

**TO:** President Bradley Bateman

**FROM:** Kristin H. Jones

**DATE:** June 25, 2021

**RE:** Executive Summary of External Review of Title IX Issues

## **I. Introduction and Overview**

As President Bateman announced to the community on September 10, 2020, Randolph College (“Randolph”) hired Troutman Pepper Hamilton Sanders LLP (“Troutman Pepper”) to conduct an external review of its practices as they relate to the handling of reports of sexual misconduct and, specifically, Randolph’s compliance with the legal obligations of Title IX, including a retrospective review of Randolph’s Title IX practices, to identify any long standing issues of non-compliance. The first phase of the review focused on Randolph’s current Sexual Misconduct Policies. The second phase of the review was an analysis of case files of all complaints of sexual misconduct made to Randolph by students in the prior seven academic years. The third phase of the review was interviews of current and former employees and students. The following is our Executive Summary of our findings and recommendations.

First, we found that Randolph’s Sexual Misconduct Policies for Students, Faculty, and Staff comply with the Title IX regulations that went into effect on August 14, 2020, as well as other applicable laws. We identified certain opportunities for improvement to those policies -- in particular, changes intended to clarify how Randolph will address sexual misconduct that does not constitute Title IX Sexual Harassment but may otherwise violate college policy. Our recommended changes have been made and Randolph’s Board of Trustees approved the revised policies on May 7, 2021, effective immediately.

Second, with respect to past cases, we believe that Randolph generally handled cases of sexual misconduct reported by students in a manner consistent with its Sexual Misconduct policy and applicable law. We did not find a systemic problem or failure to comply with either Title IX, as interpreted by existing guidance from the Department of Education, or Randolph’s policies. The external review did, however, identify areas for improvement in Randolph’s practices, as described in more detail below.

Although we found that Randolph generally followed its policies and applicable law, we found that some members of the Randolph community nonetheless have negative perceptions of Randolph’s Title IX function. These perceptions are real and, in some instances, have caused students not to report allegations of sexual misconduct. In other instances, complainants who reported sexual misconduct to the Title IX office have chosen not to avail themselves of the formal complaint process. Many of our recommendations are aimed at improving not only how

Title IX operates on campus, but how the Title IX office interacts with the Randolph community in order to build responses to sexual misconduct on Randolph's campus that the community can trust and understand.

Randolph has an opportunity with the hiring of a new, dedicated Title IX Coordinator to begin to reverse these negative perceptions and restore confidence in its program. Randolph's small campus community poses unique challenges to its Title IX program, including barriers to reporting cases of sexual misconduct. We recommend that Randolph address these challenges by exploring opportunities for transparency, eliminating confusion surrounding processes, options, support, and resources, and improving its training and programming.

This Executive Summary contains concrete suggestions for change and improvement to Randolph's Title IX program, many of which came from the individuals who were willing to participate in our external review. Each person interviewed, whether staff, faculty, current or former students, or individuals who shared feedback anonymously, offered valuable perspectives and insights, often based on personal experience. These perspectives and suggestions are incorporated into the recommendations below.

## II. Scope of External Review

We conducted an external review of Randolph's current Title IX policies to:

1. Determine whether they comply with Randolph's legal obligations, in particular, the Title IX regulations that went into effect August 14, 2020;
2. Determine whether they appropriately address sexual misconduct that does not constitute Title IX Sexual Harassment but may otherwise violate Randolph policy; and
3. Identify any potential deficiencies/weaknesses and/or opportunities for improvement.

We also conducted an external review of past Title IX cases to:

1. Determine whether student reports of sexual misconduct have historically been handled consistent with then-existing legal obligations and Randolph policy, including with respect to investigation and adjudication, where applicable; and
2. Evaluate whether there were any issues with personnel, training, oversight, policy, or procedures that may have created barriers to students reporting allegations of sexual misconduct.

Cases included in the external review were student reports of sexual misconduct from the 2013-2014 academic year through the 2019-2020 academic year. The external review included an analysis of case files and related documentation; interviews of staff, faculty, and current and former students; and an opportunity for community members to provide anonymous on-line feedback.

The purpose of the external review was not to re-investigate any past cases. Rather, we sought to understand how cases were handled, whether the handling was consistent with Randolph's policies and the law, and the experience of the participants. The results of this external review are intended to help Randolph strengthen and improve its Title IX practices.

### III. **Findings and Recommendations**

#### A. **Review of Current TIX Policies**

Randolph has sound policies for addressing sexual misconduct that comply with Title IX ("TIX") and other applicable laws. Prior to our external review, Randolph revised its Sexual Misconduct policies for students and staff effective August 12, 2020, and for faculty effective August 13, 2020. Those policies generally complied with the new TIX regulations that went into effect on August 14, 2020, and other applicable laws.

We identified certain opportunities for improvement to Randolph's policies, in particular, changes intended to clarify how Randolph will address sexual misconduct that does not constitute TIX Sexual Harassment but may otherwise violate college policy. Our recommended changes have been made and Randolph's Board of Trustees approved the revised policies on May 7, 2021, effective immediately.

#### B. **Review of Handling of Past TIX Cases**

During our review we examined approximately 49 files relating to reports of sexual misconduct made to Randolph's TIX office during the prior seven academic years in which the complainant was a student. Cases were included in the review regardless of whether or not the complainant chose to pursue the formal complaint process. We determined that Randolph generally handled cases of sexual misconduct reported by students during the 2013-14 academic year through the 2019-20 academic year in a manner consistent with its Sexual Misconduct Policy and applicable law

Certain aspects of Randolph's TIX program worked particularly well. For example, when complainants chose to pursue a formal complaint, investigations were prompt, timely, and thorough. By way of additional example, several interviewees felt that members of Randolph's faculty were particularly supportive in providing accommodations to students who were victims of sexual misconduct.

While Randolph generally followed the law and its policies, our file review and interviews identified some areas where improvements are necessary, as set forth below.

##### 1. **Intake and Coordination**

We found some cases in which it was unclear whether they should be handled as a TIX matter or a student discipline matter. At the outset of every case, Randolph needs to consider whether the complaint is a TIX matter and within the jurisdiction of the TIX office. If the decision cannot be

made at the outset, we recommend that there be explicit reconsideration of the issue early and often. Participants and staff should have clarity on what process is being followed. When a case has both TIX and student conduct aspects, we recommend that Randolph ensure that there is strong coordination among offices and the files are cross-referenced so that both aspects are completed and closed out.

We also noted some cases in which both the TIX Coordinator and the TIX investigator participated in the initial intake meeting with the complainant. As described by some interviewees, this has the potential to confuse students as to whether the meeting is aimed at providing them resources and support or starting a formal investigation, particularly where they had not decided whether to proceed with a formal complaint. We think it is better practice for Randolph to clearly separate the functions of the TIX Coordinator and TIX investigator. Given how the TIX office works at Randolph, we recommend that the TIX investigator not conduct or participate in the intake meeting absent special circumstances.

## 2. Explanation of Process, Support, and Accommodations

Some interviewees felt that when they first reported sexual misconduct, their point of contact was not able to clearly describe to them the TIX process, their options, and available resources and support. By their nature, TIX processes and options can seem confusing and overwhelming, particularly to a complainant who has recently experienced sexual misconduct. Participants in a TIX case, at least initially, may not have the ability to read and comprehend a long email or Randolph's Sexual Misconduct Policy.

We recommend that Randolph simplify and clarify how it explains, 1) a complainant's options under its Sexual Misconduct Policy to students, and 2) available support and resources. Specifically, we recommend that Randolph develop a simple one-page infographic summarizing its TIX process and options, available support and resources (both on and off-campus), and contact information for key personnel. This infographic can be distributed to students, faculty, and staff and copies can be made available at key locations on campus.

It is particularly important that first responders who may receive reports of sexual misconduct know how to address such reports. Thus, we recommend that Randolph take steps to enhance the training of individuals to whom a complainant may disclose sexual misconduct to for the first time (e.g., Public Safety officers and RA's), to ensure they understand and can provide an explanation of options and resources.

## 3. No Contact Orders

We learned of considerable dissatisfaction and frustration with No Contact Orders (NCOs) at Randolph. Several interviewees described their own experiences or told stories of others' experiences with NCO's being unhelpful in scope, disregarded by respondents, and not strictly enforced by Randolph. Several case files reflect extensive, yet unsuccessful, efforts to craft NCOs that were workable in practice.

Randolph's small campus and small class sizes present unique challenges with respect to NCOs. Students are highly likely to encounter each other daily, particularly since there are only two main gathering points on campus: the dining hall and the Student Center.

We recommend that Randolph take steps to set expectations with respect to NCOs on its campus. Specifically, we recommend that Randolph develop guidance that it can provide to students about what measures can be offered in NCOs that are supportive of complainants but are not punitive, disciplinary, or unreasonably burdensome to the other party. Randolph can prohibit communications and restrict access to certain campus locations. However, Randolph needs to make sure students understand that NCOs are unlikely to prevent all physical sightings and, instead, will provide ground rules for each party's responsibilities should they encounter the other. We also recommend that Randolph clearly communicate what the consequences will be for violations of NCOs.

#### 4. **Investigation**

Our file review demonstrated, and interviews confirmed, that formal TIX investigations are a strength of Randolph's process. Investigations were promptly conducted, included appropriate evidence gathering, and witness interviews were well-documented. Randolph's lead TIX Investigator, Angela Greene, is held in high regard by many members of the Randolph community for being effective and unbiased, yet kind and fair to all parties.

While we did not see documentary evidence in the files, during our interviews we learned that two complainants felt as though they were being blamed or at fault for the sexual assault they reported by the way in which they were asked questions about their alcohol use. Questions about alcohol may be relevant to an investigation, particularly where it bears on the issue of consent, but questions involving alcohol use must be carefully framed and placed in appropriate context to avoid this perception. We recommend that Randolph consider training specific to questioning parties about alcohol and drug usage associated with sexual misconduct.

#### 5. **Process and Documentation**

Our external review of case files alone did not always tell the full story of how the TIX office responded to a report of sexual misconduct. However, after we interviewed the involved employees, we were able to conclude that they were generally taking the required steps and making the appropriate considerations, but not always thoroughly documenting that work.

We recommend that Randolph implement more rigorous standards for TIX file documentation. All key events should be documented so that if questions arise later, Randolph is not dependent on the memories of current or former employees for answers. To be clear, the findings below are not reflected in every file or even the majority of files. Rather, these were issues spotted in just some of the forty-plus case files included in the external review.

We recommend that the TIX file clearly document legally required steps such as Review Committee consideration and whether a timely warning is required for Clery Act purposes.

While our interviews with personnel suggest that these issues were, in fact, considered by the TIX personnel, the files do not consistently document the final determinations.

We recommend that in cases in which the complainant chooses not to pursue a formal complaint, the TIX file include documentation sustaining Randolph's decision not to proceed with its own investigation. For example, the files should document that the TIX office analyzed whether there was a pattern of sexual misconduct by a Respondent, a student group or team, or at a particular location, or another safety issue that might require Randolph to take action on its own. Again, while our interviews confirm that these issues were, in fact, considered by the TIX personnel, the files do not consistently reflect their final determination.

When cases are resolved informally, we recommend that the case file document the agreement to the informal resolution process and the outcome. For example, in a situation in which a complainant wants the TIX office address a matter by having an advisory conversation with a respondent, the file documentation should confirm that the conversation with the respondent occurred and there was follow up with the complainant.

We recommend that when new potential victims are identified during the course of an investigation, the case file document the outreach to those individuals, their response, and cross-reference any new investigations opened as a result.

We think that Randolph would benefit from an academic year-end file audit to make sure file documentation is complete and the files properly closed. A third party with no familiarity with a case should be able to determine from the file every decision that was made and every step that was taken. The interviews conducted as part of this external review confirmed that processes were being followed, but some files do not completely reflect that fact.

### C. **Oversight and Personnel**

Until the Spring of 2021, Sharon Saunders, Randolph's Director of Human Resources, served as TIX Coordinator. Saunders had strong subject matter mastery and established good policies, processes, and procedures. Nonetheless, many interviewees felt that Saunders did not have enough time to devote to TIX issues because of her many other responsibilities. Several interviewees, including Saunders, felt that she did not have enough support in her role as TIX Coordinator, particularly given those other responsibilities.

Several interviewees expressed concerns with the Director of Human Resources being the TIX Coordinator, namely: 1) that students do not think of Human Resources as a student function or as a place to take TIX issues, 2) whether the Director of Human Resources might have a conflict of interest if a student made a TIX complaint against an employee, and 3) that the skill set that makes for a successful Director of Human Resources is not necessarily the same skill set needed for a TIX Coordinator.

A number of interviewees felt that the prior organizational structure, in which the TIX Coordinator was the Dean of Students, was a conflict of interest. Because Randolph's Dean of

Students oversees student discipline, as well as mental health and counseling, the potential overlap of these issues with a TIX case was described as a deterrent to reporting or pursuing a formal complaint.

It was apparent early in the external review that Randolph needed a dedicated TIX Coordinator. Randolph did not wait for the conclusion of this external review to create that position, interview applicants for that role, and hire a qualified candidate. We recommend that Randolph's new TIX Coordinator be situated in Randolph's leadership structure in a way that makes sense to students and avoids the appearance of a conflict of interest.

We further recommend that Randolph's new TIX Coordinator take active steps to make herself known and available to students. Some current and former students indicated they did not know who the TIX Coordinator was during their time on campus. A TIX Coordinator who is accessible and someone whom the community views as a resource could be an important step toward reversing some of the negative perceptions of Randolph's TIX program.

#### D. Perceptions of TIX

During our review, it became clear that Randolph has a longstanding issue with negative perceptions of its TIX program. Many interviewees described how the TIX process has been viewed negatively going back to 2013, the beginning of the external review period.

It should be noted that our external review was not a culture and climate survey. Accordingly, the findings below do not include any determination of how widely held and pervasive the negative views of Randolph's TIX process are in the community. Rather, they are reports of the experiences and perceptions shared by the current and former students who volunteered to speak with us or who shared feedback anonymously through an internet portal made available by Troutman Pepper.

Many interviewees expressed distrust for the TIX process and a perception on campus that the office does not effectively address sexual misconduct on campus. We heard statements such as:

- "I never heard of a woman complaining and feeling better afterwards. You never hear of any good outcomes. The consensus was that Randolph was not interested in harsh punishments."<sup>1</sup>
- "People don't come forward because they know nothing will be done."

We learned that a significant source of the negative perceptions of Randolph's TIX program has been the telling and re-telling of a handful of accounts of past cases that are not entirely accurate.

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<sup>1</sup> The quotes in this Executive Summary are not verbatim (because the interviews were not recorded), but are rather an attempt to capture with as much accuracy as possible, the essence of what was said by the interviewees.

Each of these accounts is grounded in truth. However, as these accounts have been repeated over the years, they have lost their factual context and became mythologized.

Randolph cannot, consistent with its privacy obligations under the law, discuss the details of any such cases. Randolph can, however, provide more transparency. Specifically, many interviewees asked for more transparency in the form of communication of the outcome of TIX cases so the community can see the process is working. One interviewee described the need to make statistics available to combat the rumor and gossip while still protecting privacy.

We recommend that Randolph's TIX office begin publishing an annual report to promote transparency. The report would not have specific details of cases or contain information that may reveal the identity of any involved parties. Within these parameters, many institutions of higher education use annual reports to provide a summary of the work of its TIX office and compliance efforts at the end of each academic year.

#### E. **Barriers to Reporting**

The negative perceptions of Randolph's TIX program were described by some interviewees as a reason why, in some instances, students may choose not to report allegations of sexual misconduct and, in other instances, why students may choose to not pursue a formal complaint despite having made a report to the TIX office.

Another equally if not more significant barrier to reporting sexual misconduct or pursuing a formal complaint is the small size of Randolph's campus community and the fact that information about cases tends to spread amongst students notwithstanding the fact that the TIX office maintained confidentiality. Many interviewees explained that because the campus community is so small, "when things happen on campus, it spreads like wildfire."

As a result, many interviewees believe that sexual misconduct may go unreported because students fear the potential impact on their social lives and potentially being ostracized from their friend groups. As one interviewee put it, "it is super uncomfortable on our campus to be the person holding another student responsible."

Additionally, another commonly identified barrier to reporting was confusion created by the role of Campus Advocates as to where students facing issues relating to sexual misconduct should turn for help. Campus Advocates was intended to be a group of faculty and staff who received specialized training in offering confidential guidance to students who have experienced sexual violence. However, the only Student Advocate students routinely consulted was the chair, Dr. Danielle Currier. Because of her background, expertise, and close relationships with students, Dr. Currier became to "go to person" instead of the TIX office. Numerous interviewees, including Currier herself, shared their belief that the feelings of safety and validation she was able to provide may have led students not to report sexual misconduct to the TIX office.

When students went to Dr. Currier but did not report to TIX, it created an information disconnect between the rate of sexual misconduct on campus known to the TIX office and the rate described



by Dr. Currier and activists. Further, when cases of alleged sexual misconduct were discussed in the community by activists and others, but were not reported to Randolph's TIX office, it created the inaccurate impression Randolph was not taking steps to address instances of sexual misconduct when it did not have the opportunity to do so.

We agree with the recommendation of the Task Force on Campus Culture that Randolph needs to either eliminate or restructure the Campus Advocates program so that it is not viewed as an alternative to reporting to the TIX office. In addition, Randolph's new TIX Coordinator has the opportunity to improve the perception of the TIX office so that students are aware of and comfortable with seeking the support and resources it can provide.

#### F. Training and Programming

We did not review Randolph's training from a legal and compliance perspective, particularly because Randolph's Task Force on Campus Culture was assigned responsibility for rethinking Randolph's education and training. However, when we asked interviewees what steps Randolph could take to improve its TIX program, we received many suggestions for training.

It should be noted that the TIX staff itself is well and continuously trained. The individuals involved in the TIX process consistently praised Randolph for providing them with the time and financial support they needed to attend training programs.

##### 1. For Students

###### a. Topics

Many interviewees stressed the need to train Randolph students more effectively on all of the issues that fall under the TIX umbrella, both procedural and substantive. Some of the current and former Randolph students we spoke with said they needed a better understanding of the TIX process, including options, support, and resources. Several interviewees asked that TIX training include a renewed focus on the need for respect surrounding reports of sexual misconduct, to combat widespread gossip on Randolph's small campus. One interviewee noted that Resident Assistants in particular need to be reminded of their confidentiality obligations and that they are only to share information through mandatory reporting channels.

We recommend that Randolph emphasize the prohibition on retaliation during its TIX training and programming. Widespread re-telling of stories of retaliation that occurred against a female student who reported an allegation of sexual misconduct against a male athlete in 2015 have severely damaged the reputation of Randolph's TIX office. We recommend that Randolph clearly communicate to its students what retaliation looks like, the forms it can take, and a zero-tolerance policy that will be enforced.

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b. **Timing and Format**

In general, situational and scenario-driven training is well-received by students, such as skits at orientation addressing alcohol and consent and situational training provided to RAs. One interviewee described how training that involves practicing how to respond to various situations makes responses more natural and authentic when the situations actually arise.

A number of interviewees asked that training and programming on issues relating to sexual misconduct occur more frequently throughout the year, not just at orientation and during awareness months.

Randolph's staff is actively engaged in improving the content and format of training and programming. They are continuously looking for new, different, and better ways to get information out to students and the community. However, a lack of student engagement is a significant barrier to TIX programming. Since 2019, the enthusiastic, creative TIX programming efforts of Randolph's head of TIX programming have been met with little response. Ten students is regarded as a good turnout at an event. The lack of student attendance at non-mandatory events was widely described as being part of the Randolph culture. We recommend that Randolph expand its efforts to address student complacency and continue to seek creative ways to encourage attendance.

2. **For Faculty**

One of Randolph's selling points is that the school's small size allows students and faculty to form close relationships.<sup>2</sup> We heard concerns from some interviewees that a consequence of some of these close relationships may be that faculty may feel reluctant to report to the TIX office a report or concern about sexual misconduct shared by a student. Several interviewees suggested that faculty needed improved training on how to respond to a report of sexual misconduct and their obligations as mandatory reporters. Another suggestion was that faculty receive training on how to recognize signs of abuse or trauma, so that they are not waiting for students to come forward with problems.

We recommend that Randolph move away from the current on-line TIX training module for faculty. In person training, including practical, scenario-driven training with respect to issues such as how to have a conversation about being a mandatory reporter, is viewed as being more effective.

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<sup>2</sup> As of May 7, 2021, Randolph revised its Faculty Handbook to prohibit intimate relationships between students and faculty.

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#### IV. Conclusion

Our external review is complete. It was one part of a multi-faceted effort by Randolph to examine all aspects of its response to sexual misconduct on its campus. In addition to our recommendations, Randolph received recommendations from the Task Force on Campus Culture on April 9, 2021. The results of the Campus Climate Survey are expected later this summer. With the hiring and arrival of its new TIX Coordinator on July 1, 2021, Randolph is well-positioned to strengthen and improve its TIX practices.