**Baylor University**

**Q&A concerning procedures for investigation of allegations of sexual assault**

**August 24, 2015**

Acts of sexual violence contradict every value Baylor University upholds as a caring Christian community. In recent years we have joined university efforts nationally to prevent campus violence against women and sexual assault, to support actively survivors of sexual assault with compassion and care, and to take action against perpetrators. We have established and fully staffed a Title IX office that employs a Title IX Coordinator and two full-time investigators. Maintaining a safe and caring community is central to Baylor’s mission and at the heart of our commitment to our students, faculty and staff.

**Q: Does the university have a process to investigate allegations of sexual assault?**

A: The University has a Title IX office with a full-time coordinator and two full-time investigators. We have and will continue to fully comply with federal statutes and guidelines concerning the investigation of sexual assault on our campus. We also actively communicate with our students about the resources of the Title IX office.

**Q. What is the university’s student disciplinary process now and what was it in 2013?**

A. This is Baylor University’s current process under Title IX: When a student files a complaint of sexual assault against another student, full-time Title IX investigators will investigate the complaint. Every complaint in which the complainant wishes to proceed goes to a formal disciplinary hearing, in which facts are considered by a highly trained adjudicator in the Title IX process. A determination is then made, and, when appropriate, sanctions are imposed. All parties have the right to appeal.

There have been changes since 2013. In 2013, Baylor University did not have a Title IX office but did have a Title IX coordinator who oversaw the university’s Title IX compliance. In 2013, complaints involving students were handled under the Student Conduct Code. Evidence was considered by a Student Life professional trained in the adjudication of student conduct and Title IX. In that process, after consideration of the preponderance of the evidence, a decision was rendered to move or not move to a full disciplinary hearing. In Title IX cases, a decision not to go to a full hearing could be appealed through the university’s Civil Rights policy. If the decision to go to a full hearing was not appealed by either party, the file was closed.

**Q. Why did Baylor make those changes?**

A. The university’s process changed because we have continued to seek out and receive additional guidance and information regarding best practices; and laws continued to evolve (Violence Against Women Act, Campus SaVE Act in 2014). Baylor’s Title IX office, with three full-time staff, continues to seek opportunities to enhance our efforts to ensure student safety.

**Q: A sexual assault is a crime. What is the difference between what a university can do in its investigation of an alleged sexual assault and what a criminal investigator can do?**

A. There are significant differences between a university’s administration process and a criminal process.

University disciplinary investigations of accusations of sexual assault are governed by federal law.

The Office for Civil Rights (OCR) for the U.S. Department of Education noted in the October 2014 Final Rule for the Violence Against Women Act (VAWA) that institutions are not making determinations of criminal responsibility but are determining whether the institution’s own rules have been violated.

A university’s investigation is different from the standards used in a criminal investigation. Further, should the University wish to sanction a student for conduct violating its policy, the maximum penalty it can assess against the student is expulsion.

Under Title IX, schools typically must complete an investigation in 60 calendar days from the day of report. A university’s investigation also differs from a criminal investigation in that:

* Universities do not have subpoena power. A university can ask but not compel persons unrelated to the university to participate in its administrative processes.
* Universities cannot require mental health professionals, counselors or physicians to disclose information about victims.
* Universities cannot compel witnesses to testify under oath.

Baylor University’s process is overseen by highly trained higher education administrators who are charged with conducting a fair, timely, equitable and caring investigatory process. Evidence gathering, investigation and final determination by a university may often be made long before an arrest or criminal prosecution, if any, commences.

**Q. Are there any exceptions to the 60-day window?**

A. The 60-day window is the typical expectation. Any investigation may take longer under certain circumstances. The Office for Civil Rights (OCR) says that it will take into consideration the complexity of the investigation and the severity and extent of the harassment or sexual violence when determining if a complaint resolution has been timely. While investigating cases of student conduct, the university has to be careful not to compromise any criminal investigation conducted by the City of Waco Police Department.

**Q. In cases of sexual assault, victims sometimes submit to a SANE (Sexual Assault Nurse Examiner) exam, often referred to as a rape kit. Does a Baylor investigation include review of SANE exam results, and if not, why not?**

A. According to Texas law, the SANE kit is not a public record nor does it belong to the victim or to Baylor University. It is legal evidence and is under the control of the local District Attorney or local law enforcement. Law enforcement determines when the SANE kit should be processed.

Baylor University understands that it is the practice in McLennan County that law enforcement does not process the SANE exam unless the victim has confirmed that he or she wishes to proceed with the criminal prosecution. After that confirmation has been received, Baylor University understands that processing the SANE exam may take up to an additional six months. Even then, the SANE exam is confidential and not the property of the victim.

**Q. In the context of its investigations, what opportunity does the university have to access mental health records for those involved or implicated?**

A. Federal policy in this area is primarily focused on ensuring that the victim receives timely access to the confidential medical and counseling services they need.

To provide the highest level of care, institutions of higher education need to ensure that students have uncompromised access to the support they need, without fear that the information they share might be used to harm them further. We do not, therefore, share a student’s sensitive and confidential medical or mental health records with others not involved in their treatment or request consent from a student though the student may do so voluntarily.

**Q. Does Baylor University request student disciplinary records from previous institutions?**

A. Yes.

Under the Family Educational Rights and Privacy Act (FERPA), a college or university may release educational records to officials of another school, school system or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled, as long as the disclosure is for purposes related to the student’s enrollment or transfer.

**Q: Can the university refuse to admit someone based on the results of what’s learned from the student disciplinary records from previous institutions?**

A: Yes. We have examples of prospective students who have not been admitted based upon review of disciplinary action taken by a previous institution.

**Q. What does the university do while it is in the process of investigating an alleged sexual assault?**

A. Baylor’s interim measures process is available publicly on the Title IX website: <http://www.baylor.edu/titleIX/doc.php/243749.pdf>. These measures generally reflect the university’s approach in 2013-14.

Baylor University may impose sanctions on the respondent and/or provide the complainant with protective measures following a final determination on university disciplinary procedures of sexual violence, sexual harassment, domestic violence, dating violence, sexual assault or stalking including:

* Protective measures for a complainant include changes in academic or living situations, counseling and an order of no contact.
* Possible sanctions against the respondent include suspension or expulsion from the university along with educational outcomes.
* Employees may be subject to discipline, up to and including termination of employment.
* Requests will be reviewed and may be granted if such a request is reasonable, regardless of whether the incident is reported to campus.

**Q. Can the university freely disclose the facts associated with discipline cases and their investigation?**

A. Disciplinary cases at all universities are confidential under federal privacy law (Family Educational Rights and Privacy Act, FERPA). A student’s enrollment status and status on a team may be disclosed.

**Q. What kind of sexual assault or Title IX training does Baylor provide?**

A. Baylor University provides extensive Title IX training for its campus community, including required training on sexual assault awareness and prevention for all freshmen and transfer students.

Students are provided with “It’s on Us BU” campaign training, which includes:

* Awareness of Interpersonal violence (sexual assault, sexual harassment, stalking, dating/domestic violence, sexual exploitation)
* University policy and how to report
* Information about the Title IX Office
* How to get help (confidential resources, University disciplinary process, criminal options, etc.)
* Prevention (combination of risk reduction and bystander intervention)
* Getting proactively involved in the It’s on Us BU campaign involvement

Employees, including faculty, staff and student workers and others, are provided with Responsible Employee Training on:

* University Policy
* Title IX law and scope
* Violence Against Women Act, Campus SaVE law and scope
* Reporting to Title IX Office
* Rights and resources
* Confidential employees and resources
* Interim measures and remedies
* Employee roles in supporting student success under this Title IX policy