

Sexual Violence on Campus: Why is this our Issue?

ROBERT DONLEY
EXECUTIVE DIRECTOR
BOARD OF REGENTS, STATE OF IOWA

SAUNDRA K. SCHUSTER
PARTNER
THE NCHERM GROUP, LLC



Iowa Board of Regents: Lessons Learned

Iowa Board of Regents Governance Structure –

- ❖ 9 member volunteer Board
- ❖ The Board is politically and gender balanced, and contains one student Regent
- ❖ Governs the School for the Deaf and the School for the Blind and the three state universities – University of Iowa, Iowa State University, and University of Northern Iowa
- ❖ Engages in policy-making, oversight and coordination of the five institutions under its jurisdiction
- ❖ Specifically tasked with the authority to develop written policies addressing sexual misconduct and abuse on Regent campuses. *See Iowa Code section 262.9.28 (2013).*



Fall 2007 Incident

During the Fall 2007 a female student reported that she had been sexually assaulted by two student athletes.

The matter was addressed under then-current University policies and procedures. These procedures provided –

- ❖ Two separate policies potentially covered allegations of sexual assault
- ❖ Allegations of sexual assault could be pursued informally.
- ❖ Individual Departments, including Athletics, were permitted to process informal complaints.
- ❖ A reporting structure that required that a number of offices be notified and involved in the investigation and resolution of formal allegations of sexual assault involving students



Lessons Learned and Action Taken

Feedback Concerning 2007 Policies and Procedures –

- ❖ Multiple applicable policies creates confusion
- ❖ Involvement of multiple offices in investigation and resolution is cumbersome and confusing
- ❖ “Informal” resolution of allegations of sexual assault is inappropriate
- ❖ The process, from reporting to investigation and resolution, needed simplification and clarity
- ❖ Access to information on policies, reporting options, and victim services needed improving
- ❖ Make readily available and accessible a trained victim advocate

Why was this feedback important to the University and the Board’s mission?



Lessons Learned and Action Taken

Flagship Grant and Schuster & Clifford, L.L.P. –

- ❖ Conducted a comprehensive, system-wide evaluation of policies and procedures
- ❖ Engaged students, faculty, staff and administrators in the process
- ❖ Reviewed relevant State and Federal laws and best practices

Outcomes –

- ❖ Implemented a single policy addressing Student Sexual Misconduct
- ❖ Created a single office tasked with receiving and investigating reports
- ❖ Created user-friendly web sites containing comprehensive resource and policy information
- ❖ Engaged in on-going training for all students, faculty and staff
- ❖ Commitment to continued engagement of students and staff in prevention, awareness, and procedures

The Headlines

Addressing Sexual Assault on Campus

Recent *Chronicle* Headlines

- *Senator's Survey Finds Subpar Response From Colleges to Sexual Assault*
- *Why Are Colleges in the Business of Handling Rape Cases?*
- *In Sex-Harassment Cases, No One Is Happy With Colleges' Response*
- *Education Dept. Names 67 Institutions Facing Sex-Assault*
- *White House Raises the Bar for Colleges' Handling of Sexual Assault*
- *7 Senators Call for Steps to Improve Colleges' Handling of Sexual Assaults*

NY Times

- *Reporting Rape, and Wishing She Hadn't: How One College Handled a Sexual Assault Complaint*

Inside Higher Ed

- Should expulsion be the default discipline policy for students accused of sexual assault?
- At college sexual assault summit, talk of apologies and 'toxic' climates

A Brief History

“Dean Wormer” (1950’s)

Dixon v. Alabama 1961 (Impact of Due Process)

Civil Rights Era (VII, VI, IX), 1960’s & 70’s

1992 “Campus Sexual Assault Victims’ Bill of Rights” (the pendulum shifts)

Gamechanger cases:

- Franklin v. Gwinnett 1992
- Gebser v. Lago Vista 1998
- Davis v. Monroe County 1999

Laws & Guidance

- 2001 OCR Guidance
- 2011 Department of Education “Dear Colleague Letter” (reinforcement of equity concept)
- VAWA/SaVE Act (March 7, 2013)
- White House Task Force Report, April, 2014
- OCR – FAQ, April, 2014

Framework for Addressing Sex & Gender Misconduct on Campus

College Policy

- Reflect the law as well as campus mission and values

Title IX – Applies to entire campus, covers sex/gender

- OCR creates Guidelines & provides oversight
- DOJ/DOE Compliance Requirements

Title VII – Limited to employment only (covers sex, race, religion and national origin)

Case law

Clery Act

- “Campus Sexual Assault Victims’ Bill of Rights” “SaVE Act” 2013

Violence Against Women (VAWA) Act & SaVE Act (March, 2013)

President’s Task Force on Sexual Assault Report (April, 2014)

OCR – FAQ (April, 2014)

Title IX

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

Title IX of the Education Amendments of 1972

Implementing Regulations at:

20 U.S.C. § 1681 & 34 C.F.R. Part 106

A Bit More About Title IX

Federal Law enacted in 1972

Intended to end sex discrimination in all areas of education, including in employment

Made non-discrimination based on sex/gender a condition of participation in all federally funded education programs for both public and private institutions

It applies to educational program equity, such as in athletics, and also to sexual harassment and sexual misconduct and violence

Compliance with the law is overseen by the U.S. Dept. of Education, Office of Civil Rights

Regulatory Oversight Of Title IX

U.S. DEPT. OF EDUCATION

OFFICE OF CIVIL RIGHTS (OCR)

Role Of OCR & Title IX

- The Office for Civil Rights (OCR) is responsible for establishing the compliance standards to be applied in investigations and enforcement of Title IX
- OCR requires that once a school has notice of possible sexual harassment of a student, the school should take immediate and appropriate steps to:
 - Investigate what occurred
 - Take prompt and effective action to end the harassment
 - Remedy the effects
 - Prevent the recurrence

Regulatory Standards Include

If the institution has “notice” of sexual misconduct, these four steps are the school’s responsibility whether or not the student who was harassed makes a complaint or otherwise asks a school to take action

OCR acknowledges that there may be circumstances where the complainant requests confidentiality or refuses to participate, thus, the school’s ability to take action may be limited

BUT - the school is still required to take all reasonable steps to investigate and respond

OCR Title IX Compliance Requirements

Publication of Policies and Procedures that includes:

- Non-discrimination Statement
- Effective reporting and response protocol
- Appropriate grievance procedures
- Fair and equitable investigations
- Equitable remedies
- Prevention of recurrence
- Incorporation of training as specified by the VAWA/SaVE Act
- Appointment of a Title IX Coordinator

The IX Commandments

Thorough	Reliable	Impartial	Investigation
Prompt	Effective	Equitable	Process
End the Discrimination	Prevent its Recurrence	Remedy the effects upon the victim & community	Remedies

Civil Law Suits v. Administrative Action & Title IX

LAW SUIT

Filed in Federal Court

Monetary damages, injunction

Requires:

- Actual Notice
- Employee with authority to take action
- Deliberate Indifference

ADMINISTRATIVE ACTION

Initiated by OCR

Voluntary compliance or findings

Requires:

- Actual OR Constructive Notice (“knew or should have known”)
- Investigate – End harassment – Remedy Impact – Prevent recurrence

OCR – Dear Colleague & FAQ's

PUBLISHED APRIL 1, 2014

Significant Messages of the FAQ's

- The FAQ's represent a "Significant Guidance Document under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices
- Supplements the DCL from April 4, 2011 & the 2001 Guidance
- Schools should take steps to provide appropriate remedies to victims of sexual misconduct (and, where appropriate, the broader population) even if the perpetrator is not a member of the school community
- Three essential procedural requirements to follow:
 - Disseminate a notice of non-discrimination
 - Designate at least one Title IX Coordinator
 - Adopt & publish grievance procedures providing for prompt and equitable resolution of student and employee sex discrimination complaints

Significant Messages of the FAQ's

- Substantial information regarding:
 - Who are “Responsible Employees” and what are their obligations
 - What constitutes “notice” requiring the school to take action
 - Who are “confidential employees” – what must we tell the community
 - Intersection of campus actions with criminal investigations and actions
 - Guidance regarding campus investigations and hearings
 - Reinforcement of broad campus outreach
 - VAWA/SaVE Act did not alter the school’s obligations under Title IX or the DCL

VAWA & SaVE Act

SIGNED INTO LAW MARCH 7, 2013

EFFECTIVE MARCH 7, 2014

FEDERAL REGISTER JUNE

Recent Clery Changes: VAWA Reauthorization & Section 304-SaVE Act

The SaVE Act (Section 304) significantly amends the Clery Act

- Adds numerous reporting requirements to the Annual Security Report (ASR)
- 2014 ASR must reflect new law
- Increased focus on bystander intervention
- Must identify trained, confidential victim advocates who can provide emergency and ongoing support (a “key” best practice)
- Addresses remedies and support for victims

Training Mandates

- The SaVE Act requires increased attention to training efforts, including substantial campus-wide and constituency-targeted training and prevention programming requirements [Note: substantial commitment & costs!]
- Extensive new training requirements focusing on sexual assault, stalking, domestic violence and dating violence, prohibits retaliation
 - Mandatory training for all incoming students and employees
 - Ongoing training for all faculty
 - Annual training for all individuals involved with the grievance process (Title IX, hearing officers, appeals officers, investigators)

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White House Task Force Report

PUBLISHED APRIL 1, 2014

White House Task Force Report

April, 2014

Recommends 4 Action Steps:

1. Identify the problem by conducting Campus Climate Surveys
2. Engage in Primary Prevention Programs and engage men
3. Develop effective response protocols
 - Provide confidential reporting resources
 - Create a comprehensive Sexual Misconduct Policy
 - Provide trauma-informed training
 - Provide effective disciplinary systems
 - Partner with community resources

White House Task Force Report

April, 2014

4. Increase Transparency and Improve Enforcement

- The White House web site NotAlone.gov will publish enforcement data
- OCR continues to highlight enforcement expectations, FAQ's released to reinforce expectations
- OCR & DOJ entered into an agreement to better coordinate their work in the area of Title IX and Clery

White House Report: Rape and Sexual Assault: A Renewed Call to Action

The Report summarizes the intention of OCR's recent Resolution Agreements with institutions. Such Agreements strive to help campuses develop:

- Comprehensive plans for educating students and employees about sexual assault;
- Policies and practices for responding to allegations of sexual violence;
- Adequate training for school officials charged with responding to complaints; and
- Policies to ensure that survivors are given the remedies and resources they need to continue their educations.

These are guideposts for us to consider on our own campuses

Source: Rape and Sexual Assault: A Renewed Call to Action, Jan. 2014, p. 25

AND More Legislation to come!

July 30, 2014 A Bi-partisan group headed by Sen. McCaskill (Mo.) introduced the “Campus Accountability and Safety Act” which would require nationwide surveys of students; increase financial penalties for violating existing regs. (from \$35,000 to \$150,000); introduces new roles for campus advocates; mandate increased disclosure from Dept. of Ed. About investigations conducted under Title IX.

July 30, 2014 Senator Boxer (Calif.) and Rep. Davis (Calif.) introduced the “Survivor Outreach and Support Campus Act” (“SOS Act”) which would require institutions to establish an independent, on-campus advocate to support victims of sexual assault

July 31, 2014 Rep. Speier (Calif.) and Rep. Meehan (Pa.) introduced the “Hold Accountable and Lend Transparency on Campus Sexual Assault Act” (“HALT Act”) focused on requiring penalties for non-compliance of Title IX; create a private right of action for individuals harmed by institutions failure to meet requirements; increase penalties for Clery violations; mandate annual climate surveys...and more

What I Am Seeing On Campuses

- Increased attention to issues of sexual harassment, hostile environment, violence
- Confusion in sorting out issues when drugs or alcohol is involved-training needed!
- Increased reporting (Clery numbers are going up—that's a GOOD thing!)
- More “helpers” for victims in filing complaints or civil suits
- Increased media attention
- Conflicts with free speech
- Issues of due process for accused v. victim's rights
- Emphasis on applying an “investigator model” to civil rights allegations, movement away from standard hearing board approaches
- Schools examining current policies & procedures for compliance-status quo challenged

Tips For State Leaders

- Ensure all institutions have appointed a Title IX Officer
 - Not Just a figurehead
 - Must be trained in the scope of the laws and regulations related to sex & gender misconduct; knowledgeable about Title IX response requirements
- Require development of climate surveys
- Require a published non-discrimination notice in compliance with Title IX
- Encourage schools to audit their policies and procedures
- Encourage schools to develop a single Community-Based Policy on Sexual Misconduct and Harassment (incorporate “Essential Policy Elements”)
- Require schools to identify “Responsible Employees” and Confidential Reporting Sources

Thank You!

Questions?

Sandra K. Schuster, Esq.

Sandra@NCHERM.org

www.NCHERM.org

www.ATIXA.org