

Responding to Sexual Assault on Campus

A Report on Findings from an
Assessment of Challenges of and
Approaches to Investigation,
Adjudication, and Sanctioning at
U.S. Colleges and Universities

Summary Overview

Linda M. Williams, Ph.D.

Wellesley Centers for Women, Wellesley College
linda.williams@wellesley.edu

April Pattavina, Ph.D.

University of Massachusetts Lowell

Alison C. Cares, Ph.D.

University of Central Florida

Nan D. Stein, Ed.D.

Wellesley Centers for Women, Wellesley College

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Given the considerable changes in federal legislation and the pressing requirements that colleges and universities develop policies and practices that meet the needs of victims and of those accused of sexual assault, we completed research designed to better understand how institutions of higher education (IHEs) handle these demands and coordinate campus approaches to investigation, adjudication, and sanctioning of sexual assaults¹. In January 2016, our research team at the Wellesley Centers for Women began an examination of the range and scope of policies and practices at IHEs in the U.S. and have documented and classified the current landscape (the breadth and differences) of campus responses. Our first step, informed by a victim-centered focus, was a web-based search of a randomly selected sample of four-year colleges and universities. We conducted this systematic broad-based environmental scan to examine the policies and practices promulgated to the public and, most importantly, made available to students by IHEs. This environmental scan was followed by interviews with Title IX coordinators to develop a clearer understanding of the challenges and successes of the policies.

Environmental Web-scan

Institutions of higher education are required to make detailed information regarding sexual assault and the related institutional policy public, particularly via an institution's website². Our environmental scan was designed to provide a panoramic snapshot of how colleges publicly present their investigation and adjudication approaches to reports of sexual assault. This content analysis was conducted in 2016 on each IHE's website and we collected information on 151 items related to response to sexual assault. Trained undergraduate student researchers collected data from the web-sites of a randomly selected representative sample of 969 four year colleges and universities. Of the 969 IHE websites scanned, 33 (3% of the websites) were excluded from analyses because we found no information about sexual assault and, as such, the websites lacked details on the definition of sexual assault, the reporting of a sexual assault, a Title IX office, or investigation or adjudication policies. Beyond the 33 IHEs with no discernable information on Title IX and sexual assault, the lack of information on many sites and the missing information on investigation and adjudication generally raises questions about the extent

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² Campus SaVE Act, 2013.

to which IHEs are effectively serving as a resource for students concerned about sexual assault. In general, the further along in the process in response to a complaint of sexual assault (reporting → investigation → adjudication → sanctioning), the less likely our student researchers were to find information on the IHE websites.

Where information on reporting, investigation and adjudication was available, our web-scan did not find a dominant model for who investigates complaints, determines responsibility or imposes sanctions. Investigations involved sole investigators, teams or panels. Approaches to adjudicatory and sanctioning responsibilities, likewise, were varied and spread across general panels, sexual misconduct specific panels, administrative panels, and sole campus administrators, with some determinations of responsibility made by a sole investigator. Following a finding of responsibility, possible sanctions described on the websites ranged from low level and infrequently mentioned sanctions, such as community service or a no contact order, to serious sanctions more typically described on the websites, such as expulsion and suspension.

It is important to note that these findings represent *what an IHE promulgated in writing on their publicly accessible website*, but may (or may not) differ from what they do in actual practice. Also, just because information could not be located on a website does not mean that information, service, or policy does not exist. Finally, the data were collected in 2016 and, therefore do not reflect any more recent changes in the website content.

While there were no readily discernable models for investigation or adjudication found in the review of the IHE public websites, we explored the extent to which more sophisticated statistical methodologies could be useful in identifying models of approaches to investigation and adjudication from the data collected. While recognizing that these data are based only on what was gleaned from the websites and that much information was missing, we conducted an exploratory cluster analysis to determine if any, clear investigation and adjudication policy models emerged from the web-scan data. These analyses identified some themes and preliminary typologies of investigatory and adjudicatory responses to sexual assault on college campuses including: A *Single Investigator Model* (42% of IHEs), a *Quasi-Criminal Justice Investigative Model* (40% of IHEs) and a *Collaborative Investigative Model* (18% of IHEs) and, for adjudication, a *Basic Due Process Model* (57% of IHEs) and a *Criminal Justice Based Due Process Model* (24 % of schools). In the analyses conducted, we did not identify distinct or mutually exclusive models nor did we find models that were specifically associated with IHE characteristics. Further analyses are underway and will be reported here.

Interviews of Title IX Coordinators

Our interviews with 47 Title IX coordinators focused on the approaches used in investigation and adjudication of sexual assault and the challenges and benefits of the approaches they took. In regard to models for investigation and adjudication, our initial meetings with the advisory board³ and some preliminary interviews led us to the plan to collect specifics on mutually exclusive categories such as: the approach to investigation

³ RSACC board of advisors - <https://www.wcwonline.org/Justice-and-Gender-based-Violence-Research-Site/board-of-advisors>

that involves a solo investigator OR a team of investigators (either comprised on internal or external staff or contractors), OR the investigation includes fact finding hearings, etc. Interestingly, and paralleling our web-scan findings, we found that the protocols within many IHEs involved more of a “smorgasbord” approach and included “all of the above” as possibilities. Interviews also uncovered new changes in protocols in response to new guidance, laws or regulations. The pathway to different approaches for some cases was influenced by the characteristics of the complaint and the wishes of the parties involved. We found that some IHEs included administrative review panels not only for adjudication, but also for investigations. In addition, we found a variety of sanctioning protocols with some administered by individuals (including the Title IX coordinator) and others conducted by boards of various compositions. Often (especially in cases which resulted in suspension or expulsion) final affirmation by the president of the institution was described.

Regardless of the format of the investigation and adjudication, Title IX coordinators described efforts to assure the protection of victims along with a focus on assuring fairness in response to both the complainants and the respondents (alleged perpetrators). Efforts were also made to handle sexual assault cases, particularly sanctioning, partly as an educational process, in keeping with the main mission of IHEs to educate.

Many challenges were mentioned by the Title IX coordinators including:

- 1.) Lacking capacity to respond to increasing numbers of complaints and reports of sexual assault. Especially acute is a need for more well-trained investigators, whether these are from within the IHE community, public safety, or external sources.
- 2.) Garnering support from institutional leadership (the chief officers, including the President) was viewed as critical to the success of the office of the Title IX coordinator. Such support includes resources; visibility of the office, and an approach that supports and legitimates the importance of the Title IX activities (reporting, investigation, and adjudication, as well as, prevention) as a part of an institutional commitment to prevent and respond to campus sexual assault.
- 3.) Improving the Title IX office network of connections on campus and cultivating trust of the Title IX officer in the community among students, faculty, and staff.
- 4.) Achieving a high level of institutional support, not only in terms of funding but also in supporting an administrative structure that does not “silo” the Title IX office in such a way that it diminishes the Title IX coordinator’s authority or isolates them from the larger campus community.
- 5.) Achieving institutional support designed to lower barriers to reporting by students, faculty and staff and thereby providing a culture in which sexual harassment and assault are understood and not tolerated.

Based on data gathered from a national sample of 969 four-year IHEs, in conjunction with interviews with key informants from 47 institutions, this project provided a context for understanding and elaborating the wide variety of individual IHE approaches and programs and thus provided an opportunity to examine how a variety of approaches

address the challenges of responding to college sexual assault. In part, the diversity of responses may be a reflection of the ever-changing landscape of Title IX⁴, driven by changes in federal guidance and policies, state laws and policies, and the impact of civil suits and judicial guidance emerging from these cases. All are awaiting new federal guidelines while continuing to consider options for addressing off-campus assaults, live hearings with direct cross-examination, and changes in investigatory practices and evidentiary standards. These findings on the vast array of responses point to a need for follow-up research designed to examine the impact of different approaches and future alignment of policy and practice with evidence based recommendations for best practices.

The work of this project will be disseminated at wcwonline.org/jgbvr

Our final summary report to NIJ can be found at <https://www.ncjrs.gov/pdffiles1/nij/grants/254671.pdf>

⁴ In a September 22, 2017, “Dear Colleague” letter from the Department of Education under Secretary DeVos, prior policy documents issued under the President Barack Obama administration were withdrawn. These included statements of policy and guidance as were reflected in the “Dear Colleague Letter on Sexual Violence” issued by the Office for Civil Rights at the U.S. Department of Education, dated April 4, 2011 and the “Questions and Answers on Title IX and Sexual Violence”, issued by the Office for Civil Rights at the U.S. Department of Education, dated April 29, 2014. The 2017 letter from the U.S. Department of Education (ED), Office for Civil Rights Acting Assistant Secretary Candice Jackson not only announced the withdrawal of the guidance established by the prior administration, but also published a document, Q&A on Campus Sexual Misconduct to be in effect until new policy is developed through a “rulemaking process that responds to public comment.” The Department of Education noted that they would continue to rely on the 2001 Revised Sexual Harassment Guidance and the reaffirmation of that guidance in the 2006 Dear Colleague Letter on Sexual Harassment. In addition, the Q&A references the Violence Against Women Reauthorization Act and Amendments to the Clery Act and requirements of the Clery Act, which can be found in The Handbook for Campus Safety and Security Reporting 2016 Edition. The issues raised by the Department of Education under Ms. DeVos related to standards of proof, the appeals process, use of cross-examination, collaborations with law-enforcement authorities, and raised concerns that “lack the most basic elements of fairness and due process, are overwhelmingly stacked against the accused, and are in no way required by Title IX law or regulation.”