsequently to Public Safety to strengthen the chances that the offense will be appropriately classified and counted in the statistics.

\textbf{Updating Policies and Procedures to Comply with the Clery Act & Title IX}

Each institution of higher education should have at least one policy and resolution procedure for responding to complaints of sex-based discrimination. Many institutions that DSA has audited have four or five policies for managing these complaints and some institutions had no idea how many policies and procedures they had until asked\textsuperscript{13}. This is problematic. With the requirement of Title IX to broadly distribute an annual notice of nondiscrimination and to have a process for resolving complaints, institutions (especially the Title IX Coordinator) should have a single policy\textsuperscript{14}; know their policy’s procedures for the intake of complaints; understand procedurally what the institution says it will do to ensure the safety of complaining parties; prohibit retaliation (always prohibited under Title IX, now prohibited under the Clery Act as well); and resolve complaints equitably and promptly using set procedures that are applicable to persons complaining of sex-based discrimination.

\textsuperscript{12} See \url{http://www.gpo.gov/fdsys/pkg/FR-2014-10-20/pdf/2014-24284.pdf}

\textsuperscript{13} DSA conducts independent audits and reviews of institutions’ Title IX policies, practices, education and prevention programs, and resolution processes. DSA can also deploy external investigators to an institution to conduct the civil rights investigation on behalf of the campus when a sexual assault is reported or can assess (post-incident) the law enforcement (campus or local) response to a complaint of sexual assault, domestic violence, dating violence, or stalking.

\textsuperscript{14} If an institution decides to have more than one policy, each author of each individual policy should be proficient in his/her knowledge and understanding of the substantive and procedural requirements of the Clery Act, Title IX, Title VII, ADA, the Pregnancy Discrimination Act, and FERPA, at a minimum.
Further, with the substantial changes to the Clery Act resulting from the implementation of VAWA, institutions should now take their current policies and resolution procedures related to sexual misconduct and revise them to align them with the new requirements. Institutions should take care to ensure that each required policy statement required under the Clery Act is not in conflict with the existing procedures the institutions have utilized under Title IX. Further, a careful review of the procedures should be conducted so when Public Safety or the Police Unit is constructing the institution’s Annual Security Report, they are providing true and accurate statements.
Relationship and Scope of Work Between DSA and Ramapo College of New Jersey

DSA has been retained by Ramapo College of New Jersey (hereinafter referred to as “Ramapo” or “the College”) to engage in a number of services as it relates to the comprehensive assessment of policies, procedures and training related to sexual misconduct, alcohol and other drugs and bystander intervention as explained further in this report.

In order to best approach this particular scope of work, DSA elected to break the project into phases. This report focuses specifically on Phase One and Phase Three of the project to allow the College to digest the information in segments as it relates to the scope of each of the phases. Phase Two focused on the educational and prevention programs offered by the College, so recommendations related to that particular scope of the project will be included in a separate report. Since Phases One and Three specifically relate to student policies and procedures for the intake and resolution of incidents of sexual misconduct, they have been combined into one report.

Phase One and Phase Three Audit Scope:
Title IX Policy Development and Review and Student Life Policies/Procedures/15 Training Regarding Alcohol Education, Sexual Misconduct and Bystander Intervention

Phase One
- A comprehensive audit of Title IX compliance; includes a review of the existing Sexual Misconduct Policies/Procedures and Title IX Procedures and all relevant supporting documents.
- A review of the College’s organizational structure in managing Title IX cases.
- Discussion of formulation of a unified Title IX policy/process that covers all aspects of Title IX from education and prevention to informal and formal resolution.

Documents assessed in Phase One included the following:
- Policy Prohibiting Discrimination By or Against Students
- Student Handbook 2014-2015

Phase Three
- Assessing the manner in which College staff are trained to manage and report sexual misconduct, alcohol and other drug education, and bystander education.
- Reviewing the disciplinary process used for cases of sexual misconduct.
- Identifying where strengthened or enhanced programming is needed to make recommendations for the modes of delivery of these programs.
- Reviewing how the College enforces policies related to sexual assault and alcohol (i.e., Public Safety and Student Life practices).

15 Training Regarding Alcohol Education and Bystander Intervention will be addressed in the companion report to this one as Ramapo’s work in this area was investigated in length during Phase Two. The manner in which staff members are trained regarding reporting sexual misconduct is addressed in this report.
Deliverables for Phases One and Three:

✓ Final Report outlining the findings and assessments in scope of work (this report)

✓ Document revision of the “Student Code of Conduct” and the “Policy Prohibiting Discrimination By or Against Students” to assure compliance and best practices for all relevant policies, procedures and support materials using the Microsoft Word Track Change function. (The track changed version shows which policy statements and other required language are present as well as what language is missing from the policies/procedures.)

✓ DSA drafted a new “Sexual Misconduct Policy Governing Students” that is compliant with the substantive and procedural requirements of the Clery Act and Title IX. This draft policy pulls together into one place policies and procedures that currently exist throughout Ramapo’s student handbook and also takes into account the missing policy statements and other language missing from the “Policy Prohibiting Discrimination By or Against Students” so that the institution has a new umbrella policy governing all forms of sexual misconduct where the accused party is a student, that meets the current requirements of the U.S. Department of Education, and encompasses best practice from institutions of higher education from throughout the United States.

Stakeholder Calls for Phases One and Three

In-depth stakeholder calls for Phases One and Three were conducted with the following individuals by telephone in order to better understand campus culture, structure, the policies and procedures and how those policies and procedures are being practically applied at the College:

- Dr. Peter Mercer, President
- Michael Tripodi, General Counsel/Vice President
- Melissa Van Der Wall, Acting Dean of Students, Director of Affirmative Action and Workplace Compliance, Title IX Coordinator
- Officer David Warbrick, Investigator, Department of Public Safety, Deputy Title IX Investigator
- Vincent Markowski, Director, Department of Public Safety
- Kathleen Hallissey, Director of Student Conduct
- Sergeant Richard Marsh, III, Investigator, Department of Public Safety, Deputy Title IX Investigator
- Matthew McMahon, Assistant Director of Student Conduct

Interviews from Phase One and Three

The interviews provided a glimpse into the above-mentioned offices and their operations. The key points gleaned during these interviews are as follows:

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16 It should be noted that parts of this report were re-written as a result of stakeholder calls with Phase Two participants due to information gleaned during some of those calls. Consequently, while this report reflects the stakeholders most directly involved in this phase of the report and assessment process, some recommendations would have been obtained from stakeholders not listed in this report.
a. The commitment to the students at Ramapo was evident in all of the interviews. Ramapo administration and staff have clearly embraced their responsibility to this special educational environment. Several staff members understood the bigger picture of addressing the role of alcohol and bystander intervention in conjunction with the need to draft a comprehensive sexual misconduct policy.

b. The consultant found that while there was a process in place to manage complaints of sexual misconduct, a better organized infrastructure should be identified and implemented. While a handful of key administrators understood the intake and resolution processes currently in place, interviewees used past incidents as examples of how something was handled versus actually discussing standardized processes known to the campus community that have been implemented.

Additionally, while a very small sample, none of the three students interviewed were aware of 1) what constituted sexual misconduct at Ramapo; 2) to whom they should report sexual misconduct; 3) the difference between “private” resources and “confidential” resources (hence who they could report to who would have a duty to act under federal law and regulatory requirements vs. who they could tell who would not have such a duty); and 4) what to do if they were sexually assaulted, or the victim of an incident of dating violence, domestic violence or stalking, all offenses identified around the country now as “sexual misconduct” for purposes of institutional compliance with Title IX.

Also, incidents of sexual assault, dating violence, stalking and domestic violence are now “Clery-crimes” for purposes of collecting statistics for inclusion in the institution’s Annual Security Report, Daily Crime Log and for purposes of assessing for the issuance of a Timely Warning Notice (Clery amended the 2013 Reauthorization of the Violence Against Women Act.)

Lastly, the Director of Affirmative Action and Workplace Compliance, who also serves as the Interim Dean of Students, has the sole responsibility of overseeing complaints of sex-based discrimination (hence, compliance with Title IX.) Besides the voluminous workload that these positions carry independent of each other, recent guidance has suggested that the Title IX Coordinator not be the Dean of Students17 at an institution. We are recommending an infrastructure further in this report with regard to where the Title IX Coordinator and supporting positions should sit as well as the roles that each position plays to support compliance with regard to Title IX.

There appears to be uncertainty as to what role Public Safety plays with regard to the intake and resolution of complaints of sexual misconduct. On one side, as a non-sworn law enforcement entity, Public Safety is certainly able to be the investigative arm of the College’s efforts in determining what occurred when cases of potential sex-based discrimination are reported, but on the other side, while they are being used for investigative support, there does not appear to be standardized processes for the sharing of information between that unit and Student Affairs nor any specificity to the investigative process fulfilling the needs of the current process. (The consultant is unsure of whether this is due to a lack of a clear policy and defined roles or due to

17 It is important to note that the Interim Dean of Students at Ramapo is also the institution’s Director of Affirmative Action and Workplace Compliance; however, this is a temporary arrangement.
the fact that the way Public Safety receives information/reports/is assigned investigations is inconsistent.)

c. An interesting and consistent theme in many of the interviews was the stakeholders view that there was a need for strong involvement and support from the “top down” at Ramapo as it relates to this topic—i.e., stakeholders believe that the President and Cabinet should make a strong, public prohibition into any form of discrimination on campus but must do so along with the dissemination of a clear sexual misconduct policy and resolution processes related to sexual harassment and others forms of sexual misconduct on campus; the institution should continue to hold offenders accountable and protect the safety and confidentiality (as able) of complaining parties; the institution should engage in deliberate, intentional and sustainable educational programming and ongoing awareness activities throughout the student’s four years (and beyond new employment activities for faculty and staff) using not only online training programs but live training delivered in a multi-disciplinary manner; and should seek to further engage faculty in the process of education by aiding them in understanding how to tie the topics of sexual violence, alcohol and other drugs and bystander intervention into the academic experience of the students via their courses through the various disciplines. Ramapo appears to be a very relational place. Many stakeholders felt that faculty were not engaged enough in this dialogue, lacked employee training regarding sexual harassment themselves, and did not have a clear understanding of what to do if a student disclosed he/she had been the victim of sexual violence. Some noted that faculty members would like to learn more about these offenses themselves as well as how to respond to a student who is the survivor of sexual assault. More with regard to the education and training of faculty will be addressed in the Phase Two report.

Recommendations from Phase One and Phase Three

1. Improve upon Ramapo’s existing structure by maintaining that the Director of Affirmative Action and Workplace Compliance serve as the Title IX coordinator and continue to report to the President. The improved structure designates at least this individual as the institution’s Title IX Coordinator, appoints Deputy Coordinators and Investigators, and implements an institutional infrastructure to ensure that complaints of sex-based discrimination are responded to promptly, fairly, and within the requirements under Title IX and the Clery Act.

Title IX Structure

The effectiveness of a sexual misconduct policy begins with a strong and clear structure outlining the roles and responsibilities of key staff members on campus.

a. **Roles:** There are four key roles that need to be identified in all Title IX structures.

1. **Title IX Coordinator:** This person is responsible for “overseeing all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints” (Office of Civil Rights). The person needs to continue to have direct access to the President, regardless of her/his reporting lines for other responsibilities. It must be understood and supported that
the Title IX Coordinator is the person authorized to make decisions regarding Title IX and staff, regardless of title. In addition, the Title IX Coordinator’s name and contact information must be widely publicized. The Coordinator must be available and willing to meet with community members on these matters. The Coordinator needs to be a person of authority that is accessible to students. The Title IX Coordinator should not be an individual with a potential conflict of interest. In other words, the Coordinator needs to be immune to pressures or responsibilities that could be in conflict. The person needs to be able to objectively analyze a situation. The Office of Civil Rights uses General Counsel and Hearing Board members as examples of individuals who should not be Title IX Coordinators (and best practice around the country is beginning to argue that Chief Conduct Officers and Chief Student Affairs Officers, like the Dean of Students, are also not ideal positions to serve as the Title IX Coordinator). Those positions have the potential to create a charge of bias.

The Coordinator’s responsibilities may include, but are not limited to:

a. Policy development, implementation, and review: The Coordinator is responsible for ensuring the policies of the College are in compliance and are being utilized in the manner expected. In addition, policies, procedures, and practices should be reviewed annually to ensure compliance.

b. Notification to the community: The Coordinator is responsible for notifying the community, in writing, about the policy and procedures. This needs to be done annually.

c. Oversight of the process: The Coordinator should not be the investigator or the individual designated to determine sanctions/outcomes. The Coordinator’s role is to ensure that complaints are being handled and the process is followed.

d. Case review: The Coordinator should be reviewing every case to ensure the institution has made every effort to eliminate the harassment, prevent its recurrence, and address its effects. In addition, it is the Coordinator’s responsibility to determine whether the complainant is entitled to a remedy under Title IX. A log should be kept of all complaints, informal or formal.
   1. Trend analysis: The Coordinator should be responsible for analyzing and responding to trends in relation to harassment.
   2. Training: It is the Coordinator’s responsibility to ensure that all individuals with a role in the policy are adequately trained.
   3. Education: The Coordinator is responsible for ensuring that the designated offices/staff are providing educational programs as outlined in the Clery Act as amended by the Violence Against Women Act.
   4. Clery compliance: The Coordinator is responsible for ensuring that staff are reporting cases of sexual assault, domestic violence, dating violence, and stalking to Public Safety in order for a timely warning assessment to be made and for inclusion in the Annual Security Report.
2. **Deputy Title IX Coordinators**: Deputy Title IX Coordinators are individuals who assist the Title IX Coordinator in overseeing the processes connected with Title IX. Deputy Title IX Coordinators are individuals tasked with ensuring the integrity of the processes. Similar to the Title IX Coordinator, these individuals should be overseeing the staff who are implementing the processes or conducting the investigations. They should not be the investigators. They could be the individuals who accept an investigation report and make the decision on a response. For example, the Dean of Students would be a natural Deputy Title IX Coordinator. The position supervises the staff members who manage the student conduct process, Athletics, and the staff who manage much of the education regarding sexual harassment. The position’s counterpart in Human Resources and Employee Relations would also be a natural Deputy Title IX Coordinator. Specific recommendations are made in this report.

3. **Investigators**: While Ramapo currently has two Title IX investigators in Public Safety, it is recommended to develop a pool of investigators from across campus as discussed on the following page. This is an administrative investigation and is separate from a criminal investigation conducted by Mahwah Police or another local or state policing agency. These individuals should be capable of investigating complaints regardless of the accused status (faculty, staff, or student). These individuals will require extensive ongoing training and experience. They should not be Resident Advisors or Resident Directors because these positions do not have the requisite training to investigate these types of complaints. This level of investigation requires training and the ability to manage complex issues.

4. **Reporters**: Ramapo College has commenced identifying and training Responsible Employees during the Spring 2015 semester and advised them of their role in reporting incidents. Ramapo should monitor its list of Responsible Employees on an annual basis and annually convey to them their role in reporting incidents. The only individuals who are confidential resources on campus are licensed professional counselors and health care providers who are required to maintain confidentiality based on their licensures. Students need to be informed that a conversation with a staff or faculty member may be private but it is not confidential. A reporting structure needs to be more clearly identified. See suggested policy for more information.

b. **Recommended Structure**: The consultant is aware that the College has an Office of Affirmative Action and Workplace Compliance (AAWC) with a Director, designated as the Title IX coordinator, who reports to the President. The ideal structure would be to hire a new Director of AAWC with ancillary professional and support staff (as the current Director is also the Interim Dean of Students). The College will need a very strong Deputy Coordinator in Student Affairs with the knowledge, skills and abilities to carry out the institution’s Title IX responsibilities in this area, hence Melissa Van Der Wall, who appears to have these skills, should either be made the Dean of Students or serve in the Director’s role in AAWC. The Director, who should also continue to be designated officially as Ramapo’s Title IX Coordinator, could have ancillary responsibilities in regard to overseeing complaints related to discrimination due to race or disability. Many of the individuals interviewed indicated that there are not many cases each year. It is impossible to know at this point if this is due to the campus culture or a lack of reporting. Both of these are likely to have some impact. It is not unreasonable to think that a spike
will occur once the existing outreach program regarding reporting and response is strengthened and re-released as a result of this report. The issue of federal compliance is also not going to abate. Compliance with Title IX, the Violence Against Women Act, and the Clery Act continue to be complex and time consuming. The days of these items being a small part of a person’s job are over. The reality is that colleges and universities throughout the country have not been in compliance and there needs to be a commitment, such as the one Ramapo has shown, to provide the best services for students.

We recognize that filling a currently vacant Director’s position and adding ancillary professional and support positions requires taking into account a number of factors beyond the scope of this audit. It would be inappropriate for us to weigh in on the financial feasibility of such a position. Please note, all of our recommendations are position-based only and not connected to the actual individuals in the positions.

*Use of Existing Position in Affirmative Action and Workplace Compliance to Meet Need*

*DSA is aware that the Interim Dean of Students is trained in the investigation of complaints of sexual misconduct, however, no interviews were conducted with the Director of Human Resources or the Provost to determine their familiarity with the requirements of Title IX. Hence the consultant would recommend training these two positions and providing them annual training as required by the Clery Act.

We recommend that the Title IX Coordinator should continue to report to the President as the Director of Affirmative Action and Workplace Compliance. The Deputy Title IX Coordinators would work closely with this individual. As the diagram above shows, the Deputies would be the Dean of Students, a senior administrator in Human Resources and/or Employee Relations, and the Provost, or her designee. (*It is important to note that the current scope of work focuses on the Student Sexual Misconduct Policy and resolution procedures, not employment procedures, so while this structure is being recommended, the consultant has not aligned any employment*
policies and procedures with this structure. It is recommended that the institution determine, using their state policy, how to use the Deputy Coordinators when a faculty or staff member becomes the accused party). Designated staff in the investigator pool or Student Life and Human Resources/Employee Relations should manage investigations. In the future, depending on the caseload, a full-time investigator’s position could prove to be helpful. The Provost’s office plays a critical role in helping faculty understand their role in reporting incidents. It is also important for the Provost’s office to be a key player in the ongoing education of faculty. Employee investigations should, however, only come out of Human Resources/Employee Relations (faculty/staff that are accused) and Student Affairs (students that are accused). The Provost’s office should be kept informed, subject to confidentiality, throughout an investigation and be a participant in any interim actions or remedies taken.

1. **Dean of Students:** The major advantage to this position is the established recognition of undergraduate students as to the role of the Dean of Students. The second advantage is that Student Affairs manages one of the processes at this time. The disadvantage is the position does not have enough oversight over faculty, staff and students outside of Student Life. (Student complaints arising from students who may fall under the Center for Innovative and Professional Learning or other areas that are outside of the scope of “traditional” students would still be handled by the Dean of Students except the Dean of the College/Administrator in charge of the program where the program was housed would be informed of the progress of the investigation and the outcomes/results and can be conferred with throughout the process).

2. **Provost:** The major advantage to this position is oversight regarding the academic mission and employee relations (the unit that is responsible for administration of the faculty contract). Provost offices typically have some experience but are not experts in areas such as investigations and Title IX.

3. **Human Resources:** Human resource personnel are historically well versed in managing processes and complaints. Since, faculty and other staff would be managed through this department, this gives it a natural connection along with the Office of Employee Relations. The disadvantage, similar to the above, is whether or not students would feel a connection with this office. In examining all three options, this seems to be the best option using an existing position for a Deputy Coordinator. We recommend both Human Resources and Employee Relations be identified in this role.

**Investigators:** We do not recommend that Public Safety solely continue investigating incidents of sexual misconduct or that you hire part time or full time investigators. You are encouraged to pull from your current talent pool to find persons with an interest in this area, train them, and place them in a pool. As investigative needs come about, the Investigator can be tasked with investigating that particular case. There are times when Ramapo may decide to assign two Investigators based on the complexity of the matter. Alternate, if a very complex case comes about, we recommend Ramapo considering using a combination of Deputy Coordinators and Investigators OR outsourcing that internal investigation to a third party (private qualified attorney or consulting firm specializing in campus sexual victimization cases and the compliance intersections).

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18 It is important to note that Ramapo has a separate employee relations unit for AFT Union faculty and professional staff.
**Title IX Practice**

There appears from those interviewed to be some uncertainty as to certain aspects of Title IX and the Violence Against Women Act. Some of this may be a misuse of terms as well as interpretation ambiguity.

a. *Notice:* Notice is when “a responsible employee knew, or in the exercise of reasonable care should have known, about the harassment. A responsible employee would include any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials-sexual harassment, or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility.” (Office of Civil Rights, 2001 Guidance)

Notice does not need to be in writing nor does it need to involve a “formal report.” Throughout the review, staff members have used the term “informal report.” We recommend that Ramapo make efforts to discontinue the use of this colloquial term as it implies that the information is not official and cannot be used. Once a responsible employee is informed, either in writing or verbally, of an alleged harassment situation, the institution must begin to investigate. This investigation is separate from any criminal investigation.

b. *“Confidential” vs “Private”:* In recent conversations between DSA and the Office for Civil Rights (OCR), it is clear to us that OCR expects that any incident reported to a responsible employee must be reported to the Title IX Coordinator and that the responsible employee is required to provide the name of the victim and the accused, if they know the names. There seems to be a substantial issue at Ramapo with students and employees understanding who is “confidential” for purposes of prompting a college response and who is “private.” DSA suggests that Ramapo continue their efforts with regard to the identification and training of Responsible Employees. Additionally, marketing material should be designed that explain to community members exactly where they can go on campus that is “confidential,” hence no identifying information or statistic will be shared with the College versus persons who have a duty to report (like all faculty).

c. *Annual Notice and Written Explanation of Rights:* It is required that an annual notice is sent to students, faculty, staff announcing this policy and providing information about existing counseling, health, mental health, victim advocacy, legal assistance, financial aid and other services available for victims both on-campus and in the community. A “Written Notice of Rights” is additionally required under the Clery Act to be provided to any victim of sexual assault, dating violence, domestic violence or stalking. This should continue to come from the Title IX Coordinator.
**Student Conduct Process** (Having reviewed the disciplinary process used at Ramapo for cases of sexual misconduct)

The Office of Civil Rights has indicated that an institution may use the student conduct process to resolve such complaints. This has been common for many years at most institutions. This is also the source of many of the complaints that are made to the Office for Civil Rights. As one will see in the suggested policy, we are not recommending that you use a hearing process for complaints of sexual misconduct (even though we know your stakeholders prefer the use of the hearing board model). We are recommending you use a streamlined single administrator decision-making process that is more in-line with the Office of Civil Rights’ own process.

Student conduct hearings are problematic for several reasons. Despite efforts on the part of an institution, hearings will be seen as adversarial and will be compared to the judicial (criminal) process. Student conduct processes are administrative processes to address issues of College policies and expectations; they are not, and should not be, criminal processes. In addition, conduct processes are meant to be educational and developmental. The goal of a process is to aid a student in repairing the harm caused and to position herself/himself to be better able to succeed. There should be a minimum number of situations that result in the ending of the relationship between the student and institution.

Sexual misconduct cases are not matters where the offense can be easily remedied, as the harm is so egregious. There is a growing feeling among student conduct professionals that hearings are unhealthy for both parties. If a complete, fair, and impartial investigation has occurred, bringing the parties together only serves the purpose of re-hashing an investigation that is complete. It also creates an emotional and stressful environment for both parties with no positive gain. Finally, boards with students and faculty as members are challenging (and now, as a result of the Violence Against Women Act, require annual training). The turnover of board members each year does not allow for consistency, and sexual misconduct is such a complex and nuanced topic that those making the decision should have an expertise in such decision-making. Students on disciplinary boards are thought to create a potential barrier to students cooperating with the conduct process as some students may fear being seen, perceived, and judged or the like by peers. Lastly, sanctioning should continue to be based on the specifics of each case, but also in light of benchmarking that the institution is engaged in to ensure consistency across all sexual misconduct cases.

2. Develop a centralized content-filled website regarding Sexual Misconduct at Ramapo.

Though there are a number of places one can find information about sexual harassment on the Ramapo website, there is no cohesive message or process in place that the consultant could identify that would easily allow students or employees to find information related to the College’s intake, resolution procedures, or resources applicable to each population. For example, entering terms such as “sexual harassment,” “rape,” and “sexual misconduct” into the search engine for Ramapo resulted in links to a mixture of various policies and procedures, but also resulted in a return of information on academic lecture series, event, and student organizations. Information regarding sexual misconduct should be contained in one home location with links directing individuals there from other sites. For example, Ramapo could develop a website containing the policy, procedures, and applicable on- and off-campus resources as well as educational materials. Sites, such as Public Safety, Student Affairs, Human Resources, etc.,
could have links on their own sites that direct persons to the College’s primary site. Having one main site removes the possibility of old information remaining on the web and also helps in marketing and education when individuals can continuously refer to one site. Most importantly, there is one, consistent message. Once a new policy is adopted by the institution (or the old policy updated to reflect compliance with Title IX and the Clery Act), the website could and likely should become the main place where all Ramapo constituents and all information needed with regard to this very important topic from policy info to the ability to report an incident anonymously.

3. Adopt the draft policy entitled “Sexual Misconduct Policy Governing Students” and strike the policy entitled “Policy Prohibiting Discrimination By or Against Students”

The “Sexual Misconduct Policy Governing Students,” written for Ramapo College of New Jersey by the consultant, is compliant with the substantive and procedural requirements of Title IX and the Clery Act as well as encompassing best practice. The policy also would be compliant should New Jersey Senate Bill 2478 passes. Adoption of this policy would also coordinate and centralize a number of policies that are currently subsumed within the Student Handbook and Code of Conduct into one stand-alone umbrella policy on Sexual Misconduct. The better practice is to have one umbrella policy.

If you do not adopt the new draft policy, then the “Policy Prohibiting Discrimination By or Against Students” should have the following compliance statements/language added and explained thoroughly in the policy as these were missing from the existing policy. The recommendations are based on the assessment of your policy and procedures against the substantive and procedural requirements of Title IX and the Clery Act as amended by the Violence Against Women Act as well as best practice guidance from the White House’s Task Force to Protect Students from Sexual Assault.

a. The policy must state that the institution will respond to conduct that occurs off campus and potentially not even in the context of an activity associated with the institution if it has the propensity to create a hostile environment on campus. Currently, the College meets the requirement with its “Actions for Serious Crimes on Campus or Off Campus” on page 61 in its handbook, but this should be added to the Policy Prohibiting Discrimination By or Against Students”(the language is contained in the draft recommended sexual misconduct policy provided for adoption by the consultant.).

b. The policy (page 1) says “This policy applies to protect all students, regardless of sexual orientation or gender identity, from discrimination/harassment by others at the College, including students, faculty, staff members, vendors, and contractors.” (The underlined language needs to be added so that the policy protects all students regardless of sexual orientation or gender identity.)

c. The policy needs to clearly define what sexual harassment means. The current policy gives some general language and examples as to what constitutes sexual harassment, but fails to address that sexual violence is the most egregious form of sexual harassment. The language should include when a student engages in unwanted physical contact such as intentional touching, grabbing, pinching, brushing against a student’s body, or impeding or blocking movement; using coercion, intimidation, force or the like to gain sexual access to a student; or penetrates, no matter how slight, the vagina, anus or mouth of another with a sex organ or other object without the consent of the victim; or uses a student’s temporary or permanent incapacitation (physical or mental) to have sexual
intercourse wherein a victim would be incapable of legally consenting to such acts; or goes beyond the scope of the currently agreed to sexual activity without consent— all of the behavior consistent with nonconsensual sexual contact or nonconsensual sexual intercourse (two terms that are never used in the current policy).

d. The current policy (on page 3) states “Sexual harassment in the workplace” is defined by the U.S. Equal Employment Opportunity Commission Guidelines to include “unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.” Since we are discussing potential faculty and staff sexual harassment in this part of the student policy, it is important to also note that sexual harassment is also defined by Title IX of the Civil Rights Act, since Title IX applies to employees AND students when the employee is employed by an institution in receipt of federal financial aid. Any amount of federal financial aid to any unit of the institution triggers requirements under Title IX in addition to the protections afforded under Title VII (the state policy). This should be noted as the state policy may not have all of the due process assurances or other requirements mandated under Title IX.

e. Also, on page 3 of Ramapo’s policy under “Examples of Behaviors By A College Employee in the Workplace That Violate The College/State Policy Include, But Are Not Limited To…”, language to add includes “An employee sexual assaults a student” needs to be included since sexual assault can happen out of the context of quid pro quo or hostile environment sexual harassment, yet can still create a hostile environment for the complaining student. Additionally, there is never a pedagogical reason for sexual touching.

f. Under Section IV. on Page 4 of the existing “Preserving Professional Relationships,” while not a compliance issue, we recommend taking away language with regard to employees “avoiding” consensual sexual relationships with students and prohibiting them all together. The College’s statement that “Such relationships are inconsistent with the proper role of the instructor, administrator or manager in the College’s educational mission, and are susceptible to perceptions of favoritism, unprofessional behavior, and conflicts of interest” in concert with the position of the American Association of College Professors does present the institution with some positions with regard to risk and sexual misconduct that could be mitigated. The statement from the AAUP reads:

> Sexual relations between students and faculty members with whom they also have an academic or evaluative relationship are fraught with the potential for exploitation. The respect and trust accorded a professor by a student, as well as the power exercised by the professor in an academic or evaluative role, make voluntary consent by the student suspect. Even when both parties initially have consented, the development of a sexual relationship renders both the faculty member and the institution vulnerable to possible later allegations of sexual harassment in light of the significant power differential that exists between faculty members and students.


g. Continue to identify and provide contact information for the trained on- and off-campus advocates and counselors who can provide an immediate confidential response in a crisis situation (e.g., obtain needed resources, explain reporting options, and help navigate the reporting process). Ramapo currently has these in place through its Emergency On-Call
Counselor (EOCC) position as well as its partnership with HealingSpace in Bergen County.

h. Provide emergency numbers for on- and off-campus safety, law enforcement, and other first responders (e.g., the Title IX coordinator).

i. Identify health care options, both on- and off-campus. Ensure the victim is aware of the options to seek treatment for injuries, preventative treatment for sexually transmitted diseases, and other health services.

j. Discuss the option of seeking medical treatment in order to preserve evidence.

k. Identify where/how to get a rape kit or find a Sexual Assault Nurse Examiner (SANE). This currently exists as part of the Annual Security Report, but we recommend this be added to the Policy.

l. List locations, including contact information, for an advocate (e.g., a local rape crisis center, on-campus advocacy program) who can accompany a victim to the hospital or health provider.

m. Identify counseling and support for victims of sexual misconduct, whether or not a victim chooses to make an official report or participate in the institutional disciplinary or criminal process.

n. On page 5, under Faculty/Staff responsibilities, interim protective measures are required under Title IX, and as such, the Director should be determining what measures are necessary and implementing them immediately. This statement, as written, is weak and relies on faculty/staff and/or supervisors to understand the need to “consult” for the institution to meet this federal compliance requirement.

o. On page 6, under When to File a Complaint, the policy says “It is requested that the complaint be filed within thirty (30) calendar days, or sooner, from when the aggrieved student becomes aware that an incident of discrimination/harassment has occurred, even if the student is unsure whether the incident was ‘severe, pervasive or objectively offensive.’ ” This should be minimally changed to 180 days, the timeframe OCR itself provides for relief under Title IX. Given the data with regard to the sexual victimization of college women (prevalence, underreporting, barriers to getting campus justice, ability of victims to identify an incident as “severe” let alone themselves as victims of crime, the fact that reports in higher education are substantially delayed, etc.), we recommend extending this timeframe to allow for reports to be made at any time. A delayed report will diminish the College’s ability to investigate and respond, however, in no way would we want to deny complaints from students who felt as though they were sexually assaulted at your institution.

p. Explain that where necessary, under Title IX, the school will take immediate steps to protect complainants pending the final outcome of an investigation, including academic accommodations and other interim measures. These steps may include the ability to
change housing; change work schedules; alter academic schedules; withdraw from/retake a class without penalty; access academic support such as tutoring; issue no contact orders; and change the alleged perpetrator’s living arrangements or course schedule.

q. Specify a reasonably prompt timeframe for conducting the investigation and resolving the complaint, as well as the process for extending the timeframe.

r. Explain that mediation is never appropriate in sexual misconduct cases.

s. Explain that the preponderance-of-the-evidence (i.e., more likely than not) standard will be used in any Title IX fact-finding and related proceedings, including any hearings (for all sexual misconduct offenses falling in the purview of this policy). This exists in the Student Handbook on page 69, but should be moved to this policy.

t. On page 8, under the section on Confidentiality, this section fails to appropriately explain the school’s confidentiality policy, including reference to the more detailed confidentiality provisions that should be afforded in the policy. For more guidance and a sample confidentiality policy, visit: https://www.notalone.gov/assets/reporting-confidentiality-policy.pdf.

u. Explain the school’s reporting obligations under the Clery Act, including the annual reporting responsibilities of Campus Security Authorities (CSAs) and the school’s obligation to issue timely warnings. The college does this by including language as part of its Annual Security Report on October 1st, but this should also appear in the policy.

v. Provide a description of safe and positive options for bystander intervention. Bystander intervention means safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene.

w. Provide information on risk reduction. Risk reduction means options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence.

x. Include options regarding the involvement of law enforcement and campus authorities, including notification of the victim’s option to notify proper law enforcement authorities, including on-campus and local police; be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and decline to notify such authorities. While not in the current policy on prohibiting discrimination by or against students, this is provided within the New Jersey Sexual Assault Victims Bill of Rights which is published in the student handbook on page 118 and emailed to students twice per year.

y. Where applicable, include the rights of victims and the institution’s responsibilities regarding, orders of protection, no contact orders, restraining orders, similar lawful orders issued by a criminal, civil, or tribal court or by the institution.
z. Procedures for institutional disciplinary action in cases of alleged domestic violence, dating violence, sexual assault, or stalking, shall include a clear statement that such proceedings shall:

1. Provide a prompt, fair, and impartial investigation and resolution; and

2. 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.

3. 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.

4. The accuser and the accused will have timely notice for meetings at which the accuser or accused, or both, may be present.

aa. A statement that the institution will allow for timely access to the accuser, the accused and appropriate officials to any information that will be used after the fact-finding investigation but during formal and informal disciplinary meeting and hearings. While not in the policy, this is included in the student handbook on page 68 described as reasonable access to the case file.

bb. A statement that the institutional disciplinary procedures will not be conducted by officials who have a conflict of interest or bias for or against the accuser or the accused.

c. A statement that both the accuser and the accused shall be simultaneously informed, in writing, of the following:

1. The outcome of any institutional disciplinary proceeding that arises from an allegation of domestic violence, dating violence, sexual assault, or stalking;

2. The institution’s procedures for the accused and the victim to appeal the results of the institutional disciplinary proceeding;

3. Of any change to the results that occurs prior to the time that such results become final; and

4. When such results become final.

d. Information about how the institution will protect the confidentiality of victims and other necessary parties, including how the institution will:
1. Complete publicly available record-keeping and for purposes of Clery Act reporting and disclosures without the inclusion of identifying information about the victim, as defined in 42 USC 1395(a)(20).

2. Maintain as confidential, any accommodations or protective measures provided to the victim to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the accommodations or protective measures.

ee. A statement that a written notification of rights will be provided to complaining students and employees about existing on- and off-campus resources to include those specifically required under the Violence Against Women Act, which include counseling, health, mental health, victim advocacy, legal assistance, Visa & immigration assistance, assistance with financial aid information (how changes in course load or a temporary leave could impact aid packages), and other services available for victims both on-campus and in the community.

ff. Written notification of victims about options for, and available assistance in, changing (the below listed items) if so requested by the victim and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement (academic, living, transportation, and working situations).

gg. A student or employee who reports to an institution of higher education that the student or employee has been a victim of domestic violence, dating violence, sexual assault, or stalking, whether the offense occurred on or off campus, shall be provided with a written explanation of the student’s or employee’s rights and options.

hh. A statement that the institution will, upon written request, disclose to the alleged victim of a crime of violence or a non-forcible sex offense, the report on the results of any disciplinary proceeding conducted by the institution against a student who is the alleged perpetrator of such crime or offense. If the alleged victim is deceased as a result of such crime or offense, the next of kin of such victim shall be treated as the alleged victim for purposes of this paragraph. This is currently in the student handbook on page 70, but should move to within this policy.

ii. The federal Campus Sex Crimes Prevention Act, enacted on October 28, 2000, requires institutions of higher education to issue a statement advising the campus community where law enforcement agency information provided by a State concerning registered sex offenders may be obtained. It also requires sex offenders already required to register in a state to provide notice, as required under state law, of each institution of higher education in that State at which the person is employed, carries on a vocation, volunteers services or is a student. This is currently published in the Annual Security Report, but should move within this policy.

4. In the Student Code of Conduct 2014-2015, strike language giving the Disciplinary Review Board jurisdiction over sexual misconduct cases
It is recommended that Ramapo adopt the “Sexual Misconduct Policy Governing Students” and as a result of such adoption, should strike language in the Student Code of Conduct that gives jurisdiction to the Disciplinary Review Board. Additionally, the Student Code of Conduct should be updated to reflect the terms and applicable definitions as noted in the Sexual Misconduct Policy Governing Students and refer interested readers to the full policy and resolution procedures and centralized website where additional information, including on and off campus resources, may be obtained.

5. Identify and continue to train all Campus Security Authorities as defined by the Clery Act

Institutions must identify those individuals and organizations from which crime statistics will be collected. These individuals/organizations are called Campus Security Authorities (CSA’s). CSA’s include all of the following:

- A campus police department or a campus security department of an institution.
- Any individual or individuals who have responsibility for campus security but who do not constitute a campus police department or a campus security department (e.g., an individual who is responsible for monitoring the entrance into institutional property).
- Any individual or organization specified in an institution’s statement of campus security policy as an individual or organization to which students and employees should report criminal offenses.
- An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline and campus judicial proceedings.

CSA’s are responsible for reporting to the official or office designated by the institution to collect crime report information (typically the campus police/public safety agency). Institutions are required to identify the individuals and organizations affiliated with their institution that qualify as CSA’s. The U.S. Department of Education recommends that an individual or office be responsible for overseeing all CSAs; notifying these individuals/organizations that they are CSA’s, providing training to CSA’s to immediately forward reports of crimes to the reporting structure of the institution and maintaining documentation of all CSA reports. In the event of an U.S. Department of Education audit, institutions would be required to produce a comprehensive listing of all CSA’s and would also be expected to furnish proof that these individuals have been adequately trained in their responsibilities as CSA’s.

When determining the list of CSA’s, the institution must include all individuals who have responsibility for student and campus activities. The people in the following positions and any other individuals (including students and/or volunteers) who have as one of their functions the responsibility of building relationships with students under the auspices of student and campus activities are categorized as CSA’s:

- All police and security staff
- Resident Assistants, Resident Directors, and Community Directors
- Dean of Students Office (Leaders in Student Affairs and Housing)

- Athletic Directors (AD’s) and Coaches (including Assistant AD’s and Assistant Coaches)
- Advisors to Student Organizations on campus
- Access Monitors (any professional or student staff members who monitor access into campus buildings, including residential facilities, academic/administrative facilities or parking facilities)
- Contract Security Officers
- Event Security Officers
- Staff who provide safety escorts on campus (professional and student staff)
- Staff in the Student Center or Student Union Building
- Staff in the Student Activities/Student Life Office (handling co-curricular activities)
- Coordinator of Fraternity and Sorority Life/Greek Affairs (or related positions)
- Administrators at Branch/Satellite/Separate Campuses
- Study Abroad Coordinators, Education Abroad Professionals and Program Leaders
- Title IX Coordinator(s)
- Director of the Student Health Center
- A physician in a campus health center, a counselor in a campus counseling center, or a victim advocate in a campus rape crisis center if they are identified by your school as someone to whom crimes should be reported or if they have significant responsibility for student and campus activities.

NOTE: We recognize that Ramapo College may not have all of these positions, but we included a complete list for the purposes of being thorough.

To ensure the list of CSAs remains current, we recommend that Ramapo continues sending a letter/email in December of each year to all campus leaders (Deans, Directors, and Department Heads) to notify them of the definition of Campus Security Authority and to request their assistance in identifying staff members within their areas of responsibility who may fit the definition.

The U.S. Department of Education has made strong recommendations in the 2011 Handbook that each CSA receive training, and the recent case at Penn State College is a glaring example of three CSAs (two coaches and an Athletic Director) who were aware of a Clery crime but failed to report the crime to the reporting structure of the institution. The Freeh Report confirmed that none of the CSA’s involved in that incident had been trained in their responsibilities as a CSA.

* It should be noted that unlicensed counselors who work in the Student Health/Counseling Center under the direction of a licensed psychologist are CSA’s (not exempt).

* It should be noted that all persons on the Assault Contact Team who have CSA status have that status even when responding to “confidential” reports of sexual assault.

* Student interns in pursuit of a degree who are unlicensed but working under the licensure of a psychologist/nurse/medical doctor in the Student Health/Counseling Center ARE exempt from CSA reporting requirements.
Any exempt CSA position (licensed counselors and medical doctors and nurses) who advise a student organization lose their exemption for all hours they work, not just the hours they advise the student organization.

DSA offers an online CSA Online Training Program. Once you have identified all your CSA’s, you can enroll them in online training via our online learning management system.

6. Continue to identify and train all Responsible Employees as defined under Title IX’s regulatory guidance and incorporate into standard at least annual process

In assessing the manner in which Ramapo’s staff members are trained to manage and report sexual misconduct, it should be noted that steps have been made to identify and train Responsible Employees and these efforts should continue and become part of a standard annual process. First, while some training is occurring, the institution is just beginning to create an institutional process to identify all Responsible Employees (those required to report sexual misconduct cases to Ramapo’s Title IX Coordinator). Ramapo’s Title IX Coordinator (in conjunction with HR or Employee Relations, if necessary) should continue to look at every employee position at the College (paid or volunteer) and determine if it meets any of the conditions below. If it does, the position should be designated as a “Responsible Employee” (RE) position for purposes of reporting sexual misconduct to the Title IX Coordinator. A responsible employee would include any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials, sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility.” (Office of Civil Rights, 2001 Guidance).

Once the RE’s have been identified (and their names placed on a master list maintained by the College each semester or academic year for purposes of having it available should the U.S. Department of Education audit the institution), they should attend training. “Responsible Employees” (RE’s) should be trained, minimally, in the following: 1. What type of conduct constitutes sexual harassment. 2. How to identify sexual harassment and sexual violence. 3. How to identify warning signals that may need attention. 4. How to report sexual harassment and sexual violence to appropriate schools officials. Remember, minimally the information should be reported to the Title IX Coordinator, but if the RE is also a CSA, then a duty exists to also report the offense to the reporting structure of the institution. For a RE who is also a CSA, simply reporting the information to the Title IX Coordinator would be insufficient as the CSA would additionally need to report the statistics to Public Safety.

Responsible Employee training is included at no extra charge to institutions using the CSA Online Training Program administered by DSA.

7. Refine the process to assess all Clery crimes reported to a Campus Security Authority or Local Police for the issuance of a Timely Warning Notice (TWN)

The Clery Act requires institutions to disclose crime statistics and assess crime for purposes of issuing Timely Warning Notices (TWN) for Clery-reportable offenses that occur in its “Clery Geography.” An institution’s Clery Geography means three types of (real) property: Campus, Non-campus Buildings or Property, and Public Property. “Campus” is defined as buildings or
property owned or controlled by the institution within the same reasonable contiguous geographic area and used by the institution in a manner related to the institution’s educational purpose, including residence halls and retail space used by food vendors. A “Non-campus Building or Property” is any building or property owned or controlled by the institution for education-related purposes and that is not reasonably contiguous to the campus. This includes off-campus sports complexes, laboratories and the like and includes property owned or controlled by a school’s recognized student organizations, such as fraternities or clubs. “Public Property” means property located within the same reasonably contiguous geographical area of the campus, like a sidewalk, street, or thoroughfare.

Public Safety understands that each Clery reported offense needs to be assessed for purposes of generating a TWN. It is important to note that all sexual assaults fall into this category, to include sexual assaults that occur between people known to each other. The FBI not make reference to the relationship between the victim and the offender in the definition of rape, hence the expectation is that if a rape is reported to a CSA and was reported to have occurred in your Clery-reportable geographical area, the institution will have in place a process for assessing the incident to determine if facts of the information presented could represent an on-going or serious threat to other members of the community. If so, the U.S. Department of Education expects the institution to disseminate, quickly and to the entire campus community, a TWN.

To assist the College with this, the consultant has put together a process that can be used by Public Safety to assess reports for issuance of a TWN. The document is included with this report.

In addition, we have attached our whitepaper (“Issuing TWNs in Non-Stranger Rapes”) with this report for additional guidance on this topic.

8. Ensure that the Title IX Coordinator, each Deputy Coordinator, all Investigators and each and every person involved in the resolution and appeal of a complaint of sexual assault, domestic violence, dating violence and stalking receive annual training in compliance with the Clery Act as amended by VAWA.

Persons can attend any of the national schools hosted by DSA, which include criminal and civil rights investigations into cases of sexual misconduct/sexual offenses, investigation of dating violence, domestic violence and stalking, or in the role and responsibilities of Title IX Coordinators, all of which are victim centered and trauma-informed investigative schools.

9. Ensure that a Public Safety Standard Operating Procedure (SOP) or General Order (GO) that specifically addresses the role Public Safety officers are to play in response to reports of sexual misconduct. As part of this protocol, define the expectations with regard to preliminary reports, the thoroughness to which reports are expected, the interim measures that Public Safety is able to take in off hours when the Title IX Coordinator is unavailable to ensure the safety of complainants, and ensure that any complainant reporting to Public Safety receives the Written Notice of Rights as required by the Clery Act as amended by the Violence Against Women Act. If Public Safety Officers are going to continue to conduct the administrative investigations into complaints, then clear expectations with regard to investigative reports is needed so Officers understand whether or not they are simply

reporting findings of fact or are additionally weighing credibility of witnesses and determining, using the preponderance of the evidence, an outcome.

10. Disband the Assault Contact Team (ACT) and discontinue use of this team for purposes of “confidential” response to sexual assault victims at Ramapo.

The College currently has a team to whom students are told to report incidents of sexual violence. The team is called the Assault Contact Team (ACT), and is described as “a group of trained professional staff members who provide the campus with victim-centered services and resources for survivors of sexual assault” (Ramapo website.) The consultant has a number of concerns with the continued use of this team as currently structured. First, the team is advertised as being a “confidential” team inferring that information told to this team would not be shared with administrators at the college without the expressed consent of the reporter. This is problematic as the team is comprised of College employees, many of whom are Campus Security Authorities under the Clery Act and would consequently have a duty to report at least the statistics to the reporting structure of the institution. Others are Responsible Employees, even if not CSA’s, and would have a duty to then report all information reported to them to the reporting structure of the institution. Secondly, in speaking with the Team members, it was not immediately apparent as to the level of training each team member had to respond to reports of students who had been recently sexually victimized. Lastly, the interviews revealed that the team actually meets infrequently, and although well intentioned does not have a charge (or is not aware of their charge from the institution) or know how they fit into the overall institutional response to sexual misconduct reporting on campus. Lastly, even though the Team’s website advertises “ACT ensures that the college is in compliance both with federal and state reporting regulations and with state guidelines for victims’ rights,” the consultant found that members of the team have no familiarity with the compliance requirements for their work with regard to Title IX or the Clery Act (which include victim’s rights as well as reporting requirements). If you have a response team and are telling students to report crime to them, then you need to ensure that the Team is well trained, meets with regularity, is reporting within the framework of the requirements required by law, and is operating in concert with the infrastructure of the College’s plan/programs/initiatives to mitigate and effectively respond to incidents of sexual assault.

Ramapo should identify trained, confidential victim advocates who can provide emergency and ongoing support. After these individuals are trained, as long as they are licensed professional counselors (hence taking away any CSA responsibilities), Ramapo should label them as “Rape Crisis Counselors” and as such, they would not be Responsible Employees under Title IX and would truly be a “confidential” resource.

11. Update the MOU (Memorandum of Understanding) with local police to outline and inform them of the College’s required responses to sexual assault as required by the U.S. Department of Education.

An MOU with local law enforcement (and local prosecuting attorneys’ offices, non-profit survivor programs, and the like) is a best practice and demonstrates an institution’s commitment to collaboration with regard to responses to intimate partner violence and sexual assault. From interviews, it appears that the College had a strong relationship with the Mahwah Police Department, so there should be a focus this summer to update the MOU.
12. Define when a “student” is a “student” for purposes of responding promptly and appropriately to incidents of sexual misconduct.

Ramapo should define when a “student” is in fact a “student” for purposes of applying the College’s policies and applicable procedures. Not having a definition has compliance implications both in terms of Clery compliance (education and prevention programs under VAWA; access to the Annual Security Report) and in terms of your institution’s sexual misconduct policy and resolution procedures under Title IX (if a “student” is a “student” when they are accepted and exchange money with your institution, for example then presumably a person could complain of a “student’s” sexual misconduct and expect an investigation and resolution before the student even gets to campus). For example, a situation our firm just dealt with at one of our client institutions: Sam allegedly rapes Judy before the school year starts. They are both entering as first year students and are from the same home town. Judy’s mom calls and demands that Sam not be permitted to attend your College because of the assault and because it will create a hostile environment on campus for Judy. At our client institution, we were able to ascertain that Sam was in fact, at the time of the assault, a “student” given that institution’s definition, and as such, was bound by the student Code of Conduct. The case was investigated (even though Judy did not want to cooperate with her local police department), and in this case, Sam was found responsible and the school separated him before he ever arrived on campus in the fall. Remember, under Title IX, a school has a duty separate and apart from any criminal investigation to investigate or otherwise respond when a complaint is made that could create a hostile environment on campus for the complaining party based on sex.

13. Expand the role of the Behavioral Intervention Team to include automatic assessment for reports of domestic violence, dating violence, stalking and sexual assault.

While this assessment did not specifically include an examination of the College’s Behavioral Intervention Team (BIT), the consultant did ask questions of stakeholders regarding the makeup of the Team, how cases are referred to the Team, and what kind of cases are automatically referred for multi-disciplinary assessment. Based on those conversations with stakeholders as well as our expertise with regard to the data as it relates to occurrences of workplace violence in power and control crimes (like domestic violence and stalking) and serial perpetration in sexual victimization in higher educational institutions (non-stranger sexual assault committed multiple times by a single offender), we recommend that all cases of stalking, domestic and dating violence, and sexual assault are brought forth to the Team for purposes of examining risk, identifying serial predation on campus, ensuring that all victims have had access to safety planning, to ensure that support services and access to orders of protection have been offered, and to ensure that if a situation is escalating or de-escalating that the team is monitoring. We would also recommend that the team include representation from Human Resources and the Title IX Coordinator. This would be a best practice.

14. Implement a consistent and articulated approach to how the College enforces policies related to sexual assault and alcohol.

Whether we are discussing sexual assault or alcohol (or the intersections lying therein), enforcement is not possible without clear, strong, and well-articulated policies and procedures in concert with deliberate culture change. The only way to encourage reporting of sexual victimization is to advertise those policies; have students migrate through them to find that there
is transparency; to see that all students in the process have been treated with dignity and respect; victims’ confidentiality have been protected as much as possible; and offenders are being held responsible. Ramapo must have these policies, train their stakeholders in how to appropriately use them, and then resolve cases using the framework created.

a. Once Ramapo has adopted its’ new policy, marketing of the new policy should begin to ensure each campus community member is aware of the policy; the key definitions in the policy (to include sexual harassment, non-consensual sexual intercourse, non-consensual sexual contact, consent, coercion, exploitation, incapacitation); where students can go to on campus if they have been assaulted that is confidential versus where they can go that is only private and would require Ramapo to investigate or otherwise determine what occurred; what to do if they are assaulted; risk reduction factors in sexual victimization; and how to be an active bystander. Students should also be provided with information explaining their options of contacting the Title IX Coordinator, the Police, both, or neither. This will need to be a layered and redundant approach for the institution and should happen with every class within the institution as well as with faculty and staff.

b. Faculty should continue to be trained in their duties as Responsible Employees to report information regarding sexual misconduct reported to them to the Title IX Coordinator and additionally taught how to respond to students in distress, to include how to appropriately respond to a disclosure of sexual victimization or intimate partner violence.

c. The Title IX Coordinator, Deputies, Investigators and any other persons involved in the intake and resolution of complaints should continue to be educated annually on the following to ensure that cases are appropriately investigated and adjudicated. The U.S. Department of Education requires that the training teaches how to protect victims and to promote offender accountability and should focus on the following:

   i. interviewing persons subjected to sexual violence;
   ii. information on particular types of conduct that would constitute sexual violence, including same-sex sexual violence;
   iii. the proper standard for review for sexual violence complaints (preponderance of the evidence);
   iv. information on consent;
   v. the importance of accountability for individuals found to have committed sexual violence;
   vi. the need for remedial actions for the perpetrator, complainant and school community;
   vii. how to determine credibility;
   viii. how to evaluate evidence and weigh it in an impartial manner;
   ix. how to conduct concurrent investigations;
   x. confidentiality;
   xi. the effects of trauma, including neurobiological change; and
   xii. cultural awareness training regarding how sexual violence may impact students differently depending on their cultural backgrounds.”

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21 See the Department of Education, Office for Civil Rights “Questions and Answers on Title IX and Sexual Violence” located at http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf
d. Distribute an Annual Notice of Non-Discrimination as required by Title IX. A sample notice and accompanying requirements for what the notice must contain may be found here at http://www2.ed.gov/about/offices/list/ocr/docs/nondisc.pdf

e. Conduct thorough investigations and if students are found responsible for sexual misconduct, hold them accountable. An offender’s own alcohol use is not an excuse for engaging in sexual misconduct. Offender’s sanctions should be proportionate to the egregiousness of the offense.

f. Create more protective factors on campus in venues where alcohol is being served to mitigate sexual assault.

Strengthen the institution’s alcohol policy by requiring parties to have guest lists and to be registered hence giving the administration some control over the frequency and duration of parties in residential facilities. Require food and non-alcoholic beverage service at all parties and sanction residences who are found to have served underage persons or exceeded the maximum number of occupants in the dwelling. Students who are verbally or physically assaultive to Residence Life student or professional staff or to Public Safety Officers should be referred for violations of the Student Code of Conduct and sanctioned.

g. Enlist the help of Residence Life student staff and have them collaborate with Public Safety Officers

In speaking with stakeholders, Ramapo has gone through some changes as it relates to the role student staff in Residence Life play with regard to their duties in the halls in responding to alcohol-related incidents. Currently, Residence Assistants complete one round per shift (an 11 p.m. round) and do not enter student apartments. They are told to contact Public Safety. Residence Life should reevaluate the roles of RAs and all residence life staff to determine how many rounds are appropriate and ways for RAs to receive training and to intervene to help students as well as to document incidents. Office hours for those responsible for supporting RAs should be at time appropriate to supporting the student staff (i.e., it is not and should not be uncommon for RDs to have office hours at 10pm on a Friday and Saturday night or to accompany RAs and Public Safety on rounds of residence halls.)

Public Safety Officers and Residence Life staff should be doing regular rounds together throughout residential living spaces and should be consistent in their enforcement of alcohol-related policies. If Public Safety does not write up a student found in possession but Residence Life staff do, a dynamic will be created wherein students believe that there are some offices that let them “get away” with violations. Consistency, collaboration, and documentation of violations by Public Safety and Residence Life staff are important to build a culture of accountability and risk reduction.