Compliance Potpourri

how do you provide a foundation for a culture of compliance?

CUAV 2018
Becky Holmes
JMU CAE
History

• 2013 – initial identification of compliance topics

• 2014 – decision to use a committee structure for compliance matters, BOV Audit Committee charter revised to include receiving reports from the compliance committee, VPs designate committee members

• December 2014 – 1st meeting

• 2015 – division subcommittees assembled, process development, compliance topic initial assessment

• 2016 and on – focused on highest priority current and emerging topics
Why was a Compliance Committee created?

• Current higher ed compliance environment
• Best practice among peer institutions
• Fits JMU philosophy and culture; compliance is everyone’s job
The JMU Compliance Committee is responsible for tracking and monitoring the university’s compliance with applicable laws and regulations and reporting on compliance-related matters to the President and the Audit Committee of the BOV.

JMU Compliance Committee
Audit Director, Chair
Legal, Ex-officio
Representatives from:
Academic Affairs
Access and Enrollment
Administration and Finance
Student Affairs
University Advancement
### Identified issues and areas

<table>
<thead>
<tr>
<th>Compliance Area</th>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Academic Programs &amp; Administration</td>
<td>Academic dismissals and Other Academic Sanctions</td>
</tr>
<tr>
<td>Academic Programs &amp; Administration</td>
<td>Academic Freedom</td>
</tr>
<tr>
<td>Academic Programs &amp; Administration</td>
<td>Access &amp; Accommodations (includes service animals)</td>
</tr>
<tr>
<td>Academic Programs &amp; Administration</td>
<td>Accreditation</td>
</tr>
<tr>
<td>Academic Programs &amp; Administration</td>
<td>Business Continuity Planning</td>
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<tr>
<td>Academic Programs &amp; Administration</td>
<td>Constitution Day</td>
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<tr>
<td>Academic Programs &amp; Administration</td>
<td>Data Privacy &amp; Security</td>
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<tr>
<td>Academic Programs &amp; Administration</td>
<td>Discrimination (ethnic, sexual orientation, age, disability, religion,</td>
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<tr>
<td>Academic Programs &amp; Administration</td>
<td>immigration status, etc.)</td>
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<tr>
<td>Academic Programs &amp; Administration</td>
<td>Employment &amp; Compensation</td>
</tr>
<tr>
<td>Academic Programs &amp; Administration</td>
<td>Foreign Scholars &amp; Students - Visas Regulations &amp; Obligations/Contracting/Insurance/SEVIS</td>
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<tr>
<td>Academic Programs &amp; Administration</td>
<td>Online Programs - Reasonable Accomodations</td>
</tr>
<tr>
<td>Academic Programs &amp; Administration</td>
<td>Required Assessments and Reporting (e.g. SCHEV)</td>
</tr>
<tr>
<td>Academic Programs &amp; Administration</td>
<td>Tenure, Standards and Criteria</td>
</tr>
<tr>
<td>Admissions</td>
<td>Clergy Act</td>
</tr>
<tr>
<td>Admissions</td>
<td>Data Privacy &amp; Security</td>
</tr>
<tr>
<td>Admissions</td>
<td>Discrimination (ethnic, sexual orientation, age, disability, religion,</td>
</tr>
<tr>
<td>Admissions</td>
<td>immigration status, etc.)</td>
</tr>
<tr>
<td>Admissions</td>
<td>Veterans</td>
</tr>
<tr>
<td>Athletics</td>
<td>Data Privacy &amp; Security</td>
</tr>
<tr>
<td>Athletics</td>
<td>Drug Testing of Athletes</td>
</tr>
<tr>
<td>Athletics</td>
<td>Indemnification/Liability</td>
</tr>
<tr>
<td>Athletics</td>
<td>National Collegiate Athletics Association (NCAA) Compliance</td>
</tr>
<tr>
<td>Athletics</td>
<td>Supervision of Minors</td>
</tr>
<tr>
<td>Athletics</td>
<td>Title IX - Gender Equity</td>
</tr>
<tr>
<td>Athletics</td>
<td>Title IX - Pregnancy</td>
</tr>
<tr>
<td>Bookstore</td>
<td>Contract Administration</td>
</tr>
</tbody>
</table>
## Refined issues and areas based on subcommittee input

<table>
<thead>
<tr>
<th>Issues</th>
<th>Examples / Explanations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clery Act (includes housing security, campus safety, Student Right to Know)</td>
<td>Academic Affairs: X, Access &amp; Enrollment Management: X, Administration &amp; Finance: X</td>
</tr>
</tbody>
</table>
Developed methodology to assess issues

**Goal:** *Prioritize*

- **Impact**
  - financial
  - reputational
  - operational
- **Likelihood** of occurrence
  - experience of JMU and other universities
  - feedback from compliance coordinators/division committee representatives
- **JMU Maturity** – what’s in place
<table>
<thead>
<tr>
<th>Score</th>
<th>Category</th>
<th>Possible impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Minor</td>
<td>Minor fines or audit findings</td>
</tr>
<tr>
<td>2</td>
<td>Moderate</td>
<td>• Moderate fines&lt;br&gt;• Short-term scrutiny by outside agency</td>
</tr>
<tr>
<td>3</td>
<td>Substantial / Serious</td>
<td>• Programmatic or operational changes required by outside agency&lt;br&gt;• Moderate or long-term agency scrutiny&lt;br&gt;• Enforcement action likely&lt;br&gt;• PI debarred and/or program funds rescinded&lt;br&gt;• Some negative media threat</td>
</tr>
<tr>
<td>4</td>
<td>Severe</td>
<td>• Imposed settlement&lt;br&gt;• Criminal prosecution&lt;br&gt;• Substantial financial penalty&lt;br&gt;• Reputational threat</td>
</tr>
<tr>
<td>5</td>
<td>Business-Critical</td>
<td>• Threatens viability of JMU or a part of its mission (e.g. research, accreditation)&lt;br&gt;• Loss of all federal funding (research and/or financial aid)</td>
</tr>
</tbody>
</table>
# Likelihood

<table>
<thead>
<tr>
<th>Score</th>
<th>Category</th>
<th>Possible likelihood</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Low/Remote</td>
<td>Compliance issues are unlikely or rare; could occur at some time in the next 5-10 years; not a focus in current higher ed environment</td>
</tr>
<tr>
<td>2</td>
<td>Low to Medium</td>
<td>Compliance issues likely to occur at some time in the next 5-10 years but not currently a focus in higher ed</td>
</tr>
<tr>
<td>3</td>
<td>Medium/Possible</td>
<td>Compliance issues likely to occur at some time in the next few years; “on the radar” for higher ed</td>
</tr>
<tr>
<td>4</td>
<td>Medium to High</td>
<td>Issues likely to occur within the next few years - the storm is brewing with legislation imminent</td>
</tr>
<tr>
<td>5</td>
<td>High / Probable</td>
<td>Very likely to occur in the next year, or is already occurring; “hot topic” for higher ed with active agency monitoring</td>
</tr>
<tr>
<td>Score</td>
<td>Category</td>
<td>Description</td>
</tr>
<tr>
<td>-------</td>
<td>------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>1</td>
<td>Optimized</td>
<td>Compliance is managed, and has become a strategic asset (e.g. – produces additional opportunities for funding, builds reputation, produces a model for higher ed industry)</td>
</tr>
<tr>
<td>2</td>
<td>Managed</td>
<td>University policies in place; high-level attention to compliance risks and mitigation efforts; effective efforts are in place to ensure compliance; history of good compliance reviews</td>
</tr>
<tr>
<td>3</td>
<td>Segmented</td>
<td>Departmental policies and procedures in place which may or may not be effective; responsible parties handle required actions with minimal feedback; little university management attention to compliance risks</td>
</tr>
<tr>
<td>4</td>
<td>Reactive</td>
<td>Awareness, but no strategy in place to handle compliance issues; ad-hoc response</td>
</tr>
<tr>
<td>5</td>
<td>Unaware</td>
<td>No awareness of the issues</td>
</tr>
</tbody>
</table>
All compliance is **not** created equal – screening process

Impact x Likelihood x Maturity (Max=125, Min=1)

<table>
<thead>
<tr>
<th>Issue</th>
<th>1</th>
<th>2</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very Act. (Includes housing security, campus safety, Student Right to Know)</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Cybersecurity (Includes cyber threats, data breaches)</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Emergency Planning &amp; Communications (Includes Continuity Planning)</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Student Disciplinary Investigations &amp; Reporting, including searches and seizures and right to a grievance process for students and employees (Includes student and employee Grievance Reporting)</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Weapons on Campus – regulation of the use, sale, and manufacture of weapons on campus</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Public Safety Accreditation</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Student Safety (Other than Crime Act)</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Employee Misconduct (Does not include Crime Act and Title IX and Title VII, and sex offenders on campus)</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Campus Notification</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Weapons Possession on Campus</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
</tbody>
</table>
**Rating - compile results and committee review**

<table>
<thead>
<tr>
<th>Issues</th>
<th>Academic Affairs</th>
<th>Rating</th>
<th>Access &amp; Enrollment</th>
<th>Administration &amp; Finance</th>
<th>Student Affairs &amp; Univ. Planning</th>
<th>Governance</th>
<th>Overall Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title IX Claims, protection from retaliation and protection for survivors of sexual assault</td>
<td>5 x 5 = 25</td>
<td>P</td>
<td>48</td>
<td>18</td>
<td>75</td>
<td>18</td>
<td>64</td>
</tr>
<tr>
<td>Complaint Handling (Internal); Access &amp; Accommodations, Title IX, EEO, Non-discrimination, Civil Rights, Diversity, Whistleblowing</td>
<td>5 x 5 = 25</td>
<td>P</td>
<td>48</td>
<td>18</td>
<td>75</td>
<td>18</td>
<td>64</td>
</tr>
<tr>
<td>Title IX - Sexual Discrimination, Harassment, Misconduct, or Violence - University Students, Visitors, Faculty &amp; Staff</td>
<td>5 x 5 = 25</td>
<td>P</td>
<td>48</td>
<td>18</td>
<td>75</td>
<td>18</td>
<td>64</td>
</tr>
<tr>
<td>Title IX - Pregnancy and Parenting students</td>
<td>5 x 5 = 25</td>
<td>P</td>
<td>48</td>
<td>18</td>
<td>75</td>
<td>18</td>
<td>64</td>
</tr>
</tbody>
</table>
Top issues -- overall assessment

• Title IX claims – protection from retaliation and protection for survivors of sexual assault

• Complaint handling (internal) – Access and Accommodations, Title IX, EEO, Non-discrimination, Civil Rights, Diversity, Whistleblowing

• Title IX – Sexual Discrimination, Harassment, Misconduct, and Violence (University Students, Visitors, Faculty & Staff)

• Title IX – Pregnancy and Parenting
Top issues by maturity

- Title IX claims – protection from retaliation and protection for survivors of sexual assault
- Title IX – Pregnancy and Parenting
- Export Controls – access to sensitive information by foreign nationals
- Clery Act – criminal activity on campus (includes housing security, campus safety, Student Right to Know)
- Drones – new federal regulation
Continuous process

- Identify issue owners and experts
- Send back to subcommittees and issue owners for...
  - Gap analysis
    - what do we have in place?
    - what do we need?
- Assign responsibilities if not already in place
- Subcommittee and issue owners create action plans
- Committee validates and supports plans
- Continue to update management
Top priorities for 2016

• Title IX
• Complaint handling (internal)
• Export Controls
• Clery Act
• Drones
Top priorities for 2017

- Title IX
- Complaint handling (internal)
- Export Controls
- Clery Act
- Drones
- HIPAA
Title IX

–Sexual assault, sexual discrimination, harassment, misconduct, and violence, accommodations for pregnant and parenting students

2016

• Policy 1340 was adopted,
• Title IX Coordinator hired

2017 accomplishments

• Mandated training in place for campus
• Policy 1340 being continuously updated in light of changing guidance
• Resources added for campus community

https://www.jmu.edu/access-and-enrollment/titleIX/index.shtml

2018 action plan

• Continue to monitor laws, regulations, guidance documents
• Maintain on top priority list

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

--Title IX of the Education Amendments of 1972 (20 U.S.C. / 1681)
Complaint handling (internal)

- Access and Accommodations, Title IX, EEO, Diversity, Non-discrimination, Civil Rights, Whistleblowing

2017 accomplishments

- Published Policies
  - New Policy 1341 – Nursing Mothers
  - Updated Policy 1603 – Reporting Fraud, Waste and Abuse
  - Updated Policy 1326 – Immigration Reform and Control Act

- Updates scheduled and drafts of new policies
  - Policy 1302 – Equal Opportunity
  - Policy 1324 – Discrimination & Harassment
  - Policy 1329 – Disability Discrimination
  - Policy 1331 – Accommodations for Disabilities

2018 action plan

- Finalize review of new and existing policies
- Maintain on top priority list

Federal law mandates that any student, employee, or applicant for admission or employment who has experienced harassment and/or discrimination, or who has witnessed unethical and/or illegal behaviors and/or activities may file a complaint and without fear of repercussions. Grievance procedures are outlined in the relevant legislation (i.e., Civil Rights Act, Rehabilitation Act, Title IX, etc...).
Export Controls — access to sensitive information by foreign nationals on campus, or sent or taken abroad

2017 accomplishments

• Policy 1119 drafted, under review
  • Sets out rules & procedures

• Resources created https://www.jmu.edu/researchintegrity/exportcontrol/index.shtml

• Vice Provost for Research & Scholarship named “Empowered Official” for JMU

• Center for Global Engagement involvement
  • responsible for international students on campus
  • responsible for students studying abroad
  • new role of monitoring international scholars on campus
  • new role of training faculty traveling abroad

An export is any oral, written, electronic, or visual disclosure, shipment, transfer or transmission of goods, technology, services, or information to:

• Anyone outside the U.S.
• A non-U.S. entity or individual
• A foreign embassy or affiliate.
Export Controls, cont.

2018 action plans

• Finalize Policy 1119
• For JMU representatives traveling abroad
  • Training on prohibited exports
  • “Clean computer” loaners with minimal software
  • Monitoring official university travel abroad
    • focus on sanctioned countries
    • additional training/ precautions as needed

Maturity has improved
Maintain on top priority list
Clery Act
– reporting criminal activity on campus

Requires all colleges and universities who receive federal funding to share information about crime on campus and their efforts to improve campus safety as well as inform the public of crime in or around campus. This information is made publicly accessible through the university's annual security report.

2017 accomplishments

• Drafted Policy 1117, under review
  • Sets out policy & procedures

2018 action plans

• Form an advisory committee
• Finalize policy
• Move off top priority list
UAS (Unmanned Aircraft Systems or “drones”)

FAA’s SMALL UNMANNED AIRCRAFT RULE (PART 107) became effective August 29, 2016. It includes safety regulations for unmanned aircraft drones weighing less than 55 pounds that are conducting non-hobbyist operations.

2017 accomplishments

• Drafted policy 2210
• Temporary measure was put in place to restrict drones on campus without prior authorization
• UAS Oversight Committee formed

2018 action plan

• Finalize policy
• Remove from top priorities list
HIPAA – protection of health information

- Student Privacy covered under FERPA

Health Insurance Portability and Accountability Act

The Privacy Rule, or *Standards for Privacy of Individually Identifiable Health Information*, establishes national standards for the protection of certain health information.

The *Security Standards for the Protection of Electronic Protected Health Information* (the Security Rule) establish a national set of security standards for protecting certain health information that is held or transferred in electronic form.

Added to priority list

- Growing number of clinics
- Electronic billing
- Expanding health-related services
- Health information on employees

Health-related services to non-students
HIPAA

2017 Accomplishments

• Drafted Policy 1343, under review

2018 Action plan

• Finalize draft policy

• Task force will be organized to conduct ongoing discussions regarding campus wide compliance with HIPAA

• Maintain on top priorities list
Top priorities for 2018

• Title IX
• Complaint handling (Title IX, Harassment, Civil Rights, Diversity, etc.)
• Export Controls
• HIPAA
Emerging issues

• Gramm-Leach Bliley Act Safeguards Rule
  • Focus on financial aid data
  • New mandatory audit guidance for FY18
    • focus on IT risk and control identification
Two components: Safeguards Rule and Privacy Rule

- **Safeguards Rule**: An institution must establish safeguards to ensure proper security of personal information:
  - Designate a security program coordinator responsible for coordinating the program
  - Conduct a risk assessment to identify reasonably foreseeable security and privacy risks
  - Establish a written information security plan that describes how safeguards are employed to control the identified risks; regularly test and monitor the effectiveness of these safeguards

- **Privacy Rule**: Requires institutions to explain their information-sharing practices to their customers (e.g., students)
  
  *Privacy Notice must include how you protect confidentiality of students' data*
• Dear Colleague Letter (DCL) on cybersecurity requirements for financial aid data:

• ED's 2016 DCL reiterates the legal obligations of institutions to protect confidential student information used in the administration of Title IV financial aid programs.

• Six GLBA requirements referenced in the DCL:
  - Develop, implement, and maintain a written information security program.
  - Designate the personnel responsible for coordinating the information security program.
  - Identify and assess risks to consumer nonpublic personal information.
  - Design and implement an information safeguards program.
  - Select appropriate service providers that are capable of maintaining appropriate safeguards.
  - Periodically evaluate and update the information security program.
Emerging issues

• Virginia General Assembly
  • Free Expression § 23.1-900.1 Speech on campus.
• Student Privacy
  • HB 1 FOIA; release of scholastic records, definition of records includes directory information.
  • Draft policy 1121 Public Expression
Emerging issues (cont.)

• European Union General Data Protection Regulation (GDPR) – privacy law takes effect May 2018

• Applicability to JMU:
  • branch campuses in EU
  • send students and/or faculty to EU
  • collaborate with EU institutions
  • online students from EU
  • research incorporating EU data sets
  • solicit student applications from EU
  • recruit faculty from EU
  • receive donations from the EU
Emerging issues (cont.)

• Deferred Action on Childhood Arrivals (DACA)

• Export controls

• ?
Final thoughts..

• Think through the relationship between internal audit, compliance, and policy committee
• Consider reporting structure
• Each institution has different resources, needs, and risk appetite, so there is no “perfect” model
• Collaboration results in a more effective compliance program, better communication and processes, and more informed decision making
Compliance at other institutions...jump in!