



NASA Title IX Compliance Report

Louisiana State University
Department of Physics and Astronomy

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I. INTRODUCTION

The National Aeronautics and Space Administration (NASA) has completed its compliance review of the Department of Physics and Astronomy at Louisiana State University (LSU or University), a recipient of NASA funding, under Title IX of the Education Amendments of 1972 (Title IX) and NASA's implementing regulations and policy. Title IX prohibits discrimination on the basis of sex in educational programs and activities receiving Federal financial assistance.¹ NASA's Title IX regulations require periodic review of NASA grant recipients² and NASA's 2005 authorizing legislation requires NASA to conduct at least two Title IX compliance reviews annually.³ This report constitutes a summary of NASA's findings related to the policies and practices of LSU under Title IX.

NASA's review has uncovered instances where LSU did not comply with its obligations under Title IX, including: 1) failing to provide the Title IX Coordinator the appropriate authority and support necessary to coordinate LSU's Title IX compliance efforts, and 2) adopting and publishing internally inconsistent grievance procedures for the prompt and equitable resolution of student and employee complaints alleging action prohibited under Title IX.

II. BACKGROUND

LSU, a large, public research university located in Baton Rouge, Louisiana, serves as the flagship school of the state of Louisiana. In the fall of 2019, LSU had an enrollment of over 34,000 undergraduate and graduate students at Baton Rouge. The Louisiana State University System (LSU – System) consists of nine (9) public colleges and universities in Louisiana (including LSU) and is the largest public university system in the state.

III. COMPLIANCE REVIEW

Prior to the onsite review, LSU provided extensive written material and documentation regarding its compliance with Title IX in response to NASA's information request. NASA also deployed a survey to gain a greater understanding of potential sex discrimination in the academic environment in the Department of Physics and Astronomy. The survey results support NASA's compliance review analysis and assessment. They also provide the University with additional information for assessing the dynamics, based on sex, of its academic environment and aiding its efforts to better ensure equal opportunities regardless of sex.

¹ Title IX of the Education Amendments, as amended (20 U.S.C. §§ 1681-1688); Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 14 C.F.R. Part 1253; NASA Policy Directive 2081.1A, Subject: Nondiscrimination in Federally Assisted and Federally Conducted Programs of NASA - Delegation of Authority.

² See 65 Fed. Reg. 52,859 (Aug. 30, 2000). Enforcement Procedures, 14 C.F.R. § 1253.605 (incorporating compliance requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d)).

³ See NASA Authorization Act of 2005, 42 U.S.C. § 16798(b), reenacted as 51 USC § 40909 (2011).

NASA conducted an onsite review of LSU’s Department of Physics and Astronomy (Physics and Astronomy) from March 9 to 13, 2020. As part of this compliance review, NASA conducted approximately 60 in-person interviews with LSU officials and Physics and Astronomy faculty, staff, and students. NASA also reviewed LSU documents related to Title IX, including policies and procedures on sexual harassment, sexual assault, and sex discrimination.

IV. LEGAL AUTHORITIES

Title IX and its implementing regulations prohibit discrimination on the basis of sex in education programs and activities operated by recipients of federal financial assistance. The statute grants NASA, among other federal agencies, the authority to take administrative action to effectuate Title IX’s nondiscrimination mandate.⁴ The regulations are aimed at preventing and addressing sex discrimination. Recipients of federal financial assistance agree to comply with these regulations as a condition of receiving funding.

A. Designation of Official for Title IX Coordination and Enforcement

<i>Review Criteria: Designation of Title IX Coordinator, Dissemination of Contact Information, Assessment of Title IX Coordinator’s Skills, Competencies, Access to University Senior Leadership, and Authority</i>	<i>Yes</i>	<i>No</i>
1. The University has designated a Title IX Coordinator.	X	
2. The Title IX Coordinator has the appropriate skills and competencies regarding the key responsibilities of administering the University’s Title IX grievance process.	X	
3. Title IX Coordinator has the resources, including capacity, independence and access to senior leadership, needed to effectively perform roles and responsibilities.		X

The NASA Title IX regulations state that a recipient must designate an official responsible for Title IX coordination and enforcement, i.e., a “Title IX Coordinator.”⁵ Title IX coordinators can effectively address discrimination on the basis of sex within their institutions only when they are provided with the appropriate resources necessary to “coordinate their institutions’ efforts to comply with and carry out their responsibilities,”⁶ including access to the proper authority and support. During the onsite, NASA assessed LSU’s compliance on the effective functioning of its Title IX coordination.

⁴ 20 U.S.C. § 1682.

⁵ 14 C.F.R. § 1253.135(a).

⁶ 14 C.F.R. § 1253.135(a).

B. Adoption of Grievance Procedures and Policy Dissemination

<i>Review Criteria: Grievance Procedures As Written –</i>	<i>Complaints Against Faculty/Staff⁷</i>		<i>Complaints Against Students⁸</i>	
	<i>Yes</i>	<i>No</i>	<i>Yes</i>	<i>No</i>
<i>In evaluating whether a school's grievance procedures are prompt and equitable, thus satisfying the Title IX requirement, NASA determines whether the procedures provide for:</i>				
1. Notice to students and employees of procedures, including where complaints may be filed.	X		X	
2. Designated and reasonably prompt timeframes for the major stages of the complaint process.		X		X
3. Clear prohibition against retaliation.	X		X	
4. Clear definitions of key terms, such as harassment and hostile environment.		X		X

NASA’s Title IX regulations require grant recipients to issue a notice of nondiscrimination as evidence of the grant recipient’s specific and continuing steps to notify students, employees, applicants for admission and employment, and unions or professional organizations having collective bargaining or professional agreements with the recipient, that under Title IX, the grant recipient is prohibited from discriminating based on sex in the educational programs or activities that it operates.⁹ A recipient must also adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action prohibited by the Title IX regulations.¹⁰ To ensure that individuals may invoke these grievance procedures and their rights under Title IX more generally without fear of reprisal, Title IX and its regulations prohibit a recipient from retaliating against, or allowing retaliation against, any individual “for the purpose of interfering with any right or privilege secured by [Title IX],” or because that individual “has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing” under Title IX.¹¹ During its compliance review, NASA assessed LSU’s compliance with regard to: (a) the content of the grievance procedures, and (b) the dissemination of the notice of nondiscrimination.

⁷ <https://www.lsu.edu/administration/policies/pmfiles/pm-73.pdf>

⁸ <https://www.lsu.edu/administration/policies/pmfiles/pm-73.pdf>

⁹ 14 C.F.R. § 1253.140(a)(1).

¹⁰ 28 C.F.R. § 54.135(b).

¹¹ 14 C.F.R. § 1253.605

V. FINDINGS

NASA relies on Title IX and NASA's Title IX regulations to assess its recipients' compliance with Title IX. NASA's review has uncovered failures in LSU's obligations under Title IX as stated below.

A. The University Fails to Provide the Title IX Coordinator with the resources, including capacity and access to senior leadership, necessary to coordinate their institution's Title IX compliance.

LSU's Title IX Coordinator position was created in 2016. The Title IX Coordinator is responsible for addressing sexual harassment and other sex discrimination on LSU's campus and overseeing Title IX compliance of all the schools in the LSU – System, which includes over 34,000 undergraduate and graduate students. LSU's Title IX Coordinator is located within LSU's Legal Affairs and General Counsel Office and reports only administratively to LSU's General Counsel for such matters as time and attendance. The General Counsel does not review any substantive work product of the Title IX Coordinator, such as Title IX investigative reports. The Title IX Coordinator lacks regular access to this counsel and University senior leadership to discuss substantive Title IX matters. In a model program, the Coordinator would have regular meetings with the University President and comparable senior leadership, including the General Counsel, to discuss Title IX concerns.

As NASA's regulations require a prompt and equitable Title IX grievance process and the Title IX Coordinator position plays a critical, and indeed, central role in this process, ensuring the independence of the Coordinator is of paramount importance. Those serving as Title IX Coordinators must maintain the necessary independence for the role and avoid a conflict of interest and the appearance of one. Although the Title IX Coordinator reports only administratively to the General Counsel, NASA finds that a reporting structure in which the Title IX Coordinator resides within the General Counsel's organization may cause the appearance of a conflict of interest that may have a chilling effect on the filing of Title IX complaints. The role of the General Counsel is to zealously defend the institution, including when it is sued for alleged noncompliance with Title IX, while the Title IX Coordinator's role in the Title IX grievance process is to be neutral and impartial.¹² A structure that has the Title IX Coordinator in the General Counsel office could limit the Title IX Coordinator's authority to independently adjudicate or otherwise address Title IX issues, as discussed below. Giving the Coordinator more independent authority and standing, and regular access to senior leadership, would promote leadership involvement in the effective functioning of the Title IX office, its strategic planning,

¹² Ensuring the absence of an actual, as well as the appearance of, a conflict of interest safeguards the integrity of the process and is a well-settled requirement in civil rights laws. For example, Title VII of the Civil Rights of 1964, an employment-related civil rights law analogous in some respects to Title IX, requires the independence of Federal agency complaints processing units, specifically limiting the roles of legal and human resources divisions in the functioning of these units. See U.S. Equal Employment Opportunity Commission, Management Directive 110, Chapter IV (D), Separation of EEOC Complaint Program from Agency's Defensive Function. The Title IX Coordinator at a university functions much like the complaint processing unit in a federal agency and, likewise, should be insulated from legal and human resource involvement.

and the identification of any emerging needs or issues without creating the appearance of a conflict.

The Title IX Coordinator has a staff of eight (8) deputy coordinators (one at each of the other universities that make up the LSU – System) and one investigator for all Title IX matters in the LSU – System. The deputy Title IX coordinators, however, do not serve in those roles fulltime, but rather absorb them as collateral duties in addition to the individuals’ primary job responsibilities. In some cases, the designated individuals are part-time or term-limited faculty, such as adjunct professors, rather than university staff. Further, reliance on one investigator to pursue allegations of sex discrimination, including sexual harassment, across the nine (9) colleges and universities within the LSU – System for a university system of this size and population (over 34,000 students), is insufficient. Furthermore, providing only a single individual to investigate allegations under Title IX, which concern issues of sexual harassment, can be problematic if the complainant is not comfortable speaking with a person of that sex.

Employing a single fulltime Title IX Coordinator to be responsible for Title IX compliance over the LSU – System is insufficient. During interviews, NASA discovered that there is not an effective plan in place to handle Title IX complaints if the Title IX Coordinator is absent. For example, the Title IX Coordinator expressed concern that deputy Title IX coordinators may find it difficult to ensure compliance during any absence of the Title IX Coordinator simply due to their unfamiliarity with other campuses within the LSU – System. The Title IX Coordinator went on to state there is a heightened risk of potential lawsuits as a result of a lapse in service for individuals who have been harmed.

The Title IX Coordinator stated she visits each campus within the LSU – System at least once a year but can only allocate approximately 5% of time to overseeing Title IX compliance for the other eight campuses due to a lack of resources. In 2018, the University assigned the Title IX Coordinator with LSU – System-wide responsibilities for the Americans with Disabilities Act¹³ program which, according to the Coordinator, encompasses approximately half of the Title IX Coordinator’s time. The University also assigned the Title IX Coordinator with responsibility for LSU – System-wide compliance related to the Section 504 of the Rehabilitation Act of 1973¹⁴ and the Clery Act.¹⁵ During interviews, the Title IX Coordinator acknowledged to NASA that more time and attention should be given to other schools within the LSU – System.

The Title IX Coordinator interacts with several offices at LSU in performing functions related to Title IX. These offices include the Office of Student Advocacy & Accountability, Lighthouse¹⁶ and the LSU Police Department (LSU PD). Currently, despite the Title IX office and the LSU PD being components of LSU, LSU PD does not communicate about active investigations of sexual assault with the Title IX Coordinator. According to the Title IX Coordinator, the LSU PD

¹³ 42 U.S.C. 12101.

¹⁴ 34 C.F.R. Part 104.4. LSU’s Digital Resources and Content Accessibility can be accessed at <https://www.lsu.edu/accessibility/index.php>.

¹⁵ 29 U.S.C. 794. LSU’s Clery Act Notice can be accessed at <https://www.lsu.edu/police/crime-information/index.php>.

¹⁶ The Lighthouse Program provides free and confidential interpersonal violence prevention, support, and advocacy to the LSU campus community. The program assists student-survivors of sexual assault, interpersonal violence, stalking, and harassment. <https://www.lsu.edu/shc/wellness/the-lighthouse-program/index.php>.

believes that a state law prevents it from sharing certain information with the Title IX Coordinator. This lack of communication presents a significant challenge for the Title IX Coordinator in ensuring LSU's compliance under Title IX and has been unaddressed for a significant amount of time. The previous General Counsel did not intervene despite requests from the Title IX Coordinator to do so. We interviewed the newly hired General Counsel who stated that he will look into the issue. The General Counsel's Office is aware of this breakdown in communication between these two important functions of the University and is in the best position to address the legal impact and resolution of this issue.

B. LSU Adopted and Published Inconsistent Grievance Procedures that Fail to Provide for Prompt and Equitable Resolution of Sexual Harassment Complaints

The Title IX regulations require recipients to adopt and publish grievance procedures for the prompt and equitable resolution of sex discrimination complaints. LSU has published at least three different policies that relate to Title IX: 1) Permanent Memorandum 73 - Title IX and Sexual Misconduct Policy (PM 73), 2) Policy Statement 73 - Sexual Harassment (PS 73), and 3) Policy Statement 95 - Sexual Harassment of Students (PM 95). PM 73 purports to be a policy prohibiting all forms of sex discrimination, including but not limited to sexual misconduct. PS 73 and PM 95 are more limited in scope. During interviews with the Title IX Coordinator, NASA learned that the above-mentioned policies were developed and published by the General Counsel in 2015.¹⁷

During interviews, primarily with the General Counsel's Office, NASA discovered that PM 73 is intended to apply to all situations involving sexual misconduct. Despite that, the General Counsel's Office stated that PS 73, not PM 73, serves as LSU's sexual harassment policy. The rationale given for having two policies was that more general issues would be covered under PM 73 at the LSU - System level while more specific issues at the LSU campus would be covered under PS 73. In the past, LSU tried to adopt an aggressive approach to sexual misconduct issues and decided to create PM 73 to serve as the LSU - System wide policy.

While it is permissible to have separate policies and procedures to govern different types of sex discrimination, such as separate sexual harassment grievance procedures, each policy should be clear about the conduct it covers. Unfortunately, the definitions and procedures in LSU's policies include contradictory language plus potentially overlapping applicability to sexual harassment. PM 95 does not even mention Title IX, even though it purports to govern sexual harassment of students. PM 73 applies throughout the LSU - System and PS 73 applies only to LSU; however, it is unclear which policy or which procedures would apply in certain instances. For example, PS 73 states that all complaints of sexual harassment must be reported to the Office of Human Resource Management, while PM 73 directs reporting to the Title IX Campus Coordinator or any other responsible person. Further, the University does not have policies associated with romantic or dating relationships in a work or educational environment. In her interviews with NASA, the Title IX Coordinator acknowledged the discrepancies between the policies, particularly that all three have different definitions of sexual harassment. The Title IX

¹⁷ As noted in the report, the Title IX position was created in 2016. Prior to the creation of the Title IX position, LSU's General Counsel was responsible for Title IX compliance, including addressing sexual harassment and other sex discrimination on LSU's campus and overseeing Title IX compliance of all the schools in the LSU - System.

Coordinator attempted to address the inconsistencies between the policies; however, the General Counsel's Office did not grant approval or provide support for her request. The policies in question have not been updated since they were first published in 2015.

VI. CORRECTIVE ACTIONS

NASA notes that LSU expressed commitment to meet its Title IX requirements during and after our onsite visit. We understand that LSU will be updating its Title IX policies and procedures in response to revised Title IX regulations regarding sexual harassment issued by the U.S. Department of Education (ED) in May 2020.¹⁸ Because NASA does not enforce ED's regulations, we recommend that LSU seek any necessary technical assistance from ED during the process for revising LSU's grievance procedures regarding sexual harassment. LSU must also review its grievance procedures applicable to all other sex discrimination complaints (*e.g.*, complaints related to: pregnancy discrimination; disparate treatment in access to classes or other educational opportunities; or inequities in athletics based on sex) to ensure that they provide for the prompt and equitable resolution of such complaints.

To resolve the issues identified above and bring LSU into compliance with Title IX, NASA and LSU will seek to agree to enter into a voluntary resolution agreement that outlines specific and concrete steps for LSU to:

- Provide the Title IX Coordinator the resources, including capacity, independence and access to senior leadership, necessary to fulfill its Title IX obligations;
- Provide the Title IX Coordinator with the appropriate authority and support necessary to coordinate the institution's Title IX compliance; and
- Revise the University's policies, procedures, and investigative practices to provide a consistent and effective grievance procedure (or set of grievance procedures) that ensures prompt and equitable resolution of allegations of sex discrimination.

VII. PROMISING PRACTICES

NASA identified the following promising practices at LSU that have helped with compliance of Title IX, nondiscrimination, and/or diversity based on sex:

¹⁸ NASA is also aware of news articles regarding allegations that the University failed to promptly and equitably resolve allegations of student-on-student sexual harassment involving a student athlete. *See, e.g.*, https://www.theadvocate.com/baton_rouge/sports/lsu/article_79e631d4-285c-11eb-b4e1-673663d8a8a0.html; <https://www.wafb.com/2020/11/17/hillar-moore-star-comment-reports-lsu-mishandling-sexual-misconduct-complaints/>; https://www.espn.com/college-football/story/_/id/30329382/report-lsu-ignored-sexual-assault-complaints-football-players. Because LSU is currently revising its sexual harassment grievance procedures to comply with the new Title IX regulations issued by ED, NASA will refer these allegations to ED's Office for Civil Rights.

- The Department of Physics and Astronomy ensures that female instructors are assigned to freshmen level introductory classes so that incoming female students considering a science major are introduced to potential role models.¹⁹
- LSU requires that diversity advocates sit on every search and recruitment committee in the Department of Physics and Astronomy. The role of the diversity advocate is to actively seek potential diverse candidates to expand the applicant pool.
- The College of Science maintains a Diversity Committee comprised of faculty and staff that advocate for and promote diversity at the graduate, postdoctoral, faculty and staff levels and serve as an advisory group to the Dean of the College of Science.
- LSU has created a pregnancy advocate program that provides training on topics such as: the differences between pregnancy and disability; how to seek disability and Title IX related academic accommodations; and available social services (including pre-natal care, child care assistance applications, campus resources, possible changes in financial aid, etc.). In addition, LSU has provided trainings for gate attendants at athletics games so that they are aware that breast pumps are permitted at games and that they can be brought in through the medical gate, even if they do not comply with the regular bag size limit enforced at athletic events.
- LSU provides lactation spaces on campus that have hot water and refrigeration, and created a website to inform the campus community of the location and hours of these lactation spaces.

VIII. CONCLUSION

By voluntarily entering into a Resolution Agreement, LSU will agree to provide its Title IX Coordinator with the resources, including capacity and access to senior leadership, necessary to address the issues of noncompliance identified in this review. LSU also will agree to modify its Title IX policies, practices and procedures to bring them into compliance with NASA's Title IX regulations. NASA appreciates LSU's efforts to address the identified issues to help ensure that it creates and maintains an environment and culture that is safe for all students, regardless of sex, and provides for prompt and equitable processing of Title IX complaints.

If you have any questions regarding this report, please do not hesitate to contact NASA Equal Opportunity Programs Division Director, Richard N. Reback, at (202) 358-2180 or hq-civilrightsinfo@mail.nasa.gov.

¹⁹ NASA has found that female undergraduate students feel it is important to be introduced to potential role models early in their academic career. However, teaching freshman level introductory classes may be considered less prestigious for faculty. NASA recommends universities ensure female faculty are assigned both freshman level introductory classes, as well as advanced level classes.