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## **TOPIC:**

**PRACTICAL CONSIDERATIONS IN DEVELOPING AND IMPLEMENTING TITLE IX CAMPUS CLIMATE SURVEYS**

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## **DISCUSSION:**

As colleges and universities address sexual harassment and violence, many are devising and administering campus climate surveys – whether by choice or by mandate. A climate survey can provide unique insight into students’ attitudes about (and experiences with) sexual harassment and sexual violence. It can also reveal students’ knowledge of resources on campus, and their perceptions of campus culture related to sexual conduct. Moreover, a climate survey can also be a useful tool for any institution of higher education to assess the efficacy of its efforts to prevent and respond to acts of sexual harassment and sexual violence, and otherwise comply with Title IX of the Education Amendments of 1972 (“Title IX”). This NACUANOTE briefly summarizes the regulatory landscape regarding climate surveys and provides an overview of a suggested process for developing and implementing a climate survey (including practical tips and links to recommended resources).

### **Regulatory Landscape**

The U.S. Department of Education’s Office for Civil Rights (“OCR”), which is responsible for enforcing Title IX, has not explicitly required that every institution conduct a climate survey.<sup>[2]</sup> Nor has OCR uniformly required climate surveys in resolution agreements released during the past six years.<sup>[3]</sup> However, Catherine Lhamon, Assistant Secretary for Civil Rights, has described the survey issue as “crucial.”<sup>[4]</sup> Moreover, climate surveys are already required in some states (including Louisiana, Maryland, New York, and Washington),<sup>[5]</sup> and may soon be

required by other states<sup>[6]</sup> and/or the federal government.<sup>[7]</sup> While some of these laws apply (or would apply) to public institutions of higher education only, others also apply to private institutions.

Given this increased governmental interest, many institutions may find it prudent to develop a climate survey proactively.<sup>[8]</sup> Doing so requires gathering the right people, asking the right questions, and planning far in advance for each stage of the process – as outlined below.

## **Creating the Survey**

Three key principles should drive the climate survey process: 1) the survey must produce valid and reliable data;<sup>[9]</sup> 2) the survey questions should be designed to lead to “responsive action;”<sup>[10]</sup> and 3) the institution should be prepared to act upon the results. These principles should inform the process of developing and administering the survey, including: selection of the survey team; establishment of the specific purposes of the survey; development of survey questions tailored to achieve those purposes; analysis of the results; and identification of follow-up actions.

### **1. Establishing the Survey Team**

In order to develop a survey that yields valid and reliable data, an institution should first establish a survey team composed of both subject matter and research methodology experts. Because the institution should be prepared to act upon the survey results, the survey team should be established with top-level administrative support. Members of the survey team should include, at a minimum: 1) someone responsible for the institution’s Title IX compliance (*i.e.*, the Title IX coordinator); and 2) someone with expertise in survey methodology (*i.e.*, someone from the institutional research office, or, in the absence of such an office, a faculty or staff member with expertise in this area).<sup>[11]</sup> Each institution should enlist the assistance of other faculty, staff, and/or students based on the institution’s campus culture and administrative organization, as well as the expertise the additional members would bring to the team.<sup>[12]</sup> To keep the size of the survey team manageable, institutions might consider establishing a separate “advisory board” composed of different stakeholders on campus.<sup>[13]</sup> The advisory board (or other group convened to provide input to the survey process) will likely represent a broader range of campus stakeholders than the survey team, and may provide valuable ideas regarding the survey content, design, and promotional communications. An advisory board may be particularly useful for larger institutions, or any institution in which a large number of people on campus have an interest in shaping development of the survey.

### **2. Identifying the Purposes of the Survey**

Once the survey team has been established, the team should focus on determining the purposes of the survey. Broadly speaking, OCR encourages climate surveys as part of an overall assessment that evaluates “the effectiveness of steps taken . . . to provide for a campus free of sexual harassment, in particular sexual assaults and sexual violence.”<sup>[14]</sup> More specifically, the climate survey should assess, at a minimum:<sup>[15]</sup>

1. Attitudes and knowledge regarding various types of sexual harassment, sexual violence, and retaliation;
2. Experiences with (and the prevalence of) sexual harassment, sexual violence, and retaliation at the institution, including identification of “any potentially problematic areas on campus (*e.g.*, dormitories, athletic facilities);”<sup>[16]</sup>

3. Knowledge of the institution's policies and procedures for reporting sexual harassment, sexual violence, and retaliation;
4. Comfort level of reporting, as well as any barriers to reporting;
5. Familiarity with the institution's outreach, education, and prevention efforts; and
6. Suggestions for the institution to encourage and better respond to reports of sexual harassment, sexual violence, and retaliation.

OCR has also made it clear that the purpose of gathering this information is to “inform future proactive steps taken to provide for a safe educational environment and compliance with Title IX.”<sup>[17]</sup> While narrower in scope than the concept of “responsive action” described herein,<sup>[18]</sup> OCR's language nonetheless reinforces the idea that each survey question should have a purpose, and that an institution should be prepared to act upon survey responses.

The survey team should evaluate the purposes listed above and identify any additional purposes for the survey. For example, the team may decide that the survey should provide data on participants' perceptions of their classmates' attitudes. This data could then be used to develop social norms campaigns that are designed to influence positive behavior by highlighting community consensus about acceptable and unacceptable behavior. Other potential purposes of the survey could include gaining insight into survey respondents' perpetration of sexual harassment, sexual violence, and retaliation; and/or willingness to engage in bystander intervention.<sup>[19]</sup>

### **3. Building the Survey Instrument**

After determining the purposes of the survey, the survey team should focus on identifying specific questions that will achieve those purposes. In doing so, the survey team may wish to utilize a template survey or develop a custom survey.

Template surveys have several advantages, including: minimizing the amount of time the survey team spends drafting questions, facilitating quick implementation of the survey, and facilitating data comparison among participating institutions. Some template surveys also contain questions that have been extensively vetted. Template surveys are available from many groups, including: the Higher Education Data Sharing (HEDS) Consortium,<sup>[20]</sup> the White House Task Force to Protect Students from Sexual Assault,<sup>[21]</sup> Rutgers University,<sup>[22]</sup> and the Association of American Universities (AAU).<sup>[23]</sup> However, template surveys are not immune from the criticism that many climate surveys receive.<sup>[24]</sup> Therefore, the survey team members should review multiple template surveys before selecting the one that best fits the institution, keeping in mind that some surveys may be dictated more by art/politics than by science.

The primary advantage of custom surveys is the ability to frame the survey so that it best reflects the institution's specific proactive efforts and approach to sexual harassment and violence prevention. A custom survey also facilitates questions that reflect campus culture and any campus-specific terminology. If a custom survey is utilized, it is particularly important that the survey team be composed of individuals who will bring objectivity and critical thinking – rather than ideology – to the question-drafting process. Although a custom survey will generally take more time to develop, the survey team need not develop the questions from scratch. In fact, multiple resources exist to assist with question drafting,<sup>[25]</sup> including, in particular, Table 1 and Appendix B of the Campus Climate Survey Validation Study.<sup>[26]</sup>

When drafting survey questions (or reviewing questions in a template survey) the survey team should evaluate each potential question with respect to the following two touchstones:

1. How does the question relate to the purposes of the survey? and
2. How will data generated from the question facilitate responsive action?

For example, the question “How safe do you feel on campus?” may exceed the scope of a sexual harassment/violence climate survey. Furthermore, the question does not lend itself to any obvious responsive action.<sup>[27]</sup> A better question would directly inquire about locations on campus where students may feel vulnerable to sexual harassment or sexual violence. Such a revised question is more conducive to targeted responsive action.

Similarly, the question, “How frightened were you by the incident?”<sup>[28]</sup> doesn’t yield data that can lead to responsive action. Moreover, this type of question may invalidate the experiences of certain victims by implying that all victims of sexual harassment or sexual violence must feel a particular emotion.<sup>[29]</sup> Thus, this question exemplifies the unintended consequences that can result from poor question drafting; it should therefore be filtered out by the survey team.

Such a critical lens should be used on each survey question to make certain that the question seeks precisely the information that is intended, will yield data conducive to developing responsive action, and is clearly worded. The rigor and objectivity of the survey team is therefore critical to the validity and usefulness of any survey results. Moreover, a skewed survey that distorts the factual realities on campus can become a basis for negative publicity and/or legal claims against the institution for harboring an unsafe or “harassing” environment, or for failing to remedy conditions identified in the survey results.

In developing the survey, the survey team may also find it helpful to conduct a “resource audit” – which serves as a comprehensive identification of “the campus infrastructure for responding to and preventing sexual violence.”<sup>[30]</sup> This can be useful in drafting questions to assess students’ knowledge of (and experiences with) those resources – particularly at larger and/or more decentralized institutions.

Finally, whether a custom or template survey is utilized, the survey team should solicit and incorporate student input. Of the recent OCR resolution agreements that require climate assessments, many emphasize the role of student input.<sup>[31]</sup> This input is particularly valuable in assessing the overall scope of the survey and the wording of specific survey questions.<sup>[32]</sup> The survey team can solicit student input through the advisory board (if one has been established).<sup>[33]</sup> Alternatively, the survey team can conduct pre-survey focus groups with various student groups on campus.<sup>[34]</sup> After obtaining student feedback from focus groups and/or an advisory board, each institution should also strongly consider offering the survey to a pilot group. Pilot groups can provide additional assistance in ascertaining whether any questions (and/or the answer choices associated with them) are unclear, not relevant, or offensive.<sup>[35]</sup> Pilot groups can also verify that the survey tool operates as intended.

### **Promoting Survey Participation**

A high survey participation rate will result in the most useful data. For this reason, the survey team should develop – well in advance of the survey launch date – a comprehensive plan to encourage survey participation. The optimal plan will vary by campus (particularly if the survey team opts to use a random sample approach rather than a census approach, as discussed further below). Nonetheless, every survey team should consider utilizing various media to raise awareness about the survey and encourage participation, including posters, videos, text messages, and social media. Each survey team should also enlist the assistance of any

campus partners (including those identified during the resource audit)[36] to encourage survey participation.

One way to create the “buzz” that is likely to generate widespread campus awareness and participation is to brand the survey.[37] For example, Rutgers branded its climate survey “iSpeak,”[38] and Boston University used “Speak Up BU.”[39] Pre-survey focus groups with students provide the ideal venue to vet any survey branding being considered.

The survey team should also consider the appropriateness and feasibility of incentivizing survey participation.[40] These incentives could take the form of a raffle for cash or other prizes, gift cards, donations to victims’ rights centers or student organizations – or some combination of the above.[41] The survey team will need to determine the budget for any such incentives and carefully think through logistical issues, such as: 1) how to count participation in the survey (*i.e.*, what percentage completion must an individual participant achieve in order to be eligible for the incentive,[42] particularly given that the survey should permit questions to be skipped – as discussed further below); and 2) how to provide incentives to individual participants in a manner that comports with any promises of anonymity/confidentiality.

### **Analyzing, Publicizing, and Acting Upon the Results**

The survey team should develop a plan to analyze and publicize the survey results well in advance of the survey launch date.[43] This will enable the team to promptly release the results and capitalize on the interest attendant to a well-promoted survey. The data analysis plan should include thorough analysis by both the research and subject matter experts on the survey team. For example, the survey team should have an idea of the cross-tabulations (*e.g.*, satisfaction with the on-campus complaint resolution process, compared by race and gender) it will conduct before the survey is even released. The data analysis plan should focus on evaluating gaps in either knowledge, preventative efforts, or responsive efforts. These gaps should form the basis of the institution’s plan for taking responsive action.

The survey team should also develop a plan to supplement the survey data as part of the institution’s broader obligation to assess campus climate. For example, in order to provide qualitative insight into the quantitative data yielded by the survey, the survey team should consider conducting post-survey focus groups to: 1) evaluate certain survey questions in much greater detail; or 2) gain insight into certain survey responses that may have been surprising or that otherwise elicited follow-up questions from the survey team.[44]

Finally, the survey team should thoroughly consider whether (and in what format) the data should be released.[45] The best method for releasing survey data will likely be campus-specific. For example, smaller institutions might not release the full data set due to concerns that doing so would enable identification of individual survey respondents with unique demographic characteristics. All institutions should consider the potential discoverability of survey results in litigation, and public institutions in particular may also need to consider whether survey results (and communications related to the survey) must be disclosed under state open records laws.

Regardless of whether the full data set is released, the survey team should consider developing an executive summary[46] of the results and/or a list of frequently asked questions.[47] Any such summary of the results should contextualize the data and outline the institution’s plan for responsive action. Open meetings on campus may also be a good method to broadcast the data, receive additional feedback as part of the institution’s broader climate assessment, correct

any misconceptions people may have drawn from the survey results, and outline the institution's plan for responsive action.

### **Practical Consideration: Duty to Investigate**

Can survey responses give rise to a duty to investigate? Unfortunately, there is not yet a definitive answer. OCR's 2011 *Dear Colleague Letter on Title IX Requirements Related to Sexual Harassment and Sexual Violence* unequivocally states that "[r]egardless of whether a harassed student . . . files a complaint under the school's grievance procedures or otherwise requests action . . . a school that knows, or reasonably should know, about possible harassment must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation."<sup>[48]</sup> OCR subsequently provided a limited exception to this broad requirement in its *Questions and Answers on Title IX and Sexual Violence* guidance document, which avers that statements made during "public awareness events such as 'Take Back the Night'" do not trigger a duty to report or investigate.<sup>[49]</sup> However, there is no reason to believe that this limited exception extends to climate surveys, which – quite to the contrary – OCR expects to lead to responsive action.<sup>[50]</sup> Moreover, enterprising plaintiff's attorneys might point to the institution's failure to act upon survey results as evidence of "deliberate indifference"<sup>[51]</sup> under Title IX. Therefore, in the absence of clear guidance otherwise, an institution should be prepared to investigate any incident that is reported in survey responses, provided that the report includes details sufficient to enable an investigation.<sup>[52]</sup>

Importantly, an institution should not use individual survey responses to reverse-engineer the identity of a potential victim for any purpose, including investigating allegations made by that person.<sup>[53]</sup> Thus, the potential for investigation arises only if specific questions elicit details that would be sufficient to enable an investigation (e.g., location, date, and/or name of the alleged assailant), or if the survey permits open-ended responses (which could include such details, even if unsolicited). This is a possibility over which both the survey team and each individual survey respondent exercise significant control. The survey team has control to the extent that it carefully drafts survey questions and decides whether to permit open-ended survey responses. Each survey respondent similarly has control, because he or she is not under any obligation to answer particular questions.

As with all things related to Title IX, transparency is key. If a survey includes specific questions that would yield investigable information, or if the survey permits any open-ended responses, the survey's informed consent page should include a statement indicating that although survey responses are generally confidential (and/or anonymous – see below), any responses that include individually-identifying information may prompt an investigation. The statement could also include a reminder about the availability of confidential and other resources.

Arguably, institutions should not shy away from the potential that survey responses might give rise to an investigation. Each institution has an interest in knowing more about the experiences of its students and taking responsive action to eliminate any sexual harassment, violence, or retaliation revealed through the survey. With this in mind, survey responses can be considered analogous to reports received through an anonymous website or hotline – which many institutions have chosen to implement.

Nonetheless, institutions that are less comfortable with the possibility of investigations prompted by survey responses can choose to minimize that possibility by specifically framing the responses a question will elicit. This can be accomplished by carefully phrasing each question (and the associated answer choices, if any), and avoiding open-ended questions. Such

institutions should balance the preference to minimize investigable information against the benefits of the additional insight that open-ended responses, in particular, may provide. Depending on campus culture, open-ended survey responses may provide the only opportunity to learn information that might otherwise never be disclosed – particularly given that rates of reporting sexual harassment and sexual violence on college campuses tend to be low.[\[54\]](#)

### **Additional Practical Considerations**

When following the process outlined above, the survey team will undoubtedly encounter a number of practical issues that will require careful consideration, such as:

- *Random Sample vs. Census*  
The survey team will need to determine whether the survey should be sent to the entire target population, or a random sample of that population. Although the White House Task Force guide implies that sampling may be permissible (as long as it is done correctly),[\[55\]](#) recent OCR resolution agreements provide mixed signals.[\[56\]](#) As a practical matter, a census approach may be necessary at smaller institutions, because a random sample may not achieve sufficiently precise data.[\[57\]](#) Conversely, a census approach will likely be less feasible at larger institutions, particularly given that a properly conducted random sample is likely to provide data that is nearly as representative as would be obtained through a census approach.[\[58\]](#)
- *Students Only, or Entire Campus Community?*  
Similarly, the survey team will need to consider whether survey participation should be limited to students, or should also include faculty and staff. The White House Task Force guide focuses on surveying students only.[\[59\]](#) Some OCR resolution agreements similarly focus on surveying students only, but others call for broader surveys that include faculty and staff.[\[60\]](#) In considering this issue, survey teams should keep in mind the need to “know your audience” – which will likely result in different survey questions for faculty and staff than for students.[\[61\]](#) Therefore, in the interest of expediency, the survey team may choose to prioritize development and implementation of the student survey first, and then decide whether (and if so, how) to expand the survey to faculty and staff.
- *Confidentiality/Anonymity*  
In what appears to be a new trend, some of the most recent resolution agreements have specifically required that institutions “allow for respondents to answer the survey anonymously.”[\[62\]](#) While participation in the survey should definitely be confidential, anonymity may be more difficult to achieve, and thus should not be promised unless it is clear that the survey tool can actually provide anonymity.[\[63\]](#) Each institution should carefully consider how it will promise confidentiality and/or anonymity, particularly given that: 1) certain survey responses may prompt an investigation (see above); 2) the survey results may be discoverable during litigation; and 3) for public institutions, the survey results may be subject to disclosure under state public records laws.
- *IRB Review*  
The survey team should consult with the institution’s Institutional Review Board (IRB) well in advance of the survey launch date in order to determine whether the survey requires advance review by the IRB and facilitate such review if required. The White

House Task Force guide opines that climate surveys must be reviewed by the institution's IRB.<sup>[64]</sup> However, some institutions have taken the position that their climate surveys do not meet the definition of human subjects research that requires IRB review.<sup>[65]</sup>

- *Survey Repetition*

The survey team will need to consider whether to conduct the same survey each year. Due to survey fatigue, survey participation rates are likely to decline if the same survey is issued annually. Therefore, unless an institution is specifically obligated (under either state law or resolution agreement) to conduct the same survey each year, the survey team may decide to utilize other climate assessment alternatives in years when the full survey is not conducted.<sup>[66]</sup> These alternatives could include: issuing the survey to a random sample (see above) or cohort; utilizing an abbreviated version of the survey; conducting a short check-in type of polling survey; or adding questions to tag-on to an existing survey. One downside to utilizing these alternatives is that the institution will lose the opportunity to conduct year-to-year comparisons of the survey data. Whether such comparisons are of material consequence will depend on the purposes the survey team has identified for the survey. For example, attitudes regarding sexual harassment and sexual violence are not likely to change significantly from one year to the next, so questions about these attitudes may not be necessary each year.

### **Quick Tips**

- Utilize a survey tool that permits participants to skip any survey questions, and inform participants of their option to do so. Survey participants should not feel compelled to answer highly personal questions that may involve traumatic experiences.
- Carefully draft the survey invitation, and include contact information for on- and off-campus support resources.<sup>[67]</sup>
- Use personalized greetings in the survey invitation,<sup>[68]</sup> and any reminder emails.
- Include contact information for support resources at the bottom of each page of the survey, so that participants who experience emotional difficulty can quickly access help without being expected to find the survey invitation or navigate to a separate "resources" page.
- Describe behaviors, rather than labeling them with either colloquial or technical terms. Survey participants may not identify their experiences by particular labels, or may interpret those labels differently.
- Avoid heteronormative questions. These questions may marginalize the experiences of victims whose experiences don't match the presumed pattern.
- Aim for a survey that takes around fifteen minutes to complete.<sup>[69]</sup>
- Consider the potential for survey response bias, and any measures to correct for such bias.<sup>[70]</sup>
- Be prepared to scrutinize the wording of every survey question. It is imperative that each question ask precisely what is intended and that the answer choices are appropriately comprehensive. Any ambiguity may skew the responses or otherwise lead to a responsive action that doesn't address the actual problem.
- Carefully consider the timing of the survey in light of the institution's academic calendar, any surveys that will be running concurrently, and any other campus-specific factors. The best time to issue the survey is likely during the spring



semester, because first year students may lack sufficient basis to respond to a survey conducted during the fall semester.<sup>[71]</sup>

## CONCLUSION:

By bringing together the right people, asking the right questions, and planning far in advance for all stages of the process, an institution can develop a climate survey that results in quality data and leads to an effective plan for responsive action.

## RECOMMENDED RESOURCES:

Detailed Resources Regarding Campus Climate Surveys:

- Christopher Krebs et al., *Campus Climate Survey Validation Study Final Technical Report*, Bureau of Justice Statistics Research and Development Series, (Jan. 2016), <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5540>.
- Sarah McMahon et al., *Understanding and Responding to Campus Sexual Assault: A Guide to Climate Assessment for Colleges and Universities*, <https://socialwork.rutgers.edu/node/963> (last visited June 11, 2016).
- Mass. Inst. of Tech., *MIT Health & Wellness Surveys: Tips from Developing the 2014 MIT Community Attitudes on Sexual Assault (CASA) Survey*, <http://mit.edu/surveys/casatips> (last visited June 11, 2016).

General Survey Drafting Tips:

- Office of Quality Improvement, University of Wisconsin-Madison, *Survey Fundamentals: A Guide to Designing and Implementing Surveys*, (Dec. 2010), [https://oqi.wisc.edu/resourcelibrary/uploads/resources/Survey\\_Guide.pdf](https://oqi.wisc.edu/resourcelibrary/uploads/resources/Survey_Guide.pdf).

Sample Climate Surveys:

- Massachusetts Institute of Technology, *Community Attitudes on Sexual Assault*, (2014), <http://web.mit.edu/surveys/health/MITCommunityAttitudesonSexualAssault-Survey.pdf>.
- Rutgers University, *#iSPEAK: Rutgers University Campus Climate Survey*, (2015), <https://socialwork.rutgers.edu/node/958>.

## ENDNOTES:

[1] Justin H. Smith is the Associate General Counsel at Amherst College. He maintains a generalist practice, including frequent advising on Title IX matters, as well as serving on the ad hoc team that developed Amherst College's Survey on Sexual Respect and Sexual Misconduct.

[2] Some commentators have questioned whether OCR has the authority to require climate surveys. See, e.g., Kent D. Talbert, *Behind the Scenes: A Closer Look at OCR's Enforcement Authority*, 16 ENGAGE 17, 19 (Dec. 2015), <https://www.fed-soc.org/publications/detail/behind-the-scenes-a-closer-look-at-ocrs-enforcement-authority>.

- [3] This author reviewed forty-three Title IX sexual harassment and/or sexual violence related resolution agreements dating from December 2010 through June 2016. Only twelve of those agreements explicitly require use of a survey, although an additional fifteen identify surveys as one possible means of conducting a broader campus climate “assessment” or climate “check.” Notably, one additional agreement requires that the climate check occur using a specific method (“purposeful meetings with students on campus”) other than a survey. See Embry-Riddle Aeronautical University, Resolution Agreement, U.S. Dep’t of Educ., OCR Case No. 08-13-2197, at 3 (Jul. 16, 2014), <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08132197-b.pdf>.
- [4] Catherine Lhamon, Assistant Sec’y of the Office for Civil Rights, U.S. Dep’t of Educ., Featured Session at NACUA’s 54th Annual Conference: Latest Developments from the Department of Education Office for Civil Rights: Perspectives from the Assistant Secretary (Jun. 24, 2014) (transcript available at <http://www.nacua.org/docs/default-source/legacy-doc/resource-pages/sexual-misconduct-other-campus-violence/nacualhamontranscript.pdf>).
- [5] See DUSTIN WEEDEN, NAT’L CONFERENCE OF STATE LEGISLATURES, HIGHER EDUCATION LEGISLATION IN 2015 (Dec. 22, 2015), <http://www.ncsl.org/research/education/higher-education-legislation-in-2015.aspx>; see also LA. STAT. ANN. § 17:3351H.(1)(a) (2015); MD. CODE ANN., EDUC. § 11-601(e) (2015); N.Y. EDUC. LAW § 6445.1 (2015); WASH. REV. CODE § 28B.112.005(1)(a) (2015).
- [6] See, e.g., S. 650, 189th Gen. Ct. Sess., at 2-3 (Mass. 2015).
- [7] See, e.g., Campus Accountability and Safety Act, S. 590, 114th Cong. (2015); Hold Accountable and Lend Transparency on Campus Sexual Violence Act, H.R. 2680, 114th Cong. (2015).
- [8] When assessing the prudence of developing a climate survey, institutions should also note that in some instances, plaintiffs have sought to compel disclosure of survey data to bolster their Title IX claims. See, e.g., *Bagley v. Yale University*, No. 3:13-CV-1890 (D. Conn., June 14, 2016) (seeking to compel survey data to support claims that “[a] culture exists... in which strong, assertive and professionally accomplished women who are not stereotypically female in their appearance, behavior and attitudes are viewed negatively because they do not meet certain gender expectations by the dominant male leadership”). Some states may also require institutions to disclose survey results pursuant to public information act requests. Institutions should be mindful of these avenues for disclosure as they assess whether or not to administer a survey.
- [9] SARAH MCMAHON ET AL., RUTGERS SCH. OF SOCIAL WORK, RUTGERS UNIVERSITY, UNDERSTANDING AND RESPONDING TO CAMPUS SEXUAL ASSAULT: A GUIDE TO CLIMATE ASSESSMENT FOR COLLEGES AND UNIVERSITIES 3, <https://socialwork.rutgers.edu/file/1730/download> (last visited June 11, 2016) [hereinafter RUTGERS GUIDE] (noting that “it is vital that the campus climate assessment gathers credible data”).
- [10] The term “responsive action” is intended to broadly reflect the notion that an institution should have some sense of the specific insight(s) the responses to each survey question might provide, and what purposes those insights serve. Put another way: “responsive action” goes beyond the initial question of “what do we want to know?”, *id.*, at 12, to the question of “what will we do with that knowledge?” This includes, but is not limited to, measuring progress in student attitudes over time, measuring the success of various initiatives over time, identifying gaps in students’ knowledge of available resources, identifying certain locations on campus that experience high prevalence of sexual misconduct, etc.
- [11] For additional information on composing a survey team, see *id.* at 6.
- [12] For example, the institution’s culture may warrant inclusion of at least one student representative, or a faculty member may have particular expertise in researching sexual assault.
- [13] See RUTGERS GUIDE, *supra* note 9, at 3-4.
- [14] E.g., State University of New York Voluntary Resolution Agreement, U.S. Dep’t of Educ., OCR Docket No. 02-11-6001, at 8 (Sept. 30, 2013), <http://www2.ed.gov/documents/press-releases/suny-new-york-agreement.doc>.
- [15] See University of Virginia Resolution Agreement, U.S. Dep’t of Educ., OCR Docket No. 11-11-6001, at 14 (Sept. 17, 2015), <http://www2.ed.gov/documents/press-releases/university-virginia-agreement.pdf>; University of Montana – Missoula Resolution Agreement, U.S. Dep’t of Educ., OCR Case No. 10126001 at 10 (May 9, 2013), <http://www2.ed.gov/documents/press-releases/montana-missoula-resolution-agreement.pdf>; Virginia Military Institute Voluntary Resolution Agreement, U.S. Dep’t of Educ., OCR Complaint No. 11-08-2079, at 6 (Apr. 30, 2014), <http://www2.ed.gov/documents/press-releases/vmi-agreement.doc>.
- [16] E.g., Cedarville University Resolution Agreement, U.S. Dep’t of Educ., OCR Docket No. 15-13-2163, at 7 (June 9, 2014), <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/15132163-b.pdf>.

- [17] E.g., Harvard Law School Resolution Agreement, U.S. Dep't of Educ., Complaint No. 01-11-2002, at 8 (Dec. 23, 2014), <http://www2.ed.gov/documents/press-releases/harvard-law-agreement.pdf>.
- [18] See *supra* note 10.
- [19] For additional commentary on possible survey topics, see CHRISTOPHER KREBS ET AL., BUREAU OF JUSTICE STATISTICS, CAMPUS CLIMATE SURVEY VALIDATION STUDY FINAL TECHNICAL REPORT 20-22 (Jan. 2016), <http://www.bjs.gov/content/pub/pdf/ccsvsfr.pdf>.
- [20] See HIGHER EDUC. DATA SHARING CONSORTIUM, 2015-2016 HEDS SEXUAL ASSAULT CAMPUS CLIMATE SURVEY (2015), <https://hedsconsortium.app.box.com/sexual-assault-climate-survey>.
- [21] See WHITE HOUSE TASK FORCE TO PROTECT STUDENTS FROM SEXUAL ASSAULT, CLIMATE SURVEYS: USEFUL TOOLS TO HELP COLLEGES AND UNIVERSITIES IN THEIR EFFORTS TO REDUCE AND PREVENT SEXUAL ASSAULT 20-35 (Apr. 2014) [hereinafter WHITE HOUSE GUIDE], <http://www.notalone.gov/assets/ovw-climate-survey.pdf>.
- [22] See RUTGERS SCH. OF SOCIAL WORK, RUTGERS UNIVERSITY, #ISPEAK: RUTGERS UNIVERSITY CAMPUS CLIMATE SURVEY (2015), <https://socialwork.rutgers.edu/file/1675/download>.
- [23] See ASS'N OF AM. UNIVS., CAMPUS CLIMATE SURVEY ON SEXUAL ASSAULT AND SEXUAL MISCONDUCT [https://www.aau.edu/uploadedFiles/AAU\\_Publications/AAU\\_Reports/Sexual\\_Assault\\_Campus\\_Survey/Survey%20Instrument.pdf](https://www.aau.edu/uploadedFiles/AAU_Publications/AAU_Reports/Sexual_Assault_Campus_Survey/Survey%20Instrument.pdf) (last visited June 11, 2016).
- [24] See, e.g., Jake New, *Asking Too Much, or Not Enough?*, INSIDE HIGHER ED, May 27, 2015, <https://www.insidehighered.com/news/2015/05/27/language-sexual-assault-surveys-criticized-students-triggering>.
- [25] See, e.g., WHITE HOUSE GUIDE, *supra* note 21; MARY P. KOSS ET AL., SEXUAL EXPERIENCES SURVEY – LONG FORM VICTIMIZATION (SES-LFV), <http://www.midss.org/content/sexual-experiences-survey-long-form-victimization-ses-lfv>, (last visited June 11, 2016); MARY P. KOSS ET AL., THE SEXUAL EXPERIENCES LONG FORM PERPETRATION (SES-LFP), <http://www.midss.org/content/sexual-experiences-long-form-perpetration-ses-lfp> (last visited June 11, 2016).
- [26] KREBS ET AL., *supra* note 19, at 8, 239.
- [27] Because of the breadth of the question, it could cover concerns about one's room being burglarized, slipping on an icy bridge on campus, being harassed by drivers on the streets around campus, being sexually assaulted during parties at certain locations on campus, or any of a number of other possibilities. An institution's response to any of these scenarios could be different, but the lack of specificity in the question leaves the institution without any insight as to how to address the problem.
- [28] See WHITE HOUSE GUIDE, *supra* note 21, at 26.
- [29] For additional criticism of this particular question, see KREBS ET AL., *supra* note 19, at 10.
- [30] RUTGERS GUIDE, *supra* note 9, at 5.
- [31] See, e.g., Tufts University, Resolution Agreement, U.S. Dep't of Educ., OCR Complaint No. 01-10-2089, at 4 (Apr. 17, 2014), <http://www2.ed.gov/documents/press-releases/tufts-university-agreement.doc>.
- [32] Although student input is critical, the survey team should retain ultimate discretion over the wording of any particular question.
- [33] See *supra* note 12 and accompanying text.
- [34] See *infra* note 44 and accompanying text.
- [35] For additional information regarding pilot groups, see RUTGERS GUIDE, *supra* note 9, at 26-27; see also KREBS ET AL., *supra* note 19, at 24-61.
- [36] See *supra* note 29 and accompanying text.
- [37] See RUTGERS GUIDE, *supra* note 9, at 21.
- [38] *Id.*
- [39] See BOSTON UNIVERSITY, STUDENT CLIMATE SURVEY FAQs (Mar. 11, 2015), <http://www.bu.edu/dos/2015/03/11/student-climate-survey-faqs/>.
- [40] Although incentives can be useful, an institution should not attempt to mandate survey participation by, for example, conditioning class registration upon completion of the survey. At least one resolution agreement has specified that student participation in a climate survey must be voluntary. See Virginia Polytechnic Institute and State University Voluntary Resolution Agreement, U.S. Dep't of Educ., OCR Complaint No. 11-14-2219, at 6 (Oct. 22, 2014), <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11142219-b.pdf>.
- [41] For further discussion of the use of incentives, see RUTGERS GUIDE, *supra* note 9, at 30; see also KREBS ET AL., *supra* note 19, at 178-186 (reviewing results of an incentive experiment and recommending an incentive "in the \$20 to \$30 range").

[42] For one suggestion of how to determine survey completion, see KREBS ET AL., *supra* note 19, at 36.

[43] See *generally* RUTGERS GUIDE, *supra* note 9, at 32-35.

[44] For detailed recommendations on conducting focus groups, see *id.* at 23-31

[45] See *id.* at 32-33.

[46] See, e.g., AMHERST COLLEGE, EXECUTIVE SUMMARY OF 2014 AMHERST COLLEGE SURVEY ON SEXUAL RESPECT AND SEXUAL MISCONDUCT, <https://www.amherst.edu/node/612405> (last visited June 11, 2016).

[47] See, e.g., BOSTON UNIVERSITY, *supra* note 39.

[48] OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., DEAR COLLEAGUE: TITLE IX REQUIREMENTS RELATED TO SEXUAL HARASSMENT AND SEXUAL VIOLENCE 4 (Apr. 4, 2011), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>.

[49] OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., QUESTIONS AND ANSWERS ON TITLE IX AND SEXUAL VIOLENCE 24 (Apr. 29, 2014), <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

[50] See *supra* notes 15-17 and accompanying text.

[51] See *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999) (holding that “a private Title IX damages action may lie against [an institution] in cases of student-on-student harassment, but only where the [institution] is deliberately indifferent to sexual harassment, of which the [institution] has actual knowledge, and that harassment is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the [institution]”).

[52] Although a detailed discussion is beyond the scope of this paper, an institution’s investigation will likely take different forms based on the amount of information provided. For example, survey responses that indicate multiple sexual assaults occurred generally within a particular residence hall will likely warrant a different degree of investigation than a survey response that includes the specific date, location, and name of the alleged assailant.

[53] See WHITE HOUSE GUIDE, *supra* note 21, at 11.

[54] See ASS’N OF AM. UNIVS., REPORT ON THE AAU CLIMATE SURVEY ON SEXUAL ASSAULT AND SEXUAL MISCONDUCT xxi, [https://www.aau.edu/uploadedFiles/AAU\\_Publications/AAU\\_Reports/Sexual\\_Assault\\_Campus\\_Survey/Executive%20Summary%202012-14-15.pdf](https://www.aau.edu/uploadedFiles/AAU_Publications/AAU_Reports/Sexual_Assault_Campus_Survey/Executive%20Summary%202012-14-15.pdf) (last visited June 11, 2016); see also CHRISTOPHER P. KREBS, ET AL., THE CAMPUS SEXUAL ASSAULT (CSA) STUDY: FINAL REPORT 2-9 through 2-10 (Dec. 2007), <https://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>; KREBS ET AL., *supra* note 19, at 107.

[55] WHITE HOUSE GUIDE, *supra* note 21, at 7-9.

[56] Compare George Washington University Voluntary Resolution Agreement, U.S. Dep’t of Educ., OCR Complaint No. 11-11-2079, at 6 (Aug. 31, 2011), <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/11112079-b.pdf> (“The climate check may be completed by sending a survey to a reasonable sample of the student body”) with Ohio State University Resolution Agreement, U.S. Dep’t of Educ., OCR Docket No. 15-10-6002, at 11 (Sept. 8, 2014), <http://www2.ed.gov/documents/press-releases/ohio-state-agreement.pdf> (“The climate check will be completed in part by sending a survey to each University student, including all regional, graduate, and professional school students”) and University of Montana – Missoula, *supra* note 15, at 10 (requiring a “climate survey” to be sent to “each” or “all” students(s)); Virginia Military Institute, *supra* note 15, at 6 (same); Lyon College Voluntary Resolution Agreement, U.S. Dep’t of Educ., OCR Docket No. 06-12-2184, at 6 (Mar. 24, 2015) (same), <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/06122184-b.pdf>; University of Minnesota Resolution Agreement, U.S. Dep’t of Educ., Complaint No. 05-14-2350, at 10 (Dec. 11, 2015) <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/05142350-b.pdf> (same).

[57] KREBS ET AL., *supra* note 19, at 25.

[58] *Id.* at 27.

[59] See WHITE HOUSE GUIDE, *supra* note 21, at 7-8, 14.

[60] Of the forty-three resolution agreements reviewed by this author, twelve did not require a climate assessment of any type, five required a climate assessment but did not give a clear indication as to exactly whom it should involve, eighteen specifically required that the climate assessment (often required to include a survey) be sent to students (with no mention of employees), and eight explicitly required that the climate assessment be sent to employees in addition to students. Compare, e.g., Ogle School of Skin, Hair, and Nails (Denton Campus) Resolution Agreement, U.S. Dep’t of Educ., OCR Complaint No. 06144015, at 5 (Sept. 23, 2015) [hereinafter Ogle School], <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/06144015-b.pdf> (stating that “the

climate check may be accomplished through anonymous written or electronic surveys distributed to students”) *with, e.g.*, University of Minnesota, *supra* note 56, at 9 (requiring that the university “[conduct] surveys of employees and students”).

[61] See Occidental College Resolution Agreement, U.S. Dep’t of Educ., OCR Case No. 09-13-2264, at 1-2 (June 8, 2016), <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09132264-b.pdf> (requiring not only that the college continue sending its annual climate survey to students, but also that the college develop a separate “annual survey for faculty and staff to assess whether a hostile environment, based on issues arising out of sexual misconduct, exists on the College campus between the College’s employees and students, and to assess whether faculty and staff understand what sexual harassment is and how to prevent it, their responsibilities related to the implementation of the Policy, and the process for reporting and investigating sexual harassment on campus”).

[62] Lyon College, *supra* note 56, at 6; *see also* Ogle School, *supra* note 60, at 5. *Cf.* University of Virginia, *supra* note 15, at 14 (requiring that at least one method of climate assessment – but not necessarily a survey – permit “students to participate anonymously”).

[63] For further discussion of confidentiality and anonymity, *see* RUTGERS GUIDE, *supra* note 9, at 17.

[64] *See* WHITE HOUSE GUIDE, *supra* note 21, at 9-10.

[65] *See* BOSTON UNIVERSITY, *supra* note 39 (stating that the survey did not require IRB review because “the purpose of the survey is to inform and develop University policy about sexual and physical violence, not to develop or contribute to generalizable knowledge”); *see also* 45 C.F.R. § 46.102 (d)-(e) (defining the types of research that, among other things, require IRB approval).

[66] It is unclear whether OCR has specifically approved an institution taking this approach, but certain resolution agreements seem to support the idea. *See, e.g.*, University of Virginia, *supra* note 15, at 14-15.

[67] *See* RUTGERS GUIDE, *supra* note 9, at 13 (noting “an ethical obligation to provide [such] information . . . before the survey is even administered”).

[68] *See* KREBS ET AL., *supra* note 19, at 177.

[69] *See id.* at 7 (stating that “several studies have determined that response quality starts to deteriorate after about the 20-minute mark in web surveys”).

[70] *See id.* at 187-90.

[71] For additional commentary on the timing of the survey, *see id.* at 34; *see also* RUTGERS GUIDE, *supra* note 9, at 18-19.

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