



## A SHARED RESPONSIBILITY

Why Colleges And Universities Must Respond To Campus Sexual Assault

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## Introduction And Summary

During the past several months, sexual assault in higher education has received increased national attention. Currently, several colleges and universities are being investigated by the Office of Civil Rights at the Department of Education for failing to properly address sexual assault. Sexual assault poses a threat to students' fundamental civil right of equal access to education.

High-profile and shocking cases of sexual assault in schools like Hobart and William Smith Colleges, Columbia University, and the University of California have recently grabbed national headlines. That attention, and subsequent investigations into procedures that deal with these crimes, have revealed the inadequate responses from an overwhelming number of colleges and universities as they address sexual assault.<sup>1</sup>

Although sexual assault affects all students, young women are disproportionately impacted by sexual assault.<sup>2</sup> According to the Department of Justice, one in five women experience an attempted or completed sexual assault while in college.<sup>3</sup> Colleges and universities currently have many tools, as well as the responsibility to address instances of sexual assault on their campuses. They can offer services that law enforcement cannot and as such, must provide accommodations, including academic ones, to survivors.

This report examines the various pieces of federal legislation that currently exist regarding sexual assault in higher education, as well as the current responsibilities colleges and universities have to make sure all students have access to a safe learning environment.

## Federal Laws On Sexual Assault In Higher Education

Under federal law, all students have a right to an education free from discrimination on the basis of sex.<sup>4</sup> Sex discrimination under Title IX can include sexual harassment if it is "so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit."<sup>5</sup> The Centers for Disease Control and Prevention found that of the 18 percent of women who have experienced rape or attempted rape in her lifetime, more than 51 percent were between the ages of 18 to 34 when they were assaulted.<sup>6</sup> The Department of Justice also found that incapacitated sexual assault—assaults that occur when the survivor is incapable of giving consent, such as when under the influence of alcohol or when they are asleep—is twice as common as physically forced sexual assault.<sup>7</sup>

Additionally lesbian, gay, bisexual, and transgender students also experience high rates of sexual assault while attending college or university.<sup>8</sup> A 2006 survey of students in higher education by the American Association of University Women found that 44 percent of LGBT students reported contact sexual harassment, including sexual



assault compared to 31 percent of non-LGBT students.<sup>9</sup>

In instances of sexual assault, federal law places responsibility on colleges and universities to: have grievance procedures in place for survivors to take disciplinary action against their perpetrators, provide accommodations and support services for survivors, and properly document cases of sexual assault for transparency.<sup>10</sup> The following federal policies provide the current framework for colleges and universities responsibility to respond to sexual assault.

### **Title IX Amendment To The Higher Education Act**

While Title IX often receives attention for regulating equitable funding for male and female athletics, it did so by establishing gender discrimination in education as a civil rights matter. Title IX, enacted in 1972 as part of a series of amendments to the Higher Education Act, holds that no person shall be excluded from participation in, or be denied the benefits of, any education program or activity receiving federal financial assistance on the basis of sex.<sup>11</sup> Title IX creates many of the responsibilities that institutions of higher education have to eliminate discrimination.

Title IX requires colleges and universities appoint an individual Title IX coordinator to their staff to oversee issues of gender equity in education.<sup>12</sup> Because sex discrimination also takes the form of sexual assault in higher education, the Title IX coordinator's responsibilities include overseeing all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints. Title IX authorizes the Department of Education's Office of Civil Rights (OCR) to sanction colleges and universities that do not comply with Title IX. Sanctions are financial penalties that OCR can levy on colleges and universities that fail to uphold Title IX provisions. Currently, OCR can only remove the entire federal financial aid funding for a college or university that fails to comply with Title IX, which can inadvertently hurt all other students.<sup>13</sup> As such, sanctions have not been used by OCR in its history.<sup>14</sup>

Due to the continuing high levels of sexual assault, the Department of Education asserted in a 2011 *Dear Colleague* letter to colleges and universities that, "sexual harassment of students, including sexual assault, interferes with students' right to receive an education free from discrimination."<sup>15</sup> The letter also goes on to affirm that under Title IX obligations to provide a nondiscriminatory environment, colleges and universities must take responsibility for proactively addressing and preventing sexual assault or face losing federal funding.<sup>16</sup>

### **The Jeanne Clery Act**

Congressional action in response to campus violence dates back to the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990 (Clery Act)*, written in response to the rape and murder of a Lehigh University first-year student in her campus residence

**"Sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination."**

-Department of Education in *Dear Colleague* letter, 2011

hall. The Clery Act amended the Higher Education Act of 1965 to require colleges and universities, both public and private, to publish and distribute an Annual Campus Security Report to better inform current and prospective students on campus crimes.<sup>17</sup> These reports must include crime statistics from the preceding three-year period, as well as describe campus procedures for addressing and investigating sexual assault.<sup>18</sup>

The Clery Act includes fines on noncompliant schools for unreported crimes and also requires colleges and universities to disclose if incidents constituted hate crimes – discriminatory crimes based on the identity of the victim.<sup>19</sup> Prior to the Clery Act, even more incidents of sexual assault went unreported than today and little or no uniform procedures existed for colleges and universities to prevent and investigate incidences.<sup>20</sup> Under the Clery Act, students may file complaints and requests for investigation with the Department of Education for violations, resulting in possible sanctions and policy changes for colleges and universities.<sup>21</sup> During the past four years, the Department of Education has levied penalties against 15 institutions, compared with the six total fines doled out during the previous decade. The Department also plans to investigate many more cases during the next couple of years.

### **The Campus SaVE Act In The Violence Against Women Act**

In 1994, Congress passed the Violence Against Women Act (VAWA) to establish a comprehensive approach to violence against women and included tough new provisions to hold offenders accountable, as well as programs to provide services for survivors.<sup>22</sup> Throughout its 20 years of existence, VAWA has helped more survivors report domestic and sexual assault to law enforcement.<sup>23</sup>

As part of the 2013 reauthorization of VAWA, the Campus Sexual Violence Elimination Act (Campus SaVe Act) was included and further expanded the Clery Act to more proactively address prevention and investigation of sexual assault in higher education.<sup>24</sup> The Campus SaVe Act added a mandate for colleges and universities to actively establish prevention and awareness programs on sexual assault and sought to revise security reporting requirements to make reporting more accessible, comprehensive, and uniform in defining sexual assault.<sup>25</sup>

The Campus SaVe Act also requires training on sexual assault for staff and students at universities, as well as formal procedures for cooperation with law enforcement.<sup>26</sup> These updates to VAWA and the Clery Act improve reporting and awareness of crime for current and prospective students.

### **How Colleges And Universities Can Act**

As colleges and universities act on their Title IX mandate to combat sex discrimination, critics have raised the question of why sexual assault falls under the domain of colleges and universities at all. Critics argue that law enforcement is more experienced and better-equipped to handle cases of sexual assault against students and college administrators should not



be involved at all.

Although survivors can choose to pursue a criminal investigation, colleges and universities still have a responsibility to address sexual assault that prevents students from their right to access higher education. In addition, campus communities—where students live, dine, and attend class—require specific resolutions that is out of the scope of law enforcement.

Current federal policy provides integral components for addressing sexual assault in a comprehensive and judicious way. However, a young woman today faces a lower chance of encountering sexual assault by simply not pursuing a higher education.<sup>27</sup> The high level of sexual assault contradicts the spirit of equal educational opportunity and indicates that female students nationwide face distinct barriers as they seek higher education.<sup>28</sup>

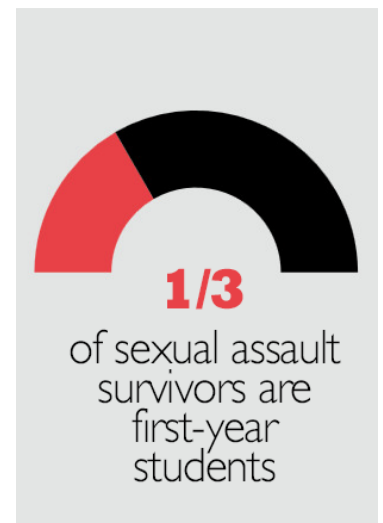
While criminal investigations and legal proceedings typically explore individual incidents of sexual assault, federal regulations recognize sexual assault as a pattern that proves profoundly detrimental to civil rights and gender equality. The following examples show how colleges and universities work in tandem with law enforcement to provide a safer environment for all students.

### **Colleges And Universities Must Provide Training And Education On Sexual Assault**

Federal law instructs colleges and universities to provide programming for students and employees to address issues of domestic violence, dating violence, sexual assault and stalking.<sup>29</sup> These must include ongoing prevention and awareness campaigns to make sure that colleges and universities remain committed to addressing sexual assault throughout the academic career of all students, not just those entering their first year. These educational programs must include certain subjects including: definition of various acts of sexual assault, safe, and positive options for bystander intervention, a statement by the school that it prohibits acts of sexual assault, risk reduction programs so students recognize and can avoid abusive behaviors or potential attacks, and information on the school's reporting system and disciplinary proceedings.<sup>30</sup>

### **Colleges And Universities Must Respond To Survivors' Needs**

Federal law requires that institutions of higher education ensure survivors have access to everything they need to continue their education.<sup>31</sup> This survivor-centered approach can include dorm and class transfers, academic accommodations, and mental health support.<sup>32</sup> Although the criminal justice system can provide some level of protection to survivors, it can simply not provide the same needed services as colleges and universities. Survivors may also not want a lengthy criminal proceeding, seeing them as more invasive and



traumatic, and prefer instead to go to college or university authorities, who must safeguard their safety and privacy.<sup>33</sup> Ultimately, while the criminal justice system remains an option for survivors, law enforcement cannot provide the same level of support services that federal law requires colleges and universities to provide.

### **Campus Adjudication Can Sometimes Be The Only Option**

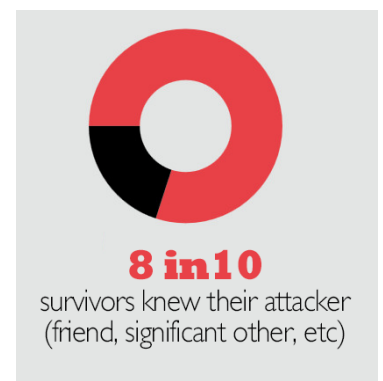
Every state has its own laws concerning sexual assault and no national standard for defining rape currently exists.<sup>34</sup> This has led to a lack of reporting of male-male or female perpetrated instances of sexual assault, leaving many survivors without recourse based simply on where they live.<sup>35</sup> Federal laws that universally codify civil rights and apply to all colleges and universities add a layer of protection to survivors not undermined by disparities in state law. Under current federal law, colleges and universities must take up all reports of sexual assault for adjudication and respond to the survivor's needs, even sexual assaults that state law does not consider, such as between two men.<sup>36</sup>

### **Colleges And Universities Can Take Quick Action To Protect Survivors**

The criminal justice system often lacks the necessary resources to investigate instances of sexual assault.<sup>37</sup> According to the Rape, Abuse & Incest National Network, only 60 percent of rapes are reported, with only eight percent being prosecuted, and less than four percent result in a conviction.<sup>38</sup> Additionally, the criminal justice system may take several months to prosecute a case and may not remove an assailant from campus.<sup>39</sup> Colleges and universities, however, can move quickly to suspend and expel offenders to ensure both the survivors' safety, but to also maintain a safe environment for other students.<sup>40</sup> Additionally, prior to full adjudication, the administration can take steps to separate a survivor from an alleged perpetrator until the investigation is completed. This rapid response from colleges and universities can work with law enforcement as they investigate or prosecute sexual assault. The rapid response from colleges and universities, among other factors, has led to a majority of survivors first reporting to college administrators for support and adjudication.<sup>41</sup>

### **Colleges And Universities Can Address And Respond To Patterns Of Violence**

Aside from seeking counseling and support, survivors may also go to college or university administrators in order to change policies and the cultures that permit high levels of sexual assault. Investigations and reports of sexual assault in higher education tend to highlight patterns of the same events, locations and circumstances that result in sexual assault.<sup>42</sup> More information empowers colleges and universities to change policies and security practices to better protect students in the future or curb risky situations. For survivors and advocates seeking to address high levels of sexual assault, reaching school officials with more information can lead to better responses to patterns of abuse and civil





rights violations rather than singular incidents.

### **Current Failures Of Institutional Response**

Despite existing policy that requires proactive engagement to address gender discrimination, many colleges and universities have largely failed to adequately address sexual assault. In 2011, the Department of Education's Office of Civil Rights reminded institutions in its Dear Colleague letter that noncompliance could result in the loss of federal funding, while including guidelines and suggestions to improve institutional procedures.<sup>43</sup> The subsequently languid response to the Dear Colleague letter as well as activism by student survivors across the country, prompted the Department to publish, for the first time, a list of 55 colleges and universities it held under investigation for Title IX noncompliance.<sup>44</sup> The list included national and headline-grabbing schools, from private Ivy Leagues, such as Harvard and Princeton, to large public institutions including the University of California, Berkeley and the University of North Carolina, Chapel Hill.<sup>45</sup>

Another stinging indictment came in July 2014 when Senator Claire McCaskill (D-MO) and the Senate Subcommittee on Financial and Contracting Oversight issued a report on campus sexual assault based on a nationwide survey of over 400 four-year higher education institutions.<sup>46</sup> The committee's report gave a comprehensive look into the institutional responses to federal law, including Title IX. Its findings uncovered institutional inaction, entrenched conflicts of interest, scant regard for the privacy or protection of survivors, and systemic weaknesses in even following federal regulations, much less proactively addressing sexual assault among students.<sup>47</sup>

### **Many Colleges And Universities Do Not Investigate Sexual Assault**

Senator McCaskill's report found that more than 40 percent of colleges and universities had not investigated a *single* instance of sexual assault in the past five years and more than 70 percent did not have a protocol for working with local law enforcement.<sup>48</sup>

Of the schools that had investigated sexual assaults, nine percent responded that they had reported more incidents to the Department of Education than they had actually investigated.<sup>49</sup> Strikingly, for the largest private institutions that number jumped to more than 20 percent.<sup>50</sup> While colleges and universities may do the bare minimum by reporting incidents, as per their Clery Act requirements, inaction and indifference on investigation reflects a lack of urgency addressing sexual assault.

### **Lack Of Adequate Training And Proper Investigation Is Rampant**

More than 30 percent of colleges and universities that responded to Senator McCaskill's survey failed to offer training on sexual assault to their students or campus law enforcement, often critical first responders

## **BY THE NUMBERS**

# 40%

of colleges and universities reported not investigating a single sexual assault in the previous five years.

# 30%

of colleges and universities offered no training on sexual assault to students nor law enforcement officers.

# 27%

of colleges and universities left oversight on cases relating to student athletes to their athletic departments.

# 10%

of colleges and universities had not hired a permanent Title IX Coordinator.

# 9%

of colleges and universities reported more sexual assaults to the Department of Education than they actually investigated.



or bystanders to assaults.<sup>51</sup> Additionally, in violation of federal law, 10 percent of colleges and universities neglected to appoint a full-time Title IX coordinator to their staff.<sup>52</sup> The lack of comprehensive and codified training, as well as the absence of full-time oversight by a Title IX coordinator, leaves a high level of discretion in handling cases to colleges and universities that have also demonstrated a pattern of inaction.

This lack of oversight and training has led to inadequate adjudication processes. Current investigation processes remain largely opaque and rife with conflicts of interest, as well as lacking proper safeguards for survivors, especially regarding their privacy and protection from retaliation.<sup>53</sup> Additionally, more than a quarter of schools reported having students participate in adjudicating sexual assault claims.<sup>54</sup> Having students adjudicating instances of sexual assault can undermine survivor privacy and the effectiveness of a disciplinary panel.<sup>55</sup>

Student athletes also face different adjudication processes that solidify lack of accountability and potential conflicts of interest. About 20 percent of large public institutions, and 15 percent of large private institutions, delegated oversight for cases involving student athletes to their athletic departments.<sup>56</sup> Adjudication by athletic departments create highly contradictory environments; survivors rightly fear harassment after potentially implicating prominent individuals on campus in assault allegations, and reasonably distrust that their complaints will receive fair investigation or arbitration by official bodies that not only represent student athletes but also directly benefit from their uninterrupted status.<sup>57</sup>

### **Colleges And Universities Do Not Require Excessive Standards Of Evidence To Investigate**

Currently, the Department of Education has stated that colleges and universities should use a “preponderance” of evidence, the standard for civil rights cases, during investigations of campus sexual assault. However, 15 percent of colleges and universities continue to use a higher evidence standard that makes it difficult for survivors to prove instances of sexual assault.<sup>58</sup> Keeping a higher level of evidence in adjudicating campus sexual assault hinders investigations and minimizes the chance to penalize perpetrators, as sexual assault is a notoriously difficult crime to prove beyond a reasonable doubt.<sup>59</sup> Title IX, however, also sets in place rights for alleged perpetrators by establishing guidelines for adjudication more rigorous than a typical disciplinary hearing for student conduct violations.<sup>60</sup>

### **Colleges And Universities Fail To Adequately Support Survivors**

Many colleges and universities also failed to protect survivors while proceedings occurred, and some student groups seemed to sit outside of their oversight or sanctioning power. More than one-third of institutions did not impose sanctions on fraternities or sororities, and only half exercised athletic department sanctions after they were

**About 20 percent of large public institutions, and 15 percent of large private institutions, delegated oversight for cases involving student athletes to their athletic departments.**

found to inadequately respond to sexual assault perpetrated by their students.<sup>61</sup> While more than 90 percent of institutions had sanctioned guilty perpetrators with expulsion or suspension, less than 20 percent included orders requiring an alleged perpetrator avoid contact with a survivor, a key provision as survivors often encounter harassment during investigations.<sup>62</sup>

The conflicts of interest present in adjudication procedures exacerbate the underreporting of sexual assault. They also do little to protect the right of a survivor to properly report a crime committed and have complaints reasonably investigated with an outcome that shields them from future harassment, hardship or contact with a perpetrator. Such weakness in institutional procedures, combined with established knowledge on the prevalence of sexual assault and a tepid attitude from colleges and universities, paints a picture of inequity, fear of retaliation, and vulnerability for students.

### **The Need For More Data And Research**

In addition to reforming federal policies on sexual assault, more research needs to be done—and more data needs to be collected—on sexual assault. Current research and information on the high levels of sexual assault do not accurately reflect the problem and make it difficult to create responses. Each school has a unique climate, and administrators need to take the proper steps to collect information from their students. Specifically, further research needs to examine the effects of sexual assault on the different student populations. Data and information will also help guide new policies and culturally competent services that address the specific needs of students who experience sexual assault.

Individual institutions should also do more to understand the realities of sexual assaults on their own campuses. For instance, they should conduct confidential student surveys about campus climate and sexual assault. The recent Senate report from Senator McCaskill's office found that only 16 percent of institutions surveyed conduct climate surveys.<sup>63</sup>

### **Conclusion**

The Clery Act and Title IX included groundbreaking measures that uncovered the prevalence of sexual assault in higher education. In their footsteps, the Violence Against Women Act and the Campus SaVE Act also concentrated efforts to combat gender-based violence and hold colleges and universities accountable to address sexual assault against students. However, sexual assault remains a deeply-rooted issue that inhibits students' fundamental civil right to equal access to education.

Forceful and proactive efforts to combat and respond to sexual assault must continue by all parties, including the federal government, individual colleges and universities, and the criminal justice system. Although critics argue that colleges and universities should not have any responsibility in addressing sexual assault against their students,

**While more than 90 percent of institutions had sanctioned guilty perpetrators with expulsion or suspension, less than 20 percent included orders requiring an alleged perpetrator avoid contact with a survivor, a key provision as survivors often encounter harassment during investigations.**

the current pattern of violence indicates that sexual assault creates a discriminatory environment for students, especially young women and LGBT students.

Although too many colleges and universities have failed to actively prevent and investigate sexual assault, the federal government can take steps to ensure institutions of higher education meet their requirement to provide a safe environment for all students.

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Students Active for Ending Rape ([safercampus.org/](http://safercampus.org/))

Know Your IX ([knowyourix.org/](http://knowyourix.org/))

White House Task Force to Protect Students from Sexual Assault  
([notalone.gov/](http://notalone.gov/))

National Women's Law Center ([nwlc.org/](http://nwlc.org/))

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