

INVESTIGATING THE HANDLING OF SEXUAL ASSAULT INVOLVING COLLEGIATE
STUDENT-ATHLETES

Victoria Krause

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Approved by:

Barbara Osborne

Diane Groff

Nicki Moore

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ABSTRACT

Victoria Krause: Investigating the handling of sexual assault involving collegiate student-athletes
(Under the direction of Barbara Osborne)

Sexual assault on college campuses is a growing issue in the United States. In May 2014, the Department of Education's Office for Civil Rights released a list of 57 schools that are currently being investigated for their handling of sexual violence cases. In 2016 that number has risen to over 100 schools.

In 2011, the Office of Civil Rights published the Dear Colleague Letter on Sexual Harassment. This document provided schools with the necessary information to remain Title IX compliant when faced with sexual assault allegations. In 2014, the NCAA issued guidance to athletic departments regarding their role during sexual assault investigations.

This study reviewed 39 cases of sexual assault committed by a student-athlete. Information was compiled to determine what errors (if any) were committed by the school or athletic department during the investigations. The study found 21 unique errors committed by the schools; eighteen of those were committed by multiple schools.

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CHAPTER 1: INTRODUCTION

Introduction

In October 2014 University of Kentucky football player, Lloyd Tubman, was accused of rape by his girlfriend. A grand jury did not indict him but he was found guilty of sexual misconduct by three University of Kentucky panels and expelled from campus. Tubman has continuously appealed the schools' decision leading the plaintiff to file a Title IX complaint with the U.S. Education Department's Office of Civil Rights, against the university, citing Tubman's appeals as "re-victimization" (Blackford, 2015).

In 2012 a Florida State University student claimed future Heisman Trophy winner Jameis Winston raped her at an off-campus apartment. Two years later, Winston was cleared in a student code of conduct hearing. The accuser has since filed a lawsuit against Winston and the school. Additionally, the Department of Education has begun an investigation into Florida State University for possible Title IX violations based on their response to complaints of sexual violence (Copeland, 2014).

Sexual assault on college campuses is a growing issue in the United States. In May 2014, the Department of Education's Office for Civil Rights released a list of 57 schools that are currently being investigated for their handling of sexual violence cases. That number has now risen to over 100 schools, despite information that has been disseminated to aid schools in remaining compliant.

In 2011, the Office for Civil Rights published the Dear Colleague Letter (DCL) on Sexual Harassment (found as Appendix A). This letter reiterated the obligations of institutions to

take immediate and effective steps to respond to acts of sexual violence. It also provided schools with detailed instructions related to remaining Title IX compliant.

In 2014, the NCAA published a guidebook entitled, “Addressing Sexual Assault and Interpersonal Violence: Athletics’ Role in Support of Healthy and Safe Campuses.” This guide was meant to provide athletic departments specific information on their role in preventing and handling sexual assault.

The Association of American Universities released their campus survey on sexual assault results in 2015. The purpose of the survey was “to provide participating institutions of higher education (IHEs) with information to inform their policies to prevent and respond to sexual assault and misconduct,” (AAU, 2015, p.iii). The report found that 11.7% of students reported nonconsensual sexual contact (AAU, 2015, p.13).

Student-athletes make up a unique subset of this issue, “Athletes comprised 15% of the study's perpetrators and fraternity members made up 10%, which is generally representative of student populations,” but “that athletes and fraternity members comprised a disproportionate share of claims involving serial and multiple perpetrators” (United Educators, 2015). The NCAA guidance released in 2014 states, “Athletics has a unique platform on most campuses from which it can visibly and vocally support its colleagues across campus who are working to make the campus safer for all students” (Wilson, 2014, p. 8). Athletic departments house unique staff, areas and students, which add additional concerns.

Therefore, it is important to look at moments where schools and athletic departments have fallen short when handling a case of sexual violence involving a student-athlete in order to better understand how schools can best remain compliant with federal law and regulations.

Purpose Statement

The purpose of this study is to determine what similarities, if any, there are between how schools handled cases of sexual assault (beginning after 2011) involving accused student-athletes based on law, legal research, and NCAA guidance.

Research Questions

1. How have schools fallen short of compliance?
2. What similarities, if any are there, between issues found with the handling of cases?
3. What changes can schools make to better comply with these guidelines based on these trends?

Assumptions and Limitations

This study assumes based on various studies that sexual violence is prevalent among student-athletes. Limitations involve both lack of information and report bias. Information regarding sexual violence is confidential in nature and may be difficult to find. Additionally many cases go unreported or investigations/claims are dropped. According to AAU only about 28% of incidents are reported (American Association of University Professors Committee on Women in the Academic Profession and Subcommittee on sexual assault on campus, 2013, p. iv). Cases will be limited to incidents that occurred after the 2011 Dear Colleague Letter was issued and only situations that involve intercollegiate student-athletes.

Significance

This study will review a comprehensive list of current and recent cases of sexual assault involving student-athletes opposed to a few historical and significant landmark cases. By using a complete list (found as Appendix D) a better understanding of exactly where schools fall short of compliance can be understood. By identifying potential trends in how schools and athletic

departments tend to mishandle these cases, this study can potentially help schools properly manage cases of sexual violence involving student-athletes in the future.

Definitions

1. Sexual violence “refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion” (Dear Colleague Letter, 2011, p. 1).
2. Sexual Harassment is defined as “unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual violence is a form of sexual harassment prohibited by Title IX” (Dear Colleague Letter, 2011, p.3).
3. A statute is a law that applies in a certain legal situation that must be complied with.
4. A federal guidance is a document published by a government entity or organization that provides information and best practices that should be followed to remain compliant with a law or laws. These documents and the information they disseminate are seen as a requirement under the law.
5. Dear Colleague Letters are notes typically written by a member of congress (in case it is written by the Assistant Secretary for Civil Rights), typically used to inform members of events or information. It is not a legal document and is instead used to disseminate information.
6. Precedent is a principle or rule established in a previous legal case that is binding for a court when deciding subsequent cases with similar issue or facts.

CHAPTER 2: REVIEW OF LITERATURE

Introduction

This chapter discusses literature regarding sexual assault on college campuses and information more specific to student-athletes and sexual assault. Additionally, it discusses the law, legal research and NCAA guidance regarding sexual assault. Previous research, laws and guidance help to create the framework for this study.

Sexual Assault on Campus

There are numerous studies that show the incredible prevalence of sexual assault on college campuses. In 2012, the CDC released a study that reported 19% of undergraduate women had experienced attempted or completed sexual assault while in college (CDC, 2012). A statement released by the American Association of University Professors' Committee on Women in the Academic Profession and Subcommittee reported that women ages eighteen to twenty-one are four times more likely to be sexually assaulted than women in any other age group. It also reported that college-bound women are more at risk than non-college-bound women. This statement boasts a higher number than the CDC finding 20-25% of college women have reported being sexually assaulted while in college (American Association of University Professors Committee, 2013).

A report submitted by the U.S. Department of Justice (2014) had similar findings. This study showed that females ages 18-24 consistently experienced "higher rates of rape and sexual assault than females in other age brackets" (p. 3). Students were significantly less likely to report

their sexual assault (80%) compared to 67% of non-students (Stnozich, 2014) When victims reported sexual assaults, fewer than 16% of female student victims received assistance from a victims' services agency.

Recently United Educators released a report on sexual assault claims among institutions of higher education (Appendix B). The study attempted to examine claims and made suggestions to colleges and universities to “advance efforts to prevent sexual assault and change campus culture,” United Educators, 2015, p. 1). Among participating institutions 43% of perpetrators were expelled and 39% suspended. The study concluded that schools were attempting to improve responses to sexual assaults and should use the information found in this particular study to improve and adjust their strategy (United Educators, 2015).

Findings tend to vary due to low reporting of sexual assaults, which makes it difficult to establish completely accurate numbers, however, these particular studies show the prevalence of sexual assault on college campuses and therefore the importance of studying it further.

Why do sexual assaults occur?

Because of the prevalence of sexual assault on campuses much of the literature seeks to understand why some commit acts of sexual violence. A report done by the University of Georgia found that 25-28% of men reported that they had committed some act of sexual assault (Mouilso, Calhoun, & Rosenbloom, 2013). This study sampled 304 college men and focused on impulsivity and aggression. It used the UPPS_P Impulsive Behavior Scale, which includes: negative and positive urgency, lack of perseverance, lack of premeditation and sensation seeking. The study found that 15.1% had reported committing an act of sexual assault; among these 15.1% it found, “Impulsivity in the presence of intense emotions, both positive and negative, was

found to be higher among perpetrators relative to nonperpetrator,” however, many of the other categories did not show significant differences (Mouilso, Calhoun, & Rosenbloom, 2013, p. 435).

According to the report released by United Educators 78% of sexual assault claims involved alcohol (United Educators, 2015). In a study of 502 undergraduates, participants were questioned about their alcohol use and sexual objectification. Participants were asked questions to judge the amount of the students’ alcohol consumption and whether they sexually objectified members of the other sex through body evaluation and unwanted sexual advances. The students were then asked to complete the Sexual Experience Survey to determine whether they had engaged in some form of sexual violence. The study found that there was a correlation between heavy drinking and sexual objectification and sexual violence. Students who consumed more alcohol were more likely to commit sexual objectification and sexual violence. However, it was not determined whether this drinking and the sexual objectification or sexual violence actually occurred simultaneously (Gervais, DiLillo & McChargue, 2014).

Can sexual assault be prevented?

Another study reviewed the lack of education regarding the known links between alcohol and sexual violence. Wilson (2014) explains that schools are afraid of discussing the role alcohol has in sexual assaults for fear that they will appear to be victim blaming. The article quotes George Washington University president, Stephen Joel Trachtenberg, who was publicly chastised after suggesting that women could stay safer by drinking less. Many of the current educational programs do not focus on students’ decisions, including how much they drink. Wilson argues that teaching students about the role alcohol plays in sexual assault could potentially keep them safe. It details the link between alcohol and sexual assault but also the unique issues it presents schools when implementing educational programs (Wilson, 2014).

Many similar studies have been conducted on various educational programs. These investigate and advocate for peer-based education. In Franklin, Allen and Pratt's study, social support theory provides the structure, which shows the importance of male peer groups to male behavior (2012). This theory explains, "association and identification with peer groups reinforce particular attitudes and behaviors that are socially desirable and appropriate according to the group" (Franklin, Bouffard & Pratt 2012, p.1459). This study surveyed collegiate men involved in Greek life and found that they were more likely to abuse women and to receive information on tactics to abuse women than their non-Greek counterparts (Franklin, Bouffard & Pratt, 2012).

Many schools have instituted peer-based educational programs to combat sexual assault. Jozkowski, Henry and Sturm (2014) studied the importance of peer-based education to students. This study examined college students' perceptions of peer-based programs and whether the students viewed them as important. They concluded that 88.7% of college students believed these programs were important for themselves specifically and 97.1% believed they were important for students in general. Jozkowski, Henry and Sturm concluded that those students who perceive sexual assault prevention education to be important may be more likely to take it seriously when exposed to prevention education and they could help to raise awareness among their peers" (2014, p.56)

McMahon (2008) was opposed to advocating a particular prevention method and instead provided a template for schools to better comply with Federal policies prior to the *2011 Dear Colleague Letter*. McMahon provided step-by-step advice for schools to follow, beginning with defining sexual assault and ending with investigating and punishing perpetrators. McMahon also focused primarily on the prevention of sexual assault and not necessarily what to do if an assault occurs. Out of her nine benchmarks, only two address situations after an assault occurs. The first

is to establish methods and policies that encourage reporting and the second is information on investigation and punishing perpetrators. However, establishing policies to encourage reporting must occur before an individual needs to report an assault. McMahon concludes that this template is meant, “to assist institutions of higher education to benchmark campus policy compliance with federal laws directed at sexual assault” (2008, p.361).

These studies provide information on who commits acts of sexual violence and why; which then leads to attempts to develop programs for schools to implement in an effort to prevent incidents and lessen the chance for litigation.

Athletes and Violence

Several studies investigate reasons athletes in particular commit violent acts. Dabbs (1998) studied professional athletes and explains that athletes are taught to be aggressive and violent on the field, making it then difficult for this attitude to not play out off the field in day-to-day life. Additionally, male athletics participation in general teaches sexism by portraying it as an opportunity to express one’s manliness. Another possible explanation described is the preferential treatment given to many athletes making them feel invincible. Dabbs then explores specific professional leagues and their current policies in regards to violence against women and how they can improve those policies under the law, including allowing commissioners to punish athletes. Dabbs concludes external pressure and punishments are solutions for addressing violence committed by professional athletes. Although this study is dated, it provides good historical data on professional athletes and violent behavior (Dabbs, 1998).

In a study conducted by Moser (2004), several cases of assault perpetrated by professional athletes including Jason Kidd, Mike Tyson and Marcus Webb were investigated and used to explain how to best punish these crimes and prevent future ones. Similar to Dabbs,

Moser uses the cases to explain why athletes commit these acts of violence but focuses primarily on the handling of these cases by teams, leagues and the legal system. This study identifies failures of both teams and the legal system when professional athletes are accused of violence by using specific case studies (Moser, 2004).

Despite the prevalence of athlete violence much of the literature is dated and focuses primarily on athlete violence in general opposed to sexual violence specifically and uses professional athletes only as their subjects.

Student-Athletes and Sexual Assault

The United Educators 2015 study found, “Athletes comprised 15% of the study's perpetrators and fraternity members made up 10%, which is generally representative of student populations,” but “that athletes and fraternity members comprised a disproportionate share of claims involving serial and multiple perpetrators.” A 1996 survey of college judicial affairs offices found that although male student-athletes represented only 3% of the population they comprised 19% of reported perpetrators between 1991 and 1993. After conducting multiple t-tests, the study found there was a significant difference and therefore “indicates an association between collegiate athletic membership and reports of sexual assault to judicial affairs offices” (Crosset, Ptacek, McDonald & Benedict, 1996, p. 173). These studies display the prevalence of student-athletes and sexual assault but also the need to examine the subject further.

Prevention

Previous research has examined the connection between athletes, sexual violence, and prevention and prevention programs. A study conducted by Moynihan, Banyard, Eckstein and Stapleton (2010) found that when 53 male and female student-athletes were given bystander training (training designed to train students that may witness sexual assault or risky behavior that

may lead to assault) it significantly improved bystander confidence and intent to engage in bystander behaviors compared to the 86 students in the control group. Jackson and Davis (2000) detail a type of prevention program specifically for male student-athletes called Preventing Assault by Young Student Athletes. The purpose of their program is to teach student-athletes the distinction between appropriate on-field and off-field behaviors, increase their knowledge on sexual assault and its consequences (Jackson & Davis, 2000). The study explains to student-athletes that they must be conscious of their behavior. They must always ask before engaging in any sexual act, remember that “no means, no” and to have open communication throughout, which includes being aware of non-verbal clues (Jackson & Davis, 2000, p.602). Lastly, student-athletes must be aware of the effect alcohol and other drugs can have in a situation (Jackson & Davis, 2000). These studies show the efforts currently taken by schools to prevent sexual assaults and in turn their efforts to decrease their chance of litigation.

Protection for schools/athletic departments

Rammell (2014) and Osborne (2012) both focus on protecting schools and athletic departments from liability when accusations of sexual harassment or violence occur. Rammell uses *Simpson v. University of Colorado* (2007), *Williams v. Board of Regents* (2007), and the Penn State scandal to illustrate common failures that open schools to litigation. Rammell asserts that schools must have policies in place and must follow them; he explains schools are most unprotected when they do not follow their own procedures. Second, schools must not contain reporting to one department. For example, accusations against athletes should not stay within the athletic department but should follow a campus-wide policy of reporting. Additionally, the university’s Title IX supervisor or coordinator should be in charge of oversight, preventing bias from another faculty or staff member from within the department. Third, annual notice must be

given of the procedures so everyone is aware of them. Finally, active efforts must be made to create a campus culture that does not accept behavior contrary to Title IX (Rammell, 2014).

Osborne (2012) uses the Supreme Court cases, *Gebser v. Lago Vista Independent School District* and *Davis v. Monroe Board of Education* and the 2011 Dear Colleague Letter to establish specific guidelines that should help schools navigate any sexual assault case that arises. Unlike Rammell, Osborne does not use athlete-specific cases, but relies on Supreme Court precedent and Office for Civil Rights guidance documents and applies the concepts to the athletics setting. This article was intended to provide schools and athletic departments with information so they can best comply with the law and protect themselves from liability. The conclusion is that schools should create and follow specific policies that pertain to both students and student-athletes alike, which would therefore prevent athletes from receiving different treatment subjecting institutions to potential liability (Osborne, 2012).

The research regarding sexual assault on campus and involving student-athletes provides an excellent framework for this research. The literature focuses primarily on the prevalence of sexual assault on campus and also why sexual assaults occur (both athlete specific and in the general population). Studies also examine ways to prevent assaults from occurring. These studies highlight what schools are currently doing to prevent and understand sexual violence. By then reviewing the requirements under the law, one can gain a better understanding of what schools are mandated to do. This structure can then be used to better study the Title IX complaints against schools that have mishandled cases of sexual assault.

The Law

The Federal government, Supreme Court and the NCAA have attempted to aid schools in preventing and addressing sexual harassment and violence at their institutions. These guidelines

provide the basis for how schools should be preventing harassment and responding to accusations of sexual violence.

Title IX

Title IX of the Educational Amendments of 1972 (20 U.S.C. §§ 1681) stated, “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied of, or be subjected to discrimination under the Educational Amendments of 1972.” The Department of Health, Education, and Welfare (now the U.S. Department of Education) was responsible for the development of regulations for schools to follow in order to comply with the legislation. General requirements for all educational institutions include a requirement to develop and distribute a notice of non-discrimination stating the school does not discriminate based on sex. Schools are also required to designate at least one employee to ensure Title IX compliance. Finally, schools must adopt and publish grievance procedures for those who believe the school is not in compliance with the law. (“Know Your Rights”, n.d.).

Notable Title IX Supreme Court Cases on Sexual Harassment

Neither the Title IX statute nor the original Regulations expressly addresses sexual harassment. Through a series of cases, it was established that sexual harassment is a form of sex discrimination, and is therefore prohibited under Title IX. Two Supreme Court decisions involving sexual harassment shape policy: *Davis vs. Monroe County Board of Education* (1999) and *Gebser v. Lago Vista Independent School District* (1998).

In 1999, Aurelia Davis, the mother of LaShonda Davis, sued the Monroe County Board of Education stating the school had failed to prevent the sexual harassment of her daughter. Davis argued that the abuse her daughter experienced created an environment that prevented her from receiving the educational benefits she was entitled to under Title IX. The issue before the

Supreme Court was whether a school board can be held responsible under Title IX for student-on-student harassment?

The Supreme Court found in a 5-4 decision that yes, schools can be found liable for damages in cases of student-on-student harassment. Title IX prevents a student from being discriminated against because of sex, and sexual harassment is a form of sex discrimination. Therefore if sexual harassment prevents a student from receiving proper educational benefits the school can be found liable (*Davis vs. Monroe County Board of Education*, 1999).

However, the harassment must be severe. According to the court “an action will lie only for harassment that is so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit” (*Davis vs. Monroe County Board of Education*, 1999, p.633). Additionally, the court found the school was actively indifferent to the accusations and took no action when Davis contacted them regarding the abuse *Davis vs. Monroe County Board of Education*, 1999).

The second case, *Gebser v. Lago Vista Independent School District* (1998) addressed whether a federally funded educational program or activity should be required to pay sexual harassment damages to a student involved in a secret relationship with a member of its staff. In 1998, Alida Star Gebser had a secret sexual affair with a teacher. After the relationship was discovered the teacher was arrested and fired. The Lago Vista Independent School district did not have an official procedure for reporting sexual harassment or any anti-harassment policy, which was required by federal law. Gebser sued the school for damages stating she was discriminated against under Title IX.

The Supreme Court stated that two minimal criteria had to be met for a school to be liable for damages in a sexual harassment suit under Title IX. First, a school district official, with the

ability to correct the wrong, had to have knowledge of the harassment. Second, it has to be proven that the school, despite having knowledge of the harassment, had not responded properly. Gebser did not meet either of those two criteria, because no one had knowledge of the relationship and therefore could not act to stop it. Although Gebser lost this case, the decision indicates that schools must properly respond to acts of harassment once it becomes known.

The Office for Civil Rights: Sexual Harassment Guidance (1997)

In 1997, the Office for Civil Rights released a sexual harassment guidance, which provides best practices for schools to remain Title IX compliant. The guidance explains that sexual harassment is prohibited sex discrimination under Title IX. This applies to all public or private schools that receive federal funds.

The guidance explains how schools can be held liable because of sexual harassment by both teachers and students. Schools can be held liable for teacher-student harassment that is *quid pro quo*. This is when a person of authority (i.e. teachers) uses his or her authority to “force a student to sexual demands” (Sexual Harassment Guidance, 1997, p.3) a school has strict liability. Schools can also be liable under a negligence standard for a hostile environment if the harassment is “sufficiently severe, persistent, or pervasive to limit a student’s ability to participate in or benefit from the education program” (Sexual Harassment Guidance, 1997, p.3). Lastly, schools can be liable if a person of authority knows or should have known of the harassment but the school fails to take “immediate or appropriate corrective action” (Sexual Harassment Guidance, 1997, p.4).

The guidance also lists the things OCR will consider if a case is brought to the department. These details include: if the school has a policy prohibiting sex discrimination, whether the school appropriately investigated or otherwise responded to allegations of sexual

harassment, and whether the school took immediate and appropriate corrective action (Sexual Harassment Guidance, 1997, p.5). A school will be in violation of Title IX if they were given “notice of a sexual hostile environment and fail to take immediate and appropriate corrective action” (Sexual Harassment Guidance, 1997, p. 9).

Lastly, the guidance explains that schools must designate at least one employee to coordinate its efforts to comply with and carry out its Title IX responsibilities, publish grievance procedures that allow students to report sex discrimination and that these grievance procedures must provide for prompt and equitable resolution of sex discrimination complaints. These prompt and equitable grievance procedures should include:

Notice to students, parents and employees including where complaints can be filed; application of the procedure to complaints alleging harassment carried out by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for the major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate, (Sexual Harassment Guidance, 1997, p.14).

The 1997 guidance provides the first information to schools on how to best comply with federal Title IX requirements.

The Office for Civil Rights: The Revised Sexual Harassment Guidance (2001)

In 2001, The Office for Civil Rights published an update to a 1997 guide on sexual harassment. The Revised Sexual Harassment Guidance provided updates including the new Supreme Court decisions *Gebser v. Lago Vista Independent School District* (1998) and *Davis v. Monroe County Board of Education* (1999), as well as greater clarification to various parts of the 1997 guidance.

The guide first defines sexual harassment more specifically as any “unwelcome conduct of a sexual nature” (Revised Sexual Harassment Guidance, 2001, p. 2). The new guidance goes into much greater detail of how schools must act when harassment has occurred. First, schools must decide if the harassment limits a student’s ability to participate in the educational program. In order to do this schools must decide the degree to which the harassment affected the students’ education and the type, frequency and duration of the harassment, the relationship between harasser and harassed, the number of individuals involved, the age and sex of the harasser and harassed, the size of the school, location of incident and context, other incidents at the school and the incidents of gender-based but non-sexual harassment (Revised Sexual Harassment Guidance, 2001, p. 6-7).

Schools’ responsibilities to address sexual harassment are also detailed in more depth. The guidance describes two types of harassment: quid pro quo harassment and hostile environment harassment. Quid pro quo harassment, which was also described in the 1997 guidance, “occurs if a teacher or other employee conditions an educational decision or benefit on the student’s submission to unwelcome sexual conduct” (Revised Sexual Harassment Guidance, 2001, p. 5). Harassment that “does not explicitly or implicitly condition a decision or benefit,” is hostile environment harassment (Revised Sexual Harassment Guidance, 2001, p. 5). Teacher-student harassment can be either quid pro quo harassment or hostile environment harassment, while student-student harassment tends to be only be hostile environment harassment, as students do not often have authority over other students (Revised Sexual Harassment Guidance, 2001).

“Notice” of harassment is also defined and discussed. Notice can include a filed grievance, a contact with appropriate personnel, a responsible employee witnessing the

harassment or in a more indirect way such as a distributed flyer (Revised Sexual Harassment Guidance, 2001, p. 13).

Greater attention is given to schools' response after sexual harassment is reported. Schools must "take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again (Revised Sexual Harassment Guidance, 2001, p. 15). How to respond to reports of harassment by students or parents, as well as harassment witnessed by a reasonable employee are also explained. The school must take immediate steps to investigate the harassment and provide appropriate measures for the complainant. This includes placing the students in separate classes and/or on campus housing. If the investigation shows harassment occurred, immediate "corrective actions must be taken" (Revised Sexual Harassment Guidance, 2001, p. 16). Steps must be taken to "eliminate any hostile environment that has been created" (Revised Sexual Harassment Guidance, 2001, p. 16). Lastly, efforts must be made to prevent any retaliation against the complainant or any witnesses.

Similar to the 1997 guidance, the 2001 guidance goes into great detail explaining what constitutes prompt and equitable grievance procedures. The 2001 guidance lists the same six requirements but emphasizes that a grievance procedure "cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint" (Revised Sexual Harassment Guidance, 2001, p. 20).

Lastly, a new section entitled "due process rights of the accused," was added. This section reminds schools of the federal rights of the accused, including the right to due process. The accused's legal rights must be balanced with the rights of the complainant. Therefore,

grievance procedures must ensure both the Title IX rights of the complainant as well as the due process rights of the accused (Revised Sexual Harassment Guidance, 2001, p. 22).

Overall the 2001 Revised Sexual Harassment Guidance touches on the same subjects as the 1997 guidance. However, it updates schools on the most recent Supreme Court cases as well as provides more specifics and greater detail throughout to better clarify how schools can best comply with Title IX requirements.

The Dear Colleague Letter (2011)

The Dear Colleague Letter, published in 2011, created a framework for schools to implement in order to maintain their Title IX compliance. The letter provided greater detail than the previous guidance published by the OCR.

For each of the Title IX requirements the DCL provides greater insight into how to best comply. The notice of nondiscrimination must state specifically that the school “does not discriminate on the basis of sex in its education programs and activities” (Dear Colleague Letter, 2011, p. 6-8). It must also include the name, office address, telephone number, and email address of the Title IX coordinator (Dear Colleague Letter, 2011, p. 6-8).

The DCL also explains what “prompt and equitable” grievance procedures means. Before a complaint is filed, a notice of the procedures must be distributed to students, parents (if the school has elementary and secondary students) and employees. This notice should include where complaints can be filed (Dear Colleague Letter, 2011, p. 9-14). An adequate, impartial investigation should then be conducted. This investigation must include the opportunity for both parties to present evidence and witnesses. Time frames must also be established for various stages in the process. A notice detailing the results of the investigation should be distributed to

both parties and then school should take steps to prevent any retaliation against the accuser, as well as future sexual assaults (Dear Colleague Letter, 2011, p. 9-14).

The next section of the DCL provides suggestions on education and prevention, before, during and after an investigation. According to the DCL educational prevention programs should include “practical information about how to identify and report sexual harassment and violence” (Dear Colleague Letter, 2011, p. 6). These programs should be required for new students, resident assistants, coaches, athletes and anyone else that could reasonably come in contact with sexual harassment (Dear Colleague Letter, 2011, p. 6).

Throughout an investigation, the Title IX coordinator should be in regular communication with any law enforcement involved in investigating sexual violence allegations. A committee of students and officials to oversee the investigation and implement the school’s policy should also be created (Dear Colleague Letter, 2011, p. 17-18). The DCL provides greater detail for schools to follow than the previous OCR guidance.

Since the Dear Colleague Letter was issued the Office of Civil Rights has received hundreds of complaints citing schools’ mishandlings of sexual assault cases. In 2014, the Department of Education released a list of 57 schools under investigation for the mishandling of multiple cases. This number has steadily grown to over a 100 in the past year.

In 2013, OCR sent an updated Dear Colleague Letter, which provided greater detail on preventing retaliation against a complainant. This guidance includes providing training for employees to prevent retaliation, distributing information to employees about the prohibition of retaliation (this could include “relevant policies and procedures”) and creating a strategy to distribute to the public as well (Dear Colleague Letter, 2013).

The statutes and Supreme Court decisions provide the framework for what schools must do to remain compliant. The multiple guidance, then provide clarity on how best to comply with these federal regulations. These documents detail exactly what schools should be doing, which can then be used to see if schools are actually complying.

NCAA: Addressing Sexual Assault and Interpersonal Violence

As sexual violence involving student-athletes has become more and more prevalent athletic departments have found themselves increasingly involved in investigations. In 2014, the NCAA published a guidebook entitled, “Addressing Sexual Assault and Interpersonal Violence: Athletics’ Role in Support of Healthy and Safe Campuses,” to aid and instruct athletic departments on how to best handle instances of sexual violence involving student athletes. The guideline is meant to explain to athletic departments that they can be an additional resource during sexual violence investigations, but only a resource. They should not be conducting the investigation or interfering in any way (Wilson, 2014).

The guideline gives several suggestions on how athletic departments can do this; specifically, how they should act before, during and after allegations. Athletic departments should know and follow all campus protocols for reporting incidents and members of the athletic department should immediately report any suspected sexual violence to the appropriate campus authority and must also remain compliant with all federal and state regulations. Athletic departments must also educate all student-athletes, coaches and staff about prevention, intervention and response to sexual violence. Most importantly, it must “cooperate with but not manage, direct, control or interfere with investigations into allegations of sexual-assault” (Wilson, 2014, p.iv). Additionally, athletics staff members must follow all the same federal requirements as other school staff members in regards to reporting suspected sexual harassment.

Athletics department staffs are not the appropriate officials to report a case to, even if it involves a student-athlete.

The NCAA goes on to detail the responsibilities of athletics programs to remain compliant. Athletics departments must educate all student-athletes, coaches and staff on sexual harassment prevention, intervention and response. Athletics administrators must eliminate any hostile environments and ensure all areas and facilities under athletics supervision are safe, including athletics buildings, locker rooms, fields, and stadiums. When incidents do occur, departments must take immediate action and cooperate with campus offices responsible for responding to such incidents (Wilson, 2014, p.14-15).

The guide also reminds member institutions what they must do in order to comply with Title IX and the other federal guidelines: one employee must be designated as a Title IX coordinator, distribute a notice of nondiscrimination; publish grievance procedures that provide for a prompt and equitable resolution, create and implement education programs, and identify who complaints should be directed to and security authorities for Title IX and Clery Act compliance. It provides additional information for athletic departments as well including ensuring concepts of consent, confidentiality and standard of proof are communicated to students and faculty, and that interim and disciplinary measures are planned. The bottom line of the NCAA guideline is athletic departments should, “cooperate with but not manage, direct, control or interfere,” with investigations, educate student-athletes, coaches and staff, remain compliant with all federal and state regulations, and be an additional resource for students (Wilson, 2014, p. iv).

Based on the guidelines provided by the Office of Civil Rights, legal research (Osborne, 2012) and the NCAA a general set of rules can be established for schools and athletic

departments to follow. To begin with, schools must designate at least one employee to be the Title IX coordinator. The name and contact information of this employee must be widely distributed and readily available to all students and staff. A notice of nondiscrimination and grievance procedures that provide for a prompt and equitable resolution of complaints must also be widely distributed and available to all. These notices should be published on the school's website or anywhere else that will allow it to be easily found.

Educational programs should also be developed and implemented for all students, faculty and staff that could come in contact with sexual harassment. These programs should ensure concepts of consent; confidentiality and standard of proof are understood. They should also explain ways for students and employees to recognize sexual harassment and how to report it.

Lastly, if a complaint is filed all procedures and disciplinary measures should be followed. Remedies for the complainant should also be established. These remedies should include the understanding that the accused or the accuser's friends may retaliate. Procedures should be put in place in case this occurs. These procedures include: changing academic, residential or work assignments and providing transportation for the complainant. These options must be expressed to the complainant and be readily available.

Athletic departments specifically should follow the same protocol as its school. However, as the NCAA document specifically states, the athletic department should function as an additional resource during an investigation, not as the driving force.

Theoretical Framework

This research will be examined using a compliance theory framework, why organizations do or do not follow rules. Specifically, what are the processes used by schools and why are they not in compliance?

This research will primarily focus on the theories of managerialism and deterrence. Managerialism theory explains that, “Non-compliance is inadvertent, stemming from lack of capacity or resources, ambiguous, commitments and provisions, and time lags between commitment and performance” (Zaelke, 2005, p. 57-58). This would explain that schools are not in compliance unintentionally; they may just lack the knowledge of where their procedures fall short.

The deterrence theory states, “there must be a credible likelihood of detecting violations; swift, certain, and appropriate sanctions upon detection; and a perception among the regulated firms that these detection and sanction elements are present” (Zaelke, 2005, p. 59). This theory would mean schools are or are not remaining compliant with federal regulations because they fear or do not fear there will be punishment for not following them.

Lastly, organizational culture could have an affect on the actions of institutions. Organizational culture is “the values and behaviors that contribute to the unique social and psychological environment of an organization” (Business Dictionary, 2015). Organizational culture can influence the way employees and customers are treated, the “extent to which freedom is allowed in decision making” and “how power and information flow through its hierarchy,” (Business Dictionary, 2015). Most importantly culture affects “how committed employees are towards collective objectives,” (Business Dictionary, 2015). In this case, the culture of a school could directly relate to how employees react when hearing about an assault or during an investigation.

Conclusion

The law, legal research, and NCAA guidance generally focuses on what schools should do before a sexual assault occurs (develop policies and procedures and provide education and

prevention programs) and what needs to happen when an assault occurs (immediate appropriate response, which follows previously implemented grievance procedures). These documents, along with research on the subject, provide a framework to determine whether schools that currently or recently encountered an allegation of sexual assault committed by a student-athlete responded appropriately. Did they have education and prevention programs? Do they follow the guidelines put in place for them to follow? If not, where are they falling short? The managerialism theory would view violations as inadvertent with the belief that schools simply were not aware their policies were not in compliance. If this is true then looking at the unintentional mistakes made by certain schools would aid in other schools not making that same mistake. If viewed through the deterrence theory schools should follow the regulations because they believe a Title IX violation and OCR investigation would occur if they are not in compliance, or they are not in compliance because they do not believe this is a threat. Lastly, if viewed through an organizational culture theory lens, schools are not in compliance due to a culture that does not prioritize sexual assault.

CHAPTER 3: METHODOLOGY

Subjects

This study focuses on cases of sexual assault where the accused was a student-athlete in order to examine how schools handled the cases and whether there are similarities in these errors. The data pool includes cases only after the 2011 Dear Colleague Letter. The DCL provided schools with adequate information to become compliant with federal law, and therefore only complaints after this guidance are relevant to the study. These cases were identified from the list of schools under investigation, published and updated by the Office of Civil Rights as well as news articles. Lawsuits and Title IX complaints that were readily available through the Internet and Bloomberg were utilized, as well as news articles to supplement this information for cases that did not involve litigation.

Data Collection and Organization

39 separate cases were analyzed for this study. They were first identified primarily using news searches. All information was read, coded and recorded in Microsoft Excel. The codes arose from recording every error in a case. If the error appeared in a subsequent case that case would be added to that list. If a new error was found a new code was created. The codebook with the definitions of each code can be found as Appendix C. A qualitative analysis was then implemented to observe any similarities in the cause for the complaints. A list of the 39 cases as well as the errors coded for each case can be found as Appendix D.

Data Analysis

The content gathered from the OCR complaints through the use of the codebook was then analyzed using descriptive statistics. Frequency was specifically used to establish which of the codes appeared most often in the complaints. This information was then used to establish what criteria was most often not followed and if there were any similarities in what criteria schools did not follow prompting a Title IX investigation and OCR complaint.

CHAPTER 4: RESULTS

A review of all OCR sexual assault complaints and media reports yielded 39 sexual assault cases occurring after 2011 involving 35 different institutions, which were analyzed for this study. Results are provided in Table 1. The dates of the assaults were analyzed first to ensure that all events occurred after the Dear Colleague Letter was distributed in 2011. The earliest case occurred at the Air Force Academy in May 2011 and the most recent case occurred October 20, 2015 at the University of Alaska-Fairbanks.

TABLE 1: DESCRIPTIVE DATA

	%	<i>n</i>
Athletic Team Accused Played On		
<i>Percentages derived out of the 39 cases</i>		
Football	51.28%	20
Basketball	23.08%	9
Hockey	5.13%	2
Track & Field	5.13%	2
Soccer	2.56%	1
Wrestling	2.56%	1
Rowing	2.56%	1
Not Specified	7.7%	3
Previous Allegations		
<i>Percentages derived out of the 39 cases</i>		
Yes	15.38%	6
No	84.62%	33
Where Assault Occurred		
<i>Percentages derived out of the 39 cases</i>		
On Campus	35.9%	14
Off Campus	35.9%	14
Not Specified	28.21%	11

Alcohol Involvement

Percentages derived out of the 39 cases

Yes	33.33%	13
No	17.95%	7
Not Specified	48.72%	19

OCR Investigation

Percentages derived out of the 39 cases

Yes	46.15%	18
No	53.85%	21

Lawsuit

Percentages derived out of the 39 cases

Yes	33.33%	13
No	66.67%	26

Results

Percentages derived out of the 39 cases

Any action	89.74%	35
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Results-Criminal

Percentages derived out of the 39 cases

Criminal Proceedings	35.9%	14
Declined by Grand Jury	20.51%	8

Results-Civil

Resulted in School Reaction	71.79%	28
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Percentage derived out of the 39 cases

Punishment by Institution	64.1%	25
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Percentage derived out of 28 cases with a school reaction

Punishment By Institution

Percentages derived out of 25

cases with a punishment by institution

Suspension	32%	8
Expulsion	52%	13
Other	8%	2
No punishment	8%	2

All 39 cases alleged sexual assault. Perpetrators primarily played on either their school's football (51.38%) or basketball teams (23.08%) and about 15% were repeat offenders. Assaults

occurred both on and off campus at the same rate (35.9%). Alcohol was involved more often than not (33.33%), however, the majority of cases (48.72%) did not state whether it played a role.

Almost all 39 cases (89%) resulted in some action, with 71.79% cases resulting in a school action and only 35.9% in criminal proceedings. About 33% of the 39 cases resulted in a lawsuit against the school (4 of which were filed by the accused student-athlete). About 46% of the involved schools either were or are currently under investigation by OCR. Finish describing the reported actions taken.

How have schools fallen short of compliance?

For each case, the school's process was examined whether it was Title IX compliant; cases were coded for each individual failing (Table 2). Lawsuits as well as news articles from these cases were examined and 23 codes were developed to explain what occurred through the process (Appendix C). Of the 23 codes, 21 were unique ways schools fell short of compliance. The two additional codes included: no known issues in how the case was handled (33.33% of cases resulted in this) and no action taken after an allegation. Only one case received this coding, the result after Duke University basketball player Rasheed Suliamon was accused of sexual assault in February 2014. The school took no action, however, he was dismissed from the team soon after reportedly for a separate team rules violation. Suliamon then transferred to the University of Maryland.

The most codes (nine) were developed for mishandlings by schools. One such error was due to the creation of a "hostile sexual environment." Schools are obligated to provide a safe environment for students to learn under Title IX. Schools were, also, accused of not following their policies they had put in place (17.95%), not having adequate policies or sanctions (5.13%), investigations that were not thorough or separate from a criminal investigation (17.95%), or having a process that did not provide a prompt resolution (15.38%). Schools also failed to train

staff to reasonably handle accusations of sexual assault or showed a “deliberate indifference” to accusations (20.51%). In a few cases, staff, were found to have had knowledge of an assault but not act in response to that knowledge (23.08%).

Multiple school (not athletic department) administrators were found to have attempted to cover-up an allegation against a student athlete (17.95%), attempted to delay hearings or investigations to allow the student-athlete to participate in events (7.69%), or ignored previous allegations of sexual assault committed by a student-athlete (12.82%). Only two errors were athletic department specific: “failure to report an incident,” which was found in four cases and “over involvement of staff,” which was found in six cases.

Three issues were related to the treatment of victims. Four schools (10.26%) were found to have not properly informed victims of their rights. For example, the lawsuit filed against Boise State alleged the school “failed to inform her of her right to file a criminal complaint against the BSU perpetrator, and even failed to provide her with information regarding available mental health services” (Moeller, 2015). The *Huffington Post* quoted a lawsuit against Brown University, “the university “led her to believe she had a choice of either pursuing a school investigation that would potentially remove her alleged attacker from campus or going to police, but not both” (Kingdade, April 4, 2014). Additionally, schools were found to allow continuing harassment of victims (33.33%) and in some cases even attempted to persuade them to not press charges (12.82%).

Victims were not the only ones complaining of improper treatment; four issues were found due to the unfair treatment of accused student-athlete perpetrators. These included due process violations (5.13%), unfair suspensions (5.13%), arbitrary and capricious sentences (2.56%) and unfairly shifting the burden of proof onto the accused (2.56%).

TABLE 2: Findings Regarding Schools' Process of Handling Cases of Sexual Assault

	Number of Cases	%
No issues with process	13	33.33%
Continued Harassment (either from continuous appeals or retaliation)	13	33.33%
Hostile Environment	10	25.64%
A person of authority had "actual knowledge" of an incident but did nothing	9	23.08%
"Deliberately Indifferent"	8	20.51%
Didn't follow school's policies	7	17.95%
A cover-up to protect an athlete	7	17.95%
No true separate or full investigation conducted by school	7	17.95%
Failure to train staff	7	17.95%
Action was not prompt (slow in either opening or completing an investigation and/or hearing)	6	15.38%
Over involvement of athletic department and/or coaches during the process	6	15.38%
Attempt to persuade victim to not press charges	5	12.82%
Known past allegations of sexual misconduct	5	12.82%
Inadequate Policies	5	12.82%
Victim was not properly informed of his/her rights	4	10.26%
Failure to report an incident (athletic department and/or coaches)	4	10.26%
A clearly delayed investigation and/or hearing to aid athlete	3	7.69%
Due process violations (accused)	2	5.13%
Unfair suspension (accused)	2	5.13%
Inadequate sanctions	2	5.13%
Arbitrary and Capricious decisions (accused)	1	2.56%
Unfair shift of burden of proof	1	2.56%
No action or unknown	1	2.56%

What similarities, if any, are there between issues found with the handling of cases?

All but three codes resulted in multiple cases failing to comply in that way (found in Table 2). The most common mistake (33.33% of cases) was not combatting continuing harassment or retaliation following an allegation. According to Title IX schools must prevent retaliation or additional harassment after an accusation. This was cited as an issue by both

accusers and accused. According to a lawsuit filed by a track athlete at Boise State she "not only had to see the BSU perpetrator at practices following the rape, she also had to endure open sexual taunting by him at those practices"(Boone, 2014). Former Xavier basketball player Dez Wells stated he had "been "branded" as a sexual predator and has been heckled by opposing fans at road games on the subject matter" (Auerbuch, 2013). Multiple lawsuits also described the ability for those found responsible by schools to file multiple appeals after the verdict, causing additional harassment of the victims.

Schools were also often at fault for creating a hostile environment for students. This was true at ten schools. Schools failed to remedy environments that allowed for these assaults to occur. Many had also facilitated environments that did not encourage victims to speak up and report assaults. The current lawsuit against the University of Tennessee states "a hostile sexual environment was created by this procedure and policy as varsity athletes were condoned and encouraged to have parties with alcohol and drugs, entertain recruits, provide alcohol to underage female students and commit sexual assaults with no discipline or deterrence against committing sexual assaults as perpetrators of assaults faced no serious consequences." (*Jane Doe, et al. v. University of Tennessee*, 2016, p.3). A complaint against the University of Kentucky alleged, "the University of Kentucky has condoned, permitted and engaged in a hostile environment against the victim of a sexual assault" (Blackford, 2015).

Nine cases alleged that a person of authority had "actual knowledge" of the crime but did nothing about it. According an affidavit by Boise State Athletic Director, Mark Coyle, obtained by the Idaho Statesman: "An investigation headed by the Office of the Dean of Students determined that Coach Hardy was aware of allegations of sexual assault on a female track athlete at an off-campus house party by "current or former members of the men's track team," but he did not report the incident to university authorities" (Moeller, 2015).

“Deliberate indifference,” was cited by eight cases. The lawsuit filed against Florida State University due to the allegation against Heisman Trophy winner Jameis Winston stated the school was “deliberately indifferent” when the allegation was made (*Jane Doe v. The Florida State University*, 2015, p.32). A second lawsuit filed against the University of New Mexico wrote, “the manner in which UNM administrators, including OEO, responded to the plaintiff’s report demonstrates deliberate indifference, and willful decisions and acts to not end sexual harassment under Title IX” (*Plaintiff v. The University of New Mexico Board of Regents*, 2015, p. 2).

Schools failed to train their own staff or did not follow their own policy in seven cases. The lawsuit filed by Dez Wells questioned the ability of Xavier staff to handle rape kits. A statement to the press regarding the findings of an internal investigation at the University of Alaska-Fairbanks, stated, “for years, we failed to follow our own student discipline policies for the most serious violations of the student code of conduct: assault, burglary and rape” (Caldwell, 2015).

An attempt to cover-up an allegation to protect a student-athlete or the lack of a separate or full investigation also occurred in seven cases. At Boise State: “the athletic department or key members of athletic department had implemented a policy of protecting athletes who had been accused of sexual assaults” according to an article in the Idaho Statesman (Moeller, 2015). According to a *New York Times* article, Hobart and William Smith Colleges took “just 12 days to investigate the rape report, hold a hearing and clear the football players” (Bogdanich, July 2014).

Six cases involved the over involvement of the athletic department and/or coaches. According to the lawsuit against the University of New Mexico, “UNM administrators, including the Office of Equal Opportunity (“OEO”) and the Athletic (sic) Department, interfered with the police investigation of these rapes. UNM administrators demonstrated more concern with

returning its football players to team play, protecting the athletic department, and protecting males” (*Plaintiff v. The University of New Mexico Board of Regents*, 2015, p.2).

Although it is important to conduct a thorough investigation of a complaint, Title IX also requires a prompt resolution to a complaint. Six cases did not provide this. For example, it took one year after Jameis Winston was identified to police for school officials to sit down and speak with him. It was almost one year after that before the school held a hearing on the sexual assault complaint (Bogdanich, April 2014).

Far less often (but still found in five cases), school officials were found to attempt to persuade the victim not to press charges, or knew of past allegations of sexual assault involving the student-athlete but did nothing to mitigate this issue. University of Alabama-Huntsville police told one victim, “You will never win in court”, that ““people who hang out at the hockey dorms share girls all the time,” and that it “was completely normal and okay to have sex with someone that [the plaintiff didn’t] know” (*Jane Doe v. The University of Alabama in Huntsville*, 2014, p. 3-4). The victim’s lawyer in the Florida State University case stated the investigator told her client “that because Tallahassee was a big football town, her client would be ‘raked over the coals’ if she pursued the case” (Bogdanich, April 2014). The lawsuit against Tulsa University alleges “Despite its knowledge of at least one, and as many as three prior allegations of sexual assault and misconduct perpetrated by Swilling, TU undertook zero investigation of his conduct and permitted Swilling to continue to attend TU,” (*Ross v. The University of Tulsa*, 2014, p.5).

Five cases also found that schools had inadequate policies before the assault even occurred. All three lawsuits filed by accused student-athletes cite this as a reason for their lawsuits. Corey Mock, a former wrestler at the University of Tennessee at Chattanooga cited the school’s “improper shift of the burden of proof” which “imposed an untenable standard upon Mr. Mock to disprove the accusation” (*Mock v. University of Tennessee at Chattanooga*, 2015, p.23).

Victims also faced similar issues. The *New York Times* wrote of Hobart and William Smith Colleges, “Whatever precisely happened that September night, the internal records, along with interviews with students, sexual-assault experts and college officials, depict a school ill prepared to evaluate an allegation so serious” (Bogdanich, July 2014).

What changes can schools make to better comply with these guidelines?

Based on the trends found in this study, schools can better comply both prior to an allegation occurring as well as after a complaint as been filed.

Schools must ensure their policies for reporting, investigating, conducting hearings and administering punishments are adequate (Dear Colleague Letter, 2011, p. 9-10). Specifically, schools must have set information that is readily available that explains the process of reporting for victims (Dear Colleague Letter, 2011, p. 9). Then additional information must be available that thoroughly explains the options for pressing charges and the process that will occur with each option (Dear Colleague Letter, 2011, p.10). Information regarding accommodations to prevent continued harassment must also be included, including how to deal with the accused during the investigative process (Dear Colleague Letter, 2011, p. 15). For example, should the accused be immediately suspended following an accusation or should they be allowed to stay on campus?

Additionally, timelines should be set within these policies to ensure the process moves at a reasonably prompt rate (Dear Colleague Letter, 2011, p.12-13). Hearing organization and punishments must also be included in these policies. Many institutions do not find out that their school’s code of conduct does not have an appropriate punishment for sexual assault until one occurs. Lastly, a procedure for appeals must also be in place. This must include the ability to appeal for the accused but in a way that does not additionally victimize the complainant.

It is also important to have one policy designed for all students, with no special treatment for student-athletes (Wilson, 2014, p. 24-25). However, when a student-athlete is accused it is equally important to be aware that many more people are going to be involved including coaches, teammates and other athletic department personnel. Therefore, policies that dictate how these groups should act when an allegation occurs should be included (Wilson, 2014, p. 22). For example, once an assault is reported, the athletic department should have no continuing presence during the investigation. Whether a student-athlete is immediately suspended from a team should also be established prior to an allegation.

It is important to create an environment and culture that combats and reports sexual (Wilson, 2014, p. 11). Having policies for when an assault occurs is important, however, they are useless if a school has an environment that covers up or discourages reports of sexual assault. The culture within a school and athletic department must be one of reporting as soon as one has knowledge of an incident. Having knowledge of an assault and either not reporting it or covering it up were both huge issues in many of these cases.

Although, the majority of issues within these cases were found from lawsuits filed against schools by victims of sexual assault, it is important to ensure that policies provide for both the victim and accused's rights. The accused's due process must be ensured throughout the process (Revised Sexual Harassment Guidance, 2001, p. 31).

CHAPTER 5: DISCUSSION

United Educators examined 305 reported incidents from 104 institutions they insured between 2011 and 2013, a similar timeline to this study. This research provides an excellent overview of the sexual assault landscape on college campuses, and therefore provides a good guideline to compare assaults committed by student-athletes to the rest of the collegiate population. The United Educators study found schools investigated 77% of cases, and of the students then found responsible, 43% were expelled and 39% were suspended. This study saw a slightly lower rate of school involvement (71.79%) and suspension (32%), but higher rates of expulsion (52%).

The UE study found that 60% of assaults occurred off-campus and 41% occurred at off campus parties. This study found that only 35.9% of assaults occurred off-campus (although 28.21% of cases did not specify). Seventy-eight percent of the cases researched by the UE involved alcohol, while only 33.3% of the cases in this study involved alcohol. However, similarly to location, 48.72% did not specify whether alcohol was involved, so the number could be much higher. Repeat offenses occurred in less frequency in this study: 20% of offenders were found to be repeat offenders in the UE study, while 15.38% were found in this study.

Theoretical Framework

There were many errors committed by the schools in these studies. Why the schools committed these errors could be due to a multitude of reasons. One reason is based on the

managerialism theory, or that “Non-compliance is inadvertent, stemming from lack of capacity or resources, ambiguous, commitments and provisions, and time lags between commitment and performance” (Zaelke, 2005, p. 57-58). This theory seems unlikely due to the limitations put on this study. Only cases after the Dear Colleague Letter was published in 2011 were used. The DCL should have provided schools enough information to not lack the resources needed to remain compliant. However, multiple mistakes were due to inadequate policies, procedures and sanctions, procedures that were not prompt and not properly informing victims of their rights. Therefore, schools do not lack the information of how to remain compliant but do not have sufficient resources within their own guidelines to remain compliant throughout a case.

Although the schools had the information necessary in 2011, educational institutions are often slow moving bureaucracies and resources are generally not instantaneously provided. Likewise, changing policies and procedures often requires forming a representative committee, fact-finding, discussion, drafting policies and procedures, debate and open forums for comments, then finally adoption and publication.

Deterrence theory provides a better framework: “there must be a credible likelihood of detecting violations; swift, certain, and appropriate sanctions upon detection; and a perception among the regulated firms that these detection and sanction elements are present” (Zaelke, 2005, p. 59). Title IX was enacted in 1972. The sexual harassment regulations and guidance documents have been available since the first guidance was published in 1997 and since the Dear Colleague Letter was published in 2011. High profile cases involving student-athletes and sexual assault were publicized as early as the 1980s. Schools and school administrators have definitely demonstrated a lack of commitment to Title IX compliance, and only the most recent flood of complaints, OCR investigations, and lawsuits have created a perception that “detection and

sanction elements are present.” The amount of missteps that involved blatant over-involvement of athletics staff, cover-ups to ensure student-athletes could still participate, and attempts to persuade victims to not press charges detailed in this research indicates that many schools do not feel these adverse efforts will be discovered.

The last source for non-compliance is the culture of the school and athletic department. Many of the problems found in these cases were due to a hostile environment on campus. This includes how athletic and non-athletic administrators act such as: not reporting assaults, recruiting players that had previous allegations of sexual assault, deliberate indifference, continued harassment and creating a generally hostile sexual environment. The current lawsuit filed against the University of Tennessee alleges the culture of allowing student-athletes to get away with sexual assault created an unsafe environment of other students:

Incidents involving athletes and misconduct, including specifically sexual violence, have been part of a hostile sexual environment and culture of the University of Tennessee Athletic Department for more than a decade. Plaintiffs aver that the University’s actions affirmatively and deliberately created (and creates) a hostile discriminatory sexual environment for female students and acted with deliberate indifference in its response to incidents of sexual assault in a pattern, practice, practice, policy, and custom of grossly inadequate discipline and resolution in specific favor of male, “major sports” athletes.

(Jane Doe, et al. v. University of Tennessee, 2016, p.7)

Adequate policies and procedures are only effective if the culture of an organization promotes following those rules and considers preventing and handling sexual a priority.

Limitations

Information regarding cases of sexual assault is always difficult to obtain, as seen in the amount of information that was unknown or not specified in this study. Although Freedom of Information requests to the Office of Civil Rights for the Title IX complaints were made six months prior to the study, OCR merely replied with an acknowledgement of the request and these complaints and/or resolutions were not provided. Therefore, only information that was readily (publicly) available was used in this study. Lawsuits provided significant information where applicable, however, news articles were relied on for cases that did not involve suits or when suits were not available. While it was assumed that the news source information was reliable, the amount of detail and advocacy perspectives of the writer may have omitted important facts.

Many of the cases were ongoing and few outcomes were reached at this time that would provide complete information regarding the case and its full progression. Additionally, because the data for the study was predominately provided in complaints and news articles about complaints, the victim's perspective was much more heavily represented. Only four lawsuits from accused student-athletes were found for this study and only one case (Brandon Austin at Oregon University) provided lawsuits from both the victim and accused student-athlete. Additionally, very few schools spoke on the allegations, other than to submit statements similar to the one published by Boise State:

Boise State University leaders are aware of the allegations and have taken them very seriously since first learning of them. Boise State does not tolerate sexual assault or harassment, and in this case took immediate action to eliminate the harassment, prevent its recurrence and address its effects. Our leaders are committed to providing a safe

learning environment for all students and have instituted programs and policies to prevent discrimination in all its forms. We also are committed to investigating and addressing complaints when they occur. (Boone, 2014)

Therefore, without completed investigations or litigation, it was difficult to establish with complete certainty the happenings surround these cases.

Future Research

Sexual assault will continue to be an issue on college campuses and therefore athletic departments. Although there are numerous studies that have attempted to explain why they occur it will be just as important to continue to study cases that have occurred and new cases that arise to examine what was done correctly and incorrectly to better prepare institutions for when it occurs on their campus. Further research using public records requests to gain access to all the OCR investigation information for these and future cases of sexual assault would provide even more insight into the handling of sexual assault. Additional qualitative studies as to why athletic departments and schools react the way they do to allegations would be beneficial as well, to understand all sides of sexual assault cases on campus and provide better solutions for reducing these tragic events from occurring.

Appendix B: Dear Colleague Letter



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

April 4, 2011

Dear Colleague:

Education has long been recognized as the great equalizer in America. The U.S. Department of Education and its Office for Civil Rights (OCR) believe that providing all students with an educational environment free from discrimination is extremely important. The sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and, in the case of sexual violence, is a crime.

Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX. In order to assist recipients, which include school districts, colleges, and universities (hereinafter "schools" or "recipients") in meeting these obligations, this letter¹ explains that the requirements of Title IX pertaining to sexual harassment also cover sexual violence, and lays out the specific Title IX requirements applicable to sexual violence.² Sexual violence, as that term is used in this letter, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape,

¹ The Department has determined that this Dear Colleague Letter is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), *available at*: http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/012507_good_guidance.pdf. OCR issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights, under the civil rights laws and implementing regulations that we enforce. OCR's legal authority is based on those laws and regulations. This letter does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to us at the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202.

² Use of the term "sexual harassment" throughout this document includes sexual violence unless otherwise noted. Sexual harassment also may violate Title IV of the Civil Rights Act of 1964 (42 U.S.C. § 2000c), which prohibits public school districts and colleges from discriminating against students on the basis of sex, among other bases. The U.S. Department of Justice enforces Title IV.

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sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX.

The statistics on sexual violence are both deeply troubling and a call to action for the nation. A report prepared for the National Institute of Justice found that about 1 in 5 women are victims of completed or attempted sexual assault while in college.³ The report also found that approximately 6.1 percent of males were victims of completed or attempted sexual assault during college.⁴ According to data collected under the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092(f), in 2009, college campuses reported nearly 3,300 forcible sex offenses as defined by the Clery Act.⁵ This problem is not limited to college. During the 2007-2008 school year, there were 800 reported incidents of rape and attempted rape and 3,800 reported incidents of other sexual batteries at public high schools.⁶ Additionally, the likelihood that a woman with intellectual disabilities will be sexually assaulted is estimated to be significantly higher than the general population.⁷ The Department is deeply concerned about this problem and is committed to ensuring that all students feel safe in their school, so that they have the opportunity to benefit fully from the school's programs and activities.

This letter begins with a discussion of Title IX's requirements related to student-on-student sexual harassment, including sexual violence, and explains schools' responsibility to take immediate and effective steps to end sexual harassment and sexual violence. These requirements are discussed in detail in OCR's *Revised Sexual Harassment Guidance* issued in 2001 (*2001 Guidance*).⁸ This letter supplements the *2001 Guidance* by providing additional guidance and practical examples regarding the Title IX requirements as they relate to sexual violence. This letter concludes by discussing the proactive efforts schools can take to prevent sexual harassment and violence, and by providing examples of remedies that schools and OCR may use to end such conduct, prevent its recurrence, and address its effects. Although some examples contained in this letter are applicable only in the postsecondary context, sexual

³ CHRISTOPHER P. KREBS ET AL., THE CAMPUS SEXUAL ASSAULT STUDY: FINAL REPORT xiii (Nat'l Criminal Justice Reference Serv., Oct. 2007), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>. This study also found that the majority of campus sexual assaults occur when women are incapacitated, primarily by alcohol. *Id.* at xviii.

⁴ *Id.* at 5-5.

⁵ U.S. Department of Education, Office of Postsecondary Education, Summary Crime Statistics (data compiled from reports submitted in compliance with the Clery Act), available at

<http://www2.ed.gov/admins/lead/safety/criminal2007-09.pdf>. Under the Clery Act, forcible sex offenses are defined as any sexual act directed against another person, forcibly and/or against that person's will, or not forcibly or against the person's will where the victim is incapable of giving consent. Forcible sex offenses include forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. 34 C.F.R. Part 668, Subpt. D, App. A.

⁶ SIMONE ROBERS ET AL., INDICATORS OF SCHOOL CRIME AND SAFETY: 2010 at 104 (U.S. Dep't of Educ. & U.S. Dep't of Justice, Nov. 2010), available at <http://nces.ed.gov/pubs2011/2011002.pdf>.

⁷ ERIKA HARRELL & MICHAEL R. RAND, CRIME AGAINST PEOPLE WITH DISABILITIES, 2008 (Bureau of Justice Statistics, U.S. Dep't of Justice, Dec. 2010), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/capd08.pdf>.

⁸ The *2001 Guidance* is available on the Department's Web site at <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>. This letter focuses on peer sexual harassment and violence. Schools' obligations and the appropriate response to sexual harassment and violence committed by employees may be different from those described in this letter. Recipients should refer to the *2001 Guidance* for further information about employee harassment of students.

harassment and violence also are concerns for school districts. The Title IX obligations discussed in this letter apply equally to school districts unless otherwise noted.

Title IX Requirements Related to Sexual Harassment and Sexual Violence

Schools' Obligations to Respond to Sexual Harassment and Sexual Violence

Sexual harassment is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual violence is a form of sexual harassment prohibited by Title IX.⁹

As explained in OCR's *2001 Guidance*, when a student sexually harasses another student, the harassing conduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the school's program. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. Indeed, a single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. For instance, a single instance of rape is sufficiently severe to create a hostile environment.¹⁰

Title IX protects students from sexual harassment in a school's education programs and activities. This means that Title IX protects students in connection with all the academic, educational, extracurricular, athletic, and other programs of the school, whether those programs take place in a school's facilities, on a school bus, at a class or training program

⁹ Title IX also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature. The Title IX obligations discussed in this letter also apply to gender-based harassment. Gender-based harassment is discussed in more detail in the *2001 Guidance*, and in the 2010 Dear Colleague letter on Harassment and Bullying, which is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

¹⁰ See, e.g., *Jennings v. Univ. of N.C.*, 444 F.3d 255, 268, 274 n.12 (4th Cir. 2006) (acknowledging that while not an issue in this case, a single incident of sexual assault or rape could be sufficient to raise a jury question about whether a hostile environment exists, and noting that courts look to Title VII cases for guidance in analyzing Title IX sexual harassment claims); *Vance v. Spencer Cnty. Pub. Sch. Dist.*, 231 F.3d 253, 259 n.4 (6th Cir. 2000) ("[w]ithin the context of Title IX, a student's claim of hostile environment can arise from a single incident" (quoting *Doe v. Sch. Admin. Dist. No. 19*, 66 F. Supp. 2d 57, 62 (D. Me. 1999))); *Soper v. Hoben*, 195 F.3d 845, 855 (6th Cir. 1999) (explaining that rape and sexual abuse "obviously qualif[y] as...severe, pervasive, and objectively offensive sexual harassment"); see also *Berry v. Chi. Transit Auth.*, 618 F.3d 688, 692 (7th Cir. 2010) (in the Title VII context, "a single act can create a hostile environment if it is severe enough, and instances of uninvited physical contact with intimate parts of the body are among the most severe types of sexual harassment"); *Turner v. Saloon, Ltd.*, 595 F.3d 679, 686 (7th Cir. 2010) (noting that "[o]ne instance of conduct that is sufficiently severe may be enough," which is "especially true when the touching is of an intimate body part" (quoting *Jackson v. Cnty. of Racine*, 474 F.3d 493, 499 (7th Cir. 2007))); *McKinnis v. Crescent Guardian, Inc.*, 189 F. App'x 307, 310 (5th Cir. 2006) (holding that "the deliberate and unwanted touching of [a plaintiff's] intimate body parts can constitute severe sexual harassment" in Title VII cases (quoting *Harvill v. Westward Commc'ns, L.L.C.*, 433 F.3d 428, 436 (5th Cir. 2005))).

sponsored by the school at another location, or elsewhere. For example, Title IX protects a student who is sexually assaulted by a fellow student during a school-sponsored field trip.¹¹

If a school knows or reasonably should know about student-on-student harassment that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.¹² Schools also are required to publish a notice of nondiscrimination and to adopt and publish grievance procedures. Because of these requirements, which are discussed in greater detail in the following section, schools need to ensure that their employees are trained so that they know to report harassment to appropriate school officials, and so that employees with the authority to address harassment know how to respond properly. Training for employees should include practical information about how to identify and report sexual harassment and violence. OCR recommends that this training be provided to any employees likely to witness or receive reports of sexual harassment and violence, including teachers, school law enforcement unit employees, school administrators, school counselors, general counsels, health personnel, and resident advisors.

Schools may have an obligation to respond to student-on-student sexual harassment that initially occurred off school grounds, outside a school's education program or activity. If a student files a complaint with the school, regardless of where the conduct occurred, the school must process the complaint in accordance with its established procedures. Because students often experience the continuing effects of off-campus sexual harassment in the educational setting, schools should consider the effects of the off-campus conduct when evaluating whether there is a hostile environment on campus. For example, if a student alleges that he or she was sexually assaulted by another student off school grounds, and that upon returning to school he or she was taunted and harassed by other students who are the alleged perpetrator's friends, the school should take the earlier sexual assault into account in determining whether there is a sexually hostile environment. The school also should take steps to protect a student who was assaulted off campus from further sexual harassment or retaliation from the perpetrator and his or her associates.

Regardless of whether a harassed student, his or her parent, or a third party files a complaint under the school's grievance procedures or otherwise requests action on the student's behalf, a school that knows, or reasonably should know, about possible harassment must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. As discussed later in this letter, the school's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve the school of its independent Title IX obligation to investigate the conduct. The specific steps in a school's

¹¹ Title IX also protects third parties from sexual harassment or violence in a school's education programs and activities. For example, Title IX protects a high school student participating in a college's recruitment program, a visiting student athlete, and a visitor in a school's on-campus residence hall. Title IX also protects employees of a recipient from sexual harassment. For further information about harassment of employees, see *2001 Guidance* at n.1.

¹² This is the standard for administrative enforcement of Title IX and in court cases where plaintiffs are seeking injunctive relief. See *2001 Guidance* at ii-v, 12-13. The standard in private lawsuits for monetary damages is actual knowledge and deliberate indifference. See *Davis v. Monroe Cnty. Bd. of Ed.*, 526 U.S. 629, 643, 648 (1999).

investigation will vary depending upon the nature of the allegations, the age of the student or students involved (particularly in elementary and secondary schools), the size and administrative structure of the school, and other factors. Yet as discussed in more detail below, the school's inquiry must in all cases be prompt, thorough, and impartial. In cases involving potential criminal conduct, school personnel must determine, consistent with State and local law, whether appropriate law enforcement or other authorities should be notified.¹³

Schools also should inform and obtain consent from the complainant (or the complainant's parents if the complainant is under 18 and does not attend a postsecondary institution) before beginning an investigation. If the complainant requests confidentiality or asks that the complaint not be pursued, the school should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the school should inform the complainant that its ability to respond may be limited.¹⁴ The school also should tell the complainant that Title IX prohibits retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs.

As discussed in the *2001 Guidance*, if the complainant continues to ask that his or her name or other identifiable information not be revealed, the school should evaluate that request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. Thus, the school may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the complainant's age; whether there have been other harassment complaints about the same individual; and the alleged harasser's rights to receive information about the allegations if the information is maintained by the school as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99.¹⁵ The school should inform the complainant if it cannot ensure confidentiality. Even if the school cannot take disciplinary action against the alleged harasser because the complainant insists on confidentiality, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence. Examples of such steps are discussed later in this letter.

Compliance with Title IX, such as publishing a notice of nondiscrimination, designating an employee to coordinate Title IX compliance, and adopting and publishing grievance procedures, can serve as preventive measures against harassment. Combined with education and training programs, these measures can help ensure that all students and employees recognize the

¹³ In states with mandatory reporting laws, schools may be required to report certain incidents to local law enforcement or child protection agencies.

¹⁴ Schools should refer to the *2001 Guidance* for additional information on confidentiality and the alleged perpetrator's due process rights.

¹⁵ For example, the alleged harasser may have a right under FERPA to inspect and review portions of the complaint that directly relate to him or her. In that case, the school must redact the complainant's name and other identifying information before allowing the alleged harasser to inspect and review the sections of the complaint that relate to him or her. In some cases, such as those where the school is required to report the incident to local law enforcement or other officials, the school may not be able to maintain the complainant's confidentiality.

nature of sexual harassment and violence, and understand that the school will not tolerate such conduct. Indeed, these measures may bring potentially problematic conduct to the school's attention before it becomes serious enough to create a hostile environment. Training for administrators, teachers, staff, and students also can help ensure that they understand what types of conduct constitute sexual harassment or violence, can identify warning signals that may need attention, and know how to respond. More detailed information and examples of education and other preventive measures are provided later in this letter.

Procedural Requirements Pertaining to Sexual Harassment and Sexual Violence

Recipients of Federal financial assistance must comply with the procedural requirements outlined in the Title IX implementing regulations. Specifically, a recipient must:

- (A) Disseminate a notice of nondiscrimination;¹⁶
- (B) Designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX;¹⁷ and
- (C) Adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee sex discrimination complaints.¹⁸

These requirements apply to all forms of sexual harassment, including sexual violence, and are important for preventing and effectively responding to sex discrimination. They are discussed in greater detail below. OCR advises recipients to examine their current policies and procedures on sexual harassment and sexual violence to determine whether those policies comply with the requirements articulated in this letter and the *2001 Guidance*. Recipients should then implement changes as needed.

(A) Notice of Nondiscrimination

The Title IX regulations require that each recipient publish a notice of nondiscrimination stating that the recipient does not discriminate on the basis of sex in its education programs and activities, and that Title IX requires it not to discriminate in such a manner.¹⁹ The notice must state that inquiries concerning the application of Title IX may be referred to the recipient's Title IX coordinator or to OCR. It should include the name or title, office address, telephone number, and e-mail address for the recipient's designated Title IX coordinator.

The notice must be widely distributed to all students, parents of elementary and secondary students, employees, applicants for admission and employment, and other relevant persons. OCR recommends that the notice be prominently posted on school Web sites and at various

¹⁶ 34 C.F.R. § 106.9.

¹⁷ *Id.* § 106.8(a).

¹⁸ *Id.* § 106.8(b).

¹⁹ *Id.* § 106.9(a).

locations throughout the school or campus and published in electronic and printed publications of general distribution that provide information to students and employees about the school's services and policies. The notice should be available and easily accessible on an ongoing basis.

Title IX does not require a recipient to adopt a policy specifically prohibiting sexual harassment or sexual violence. As noted in the *2001 Guidance*, however, a recipient's general policy prohibiting sex discrimination will not be considered effective and would violate Title IX if, because of the lack of a specific policy, students are unaware of what kind of conduct constitutes sexual harassment, including sexual violence, or that such conduct is prohibited sex discrimination. OCR therefore recommends that a recipient's nondiscrimination policy state that prohibited sex discrimination covers sexual harassment, including sexual violence, and that the policy include examples of the types of conduct that it covers.

(B) Title IX Coordinator

The Title IX regulations require a recipient to notify all students and employees of the name or title and contact information of the person designated to coordinate the recipient's compliance with Title IX.²⁰ The 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. The Title IX coordinator or designee should be available to meet with students as needed. If a recipient designates more than one Title IX coordinator, the notice should describe each coordinator's responsibilities (e.g., who will handle complaints by students, faculty, and other employees). The recipient should designate one coordinator as having ultimate oversight responsibility, and the other coordinators should have titles clearly showing that they are in a deputy or supporting role to the senior coordinator. The Title IX coordinators should not have other job responsibilities that may create a conflict of interest. For example, serving as the Title IX coordinator and a disciplinary hearing board member or general counsel may create a conflict of interest.

Recipients must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the recipient's grievance procedures operate. Because sexual violence complaints often are filed with the school's law enforcement unit, all school law enforcement unit employees should receive training on the school's Title IX grievance procedures and any other procedures used for investigating reports of sexual violence. In addition, these employees should receive copies of the school's Title IX policies. Schools should instruct law enforcement unit employees both to notify complainants of their right to file a Title IX sex discrimination complaint with the school in addition to filing a criminal complaint, and to report incidents of sexual violence to the Title IX coordinator if the complainant consents. The school's Title IX coordinator or designee should be available to provide assistance to school law enforcement unit employees regarding how to respond appropriately to reports of sexual violence. The Title IX coordinator also should be given access to school law enforcement unit investigation notes

²⁰ *Id.* § 106.8(a).

and findings as necessary for the Title IX investigation, so long as it does not compromise the criminal investigation.

(C) Grievance Procedures

The Title IX regulations require all recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of sex discrimination complaints.²¹ The grievance procedures must apply to sex discrimination complaints filed by students against school employees, other students, or third parties.

Title IX does not require a recipient to provide separate grievance procedures for sexual harassment and sexual violence complaints. Therefore, a recipient may use student disciplinary procedures or other separate procedures to resolve such complaints. Any procedures used to adjudicate complaints of sexual harassment or sexual violence, including disciplinary procedures, however, must meet the Title IX requirement of affording a complainant a prompt and equitable resolution.²² These requirements are discussed in greater detail below. If the recipient relies on disciplinary procedures for Title IX compliance, the Title IX coordinator should review the recipient's disciplinary procedures to ensure that the procedures comply with the prompt and equitable requirements of Title IX.²³

Grievance procedures generally may include voluntary informal mechanisms (*e.g.*, mediation) for resolving some types of sexual harassment complaints. OCR has frequently advised recipients, however, that it is improper for a student who complains of harassment to be required to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the school (*e.g.*, participation by a trained counselor, a trained mediator, or, if appropriate, a teacher or administrator). In addition, as stated in the *2001 Guidance*, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. Moreover, in cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis. OCR recommends that recipients clarify in their grievance procedures that mediation will not be used to resolve sexual assault complaints.

²¹ *Id.* § 106.8(b). Title IX also requires recipients to adopt and publish grievance procedures for employee complaints of sex discrimination.

²² These procedures must apply to all students, including athletes. If a complaint of sexual violence involves a student athlete, the school must follow its standard procedures for resolving sexual violence complaints. Such complaints must not be addressed solely by athletics department procedures. Additionally, if an alleged perpetrator is an elementary or secondary student with a disability, schools must follow the procedural safeguards in the Individuals with Disabilities Education Act (at 20 U.S.C. § 1415 and 34 C.F.R. §§ 300.500-300.519, 300.530-300.537) as well as the requirements of Section 504 of the Rehabilitation Act of 1973 (at 34 C.F.R. §§ 104.35-104.36) when conducting the investigation and hearing.

²³ A school may not absolve itself of its Title IX obligations to investigate and resolve complaints of sexual harassment or violence by delegating, whether through express contractual agreement or other less formal arrangement, the responsibility to administer school discipline to school resource officers or "contract" law enforcement officers. See 34 C.F.R. § 106.4.

Prompt and Equitable Requirements

As stated in the *2001 Guidance*, OCR has identified a number of elements in evaluating whether a school's grievance procedures provide for prompt and equitable resolution of sexual harassment complaints. These elements also apply to sexual violence complaints because, as explained above, sexual violence is a form of sexual harassment. OCR will review all aspects of a school's grievance procedures, including the following elements that are critical to achieve compliance with Title IX:

- Notice to students, parents of elementary and secondary students, and employees of the grievance procedures, including where complaints may be filed;
- Application of the procedures to complaints alleging harassment carried out by employees, other students, or third parties;
- Adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence;
- Designated and reasonably prompt time frames for the major stages of the complaint process;
- Notice to parties of the outcome of the complaint;²⁴ and
- An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

As noted in the *2001 Guidance*, procedures adopted by schools will vary in detail, specificity, and components, reflecting differences in the age of students, school sizes and administrative structures, State or local legal requirements, and past experiences. Although OCR examines whether all applicable elements are addressed when investigating sexual harassment complaints, this letter focuses on those elements where our work indicates that more clarification and explanation are needed, including:

(A) Notice of the grievance procedures

The procedures for resolving complaints of sex discrimination, including sexual harassment, should be written in language appropriate to the age of the school's students, easily understood, easily located, and widely distributed. OCR recommends that the grievance procedures be prominently posted on school Web sites; sent electronically to all members of the school community; available at various locations throughout the school or campus; and summarized in or attached to major publications issued by the school, such as handbooks, codes of conduct, and catalogs for students, parents of elementary and secondary students, faculty, and staff.

(B) Adequate, Reliable, and Impartial Investigation of Complaints

OCR's work indicates that a number of issues related to an adequate, reliable, and impartial investigation arise in sexual harassment and violence complaints. In some cases, the conduct

²⁴ "Outcome" does not refer to information about disciplinary sanctions unless otherwise noted. Notice of the outcome is discussed in greater detail in Section D below.

may constitute both sexual harassment under Title IX and criminal activity. Police investigations may be useful for fact-gathering; but because the standards for criminal investigations are different, police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX. Conduct may constitute unlawful sexual harassment under Title IX even if the police do not have sufficient evidence of a criminal violation. In addition, a criminal investigation into allegations of sexual violence does not relieve the school of its duty under Title IX to resolve complaints promptly and equitably.

A school should notify a complainant of the right to file a criminal complaint, and should not dissuade a victim from doing so either during or after the school's internal Title IX investigation. For instance, if a complainant wants to file a police report, the school should not tell the complainant that it is working toward a solution and instruct, or ask, the complainant to wait to file the report.

Schools should not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own Title IX investigation and, if needed, must take immediate steps to protect the student in the educational setting. For example, a school should not delay conducting its own investigation or taking steps to protect the complainant because it wants to see whether the alleged perpetrator will be found guilty of a crime. Any agreement or Memorandum of Understanding (MOU) with a local police department must allow the school to meet its Title IX obligation to resolve complaints promptly and equitably. Although a school may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, once notified that the police department has completed its gathering of evidence (not the ultimate outcome of the investigation or the filing of any charges), the school must promptly resume and complete its fact-finding for the Title IX investigation.²⁵ Moreover, nothing in an MOU or the criminal investigation itself should prevent a school from notifying complainants of their Title IX rights and the school's grievance procedures, or from taking interim steps to ensure the safety and well-being of the complainant and the school community while the law enforcement agency's fact-gathering is in progress. OCR also recommends that a school's MOU include clear policies on when a school will refer a matter to local law enforcement.

As noted above, the Title IX regulation requires schools to provide equitable grievance procedures. As part of these procedures, schools generally conduct investigations and hearings to determine whether sexual harassment or violence occurred. In addressing complaints filed with OCR under Title IX, OCR reviews a school's procedures to determine whether the school is using a preponderance of the evidence standard to evaluate complaints. The Supreme Court has applied a preponderance of the evidence standard in civil litigation involving discrimination under Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e *et seq.* Like Title IX,

²⁵ In one recent OCR sexual violence case, the prosecutor's office informed OCR that the police department's evidence gathering stage typically takes three to ten calendar days, although the delay in the school's investigation may be longer in certain instances.

Title VII prohibits discrimination on the basis of sex.²⁶ OCR also uses a preponderance of the evidence standard when it resolves complaints against recipients. For instance, OCR's Case Processing Manual requires that a noncompliance determination be supported by the preponderance of the evidence when resolving allegations of discrimination under all the statutes enforced by OCR, including Title IX.²⁷ OCR also uses a preponderance of the evidence standard in its fund termination administrative hearings.²⁸ Thus, in order for a school's grievance procedures to be consistent with Title IX standards, the school must use a preponderance of the evidence standard (*i.e.*, it is more likely than not that sexual harassment or violence occurred). The "clear and convincing" standard (*i.e.*, it is highly probable or reasonably certain that the sexual harassment or violence occurred), currently used by some schools, is a higher standard of proof. Grievance procedures that use this higher standard are inconsistent with the standard of proof established for violations of the civil rights laws, and are thus not equitable under Title IX. Therefore, preponderance of the evidence is the appropriate standard for investigating allegations of sexual harassment or violence.

Throughout a school's Title IX investigation, including at any hearing, the parties must have an equal opportunity to present relevant witnesses and other evidence. The complainant and the alleged perpetrator must be afforded similar and timely access to any information that will be used at the hearing.²⁹ For example, a school should not conduct a pre-hearing meeting during which only the alleged perpetrator is present and given an opportunity to present his or her side of the story, unless a similar meeting takes place with the complainant; a hearing officer or disciplinary board should not allow only the alleged perpetrator to present character witnesses at a hearing; and a school should not allow the alleged perpetrator to review the complainant's

²⁶ See, e.g., *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 99 (2003) (noting that under the "conventional rule of civil litigation," the preponderance of the evidence standard generally applies in cases under Title VII); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 252-55 (1989) (approving preponderance standard in Title VII sex discrimination case) (plurality opinion); *id.* at 260 (White, J., concurring in the judgment); *id.* at 261 (O'Connor, J., concurring in the judgment). The 2001 *Guidance* noted (on page vi) that "[w]hile *Gebser* and *Davis* made clear that Title VII agency principles do not apply in determining liability for money damages under Title IX, the *Davis* Court also indicated, through its specific references to Title VII caselaw, that Title VII remains relevant in determining what constitutes hostile environment sexual harassment under Title IX." See also *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007) ("We look to case law interpreting Title VII of the Civil Rights Act of 1964 for guidance in evaluating a claim brought under Title IX.").

²⁷ OCR's Case Processing Manual is available on the Department's Web site, at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

²⁸ The Title IX regulations adopt the procedural provisions applicable to Title VI of the Civil Rights Act of 1964. See 34 C.F.R. § 106.71 ("The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference."). The Title VI regulations apply the Administrative Procedure Act to administrative hearings required prior to termination of Federal financial assistance and require that termination decisions be "supported by and in accordance with the reliable, probative and substantial evidence." 5 U.S.C. § 556(d). The Supreme Court has interpreted "reliable, probative and substantial evidence" as a direction to use the preponderance standard. See *Steadman v. SEC*, 450 U.S. 91, 98-102 (1981).

²⁹ Access to this information must be provided consistent with FERPA. For example, if a school introduces an alleged perpetrator's prior disciplinary records to support a tougher disciplinary penalty, the complainant would not be allowed access to those records. Additionally, access should not be given to privileged or confidential information. For example, the alleged perpetrator should not be given access to communications between the complainant and a counselor or information regarding the complainant's sexual history.

statement without also allowing the complainant to review the alleged perpetrator's statement.

While OCR does not require schools to permit parties to have lawyers at any stage of the proceedings, if a school chooses to allow the parties to have their lawyers participate in the proceedings, it must do so equally for both parties. Additionally, any school-imposed restrictions on the ability of lawyers to speak or otherwise participate in the proceedings should apply equally. OCR strongly discourages schools from allowing the parties personally to question or cross-examine each other during the hearing. Allowing an alleged perpetrator to question an alleged victim directly may be traumatic or intimidating, thereby possibly escalating or perpetuating a hostile environment. OCR also recommends that schools provide an appeals process. If a school provides for appeal of the findings or remedy, it must do so for both parties. Schools must maintain documentation of all proceedings, which may include written findings of facts, transcripts, or audio recordings.

All persons involved in implementing a recipient's grievance procedures (e.g., Title IX coordinators, investigators, and adjudicators) must have training or experience in handling complaints of sexual harassment and sexual violence, and in the recipient's grievance procedures. The training also should include applicable confidentiality requirements. In sexual violence cases, the fact-finder and decision-maker also should have adequate training or knowledge regarding sexual violence.³⁰ Additionally, a school's investigation and hearing processes cannot be equitable unless they are impartial. Therefore, any real or perceived conflicts of interest between the fact-finder or decision-maker and the parties should be disclosed.

Public and state-supported schools must provide due process to the alleged perpetrator. However, schools should ensure that steps taken to accord due process rights to the alleged perpetrator do not restrict or unnecessarily delay the Title IX protections for the complainant.

(C) Designated and Reasonably Prompt Time Frames

OCR will evaluate whether a school's grievance procedures specify the time frames for all major stages of the procedures, as well as the process for extending timelines. Grievance procedures should specify the time frame within which: (1) the school will conduct a full investigation of the complaint; (2) both parties receive a response regarding the outcome of the complaint; and (3) the parties may file an appeal, if applicable. Both parties should be given periodic status updates. Based on OCR experience, a typical investigation takes approximately 60 calendar days following receipt of the complaint. Whether OCR considers complaint resolutions to be timely, however, will vary depending on the complexity of the investigation and the severity and extent of the harassment. For example, the resolution of a complaint involving multiple incidents with multiple complainants likely would take longer than one involving a single incident that

³⁰ For instance, if an investigation or hearing involves forensic evidence, that evidence should be reviewed by a trained forensic examiner.

occurred in a classroom during school hours with a single complainant.

(D) Notice of Outcome

Both parties must be notified, in writing, about the outcome of both the complaint and any appeal,³¹ *i.e.*, whether harassment was found to have occurred. OCR recommends that schools provide the written determination of the final outcome to the complainant and the alleged perpetrator concurrently. Title IX does not require the school to notify the alleged perpetrator of the outcome before it notifies the complainant.

Due to the intersection of Title IX and FERPA requirements, OCR recognizes that there may be confusion regarding what information a school may disclose to the complainant.³² FERPA generally prohibits the nonconsensual disclosure of personally identifiable information from a student's "education record." However, as stated in the *2001 Guidance*, FERPA permits a school to disclose to the harassed student information about the sanction imposed upon a student who was found to have engaged in harassment when the sanction directly relates to the harassed student. This includes an order that the harasser stay away from the harassed student, or that the harasser is prohibited from attending school for a period of time, or transferred to other classes or another residence hall.³³ Disclosure of other information in the student's "education record," including information about sanctions that do not relate to the harassed student, may result in a violation of FERPA.

Further, when the conduct involves a crime of violence or a non-forcible sex offense,³⁴ FERPA permits a postsecondary institution to disclose to the alleged victim the final results of a

³¹ As noted previously, "outcome" does not refer to information about disciplinary sanctions unless otherwise noted.

³² In 1994, Congress amended the General Education Provisions Act (GEPA), of which FERPA is a part, to state that nothing in GEPA "shall be construed to affect the applicability of title VI of the Civil Rights Act of 1964, title IX of Education Amendments of 1972, title V of the Rehabilitation Act of 1973, the Age Discrimination Act, or other statutes prohibiting discrimination, to any applicable program." 20 U.S.C. § 1221(d). The Department interprets this provision to mean that FERPA continues to apply in the context of Title IX enforcement, but if there is a direct conflict between the requirements of FERPA and the requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions. See *2001 Guidance* at vii.

³³ This information directly relates to the complainant and is particularly important in sexual harassment cases because it affects whether a hostile environment has been eliminated. Because seeing the perpetrator may be traumatic, a complainant in a sexual harassment case may continue to be subject to a hostile environment if he or she does not know when the perpetrator will return to school or whether he or she will continue to share classes or a residence hall with the perpetrator. This information also directly affects a complainant's decision regarding how to work with the school to eliminate the hostile environment and prevent its recurrence. For instance, if a complainant knows that the perpetrator will not be at school or will be transferred to other classes or another residence hall for the rest of the year, the complainant may be less likely to want to transfer to another school or change classes, but if the perpetrator will be returning to school after a few days or weeks, or remaining in the complainant's classes or residence hall, the complainant may want to transfer schools or change classes to avoid contact. Thus, the complainant cannot make an informed decision about how best to respond without this information.

³⁴ Under the FERPA regulations, crimes of violence include arson; assault offenses (aggravated assault, simple assault, intimidation); burglary; criminal homicide (manslaughter by negligence); criminal homicide (murder and

disciplinary proceeding against the alleged perpetrator, regardless of whether the institution concluded that a violation was committed.³⁵ Additionally, a postsecondary institution may disclose to anyone—not just the alleged victim—the final results of a disciplinary proceeding if it determines that the student is an alleged perpetrator of a crime of violence or a non-forcible sex offense, and, with respect to the allegation made, the student has committed a violation of the institution’s rules or policies.³⁶

Postsecondary institutions also are subject to additional rules under the Clery Act. This law, which applies to postsecondary institutions that participate in Federal student financial aid programs, requires that “both the accuser and the accused must be informed of the outcome³⁷ of any institutional disciplinary proceeding brought alleging a sex offense.”³⁸ Compliance with this requirement does not constitute a violation of FERPA. Furthermore, the FERPA limitations on redisclosure of information do not apply to information that postsecondary institutions are required to disclose under the Clery Act.³⁹ Accordingly, postsecondary institutions may not require a complainant to abide by a nondisclosure agreement, in writing or otherwise, that would prevent the redisclosure of this information.

Steps to Prevent Sexual Harassment and Sexual Violence and Correct its Discriminatory Effects on the Complainant and Others

Education and Prevention

In addition to ensuring full compliance with Title IX, schools should take proactive measures to prevent sexual harassment and violence. OCR recommends that all schools implement preventive education programs and make victim resources, including comprehensive victim services, available. Schools may want to include these education programs in their (1) orientation programs for new students, faculty, staff, and employees; (2) training for students who serve as advisors in residence halls; (3) training for student athletes and coaches; and (4) school assemblies and “back to school nights.” These programs should include a

non-negligent manslaughter); destruction, damage or vandalism of property; kidnapping/abduction; robbery; and forcible sex offenses. Forcible sex offenses are defined as any sexual act directed against another person forcibly or against that person’s will, or not forcibly or against the person’s will where the victim is incapable of giving consent. Forcible sex offenses include rape, sodomy, sexual assault with an object, and forcible fondling. Non-forcible sex offenses are incest and statutory rape. 34 C.F.R. Part 99, App. A.

³⁵ 34 C.F.R. § 99.31(a)(13). For purposes of 34 C.F.R. §§ 99.31(a)(13)-(14), disclosure of “final results” is limited to the name of the alleged perpetrator, any violation found to have been committed, and any sanction imposed against the perpetrator by the school. 34 C.F.R. § 99.39.

³⁶ 34 C.F.R. § 99.31(a)(14).

³⁷ For purposes of the Clery Act, “outcome” means the institution’s final determination with respect to the alleged sex offense and any sanctions imposed against the accused. 34 C.F.R. § 668.46(b)(11)(vi)(B).

³⁸ 34 C.F.R. § 668.46(b)(11)(vi)(B). Under the Clery Act, forcible sex offenses are defined as any sexual act directed against another person forcibly or against that person’s will, or not forcibly or against the person’s will where the person is incapable of giving consent. Forcible sex offenses include forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. Non-forcible sex offenses include incest and statutory rape. 34 C.F.R. Part 668, Subpt. D, App. A.

³⁹ 34 C.F.R. § 99.33(c).

discussion of what constitutes sexual harassment and sexual violence, the school's policies and disciplinary procedures, and the consequences of violating these policies.

The education programs also should include information aimed at encouraging students to report incidents of sexual violence to the appropriate school and law enforcement authorities. Schools should be aware that victims or third parties may be deterred from reporting incidents if alcohol, drugs, or other violations of school or campus rules were involved.⁴⁰ As a result, schools should consider whether their disciplinary policies have a chilling effect on victims' or other students' reporting of sexual violence offenses. For example, OCR recommends that schools inform students that the schools' primary concern is student safety, that any other rules violations will be addressed separately from the sexual violence allegation, and that use of alcohol or drugs never makes the victim at fault for sexual violence.

OCR also recommends that schools develop specific sexual violence materials that include the schools' policies, rules, and resources for students, faculty, coaches, and administrators. Schools also should include such information in their employee handbook and any handbooks that student athletes and members of student activity groups receive. These materials should include where and to whom students should go if they are victims of sexual violence. These materials also should tell students and school employees what to do if they learn of an incident of sexual violence. Schools also should assess student activities regularly to ensure that the practices and behavior of students do not violate the schools' policies against sexual harassment and sexual violence.

Remedies and Enforcement

As discussed above, if a school determines that sexual harassment that creates a hostile environment has occurred, it must take immediate action to eliminate the hostile environment, prevent its recurrence, and address its effects. In addition to counseling or taking disciplinary action against the harasser, effective corrective action may require remedies for the complainant, as well as changes to the school's overall services or policies. Examples of these actions are discussed in greater detail below.

Title IX requires a school to take steps to protect the complainant as necessary, including taking interim steps before the final outcome of the investigation. The school should undertake these steps promptly once it has notice of a sexual harassment or violence allegation. The school should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow students to change academic or living situations as appropriate. For instance, the school may prohibit the alleged perpetrator from having any contact with the complainant pending the results of the school's investigation. When taking steps to separate the complainant and alleged perpetrator, a school should minimize the burden on the

⁴⁰ The Department's Higher Education Center for Alcohol, Drug Abuse, and Violence Prevention (HEC) helps campuses and communities address problems of alcohol, other drugs, and violence by identifying effective strategies and programs based upon the best prevention science. Information on HEC resources and technical assistance can be found at www.higheredcenter.org.

complainant, and thus should not, as a matter of course, remove complainants from classes or housing while allowing alleged perpetrators to remain. In addition, schools should ensure that complainants are aware of their Title IX rights and any available resources, such as counseling, health, and mental health services, and their right to file a complaint with local law enforcement.⁴¹

Schools should be aware that complaints of sexual harassment or violence may be followed by retaliation by the alleged perpetrator or his or her associates. For instance, friends of the alleged perpetrator may subject the complainant to name-calling and taunting. As part of their Title IX obligations, schools must have policies and procedures in place to protect against retaliatory harassment. At a minimum, schools must ensure that complainants and their parents, if appropriate, know how to report any subsequent problems, and should follow-up with complainants to determine whether any retaliation or new incidents of harassment have occurred.

When OCR finds that a school has not taken prompt and effective steps to respond to sexual harassment or violence, OCR will seek appropriate remedies for both the complainant and the broader student population. When conducting Title IX enforcement activities, OCR seeks to obtain voluntary compliance from recipients. When a recipient does not come into compliance voluntarily, OCR may initiate proceedings to withdraw Federal funding by the Department or refer the case to the U.S. Department of Justice for litigation.

Schools should proactively consider the following remedies when determining how to respond to sexual harassment or violence. These are the same types of remedies that OCR would seek in its cases.

Depending on the specific nature of the problem, remedies for the complainant might include, but are not limited to:⁴²

- providing an escort to ensure that the complainant can move safely between classes and activities;
- ensuring that the complainant and alleged perpetrator do not attend the same classes;
- moving the complainant or alleged perpetrator to a different residence hall or, in the case of an elementary or secondary school student, to another school within the district;
- providing counseling services;
- providing medical services;
- providing academic support services, such as tutoring;

⁴¹ The Clery Act requires postsecondary institutions to develop and distribute a statement of policy that informs students of their options to notify proper law enforcement authorities, including campus and local police, and the option to be assisted by campus personnel in notifying such authorities. The policy also must notify students of existing counseling, mental health, or other student services for victims of sexual assault, both on campus and in the community. 20 U.S.C. §§ 1092(f)(8)(B)(v)-(vi).

⁴² Some of these remedies also can be used as interim measures before the school's investigation is complete.

- arranging for the complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant's academic record; and
- reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the complainant being disciplined.⁴³

Remedies for the broader student population might include, but are not limited to:

Counseling and Training

- offering counseling, health, mental health, or other holistic and comprehensive victim services to all students affected by sexual harassment or sexual violence, and notifying students of campus and community counseling, health, mental health, and other student services;
- designating an individual from the school's counseling center to be "on call" to assist victims of sexual harassment or violence whenever needed;
- training the Title IX coordinator and any other employees who are involved in processing, investigating, or resolving complaints of sexual harassment or sexual violence, including providing training on:
 - the school's Title IX responsibilities to address allegations of sexual harassment or violence
 - how to conduct Title IX investigations
 - information on the link between alcohol and drug abuse and sexual harassment or violence and best practices to address that link;
- training all school law enforcement unit personnel on the school's Title IX responsibilities and handling of sexual harassment or violence complaints;
- training all employees who interact with students regularly on recognizing and appropriately addressing allegations of sexual harassment or violence under Title IX; and
- informing students of their options to notify proper law enforcement authorities, including school and local police, and the option to be assisted by school employees in notifying those authorities.

Development of Materials and Implementation of Policies and Procedures

- developing materials on sexual harassment and violence, which should be distributed to students during orientation and upon receipt of complaints, as well as widely posted throughout school buildings and residence halls, and which should include:
 - what constitutes sexual harassment or violence
 - what to do if a student has been the victim of sexual harassment or violence
 - contact information for counseling and victim services on and off school grounds
 - how to file a complaint with the school
 - how to contact the school's Title IX coordinator

⁴³ For example, if the complainant was disciplined for skipping a class in which the harasser was enrolled, the school should review the incident to determine if the complainant skipped the class to avoid contact with the harasser.

- what the school will do to respond to allegations of sexual harassment or violence, including the interim measures that can be taken
- requiring the Title IX coordinator to communicate regularly with the school's law enforcement unit investigating cases and to provide information to law enforcement unit personnel regarding Title IX requirements;⁴⁴
- requiring the Title IX coordinator to review all evidence in a sexual harassment or sexual violence case brought before the school's disciplinary committee to determine whether the complainant is entitled to a remedy under Title IX that was not available through the disciplinary committee;⁴⁵
- requiring the school to create a committee of students and school officials to identify strategies for ensuring that students:
 - know the school's prohibition against sex discrimination, including sexual harassment and violence
 - recognize sex discrimination, sexual harassment, and sexual violence when they occur
 - understand how and to whom to report any incidents
 - know the connection between alcohol and drug abuse and sexual harassment or violence
 - feel comfortable that school officials will respond promptly and equitably to reports of sexual harassment or violence;
- issuing new policy statements or other steps that clearly communicate that the school does not tolerate sexual harassment and violence and will respond to any incidents and to any student who reports such incidents; and
- revising grievance procedures used to handle sexual harassment and violence complaints to ensure that they are prompt and equitable, as required by Title IX.

School Investigations and Reports to OCR

- conducting periodic assessments of student activities to ensure that the practices and behavior of students do not violate the school's policies against sexual harassment and violence;
- investigating whether any other students also may have been subjected to sexual harassment or violence;
- investigating whether school employees with knowledge of allegations of sexual harassment or violence failed to carry out their duties in responding to those allegations;
- conducting, in conjunction with student leaders, a school or campus "climate check" to assess the effectiveness of efforts to ensure that the school is free from sexual harassment and violence, and using the resulting information to inform future proactive steps that will be taken by the school; and

⁴⁴ Any personally identifiable information from a student's education record that the Title IX coordinator provides to the school's law enforcement unit is subject to FERPA's nondisclosure requirements.

⁴⁵ For example, the disciplinary committee may lack the power to implement changes to the complainant's class schedule or living situation so that he or she does not come in contact with the alleged perpetrator.

- submitting to OCR copies of all grievances filed by students alleging sexual harassment or violence, and providing OCR with documentation related to the investigation of each complaint, such as witness interviews, investigator notes, evidence submitted by the parties, investigative reports and summaries, any final disposition letters, disciplinary records, and documentation regarding any appeals.

Conclusion

The Department is committed to ensuring that all students feel safe and have the opportunity to benefit fully from their schools' education programs and activities. As part of this commitment, OCR provides technical assistance to assist recipients in achieving voluntary compliance with Title IX.

If you need additional information about Title IX, have questions regarding OCR's policies, or seek technical assistance, please contact the OCR enforcement office that serves your state or territory. The list of offices is available at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>. Additional information about addressing sexual violence, including victim resources and information for schools, is available from the U.S. Department of Justice's Office on Violence Against Women (OVW) at <http://www.ovw.usdoj.gov/>.⁴⁶

Thank you for your prompt attention to this matter. I look forward to continuing our work together to ensure that all students have an equal opportunity to learn in a safe and respectful school climate.

Sincerely,

/s/

Russlynn Ali
Assistant Secretary for Civil Rights

⁴⁶ OVW also administers the Grants to Reduce Domestic Violence, Dating Violence, Sexual Assault, and Stalking on Campus Program. This Federal funding is designed to encourage institutions of higher education to adopt comprehensive, coordinated responses to domestic violence, dating violence, sexual assault, and stalking. Under this competitive grant program, campuses, in partnership with community-based nonprofit victim advocacy organizations and local criminal justice or civil legal agencies, must adopt protocols and policies to treat these crimes as serious offenses and develop victim service programs and campus policies that ensure victim safety, offender accountability, and the prevention of such crimes. OVW recently released the first solicitation for the Services, Training, Education, and Policies to Reduce Domestic Violence, Dating Violence, Sexual Assault and Stalking in Secondary Schools Grant Program. This innovative grant program will support a broad range of activities, including training for school administrators, faculty, and staff; development of policies and procedures for responding to these crimes; holistic and appropriate victim services; development of effective prevention strategies; and collaborations with mentoring organizations to support middle and high school student victims.

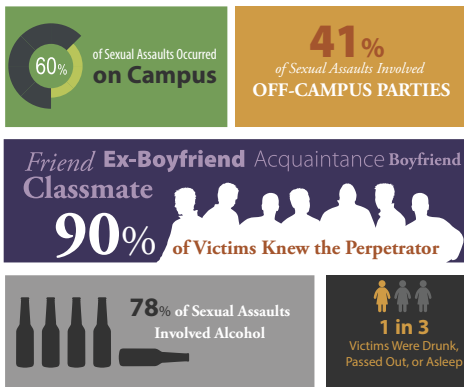
Appendix B: United Educators Study



Facts From United Educators' Report Confronting Campus Sexual Assault: An Examination of Higher Education Claims

United Educators (UE) studied sexual assault claims filed between 2011 and 2013 by the institutions it insures. The study examines 305 claims from 104 colleges and universities that involved an alleged sexual assault and a student victim. A claim is defined as a demand for damages or an event that could give rise to legal action. This analysis highlights the complexity and characteristics of sexual assaults on college campuses. The findings presented below should be used to inform efforts to prevent sexual assaults and improve the institution's response when a sexual assault is reported.

The Circumstance of Campus Sexual Assault



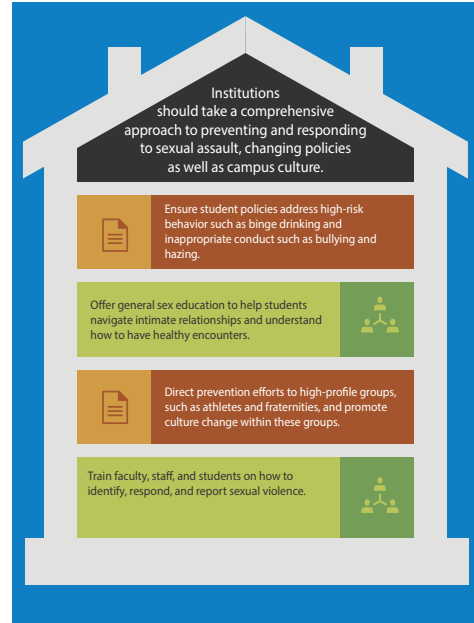
Victim Characteristics



Perpetrator Characteristics



Recommendations for Institutions



NOTE: Our use of the term "victim" rather than "survivor" is not intended to diminish the strength of those who came forward to report a sexual assault. Likewise, our use of the term "perpetrator" is not intended as acceptance of the truth of the allegations against an individual.



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APPENDIX C: Codebook Categories

1. School did not follow its own policies
2. The school created a hostile environment
3. Continued Harassment of either the victim or accused due to the accusation
4. A cover-up to protect an athlete
5. Victim was not properly informed of his/her rights
6. A person of authority had “actual knowledge” of an incident but did nothing
7. Failure to report an incident (athletic department and/or coaches)
8. Action was not prompt (slow in either opening or completing an investigation and/or hearing)
9. No true separate or full investigation conducted by school
10. “Deliberately Indifferent” (Does not mean the school takes no action only that they showed an indifference to the accusation at some point during the case)
11. Attempt to persuade victim to not press charges
12. Known past allegations of sexual misconduct
13. Over involvement of athletic department and/or coaches during the process
14. Failure to train staff
15. A clearly delayed investigation and/or hearing to aid athlete
16. Due process violations (accused)
17. Unfair suspension (accused)
18. Arbitrary and Capricious decisions (accused)
19. Inadequate Policies
20. Unfair shift of burden of proof
21. Inadequate sanctions
22. No action or unknown action
23. No issues with process

APPENDIX D: Comprehensive List of Schools*

School	Date	1	2	3	4	5	6	7	8	9	10	11
FSU	12/7/12	1	1	1	1	1	1	1	1	1	1	1
Tulsa	1/27/14	1	1	1	1	1	1		1	1	1	1
UAH	1/12/13	1	1	1	1		1		1	1		1
Delaware	12/20/11	1		1		1	1	1	1	1	1	
New Mexico	4/12/14			1	1		1		1	1	1	
Oregon (Accuser)	3/8/14				1		1	1			1	
Oregon (Accused)	3/8/14						1					
Tennessee	Multiple		1	1							1	
Xavier (Accused)	7/7/12	1		1								
Cincinnati	2014											
Boise State	2012			1	1	1	1	1			1	
UTC	3/16/14											
Montana	2011		1	1					1	1		
Niagara	Unknown		1		1							1
Alaska Fairbanks	10/20/15 4/5/15	1										
Hobart	9/7/13			1						1		
Tulane	2014											
Brown	11/21/13		1	1								
Vanderbilt	6/23/13		1									1
Kentucky	10/2/14		1	1								
Baylor	2013	1					1				1	
Duke	2013											
Ole Miss	1/24/14											
Air Force	2011											
Bowling Green	7/21/14											
Eastern Washington	3/19/14											
Louisville	2/21/14											
Arizona State	2014											
Oklahoma	1/20/14											
Providence	11/3/13											
Troy	3/10/15											
UCLA	11/17/13											
Findlay	9/20/14 9/26/14											
U. of Miami	7/5/14											
Texas	6/21/14											
Kansas	2014		1	1								

* Header numbers correspond with codebook category numbers found in Appendix C. And “1” was given when the code was used to identify an error in a case

School	Date	12	13	14	15	16	17	18	19	20	21	22	23
FSU	12/7/12		1		1								
Tulsa	1/27/14	1	1	1									
UAH	1/12/13		1		1								
Delaware	12/20/11	1											
New Mexico	4/12/14		1	1									
Oregon (Accuser)	3/8/14	1			1								
Oregon (Accused)	3/8/14					1	1						
Tennessee	Multiple		1										
Xavier (Accused)	7/7/12			1				1					
Cincinnati	2014					1	1	1					
Boise State	2012	1											
UTC	3/16/14							1	1	1			
Montana	2011			1				1					
Niagara	Unknown												
Alaska Fairbanks	10/20/15 4/5/15										1		
Hobart	9/7/13		1	1				1					
Tulane	2014												1
Brown	11/21/13			1							1		
Vanderbilt	6/23/13			1									
Kentucky	10/2/14												
Baylor	2013	1											
Duke	2013											1	
Ole Miss	1/24/14												1
Air Force	2011												1
Bowling Green	7/21/14												1
Eastern Washington	3/19/14												1
Louisville	2/21/14												1
Arizona State	2014												1
Oklahoma	1/20/14												1
Providence	11/3/13												1
Troy	3/10/15												1
UCLA	11/17/13												1
Findlay	9/20/14 9/26/14												1
U. of Miami	7/5/14												1
Texas	6/21/14												1
Kansas	2014												

REFERENCES

- (2014, March 20). Fanning charged with sexual assault. *Spokesman-Review*. Retrieved from <http://www.spokesman.com/stories/2014/mar/20/fanning-charged-with-sexual-assault/>
- (2014, July 9). Miami Hurricanes' linebackers dismissed: sexual assault not tolerated. *Inquistir*. Retrieved from <http://www.inquisitr.com/1342495/linebackers-dismissed-sexual-assault-not-tolerated/>
- (2014, August 8). BGSU athlete indicted on rape-attempt charges. *The Blade*. Retrieved from <http://www.toledoblade.com/Police-Fire/2014/08/08/BGSU-athlete-indicted-on-rape-attempt-charges.html>
- Abigail Ross v. The University of Tulsa, Case 14-cv-484-TCK-PJC (N.D. OK. 2014).
- American Association of University Professors Committee on Women in the Academic Profession and Subcommittee on sexual assault on campus. (2013). Campus Sexual Assault Suggested Policies and Procedures. *Academe*. 99(4), 92-100.
- Auerbach, N. (2013, August 21). Dez Wells sues Xavier over expulsion. *USA Today*. Retrieved from <http://www.usatoday.com/story/sports/ncaab/bigeast/2013/08/20/dez-wells-xavier-musketeers-maryland-terrapins-expulsion-lawsuit/2679807/>
- Autullo, R. (2015, October 16). Kendall Sanders found not guilty of sexual assault. *Hook 'Em*. Retrieved from <http://www.hookem.com/story/kendall-sanders-found-not-guilty-of-sexual-assault/>
- Axon, R. (2015, August 28). Victim in Baylor case hires Jameis Winston accuser's Title IX lawyer. *USA Today*. Retrieved from <http://www.usatoday.com/story/sports/ncaaf/2015/08/28/victim-baylor-case-hires-john-clune-title-ix-lawyer-sam-ukwuachu/71308544/>
- Axon, R. (2016, January 25). Florida State agrees to pay Winston accuser \$950,000 to settle suit. *USA Today*. Retrieved from <http://www.usatoday.com/story/sports/ncaaf/2016/01/25/florida-state-settles-title-ix-lawsuit-erica-kinsman-jameis-winston/79299304/>
- Bella, T. (2015, April 15). 13 student-athletes accused of sexual assault who just transferred schools. *Al Jazeera America*. Retrieved from <http://america.aljazeera.com/watch/shows/america-tonight/articles/2015/4/15/timeline-ncaa-sexual-assault-transfer.html>
- Blackford, L. (2015, September 25). Woman who accused ex-football player of rape files civil rights complaint against University of Kentucky. Retrieved from http://www.kentucky.com/2015/09/25/4055966_woman-who-accused-ex-football.html?rh=1

- Bogdanich, W. (2014, April 16). A star player accused, and a flawed rape investigation.” *New York Times*. Retrieved from:
<http://www.nytimes.com/interactive/2014/04/16/sports/errors-in-inquiry-on-rape-allegations-against-fsu-jameis-winston.html>
- Bogdanich, W. (2014, July 12). Reporting rape, and wishing she hadn’t: how one college handled a sexual assault complaint. *New York Times*. Retrieved from
http://www.nytimes.com/2014/07/13/us/how-one-college-handled-a-sexual-assault-complaint.html?_r=0
- Bonesteel, M. (2016, February 10). Tennessee football players allegedly beat up teammate who helped sexual assault victim. *Washington Post*. Retrieved from
<https://www.washingtonpost.com/news/early-lead/wp/2016/02/10/university-of-tennessee-hit-with-lawsuit-over-athletes-alleged-sexual-assaults/>
- Boone, R. (2014, April 13). Two women sue Boise State over sex assault response. *Associated Press*. Retrieved from <http://kboi2.com/news/local/two-women-sue-boise-state-over-sex-assault-response>
- Brandon Austin v. University of Oregon; Sandy Weintraub; Chicora Martin; Robin Holmes; and Michael R. Gottfredson Case 1:15-cv-29383 (Oregon 2015)
- Caldwell, S. (2015, October 20). Review finds Alaska university mishandled sexual assault cases for years. *Alaska Dispatch News*. Retrieved from
<http://www.adn.com/article/20151020/internal-title-ix-review-finds-university-alaska-fairbanks-inadequately-handled>
- Cantor, D., Fisher, B., Chibnall, S., Townsend, R., Lee, H., Bruce, C., Thomas, G. (2015). Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct. *Westat*.
- Copeland, K. (2014, December 21). Jameis Winston Cleared in Campus Sexual Assault Hearing. *Huffington Post*. Retrieved from http://www.huffingtonpost.com/2014/12/21/jameis-winston-hearing-cleared_n_6364142.html
- Corey Mock v. University of Tennessee at Chattanooga, Case 14-1687 (20th District, Tennessee, 2015)
- Crosset, T., Ptacek, J., Benedict, J., & McDonald, M. (1996). Male student-athletes and Violence Against Women: a survey of campus judicial affairs offices. *Violence Against Women*. 2(2), 163-179.
- Dabbs, E. (1998), Intentional Fouls: Athletes and violence against women. *Columbia Journal of Law and Social Problems*. 31, 167-199.

Davis v. Monroe County Board of Education (526 U.S. 629 (1999)).

Dear Colleague Letter: Sexual Violence. (2011). US Department of Education Office of Civil Rights.

Dear Colleague Letter. (2013). US Department of Education Office of Civil Rights.

Dezmine Wells v. Xavier University and Father Michael J. Graham, Case 1:13-cv-575 (S. Ohio 2013)

Dungjen, T. (2014, September 3). Sexual assault of UT student puts focus on penalties. *The Blade*. Retrieved from <http://www.toledoblade.com/Courts/2014/09/03/Sexual-assault-of-UT-student-puts-focus-on-penalties.html>

Effron, L. (2015, January 27). Vanderbilt rape trial: ex-football players found guilty. *ABC News*. Retrieved from <http://abcnews.go.com/US/vanderbilt-rape-trial-football-players-found-guilty/story?id=28531342>

Factsheet: The Violence Against Women Act. (2014, January 1). Retrieved from http://www.whitehouse.gov/sites/default/files/docs/vawa_factsheet.pdf.

Franklin, C., Bouffard, L., & Pratt, T. (n.d.). (2012). Sexual Assault on the College Campus: Fraternity Affiliation, Male Peer Support, and Low Self-Control. *Criminal Justice and Behavior*. 39(11), 1457-1480.

Gaio, M. (2015, January). Oregon, coach sued over transfer's assault history. *Athletic Business*. Retrieved from <http://www.athleticbusiness.com/civil-actions/oregon-basketball-coach-sued-over-player-s-sexual-assault-record.html>

Galloway D., and Kroschel, M. (2014, October 24). Suit claims UAH delayed, reduced punishment for hockey player accused of rape. *WHNT*. Retrieved from <http://whnt.com/2014/10/24/suit-claims-uah-delayed-reduced-punishment-for-hockey-player-accused-of-rape/>

Geary, M. (2015, January 7). Jameis Winston's accuser files federal lawsuit against Florida State. *Sports Illustrated*. Retrieved from <http://www.si.com/college-football/2015/01/07/jameis-winston-accuser-lawsuit-florida-state>

Gebser v. Lago Vista Independent School District (524 U.S. 274 (1998))

Gervais, S., Dilillo, D., & Mcchargue, D. (2014). Understanding the Link Between Men's Alcohol Use and Sexual Violence Perpetration: The Mediating Role of Sexual Objectification. *Psychology of Violence*. 4(2), 156-169.

- Gonzalez, T. (2013, November 15). Vanderbilt University slammed by female students over handling of sexual assault. *Tennessean*. Retrieved from: <http://www.usatoday.com/story/news/nation/2013/11/15/vanderbilt-sexual-assaults/3598115/>
- Gonzalez, T. (2014, May 2). *Tennessean*. Retrieved from <http://www.tennessean.com/story/news/education/2014/04/29/feds-investigate-sex-assaults-vanderbilt-university/8475183/>
- Greif, A. (2015, January 8). University of Oregon and Dana Altman sued over alleged sexual assault. *Oregon Live*. Retrieved from http://www.oregonlive.com/ducks/index.ssf/2015/01/university_of_oregon_and_dana.html
1
- Herzog, K. (2016, January 2). UW-Madison under review for handling of 3 sexual assault complaints. *Milwaukee-Wisconsin Journal Sentinel*. Retrieved from <http://www.jsonline.com/news/education/uw-madison-under-review-for-handling-of-3-sexual-assault-complaints-b99643344z1--364037541.html>
- Hoff, Sam. (2014, May 7). Torian White dismissed from UCLA for sexual misconduct. *Daily Bruin*. Retrieved from <http://dailybruin.com/2014/05/07/torian-white-dismissed-from-ucla-for-sexual-misconduct/>
- Holley, P. (2015, April 15). Third suspect arrested in spring break gang rape watched by hundreds. *Washington Post*. Retrieved from <https://www.washingtonpost.com/news/morning-mix/wp/2015/04/12/two-college-students-accused-of-sexually-assaulting-woman-as-hundreds-allegedly-watched/>
- Jackson, T., & Davis, J. (n.d.). (2000). Prevention of sexual and physical assault toward women: A program for male athletes. *Journal of Community Psychology*. 28(6), 589-605.
- Jacobs, P. (2014, June 13). 2 Brown University football players are under investigation for sexual assault. *Business Insider*. Retrieved from <http://www.businessinsider.com/brown-football-players-under-investigation-for-sexual-assault-2014-6>
- Jane Doe v. University of Delaware and Monique N. Colclough, Case 1:13-cv-02099-UNA (Delaware 2013)
- Jane Doe v. The University of Alabama in Huntsville, Brent Wren, PhD, Sgt. John Beswick and Regina Young Hyatt, PhD, Case 5:14-cv-02029-HGD (N.D. AL. 2014).
- Jane Doe v. The Florida State University, Case 6:15-cv- (M.D.FL. 2015)
- Jane Doe v. University of Oregon and Dana D. Altman, Case 6:15-cv-0042 (Oregon 2015).
- Jane Doe, et al. v. University of Tennessee, Case 3:16-cv-00199 (M.D. Tenn. 2016)

Janquart, P. (2014, March 7). Boise state called unfeeling to sexual assault. *Courthouse News Service*. Retrieved from <http://www.courthousenews.com/2014/03/07/65927.htm>

Letter to University of Montana President Engstrom and University Legal Counsel Lucy France, from the Department of Justice and the Office of Civil Rights, regarding DOJ, Case DJ 169-44-9 and OCR, Case 10126001 (2013)

Jerzyk, E. (2014, November 24). Unsealed documents shed light on assault case. *Brown Daily Herald*. Retrieved from <http://www.browndailyherald.com/2014/11/24/unsealed-documents-shed-light-assault-case/>

JK v. Arizona Board of Regents, No. CV 06-916-PHX-MHM (D. Ariz. Sept. 29, 2008).

J.K. v. Arizona Board of Regents. (2008, February 26). Retrieved from <https://www.aclu.org/womens-rights/jk-v-arizona-board-regents>.

John Doe, et al. v. University of Cincinnati, Case 1:15-cv-681 (S. Ohio W.D. 2014)

Jozkowski, K., Henry, D., & Sturm, A. (2014, January 7). College students' perceptions of the importance of sexual assault prevention education: Suggestions for targeting recruitment for peer-based education. *Health Education Journal*, 46-59.

Kellenberger, H. (2014, January 29). Ole Miss cornerback Bobby Hill charged with sexual battery. *USA Today*. Retrieved from <http://www.usatoday.com/story/sports/ncaaf/2014/01/29/ole-miss-cornerback-bobby-hill-sexual-battery/5034635/>

Kersey, J. (2015, August 1). Oklahoma linebacker Frank Shannon 'I just feel like I owed it to my teammates to come back.' *News OK*. <http://newsok.com/article/5439484>

Kieran, K. and Lamb, K. (2014, May 23). Federal complaints filed against U. in sexual assault case. *Brown Daily Herald*. Retrieved from <http://www.browndailyherald.com/2014/05/23/federal-complaints-filed-u-sexual-assault-case/>

Kingkade, T. (2014, April 4). Florida State University under investigation in connection to Winston rape case. *Huffington Post*. Retrieved from http://www.huffingtonpost.com/2014/04/04/florida-state-investigation-winston-rape_n_5093807.html

Kingkade, T. (2014, July 21). Brown University becomes latest Ivy League under federal investigation. *Huffington Post*. Retrieved from http://www.huffingtonpost.com/2014/07/21/brown-university-investigation_n_5606131.html

- Know Your Rights: Title IX Prohibits Sexual Harassment and Sexual Violence Where You Go to School. Retrieved from <http://www2.ed.gov/about/offices/list/ocr/docs/title-ix-rights-201104.pdf>.
- Kroh, K. (2015, March 3). Report: Duke ignored sexual assault allegations before dismissing basketball player. *Think Progress*. Retrieved from <http://thinkprogress.org/sports/2015/03/03/3628958/duke-basketball-sexual-assault/>
- Lavigne, P. (2014, August 19). Tulsa facing Title IX lawsuit. *ESPN*. Retrieved from http://espn.go.com/espn/otl/story/_/id/11371378/tulsa-faces-title-ix-lawsuit-sexual-assault-report-involving-patrick-swilling-jr
- Lindstrom, L. (2014, November 10). University of Findlay football player expelled following sexual assault investigation. *The Blade*. Retrieved from http://www.bcsn.tv/news_article/show/445892
- Mattioli, K. (2015, February 26). Police issue warrant for Chris Jones on rape, sodomy charges. *Sporting News*. Retrieved from <http://www.sportingnews.com/ncaa-basketball-news/4636844-chris-jones-louisville-dismissed-rape-sodomy-arrest-police-warrant>
- Megargee, S. (2016, February 9). Lawsuit alleges University of Tennessee has 'hostile sexual environment.' *Knoxville News Sentinel*. Retrieved from <http://www.knoxnews.com/news/local/sweeping-sex-assault-suit-filed-against-university-of-tennessee-368223151.html>
- McMahon, P. (n.d.). (2008). Sexual Violence On The College Campus: A Template For Compliance With Federal Policy. *Journal of American College Health*. 57(3), 361-366.
- Megargee, S. (2016, February 9). Lawsuit alleges University of Tennessee has 'hostile sexual environment.' *Knoxville News Sentinel*. Retrieved from <http://www.knoxnews.com/news/local/sweeping-sex-assault-suit-filed-against-university-of-tennessee-368223151.html>
- Miller, T. (2014, October 7). University of Findlay basketball, football player expelled after sexual assault investigation. *AP World Now*. Retrieved from <http://apmobile.worldnow.com/story/26715612/2-university-of-findlay-students-expelled-after-sexual-assault-investigation>
- Moeller, K. (2015, December 30). Boise State reaches settlement in sexual misconduct lawsuit. *Idaho Statesman*. Retrieved from <http://www.idahostatesman.com/news/local/community/boise/article52380585.html>
- Mouilso, E., Calhoun, K., & Rosenbloom, T. (n.d.). (2013). Impulsivity and Sexual Assault in College Men. *Violence and Victims*. 28(2), 429-442.

- Moser, C. (2004). Penalties, Fouls and Errors: Professional athletes and violence against women. *Sport Lawyers Journal*. 11, 69-87.
- Moynihan, M., Banyard, V., Arnold, J., Eckstein, R., & Stapleton, J. (n.d.). (2010). Engaging Intercollegiate Athletes in Preventing and Intervening in Sexual and Intimate Partner Violence. *Journal of American College Health*. 59(3), 197-204.
- Norlander, M. (2014, March 19). Report: Providence players linked to police sex assault case. *CBS Sports*. Retrieved from <http://www.cbssports.com/collegebasketball/eye-on-college-basketball/24491403/report-providence-players-linked-to-police-sex-assault-case>
- O'Neil, D. (2016, March 15). Ex-Ducks Dominic Artis and Damyeon Dotson suing school. *ESPN*. Retrieved from http://espn.go.com/college-sports/story/_/id/14982683/two-former-oregon-ducks-file-lawsuit-dismissals
- “Organizational Culture.” *Business Dictionary*. Retrieved from <http://www.businessdictionary.com/definition/organizational-culture.html>
- Osborne, B. (n.d.). (2013). Eliminating sexual violence in schools: Implications for athletics administrators in the United States. *The International Sports Law Journal*. 13(1-2), 9-17.
- Ovalle, D. (2014, November 5). Ex-UM players in campus rape case allowed to enter program for first-time offenders. *Miami Herald*. Retrieved from <http://www.miamiherald.com/news/local/crime/article3583495.html>
- Pendergast, C. (2014, March 18). Garcia sentenced to 2.5 years prison, lifetime as sex offender. *Nogales International*. Retrieved from http://www.nogalesinternational.com/news/garcia-sentenced-to-years-prison-lifetime-as-sex-offender/article_78e67138-ae09-11e3-a3be-001a4bcf887a.html
- Perry, K. (2014, November 26). University accused of violating accused students' rights. *USA Today*. Retrieved from <http://www.usatoday.com/story/news/nation/2014/11/26/university-cincinnati-lawsuit-sex-assault-accused-students/19518741/>
- Plaintiff v. The University of New Mexico Board of Regents, Case 1:15-cv-00141 (New Mexico 2015).
- Prohaska, T. (2015, December 6). Online petition seeks ouster of Niagara dean over rape claim. *Buffalo News*. Retrieved from <http://www.buffalonews.com/city-region/niagara-university/online-petition-seeks-ouster-of-niagara-dean-over-rape-claim-20151205>
- Prohaska, T. (2016, February). Dean cleared of rape coverup, will step down anyway. *Athletic Business*. Retrieved from <http://www.athleticbusiness.com/college/report-clears-dean-of-rape-coverup-dean-still-to-step-down.html>

- Rammell, N. (n.d.). (2014). Title IX and the Dear Colleague Letter: An ounce of prevention is worth a pound of cure. *B.Y.U. Education & Law Journal*. 1, 135-149.
- Revised Sexual Harassment Guidance: Harassment of Students by School Employees, other Students, or Third Parties*. (2001). US Department of Education Office of Civil Rights.
- Romero-Salas, T. (2015, February 20). Lawsuit: UNM botched rape investigation. *Daily Lobo*. Retrieved from <http://www.dailylobo.com/article/2015/02/2015-02-20-lawsuit-filed-against-unm>
- Schlabach, M. (2015, August 28). Baylor victim hires Title IX lawyer from Florida State case. *ESPN*. Retrieved from http://espn.go.com/college-football/story/_/id/13533119/woman-accused-former-baylor-player-sam-ukwuachu-rape-hires-title-ix-firm
- Schow, A. (2015, August 10). Judge rules university can't shift burden of proof onto the accused. *Washington Examiner*. Retrieved from <http://www.washingtonexaminer.com/judge-rules-university-cant-shift-burden-of-proof-onto-the-accused/article/2569953>
- Sexual Harassment Guidance: Harassment of Students By Employees, Other Students, or Third Parties*. (1997). US Department of Education Office of Civil Rights.
- Sexual Violence Facts At A Glance. (2012). Retrieved from: <http://www.cdc.gov/violenceprevention/pdf/sv-datasheet-a.pdf>.
- Simpson v. University of Colorado-Boulder, 06-1184 (10th Cir. 2007)
- Simpson v. University of Colorado. (2006, August 24). Retrieved from <https://www.aclu.org/racial-justice-womens-rights/simpson-v-university-colorado>.
- Sinozich, S., & Langton, L. (2014, December 1). Rape and Sexual Assault Victimization Among College-Age Females, 1995-2013. *US Department of Justice*.
- SS v. Alexander, 177 P.3d 724, 143 Wash. App. 75 (Ct. App. 2008).
- Sinozich, S., & Langton, L. (2014, December 1). Rape and Sexual Assault Victimization Among College-Age Females, 1995-2013. *US Department of Justice*.
- Title IV, sec. 40001-40703 of the Violent Crime Control and Law Enforcement Act of 1994, H.R. 3355
- Title IX of the Educational Amendments (1972, 20 U.S.C. §§ 1681)
- United Educators. Confronting campus sexual assault: an examination of higher education claims. (2015, January 28).

- Walker, T. (2016, March 21). Former KU rower files Title IX lawsuit against university. *KMBC*. Retrieved from <http://www.kmbc.com/news/former-rower-files-title-ix-lawsuit-against-ku/38620356>
- Williams v. Board of Regents of University System of Georgia., 477 F.3d 1282 (11th Cir. 2007).
- Wilson, D. (2014). *Addressing Sexual Assault and Interpersonal Violence: Athletics' Role in Support of Healthy and Safe Campuses*. NCAA.
- Wilson, R. (2014, September 4). Why campuses can't talk about alcohol when it comes to sexual assault. *Chronicle of Higher Education*.
- Wiseman, C. (2015, January 31). UTC wants accused rapist gone for good. *Times Free Press*. Retrieved from <http://www.timesfreepress.com/news/local/story/2015/jan/31/utc-wants-accused-rapist-gone-good/285711/>
- Wolfson, A. (2015, April 29). Chris Jones in tears after rape exoneration. *Courier-Journal*. Retrieved from <http://www.courier-journal.com/story/news/crime/2015/04/29/chris-jones-indicted-rape-case/26577053/>
- Zaelke, D. (2005). Compliance Theories. In *Making law work: Environmental compliance & sustainable development*. London: Cameron May.