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## Guest Column: Campus sexual assault awareness

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With the development of social media and sexual-assault awareness programs such as Know Your IX and the White House's Not Alone campaign, college students are becoming more educated about their rights and a college's obligations when allegations of sexual violence are reported.



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Colleges and universities receiving federal funding are subject to requirements of Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681-1688, the [Jeanne Clery](#) Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act), 20 U.S.C.

§ 1092(g) and many other regulations involving sexual violence prevention and response in an educational setting. The enlightenment of the student body and the public at large has helped spark a national conversation about a topic that has long been quiet — sexual assault and its impact on a student's ability to access higher education. After all, knowledge is power.

Increased public awareness also has affected the number of Title IX violation complaints filed with the U.S. Department of Education's Office of Civil Rights. In March, 104 colleges and universities were confirmed to be under investigation by OCR for alleged Title IX violations, according to [Nick Anderson's](#) article, "Feds Launch a Sexual Violence Investigation at American University," in the March 18 edition of the [Washington Post](#).

According to the Department of Education's List of Higher Education Institutions with Open Title IX Sexual Violence Investigations last year, which listed 55 institutions under investigation, the latest figure is almost double the number from less than a year earlier. In addition to filing complaints with OCR, students may also decide to bring a private lawsuit against an institution related to its delayed or deficient response to a report of sexual assault. See, for example, *Doe v. Univ. of Or.* No. 6:15-cv-00042(MC) (D. Or. filed Jan. 8, 2015).

Title IX prohibits discrimination on the basis of sex in educational programs and activities receiving federal funding and imposes an independent obligation for a college or university to investigate allegations of sexual violence, even when there is a corresponding criminal investigation involving the same incident.

Despite having the duty to investigate, a 2014 national survey of 440 public and private colleges and universities conducted at the request of Sen. [Claire McCaskill](#) found that “more than 40 percent of schools in the national sample have not conducted a single (sexual violence) investigation in the past five years,” according to the U.S. Senate Subcommittee on Financial & Contracting Oversight Sexual Violence on Campus from July 9, 2014.

If accurate, these colleges may find themselves amongst the ranks of the 104 colleges and universities under investigation by OCR.

Responsibility to take action (both preventative and responsive) to sexual assault and other matters is not unique to institutions of higher learning. A similar, but not identical, responsibility exists in employment settings. Employers generally have an obligation to investigate complaints of sexual harassment or sex discrimination under Title VII of the Civil Rights Act of 1964. It doesn't mean that employers or college administrations are guarantors of safety in the workplace or at school. However, like employers, universities cannot stand idle or turn a blind eye if they have a known problem.

Most universities and colleges trying to meet their obligations under Title IX and the Clery Act (and other federal regulations) are simply looking for more direction. Clearer mandates about what has to be done or should not be done in response to a sexual assault complaint would provide a road map for college administrators to follow. By now, colleges and universities are aware that they have a duty to investigate allegations of sexual assault.

There are questions that arise about what that entails. After receiving a report of a sexual violence or stalking incident, which, or how many, witnesses do you have to interview? Where do you begin when the alleged incident occurred years ago? Is a review of electronic correspondence (emails, texts, etc.) required, and what happens when the investigator cannot access this information? What happens when electronic information or evidence is destroyed (either intentionally or otherwise)? At what point is the investigation complete? What if law enforcement has evidence relevant to your investigation but cannot (or refuses to) turn it over during the pending criminal investigation? What happens if the victim refuses to cooperate or claims the incident never happened?

Federal regulations effective July 1 will help provide more guidance when encountering allegations of sexual misconduct. Some of these regulations are new, such as requiring an institution to clearly identify in the school's policy the standard of evidence used at a student disciplinary hearing. Others, such as informing a sexual-assault victim of his or her option to notify law enforcement, as well as options for counseling services, restate items that institutions should have been providing all along, according to Campus Sexual Assault Victims' Bill of Rights, Pub. L. No.102-325, § 486(c), 106 Stat. 448, 621-623 (1992).

It seems there may be no “one size fits all” approach when it comes to a college's investigation or a student disciplinary proceeding. It may be an evolving process aimed at striking a balance between, for example, due process for an accused student and a victim's rights. Yet there must be minimum thresholds that must be met. Pending legislation such as the Campus Accountability and Safety Act may provide further guidance for colleges on what needs to be done in response to sexual assault allegations.

Additionally, the pending legislation calls for heightened financial impacts on institutions by the imposition of stiffer penalties (including a civil penalty of up to 1 percent of an institution's operating budget) for failure to carry out the new proposed requirements, according to Campus Accountability and Safety Act, S. 590, 114th Cong. (2015). For those institutions seeking to comply with regulations and also reduce institutional risk, the time to review your policies and procedures is now.