



COMMONWEALTH of VIRGINIA

GOVERNOR TERRY MCAULIFFE'S TASK FORCE ON
COMBATING CAMPUS SEXUAL VIOLENCE
CHAIR ATTORNEY GENERAL MARK HERRING

MARCH 4, 2015, 10:00AM
VIRGINIA SEXUAL AND DOMESTIC VIOLENCE ACTION ALLIANCE

RESPONSE SUBCOMMITTEE DRAFT MEETING MINUTES

(pending approval at the next Subcommittee meeting)

Members Present: Peter Blake, Judy Castele, Dan Dusseau, Bill Grace, Allen Groves, Daphne Maxwell-Reid, Ellen Plummer, and Raychel Whyte (via teleconference)

Members Not Present: Jean Cheek, Mike Maxey

Staff Present: Melissa McMenemy, Elizabeth Griffin

Guests: LeWanza Lett Brewington, director Old Dominion University Women's Center, Karin Kapsidelis, Richmond Times Dispatch

Meeting Summary: 10:00am meeting called to order

Plummer welcomed committee members and guests.

Maxwell-Reid moved and Blake seconded a motion to approve the minutes as amended. The motion carried.

Plummer updated the committee on discussions regarding possible task force recommendations. Plummer met by phone with Attorney General Mark Herring who suggested that the Response subcommittee consider using its report as an opportunity to educate the public on student conduct processes and appropriate sanctions for students who are found to be in violation of sexual misconduct codes.

Plummer and Kay Heidbreder, General Counsel to Virginia Tech, met with Secretary of Public Safety and Homeland Security Brian Moran, Deputy Secretary of Education Dietra Trent, Deputy Secretary of Public Safety and Homeland Security Tonya Vincent, and Special Assistant to Governor McAuliffe for Constituent Services Rachel Levy. The discussion included ways in which cross-cutting recommendations might be implemented at the conclusion of the task force. For example, both the Response and the Law Enforcement subcommittees are considering recommendations to establish a statewide advisory group aimed at guiding the development and implementation of

programs, policies, and interventions. Key components of next steps for addressing campus sexual assault include the Office of the Attorney General (OAG), specifically the Education Section, the Department of Criminal Justice Services (DCJS), and the State Council of Higher Education for Virginia (SCHEV). Each of these agencies, with appropriate partners, has the potential for reaching different sectors of the university and college communities. For example, DCJS is well known among law enforcement for providing expertise and training; SCHEV is responsible for training members of boards of visitors, and has relationships with college and university presidents and chief academic officers; and the OAG provides legal guidance to institutions on the development of student conduct and employment policies and procedures, in addition to specific advice on sexual misconduct cases. Integrating recommendations with similar intent, such as the recommendations that a statewide advisory group be established, will help the task force offer comprehensive recommendations aimed at multiple audiences. Message from Sec Moran is that he is in support of moving forward, and committed to recommendations reflecting the legislative changes from this last session, such as recommendations on implementation of the transcripts and the reporting bills. Secretary Moran, Deputy Secretary Vincent, Deputy Secretary Trent, and Special Assistant Levy supported the work of the subcommittee and the task force as a whole. In addition, the task force may need to make recommendations that acknowledge legislation that is making its way through the General Assembly.

Plummer attended a day-long sexual assault “summit” hosted by Virginia Tech Police Chief Kevin Foust. The summit was an opportunity to share processes and information and included on and off-campus units such as the Commonwealth’s Attorney, the Sheriff’s office, local law enforcement, and on-campus units such as student conduct, Title IX, and the women’s center. Events like this help bridge on and off-campus relationships and help improve understanding of institutional obligations under Title IX and Clery.

The subcommittee was updated on next steps for the task force. The agenda for the task force meeting on the 18th is being developed. The subcommittees will be asked to meet in April, and subcommittee chairs will be brought together to discuss recommendations prior to a final meeting of the task force in late May.

Griffin provided a reminder to the members of the subcommittee about Freedom of Information Act (FOIA) requirements: it is best not to “reply all” in email communication. “Reply all” creates a dialogue and thus might be considered a “meeting” subject to FOIA. In addition, announcements of the committee’s meetings must include the location of subcommittee members who are calling in, no less than three days prior to the meeting. Please communicate regularly with Melissa on any arrangements to join meetings by phone.

Griffin provided the subcommittee with an update on legislation in the General Assembly. Her presentation reviewed the elements of the many bills introduced in the session. Highlights of approved bills include:

- HB 1930/SB 712 – includes the creation of a committee that would include, at minimum, representation from Title IX, local/campus law enforcement, and student affairs, to determine whether a report of sexual violence presents a threat to the community. This is of particular sensitivity when the reporting student does not want to proceed with a formal report to law enforcement or other responding unit. This team would also determine if personally identifiable information would be given to outside law enforcement.
- SB1193 - Transcript notation for any student conduct violation.
- HB 1785 – Notification to Commonwealth's Attorney of investigation of felony sexual assault with the institution's Clery geography.

Subcommittee members discussed various elements of the bills. The role of the Title IX coordinator might be complicated by requiring reporting to law enforcement and/or the Commonwealth's Attorney. It will be necessary to balance the requirements outlined in the legislation with regulatory guidance from the US Department of Education, Office for Civil Rights (OCR). Teams will be challenged to review all factors in a case, as required by OCR guidance, before determining whether to breach the confidentiality of a reporting student. One challenge will be that a Title IX coordinator may not know what constitutes a felony violation of the criminal code. Title IX coordinators may not have enough facts to determine if there is a threat to the entire campus. The Clery geography includes other states and countries where the institution might have students (for example, study abroad). Other challenges include the requirement that the team meet within 72 hours and determining whether the facts of the report might rise to the level of felonious acts. Additional discussion included whether placing the Title IX Coordinator on the institution's threat assessment team presents a conflict since the Coordinator is responsible for conducting an unbiased investigation.

The subcommittee reviewed and discussed each of its recommendations:

Grace presented his recommendation for establishing a database that would include the names of individuals dismissed from institutions for violating the student sexual misconduct code. These individuals may not be registered sex offenders on the Virginia State Police sex offender registry. Such a database is currently not available for students found in violation of a policy of sexual misconduct and expelled from school. Family Educational Rights and Privacy Act (FERPA) contains an exception for an institution to disclose information regarding final disciplinary disposition of sex offenses, including the name of the student, violation, and sanction imposed. The subcommittee discussed the nature of due process rights for the accused and whether maintaining a database might be perceived as a threat to an individual's rights to due process since on-campus administrative processes use a civil and not criminal standard. Maintaining a database would require the participation of all institutions and likely require legislation or some other form of mandate.

Grace discussed his recommendation for establishing a Center of Excellence which would be housed within an institution and bring to bear the expertise of scholars to the challenges of investigations, prevention efforts, and training.

The committee discussed the Center for Excellence in light of Blake's recommendation for establishing an advisory committee at SCHEV. The advisory committee would be comprised of senior leaders and board members. Grace and Blake will work together to develop a fiscal impact statement for the Center and how the advisory committee might be a precursor to the formation of a Center.

Castele discussed the recommendation that institutions develop Memoranda of Understanding (MOU) with local agencies that provide victim support and advocacy. The importance of this partnership is acknowledged in the legislation in the General Assembly. The subcommittee discussed that MOUs might want to address how training will occur for on and off-campus entities on Title IX, Clery, and other mandates.

Dusseau discussed the recommendation that a study be done to discern the appropriate levels of personnel needed, both law enforcement and counseling, for proper response to reports of sexual violence.

Groves discussed the recommendations that include technology for reporting and preventing crimes. Specifically, the use of info-graphic communication will aid in providing victims with at-a-glance one-stop information on reporting and resources. Infographics are easier to read and students generally do not read policies. The subcommittee discussed that the infographic should include all victim rights and options notification requirements of the final VAWA regulations and the additional requirements in HB 1930/SB 712. The subcommittee also discussed the importance of having parallel resources for the accused. Including the infographic on the same page as the portal for on-line reporting and anonymous reporting might improve the comprehensive nature of the information provided to students "one click away".

Groves discussed the use of applications (Apps) for prevention and response. Apps received varied responses from students and are underutilized. Apps can be customized and can provide students with local contacts and time-sensitive information (e.g. the preservation of evidence). However, students resist the appearance of being connected electronically to the police – it has a "big brother" overtone. The subcommittee discussed whether the Commonwealth might be able to purchase the services of an app for all institutions, thus helping with the cost.

Subcommittee members agreed to revisit their recommendations and make edits. Plummer requested that all recommendations be sent to her and McMenemy by Friday, March 13th.

The subcommittee will meet on Tuesday, April 14th, 9:30-12:30 at the offices of the Virginia Sexual and Domestic Violence Action Alliance.

Maxwell-Reid moved, and Groves seconded a motion to adjourn. The subcommittee adjourned at 12:30 p.m.

