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I. Introduction

Binghamton University (the “University”) retained Husch Blackwell LLP to conduct a comprehensive review of the University’s compliance with Title IX of the Education Amendments of 1972 (“Title IX”). Specifically, the University requested an outside analysis of its response to sex-based misconduct which includes the following:

- An assessment of the University’s Title IX policies and procedures and student conduct process, and benchmarking those policies and procedures against peers and best practices;
- An analysis of best practices at comparable institutions as it pertains to sexual assault education and prevention strategies, victim support services, and staff training and benchmarking Binghamton against best practices;
- Recommendations for improving Binghamton policies, procedures, prevention and support services and training; and
- Recommendations regarding organizational structures to most effectively utilize University resources to sustain a leading and innovative program of sexual assault prevention and response.

The following constitutes a summary of our review, analysis of issues, and recommendations for improvement.

II. Summary of Review

A. Background

Beginning in the summer of 2020, Binghamton University students created and began sharing information regarding incidents of sexual misconduct and experiences with the University’s resources and response on an Instagram account called “shareyourstorybing” (“Share Your Story”). The account provided a platform for students to anonymously submit posts that the account owner then reproduced on the website.

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1 See 20 U.S.C. §§ 1681 et seq. This review was limited to the University’s programming relating to preventing and responding to sex-based discrimination, assault, and harassment and did not consider other aspects of Title IX, such as gender equity in athletics or discrimination on the basis of pregnancy. In addition, the review was focused on the student experience and did not include a review of employee issues.

In addition to gathering and posting stories, the website also included links to several petitions and demands addressed to University officials and local and state leaders.3

In response to the activism on the Share Your Story account, on July 14, 2020, University President Harvey Stenger issued a statement outlining twelve actions the University was taking “immediately to begin to address this crisis.” 4 These items included hiring additional counseling and investigative staff, increasing investments in sexual assault prevention and training programs, and establishing a “Title IX Council” to “discuss sexual assault cases.”

The University’s Women’s Student Union (“WSU”) responded to President Stenger’s July 2020 statement by issuing its own “list of demands” relating to the University’s response to sex-based violence and misconduct.5 These demands included the creation of an “on-campus rape crisis center”; the hiring of sixteen new professional sexual and interpersonal violence counselors; a “more developed platform provided for students to anonymously report their stories of interpersonal violence”; “a new, comprehensive, and thorough education about sexual assault, rape culture, and victim-blaming”; and the removal of several director-level administrators.

While all of these items were not necessarily germane to our review, we considered these statements in crafting the below recommendations.

B. Overview of Review

As part of the review, we requested and reviewed several policies and documents, including:

- All Title IX-related policies and procedures
- Intake forms and case management/tracking sheets
- Resources or other documents made available to students involved in the investigative process
- Code of Student Conduct
- Organizational charts for University offices with Title IX compliance functions
- Reports, summaries, or surveys relating to the University’s Title IX compliance
- Selected case files provided by the University’s Office of Student Conduct
- Documents and information from specific University offices with Title IX compliance functions, including the offices listed in Section III of this report.

In addition, this review included interviews with several University stakeholders. Due to the ongoing challenges posed by COVID-19, all interviews were conducted virtually through Zoom or through a telephone conference. The following institutional employees were interviewed:

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3 The demands are publicly available at https://docs.google.com/document/d/1LFpe75QNmr_tbkIdVHerQ5V4UKEqnGGrcaZO-NfZo0/edit# (last visited January 16, 2021).
4 See Exhibit A.
5 The WSU statement is attached as Exhibit B.
In addition, we also met with several students and student groups, including students who identified as survivors of sexual misconduct.\(^6\) The following student groups participated in the review:

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<th>Date(s)</th>
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<td>Women’s Student Union</td>
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\(^6\) To protect those individuals’ confidentiality, they are not named here; although, their perspectives and feedback are incorporated throughout this report.
III. Overview of Current Title IX Structure

A. Title IX Office

The Title IX Office is currently housed in the University’s Risk Management and Administrative Compliance (“RMAC”) unit. The Director, Eric Backlund, reports directly to the President. Andrew Baker has served as the University’s Title IX Coordinator since 2015. In addition, pursuant to the President’s July 2020 Statement, the Title IX office recently hired a Deputy Title IX Coordinator to “support the University’s compliance with Title IX and strive to ensure prompt, fair, and impartial resolution of complaints.”

Mr. Baker has served in various risk management and compliance roles for the SUNY system for the last 22 years. Given this background, Mr. Baker described his approach to his role as Title IX Coordinator “from a compliance standpoint,” noting that a significant portion of his responsibilities includes ensuring the University’s compliance with ever-shifting federal and state laws and internal SUNY guidance. These responsibilities include conducting training for students and employees upon request, incorporating legal mandates in the University’s policies and procedures, preparing reports and other documentation required by state and federal law, overseeing and coordinating the Title IX Council, and consulting with other University offices and stakeholders regarding Title IX compliance.

Mr. Baker stated that he was both “saddened” and “grateful” for the information shared on the Share Your Story site. He noted that requests for presentations to student and employee groups have doubled since the posts became public. Mr. Baker also acknowledged challenges with balancing the needs and goals of the survivor and advocacy community with the constraints inherent in his role as a Title IX Coordinator.

B. Title IX Council

Since 2014, the Dean of Students, CARE Team Director and Title IX Coordinator, have met regularly as an informal committee to discuss the status of individual reports and cases filed with the University. The Director of Residential Life joined this informal case management group sometime in the 2016-17 academic year. The meetings remained a small group committee meeting weekly without a formal chair or set format until the formation of the Title IX Council in 2020. Members of this original committee described the group as “effective at delving deep into the cases, and ensuring that students receive all services, outreach, contacts.”

Pursuant to the President’s July 2020 statement, this group was re-constituted as the “Title IX Council” in September 2020 to include the following representatives:

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7 Exhibit C (Senior Administration Organizational Chart), available at https://www.binghamton.edu/president/docs/senior-admin-org-chart-sept2019.pdf.
8 The job description for the Deputy Coordinator position is attached as Exhibit D, and publicly available at: https://binghamton.interviewexchange.com/jobofferdetails.jsp;jsessionid=94BEC2A060BE170DF9157D00CF4F2074?JOBID=124331#.
Andrew Baker: RMAC, Title IX Coordinator (Chair)
Regular attendee since beginning at BU in Fall 2015

Eric Backlund: RMAC, Director
Alternate RMAC representative since 2015, regular attendee since Sept. 2020

Zach DuBord: Office of Student Conduct, Associate Director
Regular attendee since beginning in OSC in 2017

Jazell Johnson*: Office of Student Conduct, Director
Alternative OSC representative since 2017

Jessica Treadwell: Residential Life, Crisis Response Manager
Has attended since beginning at BU in 2019

Paola Mignone*: Residential Life, Director
Began attending with expansion to Title IX Council in Sept. 2020

James (JJ) Brice*: Residential Life, Associate Director of Operations and Crisis
Regular attendee since 2016-17; currently serves as Res Life alternate to J. Treadwell

Beth Riley: Consultation, Advocacy, Referral, Education Office (CARE), Assistant Dean
Began serving when group formed in 2014

Tina Lindley: CARE, Intake Coordinator
Began serving after joining the CARE Office in 2018

Randall Edouard: Dean of Students
Began attending with expansion to Title IX Council in Sept. 2020

Nicole Sirju-Johnson – Diversity, Equity & Inclusion (DEI), Assistant Vice President
Began attending with expansion to Title IX Council in Sept. 2020

Kimberly Peabody – Health Promotion and Prevention Services (HPPS), Director
Began attending with expansion to Title IX Council in Sept. 2020

Matt Rossie – Binghamton University Police Department (BUPD) – Assistant Chief of Police
Began attending with expansion to Title IX Council in Sept. 2020

Lisa Loar: Health and Counseling, Director
Began attending with expansion to Title IX Council in Sept. 2020

*Indicates a back-up/secondary contact, not a regular attendee

The Council meets every week to review “every known report that the University receives” and discuss next steps for ensuring all available information is gathered, the appropriate offices have
provided support and resources to reporting individuals, and each case is progressing consistent with University policies and procedures. The Council only considers cases of domestic violence, dating violence, stalking, sexual assault, and sexual harassment. Members of the Council described utilizing a “case management model” to provide direct services to individuals impacted by incidents of sex-based misconduct. Members also noted that the Council functions similarly to a behavior intervention team for cases involving sexual misconduct.

C. Sexual Assault Response Team (“SART”)  

The Sexual Assault Response Team is a second interdisciplinary group of University professionals examining issues related to sexual misconduct. The SART is chaired by Kimberly Peabody, Director of Health Promotion and Prevention Services, in the Division of Student Affairs.9 Notably, the SART’s membership has some overlap with the membership of the Title IX Council.10

SART members reported that the SART’s previous primary focus was reviewing and providing feedback on student conduct procedures. The SART is currently undergoing a strategic reevaluation of its mission and goals in light of changing statutory and regulatory requirements relating to Title IX as well as the establishment of the Title IX Council. In the fall of 2020, the SART drafted the following Mission and Goals:

**SART Mission**  
It is a priority at Binghamton University to provide a transformative learning community that prepares students for advanced education, careers, and purposeful living. Understanding that the trauma of sexual assault and dating violence impedes a student’s ability to engage in healthy living for lifelong success, Binghamton University, as a premier institution, is committed to the continuous improvement of response, support and prevention.

The mission of the Sexual Assault Response Team (SART) coordinated by Binghamton University is to conduct reviews and gather information regarding sexual assault and dating violence incidents to support and further develop effective and efficient responses.

**Goals:**

1. Continuous improvement of trauma-informed response and support for survivors.
2. Continuous improvement of trauma-informed response and accountability of perpetrators.
3. Continuous improvement of evidence-based prevention efforts.

To implement its mission and goals, SART members noted their recent efforts to include broad representation from the University, including especially “high risk populations” as identified by

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9 Prior to Ms. Peabody’s tenure, the SART was led by the former Assistant Vice President of Student Affairs.
10 A complete list of the current SART Roster is attached as Exhibit E.
national and internal data, such as students of color, students identifying as LGBTQIA+, and students with disabilities.

SART members also noted that an immediate action item was to establish formal mechanisms for gathering information and data from various offices across the University in order to meaningfully evaluate prevalence, satisfaction with the conduct process, and effectiveness of prevention and training programming. A challenge to this work is gaining access to and distilling information obtained from the University’s many reporting sources. In addition, SART is working with other University offices to ensure that as much demographic data as possible is captured during initial intake processes in order to meaningfully assess trends and “hot spots” for interventions.

SART currently has no formal reporting responsibilities to the Title IX Office (although the University’s Title IX Coordinator is a member) or other University stakeholders, and generally relies on individual members to relay information and action items to their constituent offices and stakeholders. In addition, members of SART felt that their particular insight and expertise was an untapped resource for the University’s leadership as the University works to improve its overall Title IX compliance and programming. Finally, the group noted that it is working to increase outreach efforts to students and other University stakeholders to increase awareness of its mission and activities.

**D. Consultation Advocacy Referral Education (“CARE”) Team**

The University’s CARE team is made up of a director, three case managers, an intake coordinator, and a secretary—with one case manager specifically designated as a victims’ advocate. Of note, all of the members of the CARE team handle all types of “student concerns,” including matters outside of Title IX. The CARE team is managed by Beth Riley, Assistant Dean of Students and Director of Case Management Services, who reports to Johann Fiore-Conте, Associate Vice President for Student Affairs.12

The CARE team is responsible for “initial outreach” to students impacted by sex-based misconduct. The initial outreach includes a “form letter” that includes resources for the impacted individual and is intended to provide a “direct person and point of contact for students to connect with” once appropriate University officials are aware of an incident of misconduct. Members of the CARE team are student affairs professionals, not counselors. The CARE team’s primary charge is to “connect students to resources, both internal and external,” to help arrange interim measures and issue “no contact” orders, and work with students involved in the student conduct or other University processes. Significantly, the CARE Team is a “private”—not a confidential—resource.

**E. Office of Student Conduct**

The University’s Office of Student Conduct (“OSC”) is led by Director Jazell Johnson, who has served in that role since June 2018 and worked in student affairs at the University since 2012. OSC reports to Associate Vice President for Student Affairs Johann Fiore-Conте, and is staffed by a director, one associate director, an assistant director for conflict management, a case examiner, an

11 At the time of this review, there was one vacancy on the case management team.
12 Exhibit F (Division of Student Affairs Organization Chart).
administrative assistant, and two graduate assistants. Two investigators, Kelcy Brooks and Zach DuBord, serve as the lead Title IX investigators, while Ms. Johnson and Ms. Erin Kentos serve as alternate investigators.\(^{13}\)

As to be expected in light of the various statutory and regulatory obligations imposed on schools in this space,\(^ {14}\) the Office of Student Conduct process is similar in many respects to a traditional student conduct process.\(^ {15}\) OSC initiates a conduct process once it receives a report or referral from several different sources. Once a report is registered with OSC, an investigator is assigned and outreach is initiated. OSC staff members noted that in “most cases,” someone from the CARE team has already initiated contact with one or both of the parties so the investigator’s outreach is often (although not always) the second communication a reporting or responding student may receive from the University.

OSC confirmed that members of the CARE team are primarily responsible for implementing interim measures, including “no contact” orders; however, it was noted that there are occasions where the assigned investigator or the Director directly handles such requests—often in conjunction with other University offices (e.g., Residential Life). These interventions are made on a case-by-case basis. In addition, OSC noted that each case is placed on the Title IX Council’s meeting agenda for discussion at the Council’s weekly meeting and is also discussed separately during internal weekly OSC staff meetings.

After an investigation is initiated, the investigator works directly with the parties to schedule interviews, gather evidence, and identify and interview relevant witnesses. The investigator then prepares a case file summarizing the witness statements and evidence. If a decision is made to charge the responding student with a violation of the University’s Title IX policy, all of the information and evidence is placed into a packet along with a charge letter, which is provided to the parties.

Somewhat uniquely, under the University’s policy:

The student conduct administrator may conduct an investigation to determine if the charges have merit and/or if they can be handled administratively by Administrative Agreement\(^ {16}\) of the parties involved on a basis acceptable to the student conduct administrator. Prior to the resolution, the respondent will be given the opportunity to review all available reports pertaining to the incident. Such resolution is final and there will be no subsequent proceedings. Students who are offered an

\(^{13}\) The office is also assisted by four graduate-level interns working in the program who “help with outreach and marketing” and “do trainings and coaching.”


\(^{15}\) OCS’s investigation and adjudication process is governed by the SUNY system-wide policy and procedure, which implements with Department of Education’s August 2020 Title IX regulations. See Exhibit G (SUNY Sexual Violence Response Policy).

\(^{16}\) An “Administrative Agreement” is defined as “the respondent acknowledges responsibility for violating the code of conduct and resolves the case with a Student Conduct Administrator by agreeing to an appropriate disciplinary sanction and signing the agreement to resolve the case.” Such agreements are “final and not subject to appeal.” Exhibit H (Code of Student Conduct 2020–21) at 4.
Administrative Agreement are given the opportunity to consider the agreement before signing it.\textsuperscript{17}

Other than this administrative agreement process, the University’s current Title IX policy does not provide for informal resolution of a complaint. When asked about informal resolution or alternative dispute resolution, OSC staff reported that such practices were “rare” and usually entail a reporting student requesting an “educational conversation” with the alleged offender. Given the uncertainty about the legal propriety of informal resolution over the last several years, this is understandable. In addition, OSC staff noted that historically, “complainants have not had much of a formal say in the administrative agreement process,” other than “having a conversation” and “asking about desired outcomes.” Although OSC staff includes an Assistant Director of Student Conduct for Conflict Management who oversees alternative dispute resolution (including restorative justice) for some student conduct cases, Ms. Kentos reported that these processes are not used for Title IX cases.\textsuperscript{18}

“If the matter cannot be resolved by mutual agreement, a Level II Student Conduct Board hearing will be scheduled.”\textsuperscript{19} Pursuant to the Department of Education’s regulations and state and federal law, parties in Title IX proceedings have several procedural rights, which are outlined in the Code of Student Conduct.\textsuperscript{20} A hearing is administered by a hearing advisor and a three-member hearing panel made up of trained University employees and a student representative for Title IX cases. Following the hearing, the Student Conduct Board determines whether the respondent violated the Code of Student Conduct and recommend appropriate sanctions, if any.

The University has also adopted sanctioning guidelines. Relevant to cases of sexual misconduct, the Code of Student Conduct provides the following:

Sanctions for incidents involving sexual harassment, sexual assault, domestic violence, dating or sexual violence, or stalking include suspension or expulsion from the University. Where facts and circumstances justify mitigating to a lesser sanction of probation, students found responsible may also be subject to required educational activities, limitations on campus activities, change in living situation, restricted access to campus and/or other sanctions.

For cases in which students are found responsible for sexual assault consistent with the federal definition of rape (the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without consent of the victim), the available sanctions are suspension with additional requirements and expulsion/dismissal. . . .\textsuperscript{21}

\textsuperscript{17} Id. at 17.
\textsuperscript{18} OSC noted that the restorative justice program was launched in 2016 as part of the dispute management program run by Ms. Kentos.
\textsuperscript{19} Exhibit H (Code of Student Conduct 2020–21) at 17. A “Level II” conduct board hearing is defined as a case “in which possible sanctions do include more than two years’ disciplinary probation, final probation, suspension, expulsion or removal from University housing.”
\textsuperscript{20} Id. at 18.
\textsuperscript{21} Id. at 23.
The University’s sanctioning guidelines are reviewed annually by a committee which Mr. DuBord (Associate Director of Student Conduct) chairs. Both a complainant and a respondent may appeal a hearing outcome, including both a finding of responsibility and/or any sanctions imposed.

When asked about opportunities for improvement in their department, OSC staff reported challenges in balancing complainant demands for speedy resolution or immediate action with legally-mandated respondent due process rights. In a similar vein, staff acknowledged that complainants are often unhappy with or object to questions posed by an investigator or hearing board member as “not trauma-informed,” but managing these objections can be a challenge due to the fact-finding charge of these employees.

Staff also noted that many students have a difficult time navigating the difference between “confidential” and “private” reporting options and resources, adding, “Depending on who you told at the University, that employee may not be able to tell anyone else as required by law . . . in some cases it is incumbent on the student to communicate desires for next steps.” OSC staff also felt that that students and employees need “more and better education” generally, but acknowledged that there is a “challenge with engagement, because often students receiving training and education are not victims at that point, so they don’t always absorb information.”

Finally, OSC staff reporting feeling a high degree of stress in managing current caseloads, noting that the office manages general student conduct complaints in addition to Title IX matters. In particular, staff described struggling to prioritize Title IX cases alongside with other sensitive conduct issues—and particularly hazing cases. Staff noted that the President’s July 2020 announcement included the hiring of two new Title IX investigators; however, concern was expressed due to uncertainty regarding how the new investigators would be integrated into the existing conduct process.

F. Health Promotion & Prevention Services

The University’s Title IX and related sexual misconduct prevention and awareness training programs are primarily administered through the Health Promotion & Prevention Services unit which is directed by Kimberly Peabody. The unit has an Interpersonal Violence Prevention (“IPV”) program which is staffed by one University coordinator (Dara Raboy) and two graduate assistants.

Ms. Peabody noted that the University’s training and education program is driven largely by several state and federal mandates. These mandates include detailed substantive requirements for

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22 Staff described being “inundated” with hazing cases with one to two active cases per week. When asked about managing investigations into Code of Student Conduct violations by Greek organizations, OSC staff expressed frustration, noting that these cases presented unique challenges due to the presence of “unrecognized” organizations and the prevalence of reluctant complainants or unknown perpetrators in this context.

23 See 34 C.F.R. § 668.46(j) (requiring schools to develop and implement “primary prevention and awareness programs for all incoming students and new employees” that “are intended to stop dating violence, domestic violence, sexual assault, and stalking before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe directions.”); N.Y. Educ. Law § 6447 (McKinney), available at https://www.health.ny.gov/prevention/sexual_violence/docs/regulations.pdf.
the content of the training and require institutions to offer “all students general and specific training in domestic violence, dating violence, stalking and sexual assault prevention”; utilize “multiple methods to educate students about violence prevention”; and provide specific or expanded training to “international students, students that are also employees, leaders and officers of registered or recognized student organizations, . . . online and distance education students,” and “members of groups that the institution identifies as high-risk populations.”

New York law also requires institutions to “regularly assess programs and policies established pursuant to this article to determine effectiveness and relevance for students.”

From Ms. Peabody and Ms. Raboy’s perspectives, just managing and providing training to new students and student organizations alone is an “overwhelming” mandate. This is exacerbated by the fact that the IPV coordinator, Ms. Raboy, currently works as a ten-month employee—which means that the IPV program is not staffed by a full-time University employee during the summer months. Ms. Peabody noted that this presents significant operational challenges for implementing comprehensive training and programming as Ms. Raboy does not have the benefit of a summer planning or evaluation period. In addition, the University’s primary IPV training program has historically been provided for first-year students during summer orientation, meaning that the program is entirely managed by Ms. Peabody and (budget permitting) graduate student assistants and not the IPV program coordinator.

IPV primarily implements training through a program entitled “20:1,” which Ms. Raboy created in 2004. Ms. Raboy indicated that the 20:1 program initially grew out of an initiative to work with fraternities and other men’s groups to provide peer education around interpersonal violence and attendant issues. Later, through funding from the U.S. Department of Justice’s VAWA program (which has since expired), Ms. Raboy developed additional program “tiers” focusing on consent and bystander intervention.

The program’s mission statement is as follows:

20:1 is a peer education program that educates students by providing interactive sexual assault prevention programming, addressing sexual consent, victim blaming, bystander intervention as well as understanding predatory behavior. 20:1 Sexual Assault Prevention Program aims to create a dialogue about the Sexual Assault epidemic on college campuses and create a safer educational environment.

As a peer-education program, Ms. Raboy oversees a two-credit professional internship course for Binghamton students to “gain practical experience facilitating presentations on the topic of interpersonal violence including sexual assault prevention and bystander intervention education to student groups on campus.” Once trained, these students are then able to provide IPV and related

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24 N.Y. Educ. Law § 6447 (4–6)
25 Id. § 6447(7).
26 IPV’s annual report to the Title IX office, which summarizes the programming offered for the 2019-20 academic year, is attached as Exhibit I.
27 Candidly, this program was described as “a nightmare to facilitate.”
28 A summary of the IVP Prevention Education program is attached as Exhibit J.
29 Exhibit K (2020 20 to1 Syllabus).
training to peers and student organizations. Ms. Raboy conducts this course in addition to her other IPV training and administrative responsibilities.

Ms. Raboy described the program as “very interactive” and including “scenario and discussion-based activities.” While the goal of the programming is to provide in-depth education regarding issues such as healthy relationships, affirmative consent, and recognizing and preventing predatory behavior, Ms. Peabody and Ms. Raboy felt that these topics are often subordinated to legally-mandated training elements. Ms. Peabody and Ms. Raboy agreed that it was critical for the University to consider building additional time into student’s educational experiences to integrate this training, as opposed to “cramming it in late at night” during student orientation or relying on online modules.30 Ms. Peabody also suggested that additional support and involvement from the Title IX office may make both the required and best-practice training more effective, noting that there may be some benefit to Title IX having more of a “face” with students so that “students are getting connected to the office.”

G. Residential Life

The University’s Office of Residential Life has been led by Director Paola Mignone since 2017. In addition to serving in the Director role, Ms. Mignone has served in Student Affairs at Binghamton for over a decade. As relevant to this review, Ms. Mignone is primarily assisted by James (“JJ”) Brice, Associate Director of Operations and Crisis. Mr. Brice serves as the lead contact for Title IX-related responsibilities and investigations, in addition to other duties as assigned by the Director.

Residential Life is responsible for overseeing over 230 Resident Assistants (“RAs”) in a normal year (there are slightly fewer RAs this year due to the impact of COVID-19). RAs undergo a selective application process which staff described as “competitive” due to the many benefits enjoyed by RAs on campus. RAs are supervised by graduate assistants and professional Residence Life staff (i.e., “Resident Directors” and “Area Directors”).

As is the case with nearly all institutions of higher education, RAs often serve as “first responders” to incidents of sexual misconduct and interpersonal violence. Residential Life staff and representatives from the student RA Leadership Council noted that “Res Life is the funnel for pretty much everything” relating to reports student health and wellness concerns. Ms. Mignone noted that students often have frustrations that incidents are not handled expeditiously or “fairly,” but Ms. Mignone observed that it can be challenging to meet student expectations in this regard while balancing legally-mandated rights of students accused of misconduct. This most often plays out in the context of interim measures for sexual misconduct cases where Residential Life is asked to relocate an individual accused of misconduct away from the complainant or reporting individual. Staff reported that they generally follow and work with Student Conduct to issue and enforce no-contact orders and relocation requests, but also indicated that the department has its own protocol for assessing requests for temporary relocations or other interim action “outside of the conduct process.”

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30 It was noted that the new student orientation program is currently being re-structured, and that the 20:1 program has been modified to be delivered in hybrid fashion (one portion online and one in person).
Ms. Mignone reported that RAs and professional Residence Life staff received a total of six hours of Title IX training (in addition to any University-mandated training for students and employees), plus additional professional development on topics such as ethics, professionalism, and boundary setting. Regarding allegations that RAs and professional Residential Life staff have abused their positions of authority or otherwise engaged in misconduct, Ms. Mignone stated that the department, in conjunction with student conduct and/or Human Resources, processes all complaints according to established policies and procedures, and that any Residential Life employee found responsible for policy violations has been disciplined appropriately after required due process. Staff commented that students may feel like a lack of immediate action or removal against accused RAs or professional staff is evidence of favoritism or a systemic issue, but admonished that her department takes such allegations seriously and the University treats them in accordance with all other student/employee complaints. In addition, while staff expressed understanding of students’ frustration with a perceived lack of action, it was also noted that federal and state privacy laws limit the information an educational institution can share about disciplined students and/or employees.

Both Residential Life staff and student members of the RA Council noted that the training was fairly comprehensive (students went so far as to say that “some of the training that we get on sex assault awareness should be given to every single student”), and although there is always room for continuous improvement, felt that it equipped them to handle the day-to-day responsibilities of a RA position. A challenge is enhancing training to help RAs and other responding professional staff be more trauma-informed in meeting with individuals reporting incidents of sexual misconduct, but it was acknowledged that this is a skill set that is improved with experience and ongoing training.

**H. Health & Counseling Services**

The University’s Health and Counseling Services are housed in the Decker Student Health Services Center and the University Counseling Center, respectively. Lisa Loar, Director, oversees the unit, and Dr. Mark Rice serves as the Clinical Director for the Counseling Center. The unit reports to Johann Fiore-Conte, Associate Vice President for Student Affairs.

Ms. Loar and Dr. Rice reported that the University counseling center currently has a total of 14.5 FTEs for mental health and/or crisis counseling professionals. Staff estimated that in total, the Center has interactions with approximately 10% of the student body in a “normal” (i.e., COVID-free) year, with Title IX and interpersonal violence cases being a “somewhat regular” occurrence. The Health and Counseling centers have written protocols governing their initial response practices for students reporting incidents of interpersonal violence.

The Counseling Center reported the following data regarding the number of students seeking appointments:

- Number of students receiving appts. in 2017-2018: 1905
- Number of students receiving appts. in 2018-2019: 2172
- Number of students receiving appts. in 2019-2020: 1913

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31 Ms. Loar noted that the 2019-2020 numbers are slightly lower than expected due to COVID-19.
Health and Counseling staff noted that wait times for counseling appointments can vary across the semester. Generally speaking, though, staff find that there is “zero wait time” near the beginning of a semester (August to mid-October and January to mid-March), but that wait times tend to increase dramatically near the end of the semester, up to “several weeks.” Staff noted, however, that these numbers reflect the Center’s “mixed caseload of emergencies and appointments,” emphasizing that the University “wouldn’t waitlist a student who was a recent trauma victim.” Health and Counseling staff are trained to triage cases, and “sexual assault victims are prioritized for receiving services.”

In the event that a student cannot immediately visit with a counselor, the Counseling Center offers the student the opportunity to connect with a “Treatment Coordinator,” whose “purpose is to help to minimize the impact of mental illness or emotional distress on students’ academic and personal pursuits through treatment coordination with campus and community resources.” According to staff, “Treatment Coordinators provide case management and related services that help facilitate student access to and utilization of University and/or community resources, particularly clinical treatment resources.” These services include “making referrals, coordinating hospital aftercare, following up with students of concern, enhancing community referral networks, and assisting students leaving for or returning from medical withdrawals.”

Staff noted that most of the University’s counseling staff are licensed social workers and counselors “trained to work with individuals with trauma” and that the University has been supportive of the Center’s requests for resources to fund additional training and professional development in this area. Ms. Loar also noted the President’s July 2020 Statement, in which the University committed to hiring a new sexual violence counselor to work specifically with survivors of sexual assault” and to also “assign two of our existing counselors to deal specifically with these cases.”

Staff noted that a challenge in this area is ensuring students are trained and educated on the various resources and services offered by the University, noting that when many students find themselves in need of support and healthcare programs, they may be experiencing trauma and unsure of where to go. Ms. Loar and Dr. Rice expressed support for increasing initiatives around health communication and education to address this issue. The University is responding to this concern in part by establishing a victims advocacy and rape crisis center space on campus during the spring 2021 semester. The still to-be-named space will create a single identifiable and centrally located campus space where all of the resources and services offered by the University in this realm will maintain a presence. The center will also provide space for the CVAC and for closely related student organizations.

I. Fraternity and Sorority Life

While not formally integrated into the University’s Title IX structure, the office of Fraternity and Sorority Life (FSL) and Greek Life generally have been identified as potential areas of conflict and opportunities for improvement by many student advocacy groups. FSL is a one-person office led by Director L.C. Coghill, who reports to the University’s Dean of Students. Mr. Coghill is assisted by two graduate assistants. Mr. Coghill reported that he “wears a variety of hats” in
relation to Greek Life, including providing support and resources, assisting with tracking and implementing mandated training, and overseeing Greek Life activities such as recruitment for registered fraternities and sororities.\textsuperscript{32}

Mr. Coghill works closely with other offices in the Division of Student Affairs, including the Office of Student Conduct. Mr. Coghill noted that OSC is often “swamped” with investigating and adjudicating potential FSL violations for hazing and violations of alcohol/drug policies. These cases have also ballooned recently due to efforts to enforce COVID-19 related policies and restrictions implemented by both the University and state law. Based on his many years of experience as a FSL administrator, Mr. Coghill expressed concern that Binghamton’s “party culture” was more extreme than other institutions, resulting in serious health and safety concerns relating not only to sexual misconduct but also alcohol and drug-related issues.

Mr. Coghill identified several challenges in his area, some of which are common in administering a Greek Life program and others which are unique to the University. Mr. Coghill noted that the University does not own chapter properties for any Greek organization and that most FSL activities occur off-campus approximately four miles away in downtown Binghamton. Because FSL organizations operate off-campus, this eliminates many traditional institutional enforcement tools, such as utilizing campus law enforcement and withholding leases from organizations that violate campus rules or state/federal law. Mr. Coghill observed that a perennial challenge was the City of Binghamton’s limited interest in engaging with the University to consistently enforce criminal and civil laws at student-occupied dwellings.

In addition, significantly, the University struggles with a large “underground fraternity presence”—meaning that organizations that are either unrecognized or de-recognized by the University continue to operate and recruit students into their organization. Mr. Coghill felt that the University had taken a strong stance in unrecognizing organizations for which there was sufficient evidence to establish policy violations, but that due to the unique culture and environment of Binghamton, unrecognition had the adverse effect of eliminating potential enforcement tools, such as the ability to mandate training for FSL members, identify members affiliated with certain organizations, and exercise oversight over the organization for compliance with institutional mandates.

IV. Analysis & Recommendations

Based on our review of the documentation provided, interviews with University administrators, and engagement with student groups and individuals impacted by sexual misconduct and interpersonal violence, we offer the following analysis and recommendations for the University’s consideration.

A. The University’s Title IX Policies and Procedures are Legally Compliant and Consistent with Best Practices.

As an initial matter, it is important to stress that the University handles Title IX-related matters in a manner that is both consistent with the institution’s legal obligations and well-recognized best

\textsuperscript{32} Mr. Coghill that the University does not register or promote social events for Greek organizations.
practices. We have certainly been unable to identify any broad systemic compliance failures. The University’s personnel are well trained and skilled practitioners in their respective fields and the University’s infrastructure for responding to Title IX-related matters is robust.

As part of our review, the University made available several case files to evaluate the University’s fidelity to its policies and procedures relating to the investigation and adjudication of reports of sex-based discrimination. Investigators assigned to manage these cases performed their responsibilities in accordance with the University’s written policies and consistent with best practices for trauma-informed investigations and appropriate attention to due process. In each Title IX-related incident we reviewed, appropriate resources were provided to participants. No-contact orders and other interim relief provided was appropriate as well.33 Reviewed file records show investigatory interviews which strike an appropriate balance between concern for the well-being of the complainants and the due process rights of those accused of misconduct. In some instances where there were findings of misconduct, people could perhaps disagree about whether the sanctions meted out were punitive enough; however, sanctioning decisions were reasonable. Put simply, we were duly impressed with the employees we interviewed and there was nothing uncovered in this review which suggested any sort of broad institutional failing.

We think it is imperative that University leadership understand the inherent complexity of these cases and that virtually every case results in at least one party being upset with the end result. Certainly, concerns cannot be reflexively dismissed, but we are comfortable concluding that many of the concerns registered here are simply an inherent part of doing this work and not symptomatic of widespread problems.

1. Complaints Regarding University “Negligence” or “Unprofessionalism” are Unsubstantiated.

Share Your Story, the WSU Statement, and some students interviewed as part of this review shared concerns that Title IX and OSC administrators were not sufficiently “trauma-informed” or otherwise attentive to the rights and needs of survivors. While University administrators should continue to be receptive to student feedback and concerns (and have expressed willingness to continue to self-evaluate and improve in the delivery of services), we note that employees tasked with implementing the student conduct process have legal obligations to act without bias toward complainants or respondents as a group or individually and to provide appropriate due process to students accused.34 This is a difficult balance.35 We are confident that the employees tasked with navigating these issues are committed to respecting the rights of all students and ensuring that individuals impacted by sexual misconduct and interpersonal violence receive appropriate support and resources throughout the process.

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33 Of note, some survivors expressed concerns regarding implementation of interim measures in their case. While they were understandably unhappy with the decisions made in their cases, we did not find that the provision of interim measures was inconsistent with federal law or University policy.

34 See 34 C.F.R. § 106.45(b)(1)(iii) (requiring institutions to ensure “that any individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent”).

2. The University Should Expand Informal Resolution Options in the Title IX Student Conduct Process.

One issue raised in our file review and in student feedback was the University’s reliance on an “administrative adjudication” process. The process essentially provides an opportunity for a responding student to accept responsibility for a policy violation (which may be a lesser violation than how the student was charged) and accept a sanction recommended by the investigator assigned to a case. Several students who had participated as complainants in the University’s conduct process described dissatisfaction and frustration with this process, as they felt that victims of the misconduct did not have an adequate voice in the outcome of their formal complaint. This sentiment was acknowledged by OSC staff, noting that while a complainant’s perspective may (and is usually) solicited informally, the complainant does not formally sign off on the administrative agreement. Significantly, other than this administrative agreement process, the University does not offer other alternatives to investigative/adjudicative resolution of reports of sex-based discrimination (i.e., “informal resolution.”). In addition, the University generally does not offer an informal resolution process prior to initiating a full investigation of a complaint.

Relevant here, the Department of Education’s 2020 regulations (effective August 2020) provide that “at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication.”\(^{36}\) Such informal resolution must include a process for obtaining “the parties’ voluntary, written consent to the informal resolution process,” among other requirements.\(^{37}\) Accordingly, to the extent the University continues utilizing the administrative agreement process, administrators should ensure that the reporting party has an opportunity to review and ultimately consent to any outcome offered in lieu of a complete adjudication of a complaint.

Given these requirements and student feedback, on a go-forward basis, the University should offer more robust options for informal resolution of complaints of sex-based discrimination consistent with best practices for such options. The University may consider several factors—including the nature and severity of the alleged conduct, whether the complaint is against an individual previously accused of similar misconduct, and whether the health or safety of the reporting individual or the University community is endangered—to determine whether to offer or agree to facilitate an informal resolution in any given case. We note that the University already has a dedicated and experienced professional whose focus is alternative dispute resolution, including restorative justice. We recommend tapping into this existing expertise and expanding options available to the University community for resolving these matters.

3. The University’s Commitment to Hire Two Additional Investigators will Ensure Prompt Investigations and Enhance Capacity of OSC Staff.

Currently, the University’s investigators and hearing officers responsible for adjudicating alleged misconduct reported against students are handled by the Office of Student Conduct. OSC has two lead investigators, and the Director and Assistant Director of Student Conduct for Conflict

\(^{36}\) 34 C.F.R. § 106.45(b)(9).
\(^{37}\) Id. § 106.45(b)(9)(ii).
Management serve as additional investigators in the event of a conflict or to balance the lead investigators’ caseload. As discussed above, our review of a selection of representative case files and interviews with staff determined that current OSC investigators fulfill their responsibilities under governing law and engage in best practices for investigating and adjudicating these challenging cases.

Nationally, the subject of how to staff University investigative units appropriately is a subject of debate. The stresses of investigating allegations of interpersonal violence are well-documented and turnover in this field is rampant.OSC staff described feeling under “a lot of pressure” and “reaching a breaking point” in terms of caseload—due largely to the University’s already high and increasing caseload of conduct complaints involving Greek life (i.e., hazing and drug/alcohol violations) and also due to processing violations of University and state/local COVID-19 rules.

Investigator staffing across peer institutions varies dramatically based on institutional size and resources, ranging from one to up to six professional, part- or full-time investigators. Many schools utilize Binghamton’s practice of investigating complaints filed against students within a student conduct office; others have opted to centralize investigations within an office of institutional compliance or equity/affirmative action office. Both are acceptable investigative models with appropriate training and oversight by the Title IX office.

The University committed to “two new sexual violence investigators, specifically trained for this work” in the President’s July 2020 Statement. According to the Statement, “These investigators will work with victims and survivors to identify perpetrators, bystanders and witnesses so that the prosecution and disciplinary sanctions against the perpetrator are executed quickly and to the fullest extent of our Code of Student Conduct.” It is not clear from the Statement, however, where these new investigators will be housed, although we assume based on the background and context of our review that they will at least supplement OSC’s investigative staff. If so, these additional staff members will bring OSC’s total investigative capacity up to six professional members—well-within and at the higher end of the number of investigators found among peer institutions.

Also, we note that the University recently hired a new Deputy Title IX Coordinator whose job description includes “conducting investigations and prepare detailed reports of investigative findings.” While these responsibilities certainly fall within the purview of a deputy coordinator, we note that integrating this role into the University’s existing investigative and adjudicative process currently housed in the Office of Student Conduct has the potential for confusion both internally and with the broader community (i.e., how cases would be assigned to the Deputy for investigation, who would oversee the Deputy’s investigations, how communications would be handled, etc.). Indeed, uncertainty and concerns were expressed both in our meetings with

39 Exhibit A.
40 Id.
41 Exhibit D; see also Exhibit A (July 14, 2020 Statement) (noting that the University “will hire two new sexual violence investigators, specifically trained for this work”).
University administrators and student representatives regarding whether investigators housed in the Title IX office would assist or supplant investigators already engaged in this difficult work in OSC. Accordingly, we recommend that the Title IX office and/or University leaders communicate directly with the Director of Student Conduct to ensure that roles and responsibilities are clearly delineated and that protocols are established to ensure consistency and communication between the two offices if they both have an investigative function.

B. The University’s Oversight of Title IX Compliance Should Be Enhanced by Centralizing and Improving Communications Regarding Title IX Operations, Programs, and Services.

The University has a number of people and committees doing considerable Title IX work, but there is a lack of clarity on roles and responsibilities. We are concerned that this lack of clarity could eventually lead to a significant misstep or oversight. We also believe the University has done a poor job of communicating and marketing the extensive work it is doing in this space to the University community. We recommend the following to address these concerns.

First, Title IX requires all institutions to designate at least one employee to coordinate and oversee compliance with Title IX. Generally, this “Title IX Coordinator” should be a senior university official and report to the university’s senior leadership to maintain independence, avoid any potential conflicts of interest, and ensure that University leadership is fully informed of significant Title IX issues that arise. Federal law and University policy requires the Title IX Coordinator to receive all reports and complaints raising Title IX issues, even if the complaint was initially filed with another individual or office or the investigation will be conducted by another individual or office. Although the Title IX Coordinator should have capacity to meet with students, employees, and other university constituents and oversee the University’s response to all Title IX complaints, the Coordinator also serves the critical functions of monitoring outcomes, identifying and addressing any patterns or systemic problems, and assessing campus climate. Given the breadth of these responsibilities, most institutions—especially institutions as large and complex as Binghamton—designate “deputy” Title IX Coordinators to handle specific compliance responsibilities (such as investigations, training, or support services).

Comprehensive Title IX programs have four areas of focus:

1. Prevention Programming and Training designed to: (a) increase awareness of institutional policy and internal reporting options and resources and (b) reduce incidence of sex discrimination throughout the university community.
2. Incident Resolution, i.e., how an institution resolves reports of sex discrimination.
3. Support and Resources for community members impacted by sex discrimination.

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42 34 C.F.R. § 106.8(a).
43 See id. § 106.30(a) (defining “Actual knowledge” as “notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient,” including, at a minimum “a report of sexual harassment to the Title IX Coordinator.”); see also U.S. Dep’t Ed., Office for Civil Rights, “Questions and Answers on Title IX and Sexual Violence” 14–15 (2014) (rescinded), available at https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf.
4. Athletics Compliance, which is subject to a particular regulatory compliance regime.

Accordingly, we recommend the University’s Title IX compliance function become more formalized in a manner befitting the current institutional structure. The Title IX Coordinator should have “dotted-line” authority over three areas: (1) prevention and training programs; (2) support and resources; and (3) athletics. For each area, specific Deputy Title IX Coordinators should be explicitly identified (e.g., a Deputy Title IX Coordinator for Prevention and Training, a Deputy Title IX Coordinator for Support and Resources, and a Deputy Title IX Coordinator for Athletics). These Deputy Title IX roles can be assumed by existing staff. For example, the role of Deputy Title IX Coordinator for Prevention and Training can be filled by the Director of HPPS as one of her assigned duties. We also recommend that the Title IX Coordinator begin having regularly scheduled meetings with the University President.

1. The Title IX Office Must Meaningfully Engage with the University Community.

The University’s current Title IX Coordinator excels in the traditional legal compliance role of an institutional Title IX coordinator. There is also no question that the compliance aspects of the Title IX office are a full-time endeavor, particularly in light of New York’s comprehensive laws related to institutional responses to sex-based misconduct and the U.S. Department of Education’s ever-shifting guidance and regulations. Community members reported high degrees of confidence in the Title IX office’s capability to fulfill these core compliance functions.

But while compliance with the myriad legal obligations is essential for an effective Title IX office, skilled community outreach and communications can make a remarkable difference in how the University’s efforts are perceived by the University community as well as the community’s trust in that work. We feel that the University has work to do on this score.

Specifically, there was a chasm between the comprehensive work being done by the University regarding Title IX compliance and what students knew about that work. Public engagement has been poor. With that in mind, we think the University would be well-served by identifying someone who can skillfully engage the University community on these topics whether that is the form of a Deputy Title IX Coordinator for Community Engagement or in some other administrative role within the institution’s current structure. To that end, we note that the office recently hired a Deputy Title IX Coordinator in January 2021 and understand that the individual’s role will include regular engagement with many University community groups.

2. The University Should Update its Title IX and Interpersonal Violence Prevention Webpages.

Relatedly, students and administrators described the University’s Title IX website and related pages as exceptionally difficult to navigate. Our review of the website found that University policies, procedures, and resources are available, but not easy to navigate. Research has shown that efforts to “increase the accessibility of policies, links, and Title IX coordinator information, along with campus climate surveys (by making these public surveys) and training of the university
“communities” helps build trust in the University’s handling of these sensitive matters and results in increased reporting. Accordingly, we also recommend that the University create a new “Title IX” or “Interpersonal Violence Prevention and Response” webpage, independent of the University’s Risk Management and Compliance site. Several references to high-quality webpages are included throughout this report, including the University of Rhode Island’s “Sexual Violence Prevention and Response” page and the University of Oregon’s “Help for Survivors” page. The University should invest in creating a similar page marketed specifically to students, with dedicated links to information for survivors, accused students, and bystanders.

3. **The University Should Designate an Appropriate Staff Member as Deputy Title IX Coordinator for Support and Resources.**

The provision of professional, trauma-informed support and resources for individuals impacted by sex discrimination and gender-based violence is a critical component of an effective Title IX program. Under state and federal law, the University has an obligation to provide students and employees with notice of their “rights and options” under the institution’s sex discrimination policy and protocol. These rights and options include the right to report a complaint to the institution and/or law enforcement and be provided with information outlining the process, participation expectations, and potential outcomes of an investigation or informal resolution. Similarly, all institutions must notify reporting parties of their right to file and pursue a complaint with law enforcement, and provide appropriate information and support to facilitate the filing of such a report if the reporting party expresses a desire to do so. Given these specific mandates, ensuring that the University has identified appropriate staff to meet these obligations and ensure community members receive clear and accurate information regarding rights, options, and resources available to resolve a sex discrimination complaint is imperative.

A common theme in stakeholder comments—and indeed a common challenge for nearly every institution of higher education—is balancing the institution’s compliance obligations to provide a fair and impartial investigative process with ensuring access to educational programming and supporting individuals throughout the resolution of a report. Supportive measures may include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations.

Ultimately, the Title IX Coordinator is charged with the responsibility of “coordinating the effective implementation of supportive measures.” In addition, upon receipt of a report of sex-based discrimination, the Title IX Coordinator “must promptly contact the complainant to discuss the availability of supportive measures” and ensure the complainant understands their rights and

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45 [https://www.binghamton.edu/rmac/title-ix/](https://www.binghamton.edu/rmac/title-ix/).
46 [https://web.uri.edu/titleix/](https://web.uri.edu/titleix/).
47 [https://safe.uoregon.edu/](https://safe.uoregon.edu/).
48 See N.Y. Educ. Law § 6443; 34 C.F.R. § 668.46.
49 See 34 C.F.R. § 106.30(a).
50 34 C.F.R. § 106.30(a)(3).
options for supportive measures “with or without the filing of a formal complaint.”51 Currently, though, supportive measures are provided by several different offices and officials, culminating in a long laundry list of contacts for students (who may be in crisis) to individually navigate. Recognizing the need for coordination of these services, we recommend identifying a dedicated Deputy Title IX Coordinator for Support and Resources who will be responsible for receiving, coordinating, and monitoring implementation of support and resources for all community members impacted by sex discrimination.52 We also note with approval the University’s pending creation of a victims advocacy and crisis center which we believe will further strengthen coordination of services.

In addition, after a formal complaint is filed, institutions must consider and—where appropriate—implement requests for temporary or emergency removal of an accused student to ensure that a reporting student has continued access to the University’s educational programs and activities.53 Such actions could include temporary suspension, residence relocation, adjustments to a respondent’s class schedule, and limitations on a student’s ability to participate in University activities or access University property. In assessing the appropriateness of a request for temporary or emergency removal, institutions are required to engage in an “individualized safety and risk analysis” to determine whether “an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal.”54 In addition, the University must “provide[] the respondent with notice and an opportunity to challenge the decision immediately following the removal.”55

Several students interviewed as part of this process expressed frustration with the University’s response to requests for removals of accused students after reporting incidents of sex-based discrimination. Specifically, students expressed concern that the University did not respond promptly or did not comply with a request for removal of a respondent from an educational program or residence hall. While this frustration is understandable, the University is legally obligated to ensure that a respondent has an opportunity to challenge and/or appeal an decision to remove them from an educational program or activity (including a residence hall), and is limited to issuing such determinations only in cases where there is evidence of “an immediate threat to the physical health or safety” of a student. As many advocates have commented, establishing an immediate threat can be a challenge for a reporting student. Absent additional or new guidance from the Department of Education, the University is obligated to continue evaluating requests for interim removal consistent with this guidance.

51 Id. § 106.44(a).
52 See, e.g., University of Colorado Boulder, Office of Institutional Equity and Compliance, “Staff,” https://www.colorado.edu/oiec/about-us/staff (including an “Associate Director of Support and Safety Measures” and a “Senior Director of Support & Safety Measures & Deputy Title IX Coordinator”).
53 Id. § 106.44(c).
54 Id.
55 Id.
4. Membership in the Title IX Council Should be Limited to Officials Responsible for Responding to Reports of Interpersonal Violence.

Formally established by the President’s July 2020 Statement, the Title IX Council represents a strong commitment by the University’s leadership to ensuring that institutional processes for investigating and adjudicating reports of misconduct are handled appropriately. It is well settled that these interdisciplinary case-management teams constitute a best practice for responding to reports of misconduct.

In general, Council members universally described a positive working relationship in which representatives of each office approached the work with a spirit of collaboration. Members felt that it was useful for each of the offices to “have enough information about a case to be on call” while not getting “too much information to compromise an investigation or violate privacy.” Members felt that “communication lines are incredibly open” among the various offices, observing that “traditional silo-ing is not an issue” at the University.

We note, though, that prior to the summer of 2020, several University officials had already been engaging in a Title IX committee process to review and monitor cases. While many members of the re-constituted Title IX Council expressed satisfaction with the formal recognition of the committee, some members of the Council expressed concern that the expanded Council was not able to do a “deeper dive into each individual case” due to the number of participants and relative inexperience with the Title IX process for some of the newly-added members. Others noted a “disconnect between the Council’s charge” as presented by the President and the actual work being done. While it was universally acknowledged that ensuring broad representation from high levels of leadership was important for ensuring Title IX compliance across the University, this “vision” may conflict with the day-to-day case management work that the original committee and expanded Council engage in.

Accordingly, we recommend that membership in the Title IX Council be limited to university officials directly responsible for responding to reports of interpersonal violence, and that the University avoid assigning administrators to the Council in name only. We further suggest that, to the extent the University adopts our recommendations to identify staff as Deputy Title IX Coordinators to serve the specific roles noted above, that each such Deputy Title IX Coordinator be one of those staff appointed to the Title IX Council.

In addition, interviewees noted that the Council does not issue any reports, recommendations, or “summative analysis” identifying trends or issues for broader consideration. Members felt that these challenges could be addressed by implementing “more intentional data gathering and information sharing” and ensuring that members of University leadership have regular access to the information and insight gained by Council members. We agree, and recommend that the Title IX Coordinator prepare a report summarizing the work of the Title IX Council annually to be reviewed by the President and other appropriate offices.
5. The University’s Commitment to Add Two Sexual Violence Counselors is Appropriate Given the University’s Size and Caseload.

A repeated criticism of the University’s Title IX support and resources included a demand that the University increase the number of counselors for survivors of interpersonal violence. Specifically, the Women’s Student Union included a demand for the hiring of sixteen counselors specifically dedicated to counseling victims of sexual assault. We note at the outset that the research cited to support this demand was developed for elementary and secondary educational institutions, and not institutions of higher education.

Regardless, the demand for sixteen new counselors is unreasonable and not in line with peer institutions or recognized standards for higher education institutions. While clinical capacity varies significantly based on the size and character of any particular institution, the Association for University and College Counseling Center Directors has noted that schools the size of Binghamton (approximately 18,000 students) report the numbers of counseling on staff ranging from five to thirty-three, with an average of 12.5.

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<td>45,001 and over</td>
<td>14</td>
<td>28.4</td>
<td>10.4</td>
<td>44.3</td>
</tr>
<tr>
<td>Total</td>
<td>475</td>
<td>8.1</td>
<td>0.8</td>
<td>44.3</td>
</tr>
</tbody>
</table>

Standardized Counselors is computed by dividing a center’s Clinical Capacity by 24. This number is only used as a standardized way of calculating the Clinical Load Index (below), and is NOT appropriate to use for other purposes. There is a large amount of variability in the number of Standardized Counselors per center within each size category.

57 See Exhibit B.
58 See Exhibit B, n. 7 (citing “State-by-State Student-to-Counselor Ratio Report,” National Association for College Admission Counseling, News & Publications, Research & Reports. Accessed August 24, 2020). The National Association for College Admissions Counseling is an organization dedicating to supporting “students seeking higher education,” (i.e., high school students) (emphasis added). The report notes in its introduction, “Both NACAC and ASCA advocate for more state and federal funding to hire, train, and equip school counselors in public schools” (emphasis added), and the underlying data from the Department of Education is from K-12 institutions, not institutions of higher education. See https://www.nacacnet.org/globalassets/documents/publications/research/state-by-state-ratio-report.pdf.
In addition, the Counseling Center described a triage system in line with best practices for responding to students reporting incidents of physical violence and recent trauma. University Health and Counseling leadership reported that the additional FTEs authorized by the President’s July 2020 Statement were a welcome addition to counseling staff and would alleviate student wait times during peak service request periods. We find no reason to disagree with this assessment.

C. The University Must Increase Investment in Title IX Training and Interpersonal Violence Prevention Education.

Interpersonal violence is a serious public health problem that is highly prevalent among young adult (i.e., college-age) populations. Accordingly, institutions of higher education bear (perhaps unfairly) an incredibly high burden of preventing and responding appropriately to incidents of interpersonal violence when they occur on campus or otherwise affect an individual’s ability to access an educational program or activity. Because interpersonal violence has many root causes and risk factors, effective institutional interventions require a comprehensive approach grounded on the best available public health information, which the institution constantly evaluates and improves.

As the CDC has observed, emerging research indicates that effective interpersonal violence prevention programs have the following components:

- Establishing clear policies and procedures defining unacceptable conduct and enforcing such policies equitably;
- Providing prompt, trauma-informed support to survivors to increase safety and lessen harms;
- Engaging influential adults and peers, including University leadership, bystanders, and male-identifying allies; and
- Implementing social-emotional learning programs regarding healthy relationships and community norms throughout educational programs and activities.

With this framework in mind, we offer the following recommendations regarding improving the University’s investment in this critical work.

1. The University Should Designate a Deputy Title IX Coordinator for Training and Prevention and Increase Staffing in the Interpersonal Violence Prevention Office.

Federal law requires institutions of higher education to provide “primary prevention and awareness programs . . . intended to stop dating violence, domestic violence, sexual assault, and stalking

before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe directions.\textsuperscript{62} New York law has even more prescriptive “ongoing education” requirements, including requirements to identify and provide training targeted to “high-risk populations” and to “use multiple methods to educate students about violence prevention.”\textsuperscript{63}

It was universally acknowledged that this is a robust mandate which requires much time and resources. Notably, though, the University’s primary training program, “20:1” was developed and is implemented by a single University office/employee. Significantly, the Interpersonal Violence “office” is not staffed with a full-time employee on a year-round basis. The SART and IPV staff identified several opportunities for program growth and improvement, but expressed concern that the University would not be available to fully implement them without additional investment of resources. Here we note the University’s July 2020 commitment to “increase the scope, enhance trainings and double our investment in programs that train students on sexual assault prevention.”\textsuperscript{64}

In addition, students expressed frustration with content of the University’s current offerings, noting concerns that some of the scenarios were “outdated” and discussions failed to include trauma-informed safeguards for participants.

Based on peer institution practices and federal regulations assigning ultimate authority for compliance with training mandates to the Title IX Coordinator, we recommend that the University identify a Deputy Title IX Coordinator for Training and Interpersonal Violence and Education who shall have clear authority and responsibility to lead the University’s training and prevention programming. In addition, at a minimum, the University should staff the IPV office with a full-time, twelve-month employee—although some peer institutions staff such offices more full-time professional staff (\textit{i.e.}, not graduate student assistants). In order to improve and grow the peer-to-peer program, the University should also hire at least one additional professional staff member to oversee the peer educator training course and supervise student trainers throughout the academic year.

2. The University’s Mandated Title IX Training Should be Re-Evaluated.

Both students and University administrators were aligned in their belief that the University must show a greater commitment to prevention, training, and awareness programs beyond allocating fiscal resources. Specifically, stakeholders felt that the University’s executive and academic leadership must establish education and training on these topics as a priority by ensuring that these programs are made available to students during prime times for engagement (\textit{i.e.}, not late in the evening or in the midst of other administrative or social programming) and repeatedly throughout the University’s educational programs and activities. University administrators noted that while they were prepared to develop additional training and educational programming, it would not be effective without a “mandate” from University leadership to enforce attendance and engagement.

\textsuperscript{62} 34 C.F.R. § 668.46(j).
\textsuperscript{63} See \textsuperscript{63} N.Y. Educ. Law § 6447.
\textsuperscript{64} See Exhibit A.
Federal and state law requires “[e]very institution [to] adopt a comprehensive student onboarding and ongoing education campaign to educate members of the institution’s community about domestic violence, dating violence, stalking, and sexual assault.”65 New York law requires such orientation training to cover the following topics:

a. The institution prohibits sexual and interpersonal violence and will offer resources to any victims and survivors of such violence while taking administrative and conduct action regarding any accused individual within the jurisdiction of the institution;

b. Relevant definitions including, but not limited to, the definitions of sexual assault, domestic violence, dating violence, stalking, confidentiality, privacy, and consent;

c. Policies apply equally to all students regardless of sexual orientation, gender identity, or gender expression;

d. The role of the Title IX Coordinator, university police or campus security, and other relevant offices that address domestic violence, dating violence, stalking, and sexual assault prevention and response;

e. Awareness of violence, its impact on victims and survivors and their friends and family, and its long-term impact;

f. Bystander intervention and the importance of taking action to prevent violence when one can safely do so;

g. Risk assessment and reduction including, but not limited to, steps that potential victims, perpetrators, and bystanders can take to lower the incidence of violations, which may contain information about the dangers of drug and alcohol use, including underage drinking and binge drinking, involuntary consumption of incapacitating drugs and the danger of mislabeled drugs and alcohol, the importance of communication with trusted friends and family whether on campus or off campus, and the availability of institution officials who can answer general or specific questions about risk reduction; and

h. Consequences and sanctions for individuals who commit these crimes and code of conduct violations.66

Students and administrators stated that the current process for incorporating mandated Title IX training into student orientation may not serve student participants or employee facilitators well. Assuming the University accepts the recommendation to appoint a Deputy Title IX Coordinator

65 N.Y. Educ. Law § 6447(1); see also 34 C.F.R. § 668.46(a)(ii) (“Programs to prevent dating violence, domestic violence, sexual assault, and stalking include both primary prevention and awareness programs directed at incoming students and new employees and ongoing prevention and awareness campaigns directed at students and employees.”).
66 Id. § 6447(2).
for Training and Prevention, one of the first tasks for that person should be evaluating whether such training is an appropriate fit in the initial student orientation process.

Moreover, research has shown that effective prevention and awareness programs at institutions of higher education require more than one contact or program. In other words, in addition to providing training during new student orientation, the University should identify and implement opportunities to provide additional “doses” of prevention and awareness training throughout its educational programs and activities. We found that students—including representatives from the Student Government Association, Women’s Student Union, and Sorority and Fraternity leadership council—had many intriguing and exciting ideas about how the University could better incorporate this topic into the academic program. At a minimum, the University—through the SART or some other qualified group—should implement a task force to study and develop options for better incorporating prevention and awareness training into the University’s academic programs and activities. Such options could include required academic courses, offering guest speakers and lecturers, and additional programming for student organizations.

3. Prevention and Awareness Education Must Address Known IPV Risk Factors, Including Alcohol/Drug Misuse.

A significant issue presented in this review was the universal acknowledgement that the University community struggles with an unhealthy “party” culture which was exacerbated by a large, off-campus fraternity and sorority presence. Further complicating this issue is the fact that a significant portion of the University’s challenges in regulating Greek Life are due to the existence of active “unrecognized” organizations purporting to operate as fraternities and sororities.

We note that some student organizations called for the total “abolishment” of Greek Life at the University. We have considered this demand and believe it would ultimately be counterproductive and rife with unintended consequences. As a public institution, the University is well-aware of Constitutional limitations on its ability to limit students’ associational rights. In addition, University community members universally agreed that perhaps the most challenging aspect of “the Greek life issue” is the unusual prevalence of “underground” fraternities or sororities, over which the University exercises no authority—undermining assertions that derecognition is an effective tool to prevent interpersonal violence and related issues.

To effectively implement programs addressing the complicated relationship between interpersonal violence, drug/alcohol misuse, and Greek life, the University must have clear health communications regarding behaviors that are unsafe and unacceptable. Community members repeatedly expressed concern, frustration, and anger regarding the institution’s perceived tolerance of the current climate and culture. In addition, students reported that new or younger students (i.e., first-year students) are particularly susceptible to the predatory and risky behaviors associated with interpersonal violence, and that they often have a belief that dangerous and harmful behaviors are normal or “part of the Binghamton experience.” As one student aptly put it, students feel an “intrigue about darkness and the things that happen in the shadows . . . that’s why they are drawn to the myths of these underground groups. Kids feel invincible when they go out and buy into the myth that ‘this can never happen to me’—but Share Your Story Bing shows it can.”
Research is clear that substance abuse is a significant risk factor for prevalence of IPV.\textsuperscript{67} We note that New York law requires institutions to share “information on domestic violence, dating violence, stalking and sexual assault prevention with parents of enrolling students.”\textsuperscript{68} Research also shows that engaging “influential adults” has been identified as an effective strategy for preventing interpersonal conduct. Accordingly, while this may seem counterintuitive, we recommend the University share targeted health communications with students and parents of University students regarding the prevalence and risks of unhealthy behaviors such as excessive alcohol consumption and interpersonal violence occurring on or near the University’s campus—including at off-campus locations where data demonstrates these risks are heightened.

There is emerging consensus that establishing “community norms that are intolerant of IPV may be protective against IPV.”\textsuperscript{69} Accordingly, comprehensive, ongoing, and data-driven prevention and awareness programming is critical for institutions of higher education working to combat this issue.

4. The University Should Engage in Campus-based Climate Assessments and Increase Options for Reporting Concerns.

New York law requires institutions of higher education to “conduct, no less than every other year, a campus climate assessment to ascertain . . . student experience with and knowledge of reporting and college adjudicatory processes, which shall be developed using standard and commonly recognized research methods.”\textsuperscript{70} In accordance with this mandate, the University has already committed to conducting an annual Office of Institutional Research and Assessment survey and participating in the SUNY-wide Sexual Assault and Prevention Survey every two years.\textsuperscript{71} We note, however, that neither of these survey tools are tailored to the unique culture and issues faced by Binghamton University.

We are confident that the recommendations above will assist in accomplishing the University’s goals of improving institutional response to reports of sex discrimination and creating an educational environment where survivors feel supported and are aware of the full range of University’s options and resources. With that said, we think it is critically important for the University to regularly measure whether its interventions are succeeding as well as the overall effectiveness of the University’s comprehensive Title IX program and to continuously improve the University’s overall climate with respect to sex discrimination and interpersonal violence.

To that end, the training recommended above should not be done for its own sake or to check a compliance box. Rather, training and prevention programs created by the University should always be intentional. For each program, there should be:

\textsuperscript{67} Preventing Intimate Partner Violence 3, 31; see also Centers for Disease Control and Prevention, Division of Violence Prevention, “The Role of Alcohol Policies We are in Preventing Intimate Partner Violence: A Review of the Literature (Jan. 2015), \url{https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4770459/pdf/nihms748548.pdf}.
\textsuperscript{68} Id. § 6447(4).
\textsuperscript{69} Preventing Intimate Partner Violence 9.
\textsuperscript{70} N.Y. Educ. Law § 6445.
\textsuperscript{71} See Exhibit A (July 14, 2020 Statement).
• a preliminary assessment of needs (i.e., what are the knowledge deficits that are being addressed or the attitudes which the training is trying to change);
• clear training goals;
• an opportunity for participant feedback geared to assessing whether training goals are being met; and
• a regular process for reviewing participant feedback, assessing what worked and what did not work, and making necessary adjustments.

In terms of measuring broader institutional goals and climate change, the Institute on Domestic Violence and Sexual Assault’s CLASE survey is a remarkable national model, and we recommend the University develop a similar climate assessment tool. We recommend that it be used (either directly or as a model) by the Title IX Coordinator, Deputy Title IX Coordinator, or IPV Prevention Office as an ongoing longitudinal campus climate survey to measure at least the following items:

• prevalence of campus sex discrimination;
• community perceptions about institutional response to sex discrimination generally; and
• community and participant perceptions about the effectiveness of the University’s incident resolution processes.

By ensuring the community has adequate and constructive opportunities to comment on the efficacy of the University’s Title IX program and by taking steps to continually improve its response to sex discrimination, the University can work to build trust with the University community.

D. The University’s Current Restorative Justice Programming Should be Expanded to Create Opportunities for Accountability and Healing.

As a final note, some student groups, including the curators of the Share Your Story site, issued a call for the University to participate in a restorative justice process in which the University acknowledges “the harm done to survivors” through the University’s handling of these matters. We note that the University already has an office dedicated to alternative dispute resolution, which includes options for restorative processes. We recommend that the University tap into this existing expertise and explore whether restorative justice may be effectively utilized to address students’ experiences and create a path toward reconciliation for all stakeholders. In addition, we note institutions of higher education utilize restorative-justice processes to address other issues related to this review, including as a method of informal resolution in the formal conduct process and as a method of building trust and community in residential life. We understand that many stakeholders are supportive of exploring these options.

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72 See https://sites.utexas.edu/idvsr/research/campus-initiatives/clase-project/prevalence-study/.
73 See https://docs.google.com/document/d/1LFpe75QNmr_thkIdVHerQ5V4UKEqnGgbcaZO-NfZo0/edit# (last visited January 16, 2021).
V. Conclusion

The University has done substantial work in building its Title IX program. Overwhelmingly, we found that campus personnel are committed to building a collaborative approach that serves the community and provides an effective response to reports of sexual misconduct and interpersonal violence. The findings and recommendations contained in this report are intended to assist the University in making meaningful improvements in its policies and processes that will benefit the University community. We are grateful to the many institutional stakeholders—especially student groups and survivors—who met with us and assisted in developing this report.