

Attachment 3

WHEREAS, The following resolution was passed by Student Senate on November 19, 2020

BE IT RESOLVED THAT

SECTION 1. Faculty Senate joins S.G.A in their recommendation regarding the Implementation of the Updated Title IX At Kansas State University appended below.

SECTION 2. Upon passage by Faculty Senate and signature of the Faculty Senate President, a copy of this resolution shall be sent to the Vice President of Student Life and Dean of Students Dr. Thomas Lane, Chief Diversity and Inclusion Officer Dr. Bryan Samuel, Provost Dr. Charles Taber, Acting Director of the Office of Institutional Equity and Title IX Coordinator Cleopatra Magwaro, Chief of Staff and Director of Community Relations Linda Cook, Executive Director of End Rape on Campus Kenyora Parham, CARE Office Director Clara Kientz, CARE Prevention Specialist Jessica Henault, CARE Graduate Research Assistant Julia Hagen, Fraternity and Sorority Life Director Jordan Kocher, Co-National Director of the Every Voice Coalition Lily James, the members of the President's Committee on the Status of Women, the members of the K-State Sexual Assault Task Force, and University President Richard B. Myers.

SIGNED: Angela Hubler, Clara Kientz, Jessica Henault, Elizabeth Dodd, Michelle Toews, Anthony Ferrarro, Erin Yelland, Amber Vennum, Joy Robbins, Michele Janette, Bradford Wiles

RESOLUTION 20/21/45

RECOMMENDATIONS REGARDING THE IMPLEMENTATION OF THE UPDATED TITLE IX AT KANSAS STATE UNIVERSITY

BY: Sara Haggard, Tel Whitmer, Lane Lundeen, Ashton Hess, Michael Dowd, Carson Tjelmeland, Madison Brown, Maggie Billman, Nathan Bothwell, Andrew Booze, Billy Croslow, Durga Jambunathan, Kristen Schau, Michael Arnold, Rachel Grollmes, Vedant Kulkarni, Cameron Koger, Jeff Ebeck, Natalia Rodriguez, Lily Colburn, Ashley Grills, Creighton Glasscock, Marta Richenburg, Bob Brummett, Hannah Heatherman, RJ Salmen, and Morgan Garrett

WHEREAS, The Title IX statute protects individuals from discrimination based on sex in educational institutions that receive funding from the federal government;

WHEREAS, The Department of Education, under the leadership of the Secretary of Education Betsy DeVos, released the federally updated Title IX policy on May 6th of 2020;

WHEREAS, Kansas State University was required to comply with these updated federal regulations by August 14th of 2020;

WHEREAS, According to the Kansas State University Climate Survey of 2018, which consisted of 1,586 respondents, 28.2 percent of respondents reported being the victim of sexual violence or attempted sexual violence, 46.7 percent reported being the victim of sexual harassment, and 28.4 percent reported being a victim of stalking;

WHEREAS, Kansas State University has a responsibility to students to address sexual harassment, violence, and stalking in the most accurate, equitable, and compliant manner possible under Title IX;

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55 **WHEREAS,** According to the Kansas State University Office of Institutional Equity’s (OIE) most
56 recent Annual Report of Title IX reporting from July 1, 2019 to June 3, 2020, there was
57 an average of 337 reports per academic year from 2015-2020, with violations identified
58 in 21.3 percent of all reports;
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60 **WHEREAS,** In said report, violations were identified in Unique Cases (cases falling outside the
61 jurisdiction of the Title IX process, which includes those occurring in Greek Life) in 4.4
62 percent of all Unique Case reports;
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64 **WHEREAS,** Regarding sexual violence statistics on college campuses in the United States: sexual
65 violence against women is more prevalent than robbery, as a woman in college is twice as
66 likely to be sexually assaulted than robbed; however, for college-age individuals, only 20
67 percent of female students report, meaning that 4 out of 5 sexual assaults are unreported
68 on college campuses;
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70 **WHEREAS,** Furthermore, 21 percent of transgender, gender-nonconforming, or genderqueer students
71 are sexually assaulted annually; moreover, 5-6 percent of male college students are
72 sexually assaulted in college;
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74 **WHEREAS,** 90 percent of the time, the perpetrator is someone the survivor knows, making it difficult
75 to continue seeing that person day-to-day (according to studies funded by the Department
76 of Justice);
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78 **WHEREAS,** False reports only account for 2-10 percent of all sexual assault reports: the same amount
79 of false reports as any other crime (according to the National Sexual Violence Resource
80 Center);
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82 **WHEREAS,** Reporting and harboring a culture where students feel safe reporting is critical on college
83 campuses, as evidence suggests that the majority of perpetrators on college campuses are
84 serial sexual assailants;
85
86 **WHEREAS,** These statistics represent a disconnect between the national averages and the Kansas
87 State Title IX records regarding the number of reports warranting the use of the Title IX
88 process (i.e. were within the jurisdiction of Title IX) versus the number of investigations
89 in which violations were found;
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91 **WHEREAS,** This demonstrates that more focus should be put on encouraging survivors to come
92 forward and making the process as trauma-informed as possible to avoid retraumatizing
93 those involved who have experienced sexual violence;
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95 **WHEREAS,** The individuals involved in this process are defined as: the complainant, who filed the
96 report; the respondent, who is the subject of the report; an advisor, a person selected by
97 each party to represent them during this process; and the decision-maker (called the
98 “hearing officer” at K-State), who makes the final decision and decides which questions
99 are acceptable;
100
101 **WHEREAS,** The federal updates to Title IX include the following: a narrower definition of sexual
102 harassment; clarification that the Title IX policy does not apply to incidents occurring
103 outside of the U.S.; and requires the following process: a live, recorded hearing in which
104 both parties are each represented by their advisor (who can be any person of their
105 choosing) in front of the hearing officer;
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WHEREAS, The federal Title IX’s new definition of sexual harassment is “Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the University’s educational program or activity;”

WHEREAS, This definition’s use of subjective language, like “objectively offensive” and “a reasonable person” are hard to quantify, making it narrower and more vague;

WHEREAS, This kind of vague, non-definitive wording in the federal Title IX policy makes it is more important than ever that to clarify the new Title IX process and make it equitable and understandable for all parties involved;

WHEREAS, Kansas State University administration held a Title IX forum to educate those interested in the implementation of the federal Title IX updates at the university level, which was recorded upon multiple requests from the CARE office;

WHEREAS, Unlike every other recorded university forum, it was deleted after 2 weeks;

WHEREAS, The reasoning for the deletion was that it could implicate the university in future lawsuits, despite the subject of the forum being Kansas State University’s own policy;

WHEREAS, Despite the institutional discretion to allow parties to interact indirectly in different rooms or through other methods, the Kansas State University Title IX hearing process will take place over Zoom where cameras are required to be on;

WHEREAS, When questioned on how to avoid retraumatizing survivors when using Zoom as the medium for Title IX hearings, Title IX director Scott Jones suggested that survivors put a Post-It note over their screen to avoid viewing their abuser;

WHEREAS, The federally required hearing process involves interaction and cross-examination (either direct or indirect, upon the discretion of the university) between parties, which will be retraumatizing for survivors according to multiple experts in sexual violence, including K-State’s Center for Advocacy, Response, and Education (CARE);

WHEREAS, President Myers admitted at the K-State Title IX forum that he believes this hearing process will deter survivors from coming forward or reporting;

WHEREAS, After the federal Title IX updates were released, a small focus group at Kansas State University was created and tasked with implementing these new regulations at the university level;

WHEREAS, That small focus group excluded the CARE office and other key organizations, such as Counseling Services, with the necessary expertise to implement the federal regulations in the most equitable manner possible for both complainants and respondents;

WHEREAS, When questioned about CARE’s exclusion from the small focus group, K-State administration stated that because of CARE’s role as an advocacy group, they could not be unbiased, making the university non-compliant with the federal regulations;

WHEREAS, In actuality, nowhere in the federal Title IX regulations does it state that advocacy organizations, or any “biased” group, cannot participate in the new policy implementation or would make the institution non-compliant;

WHEREAS, The federal regulations specifically mention that the university has the discretion to appoint advocacy groups to the implementation process;

WHEREAS, The CARE office is a great asset to Kansas State University through the services they provide to survivors of sexual violence;

WHEREAS, By not including CARE in the implementation process, K-State has done a great disservice to those who may decide to go through with the Title IX process in the future;

WHEREAS, After admitting at the K-State Title IX forum they believe the new Title IX process will retraumatize survivors, K-State administration cited the CARE office as their primary resource for those who are retraumatized;

WHEREAS, The K-State Administration, therefore, denied the CARE office the opportunity to participate in the implementation of a policy that its officers will now have to address the repercussions of;

WHEREAS, OIE requested that the CARE office provide training for the necessary individuals involved in the Title IX process (such as advisors and hearing officers), but gave explicit instructions and limitations on how to do so, restricting their ability to fully utilize their expertise;

WHEREAS, CARE's description in K-State's Title IX policy states that when a survivor comes to their office, "[a CARE staff member] will encourage the person to make a report under the Policy," not mentioning that everything shared with members of the CARE office is confidential;

WHEREAS, This language may deter students from utilizing this vital campus resource;

WHEREAS, When updating the K-State Title IX policy, OIE reached out to the CARE office regarding any updates they may like to add and CARE provided a description more accurately fitting their procedure before the given deadline;

WHEREAS, None of these updates or the guidance provided by CARE was added to the K-State Title IX Policy;

WHEREAS, The Title IX policy, both federal and at K-State, specifically state the need for a decision-maker (or "hearing officer") to make the final decision and rule on what questions are permissible during the hearing process;

WHEREAS, The hearing officer position is a discretionary aspect of the Title IX policy, meaning that Kansas State University can decide who can be a decision-maker and whether or not that position can be held by a single person or constitute a panel;

WHEREAS, Kansas State University has elected to appoint a single decision-maker, but the Title IX director has stated that with support from the Student Senate and sufficient evidence, this discretionary decision can be changed to appoint a hearing-officer panel;

WHEREAS, The reasoning given for not selecting a panel of hearing officers in favor of a single officer was convenience, with the Title IX director citing the need for expensive training and lined-up schedules being too difficult to coordinate;

212 **WHEREAS,** The CARE office will be offering officer and advisor training free of charge, and has
213 offered to record training videos to more easily accommodate the preparation of panel of
214 hearing officers;
215

216 **WHEREAS,** A panel of decision-makers allows both parties to be evaluated more equitably and avoids
217 giving a single individual the power of making this impactful decision;
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219 **WHEREAS,** According to the SGA Attorney General Ashton Hess: “One of the strongest parts of our
220 judicial program is allowing students to be heard by a board of their peers. It allows the
221 student body to have more of a voice on their campus, as well as allowing for more due
222 process;”
223

224 **WHEREAS,** A panel of decision-makers allows both parties to be evaluated more equitably and avoids
225 giving a single individual the power of making this impactful decision;
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227 **WHEREAS,** Incidents that occur outside of the United States do not fall within the jurisdiction of the
228 federal updated Title IX policy, but students studying abroad could have “recourse in the
229 event of sexual harassment or sexual assault,” because universities are “free to adopt
230 disciplinary systems to address sexual misconduct committed outside the United States,
231 to protect their students from such harm, and to offer supportive measures such as mental
232 health counseling or academic adjustments for students impacted by misconduct
233 committed abroad;”
234

235 **WHEREAS,** OIE has not yet developed a policy addressing Title IX violations that occur outside of
236 the United States;
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238 **WHEREAS,** Via the current system, reports are only seen by the Title IX director, who alone decides
239 whether to move forward with an investigation depending on whether it is “in the best
240 interest of Kansas State University,” or designate that the report does not fall within Title
241 IX’s jurisdiction;
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243 **WHEREAS,** The federal Title IX policy requires compliance from all public universities lest they be
244 subject to potentially losing federal funding;
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246 **WHEREAS,** The federal Title IX policy explicitly includes incidents in off-campus buildings owned
247 or controlled by a recognized student organization in the scope of “education program or
248 activity;”
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250 **WHEREAS,** The federal Title IX policy states “where a postsecondary institution has officially
251 recognized a student organization, the recipient’s Title IX obligations apply to sexual
252 harassment that occurs in buildings owned or controlled by such a student organization,
253 irrespective of whether the building is on campus or off campus, and irrespective of
254 whether the recipient exercised substantial control over the respondent and the context of
255 the harassment outside the fact of officially recognizing the fraternity or sorority that
256 owns or controls the building;”
257

258 **WHEREAS,** This means that as long as the student organization in question is recognized by the
259 university, Title IX procedures should apply to locations owned or controlled by that
260 organization, therefore including Kansas State University’s Greek Life within its Title IX
261 jurisdiction;
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263 **WHEREAS,** By not investigating Greek Life Title IX reports nor counting them as on-campus
264 incidents, Kansas State University is currently not in compliance with the federal Title IX
265 regulations;

WHEREAS, If a report designated to be under Kansas State University’s Title IX policy jurisdiction was made today, the process would not be able to begin because training is not currently in place and individuals have not been selected to fill the designated positions;

WHEREAS, This is despite the fact Title IX reports have been filed this school year, but none have required further investigation;

WHEREAS, Kansas State University was required to comply with this process by August 14, 2020, as stated above, making the university non-compliant with the federal regulations;

WHEREAS, Through all of these implementation and policy decisions, it can be argued that protecting survivors from further re-traumatization and providing justice was not the university’s main goal in this process, but rather to keep survivors from coming forward and further discourage reporting; and

WHEREAS, The Kansas State University Student Governing Association values transparency, streamlined education, and outreach regarding sexual harassment on and off campus and Kansas State University’s Title IX policy.

BE IT RESOLVED THAT:

SECTION 1. The Student Governing Association asks that Kansas State University take additional measures to ensure the most professional possible experience for both parties during the federally required, live, recorded hearing process, including using a medium that allows cross-examination without requiring face-to-face interaction (virtually or in person) to protect survivors from re-traumatization.

SECTION 2. The Student Governing Association asks that Kansas State University involve the CARE office in all future endeavors regarding Title IX, allow its officers to fully utilize their expertise and creativity in creating the trauma-informed training requested by OIE and necessary for this process, and allow CARE to update their description and procedure as defined in the Kansas State University Title IX policy.

SECTION 3. The Student Governing Association requests that Kansas State University Title IX policy and procedure be revised to consist of a panel of decision-makers (or “hearing officers”) to act as a “jury of peers” to both parties in place of a single individual, consisting of an undergraduate student, graduate student, and a member of faculty or staff.

SECTION 4. The Student Governing Association requests that the Kansas State University Office of Institutional Equity develop a policy addressing Title IX violations that occur outside of the United States regarding faculty, staff, or students.

SECTION 5. The Student Governing Association asks that decisions made on whether or not to move forward with reports sent to the Office of Institutional Equity be reviewed and seconded by a separate party other than Scott Jones or another member of that office.

SECTION 6. The Kansas State University Student Governing Association asks that the Office of Institutional Equity conduct thorough investigations off campus—including within Greek Life organizations. This request is consistent with the Student Governing Association’s previous Resolution 16/17/05.

SECTION 7. The Student Governing Association requests that Kansas State University finalize its Title IX process by designating university-provided advisors and forming a panel of hearing-officers.

SECTION 8. Upon passage by the Student Senate and signature of the Student Body President, a copy of this resolution shall be sent to the Vice President of Student Life and Dean of Students Dr. Thomas Lane, Chief Diversity and Inclusion Officer Dr. Bryan Samuel, Provost Dr. Charles Taber, current Director of the Office of Institutional Equity and Title IX Coordinator Scott Jones, future Director of the Office of Institutional Equity and Title IX Coordinator Cleopatra Magwaro, Chief of Staff and Director of Community Relations Linda Cook, Executive Director of End Rape on Campus Kenyora Parham, CARE Office Director Clara Keintz, CARE Prevention Specialist Jessica Henault, CARE Graduate Research Assistant Julia Hagen, Fraternity and Sorority Life Director Jordan Kocher, Co-National Director of the Every Voice Coalition Lily James, the members of the President's Committee on the Status of Women, the members of the K-State Sexual Assault Task Force, and University President Richard B. Myers.