



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION VI  
LOUISIANA  
MISSISSIPPI  
TEXAS

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1201 Elm Street, Suite 1000  
Dallas, TX 75270-2102

December 12, 2024

Patricia Crawford

Sent via email only to: [patriciajocrawford@gmail.com](mailto:patriciajocrawford@gmail.com)

Re: OCR Docket No. 06162331  
Baylor University

Dear Ms. Crawford:

This letter is to inform you of the disposition of the above-referenced complaint you filed with the U.S. Department of Education, Office for Civil Rights, Dallas Office (OCR) against Baylor University (Baylor or the University), alleging discrimination based on sex and retaliation. Specifically, you alleged that, during your tenure as the University's Title IX Coordinator, the University:

1. Failed to comply with Title IX in its responses to sexual harassment complaints, particularly those involving student athletes as respondents; and
2. Retaliated against you for your participation in Title IX investigations and monitoring activities, including the external audit of the University's Title IX processes conducted by law firm Pepper Hamilton, LLP.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of federal financial assistance from the Department. The Title IX regulation at 34 C.F.R. § 106.71 incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964, which prohibits retaliation based on a person's exercise of a protected right or because they participated in an investigation into discrimination. The University is a recipient of federal financial assistance from the Department. Therefore, OCR had jurisdiction to investigate this complaint.

After a careful review of the evidence gathered during the investigation, OCR identified Title IX violations and compliance concerns. The University signed the enclosed resolution agreement (Agreement) to address these violations and concerns. When fully implemented, the Agreement will resolve this complaint.

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

## **Summary of Investigation, Findings, and Concerns**

OCR investigated this complaint by collecting data for the 2014-2015 to 2019-2020 academic years (the review period) and reviewing and analyzing relevant documents and data provided by you and the University, including, but not limited to, Baylor's Title IX policies and procedures and records of sexual harassment complaints. OCR interviewed you and relevant University personnel and officials, including the University President; the Vice President for Internal Administration & Compliance, who oversees the Title IX program; the Athletic Director (AD) and other Athletic administrators; the present and former Baylor University Police Department (BUPD) Chief of Police and police officials; the Chief Human Resource Officer; the Director of Equity, Civil Rights and Title IX; and the Title IX Coordinator and Title IX investigators. OCR also conducted two onsite visits to the University between February and April 2017, in which OCR collected information during open office hours and conducted multiple in-person interviews with students, student groups, student athletes, and University representatives.

After a careful review of the evidence gathered during the investigation, OCR identified Title IX violations and compliance concerns with respect to Allegation 1. OCR found the University violated Title IX when it failed to properly utilize its Title IX Coordinator to coordinate the University's response to Title IX complaints. For example, the University, at times, involved its Athletics Department in the investigative or fact-gathering process for Title IX complaints involving student athlete respondents, even prior to notifying its Title IX Coordinator of complaints, which prevented the University from responding in a prompt and equitable manner to notices of sexual harassment, compromising the legitimacy of its Title IX investigations. This involvement of the Athletics Department was documented in one of the only three full Title IX complaint investigations conducted by the University involving athletes between January 2017 and September 2020. While the University had an obligation to investigate Title IX complaints in an impartial manner, the University's insertion of its Athletic Department in its investigation of complaints involving athletes likely led to bias and conflicts of interest. Further, the University at times denied accused athletes an equitable Title IX process by suspending them from athletics prior to a finding of responsibility for sexual harassment. University records likewise raise Title IX compliance concerns regarding the equity of University processes for all parties. Moreover, OCR's file review revealed significant unexplained delays in the University's investigations of sexual harassment complaints, raising concerns that the University may not have consistently responded to sexual harassment complaints in a prompt manner.

In addition, OCR identified violations of Title IX and Title IX compliance concerns related to the University's Title IX policies and procedures. Certain University publications contained a notice of nondiscrimination that did not contain the requisite information required by the Title IX regulation. Moreover, OCR has concerns that some iterations of the University's amnesty policy were inequitable, as the University did not consistently offer amnesty to respondents as compared to complainants and witnesses, and its amnesty provisions did not apply to employees.

Further, OCR identified compliance concerns related to the University's Title IX recordkeeping, as the University's recordkeeping practices when student athletes were involved in the Title IX

process resulted in decentralized Title IX recordkeeping, with some relevant Title IX records being maintained by the Athletics Department rather than the Title IX Office. This practice could have interfered with the Title IX Coordinator's ability to respond promptly and equitably to complaints of sexual harassment.

Finally, OCR has concerns based upon its review of the University's Title IX files and related information which revealed that, in more than a third of Title IX complaints filed with the University from 2017 to 2020, the complainants declined to pursue a full Title IX process. The University reported incidents in which administrators discouraged complainants from reporting harassment and, on one occasion, even retaliated against a complainant for reporting sexual assault, effectively silencing them. However, OCR identified a compliance concern regarding whether the University took steps that were reasonably calculated to ensure that complainants were not being discouraged from fully availing themselves of the University's Title IX complaint process, which could have deprived complainants of a prompt and equitable resolution to their Title IX complaints.

After OCR opened Allegation 2 for investigation, OCR determined that Allegation 2 had been resolved via a private settlement agreement between the parties. OCR's Case Processing Manual (CPM), Section 110(e), states that OCR will dismiss an allegation if OCR obtains credible information indicating that the allegation has been resolved. Because information obtained during the investigation confirmed that Allegation 2 is resolved, OCR is dismissing this allegation in accordance with OCR's case processing procedures.

### **Applicable Legal Standards**

In investigating this complaint and evaluating the University's compliance with Title IX, OCR applied the Title IX regulation in effect during the 2016-2017 to 2019-2020 academic years. Citations in this section are to this regulation. Amendments to the Title IX regulation went into effect on August 14, 2020, and can be viewed [here](#). Although a more recent Title IX regulation took effect on August 1, 2024, this Department has been enjoined, by federal court order, from enforcing those regulations in the state of Texas, and the prior 2020 amendments to this Department's Title IX regulation are currently operative in the state. For more information about Title IX, including the Title IX regulation and related resources, visit OCR's [Title IX and Sex Discrimination webpage](#) and [Policy Guidance Portal](#).

The Title IX regulation contains a number of procedural requirements, including a requirement that recipients designate at least one employee to coordinate the recipient's efforts to comply with Title IX, including the investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX or any actions that Title IX would prohibit, 34 C.F.R. 106.8(a). In addition, the Title IX regulation requires recipients to publish a notice of nondiscrimination covering Title IX, and to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. *See* 34 C.F.R. § 106.9(a); *see also* 34 C.F.R. § 106.8(b).

While the Title IX regulation in effect during the academic years under review did not reference sexual harassment, OCR interpreted Title IX at that time to require recipients to respond to complaints or other notice of sexual harassment involving students and employees. Sexual harassment is a form of sex discrimination prohibited by Title IX. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Sexual harassment can create a hostile educational environment based on sex when the harassment is sufficiently serious to deny or limit the individual's ability to participate in or benefit from the recipient's education program or activity.

In determining whether sexual harassment exists and has created a hostile environment based on sex for students, OCR looks at the totality of the circumstances and considers a variety of factors, including whether the conduct was unwelcome to the student(s), the degree to which the conduct affected one or more students' education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment; the size of the school, location of the incidents, and the context in which they occurred; other incidents at the school; and whether there were also incidents of gender-based but non-sexual harassment. OCR examines the conduct from an objective perspective and a subjective perspective.

Under the Title IX regulation in effect for the time period reviewed in this investigation, when the recipient has actual or constructive notice of sexual harassment, it must take appropriate steps to investigate or otherwise determine what occurred, and it may be appropriate for a school to take interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. Interim measures 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 locations, leaves of absence, increased security, and monitoring of certain areas of campus, and other similar accommodations. For instance, if a student alleges that they have been sexually assaulted by another student, the school may decide to place the students immediately in separate classes, pending the results of the school's investigation. Similarly, if the alleged harasser is a teacher, allowing the student to transfer to a different class may be appropriate.

If a school's investigation or other appropriate steps to determine what occurred identify staff-on-student sexual harassment or student-on-student harassment that creates a hostile environment, schools are responsible for taking prompt and effective action to stop the harassment and prevent its recurrence. A school also may be responsible for remedying the effects of the harassment on the student or employee who was harassed.

Once charged with notice of sexual harassment, a school should take steps to prevent any retaliation against the person who made the complaint (or was the subject of harassment) or against those who provided information as witnesses. At a minimum, the school's responsibilities include making sure that the harassed students know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents

or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems. In cases where the harassment is widespread, the school may need to provide training for the larger school community to ensure that individuals can recognize harassment if it recurs and know how to respond.

## **Background**

Baylor is a private Christian research university in Waco, Texas, with an enrollment of [16,959](#) students at the time this complaint was filed. Founded in 1845, it is the oldest continuously operating university in Texas and one of the first educational institutions west of the Mississippi River. When OCR opened this complaint, Baylor reported that it had 19 NCAA sports, and spent \$90,769,041 for its athletic program.

In November 2014, when the University hired you as its first Title IX Coordinator, Baylor was embroiled in a high-profile sexual assault scandal, with multiple media outlets reporting on sexual assaults committed by Baylor student athletes. In the Fall of 2015, Baylor hired a law firm, Pepper Hamilton, LLP, to conduct an external review of the University's compliance with Title IX. On May 26, 2016, the University issued a [press release](#) stating that Pepper Hamilton had provided the Baylor Board of Regents with its findings and recommendations. Baylor stated that “[k]ey findings of the investigation reflect a fundamental failure by Baylor to implement Title IX of the Education Amendments of 1972 (Title IX) . . . .” The press release also linked to a document entitled [Baylor University Board of Regents Findings of Fact](#), in which the University discussed Pepper Hamilton's factual findings in greater detail.

During 2016 and 2017, more than a dozen female former Baylor students filed lawsuits against the University, the Board of Regents, and various Baylor staff connected with the Athletic Program or the Title IX Office, alleging the University failed to respond to their complaints of sexual harassment, including sexual assault, in compliance with Title IX. Some students also claimed the University violated the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) between 2012 and 2017.

Amid these accusations, there was [significant turnover](#) in Baylor's high-level administration, including resignations of the Senior Vice President/Chief Operating Officer, the Provost/Executive Vice President, and the Vice President of Constituent Engagement. Coach Art Briles and the University also mutually agreed to terminate their employment relationship in 2016.

In 2018, the Big XII Conference [fined](#) Baylor \$2 million dollars for “reputational damage to the conference and its members.” The National Collegiate Athletic Association (NCAA) launched an investigation in 2016 regarding whether Baylor violated their rules by failing to report incidents of on campus sexual harassment and interpersonal violence involving football players between 2010 and 2016. Although the [NCAA](#), “with tremendous reluctance,” ultimately decided not to penalize Baylor because its failures had not resulted in preferential treatment for players, it nevertheless noted its “campus-wide culture of sexual violence,” between 2010-2015. In a [statement](#) following the NCAA's August 2021 decision, high-ranking Baylor officials

acknowledged the University's "significant and moral failings related to sexual and interpersonal violence."

In 2017, the Department's Clery Act Compliance Division also initiated an investigation into possible violations by the University of the Clery Act between 2011 and 2016. In 2020, this investigation concluded that Baylor had violated the Clery Act by: failing to develop and implement adequate Clery Act compliant programs; failing to accurately report crime statistics to the Department (including reports of sexual offenses); failing to issue timely warnings for reports of Clery crimes that presented serious or continuing threats to students and employees in its campus community; failing to identify and notify campus security authorities for crime reporting and timely warnings; and failing to maintain an accurate and complete daily crime log. Pursuant to its findings issued on March 17, 2020, the Department fined Baylor \$401,656 on August 20, 2020. According to Department records, Baylor has paid this fine in full.

### ***Title IX Policies and Procedures***

The University did not have specific Title IX policies and grievance procedures for the resolution of sexual harassment complaints when it first hired you, i.e., during the 2014-2015 academic year. Instead, student-to-student sexual harassment complaints were governed by the Student Conduct Code (Code), and employee sexual harassment complaints fell under the University's Civil Rights Policy (CR Policy). Pepper Hamilton found, and Baylor acknowledged in its Findings of Fact, that the University's student conduct processes alone, in absence of a formalized Title IX process, "were wholly inadequate to consistently provide a prompt and equitable response under Title IX." Baylor further acknowledged specific failings within both the football program and Athletics department leadership related to Title IX, including a failure "to report sexual violence and dating violence to appropriate administrators outside of athletics," "inappropriate involvement in disciplinary and criminal matters," and the maintenance of "an informal, subjective, and separate system of discipline for football players, separate from the University's processes."

Around the same time the University retained Pepper Hamilton, in August 2015, the University adopted its first specific Title IX policy that included sexual harassment, namely, its *Sex Discrimination, Sexual Violence, and Sexual Harassment Policy* (2015-16 Policy), which was applicable to student, employee, and third-party complaints. Notably, at that time, employees could either invoke the 2015-16 Policy, or the CR Policy, to report sexual harassment. In the Fall 2014 semester, the University hired and designated a Title IX Coordinator (you) and notified students and employees of the Coordinator's contact information, as evidenced by both print and [electronic publications](#) OCR reviewed.

The 2015-16 Policy governed the conduct of students, faculty, staff, and third parties and defined prohibited conduct as sexual violence, sexual harassment, dating relationship violence, domestic violence, stalking, sexual exploitation, sexually inappropriate conduct, and retaliation. The Policy required that the Title IX Coordinator "be informed of all complaints or reports of violations of this policy and shall oversee the University's centralized response to ensure compliance with Title IX." Per the Policy, complainants and other parties could report alleged or

suspected violations of the Policy to the Title IX Coordinator, to invoke the University's internal investigation process, and/or to campus or local law enforcement. The Policy provided that, upon receipt of a complaint, the Title IX Coordinator would conduct an initial assessment and thereafter: (1) dismiss the complaint, if it did not rise to the level of a violation of the Policy even if substantiated; (2) refer the complaint to another office if it fell outside the scope of the Policy; or (3) determine whether interim measures were appropriate and initiate an investigation, if the report constituted a violation of the Policy, were it substantiated. Under the Policy, the Title IX Coordinator sought to complete the investigation in 60 days following receipt of the complaint or report, but time could be extended for good cause. Pursuant to the Policy, “both parties (complainant and respondent) ha[d] equivalent rights, including the opportunity to review and present evidence, to be accompanied by an advisor of their choice, and to appeal,” and the University would “concurrently provide both parties with written notification of any hearing, the outcome of the process, any appeal, and the final results.” The 2015-16 Policy also offered “amnesty to the alleged victim or reporting witness with respect to any alcohol and minor drug use violations of the University’s student conduct code,” and it stated that amnesty or leniency may be offered “to the alleged victim or reporting witness with respect to other violations of University policy which may be disclosed as a result of such reports, depending on the circumstances involved.” The 2015-16 Policy did not offer amnesty to respondents.

During the 2016-17 and 2017-18 years, Baylor made additional revisions to its Title IX policies and procedures, creating three separate grievance procedures for processing Title IX complaints. The first procedure, the University’s Sexual and Gender-Based Harassment and Interpersonal Violence Policy, was identified as the Policy governing the University’s Title IX process and applied to cases initiated from January 9, 2017, to January 7, 2018 (2017 Title IX Policy). The 2017 Title IX Policy indicates it was created to apply to students, regardless of enrollment status; faculty; staff; and third parties alleging sexual and gender-based harassment, sexual assault, sexual exploitation, stalking, intimate partner violence, and retaliation. The University also created separate CR policies for students and employees, *i.e.*, the Student CR Policy and the Employee CR Policy, respectively, which served as the University’s second and third Title IX grievance procedures. The 2017 Title IX Policy referred all other Title IX complaints (*i.e.*, sex discrimination *not* based on harassment or violence) for students and employees to either the Student CR Policy or the Employee CR Policy.

The 2017 Title IX Policy further provided that complainants and witnesses could seek counseling or assistance or make a report under the Policy and/or to law enforcement. Further, all persons designated as “responsible employees,” which included all faculty, instructors, staff, and other employees not designated as “confidential resources” were required to immediately report any information “they kn[ew] about suspected prohibited conduct or potential violations” of the Policy. The 2017 Title IX Policy stated that, upon receipt of a report of prohibited conduct, the Title IX Office would gather information about the reported conduct to assess immediate health and safety concerns and the complainant’s safety and well-being and provide “reasonable and appropriate interim measures.” The Policy included two processes to resolve reports of prohibited conduct: “Disciplinary Resolution, which involve[d] an investigation, adjudication, and, if appropriate, the imposition of sanctions, and Alternative Resolution, which include[d] informal or restorative options for resolving reports that d[id] not involve disciplinary action



against a respondent.” The Title IX Coordinator was charged with determining the resolution process “after making an initial assessment of the reported information, considering the stated interest of the complainant, campus safety, and the University’s obligation to maintain an environment free from harassment and discrimination.” For cases in which the Title IX Coordinator initiated an investigation under the Disciplinary Resolution process, the Policy provided that the University would seek to complete the investigation and resolution process in approximately 60 days following the notice of the investigation, noting that the timeframe may be extended for “good cause.” The Policy specified that complainants and respondents had equal rights in the Disciplinary Resolution process, “including the opportunity to receive a written notice of investigation; to participate in the investigation; to review and present information and evidence; to be accompanied by an advisor of their choice to any meeting; to timely and equal access to information that will be used in disciplinary proceedings; to timely notice of meetings at which their presence will be requested or required; to simultaneous written notice of the outcome, sanction, and rationale; and to seek review of the finding.” Regarding Alternative Resolution, the Policy provided that the process was voluntary; either party could request to end the process at any time; and it would typically be completed within 60 days of the initial report.

The 2017 Title IX Policy included a revised amnesty provision, which stated that in addition to not pursuing disciplinary actions against “students (complainants or witnesses)” for disclosure of personal consumption of alcohol or other drugs, when the disclosure was made in connection with a good faith report or investigation of prohibited conduct, and the personal consumption did not place the health or safety of any other person at risk, the University would also not pursue disciplinary action against “students (complainants or witnesses)” for conduct in violation of the University’s [Sexual Conduct Policy](#). This amnesty provision did not reference respondents or employees.

The University further revised its Title IX processes for complaints initiated between January 8, 2018, and August 25, 2019 (2018 Title IX Policy), and again for complaints initiated between August 26, 2019, and August 13, 2020 (2019 Title IX Policy) (the 2018 and 2019 Title IX Policies are referred to collectively as Revised Title IX Policies). The Revised Title IX Policies expanded the scope of the amnesty provision, providing amnesty to complainants and witnesses for a violation of the Student Conduct Code for conduct occurring at or near the time of the incident, including “amnesty for disclosure of personal consumption of alcohol or other drugs (underage or illegal) which would otherwise be a violation of the Code of Student Conduct.” The Revised Title IX Policies also expanded amnesty related to its Sexual Conduct Policy by extending amnesty to “students (complainants, respondents or witnesses),” stating that “[u]nder no circumstances will a complainant or witness who makes a report of sexual assault or other prohibited conduct, or a respondent who participates in an investigation, be charged with violating the Sexual Conduct Policy, regardless of the outcome.” The provision did not provide amnesty for employees, nor did the Student CR Policy have an amnesty provision. Further, while the 2018 Title IX Policy retained the 60-day timeframe for resolution of complaints, the 2019 Title IX Policy extended the timeframe such that the University would “seek to issue a final notice of outcome no later than 90 calendar days from the date of the notice of investigation.”



After Amendments to the Title IX regulation went into effect on August 14, 2020, the University replaced the 2019 Title IX Policy with its Sexual and Interpersonal Misconduct Policy, applicable to cases initiated between August 14, 2020, and September 15, 2021. The University subsequently revised this Policy for cases that were active or initiated on or after September 15, 2021. This Policy tracks the 2020 Title IX regulation. Its amnesty provision extends amnesty to complainants, respondents, and witnesses for conduct in violation of its Sexual Conduct Policy, but still does not extend amnesty to employees.

During OCR's investigation, the University published varying notices of nondiscrimination in University publications and recruitment materials, which were disseminated to both students and employees. While the notices generally set forth the University's prohibition against sex discrimination, including sexual harassment, OCR sometimes noted omissions of information required by the Title IX regulation. For example, Baylor's 2018-19 online student undergraduate and graduate catalogs revealed nondiscrimination policy statements that only mentioned gender and did not direct Title IX inquiries to the Title IX Coordinator or OCR. More recently, the 2023-2024 undergraduate and graduate catalogs similarly omit references to the Title IX Coordinator or OCR. Additionally, the University's current employment webpage regarding [workplace concerns and disclosures](#) fails to reference OCR, and while it includes a link to the University's current dedicated [Title IX webpage](#), the notice of nondiscrimination on the dedicated site does not reference OCR for Title IX inquiries, does not indicate that the University is required by Title IX not to discriminate on the basis of sex, nor does it state that the requirement not to discriminate extends to admission.

The University's [Title IX webpage](#), created during OCR's investigation, includes a section for online reporting, which contains a link stating, "Click here to report sexual or interpersonal misconduct including sexual assault, gender-based and sexual harassment, dating violence, domestic violence, stalking, sexual exploitation, and retaliation to the Title IX coordinator."

In a 2021 [Social Climate Survey](#) conducted by the University, 68% of responding students answered that they knew where to go to make a report of sexual misconduct, and 74% indicated that they believed it was unlikely that the University would punish the person who made the report. However, only 59% of responding students responded that they believed that the University would handle the complaint fairly. Further, only 52% of responding students indicated that they understood what happens when a student reports a claim of sexual misconduct at the University. Student and staff interviews and the 2021 Social Climate Survey reflected an overall lack of awareness and/or understanding of the Amnesty Policy, as well as a fear of retribution for reporting sexual misconduct because of possible violations of University policies regarding alcohol/drug use and/or the University's prohibition against extramarital sexual conduct as articulated in its Sexual Conduct Policy.

## **Facts**

### **Overview of Possible Sexual Harassment, Including Sexual Assault, Reports**

The University has maintained a centralized system of recordkeeping for Title IX complaints since the 2016-2017 academic year, *i.e.*, the year in which you filed your complaint. Therefore, OCR reviewed information related to sexual harassment complaints the University received between January 9, 2017 (the effective date of the 2017 Title IX Policy) and September 2020. During this period, the University received 1,578 reports under the 2017 Title IX Policy and the Revised Title IX Policies. Notably, the University closed over a third (544, 34%) of those reports as “Declined Process,” which Baylor described as situations wherein the allegedly harassed student chooses not to pursue any process under Baylor Policy following outreach by the Title IX Office. Moreover, the University fully investigated a mere 6% (98) of the complaints filed, which it characterized as “Process Completed.”

In considering the possible explanations for this large percentage of “Declined Process” dispositions, OCR notes that Baylor acknowledged in its Findings of Fact that, from the 2012-2013 through the 2014-2015 academic years, “[a]ctions by University administrators directly discouraged some complainants from reporting or participating in student conduct processes and in one instance rose to the level of retaliation against a complainant for reporting sexual assault.” Therefore, OCR sought an explanation from the University’s Title IX Coordinator for the large percentage of “Declined Process” dispositions. She informed OCR that the University does not track the reasons why allegedly harassed students overwhelmingly decline a full Title IX process. She asserted that the number of “Declined Process” cases at Baylor is typical as compared to other universities. She further postulated that many individuals file a complaint to make a record of an incident, but do not necessarily want disciplinary action against the respondent; in some cases, an allegedly harassed student decides not to go forward after being informed about the formal process. The Title IX Coordinator also suggested that, many times, a complainant is seeking counseling or a no-contact order, but not a full investigation.

OCR reviewed all complaints filed against athletes, regardless of disposition, between January 2017 and September 2020, totaling 49. Almost half (49%) of them were not investigated but were rather closed as “Declined Process.” Only three Title IX complaints against athletes during the subject time period were fully investigated by the University. The complaint files generally included documentation of the University’s resolution of the reports, including initial responses to complaints, notices of the outcome, interim measures, hearings, decisions, and appeals, when applicable.

### **Possible Athletics Department Interference with the Title IX Coordinator and Its Impact Upon Respondents’ Rights to a Prompt and Equitable Process**

You described to OCR instances in which the Athletics Department separately investigated incidents of alleged sexual harassment that were not reported to you, leading to the University’s failure to conduct timely investigations, as well as violations of respondents’ rights to an

equitable process. Although some University officials denied the Athletics Department had advance notice of sexual harassment complaints involving athletes, the former Baylor Chief of Police, who served during the time you were the Baylor Title IX Coordinator, informed OCR that the BUPD did, in fact, formerly provide advance notice to the Athletics Department upon receipt of a sexual harassment/sexual violence complaint involving an athlete as a respondent. The former Chief stated he was aware of this because he was the BUPD liaison to the “Privilege to Play” Committee, which considers whether an athlete has violated the Student Athlete Code of Conduct. He further noted that the practice of giving advance notice to the Athletics Department only ended in 2020. The current Deputy Athletics Director also acknowledged to OCR that the BUPD would previously give the Athletics Department a “heads up” when student athletes were involved in Title IX related incidents of sexual harassment. However, she maintains this is no longer the practice of the University.

In addition to the information OCR gathered during interviews with University staff, the Baylor Findings of Fact also declared that football staff conducted untrained internal inquiries and did not share reports of sexual assault or dating violence with the Title IX Office. This was corroborated by a Baylor staff member who worked in the Title IX Office during the relevant timeframe, who informed OCR that there were times when the Athletics Department held onto Title IX reports to conduct initial fact-gathering to understand the issues before them before forwarding the matters to the Title IX Office. The witness identified a couple of cases in 2017 in which the Athletics Department likely did more fact-gathering “than was necessary” before sending the matters to the Title IX Office. Along those same lines, the University admitted in its Baylor Findings of Fact that it “did not maintain systems or protocols to coordinate information or keep centralized records necessary to fulfill compliance mandates.”

You further alleged that University officials violated some respondents’ due process rights by discontinuing their athletic scholarships before investigations were commenced and/or completed, creating a “resentful and hostile environment” for you in your interactions with the Athletic Department, even though the scholarship removals were done without any Title IX Office involvement. Athletics Department personnel reported to OCR that although the Privilege to Play Committee previously suspended players at the beginning of Title IX investigations, the University changed this practice after the Department’s Title IX regulations were amended in 2020, and that now, athletes are only suspended if found responsible of a Title IX violation through the Title IX process.

Example 1 is one of the only three complaints involving athletes that Baylor fully investigated during the subject time period. Documentation in the file for Example 1 confirmed that Athletics Department officials met with respondent student athletes and began to investigate a Title IX complaint involving the athletes prior to forwarding the complaint to the Title IX office. Moreover, the University suspended the respondents from play and practice for the football team prior to completing an investigation or making a determination regarding responsibility for the alleged sexual harassment. A summary of the investigation of Example 1 follows.

- **Example 1**

The University processed this complaint under its 2018 Title IX Policy, which, as stated above, prescribed that Title IX complaints should typically be resolved within 60 days of the report. The University Title IX office received reports from both the University Counseling Center and the Athletics Department on November 14, 2017, regarding a possible Title IX concern involving members of the equestrian team and the football team. After the Title IX office contacted the parties, the three complainants, who were athletes on the University's equestrian team, filed a complaint alleging that two male respondents, who were football players, sexually assaulted them while the other two respondents, one male football player and one female equestrian team member, recorded the incident. The incident was said to have occurred at an apartment inhabited by two of the complainants and the female respondent.

The University's Title IX log states that an Athletics Department official forwarded information, including videos, to the Title IX office on November 14, 2017, and informed the Title IX office that it would submit a report with the students' names to the Title IX office's reporting system so that an investigation could begin. After not hearing from the Athletics Department for a few hours, the Title IX office requested an update and was informed that members of the Athletic Department, including the head football coach, met with the respondent football players "and determined that there would not be any suspensions or disciplinary actions taken through athletics" at that time. The Athletics Department official reported that information was gathered from the football players because there was an upcoming game "and the team did not want to honor any athletes who were going to be accused of serious misconduct." The Title IX representative discussed with the Athletics Department official the University's "protocol to get information to [the Title IX office] immediately and without athletics conducting fact-finding." The Title IX log reflects that the Athletics Department official apologized and stated the protocol would be implemented in the future. The log reflects that the respondents were subsequently suspended from the ability to play and practice only three days later, when the University's "Privilege to Play" Committee convened on November 17, 2017. The suspension decisions occurred months before the Title IX office completed its investigation or made a determination regarding the complaint.

After the Title IX office received the complaint, the University issued mutual no-contact directives. The University also offered the parties counselling services, assisted the complainants with academic concerns, and offered the parties alternate housing. The University assisted one complainant with placement in alternate housing. When the other complainant residing at the apartment requested removal of the respondent roommate, the University offered alternate housing for the complainant but declined to remove the respondent. The female respondent temporarily withdrew from the University in January 2018 and moved at that time.

The University, including the University Police Department, interviewed 32 witnesses, not counting the parties, the bulk of whose interviews were conducted in February 2018; the University completed its interviews on April 24, 2018. The University also collected other evidence including sexual assault examination reports, photos, floorplans, text messages, and

Snapchat screenshots. A review of the information gathered by OCR indicates that the parties were permitted from July 2018 through August 2018 to review the preliminary report under the supervision of a proctor.

The case was resolved as to three of the respondents in 351 days (on October 31, 2018), and the complaint against the fourth respondent was resolved after 447 days (February 4, 2019). Documentation in the file reflects that on the 60<sup>th</sup> day after the University's notification to the parties of the investigation, the University provided notice to the parties of a complaint processing delay and articulated the circumstances under the 2018 Title IX Policy that justified delays without specifying which, if any, of those circumstances were present in their case. Thus, no specific reason for the delay was provided, nor did the documentation show that the University provided any further updates on its investigative timeframe throughout the rest of the investigation. OCR noted that, during the summer months, the complainants were in different out-of-state locations, and the respondents were in different locations in Texas, which may have contributed to processing delays. Nevertheless, the complaints were not fully resolved until well over a year after they alerted the University to the alleged incident.

In Example 2, the complainant declined to participate in the Title IX process for her report of a respondent who was a student athlete. The University's Privilege to Play Committee suspended the student athlete respondent without a completed investigation or determination of responsibility.

- **Example 2**

The University began to process this complaint under its 2018 Title IX Policy. Documentation in this file reflects that the complainant was reluctant to report because the respondent was a student athlete "at the peak of his career," and the complainant believed the University would show preference to the respondent. The complainant reported in her February 18, 2019, Title IX report that she was sexually assaulted by the respondent, but "was reluctant to talk to a stranger about it," such as a counselor, and that the University "has a poor track record in her opinion of privileging male perpetrators (who are on an athletic team) over female victims." The file states that resources and interim measures were offered to the complainant after filing the Title IX complaint; however, the complainant requested no specific resources or interim measures. On March 19, 2019, the complainant informed the Title IX office she was declining to participate in the Title IX process.

The file reveals that on September 19, 2019, the Title IX office informed the complainant that another Title IX report was filed about the same respondent also alleging sexual assault. However, the complainant still declined to participate in the Title IX process. The file notes that on September 23, 2019, the Title IX Coordinator then met with the University's Privilege to Play Committee and discussed the reported allegations regarding the respondent. According to notes in the file, without the Title IX office having completed an investigation or made a determination regarding responsibility as to either complaint, the Privilege to Play Committee nevertheless suspended the respondent's athletic privileges indefinitely, including play, practice, and weight room access, on September 23, 2019. While OCR did not identify

any additional information in the file regarding the impact upon the respondent, according to an [ESPN news article](#), the University indefinitely suspended him from the men's basketball program in accordance with Athletics Department Policy, and he subsequently left the University to play [professional](#) basketball. OCR's review of the file did not reflect any documentation evidencing that the complainant was notified of the indefinite suspension of the respondent or that the respondent had left the University. No further information was provided in the file regarding this complaint.

OCR also found unexplained delays in the other two investigations we reviewed, as follows.

- **Example 3**

The University also responded to this complaint under the 2018 Title IX Policy. The complainant filed this complaint with the University on February 14, 2017. The female complainant reported that the male respondent sent her a photo of his genitalia via Snapchat. The University's notice of investigation indicates that it did not initiate an investigation until almost a month later on March 13, 2018. The documentation further reflects that the University advised the complainant about the availability of interim measures, but the complainant, who attended a different university at the time, declined.

The University did not resolve this case until 203 days from the date of filing, i.e., on September 5, 2018. Documentation in the file reflects that on the 60<sup>th</sup> day after the University's notification of the investigation, the University provided notice to the parties of a complaint processing delay and articulated the circumstances under the 2018 Title IX Policy that justified delays. However, no specific reason for the delay was provided, nor did the University provide any other updates on its investigative timeframe throughout the rest of the investigation.

- **Example 4**

The University responded to this complaint according to its 2018 Title IX Policy, as well. This complaint involved a 2017 rape, of which Baylor did not become aware until August 2019, when the complainant was being interviewed in connection with another complaint. The complainant agreed to pursue her complaint on September 20, 2019, and the University initiated its investigation four days later, on September 24, 2019. The documentation reflected that the complainant was provided interim measures, including counseling and provision of a tutor, in September 2019.

On December 12, 2019, the complainant decided that she no longer wanted to continue with the Title IX process. Baylor nevertheless continued its investigation, and found the respondent liable on February 18, 2020, 147 days after it initiated its investigation. Documentation in the file reflects that on the 60<sup>th</sup> day after the University's notification of the investigation, the University provided notice to the parties of the complaint processing delay and informed them of the circumstances under the 2018 Title IX Policy that justified delays. However, no specific reason for the delay was provided.

## **Recordkeeping**

You asserted that the Athletics Department’s “initial fact-gathering” and involvement in Title IX complaints prior to contacting the Title IX Coordinator resulted in a system of records of its sexual harassment investigations that was separate from the records the University maintained. You informed OCR that this interference and lack of coordination prevented you from ensuring that the University responded to Title IX complaints promptly and equitably.

Additionally, OCR found that the University instituted several online reporting mechanisms for sexual harassment in the 2016-2017 academic year, some of which provided separate paths for reporting incidents involving athletes. First, the University formerly employed a Student Misconduct Reporting Form webpage. The University reported to OCR that the Athletics Department Policy required athletics employees to use this separate webpage to report all student athlete misconduct, including sexual misconduct. The webpage went to a login portal but did not identify the purpose of the portal or where the reported complaints of sexual misconduct would be routed (e.g., the Athletic Department and/or the Title IX Department).

Currently, there is portal called “[EthicsPoint](#)” that is accessible via the University’s website, which provides a reporting mechanism for Title IX complaints, touting that it provides “anonymity” to reporters. At its inception, EthicsPoint had two distinct options for reporting Title IX complaints: first, a specific link entitled “Athletics” for reporting “[a]ll issues dealing with the University’s athletic department or programs,” with several choices for the subject of a report, including “Sex Discrimination/Violence,” as well as a link entitled “Title IX,” which specified that it was to be used for “[s]tudents reporting sex discrimination related to sexual violence, sexual harassment, dating violence, domestic violence, and stalking.” EthicsPoint currently includes a *Title IX* category, which is comprised of multiple subcategories for reporting sexual harassment and assault.

## **Title IX Changes the University Has Made During the Investigation**

In addition to the personnel changes the University made in the wake of the Pepper Hamilton audit, the University created the position of Chief Compliance Officer to monitor compliance with federal requirements such as Title IX, in addition to state requirements, and it later hired a full-time Compliance Officer and a Compliance Associate to ensure Baylor’s compliance with its reporting responsibilities under the Clery Act.

Baylor also hired additional Title IX staff, including a Deputy Title IX Coordinator, a Support Services Coordinator, a Training and Prevention Specialist, three full-time investigators, a Case Coordinator, and a Title IX/Equity Office Manager, doubling the size of the Title IX Office. Also, in 2020, the Title IX Office and the Civil Rights office were combined into the Equity, Civil Rights and Title IX Office.

Baylor made several global changes to its Title IX processes. OCR reviewed the University’s “Student-Athlete Misconduct Reporting and Determination of Suspension Policy and Protocol,” effective as of October 11, 2017, which required coaches and staff to report known, alleged, reported, or suspected serious misconduct or violations of the Title IX Policy, Civil Rights



Policy, or Honor Code immediately, but not later than 24 hours after first learning of the conduct, via a designated online reporting tool. The Policy mandates designation of an athletics staff liaison who will serve as the only point-of-contact with the Title IX Office and prohibits athletics personnel from conducting their own investigation of an incident that constitutes or may constitute a violation of the Title IX Policy. The policy provides that the Title IX Office may enlist the assistance of the Director of Athletics or the liaison to contact athletes and to gather information.

Additionally, University officials and staff OCR interviewed in 2021 reported that neither the Athletics Department nor any other Baylor Department/entity is permitted to conduct intake, screening or a preliminary inquiry before the Title IX Office receives a complaint. Similarly, staff stated that cases of sexual harassment/assault involving athletes are required to be reported directly to the Title IX Office, and the Title IX Office has discretion to contact the Athletics Department, as appropriate, regarding the matter.

Baylor also organized a [Sexual Assault Task Force](#) in summer 2016, which was comprised of an Action Team and 17 implementation teams. The Task Force reportedly assessed restorative and ongoing needs of relevant students between 2016-2020; contacted sexually assaulted students to determine if they required appropriate remedies consistent with Title IX; reviewed cases to consider patterns, trends and climate; identified sexually assaulted students who did not move forward on their reports to assess current conduct of concern, need for support, appropriate restorative action and need for further investigation; and contacted students who filed Title IX reports but subsequently withdrew from Baylor to determine if their respective withdrawal was connected to Title IX concerns.

The Title IX Coordinator also purportedly instituted Case Management Meetings to discuss individual cases. The purpose of these meetings is to identify which students need a high level of care and to determine which office or department can address it. Further, according to the University's President, the Vice President for Internal Administration and Compliance addresses Title IX issues in twice weekly meetings of the President's Council, which is composed of the Baylor President, all vice-presidents, the General Counsel, the Title IX Coordinator, the Chief of Staff, the Provost, and special advisors on diversity and campus engagement.

Baylor also submitted documentation to OCR evidencing the University developed and expanded sexual harassment education on campus during the 2016-2017 academic year, appointing a Coordinator for Title IX training in line with the Pepper Hamilton recommendations. All first-year students and transfer students are now required to take an in-person course entitled "Set the Standard" (originally called "It's on Us"), which educates students about sexual harassment issues. Sexually harassed students speak as part of the Program. Every summer, all continuing students and Baylor personnel are required to take an hour-long online training course involving sexual harassment scenarios. Student leaders such as resident assistants (RA), student government members, and fraternity/sorority leaders receive additional training regarding sexual harassment and Baylor's sexual harassment policies and procedures. Title IX investigators and hearing officers also have an annual in-house training, with the Title IX Office allocating \$3,000-\$4,000 annually for staff professional development.

Since the 2016-2017 academic year, the Athletics Department provides additional training to student athletes and coaches, as well. Athletes are required to attend a course entitled “Real Relationships,” which covers topics such as consent, bystander intervention, and alcohol use. Athletes also participate in team-specific training sessions before each team’s season begins. The University provided OCR with documentation of student athlete training presentations and attendance sheets, and student athletes confirmed they received regular Title IX training during OCR interviews.

## **Analysis**

While OCR recognizes that the University has made significant strides in improving its Title IX process, OCR’s investigation revealed violations of Title IX as well as Title IX compliance concerns. The Title IX regulation in effect during the subject academic years required designation of an employee to coordinate its investigation of complaints alleging noncompliance with Title IX and held recipients responsible for responding promptly and equitably to actual or constructive notice of sexual harassment, including sexual violence, free from possible conflicts of interest. OCR’s investigation revealed that the University violated Title IX by failing to coordinate its Title IX response through its Title IX Coordinator when the Athletics Department engaged in fact-gathering for complaints involving student athletes prior to notifying the Title IX Coordinator. The failure to immediately report sexual harassment to the Title IX Coordinator prevented the Title IX Coordinator from providing a prompt and equitable response as required by Title IX. Moreover, involvement of the Athletics Department in the investigative or fact-gathering process for athletes introduced a conflict of interest into the University’s Title IX process, compromising the legitimacy of some Title IX investigations. In one case, OCR documentation confirmed that the Athletics Department engaged in discussions with accused football players prior to reporting an alleged sexual assault to the Title IX office in November 2017.

Additionally, Baylor admitted to its practice in operation through 2020 of suspending athletes at the commencement of Title IX investigations, prior to a finding of responsibility for engaging in sexual harassment or assault through the University’s Title IX procedures, which was also documented in the University’s Title IX investigative files reviewed by OCR. This practice resulted in an inequitable process for accused student athletes in violation of Title IX. In addition, while the University records document the University unfairly denying respondents equitable process during their resolutions, these other indicia raise a separate concern regarding the equity of the University process for all parties. The low rate of follow through with the Baylor Title IX process from complainants who notified the University of sexual harassment and assault, coupled with University records documenting complainant reports that they did not have confidence that the University process could be fair to them, raises a Title IX concern regarding the equity of the University process for all parties. For one example, the complainant in Example 2 reported to the University that she lacked confidence in its response because the University “has a poor track record in her opinion of privileging male perpetrators (who are on an athletic team) over female victims.” In addition, from January 2017 through September 2020, 34% of complainants to the University “declined process,” meaning University records reflect

these complainants’ decision not to proceed through the available University process at the time, while during that same period the University fully investigated only 6% of the total sexual harassment complaints it received. Further, in OCR’s file review of the January 2017 through September 2020 Title IX complaint files of cases against athletes, OCR found material unexplained delays in the University’s investigations of the complaints, raising concerns regarding the promptness of the University’s responses in these cases.

OCR also noted multiple versions and/or omissions of a nondiscrimination policy in University publications and recruitment materials throughout the academic years that failed to comply with Title IX. For example, OCR’s review of the 2018-2019 and 2023-2024 online student undergraduate and graduate catalogs revealed inconsistent nondiscrimination policy statements that did not meet the Title IX regulation’s requirements (e.g., some catalogs only mentioning gender, no references to the Title IX Coordinator or OCR). Moreover, the University’s current dedicated Title IX website contains a nondiscrimination notice that fails to reference OCR for Title IX inquiries, fails to state that the University is required by Title IX not to discriminate on the basis of sex, and fails to state that the requirement not to discriminate extends to admission, as required by the current Title IX regulation. As such, OCR identified a Title IX violation regarding consistency and inclusion of the requisite notice of nondiscrimination in each University announcement, bulletin, catalog, or application form as required by Title IX.

Moreover, while OCR recognizes Baylor’s effort in developing and establishing the Amnesty Policy, OCR is concerned that the University’s exclusion of respondents in its 2015-2016 Policy was inequitable. While the University expanded the amnesty provision in 2018 to offer amnesty to respondents, complainants, and witnesses for violations of its Sexual Conduct Policy, the Revised Title IX Policies only provided for amnesty for other Code of Student Conduct violations to complainants and witnesses. Because the amnesty provisions in the 2015-2016 Policy, the 2017 Title IX Policy, and the Revised Title IX Policies were inequitable in their application to respondents, OCR has Title IX concerns regarding the University’s Amnesty Policy.

The Title IX regulation requires that recipients “keep such records . . . containing such information, as the responsible Department official or . . . designee may determine to be necessary to enable him [or her] to ascertain whether the recipient has complied or is complying with this part.” However, the University acknowledged in the Baylor Findings of Fact that the University did not maintain such records through November 2014. Further, OCR has concerns that the University failed to have a centralized system of record-keeping when the Athletics Department engaged in its own fact-gathering prior to reporting alleged sexual harassment, and due to its separate online reporting mechanisms for incidents involving athletes, which could have interfered with the Title IX Coordinator’s ability to provide a prompt and equitable response to sexual harassment reports.

OCR’s file review also revealed other concerns. Title IX charges recipients with the responsibility to take steps to prevent any retaliation against the person who made a Title IX complaint or was the subject of harassment. A recipient cannot take prompt and effective action to respond to harassment and at the same time discourage complainants from availing themselves

of their Title IX process. Given that Baylor acknowledges that actions by University administrators in the past discouraged some complainants from reporting or participating in a Title IX investigation, and even retaliated against a student for making a Title IX complaint, OCR has concerns that a significant number of reports of sexual harassment received by the University and reported to OCR were closed because the complainant declined the full Title IX process. Specifically, OCR's file review showed that almost half of the 49 complaints filed against athletes between January 2017 and September 2020 were closed as "Declined Process." Moreover, of 1,578 total sexual harassment reports to the University during this same timeframe, only 6% percent of the complaints were fully investigated, with 34% closed as declined process. Accordingly, OCR identified a compliance concern regarding whether the University monitored the reasons for declining the Title IX process or otherwise took steps calculated to ensure that complainants were not discouraged from pursuing Title IX complaints.

## **Conclusion**

The University signed the enclosed Agreement, which, when fully implemented, will address the evidence obtained, the allegation investigated, and the compliance concerns OCR identified. The Agreement requires the University to:

- Remove non-conforming Title IX nondiscrimination policies.
- Review and revise its current Title IX policies and grievance procedures, as necessary, to conform to Title IX.
- Removal of any reporting mechanism currently available for student athletes to report separately from other students any violation of Title IX by students, employees, and third parties.
- Adopt, implement, and publish a department-wide policy (Title IX Coordinator Policy) for all employees affirming full coordination, cooperation, and support are extended to the University's Title IX Coordinator, in accordance with the University's Title IX policies and procedures.
- Develop a centralized procedure to consistently document, maintain data, and keep records that will assist the University in assessing its Title IX compliance.
- Provide annual Title IX training to its Title IX Coordinator and all other University officials and staff involved in the processing of Title IX complaints (including third-party contractors, as applicable).
- Review all written and oral complaints of sexual harassment, including sexual assault, within 30 days of receipt to ensure that these complaints are being processed in a timely and equitable way.
- Maintain documentation sufficient to demonstrate Title IX compliance with respect to all written and oral complaints of sexual harassment, including sexual assault, received during the 2022-2023 academic year.

OCR will monitor the implementation of the Agreement until the University is in compliance with the terms of the Agreement and the statutes and regulations at issue in this case.

This concludes OCR's investigation of the complaint and should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. You have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, that individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, 5 U.S.C. § 552, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions or concerns regarding this letter, please contact Jose Ortiz, Senior Attorney, at 214-661-9643 or via email at [jose.ortiz@ed.gov](mailto:jose.ortiz@ed.gov) or Dana Garrett, Senior Investigator, at [dana.garrett@ed.gov](mailto:dana.garrett@ed.gov) or 202-987-1542.

Sincerely,

Lori Bringas  
Supervisory Attorney/Team Leader  
OCR Dallas Office

Enclosure