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PERSPECTIVE

## Title IX: Assaults shine spotlight on schools' responsibilities

By Angela Reddock-Wright

Over the last few years, several stories have appeared around sexual assaults on college campuses. Michigan State University and the University of Michigan became the poster children for these allegations when both were found to have employed doctors who sexually assaulted student athletes. In 2019, University of Southern California separated with its President C.L. Max Nikias amidst stories of alleged sexual assault against thousands of students by a former student health center gynecologist.

Most recently, alleged druggings and sexual assaults were reported at a fraternity house on the USC campus. Six students claimed they had been drugged at Sigma Nu on September 24 with one also alleging that she had been sexually assaulted. Additional reports of sexual assault and battery, as well as reports of drugging, at other unnamed fraternities were filed with the school. USC suspended its Sigma Nu chapter and called for a voluntary stop to all fraternity social gatherings while the allegations were being investigated.

These schools, and the fraternities and sororities on their campuses, are not outliers. Fraternities and sororities across the country have been hotbeds of alleged hazing and sexual assault going back decades, and in recent years major universities have faced increased scrutiny for student sexual assault involving school personnel. Universities that learn of campus assaults have a fundamental duty to take the allegations seriously and promptly commence thorough and



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fair investigations. They also have a responsibility to maintain open lines of communication with the student body, local law enforcement and the general public.

When assaults involve school personnel, such as campus physicians, schools clearly have accountability. But when misdeeds occur with respect to Greek organizations, or when the alleged perpetrators are fellow students, the picture can be less clear. Greek houses are part of a national system and are quasi-independent from their school hosts, but they exist at the sole discretion of the schools. The schools authorize these groups to be on campus and agree to serve as their hosts. Schools cannot separate themselves from these institutions.

Schools that open their doors and their grounds to Greek life have a duty not only to monitor what happens at Greek houses,

but also to conduct a thorough investigation whenever an incident is reported, and to take prompt and appropriate action when an abuse is identified. At a minimum, such investigation must include a Title IX hearing and a commitment by the Greek organization's governing body to establish a robust oversight process. Absent this last item, schools have a further duty to determine whether the Greek organization should be barred from campus.

All federally funded educational institutions are subject to Title IX, which prohibits sexual discrimination, harassment, and assault, domestic violence, and stalking. Title IX states, "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 education program or

activity receiving Federal financial assistance."

Schools' responsibilities in cases of sexual assault have evolved over the years. In the 1980s, federal courts ruled that sexual harassment was a form of sex discrimination under Title VII of the Civil Rights Act, and they later applied similar rules to schools under Title IX. The Supreme Court established boundaries in two 1990s cases, *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998), and *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999), ruling that any

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school receiving federal money could be held liable only if it (1) had “actual knowledge” of the misconduct and (2) responded with “deliberate indifference.” The misconduct had to be “so severe, persistent, and objectively offensive that it effectively bars the victim’s access to educational opportunity.”

The Obama administration’s Office of Civil Rights expanded schools’ responsibility with measures designed to “end any harassment, eliminate a hostile environment if it has been created, and prevent harassment from occurring again.” OCR’s policy required schools to use a “preponderance of the evidence” standard in disciplinary hearings and discouraged live hearings and cross-examination. Schools were urged to employ a “single investigator” model, with one person appointed by the school’s Title IX coordinator authority to investigate alleged misconduct and determine guilt or innocence.

In 2019, however, the Trump administration chose to rewrite the Title IX playbook through a formal rulemaking process. It decreed that schools no longer had an affirmative obligation “to take effective action to prevent, eliminate, and remedy sexual harassment” by “changing the culture.” They would simply be obligated to address particular cases of serious sexual misconduct. Attorneys general from 18 states sued to reverse the regulations; however, the new rules currently govern the manner in which campus assaults are handled.

Of most concern to victims’ groups is a requirement that schools hold live disciplinary hearings with cross-examination of witnesses, using a “clear and convincing” evidence standard. Students and employees accused of misconduct are presumed innocent until proven guilty, and schools bear the burden of proof in disciplinary

hearings. With greater procedural protections for alleged perpetrators, the hearing process has become more onerous for schools and arguably less responsive to the trauma of victims.

The Title IX investigation is not a legal investigation; it examines violations of school policy, and failure to appropriately respond could mean a loss of federal funding. Every institution of higher education should have a formal, thorough process for receiving, investigating, and resolving reports of alleged violations. The school’s Title IX office should be responsible for notifying parties when a complaint has been filed and for gathering information relevant to the allegations, including documents, files, cell phone records and audio and video recordings.

The new Title IX procedures require schools to provide both parties with a written explanation of the allegations with “sufficient

details known at the time and with sufficient time to prepare a response before any initial interview.” Both parties have a right to see all evidence collected by the investigator and at least 10 days before the hearing must be given a written report that “fairly summarizes the relevant evidence.” At the conclusion of the hearing, the decision makers must provide “a statement of, and rationale for, the result as to each allegation.”

It is imperative that schools fairly and thoroughly investigate all allegations of sexual assault, wherever they occur on campus, and that they take appropriate action when the evidence supports a finding of alleged misconduct. Victims should be given assurance that they will not face retaliation for reporting assaults, and schools should commit to doing everything in their power to ensure a just and equitable resolution of all reported incidents.