



VENABLE<sub>LLP</sub>

# **Law & Education Forum**

a discussion series focused on legal issues important  
to universities, secondary schools, independent schools  
and other degree-granting institutions



**Today's Program – April 21, 2016**  
**Speaker Biographies**



**Robb Jones (moderator)** is the senior vice president and general counsel for claims management at United Educators (UE). At UE, he heads the team of 26 lawyers and 29 other professionals responsible for liability claims management for nearly 1,300 colleges, universities, and K-12 schools. He has been at UE since 1997.

Robb has over 35 years of experience serving the education community. He currently serves as a trustee for a liberal arts college, as an adviser to the American Law Institute's Project on Sexual and Gender-Based Misconduct on Campus, and is a member of the National Association of College and University Attorneys (NACUA). He frequently speaks on topics and developments related to Title IX, campus violence, education law, and the U.S. Supreme Court.

Robb has evaluated higher education legal programs for the federal government and a state board of regents and has taught as an adjunct faculty member at two institutions. From 1994-97 he was director of the Judicial Education Division of the Federal Judicial Center, where he developed and managed training and continuing legal education programs for the federal courts. From 1991-94 he served as chief of staff to Chief Justice William Rehnquist at the U.S. Supreme Court. Before that time he was a litigation partner in a Washington law firm, where he concentrated on education, employment, and media litigation.

Robb received his undergraduate degree from Grove City College and graduate and law degrees from the University of Virginia.



**Joseph Storch** is an Associate Counsel in the SUNY Office of General Counsel and Chair of the Student Affairs Practice Group. He concentrates his practice on student affairs, intellectual property, and compliance with the Clery Act. Joseph has provided technical guidance to several higher education institutions and organizations on the Clery Act and served as an expert adviser to the VAWA Negotiated Rulemaking Committee on Counting Clery Crimes. He regularly advises members and staff of the U.S. Senate, House of Representatives, and New York State Legislature on best practices in drafting and analyzing pending domestic and international campus violence prevention legislation.

Joseph co-coordinated SUNY's 2014 University-wide sexual violence prevention policies with the New York State Governor's Office and stakeholders from inside and outside the SUNY system. The resulting policies were lauded by advocates, institutional professionals, media commentators and members of the U.S. Senate, House and New York's State legislature. In 2014, Joseph received the Commissioner's Award from the State University Police for contributions to safety on campus. In 2015, he served as a technical advisor to the Office of Governor Andrew Cuomo, developing comprehensive legislation that was enacted in July 2015 as 129-B of the Education Law (also called "Enough is Enough").

Joseph has trained several thousand higher education professionals on compliance with the Clery Act and related obligations, including National Association of College and University Attorneys (NACUA) conference presentations, three NACUA Virtual Seminars, and co-teaching the NACUA Fundamentals of Clery course. Additionally, he has conducted conference presentations and/or webinars for EDUCAUSE, Cornell ICPL, The University Risk Management and Insurance Association, ACPA—College Student Educators International, the Forum on Education Abroad, the



American Association of State Colleges and Universities, the Northwest Academic Computing Consortium, and to a higher education conference in Australia. By the end of 2016, he will have presented to conference or college audiences in nearly half of the U.S. states. In 2015, NACUA awarded him its First Decade Award at their Annual Conference recognizing the member who makes the greatest contribution within their first ten years of higher education law practice.

Joseph graduated *Summa Cum Laude* from the State University of New York, College at Oswego where he served as Vice President of the Student Association, from the University at Albany with a Masters of Public Policy, and from Cornell Law School where he served as Moot Court Board Chancellor. After graduating, he clerked for the New York State Appellate Division, 3rd Department. Joseph is a frequent author and contributor to education industry and legal publications. [www.linkedin.com/in/JosephCStorch](http://www.linkedin.com/in/JosephCStorch)



**Doreen Martin**, a former state prosecutor, has substantial experience in counseling clients in connection with and conducting internal investigations on behalf of school management, audit committees, and special committees of board of directors, including investigations arising from allegations of harassment, sexual misconduct, accounting fraud, embezzlement, and executive improprieties. Her experience includes assisting management in decisions following investigations, providing risk assessment of policies and internal controls; recommending remedial measures; and other matters.

Recent experience includes advising an educational institution in connection with allegations that the director of the school's residency program harassed and intimidated students. Based on the results of the investigation, she provided advice that the director of the school's residency program should be terminated immediately and that school's anti-harassment and discrimination policies be revised to tighten controls and prevent non-compliance with the policies in the future. Doreen frequently given presentations to clients on how to conduct effective internal investigations and preventing workplace harassment.



**Caryn Pass** represents independent schools throughout the country. She advises educational institutions on a wide range of issues facing her clients in these ever-changing times. The foundation of her practice is the philosophy that effective legal counsel must be consistent with a school's culture. She works collaboratively with her clients, actively joining their team to make certain she is intimately familiar with the school's operations, mission and environment. As a practitioner to schools nationwide, Caryn brings a wide range of experience to the table. Extensive and daily interaction with independent schools provides her with the ability to track trends and patterns and understand the nuances specific to independent schools. This advantage promotes the development of best practices.

Well versed in school law, Caryn advises clients in virtually every type of legal matter. Independent schools enjoy the benefit of interacting with many constituencies including students, parents, employees, trustees, donors, alumni, neighbors and vendors. She assists her clients in navigating these relationships by establishing policies, procedures, strategies and best practices that promote positive working and learning environments while limiting potential liability exposure.



## Protecting Your Campus: Sound Approaches to Handling Abuse, Bullying, Harassment and Sexual Misconduct Claims

## Your Notes:

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A stylized illustration of a wooden pencil pointing upwards, with a cluster of colorful, abstract shapes (bubbles or droplets) emerging from its tip. The shapes are in shades of blue, green, and orange. The background features vertical orange stripes on the left and horizontal blue stripes at the bottom.

# Law & Education Forum

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# Law & Education Forum

## Protecting Your Campus: Sound Approaches to Handling Abuse, Bullying, Harassment and Sexual Misconduct Claims

April 21, 2016

Robb Jones (**Moderator**)  
Senior Vice President and General Counsel for  
Claims Management  
United Educators

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Joseph C. Storch  
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Practice Group  
The State University of New York (SUNY)

Doreen Martin  
Partner, Venable LLP



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# Road Map

- Hot Topics
- Investigations and Reporting
  - How to use investigators
  - Who is the client?
  - Privilege considerations
- Prevention and Intervention
  - Bystander intervention program
  - Social media
- Q & A

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# Law & Education Forum

Protecting Your Campus: Sound Approaches  
to Handling Abuse, Bullying, Harassment and  
Sexual Misconduct Claims

## Hot Topics





The Telegraph

EDUCATION APRIL 18, 2016 7:09 PM

## Mercer University fraternity being investigated for 'serious violations'

The New York Times

*Sexual Harassment Cases Tarnish Berkeley's Image as a Center of Social Activism*

By THOMAS FULLER MARCH 24, 2016



April 20, 2016  
EDUCATION WEEK

## Exclusive boarding schools face reckoning on sexual abuse

THE  
DM  
DAILY MISSISSIPPIAN

## Title IX, University investigate sexual harassment incident at Derby Days

Posted on Apr 19 2016 - 7:01am by Alexis Neely

« PREVIOUS | NEXT »

Newsweek

U.S.

AMID MOUNTING COMPLAINTS,  
UC BERKELEY VOWS TO FIX  
CAMPUS SEXUAL HARASSMENT

By MAX KUTNER ON 4/15/16 AT 4:04 PM

The New York Times

*Colleges Spending Millions to Deal With Sexual Misconduct Complaints*

By ANEMONA HARTOCOLLIS MARCH 29, 2016





# Law & Education Forum

Protecting Your Campus: Sound Approaches  
to Handling Abuse, Bullying, Harassment and  
Sexual Misconduct Claims

## Investigations and Reporting



# Reporting

- Verbal or in writing?
- Regardless of what entity — the institution or the government agency — receives the final report, it is imperative to maintain an ongoing dialogue:
  - What are we doing?
  - Why are we doing it?
- When reporting to government authorities, maintain a distinction between factual reporting and “spin,” e.g., arguing mitigation or putting the organization’s “best foot forward”
- Actual knowledge of wrongdoing
- Constantly be thinking about how to maintain the attorney-client privilege

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# Responding to Government Subpoenas

- ☐ Forward a copy of the subpoena and any supporting documents to legal counsel; await specific instructions
- ☐ To the extent possible, identify the documents being requested by the subpoena and their location(s)
- ☐ Determine who within the organization has knowledge or custody of the documents or the subject matter of the subpoena
- ☐ Suspend any document destruction policies that could affect the documents
- ☐ Issue a “litigation hold” to custodians and other concerned employees, along with specific instructions not to destroy, overwrite, or alter the relevant documents in any way, regardless of the documents’ location(s) or the manner in which they are stored

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# Who is the Client?

Client-Lawyer Relationship –  
Organization As Client  
ABA Model Rule 1.13

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# Who is the Client? (*Cont.*)

- a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.
- b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.

ABA Model Rule 1.13

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# Who is the Client? (*Cont.*)

- c) Except as provided in paragraph (d), if
  - despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and
  - the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

ABA Model Rule 1.13 (*Cont.*)



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# Who is the Client? *(Cont.)*

- d) **Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.**
- e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal

ABA Model Rule 1.13 *(Cont.)*

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# Who is the Client? (*Cont.*)

- f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.
- g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

ABA Model Rule 1.13 (*Cont.*)



# Law & Education Forum

Protecting Your Campus: Sound Approaches  
to Handling Abuse, Bullying, Harassment and  
Sexual Misconduct Claims

## Prevention and Intervention

# Shifting the Conversation

Higher Education (and society in general) has spent years talking to victims and potential victims:

- Walk in groups
- Watch your drink
- Stay with your friends

With VAWA we can shift the conversation to potential assailants and bystanders:

- Recognizing signs of impending sexual assault
- Feeling empowered to disrupt
- Learning tactics to safely disrupt
- Feeling responsibility for others
- Widening the "in group"

# Shifting the Conversation

Amartya Sen, *Identity and Violence*

- Solitarist Identity- leads to us v. them
- That is the primary identity, but we have other identities too:
  - Race
  - Religion
  - Gender
  - Geographic Origin (wide and narrow)
  - Athletic Teams
  - School Affiliation
- In group v. out group for each identity
  - Stronger identity leads to more comfort with violence against out group
  - Education helps (including seeing the world from others' eyes)

# Bystander Action

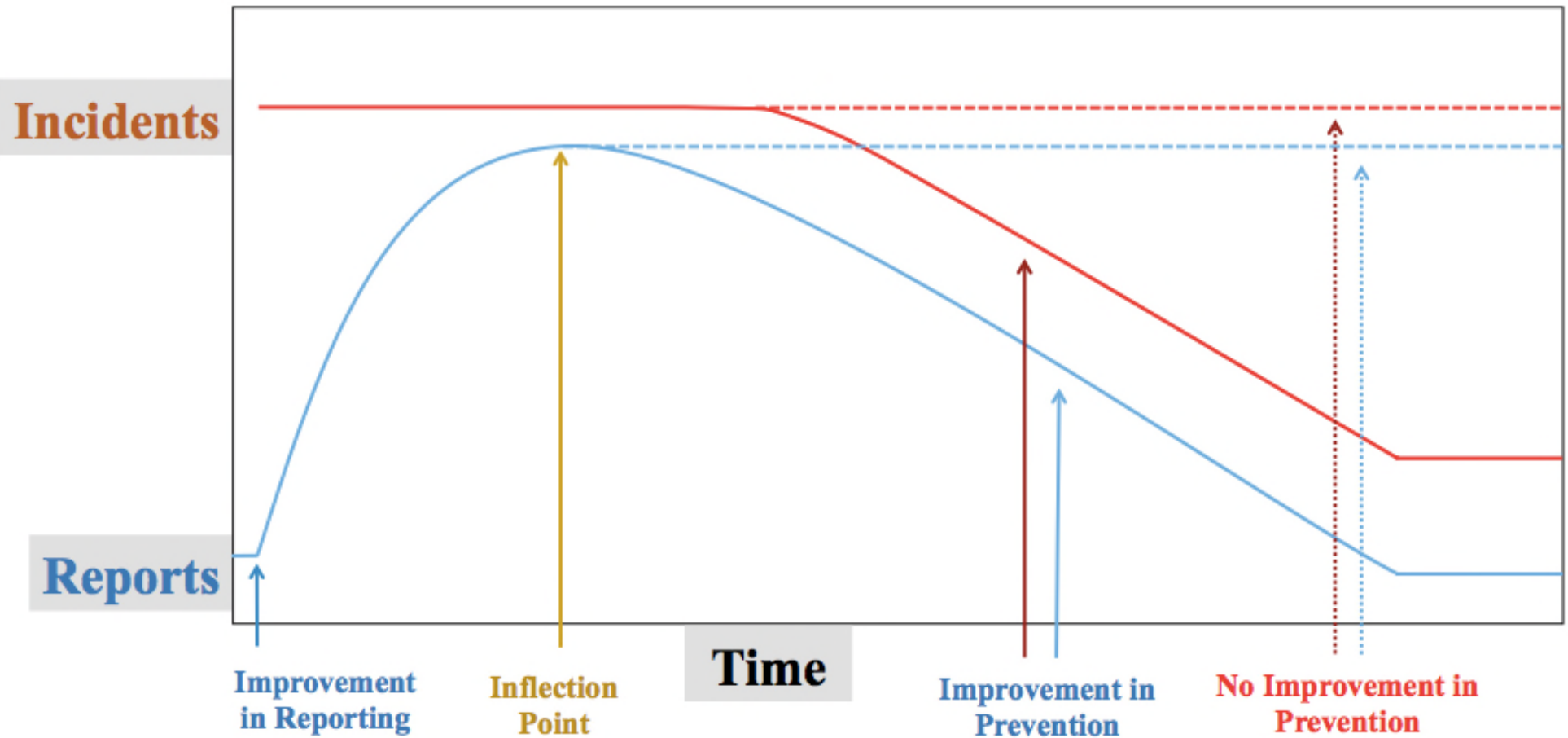
Steps to encourage student bystander action:

- Recognize that an incident is occurring or will occur
- Reduce the ambiguity of whether it is a crime or not
- Believe that the potential victim is in your In Group
- Become empowered to act where others do not
- Determine if one can intervene safely
- Determine if Direct Intervention or Distract, or Detour Intervention (calling UP, alerting friends) is appropriate
- Act (directly, indirectly, or sneakily)
- Feel proud of your role in preventing a life altering crime



The State University  
of New York

# Onboarding/Training



Inside Higher Ed Article: <https://www.insidehighered.com/views/2016/03/14/colleges-must-not-only-respond-reports-sexual-violence-also-prevent-it-essay>



# Onboarding/Training

## ***Stream Model of Sexual and Interpersonal Violence Prevention and Response***

### **Upstream**

Culture of Respect

Green Dot/Bringing in the Bystander/MVP

Orientation/Policy Training

VAWA Campaign and Prevention Programming;  
Programming such as One Love Campaign

Students Run Bystanders Intervention  
at Parties (Cornell's Cayuga's Watchers)

### **Incident Occurs**

Response: Disclosure (confidential and private),  
Health, Mental Health, Housing Accommodations,  
Academic Accommodations.

### **Downstream**

Reporting to Title IX, Conduct  
and/or Law Enforcement

Investigation and college and/or criminal justice process,  
resolution and further training or policy changes

Clery Act Reporting, if applicable

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# Social Media and Email: Best Practices

1. Give your emails and your postings your undivided attention. **Avoid multitasking.**
2. Save the distribution list for last.
3. Beware of "reply all" and only copy people who need to be in on the conversation.
4. **Review on a big screen.** E-mailing and posting using handheld devices with small screens and autocorrect keyboards increase typos and other mistakes.
5. Check attachments.
6. Don't hit "**send**" and / or "**post**" when you're mad/upset/etc.
7. Keep it **professional and collegial**
8. Exaggerating, Joking, Boasting and Losing your Temper -- Tone is not conveyed well in emails and on social media. Juries, judges and arbitrators have been known to give extra weight to content when it comes from email and social media because they are seen as especially frank mediums
9. Don't **promise** complete confidentiality; some disclosures (subject to confidentiality) necessary to investigate
10. Don't comment on a legal complaint
11. For school leaders, don't promise "no action" or "action"
12. Elevate complaints to Title IX, Diversity Coordinators and HR as appropriate
13. **Golden rule – do not informally handle complaints!**

# Questions?



Doreen Martin

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April 21, 2016

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# Confronting Campus Sexual Assault: An Examination of Higher Education Claims

Recent legal and regulatory mandates require virtually all colleges and universities to investigate and adjudicate reports of sexual assault. An analysis of claims reported to United Educators (UE) reveals that institutions respond to cases of sexual assault that the criminal justice system often considers too difficult to succeed at trial and obtain a conviction. Our data indicates these challenging cases involve little or no forensic evidence, delays in reporting, use of alcohol, and differing accounts of consent.

## Claims Data and Methodology

Shortly after the U.S. Department of Education's Office for Civil Rights (OCR) issued its April 4, 2011, "Dear Colleague" letter (DCL), UE published *Sexual Assault: Weathering the Perfect Storm*, which examined student sexual assault claims reported from 2006 to 2010.<sup>1</sup> Our current study, *Confronting Campus Sexual Assault*, examines the nature of campus sexual assaults post-DCL to help educational institutions evaluate their strategies for responding to and preventing campus sexual assaults.

For this study, UE collected and analyzed data from claim files that:

- Involved a student victim
- Included allegations of sexual assault
- Occurred at a higher education institution
- Were reported to UE between Jan. 1, 2011, and Dec. 31, 2013

This study excluded claims involving allegations that faculty or staff sexually assaulted students. Also excluded were claim files for which the gender of both parties and whether they were students was unknown. The final data set included 305 claims reported from 104 colleges and universities throughout the United States. Files were reviewed individually to examine:

- Perpetrator and victim characteristics
- Circumstances of the assault
- Response from the institution
- Resulting litigation

Our analysis is subject to several limitations and conditions. Claims analysts and attorneys maintain claim files to manage litigation and resolve claims against UE members. Because research is not the primary purpose of claim files, our analysis is limited by the information contained in them. Nevertheless, the files contain valuable information that would otherwise be unavailable through other means such as self-report surveys. For example, a claim file can capture a more complete picture of campus sexual assault because it includes information from both parties as well as the institution's investigation and adjudication processes.

Finally, our analysis reflects only UE claims data and should not be generalized to represent all reports of sexual assault on college campuses. The claims data, however, enables institutions to draw some meaningful conclusions for use in responding to and preventing sexual violence on their campus.

<sup>1</sup> Different methodology was used to obtain a larger data set for this study than in the previous study. We recommend that you not draw conclusions from any differences in the findings between the studies.

## Definitions

We use the term "claim" throughout this report to mean a demand for damages as well as an event that could potentially give rise to legal action. Given the serious nature of student sexual assaults, UE policies require reporting of sexual assaults regardless of whether a threat of litigation exists. Accordingly, this study includes sexual assaults that were reported to the institution but never developed into a demand for damages or lawsuit.

Language is important when discussing sexual assaults. Throughout this report, we use the term "victim" to refer to an individual who alleges he or she has been sexually assaulted and "perpetrator" to refer to the individual who allegedly committed the act. These terms are consistent with language used by governmental agencies and organizations that publish sexual violence statistics. 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.

For the purposes of this study, "sexual assault" is defined to include a range of conduct, including sexual coercion, nonconsensual sexual touching (i.e., fondling and kissing), and nonconsensual sexual intercourse, including vaginal, oral, or anal penetration.

# Key Findings

## Frequency

As [Figure 1](#) illustrates, prior to the DCL and for two years thereafter, UE saw a steady decline in the total number of reported sexual assault claims. However, by the end of 2013, the total number of claims more than doubled. We likely can attribute this increase to more institutions publicizing their policies and heightened campus awareness of sexual assault—whether from student-led advocacy or other means.

While this study draws from data through 2013, claims are also likely to increase in 2014 and beyond as institutions evolve their handling of sexual assaults to comply with Title IX and the Violence Against Women Act (VAWA).

## Perpetrator Characteristics

- **Male.** Nearly all (99 percent) of the perpetrators were men.
- **Student.** As [Figure 2](#) shows, 84 percent of perpetrators were students at the same college or university as the victim.
- **Athletics and Greek life.** Fifteen percent of perpetrators were athletes, and 10 percent were members of a fraternity.

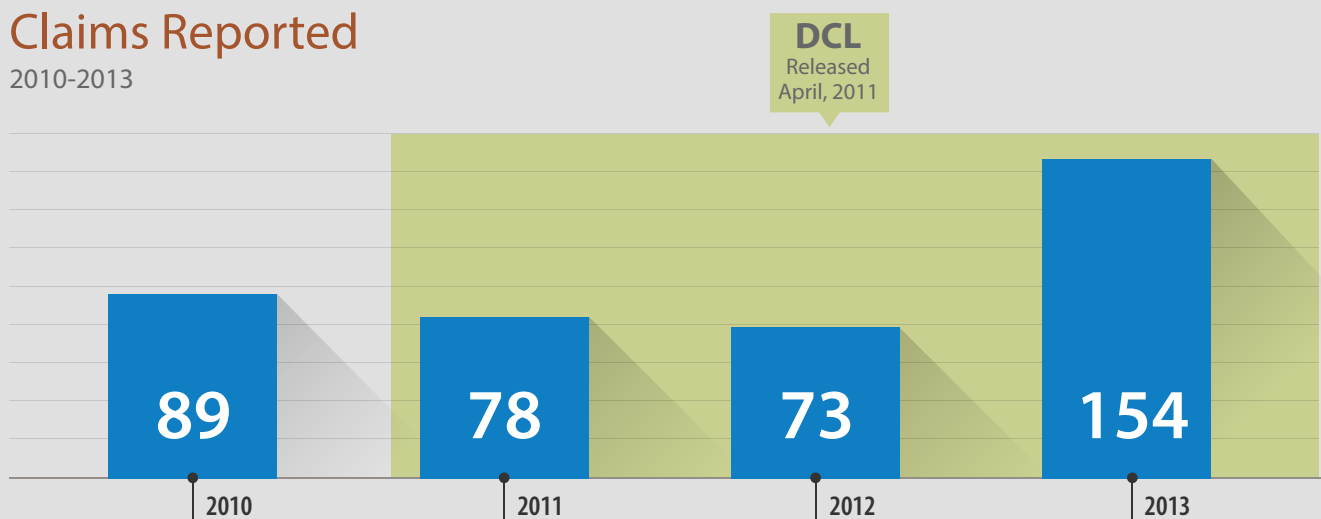
- **Multiple perpetrator sexual assaults.** Ten percent of all sexual assault claims involved a single victim and two or more perpetrators. More than half of multiple perpetrator sexual assaults involved athletes (40 percent) or fraternity members (13 percent). Our review of these claims suggests a subculture within some fraternities and teams that promotes hypermasculinity, sexual aggression, and excessive alcohol consumption. These sociocultural factors may encourage students within these groups to engage in or excuse sexual violence. Claims examples include:

- Members of a football team were accused of taking turns sexually assaulting a student who was unconscious from drinking too much.
- University basketball players pursued a female student who they described as “shy,” “quiet,” and “lonely” because she was “easy” to obtain sex from. Players had sex with the victim on multiple occasions. In one instance, five players showed up at her residence hall to have sex with her.

Figure 1

## Claims Reported

2010-2013





- **Serial perpetrators.** One in five perpetrators was accused of sexually assaulting more than one student; 44 percent of these repeat perpetrators were athletes (20 percent) or fraternity members (24 percent). While the institution generally learned of potential multiple victims only after one victim came forward, in a few instances the perpetrator had previously been accused of violating the institution's sexual misconduct policy. For example, one institution placed a student on disciplinary probation and required him to do community service after he admitted to nonconsensual sexual touching of a female student. He sexually assaulted another student the following semester, this time escalating to nonconsensual sexual intercourse.

## Victim Characteristics

- **Female.** Most (94 percent) victims were women.
- **Knew the perpetrator.** The majority (90 percent) of victims knew the perpetrator. The perpetrator was most often the victim's friend, acquaintance, classmate, boyfriend, or ex-boyfriend.

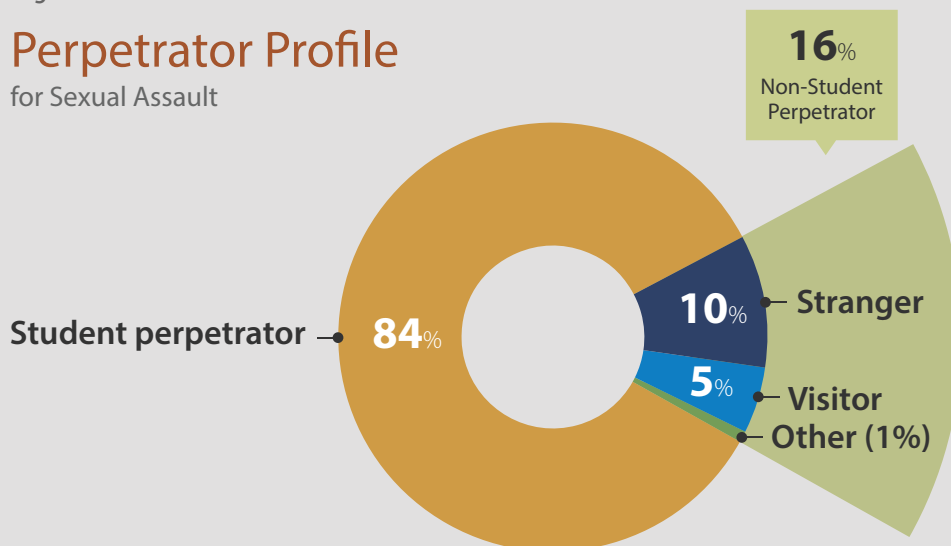
- **First- and second-year students.**<sup>2</sup> Nearly three-fourths (73 percent) of sexual assault victims were freshmen or sophomores (■ Figure 3). The highest rate of victimization occurred during freshman year, followed by a sharp decline sophomore year and every year thereafter. First-year students were also most vulnerable to multiple perpetrator sexual assaults. They accounted for 88 percent of those victims.
- **Reluctance to report sexual assault.** Nearly 40 percent of victims delayed reporting the sexual assault to their college or university. On average, victims delayed 11 months. A review of these claims revealed several reasons for the lengthy delay in reporting, including:
  - *The victim blamed herself because she was intoxicated.* Three-quarters of the victims who delayed in reporting consumed alcohol prior to the sexual assault. In fact, 26 percent of victims who delayed reporting had no clear memory of the assault.

2 This study only presents findings on victims' class year because there was insufficient information on perpetrators' class year in the claims files.

Figure 2

## Perpetrator Profile

for Sexual Assault



**Strangers:** Perpetrators that were unseen or the victim did not recognize.

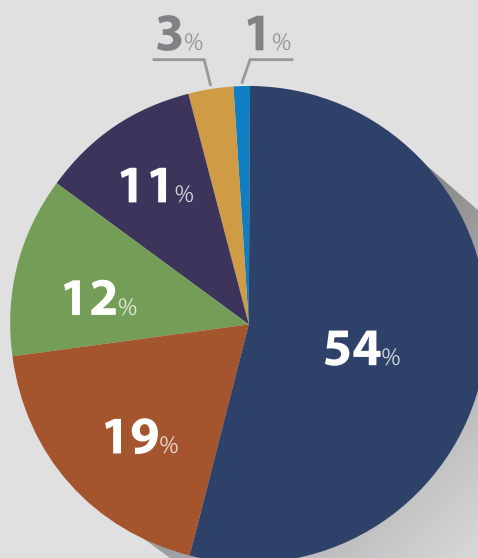
**Visitors:** Nonstudents visiting the campus who were acquaintances of the victim or other student.

**Other:** Family members and nonstudent acquaintances; these off-campus incidents were reported to the institution because the victim wanted protection from the perpetrator coming to campus.

- *The victim did not immediately label the incident a sexual assault.* In most cases, the victim labeled the incident a sexual assault only after talking with friends or attending prevention training.
  - *The victim and perpetrator were in a romantic relationship.* We saw a slightly higher rate of delay when the victim and perpetrator were in a dating relationship. Nearly 60 percent of the victims in this subgroup did not immediately report their sexual assault to the institution and only came forward after the relationship ended.
  - *One in five victims did not want the institution to investigate their sexual assault or take disciplinary action against the perpetrator.* In 52 percent of these claims, institutions did not investigate the complaint or could not complete their investigation, for two primary reasons:
    - The institution honored the victim's request and did not investigate or take disciplinary action against the perpetrator
    - The institution chose to investigate against the victim's wishes, and the victim became uncooperative, making it difficult to complete the investigation
- Examples of these situations included:
- A university could not investigate a sexual assault complaint after the victim reported the assault as part of her recovery and refused to identify the perpetrator.
  - A resident assistant (RA) reported a sexual assault to campus police that a victim shared in confidence with him. The college did not complete its investigation after the victim recanted her original statement to the RA.
  - A student reported an incident of nonconsensual sexual contact but was unsure if it was "actually sexual assault." Although she did not want the university to investigate, she did want them to issue a no-contact order. The university complied, and the following semester the student changed her mind and requested a formal Title IX investigation.

Figure 3

## Victims by Class Year



## The Circumstances of Campus Sexual Assault

### Location

- **More than half (60 percent) of sexual assaults occurred on campus.** The most frequent location for sexual assaults was the victim or perpetrator's residence hall (53 percent).
- **Role of off-campus parties.** In 41 percent of claims, the victim and perpetrator attended the same off-campus party before going back to campus, where the sexual assault occurred. These off-campus parties included institution-recognized sorority and fraternity houses, athletic team houses, and students' off-campus residences. Nearly 80 percent of the victims who attended off-campus parties were first and second-year students (■ Figure 4).

The data suggest that easy access to alcohol by underage students may explain the number of sexual assaults that occurred after off-campus parties. The binge drinking and large amounts of alcohol consumed at these parties is evident by our finding that 66 percent of the victims who had no clear memory of the assault drank alcohol at an off-campus party prior to the assault.



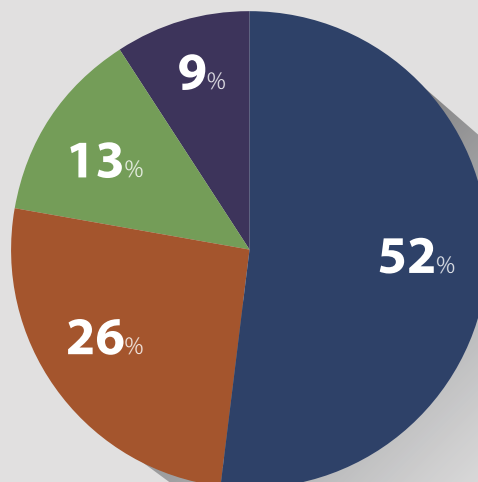
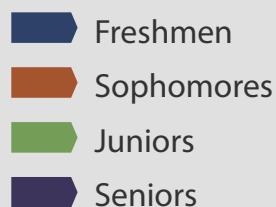
### Connection to Alcohol

More than three-fourths (78 percent) of sexual assaults involved the perpetrator, victim, or both consuming alcohol. Both the perpetrator and victim consumed alcohol in 88 percent of sexual assaults involving alcohol. These findings seem to reflect the high rate at which students use alcohol in their sexual encounters.

We saw the lowest rate of alcohol use when the victim and perpetrator were in a dating relationship. Only 36 percent of the sexual assaults occurring in a dating relationship involved alcohol.

Figure 4

### Victim Attendance at Off-Campus Parties



### Methods of Sexual Assault<sup>3</sup>

■ **Figure 5** shows the frequency of each method of sexual assault seen in the claims.

- **Incapacitated sexual assault.**<sup>4</sup> Incapacitation of the victim was the most frequent method of sexual assault seen in the claims (■ **Figure 5**). Examples include:
  - A student with no recollection of consenting to sexual intercourse was described by the perpetrator as “drunk but in control.” Other witnesses described the perpetrator holding the victim up to walk and the victim as “clearly drunk” and “drunk but not stumbling down.”
  - A student alleged that an intoxicated friend propositioned him for sex when he helped her

3 The dynamics of campus sexual assault are complex, and perpetrators may use more than one method to assault a victim. For example, a victim could be under the influence of alcohol and meet the standard for incapacitation, but the perpetrator may choke or hold the victim down to carry out the assault. For the purposes of this study, we looked only at the primary method used and therefore classified assaults such as this example as sexual assault by physical force.

4 For this study, it did not matter if the perpetrator gave the victim alcohol or other drugs, if the victim voluntarily consumed alcohol without involvement from the perpetrator, or if the institution's adjudication determined incapacitation for it to be classified as an incapacitated sexual assault.

to bed after she threw up and passed out in a bathroom. During the college's investigation he stated that the victim never said “no,” “stop,” or struggled.

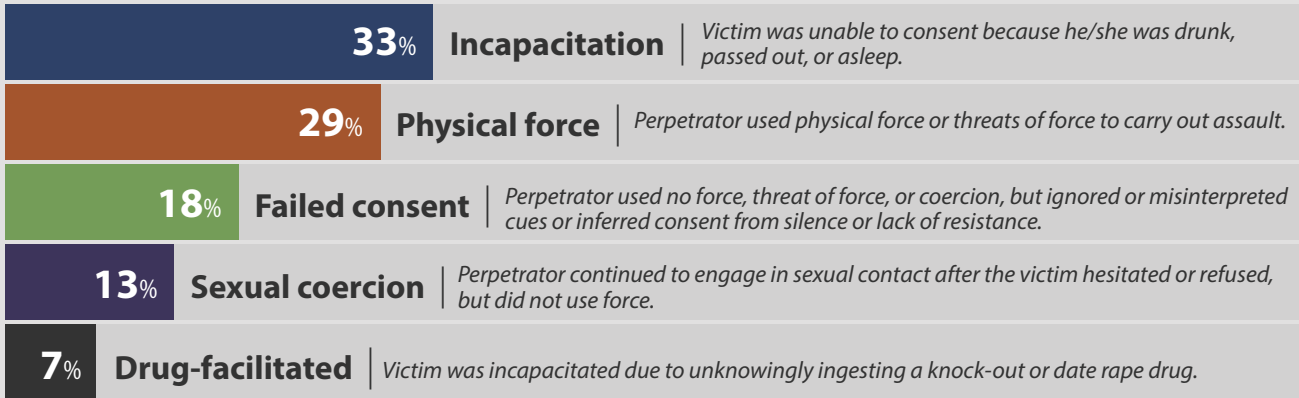
- A group of students walked to an off-campus residence after a party where they were drinking. One of the students fell asleep on the living room sofa and woke to find another student having sex with her.

All of the study's incapacitated sexual assaults involved alcohol. In 89 percent of these claims, both the victim and perpetrator were drinking (■ **Figure 7**). The remaining 11 percent of assaults involved only the victim consuming alcohol. While we could not identify the perpetrator's intent in these claims, the unequal levels of intoxication could indicate that a small number of perpetrators targeted intoxicated students. In fact, serial perpetrators most frequently used a victim's incapacitation to carry out the assault (■ **Figure 6**).

- **Drug-facilitated sexual assault.**<sup>5</sup> We saw a low rate of claims in which the victim was incapacitated due to unknowingly ingesting a knock-out or date rape drug. Examples of drug-facilitated sexual assaults include:

5 For the purposes of this study, it did not matter if drugs were found in the victim's system.

Figure 5  
Methods of Sexual Assault





- A victim described meeting the perpetrator at an off-campus party. She was already intoxicated when she arrived at the party and remembered the perpetrator giving her a “strong” drink. Later in the evening she blacked out and remembered only pieces of the assault.

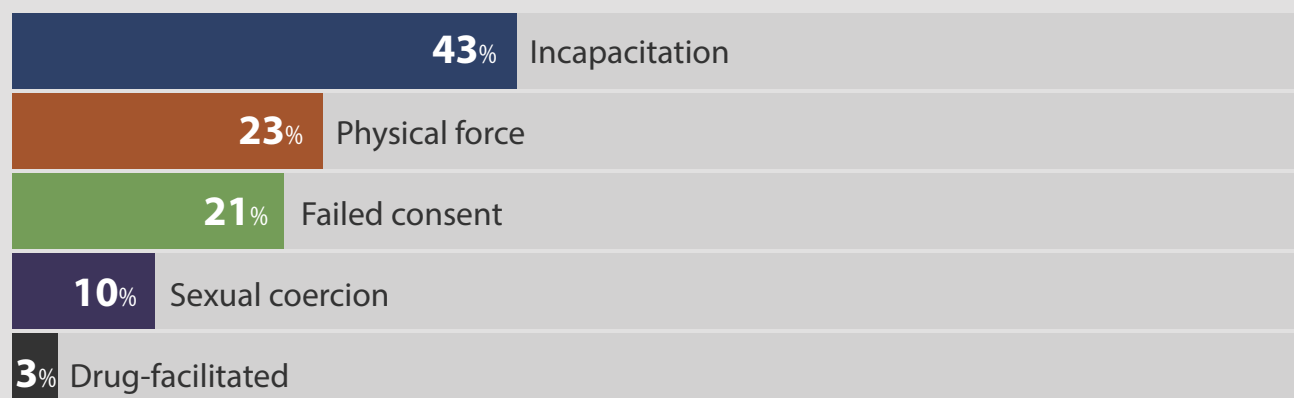
- A student woke up in her dorm room after drinking with friends at an off-campus party. She thought she may have been sexually assaulted and went to the emergency room. An examination at the hospital revealed MDMA or “Molly” in her system. The student told investigators that she only drank at the party and did not take any drugs.

- **Sexual assault by physical force.** More than one-fourth (29 percent) of perpetrators used physical force or threats of force to carry out the assault (■ Figure 5). Examples include:

- A student consented to sexual intercourse, but when it started to hurt, she asked her partner to stop. He continued with sexual intercourse, telling her that it would “stop hurting in a second.”
- A student consented to protected sex, but when there was no condom he was held down and sexually assaulted.
- A student was walking to the bathroom at a fraternity house party when she was pulled into an empty room by an unknown man who beat and raped her.

Figure 6

## Methods of Sexual Assault by Serial Perpetrators



None of the perpetrators used weapons. Instead, the perpetrator most often exploited the victim's vulnerability from intoxication. Overall, alcohol was involved in about half of the physical force sexual assaults with both parties consuming alcohol in most of these claims (■ Figure 7). Although we cannot determine each party's level of intoxication, the victims claimed they communicated to the other person they did not want to engage in sex. As a result, the perpetrator needed to use some force or threat of force to carry out the assault. The fact that 11 percent of the claims involving alcohol involved only the perpetrator consuming alcohol could also suggest that alcohol consumption by some students enables them to more easily use force to obtain sex when their partner hesitates or resists.

- **Failed consent.** In a number of the claims, the perpetrator used no force, threat of force, or coercion, but instead ignored or misinterpreted cues or inferred consent from silence or lack of resistance. Examples of failed consent include:
  - A student never asked if he had consent for sex. He believed, however, that his partner consented because she kissed him and helped take off his clothes although she was silent when they were having sex.

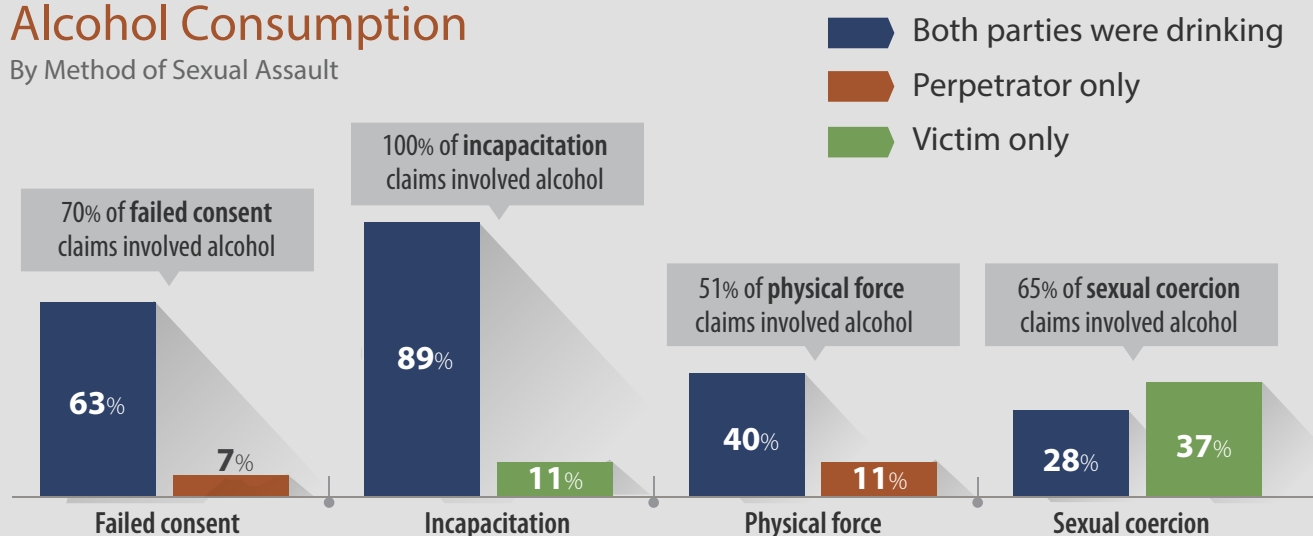
- A student engaged with another student in consensual kissing and touching in her dorm room. They briefly began having sexual intercourse before the female student asked the male student to stop because she was a virgin. The male student said he stopped and talked with the victim before he got dressed and left her room. The female student said that the male student stopped when she told him to, but that he still took things further than she wanted to.
- A student reported to her college that she thought she was sexually assaulted by another student. She told investigators that "I did not want to have sex, but it wasn't like I resisted."

We classified these as failed consent sexual assaults, and they accounted for 18 percent of the study's claims (■ Figure 5). More than two-thirds (70 percent) of failed consent sexual assaults involved alcohol. In those claims, both the perpetrator and victim consumed alcohol 63 percent of the time (■ Figure 7). In the remaining 7 percent of claims, only the perpetrator was under the influence. This could support the idea that alcohol consumption by some students contributes to misinterpreting sexual interest or ignoring their partner's hesitation.

Figure 7

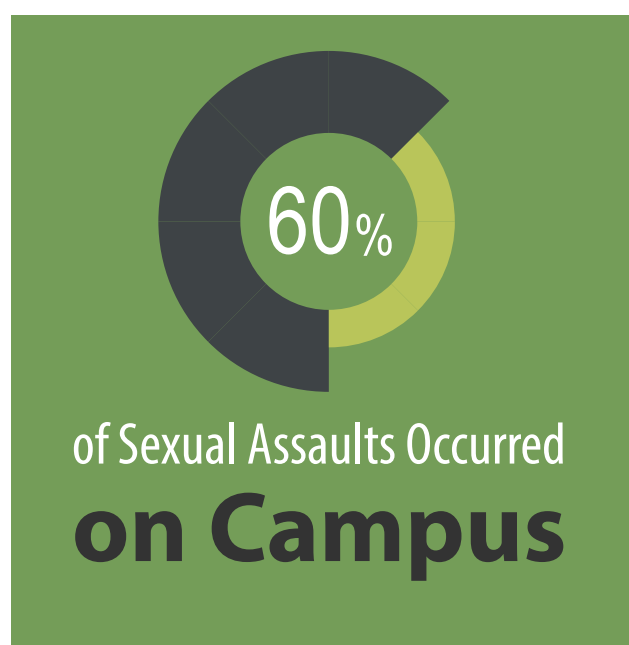
## Alcohol Consumption

By Method of Sexual Assault



Failed consent sexual assaults also had the highest rate of freshman victims. Nearly half of all victims were freshmen. This seems to suggest that students new to the college environment have difficulty with sexual communications, especially when alcohol is involved.

- **Sexual coercion.** The least frequent method of sexual assault was sexual coercion or situations in which one party used no physical force but continued to engage in sexual contact after the



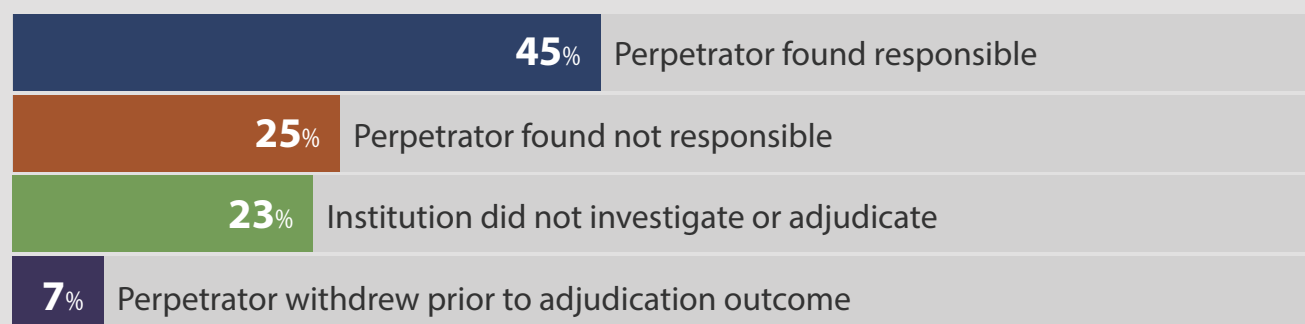
other hesitated or refused.<sup>6</sup> However, for assaults occurring in a dating relationship, sexual coercion was the most frequent method—accounting for nearly 60 percent of these claims. Compared to other methods of sexual assault, sexual coercion claims had the lowest rates of alcohol use, although alcohol was still a contributing factor in 65 percent of the claims. Examples of sexual coercion claims include:

- During a sexual assault investigation an institution found several students who described the perpetrator as “persistent,” “wearing you down,” and “making you go further than you wanted to go.”
- A student reported that her boyfriend took consensual naked photos of her, but then threatened to post them on social media unless she engaged in certain sex acts.
- A pledge was ordered to perform oral sex on someone in order to receive a bid from the fraternity.

6 The fact that we looked only at the primary method used to carry out the assault may be one reason for the lower rate of sexual coercion claims. Several of the physical force sexual assault claims involved the perpetrator using physical force after the victim hesitated or resisted.

Figure 8

## Outcomes After Institution Received Sexual Assault Report





*Friend* **Ex-Boyfriend** Acquaintance **Boyfriend**  
**Classmate**

90%

**of Victims Knew the Perpetrator**

## The Institution's Response to Sexual Assault Complaints

### Instances in Which the Institution Did Not Investigate or Adjudicate a Sexual Assault Report

In 23 percent of the claims, the institution did not investigate or adjudicate students' sexual assault complaints (■ Figure 8) for the following reasons:

- **Victims were uncooperative.** In more than half of these claims, the victim asked the institution not to investigate, and the institution honored that request or the victim became uncooperative, preventing the institution from fully adjudicating the complaint (■ Figure 9). Examples included:
  - A student was forcibly raped in her residence hall by another student. Her friend persuaded her to report the sexual assault

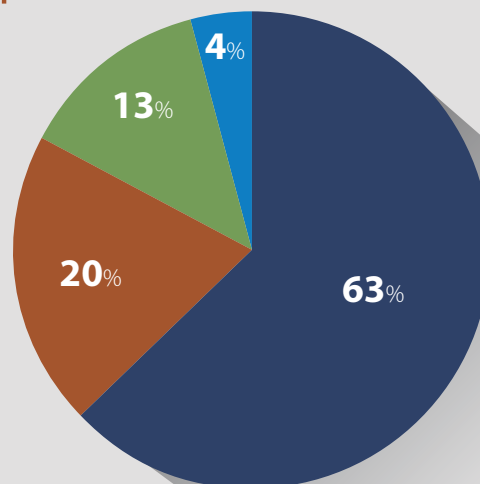
to campus police, and the school launched an investigation. The perpetrator hired an attorney and stopped cooperating with the school's investigation. The victim also became uncooperative because she was afraid she would lose her boyfriend and did not want to be known as the "girl who got raped." The perpetrator withdrew from school and the college never completed its investigation.

- A student came forward to report that her friend was sexually assaulted while passed out from drinking. During the college's investigation the victim became uncooperative because she feared her parents would find out about the rape. The victim ultimately recanted, saying she and the perpetrator engaged in consensual sex.

Figure 9

## Reasons for No Investigation or Adjudication

- Uncooperative victim
- Unable to identify perpetrator
- Perpetrator withdrew
- Relied on police investigation



- **Victim could not identify perpetrator.** In 20 percent of these claims, victims had no clear memory of the assault, which impeded their ability to identify a perpetrator to investigate.
- **Perpetrator withdrew.** In 13 percent of these claims, the perpetrator withdrew from the institution before the complaint could be fully adjudicated.
- **Institution relied on a police investigation.** In 4 percent of these claims, the institution failed to use its internal process because it inappropriately relied on the criminal justice system to make a determination for them. For example, a student pressed charges with local police after he was sexually assaulted. He sought help from the institution for a no-contact order, which the institution issued. The institution, however, did not conduct an investigation because it believed that the criminal justice system would punish the perpetrator, which would remove the threat to the victim and the campus community.
- **Victim delayed reporting the sexual assault.** Based on this claims data, we suspect that victim delay in reporting may have contributed to an institution's inability to fully adjudicate a sexual assault report. On average, the complaints that were not fully adjudicated were reported to the institution 17 months after the alleged assault.

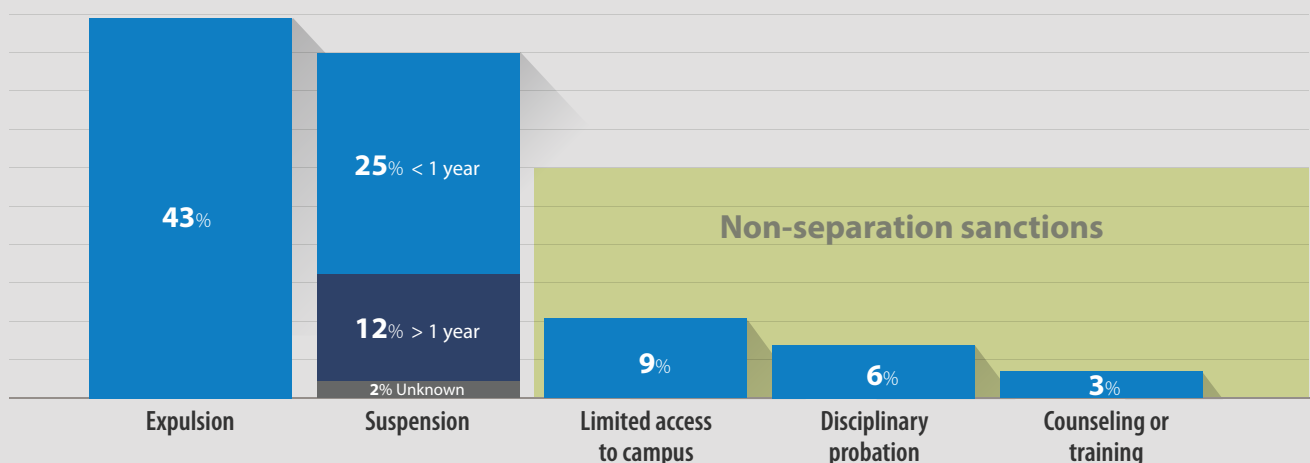


### Institution's Adjudication of Sexual Assault Complaints

The perpetrator was found responsible in 45 percent of the study's student-on-student sexual assaults, while 25 percent of perpetrators were found not responsible. In 7 percent of the claims, the institution improperly ended the adjudication process without reaching a decision when the perpetrator withdrew from the institution (Figure 8).

Figure 10

## Sanctions



- **Expulsion was the most frequent sanction.** Our data suggest that when sexual assaults are adjudicated, institutions frequently impose their severest sanction. Only 18 percent of claims involved sanctions in which the perpetrator did not receive a suspension or expulsion (Figure 10). In these instances, the student perpetrator was most frequently removed from on-campus housing and permitted access only to academic buildings on campus.
- **Method of sexual assault and likelihood of expulsion.** The method used by the perpetrator to carry out the assault may have been a factor in an institution's choice of sanction. More than four-fifths (82 percent) of expulsion sanctions were for perpetrators who either took advantage of a victim's incapacitation or used physical force (Figure 11). Disciplinary probation and lesser sanctions were most often imposed by institutions when the sexual assault involved failed consent (Figure 11).

### Investigation and Adjudication of Complaints Against Athlete Perpetrators

- **Athletic department involvement in sexual assault investigations.** Our study found no athletic departments overseeing an institution's

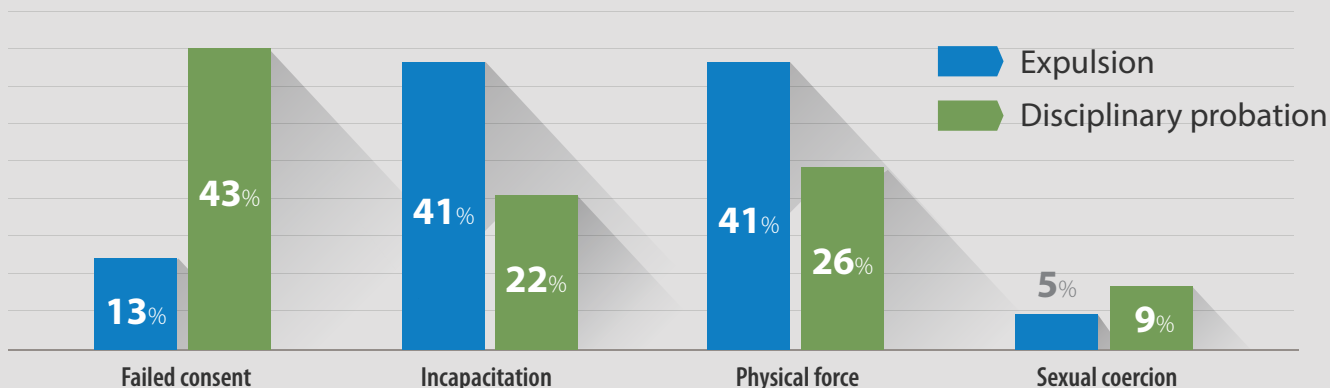
sexual assault investigation when athletes were involved. There were only two instances in which the athletic department had any role in the process. In both claims, the coaches initially thought the incidents involved only physical fighting and punished the players. When they learned that the incidents involved sexual contact, the coaches stepped back while the institution conducted a Title IX investigation. In each instance, the perpetrator was found responsible for violating the institution's sexual misconduct policy.

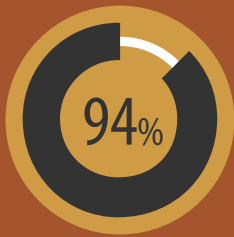
- **Adjudications involving athlete perpetrators.** Given the frequent media attention that describes institutions treating athletes more favorably and not holding them accountable for sexual misconduct, it was surprising that our claims data showed that almost two-thirds of athlete perpetrators were found responsible through the institution's adjudication process (Figure 12).
- **Addressing the role of team culture in athlete perpetrated sexual assaults.** While the claims data show that most athlete perpetrators were held accountable for violating the institution's sexual misconduct policy, the team itself was often overlooked during an institution's investigation. In a quarter of the multiple perpetrator assaults by athletes, the institution never assessed whether

Figure 11

## Expulsion vs. Disciplinary Probation

By Method of Sexual Assault





of Victims Were  
**Female**

**41%**  
*of Sexual Assaults Involved*  
**OFF-CAMPUS PARTIES**

the perpetrator's conduct was part of a larger team culture that created a hostile educational environment. In one claim, for example, a disciplinary committee found two athletes not responsible for sexual assault, but the investigation revealed that the team frequently threw parties at which players would take turns having sex with "drunk girls." The institution's investigation did not examine whether the team's conduct was a violation of the institution's sexual harassment policy or other provisions of the student code of conduct.

### Litigation Arising From Campus Sexual Assaults

More than one-fourth (28 percent) of the sexual assaults reported to UE resulted in litigation.<sup>7</sup> As [Figure 14](#) illustrates, there was an equal rate of OCR complaints and lawsuits filed against educational institutions.

<sup>7</sup> The term "litigation" in this study refers to lawsuits, complaints filed with OCR, and demand letters from claimants that may never result in a lawsuit or OCR complaint.

Over the three-year period, UE and its members spent approximately \$17 million defending and resolving sexual assault claims. Defending the institution's investigation and adjudication process was costly. Approximately \$9.3 million (or 64 percent of the total losses) was spent on defense costs. Half of these costs were for defending institutions in OCR investigations.

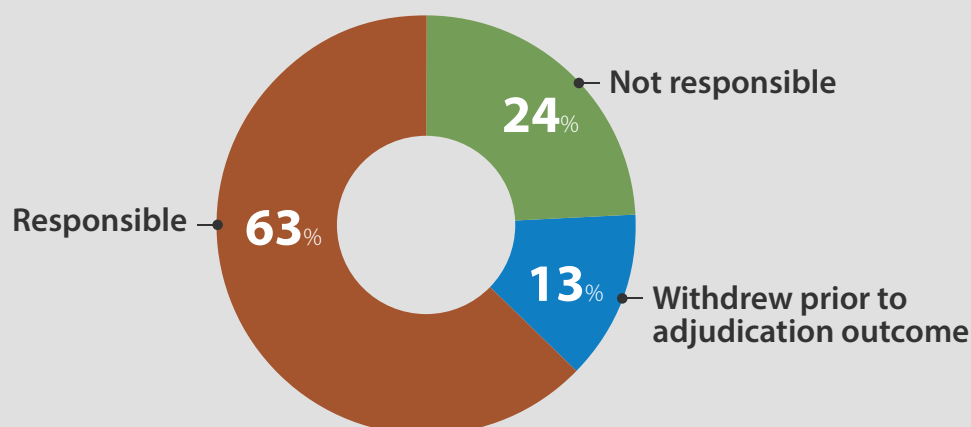
### Litigation Brought by Victims

Victims brought the most litigation against educational institutions and accounted for 68 percent of the litigated claims in this study. All of the OCR complaints filed against educational institutions were initiated by victims. Victim-driven litigation was also the most costly for institutions. It accounted for 84 percent (or \$14.3 million) of the total losses.

Litigation does not appear to be driven by adjudicatory findings, but it may be driven by the severity of the sanctions issued. For example, in 48 percent of litigation brought by victims, the institution found the perpetrator responsible for

Figure 12

### Athlete Perpetrators and Adjudicator Findings



violating its sexual misconduct policy. However, in only one-third of these cases where there was a finding of responsibility was the perpetrator expelled.

## Victims' Allegations

### ■ Title IX

□ *Discouraged pursuit of a complaint.* Nearly three-quarters of the litigation initiated by victims alleged a Title IX violation (■ Figure 15). Less than half (41 percent) of these Title IX claims alleged that the institution discouraged the victim from pursuing an internal complaint or reporting the assault to the police. Examples include:

- Allegations that a staff member told the victim that the perpetrator had been “punished enough.”
- A college dean telling a victim that he would try to get the perpetrator to withdraw from the institution so she would not have to deal with the disciplinary process.
- When trying to manage expectations about the investigation and disciplinary process, a staff member told a victim to expect a “grueling” process if she wished to pursue her complaint.

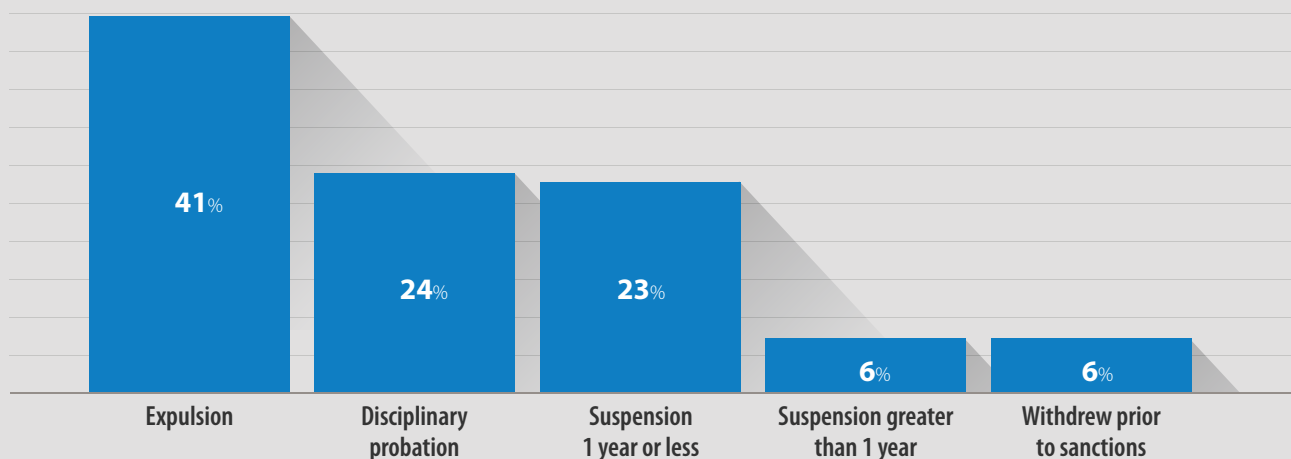
### □ *Failed to conduct timely investigation.*

Additionally, victims' Title IX claims frequently alleged that the institution did not conduct a timely investigation. A review of these claim files revealed that many of the allegations concerned students and staff misunderstanding reporting obligations and confidentiality under the institution's sexual misconduct policy. Examples include:

- A student reported that she was sexually assaulted to a counselor at the university's counseling center. The student thought her disclosure would launch a Title IX investigation, but the counselor never disclosed the assault due to confidentiality.
- A student told her resident advisor (RA) that she was sexually assaulted, but the RA never reported it to the college's Title IX coordinator. A friend of the victim eventually reported the assault to the Title IX coordinator and the institution began its investigation.
- A student athlete told her coach that she had been missing practice because she had been raped earlier in the semester. The coach notified the athletic director who recommended that she direct the

Figure 13

## Athlete Perpetrators and Sanctions



student to the counseling center. Neither contacted the Title IX coordinator or campus police.

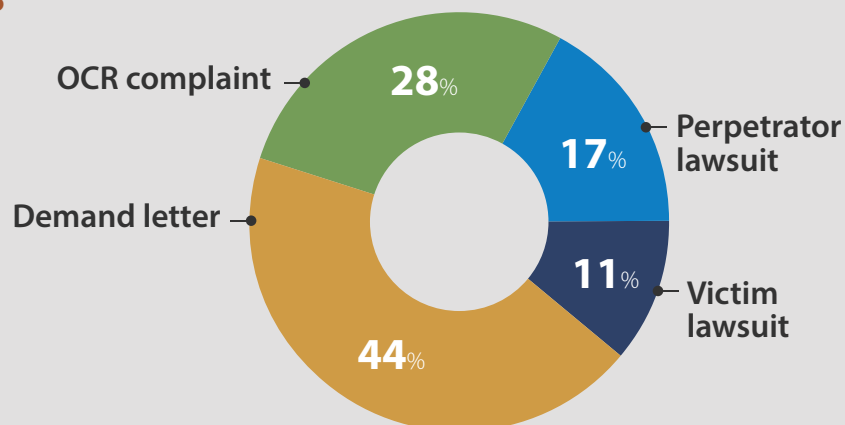
- **Inadequate sanctions.** Nearly a quarter of victims' Title IX claims alleged that the sanctions imposed were inadequate and created a hostile environment for the victim on campus. Examples include:
  - A perpetrator was permanently removed from campus housing after being found responsible for sexual harassment and sexual assault. The victim challenged the sanction alleging that it was inadequate and that the perpetrator had received special treatment due to his popularity.
  - A student complained when her perpetrator received only a one-semester suspension and 10 hours of community service after he was found responsible for nonconsensual sexual intercourse.
- **Negligence.** Nearly half (40 percent) of victims alleged that the institution was negligent in its investigation or negligent in training staff to handle sexual assault reports (■ Figure 15). Victims' claims against the institution were

particularly compelling when the adjudicator's written decision signaled problems with understanding the dynamics of sexual assault or the institution's sexual misconduct policy. Examples include:

- A hearing panel had trouble understanding and applying the preponderance of the evidence standard to a sexual misconduct case. It ultimately found the student not responsible, but noted in its decision that it was "more likely than not" that the perpetrator failed to obtain the victim's consent.
- An institution's sexual misconduct policy provided that students should not assume consent and that it was the responsibility of the initiator of the sexual contact to confirm the other party's consent. A disciplinary committee found two students not responsible for violating the sexual misconduct policy, but noted in its written decision that the students "acted recklessly" in assuming the victim's consent and ignored all of the "signals of apprehension, anxiety, and mixed messages."

Figure 14

## Litigation\* Against Educational Institutions



\*The term "litigation" in this study refers to lawsuits, complaints filed with OCR, and demand letters from claimants that may never result in a lawsuit or OCR complaint.



- A hearing panel found a student not responsible for violating the institution's sexual misconduct policy, but ordered him to participate in consent training because they were troubled by his admission that he had sex with other intoxicated students besides the victim.

■ **Breach of contract.** Nearly one-third (32 percent) of victims alleged the institution failed to follow its own process and procedures when investigating and adjudicating sexual assault reports (■ Figure 15). In their breach of contract claims, victims most often challenged the sanctions imposed on the perpetrator. Specifically, a seemingly arbitrary appeal process and negotiating with the perpetrator to avoid litigation formed the basis of victims' breach of contract claims. Examples include:

- After finding a student responsible for violating the institution's sexual misconduct policy, the disciplinary committee recommended expulsion. The student appealed and the president reduced the sanction to one-semester suspension. The president did not articulate a reason for reducing the sanction or communicate the change to the victim.

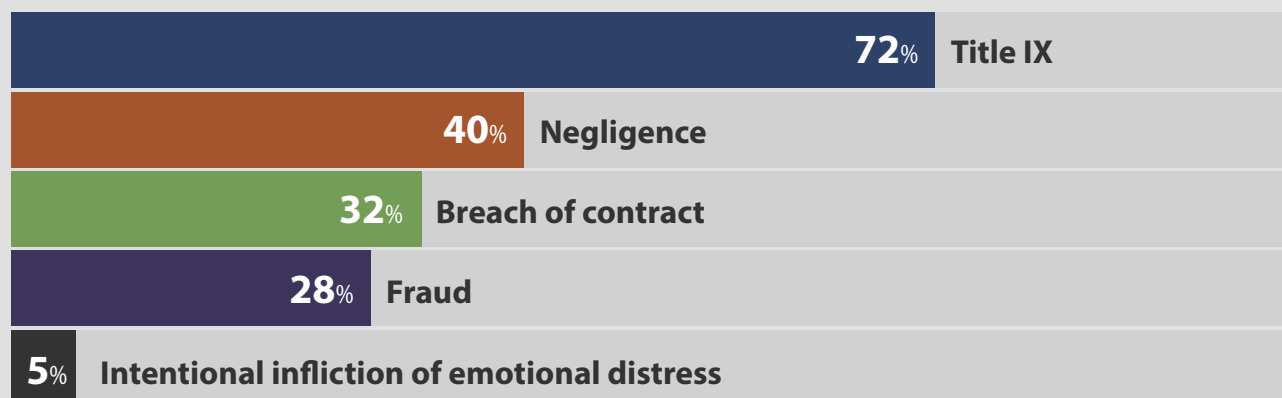
- A student was found responsible for sexual assault and suspended, but while he appealed the decision, his attorney negotiated a settlement to avoid litigation. The student was able to choose whether to proceed to a new hearing or withdraw from the institution and receive a tuition refund.
- An institution considered an accused student's appeal because his attorney threatened litigation, although the student failed to meet the appeal filing deadline and did not have sufficient grounds for the appeal under the institution's grievance policy.
- As a result of negotiating with the perpetrator, an institution agreed not to issue the recommended sanction until after the accused student withdrew, enabling him to transfer to another college.

### Litigation Brought by Perpetrators

Nearly one-third (32 percent) of the litigation against institutions was initiated by students accused of sexual assault. Sanctions often drove the litigation. More than half of the perpetrators who brought litigation had been expelled from the institution. However, a little more than a third of the perpetrators were given

Figure 15

## Victim Allegations



*The complainant often makes multiple allegations against the institution.*

# Nearly 3 of 4 Victims Were FRESHMEN — or — SOPHOMORES

light sanctions or no sanctions at all. Additionally, 72 percent of perpetrators who sued the institution also sued the victim for defamation or slander. These findings may suggest that, for some perpetrators, litigation is a means to repair their reputation.

## Perpetrators' Allegations

■ **Figure 16** depicts the five most frequent allegations made by perpetrators against educational institutions.

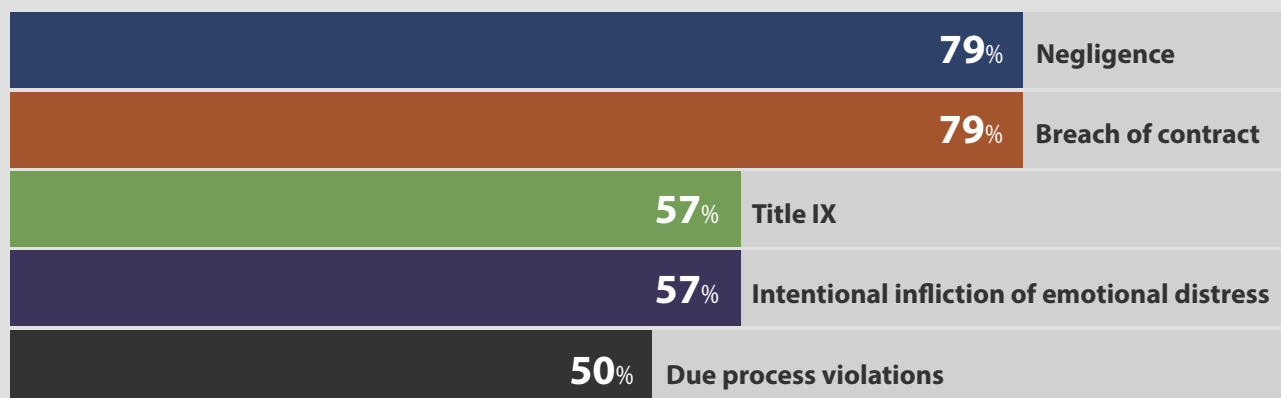
- **Negligence and breach of contract claims rooted in the adjudicatory process.** Student perpetrators were most often dissatisfied with the institution's adjudicatory process and challenged its fairness. Typical allegations included:

- The institution imposed harsh and disproportionate sanctions.
- The institution did not consider the student's good disciplinary and academic records when imposing sanctions.
- To show a pattern of predatory behavior, the institution considered allegations of prior misconduct that were either unrelated to the pending matter or were unsubstantiated.
- The institution did not consider exculpatory evidence such as text messages from the victim in which she did not refer to the incident as sexual assault.
- The institution did not allow the student to present evidence about the victim's sexual history or reputation.

- **Title IX.** In their Title IX claims, perpetrators focused on the institution's sexual misconduct policy. Specifically, they argued that the policies and process were inherently discriminatory toward men or that an unfair outcome was reached to stave off adverse OCR findings. For example, a perpetrator alleged that the university found male students responsible for sexual assault based on their gender regardless of the evidence or lack thereof.

Figure 16

## Perpetrator Allegations



*The complainant often makes multiple allegations against the institution.*

- **Requests for injunctive relief.** More than a third (36 percent) of perpetrators sought a temporary restraining order (TRO) or preliminary injunction to stop the institution’s adjudication process or the imposition of sanctions. Courts granted approximately 20 percent of perpetrators’ requests. This tells us that some courts are willing to examine the fairness of an institution’s policy and process. Examples include:
  - A court denied a student’s request to be immediately readmitted to the university, but ordered the institution to reconsider the length of the suspension imposed. The institution ultimately decided to shorten the suspension and allow the student to return to campus prior to the victim’s graduation.
  - A student was at the end of his final semester before graduating when he was found responsible for sexual assault and suspended. He filed a TRO, which the court granted. The student was allowed back on campus to finish his courses and graduated from the institution.
  - Although the court denied a student’s TRO, it voiced several concerns about the institution’s internal process and noted that it seemed “arbitrary and capricious.”

## Conclusion

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UE claims show that colleges and universities respond to some of the most difficult sexual assault cases. Although addressing student sexual assaults is a formidable task, the information from this study can help institutions understand this complex environment and develop an integrated and comprehensive plan for responding to and preventing sexual assaults on campus.

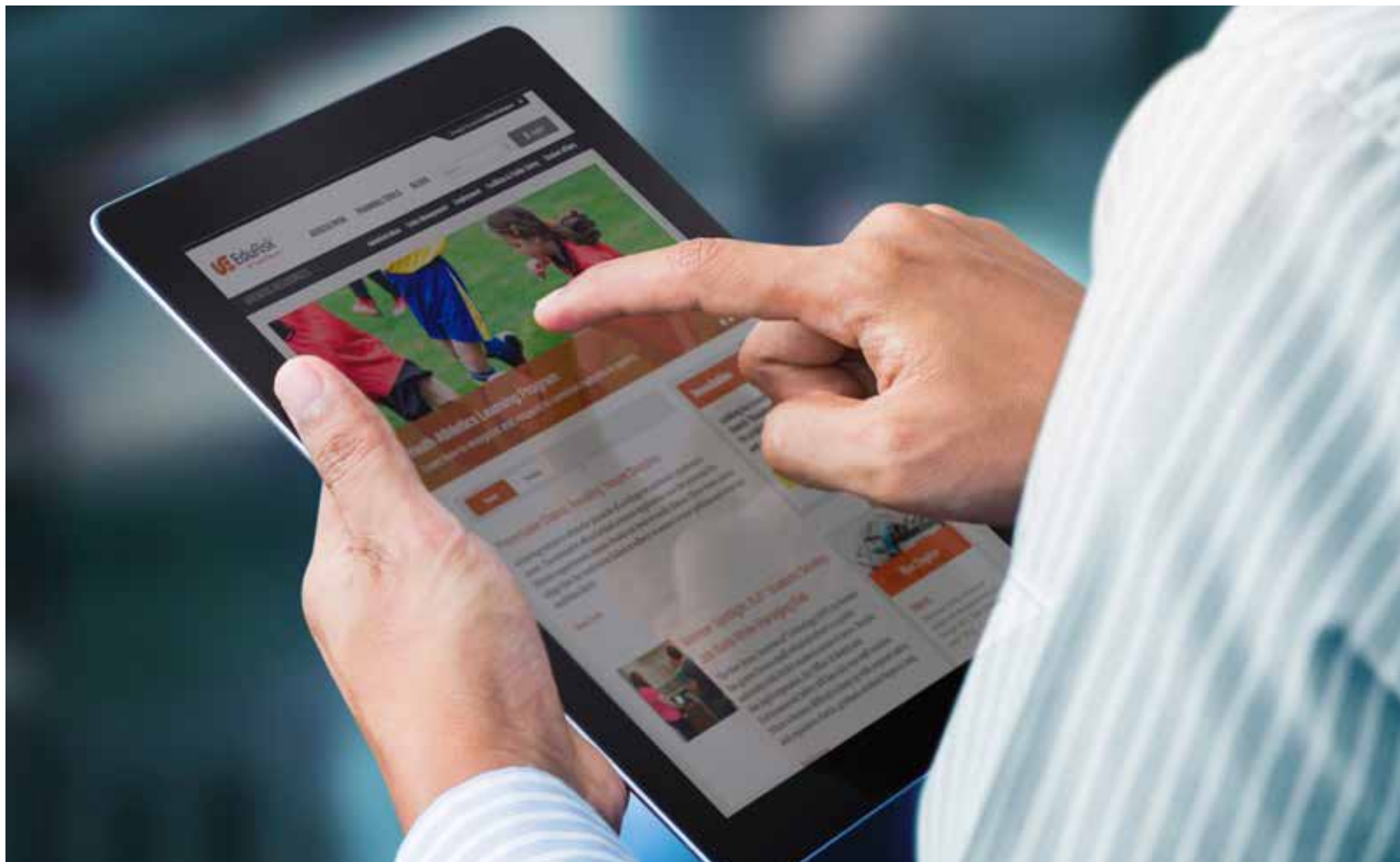
## Acknowledgment

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November 2015

## Responding to Social Apps on Campus

Teenagers are using a [secret phone app](#) to send illicit pictures. The app is called Private Photo (Calculator%) and is known as a ghost app. These apps—designed to look and function like normal apps—are built to conceal photos, video, and information. Educators and administrators should note that technology changes constantly and most students have access to these social tools.

But faculty and staff are also using “ephemeral messaging” and “anonymous” apps in an effort to disguise and delete their communications.

[Public school administrators](#) in California recently tried to skirt the state’s public records law by using Cyber Dust, an app that appears to delete messages as soon as they are read, similar to the well-known Snapchat. And last month, several [women’s and civil rights groups](#) asked the federal government to help protect students from anonymous social apps such as Yik Yak.

Administrators could choose to ignore these emerging social media platforms or ban their use by students, faculty, and staff. However, such policies are short-



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sighted because technology, social media, and constant communication at schools and colleges are here to stay. UE recommends four steps for managing these apps on campus.

1. Broaden campus policies to cover the use of social media platforms and apps. Many institutions include social media among the forums in which harassment, assault, and misconduct will not be tolerated. For example, [Bethune-Cookman University's nondiscrimination statement](#) applies to conduct on and off campus and through the use of technology resources and specifically refers to social media platforms in its policy on electronic communications. Rather than trying to monitor all known social media platforms, institutions should make clear that reported misconduct will be addressed as outlined in the policy. In addition, a recent court case involving the [University of Kansas](#) shows that schools and colleges must ensure their policies apply everywhere—not only when students or employees are electronically communicating from or to campus.
2. Make resources available for students or employees who are being harassed. Trolling, or anonymous Internet harassment and bullying, is an unfortunate side effect of many social media platforms. To assist students or employees who may be victims of harassment, create resources or direct them to pre-existing support on campus. For instance, [Humboldt State University](#) built a series of FAQs for students who face online harassment. The [University of North Carolina](#) built a website to inform, prevent, and report Internet trolls. The site features specific resources for Facebook, Instagram, Twitter, Snapchat, and Yik Yak.
3. Work with local law enforcement and your campus threat assessment team when necessary. Notify law enforcement immediately if you believe a crime has occurred or a threat of harm exists. In the ghost app example above, students sending nude photos of other students and themselves implicated laws protecting minors. Law enforcement can also help campuses respond to threatening messages made anonymously online. Although apps like Yik Yak claim to provide anonymity to posters, app companies routinely work with law enforcement to identify users who threaten the health and safety of others. For example, [Virginia Tech University](#) recently worked with the Blacksburg Police Department to arrest a student who posted threats online. An institution's campus threat assessment team should also be notified of social media behavior presenting a threat of harm to self or others. This team can assess the potential for harm and, where appropriate, suggest helpful intervention strategies.
4. Use the platforms to connect with students. Students spend several hours on social media apps every day. Savvy schools and colleges recognize that to communicate effectively with their students, they must do so via platforms that students regularly use. Email communication alone is no longer sufficient to effectively interact with the campus community. [Northern Michigan University](#) has an official Snapchat account to communicate with students and assist with recruitment. The [University of Michigan](#) asks student resource groups to interact with peers on social media; when a Michigan student posted a suicide threat on Yik Yak, the university was able to quickly and effectively intervene.

## Resources

## Archives

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- 📅 2016
  - January
  - February
  - March
  - April
- 📅 2015
- 📅 2014
- 📅 2013
- 📅 2012





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## Sexual Violence Reporting in Study Abroad Programs

Recently I attended a NACUA workshop on Title IX and Clery Act responsibilities in study abroad programs. One topic discussed was the frequent confusion over how colleges and universities should apply home campus reporting obligations, such as notifying state officials about suspected child abuse or tallying reported Clery crimes, to faculty or trip leaders when students travel overseas.



Workshop participants discussed the importance of creating a culture of reporting for acts of sexual violence at educational institutions and the challenges of extending that culture to study abroad programs. Most faculty and staff who lead trips to foreign countries have less experience complying with reporting obligations than administrators on the home campus. A culture that emphasizes reporting of sexual violence in study abroad programs can also empower trip leaders to respond promptly and appropriately to sexual violence.

To develop a culture of reporting in study abroad programs, consider the following actions, recommended by institutions at the workshop:

- **Centralize your study abroad programs under one office.** Organizing your programs under a single department can improve communication and the uniform adoption of risk management practices. For example, workshop attendees whose study abroad programs fall under the Finance Department said they could encourage trip participants to follow internal policies and procedures by making program funding conditional on compliance.
- **Establish a reporting process for all incidents that occur abroad, including acts of sexual violence.** Many campuses are moving to a mobile platform to track incidents on their home campuses and abroad. [The Forum on Education Abroad](#), which develops best practices for school study abroad programs, encourages its members to use the free [Critical Incident Database](#) available online. The database allows schools to log their own incidents for review, including specific sexual violence codes for Clery and Title IX reporting.
- **Treat trip leaders as responsible employees under Title IX and educate them on those duties.** Trip leaders should be mandatory reporters of all incidents of sexual discrimination (including sexual violence) and should be trained to handle complaints of sexual violence, including being attentive to the needs and rights of victims and alleged perpetrators.
- **Designate trip leaders as [Campus Security Authorities](#) (CSAs) under the Clery Act, and give them the same training as CSAs on the home campus.** Workshop participants pointed out that most higher education trip leaders qualify as CSAs as defined by the Department of Education.
- **Be aware of state laws that add additional reporting obligations.** For example, Minnesota recently enacted a law requiring higher education institutions to report student death, accidents, and crimes while abroad. Many states are watching closely to gauge the effectiveness of the legislation.
- **Don't use contracts with third-party providers to avert the institution's reporting obligations.** Although institutions may not have control over properties owned and operated by third parties abroad, such as student housing, this does not nullify the institution's reporting responsibilities. Contracts with third parties should require those parties to report incidents to the home campus. Several third-party providers at the workshop expressed a willingness to include similar language in contracts with institutions.

*By Joe Vossen, JD, Associate Risk Management Counsel*



(<https://www.insidehighered.com>)

## Colleges must not only respond to reports of sexual violence but also prevent it (essay)

Submitted by Joseph Storch on March 14, 2016 - 3:00am

The elevated attention paid to sexual and interpersonal violence, coupled with new legislative requirements, is leading colleges and universities to improve the ways that victims and survivors can report incidents of such violence. Providing additional resources and educating students about reporting options can lead to a significant increase in those reports. That is a positive step forward. However, surges in reporting can, in turn, stress institutional resources and delay or stop colleges and universities from shifting their focus to actually *preventing* sexual violence and bringing reporting numbers back down.

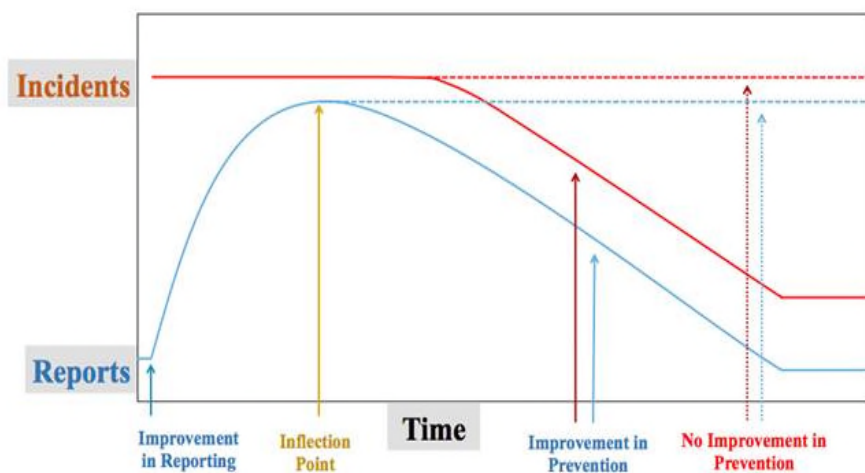
A valuable national conversation about the proper role for colleges and universities in appropriately responding to sexual and interpersonal violence and preventing such violence has followed upon the [April 2011 Office for Civil Rights Dear Colleague letter](#) <sup>[1]</sup> and its [2014](#) <sup>[2]</sup> and [2015](#) <sup>[3]</sup> progeny -- the [2013 reauthorization of the Violence Against Women Act](#) <sup>[4]</sup> and its [concomitant changes to the Clery Act](#) <sup>[5]</sup> -- as well as the [White House's April 2014 task force report](#) <sup>[6]</sup>. [Journalists' investigations](#) <sup>[7]</sup>, books such as [Jon Krakauer's \*Missoula\*](#) <sup>[8]</sup> and student activism have further pushed the issue to the national forefront.

Traditionally, the Clery Act and Title IX looked backward toward reporting and response. The Clery Act requires institutions to report [certain delineated crimes](#) <sup>[9]</sup> occurring in [specifically defined geographic locations](#) <sup>[10]</sup> in the [previous three calendar years, and to maintain policies to properly respond to crimes and violations](#) <sup>[11]</sup>. Title IX has required that institutions respond to reported sex discrimination, including sexual assault, in a way that [limits its effect and prevents recurrence](#) <sup>[12]</sup>.

Yet more recent requirements of the 2013 Violence Against Women Act reauthorization and state legislation in [New York](#) <sup>[13]</sup> and [California](#) <sup>[14]</sup> demand colleges and universities to work more on preventing violence in the first place. This is a favorable development over all and one that should be celebrated. But shifting to prevention is easier said than done in a field that does not have decades of evidence-based solutions. Worse, institutions that are working through the compliance curve detailed here will have to expand prevention efforts at the exact time when the employees charged with implementing such programs are swamped dealing with reports.

In the past, sexual and interpersonal violent crimes and violations have been rarely reported <sup>[15]</sup>. The best data we have show that the majority of such violations are never disclosed to anyone <sup>[16]</sup>, let alone police or college officials, and that reporting percentages are even lower in same-sex violence <sup>[17]</sup>.

It isn't surprising, therefore, that the vast majority of institutions reported no rapes occurring in 2014 <sup>[18]</sup> -- at least in the specifically defined locations of the Clery Act that were disclosed to a campus security authority or local law enforcement. That was the case even as climate survey after climate survey has shown that a considerable portion of women and men have been victimized by such violations (although the precise number can differ between surveys <sup>[19]</sup>). Societally, the reporting level is low, and that applies to sexual violations in college as well. As shown below, at the beginning of the reporting curve, the number of violations is much higher than the number of reports.



But as institutions develop and improve their reporting methods and resources <sup>[20]</sup>, and they endeavor to disrupt longstanding silos between different offices that can lose reports in bureaucracy, reports of sexual and interpersonal violence will skyrocket. It isn't unheard of for campuses to have such reports of sexual and interpersonal violence double or triple year over year in the midst of a campaign to educate students about reporting options on top of additional efforts to respond in a timely way to reports of violations. That spike puts substantial pressure on first responders, Title IX coordinators, judicial and conduct professionals, and counseling centers.

That pressure is a systemic risk, as the time and effort that campus officials spend responding to cases may draw attention away from the work needed to get to the next level: prevention programming. Such programming can include bystander intervention and engaging student leaders who can model behavior that changes the culture surrounding sexual and interpersonal violence. At this level, institutions can reach what I call the violence reduction inflection point (gold line), as shown in the figure above. It is at this most difficult point that resources are stretched thinnest -- and where many institutions become stuck, staff members become overwhelmed and morale can suffer.

But it is exactly at this point that colleges and universities need to spend the most time, resources and intellectual bandwidth to shift to a prevention model. If institutions can

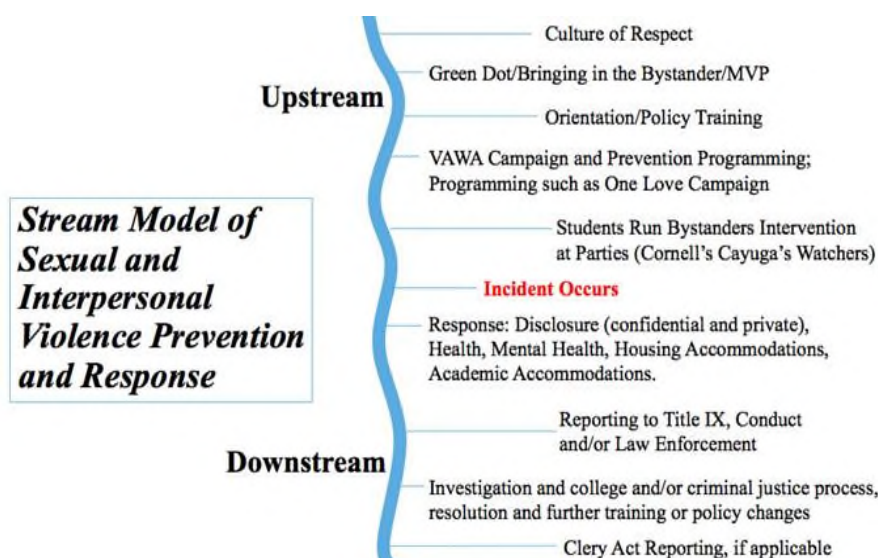
properly commit resources to improvement in prevention, that work will lead to a reduction in overall incidents of violence (solid red line) with a concordant reduction in reports of violence (solid blue line). Note that the road back down is a gentler slope than the initial increase in reports, as the process will take longer. The danger is that if the improvement in prevention is not there, incidents will occur at the same rate (dotted red line) and reports of incidents -- while never encompassing all incidents that occur -- will nevertheless remain high (dotted blue line), continuing to strain resources as the institution attempts to respond to them all.

The fact is, at most institutions, greater prevention efforts will require not simply asking existing response personnel to take on more tasks related to prevention. It will also demand an investment in additional resources and personnel, or additional shared efforts in offices across the campus. While good models of prevention programming already exist and can be adopted or purchased, the ideal is for a campus to eschew buying an off-the-shelf product in favor of developing programming that, while building on the publicly available work of others, is tailored to its specific campus culture and population. Such efforts are absolutely crucial to bringing the number of reports down -- not because the reporting will return to a low percentage of incidents, but because the incidents themselves will decrease.

Although the field lacks a longstanding base of evidence as to what works best, we have some initial examples of prevention programs that are making a difference. These include bystander intervention programs such as [Green Dot](#) <sup>[21]</sup>, [MVP](#) <sup>[22]</sup> and [Bringing in the Bystander/Know Your Power](#) <sup>[23]</sup>, as well as homegrown programs such as [Binghamton University's 20:1](#) <sup>[24]</sup> and [SUNY Oneonta's Know Violence](#) <sup>[25]</sup>. Other promising programs coming online include [Culture of Respect](#) <sup>[26]</sup> and the dating violence-prevention work of the [One Love Foundation](#) <sup>[27]</sup>.

While the dollar cost of acquiring access to some of these programs is low or nothing, the time and resource cost of implementing any of them at a campus can be high. Thus, it is easy and tempting for overworked Title IX and student affairs professionals to say, "I have so many investigations on my plate, I can't even begin to think about additional programming." That understandable impulse is penny-wise and pound-foolish. Without an intentional and significant shift of current and new resources into prevention programming and culture change, the number of incidents will stay high, as will the number of reports (albeit never as high as all occurring incidents). Without a greater focus on prevention, staff will be endlessly overwhelmed, and we in higher education won't make the dent in the prevalence of incidents and reports that we have the capacity to make.

The Stream Model of Sexual and Interpersonal Violence Prevention and Response outlined below can help people think about prevention and response in both upstream and downstream programs. While downstream efforts, such as responding to violence and violations, are vital, institutions should also be constantly looking upstream to bring new programming and policies online that reduce the number of incidents that require a response.



In short, it is not enough to strengthen resources to respond to violence. Federal law requires, and the current times and our educational mission demand, that higher education lead the way in developing, studying and implementing prevention programming so as to lower the incidents of these crimes and violations on and off the campus. Colleges and universities must work to ensure that their efforts not only to respond to and increase reporting about assaults but also to ultimately prevent them are consistently moving forward.

*Joseph Storch is an associate counsel and chair of the student affairs practice group in the State University of New York's office of general counsel. The views expressed here are his own.*

### Section:

Strategies to Prevent Violence <sup>[28]</sup>

### Editorial Tags:

Crime <sup>[29]</sup>

### Image Source:

iStock

**Source URL:** <https://www.insidehighered.com/views/2016/03/14/colleges-must-not-only-respond-reports-sexual-violence-also-prevent-it-essay?width=775&height=500&iframe=true>

### Links:

[1] <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>

[2] <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

[3] <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>

[4] <https://www.gpo.gov/fdsys/pkg/BILLS-113s47enr/pdf/BILLS-113s47enr.pdf>

[5] <https://www.gpo.gov/fdsys/pkg/FR-2014-10-20/pdf/2014-24284.pdf>

[6] <https://www.notalone.gov/assets/report.pdf>

[7] <http://www.publicintegrity.org/accountability/education/sexual-assault-campus>

[8] <https://www.insidehighered.com/news/2015/04/24/new-book-details-u-montanas-citys-mishandling-sexual-assault>

[9]

[http://www.nacua.org/securedocuments/resourcepagedocs/CleryAct/CleryActHierarchy\\_FinalRulesImplementV](http://www.nacua.org/securedocuments/resourcepagedocs/CleryAct/CleryActHierarchy_FinalRulesImplementV)

[10] [http://www.higheredcompliance.org/resources/resources/ProperlyClassifyingGeoLocale\\_CleryAct.pdf](http://www.higheredcompliance.org/resources/resources/ProperlyClassifyingGeoLocale_CleryAct.pdf)

[11] <https://www2.ed.gov/admins/lead/safety/handbook.pdf>



- [12] <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>
- [13] <http://www.nysenate.gov/legislation/bills/2015/S5965>
- [14] [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140SB967](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB967)
- [15] [http://www.nsvrc.org/sites/default/files/publications\\_nsvrc\\_factsheet\\_media-packet\\_statistics-about-sexual-violence\\_0.pdf](http://www.nsvrc.org/sites/default/files/publications_nsvrc_factsheet_media-packet_statistics-about-sexual-violence_0.pdf)
- [16] <http://www.d.umn.edu/cla/faculty/jhamlin/3925/Readings/CollegeRape.PDF>
- [17] [http://www.nsvrc.org/sites/default/files/Publications\\_NSVRC\\_Research-Brief\\_Sexual-Violence-LGBTQ.pdf](http://www.nsvrc.org/sites/default/files/Publications_NSVRC_Research-Brief_Sexual-Violence-LGBTQ.pdf)
- [18] <http://www.aauw.org/article/clery-act-data-analysis/>
- [19] [https://www.aau.edu/uploadedFiles/AAU\\_Publications/AAU\\_Reports/Sexual\\_Assault\\_Campus\\_Survey/AAU\\_Ca](https://www.aau.edu/uploadedFiles/AAU_Publications/AAU_Reports/Sexual_Assault_Campus_Survey/AAU_Ca)
- [20] <http://www.suny.edu/violence-response/>
- [21] <https://www.livethegreendot.com/>
- [22] <http://www.mvpngnational.org/>
- [23] <http://cola.unh.edu/prevention-innovations/bystander>
- [24] <https://www.binghamton.edu/counseling/services/sexual-assault-peer-education/bystander/>
- [25] <http://www.oneonta.edu/knowviolence/>
- [26] <http://cultureofrespect.naspa.org/>
- [27] <http://www.joinonelove.org/>
- [28] <https://www.insidehighered.com/news/news-sections/strategies-prevent-violence>
- [29] <https://www.insidehighered.com/taxonomy/term/224>

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## Crime and Incident Reporting Guidelines for CSAs and Responsible Employees

Andrea Stagg & Joseph Storch, Office of General Counsel, State University of New York

September 2014

Violation	CSA?	CSA Reporting Obligation	Responsible EE?	Title IX Reporting Obligation
Nonviolent sex discrimination, including verbal sexual harassment	<b>YES</b>	No reporting obligation because sexual harassment is not a Clery reportable crime (but see Responsible Employee obligations).	<b>YES</b>	Yes
	<b>NO</b>		<b>NO</b>	No reporting obligation. Only responsible employees are required to report incidents to Title IX Coordinator. Others <u>may</u> but not <u>required</u> by law or OCR guidance.
Clery Part I Primary Crimes with exception of sex offenses	<b>YES</b>	CSAs must report the Clery statistic to appropriate Clery coordinator but may withhold the identity of the victim or reporter.	<b>YES</b>	Not applicable to role as a “responsible employee” under Title IX because sex discrimination is not involved (but see CSA obligations).
	<b>NO</b>	No reporting obligation because reported to non-CSA. Others <u>may</u> but not <u>required</u> by law or DoE guidance.	<b>NO</b>	
Part I Primary Crimes that are sex offenses	<b>YES</b>	CSAs must report the Clery statistic to appropriate Clery coordinator but may withhold the identity of the victim or reporter (and see Responsible Employee obligations).	<b>YES</b>	Yes (and see CSA obligations).
	<b>NO</b>	No reporting obligation because it was reported to a non-CSA (but see Responsible Employee obligations). Others <u>may</u> report but not <u>required</u> by law or DoE guidance.	<b>NO</b>	No reporting obligation (but see CSA obligations). Only responsible employees are required to report incidents to the Title IX Coordinator. Others <u>may</u> report but are not <u>required</u> to report by law or guidance from OCR.

### Definitions & Resources

**Campus Security Authority (CSA)** are defined by the Clery Handbook to include campus police/security and affiliated offices, those designated by the institution, and faculty and staff with significant responsibility for students and campus activities. For the purposes of this document, the term CSA does not include any individual who may meet the requirements of being CSA but is acting as a professional or pastoral counselor at the time they receive a report.

**Responsible Employees** have the authority to address complaints of sex discrimination, including sexual violence, and they must report sexual harassment they observe or learn about to the Title IX Coordinator. Responsible employees must report all known relevant details about a complaint of sexual violence to the Title IX Coordinator or designee, including names of anyone involved or present, date, time, and location. We can't be sure, but it is very likely that all responsible employees are CSAs.

**Non-professional counselors or advocates** are all individuals who work or volunteer in on-campus sexual assault centers, victim advocacy offices, women's centers, and the like, including students and front desk staff. These individuals can keep personally identifiable information confidential, but are required to report general information about incidents of sexual violence, including nature, date, time, and general location of the incident.

**Pastoral counselors** are persons associated with a religious order or denomination, recognized by that religious order or denomination as someone who provides confidential counseling, and functioning within the scope of that role at the time they learn of a crime/incident.

**Professional counselors** are persons whose official responsibilities include providing mental health counseling to members of the institution's community and who are functioning within the scope of their license or certification at the time they learn of a crime/incident.

**Nonviolent sexual harassment** - Example: sexually explicit comments, unwanted nonphysical sexual attention.

2011 Department of Education [Clery Handbook](#) | April 2014 Office for Civil Rights [Title IX Questions & Answers](#) | April 2011 Office for Civil Rights [Dear Colleague Letter](#)

## Notifications Following Student Conduct Hearings

Andrea Stagg & Joseph Storch, State University of New York

July 2014

Violation & Example	Notifications	Relevant Rules
Crime of Violence or Nonforcible Sex Offense <sup>1</sup>	Written notice of outcome and any sanctions to both parties.  If someone other than the parties asks, you <i>may</i> provide certain information <u>only if</u> the accused was found responsible.	Clery and FERPA  FERPA
Sexual Violence (included in Crime of Violence and requires the same notifications, but listed separately because it invokes Title IX)  Example: rape, sexual assault, sexual coercion	Written notice of outcome and sanctions imposed to both parties, including rationale and sanctions.  If someone other than the parties asks, you <i>may</i> provide certain information <u>only if</u> the accused was found responsible.	Clery <sup>2</sup> , FERPA <sup>3</sup> Title IX DCL <sup>4</sup> , VAWA/S aVE <sup>5</sup>
Sexual Harassment, nonviolent  Example: sexually explicit comments, unwanted nonphysical sexual attention	Provide written notice of outcome to both parties. Notify the victim/complainant about sanctions <u>that directly relate to the harassed student</u> .  Example of sanctions that directly relate to the harassed student: no-contact order, suspension, expulsion.  Example of sanctions that <u>do not</u> relate: probation, cleaning duties.	Title IX DCL <sup>7</sup> and FERPA <sup>8</sup>
Stalking, Domestic Violence, Dating Violence	Written notice of outcome and sanctions to both parties, including rationale of results and sanctions.	VAWA/SaVE <sup>9</sup>

<sup>1</sup> Crimes of violence is defined in [18 U.S.C. 16](#) as: “offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony and that, by its nature, involves substantial risk that physical force against the person or property of another may be used in the course of committing the offense.” [34 C.F.R. 99, Appendix A to Part 99](#) lists Crimes of Violence and their definitions, including arson, assault offenses, burglary, criminal homicide, destruction/damage/vandalism of property, kidnapping/abduction, and sex offenses.

<sup>2</sup> [The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act](#) requires institutions to inform both parties of the outcome of any disciplinary proceeding brought alleging a sex offense (which includes sexual violence like rape or assault). Under [FERPA](#), “final results” and “outcome” include: the name of the accused student, the violation found to have been committed, and any sanction imposed. See 20 USC 1232g(b)(6)(C).

<sup>3</sup> For crimes of violence and non-forcible sex offenses, [FERPA](#) permits the disclosure of the final results of a disciplinary proceeding to the victim, regardless of whether or not the accused was found responsible. See 20 USC 1232g(b)(6)(A).

<sup>4</sup> [Guidance from the Department of Education’s Office for Civil Rights](#) (OCR) requires written notice of outcome, including all sanctions, to victims of sexual violence.

<sup>5</sup> [The amendments to the Violence Against Women Act](#) require the accused and accuser in cases of sexual assault to be simultaneously informed in writing of the outcome of a disciplinary proceeding. They also must be informed of the appeals procedures, if any, and any change that occurs before the results become final (outcome of appeals). The [proposed regulations](#) require providing both parties in VAWA cases with the rationale for the result and sanctions, and to do so does not violate FERPA. See 34 C.F.R. 668(k) and (l).

<sup>6</sup> For crimes of violence and nonforcible sex offenses, [FERPA](#) permits the disclosure of the “final results” of a disciplinary hearing only if that student was found responsible for violating the institutions rules or policies with respect to such crime or offense. See 20 USC 1232g (b)(6)(B),.

<sup>7</sup> [Guidance from OCR](#) requires written notice of the outcome to both parties and of course notifying the accused of any sanctions. The institution can only disclose to the harassed student the sanctions that directly relate to the student.

<sup>8</sup> Guidance from OCR also affirms that under FERPA institutions are permitted to disclose outcome and the sanction to the victim in a case of sexual harassment (nonviolent) if that sanction directly relates to the harassed student. See page vii of the [2001 Revised Sexual Harassment Guidance](#) from OCR and pages 5 and 13 of the 2011 [DCL on Sexual Violence](#). OCR’s view is that disclosing the outcome and sanctions that relate to the victim is necessary to eliminate the hostile environment.

<sup>9</sup> [The amendments to the Violence Against Women Act](#) require the accused and accuser in cases of stalking, dating violence, and domestic violence to be simultaneously informed in writing of the outcome of a disciplinary proceeding. They also must be informed of the appeals procedures, if any, and any change that occurs before the results become final (eg, the outcome of appeals). The [proposed regulations](#) require providing both parties in VAWA cases with the rationale for the result and sanctions, and to do so does not violate FERPA. See 34 C.F.R. 668(k) and (l).



## Reporting Obligations of Confidential, Semi-Confidential, and Private Resources On- and Off-Campus

Andrea Stagg, Associate Counsel, Office of General Counsel

December 2014

	<b>CONFIDENTIAL</b>	<b>SEMI-CONFIDENTIAL (NON-PROFESSIONAL COUNSELORS &amp; ADVOCATES)</b>	<b>PRIVATE</b>
<b>These individuals:</b>	Cannot re-disclose any information provided by a reporting individual. <sup>1</sup>	Do not disclose any personally identifiable information to police or campus officials, <u>but</u> provide aggregate data to the Title IX Coordinator as required by law. <sup>2</sup>	Will limit disclosure as much as possible while complying with the law and College policy, which requires notifying the Title IX Coordinator or designee of all known details.
<b>Who are they?</b>	<ul style="list-style-type: none"> <li>- Medical providers.</li> <li>- Licensed mental health counselors.</li> <li>- Clergy.</li> <li>- Off-campus counselors and advocates.</li> </ul> <p><b>The above must be acting in the capacity of these roles when learning of a report in order to maintain confidentiality.<sup>3</sup></b></p>	<ul style="list-style-type: none"> <li>- Counselors without licenses, including peer counselors.</li> <li>- Employees at a campus advocacy center, including a women's center or crime victim assistance center.</li> <li>- Administrative staff at counseling, health, and advocacy centers.</li> </ul>	<ul style="list-style-type: none"> <li>- All College employees besides confidential resources and non-professional counselors and advocates</li> <li>- Including deans, RAs, hall directors, academic advisors, and more.</li> </ul>

**Clery Act Note:** When a Campus Security Authority (CSA) learns of a Clery Act crime reported to occur in one of the four geographic areas specified by Clery, that individual is required to report the statistic, without any personally identifiable information, to the University Police/Campus Security. The Title IX Coordinator is a CSA; if another CSA reports information about sex discrimination to the Title IX Coordinator that would be Clery countable, ensure that either the Title IX Coordinator or the reporting CSA provides the statistic to University Police/Campus Security for inclusion in the Annual Security Report.

<sup>1</sup> Exceptions: if there is an imminent health or safety risk, or a lawfully issued subpoena, an otherwise confidential resource may be able and/or required to disclose.

<sup>2</sup> Information should include the nature, date, time, and general location of an incident; information can be excluded if including it would reveal personally identifiable information about the victim.

<sup>3</sup> Examples of people not acting in the capacity of the confidential role: A dean of students who is a licensed counselor but works at the college as a dean, not a counselor; a college president who is an ordained minister, talking with a reporting individual as a president.



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# **Policy and Programming Changes Pursuant to the Campus SaVE Provisions of the Violence Against Women Act**

**Office of General Counsel  
State University of New York**

**January 2015 (updated from July 2014)**

To Learn  
To Search  
To Serve



## Introduction

This document represents a team effort of members of the State University of New York Office of General Counsel, alongside partner organizations, to create guidance that SUNY colleges can use to prepare for the changes required by the [2013 amendments to the Violence Against Women Act](#) and its [regulations](#). The Department of Education released a [letter](#) detailing expectations for colleges to make a “good faith effort” to comply with these changes. The documents below were created specifically for two sessions SUNY hosted for campuses in the summer of 2014 to help them prepare to meet the requirements. We were pleased that hundreds of campus professionals representing all corners of the SUNY system attended those trainings. As we were preparing for these sessions, we benefitted significantly from the resources of the [First Report of the White House Task Force to Protect Students From Sexual Assault](#).

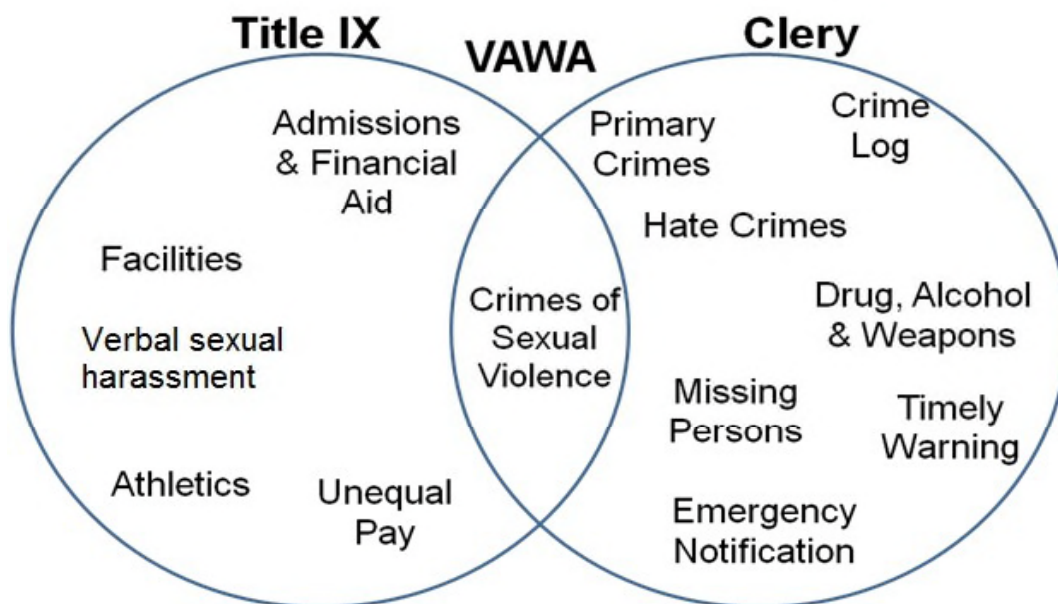
Attorneys often provide guidance about compliance with the law and regulations, and the guidance documents found here certainly aim to ensure compliance with the laws and regulations as we currently understand them. But we don’t want to “miss the forest for the trees.” **Our objective is to work with SUNY colleges and universities to best serve our students and foster a safe and healthy environment for our students and employees. Our priority at SUNY is not checking the boxes on compliance checklists or documenting details for an audit; our priority is an educational environment free from discrimination and assault. The most important concepts we hope that our clients take from this guidance is the need to be fair, transparent, and supportive with members of our campus community who experience, learn about, or otherwise report these very serious incidents and crimes.**

This guidance is meant to be used by SUNY State-operated and community colleges. The documents appear in the order of the trainings the Office of General Counsel conducted in June and July 2014. As new guidance arrives from the Department of Education and White House, we will update our guidance and maintain the current copy on the SUNY Website. Other colleges and universities may feel free to adapt the language in the documents under a [Creative Commons Attribution-NonCommercial 4.0 license](#) wherein colleges and universities may use this content provided that it is attributed to the State University of New York, but no one may sell or make other commercial use of this content. Higher education organizations may link to or post this document on their Web site provided no one is charged to access the content and the document retains its attribution. Non-SUNY readers are encouraged to consult with college counsel as the contents of this guidance do not constitute legal advice.

The amendments to the Violence Against Women Act make changes to Clery Act compliance. Some of these changes are minor (adding gender identity and national origin to hate crime reporting or ensuring victims are never identified in Timely Warnings) while others are complex (the myriad training, programming and campaign requirements). **Compliance with these laws requires an institution-wide effort and support from college leadership.** The



proposed regulations insist that they make no changes to Title IX, but casual and intense readers will certainly note overlap and distinctions between Title IX compliance and Clery/VAWA compliance. In response to questions from clients, we created this Venn diagram:



While there is some overlap between the Clery Act and Title IX, most of each law does not concern the other. Remember also that the Clery Act is part of the Higher Education Act, only applicable to colleges and universities that accept Title IV funds, whereas Title IX is applicable to both higher education and K-12 schools.

SUNY colleges and universities take reports of crimes, including sexual assault, domestic violence, dating violence, and stalking, very seriously. We are proud of the work of our SUNY clients and we remain available to support you as you continue to work towards a safe and supportive college environment for all of our students.

As stated earlier, this project was a true team effort among SUNY colleagues willing and eager to provide a helpful resource to our clients. **The idea was to create an efficiency by centralizing the research and drafting of appropriate language, so campus clients could return to doing what they do best—serving students.** We are deeply grateful to our Counsel's Office colleagues who both participated in the training and worked together seamlessly to draft the guidance that appear in this comprehensive document:

- Nedra Abbruzzese-Werling, Director of Compliance
- Jim Jarvis, Associate Counsel
- Elise Puzio, Special Assistant to the Deputy Counsels
- Wendy Ravitz, Associate Counsel
- Suzanne Shane, Associate Counsel
- Janet Thayer, Associate Counsel

We appreciate the support and leadership of Senior Vice Chancellor and General Counsel Bill Howard and Deputy General Counsel Sandra Casey who convened SUNY's VAWA training sessions. Bill played a significant role in the White House Task Force process, attending a meeting with Vice President Biden and Cabinet members, and providing them with useful feedback on these issues. We were fortunate to have two bright and thoughtful legal interns during the summer of 2014 who played a large part in the research and presentation of these concepts. Stephanie Morrison, a 2L at Cornell Law School and Alex Slichko, a 2L at Harvard Law School, each distinguished themselves by going above and beyond their assignments and providing our clients with innovative and well-prepared presentations. Kudos to both of you.

We are also very thankful for the partnership with colleagues across SUNY, especially Commissioner Bruce McBride and Deputy Commissioner Paul Berger of the SUNY University Police and University Life colleagues Liz Droz, Cariann Quick and Lisa Kelsey. We were lucky to work closely with our friend and colleague Bob Passonno of the New York State Office for the Prevention of Domestic Violence, whose work on bystander intervention inspired great parts of the training.

During the VAWA Negotiated Rulemaking process, we were privileged to work with a team of higher education lawyers, organized by NACUA, to analyze the proposals and suggest solutions that are workable and also allowed colleges to best provide support and assistance to students. NACUA members Dana Scaduto and Jerry Blakemore provided exceptional representation to the rulemaking team and we appreciate their leadership, friendship and collegiality. Thank you also to NACUA colleague John Graff who has been a great partner in teaching Clery compliance to the NACUA community and who contributed the checklist to this document. We are lucky to have such colleagues and could not complete this without them.

Any readers who see areas of improvement in this paper or have additional resources to suggest are encouraged to reach out to us. We hope to continually update and improve this document to serve as a resource both for compliance with the law and, more importantly, to create cultures on our campuses that strongly resist sexual violence in all forms.

Best wishes as you work to comply with the VAWA changes to the Clery Act and please let us know if we can be helpful.

This January 2015 document is an updated version of the document initially created in July 2014 to include [updated SUNY policies](#) and new guidance.



**Andrea Stagg**  
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# Counting Crimes in The Annual Security Report<sup>1</sup>

## Hate Crimes:

If reporting in tabular format, add a column/row in Hate Crimes for **Gender Identity**. You should already be reporting for **National Origin** based on guidance from the 2011 Clery Act Handbook.

If reporting in paragraph, leave as before, just include these crimes (if they occur).

Add **Gender Identity** to list of categories for Hate Crime purposes.

To the extent practicable, institutions should include such hate crimes, if any occurred, from the 2013 calendar year in the 2014 Annual Security Report. Such reporting shows good faith in compliance, even prior to the July 1, 2015 effective date of the VAWA regulations.

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The Violence Against Women Act and its Proposed Regulations require us to use two (or potentially three) different definitions in counting, notifying, and holding students accountable for crimes of sexual violence, dating violence, domestic violence and stalking.

- Counting Crimes – Use VAWA definitions only (below).
- Notifying of Definitions in Annual Security Report – Use New York State definitions and campus definitions (if applicable). See [New York Crime Definitions](#), below.
- Holding students accountable in Judicial/Conduct Code – Use campus or New York State definitions.

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## Counting Crimes

Use the following definitions from the Proposed Regulations to count Sexual Violence, Dating Violence, Domestic Violence and Stalking.

**Note:** Sex crimes definitions have changed. In a positive development sure to reduce confusion and misreporting of sexual violence, especially in the area of acquaintance sexual assault, the Department of Education removed the descriptors of “Forcible and Non-Forcible Sex Offense” in favor of clear definitions of crimes.

## Sex Offenses

Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

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<sup>1</sup> Prepared by Joseph Storch, Associate Counsel.

**Rape**

The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

**Fondling**

The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

**Incest**

Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**Statutory Rape**

Nonforcible sexual intercourse with a person who is under the statutory age of consent.

**Note:** The Proposed Regulations will use the age of consent of the jurisdiction. In New York State, the age of consent is seventeen.

For campuses with operations outside of New York State, the Department of Health and Human Services has created a resource, *Statutory Rape: A Guide to State Laws and Reporting*

*Requirements: Summary of Current State Laws* which is available here:

<http://aspe.hhs.gov/hsp/08/sr/statelaws/summary.shtml>

To the extent practicable, institutions should include such VAWA crimes, if any occurred, from the 20013 calendar year in the 2014 Annual Security Report. Such reporting shows good faith in compliance, even prior to the July 1, 2015 effective date of the VAWA regulations.

## New York Crime Definitions<sup>2</sup>

The Violence Against Women Act and its proposed regulations require the inclusion of certain New York State definitions in a campus's Annual Security Report and also require that those definitions be provided in campaigns, orientations, programs and trainings for employees and students. Definitions required include: consent; dating violence; domestic violence; sexual assault; and stalking.

**CONSENT:** Lack of consent results from: forcible compulsion; or incapacity to consent; or where the offense charged is sexual abuse or forcible touching, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct. Where the offense charged is rape in the third degree, a criminal sexual act in the third degree, or forcible compulsion in circumstances under which, at the time of the act of intercourse, oral sexual conduct or anal sexual conduct, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances. A person is incapable of consent when he or she is: less than 17 years old; or mentally disabled; or mentally incapacitated; or physically helpless; or committed to the care and custody of the state department of correctional services, a hospital, the office of children and family services and is in residential care, or the other person is a resident or inpatient of a residential facility operated by the office of mental health, the office for people with development disabilities, or the office of alcoholism and substance abuse services, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to the care and custody of such department or hospital.

**CONSENT, ABBREVIATED:** Clear, unambiguous, and voluntary agreement between the participating to engage in specific sexual activity.

**DATING VIOLENCE:** New York State does not specifically define "dating violence." However, under New York Law, intimate relationships are covered by the definition of domestic violence when the act constitutes a crime listed elsewhere in this document and is committed by a person in an "intimate relationship" with the victim. *See* "Family or Household Member" for definition of "intimate relationship."

**DOMESTIC VIOLENCE:** An act which would constitute a violation of the penal law, including, but not limited to acts constituting disorderly conduct, harassment, aggravated harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, kidnapping, assault, attempted murder, criminal obstruction or breaching or blood circulation, or strangulation; and such acts have created a substantial risk of physical or emotional harm to a person or a person's child. Such acts are alleged to have been committed by a family member. The victim can be anyone over the age of sixteen, any married

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<sup>2</sup> Prepared by Stephanie Morrison, Legal Intern, 2L at Cornell Law School under the supervision of Joseph Storch, Associate Counsel.

person or any parent accompanied by his or her minor child or children in situations in which such person or such person's child is a victim of the act.

**FAMILY OR HOUSEHOLD MEMBER:** Person's related by consanguinity or affinity; Persons legally married to one another; Person formerly married to one another regardless of whether they still reside in the same household; Persons who have a child in common regardless of whether such persons are married or have lived together at any time; Unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household; Persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors that may be considered in determining whether a relationship is an "intimate relationship" include, but are not limited to: the nature or type of relationship regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship"; Any other category of individuals deemed to be a victim of domestic violence as defined by the office of children and family services in regulation. Intimate relationship status shall be applied to teens, lesbian/gay/bisexual/transgender, and elderly individuals, current and formerly married and/or dating heterosexual individuals who were, or are in an intimate relationship.

**PARENT:** means natural or adoptive parent or any individual lawfully charged with a minor child's care or custody.

**SEXUAL ASSAULT:** New York State does not specifically define sexual assault. However, according to the Federal Regulations, sexual assault includes offenses that meet the definitions of rape, fondling, incest, or statutory rape as used in the FBI's UCR program.

**SEX OFFENSES; LACK OF CONSENT:** Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without consent of the victim.

**SEXUAL MISCONDUCT:** When a person (1) engages in sexual intercourse with another person without such person's consent; or (2) engages in oral sexual conduct or anal sexual conduct without such person's consent; or (3) engages in sexual conduct with an animal or a dead human body.

**RAPE IN THE THIRD DEGREE:** When a person (1) engages in sexual intercourse with another person who is incapable of consent by reason of some factor other than being less than 17 years old; (2) Being 21 years old or more, engages in sexual intercourse with another person less than 17 years old; or (3) engages in sexual intercourse with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.



**RAPE IN THE SECOND DEGREE:** When a person (1) being 18 years old or more, engages in sexual intercourse with another person less than 15 years old; or (2) engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated. It is an affirmative defense to the crime of rape in the second degree the defendant was less than four years older than the victim at the time of the act.

**RAPE IN THE FIRST DEGREE:** When a person engages in sexual intercourse with another person (1) by forcible compulsion; or (2) Who is incapable of consent by reason of being physically helpless; or (3) who is less than 11 years old; or (4) who is less than 13 years old and the actor is 18 years old or more.

**CRIMINAL SEXUAL ACT IN THE THIRD DEGREE:** When a person engages in oral or anal sexual conduct (1) with a person who is incapable of consent by reason of some factor other than being less than 17 years old; (2) being 21 years old or more, with a person less than 17 years old; (3) with another person without such persons consent where such lack of consent is by reason of some factor other than incapacity to consent.

**CRIMINAL SEXUAL ACT IN THE SECOND DEGREE:** When a person engages in oral or anal sexual conduct with another person (1) and is 18 years or more and the other person is less than 15 years old; or (2) who is incapable of consent by reason of being mentally disabled or mentally incapacitated. It is an affirmative defense that the defendant was less than four years older than the victim at the time of the act.

**CRIMINAL SEXUAL ACT IN THE FIRST DEGREE:** When a person engages in oral or anal sexual conduct with another person (1) by forcible compulsion; (2) who is incapable of consent by reason of being physically helpless; (3) who is less than 11 years old; or (4) who is less than 13 years old and the actor is 18 years old or more.

**FORCIBLE TOUCHING:** When a person intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor's sexual desire. It includes squeezing, grabbing, or pinching.

**PERSISTENT SEXUAL ABUSE:** When a person commits a crime of forcible touching, or second or third degree sexual abuse within the previous ten year period, has been convicted two or more times, in separate criminal transactions for which a sentence was imposed on separate occasions of one of one of the above mentioned crimes or any offense defined in this article, of which the commission or attempted commissions thereof is a felony.

**SEXUAL ABUSE IN THE THIRD DEGREE:** When a person subjects another person to sexual contact without the latter's consent. For any prosecution under this section, it is an affirmative defense that (1) such other person's lack of consent was due solely to incapacity to consent by reason of being less than 17 years old; and (2) such other person was more than 14 years old and (3) the defendant was less than five years older than such other person.

**SEXUAL ABUSE IN THE SECOND DEGREE:** When a person subjects another person to sexual contact and when such other person is (1) incapable of consent by reason of some factor other than being less than 17 years old; or (2) less than 14 years old.

**SEXUAL ABUSE IN THE FIRST DEGREE:** When a person subjects another person to sexual contact (1) by forcible compulsion; (2) when the other person is incapable of consent by reason of being physically helpless; or (3) when the other person is less than 11 years old; or (4) when the other person is less than 13 years old.

**AGGRAVATED SEXUAL ABUSE:** For the purposes of this section, conduct performed for a valid medical purpose does not violate the provisions of this section.

**AGGRAVATED SEXUAL ABUSE IN THE FOURTH DEGREE:** When a person inserts a (1) foreign object in the vagina, urethra, penis or rectum of another person and the other person is incapable of consent by reason of some factor other than being less than 17 years old; or (2) finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person and such person is incapable of consent by reason of some factor other than being less than 17 years old.

**AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE:** When a person inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person (1)(a) by forcible compulsion; (b) when the other person is incapable of consent by reason of being physically helpless; or (c) when the other person is less than 11 years old; or (2) causing physical injury to such person and such person is incapable of consent by reason of being mentally disabled or mentally incapacitated.

**AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE:** When a person inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person by (1) forcible compulsion; or (2) when the other person is incapable of consent by reason of being physically helpless; or (3) when the other person is less than 11 years old.

**AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE:** When a person subjects another person to sexual contact: (1) By forcible compulsion; or (2) when the other person is incapable of consent by reason of being physically helpless; or (3) when the other person is less than eleven years old; or (4) when the other person is less than thirteen years old and the actor is twenty-one years old or older.

**COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE SECOND DEGREE:** When over a period of time, not less than three months, a person: (1) Engages in two or more acts of sexual conduct with a child less than 11 years old; or (2) being 18 years old or more engages in two or more acts of sexual conduct with a child less than 13 years old. A person may not be subsequently prosecuted for any other sexual offense involving the same victim unless the other charges offense occurred outside of the time period charged under this section.

**COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST DEGREE:**

When a person over a period of time, not less than three months in duration, a person: (1) Engages in two or more acts of sexual conduct, or aggravated sexual contact with a child less than 11 years old; or (2) being 18 years old or more engages in two or more acts of sexual conduct which includes at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct, or aggravated sexual contact with a child less than 13 years old.

**FACILITATING A SEX OFFENSE WITH A CONTROLLED SUBSTANCE:** A person is guilty of facilitating a sex offense with a controlled substance when he or she: (1) knowingly and unlawfully possesses a controlled substance or any preparation, compound, mixture or substance that requires a prescription to obtain and administers such substance or preparation, compound, mixture or substance that requires a prescription to obtain to another person without such person's consent and with intent to commit against such person conduct constituting a felony defined in this article; and (2) commits or attempts to commit such conduct constituting a felony defined in this article.

**INCEST IN THE THIRD DEGREE:** A person is guilty of incest in the third degree when he or she marries or engages in sexual intercourse, oral sexual conduct or anal sexual conduct with a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother or sister of either the whole or the half blood, uncle, aunt, nephew or niece.

**INCEST IN THE SECOND DEGREE:** A person is guilty of incest in the second degree when he or she commits the crime of rape in the second degree, or criminal sexual act in the second degree, against a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother or sister of either the whole or the half blood, uncle, aunt, nephew or niece.

**INCEST IN THE FIRST DEGREE:** A person is guilty of incest in the first degree when he or she commits the crime of rape in the first degree, or criminal sexual act in the first degree, against a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother or sister of either the whole or half blood, uncle, aunt, nephew or niece.

**STALKING IN THE FOURTH DEGREE:** When a person intentionally, and for not legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct (1) is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or (2) causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was

previously clearly informed to cease that conduct; or (3) is likely to cause such person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.

**STALKING IN THE THIRD DEGREE:** When a person (1) Commits the crime of stalking in the fourth degree against any person in three or more separate transactions, for which the actor has not been previously convicted; or (2) commits the crime of stalking in the fourth degree against any person, and has previously been convicted, within the preceding ten years of a specified predicate crime and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or (3) with an intent to harass, annoy or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family; or (4) commits the crime or stalking in the fourth degree and has previously been convicted within the preceding ten years of stalking in the fourth degree.

**STALKING IN THE SECOND DEGREE:** When a person: (1) Commits the crime of stalking in the third degree and in the course of and furtherance of the commission of such offense: (a) displays, or possesses and threatens the use of, a firearm, pistol, revolver, rifle, sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, slingshot, slungshot, shiriken, "Kung Fu Star," dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, dangerous instrument, deadly instrument or deadly weapons; or (b) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or (2) commits the crime of stalking in the third against any person, and has previously been convicted, within the preceding five years, of a specified predicate crime, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or (3) commits the crime of stalking in the fourth degree and has previously been convicted of stalking in the third degree; or (4) being 21 years of age or older, repeatedly follows a person under the age of fourteen or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of fourteen in reasonable fear of physical injury, serious physical injury or death; or (5) commits the crime of stalking in the third degree, against ten or more persons, in ten or more separate transactions, for which the actor has not been previously convicted.

**STALKING IN THE FIRST DEGREE:** When a person commits the crime of stalking in the third degree or stalking in the second degree and, in the course and furtherance thereof, he or she intentionally or recklessly causes physical injury to the victim of such crime.

## **VAWA's Impact on Student Conduct Codes/Disciplinary Proceedings<sup>3</sup>**

VAWA requires that the Institution's policy describe its procedures for disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, and stalking cases.

### **Prompt, Fair, and Impartial**

All proceedings must be prompt, fair, and impartial from initial investigation to final result. A proceeding is defined in the proposed regulations as "all activities related to a non-criminal resolution of an institutional disciplinary complaint, including, but not limited to, fact-finding investigations, formal or informal meetings or hearings." The proposed regulations require that the Code of Conduct:

- Have designated and reasonably prompt timeframes for the major stages of the grievance process that apply equally to the parties of the complaint, including the investigation, complaint resolution, and appeal processes, if any.
- Be conducted by officials who receive annual training on issues related to dating violence, domestic violence, sexual assault, and stalking and the procedure to conduct an investigation that protects the safety of victims and promotes accountability;
- Include a statement of the standard of evidence that will be used during the proceeding. VAWA does not prescribe a particular evidentiary standard, but OCR guidance directs the 'preponderance of the evidence standard' for Title IX purposes;
- The proposed regulations indicate that the process should:
  - Allow for an extension of timeframes for good cause with written notice to the accuser and the accused of the delay and the reason for the delay;
  - Be consistent with the institution's policies and transparent to the accuser and accused;
  - Include timely notice of meetings at which the accuser or accused, or both, may be present;
  - Provide the accuser, the accused, and appropriate officials timely access to any information that will be used after the fact-finding investigation and during informal and formal disciplinary meetings and hearings;
  - Be conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused; and
  - Include in the results (which is defined as any initial, interim and final decisions by any official or entity authorized to resolve disciplinary matters within the institution) any sanctions imposed by the institution and must include the rationale for the result and the sanctions. Result will replace "outcomes," "resolution" and "final determinations" in statute regulations.

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<sup>3</sup> Prepared by Suzanne Shane, Associate Counsel & Alexander Slichko, Legal Intern, 2L Harvard Law School.

## *Sample Language*

### ESTABLISHING TIME FRAMES FOR THE REVIEW PROCESS

*The University will conduct a timely review of all complaints of domestic violence, dating violence, and/or stalking. Absent extenuating circumstances, review and resolution is expected to take place within sixty (60) calendar days from receipt of the complaint.*

*The preliminary review of all complaints, including any necessary interviews to be conducted and any necessary interim measures to be put in place, will usually be completed within \_\_\_\_ days of receipt of the complaint.*

*The subsequent, comprehensive review and investigation of the complaint, including interviews with all involved parties and gathering of evidence, is usually completed within \_\_\_\_ days of receipt of the complaint.*

*Results of the complaint, via either a formal hearing or waiver of hearing are typically issued within \_\_\_\_ days of receipt of the complaint.*

*An appeal of the results must be submitted within 7 days of receipt of the written result. Absent extenuating circumstances, decisions on appeals are typically issued within \_\_\_\_ days of submission of the appeal.*

### BURDEN OF PROOF

*The burden of proof in all cases is “the preponderance of the evidence” – whether it is “more likely than not” that the sex discrimination, dating violence, domestic violence, sexual assault, or stalking occurred. If the evidence presented meets this standard, then the respondent must be found responsible.*

*Adopted from SUNY Oswego Student Code of Conduct*

### EXTENSIONS

*All deadlines and time requirements in the Code may be extended for good cause as determined by \_\_\_\_\_. Both the respondent and the complainant will be notified in writing of the delay, the reason for delay, and provided the date of the new deadline or event. Extensions requested by one party will not be longer than 5 business/school days.*

### EVIDENCE

*Evidence to be presented by complainant(s) and respondent(s) during any hearing on the charges must be shared with the opposing party at least two (2) business days in advance of the scheduled hearing. The University Official presiding at and/or hearing the case may exclude evidence that has not been shared or adjourn the hearing to afford all parties the opportunity to review evidence to be presented during the hearing. The University Official presiding at and/or hearing the case will make the final decision relating to the admissibility of all evidence.*

*Adapted from the SUNY Stony Brook University Student Conduct Code*

## Meeting/Hearing

- Both the complainant and the alleged offender must be given equal opportunity to have others present during a disciplinary proceeding including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice. The Institution cannot limit the parties' choice of an advisor but may establish restrictions regarding the **extent** to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
  - For example: Any school-imposed restrictions on the ability of lawyers or other advisors to speak or otherwise participate in the proceedings must also apply equally.
  - Similarly, if the school permits one party to submit third-party expert testimony, it must do so equally for both parties.
- An adviser is defined in the proposed regulations as “any individual who provides the accuser or the accused support, guidance or advice.”

### *Sample Language*

#### PARTIES' RIGHTS TO ADVISORS

*The respondent and complainant may be assisted during disciplinary hearings and related meetings, by an advisor of their choice. The respondent and complainant may present witnesses and may produce other evidence for consideration by the student conduct body. The respondent and complainant are responsible for presenting evidence on their own behalf. Advisors may speak privately to their advisee, respondent or complainant, during the proceeding. Either party may request a brief recess to consult with their advisor which will be granted at the discretion of the Assistant Dean of Students for Student Conduct or designee. Advisors for the respondent and complainant may not present evidence or question witnesses.*

*Adapted from the SUNY Oswego Student Code of Conduct*

## Notification

Both parties must be notified **simultaneously and in writing** of:

- (a) the result of the disciplinary proceeding;
- (b) any appellate procedures available (which should be available to both parties);
- (c) any change to the result that may occur prior to the time that the result becomes final;
- (d) when the results become final.

Note: OCR Guidance recommends only that the parties be provided the determination “concurrently.”



*Sample Language*

Notification of findings

*Within five (5) class days after the adjournment of the hearing, the student conduct hearing body shall submit written findings of fact, conclusions regarding the charge(s), and imposition of a sanction, if any, to the respondent and any College official who is determined by the Assistant Dean of Students for Student Conduct to have a legitimate interest in the result. In the case of sexual misconduct and violations involving dating violence, domestic violence, sexual assault, or stalking, both the complainant and respondent shall also receive simultaneous notice of the results and sanctions imposed (and the rationale for the result and sanctions), as well as notice of the appellate procedures available, any possible changes to the result that may occur before it becomes final, and when the result becomes final.*

*Adopted from SUNY Oswego Student Code of Conduct*

**Protective Measures/Sanctions and Retaliation**

Language should be included which explains:

- The range of protective/interim measures that an institution may offer following an allegation of domestic violence, dating violence, sexual assault or stalking such as changing academic, living, transportation and/or working situations;
- The possible sanctions that the institution may impose following a final determination of a disciplinary proceeding regarding rape, acquaintance rape, domestic violence, dating violence, sexual assault, or stalking;
- The prohibition against retaliation. Retaliation is prohibited against any individual who files a sex discrimination complaint under Title IX or participates in a complaint investigation in any way. (Was previously in the statute but not the regulations.)

*Sample Language*

SANCTIONS

*The University considers dating violence, domestic violence, sexual assault, and stalking as extremely serious violations and subject to SUSPENSION and/or EXPULSION from the University. In such cases, the Exceptional Procedure of EXECUTIVE SUSPENSION also may be invoked.*

*Adopted from the SUNY Stony Brook University Student Conduct Code*

**RETALIATION**

*No member of the University community shall retaliate, intimidate, threaten, coerce or otherwise discriminate against a person who files a Title IX complaint, serves as a witness, or assists or participate in a Title IX proceeding in any manner. Participants who experience retaliation should report the incident to \_\_\_\_\_.*

*Adopted from the SUNY Oswego Student Code of Conduct*

## New VAWA Required Definitions for Student Conduct Codes<sup>4</sup>

### Dating Violence

The definition must include:

- Reference to a violent **act**;
- Committed by
  - A person who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - The existence of the relationship shall be determined based on victim's statement with consideration of the length of the relationship, the type of the relationship, and the frequency of the relationship.

### Domestic Violence

The definition must include:

- Reference to a violent **crime**;
- Committed by
  - Current or former spouse or intimate partner;
  - Person sharing a child with the victim; and
  - Person cohabitating with or has cohabitated with the victim as a spouse or intimate partner.

### Stalking

The definition must include:

- Engaging in a course of conduct (two or more acts by which the stalker directly, indirectly, or through third parties follows, monitors, observes, surveils, threatens, or communicates about a person or interferes with his or her property);
- Directed at a specific person; and
- Causes a reasonable person to fear for his or her safety or the safety of others or causes that person to suffer substantial emotional damage.

### Consent

The definition must include:

- Consent is a voluntary agreement to engage in sexual activity;
- Someone who is incapacitated cannot consent;
- Past consent does not imply future consent; silence or an absence of resistance does not imply consent;
- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another;
- Consent can be withdrawn at any time; and
- Coercion, force, or threat of either invalidates consent.

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<sup>4</sup> Prepared by Alexander Slichko, Legal Intern, 2L at Harvard Law School under the supervision of Andrea Stagg, Associate Counsel and Joseph Storch, Associate Counsel.

## Sample Language

### DATING VIOLENCE

*Dating violence is any act of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the victim's statement and with consideration of the type and length of the relationship and the frequency of interaction between the persons involved in the relationship. Two people may be in a romantic or intimate relationship, regardless of whether the relationship is sexual in nature; however, neither a casual acquaintance nor ordinary fraternization between two individuals in a business or social context shall constitute a romantic or intimate relationship. This definition does not include acts covered under domestic violence.*

### DOMESTIC VIOLENCE

*Domestic violence is any violent felony or misdemeanor crime committed by a current or former spouse or intimate partner of the victim, a person sharing a child with the victim, or a person cohabitating with the victim as a spouse or intimate partner.*

### STALKING

*The term stalking means intentionally engaging in a course of conduct, directed at a specific person, which is likely to cause a reasonable person to fear for his or her safety or the safety of others or cause that person to suffer substantial emotional damage. Examples include, but are not limited to, repeatedly following such person(s), repeatedly committing acts that alarm, cause fear, or seriously annoy such other person(s) and that serve no legitimate purpose, and repeatedly communicating by any means, including electronic means, with such person(s) in a manner likely to intimidate, annoy, or alarm him or her.*

### CONSENT

*Affirmative consent is a clear, unambiguous, knowing, informed, and voluntary agreement between all participants to engage in sexual activity. Consent is active, not passive. Silence or lack of resistance cannot be interpreted as consent. Seeking and having consent accepted is the responsibility of the person(s) initiating each specific sexual act regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent to any sexual act or prior consensual sexual activity between or with any party does not constitute consent to any other sexual act. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression. Consent may be initially given but withdrawn at any time. When consent is withdrawn or cannot be given, sexual activity must stop. Consent cannot be given when a person is incapacitated. Incapacitation occurs when an individual lacks the ability to fully, knowingly choose to participate in sexual activity. Incapacitation includes impairment due to drugs or alcohol (whether such use is voluntary or involuntary), the lack of consciousness or being asleep, being involuntarily restrained, if any of the parties are under the age of 17, or if an individual otherwise cannot consent. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.*

<http://system.suny.edu/sexual-violence-prevention-workgroup/policies/affirmative-consent/>

## Developing a Confidentiality and Reporting Webpage<sup>5</sup>

VAWA requires that Institutions publish policy statements describing their reporting and confidentiality protocols used in cases of dating violence, domestic violence, sexual assault, and stalking.<sup>6</sup> Publishing this information on the Title IX page can encourage students to seek help.

In December 2014, SUNY developed model [Victim/Survivor Bill of Rights](#), [Sexual Violence Response Policy](#), and [Options for Confidentially Disclosing Sexual Violence](#) for implementation at all SUNY colleges.

### What information should be included?

- A description of the options through which a student can report an incident of dating violence, domestic violence, sexual assault, or stalking. The description should also explain how the Institution could assist the student through the process. These reporting options should include:
  - Filing a criminal complaint with law enforcement;
  - Filing student disciplinary charges with the Institution; and
  - Filing a discrimination complaint with the Institution's Title IX Coordinator.
- A list of the people and organizations to whom the student may report and their respective obligations to report that information to the Institution, including:
  - **Professional Counselors** – These licensed and pastoral counselors provide mental-health counseling to members of the campus community and are not obligated to report any information to the Institution.
  - **Non-Professional Counselors** – Other individuals that work or volunteer in on-campus counseling centers may talk to a victim without revealing any personally identifying information to the Institution. However, those individuals must report the nature, date, time, and general location of the incident to their Title IX Coordinator.
  - **Responsible Employees** – Responsible employees must report all relevant details to the Title IX Coordinator. If a student requests confidentiality, the Institution will consider the request, but cannot guarantee that it will honor it.
- How an Institution will decide if it can honor a student's confidentiality request and how it will protect and assist the student if it cannot.

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<sup>5</sup> Prepared by Alexander Slichko, Legal Intern, 2L at Harvard Law School under the supervision of Andrea Stagg, Associate Counsel and Joseph Storch, Associate Counsel.

<sup>6</sup> There are many ways to accomplish this notification. This is one example but, like the other resources in this guidance, there are many ways to accomplish the same goals. Institutions that do a good job with this information include the University at Buffalo (<http://www.buffalo.edu/equity/obtaining-assistance/sex-discrimination-and-sexual-harassment/if-you-have-experienced-sexual-assault.html>).

Caryn Pass	(202) 344-8039 (DC)	(212) 370.6260 (NYC)	cpass@venable.com
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### **Independent School Law Report Card**

As Independent Schools prosper and develop, ensuring compliance with best practices becomes a higher priority. As fiduciaries responsible for fiscal resources, schools have begun to thoroughly assess their operations as they relate to legal issues. When conducting such reviews, it is imperative that the school act consistently with its culture and mission to achieve sustainability by building best practices. The Independent School law practice at Venable is well versed in the operations of educational institutions. We stay apprised of federal and state laws that apply to independent schools and help schools create strategies that limit liability and exposure to legal challenges.

Venable's Independent School practice offers a review of the school's policies, procedures, and practices known as the "School Law Report Card." The objective of the School Law Report Card is to determine whether the School's operations are in compliance with federal and state law and best practice in the independent school industry. We create the Report Card by collecting information through interviews and review of documentation at an on-campus visit. After we have assembled the necessary information, we evaluate and draft our findings and recommendations in a written document.

When designing the Report Card document we find it helpful to create a list of actions to be taken, organized by priority, along with a timeline for completing the work. Since time and funds are not unlimited, these two factors must be calculated into the timeline for completing the proposed projects. Not only does this allow for a more effective and thoughtful process, but it avoids the "shock" that sometimes occurs with change. Since policies and practices do not become out of date overnight, they should not be updated overnight. If the goal is to ensure that the School is meeting best practices, this can be achieved only if changes are made in a thoughtful and integrated manner with careful attention to all details.

After we have obtained the necessary information, we will provide a Report Card, which is an evaluation of where current policies stand with respect to legal compliance and best practices. We would then work with the members of your team to design a strategy that specifically addresses the needs of your school. The strategic plan would be designed with consideration of the areas of weakness that are identified during our assessment, the priorities and needs of the school, future goals of the school, budget, and timing. Our recommendation would also be mindful of the fact that certain documents and policies interact and build upon one another, and require attention at different times of the academic year. For example, while an updated employee handbook is a crucial document, it is unwise to roll out a new handbook to staff prior to providing a training session to the administrative staff who must "enforce" it. Likewise, if the existing teacher contracts incorporate certain provisions of an existing handbook, this may pose a problem in implementation.

### **School Law Report Card Checklist**

- I. Governance
  - By Law, Charter and Article of Incorporation Review
  - Audit Committee Creation
  - Conflict of Interest and Codes of Conduct
  - Gift Receipt Policies
  - Governance Best Practice and Board Consultation

Independent School Law Report Card  
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- Whistleblower Policies
  - Policy and Process Procedures for Board
  - Creation of Committee Descriptions and Design of Best Practice
  - Training and Presentations for Proper Governance
  - Intermediate Sanctions Compliance
  - Minutes and Maintenance of Board Documents
  - Proper Procedures and Practices During Board Meetings
- II. Insurance Coverage
- Review Insurance Coverage for Adequate Coverage Amounts
  - Review Insurance Coverage for Adequate Language Inclusion
  - Review Insurance Coverage for Adequate Policies
- III. Executive Support
- Head Contract Review
  - Deferred Compensation Advice
  - Comparable Salary Assessment
  - Intermediate Sanctions and Rebuttable Presumption Compliance
  - Tuition Remission
  - Housing Compliance Issues
- IV. Document Compliance, Maintenance, and Retention
- Document Retention/Destruction Policy
  - Review of Sarbanes-Oxley Act Compliance
  - I-9 Records
  - Individual Personnel Files Maintenance
  - Contents Review
  - Length of Time Retained
  - Payroll Information
  - Recruitment, Application, and Hiring Process Records
  - Employee Benefit Plan Records
  - Affirmative Action Plan Compliance Records
  - Workplace Injury Records
  - Termination and COBRA Compliance Records
- V. Information Gathering
- Description of Any Pending Employment-Related Litigation, Including Allegations
  - Total Number of Employees, Full-time, Part-time, Faculty, Staff
  - Total Number of Students
- VI. The Hiring Process and Related Issues
- Review of Recruitment
  - Employment Application
  - The Interview Process
  - Is There a Written Hiring and Interview Procedure?
  - Is There a Standard Applicant Evaluation Form?
  - Are Colleagues Trained on Interviewing Skills?
  - What Records are Maintained That Identify the Sex, Race, Age, National Origin,



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- Disability, or Other Protected Status?
  - A Review of Pre-Employment Inquiries That May Appear Benign, but Implicate Legal Issues
  - I-9 Employment Verification Process
  - Review of any Testing Done as Part of the Hiring Process
  - Aptitude or Skill Testing
  - Polygraph
  - Drug/Alcohol Testing for Bus Drivers
  - Reference Checking Procedure
  - Fair Credit Reporting Act Compliance
  - Criminal Background Checks
  - Offers and Rejections of Employment
  - Review of Employment Agreements
  - New Hire Reporting Requirements
  - New Hire Orientation Process
- VII. Performance Evaluations and Training for Supervisors on Conducting Evaluations
- VIII. Discipline and Discharge
  - Review of Policy and Process
  - Review Discipline Forms
- IX. Compliance with Americans with Disabilities Act (ADA)
  - Review Job Descriptions
  - Review Process for Determining Reasonable Accommodation
  - Review Available Leave Policies to Ensure Compliance with ADA
- X. Compliance with Family and Medical Leave Act (FMLA)
  - Review FMLA Notice Letter
  - Review Procedure for Designating Leave as FMLA
  - Review Procedure for Requesting Medical Certification, Re-certification, and Fitness for Duty
  - Coordination of FMLA, Workers' Compensation, Short-term Disability, and Other Leave Policies
- XI. Review of Employee Handbook/Faculty and Staff Policies
  - Review for Compliance with Applicable Federal, State, and Local Laws
  - Ensure that Handbook Reflects School's Practices, Policies, and Culture
  - Review At-Will Employment Language
  - Review Acknowledgment Form
  - Acceptable Use Policies and Use of Technology
- XII. Compliance with USERRA
- XIII. Determine Applicability of HIPAA and Review Compliance
- XIV. Review of Any Other Benefits Offered to Employees
  - Tuition Reimbursement/Remission
  - Child Care
  - Attendance at Conferences and Seminars

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- Credit Union
  - Moving Expenses
  - Food Services, Meals
  - Employee Assistance Program
  - Relocation Assistance
  - Employee Referral Bonuses
- XV. Assessment of Handling of Internal Employee Complaints
- Complaint Procedure
  - Communication of Procedure to Employees
  - Investigation Process
  - Resolution of Complaint
  - Action Plan to Prevent Recurrence
- XVI. Wage and Hour Practices
- Exemption Status and Overtime Calculation
  - Identification of All Positions Treated as “Exempt” from Overtime Obligations under the FLSA
  - Review Lawful Basis for Treatment as Exempt
  - Review of any Salary Deductions of Exempt Employees, and Any Other Deviation from Compensation
  - Review any Additional Types of Payment Provided to Exempt Colleagues
  - Review the Method of Overtime Computation for Non-exempt Colleagues
  - Review Calculation of Non-exempt Employees’ Regular Rate of Pay
  - Review of Any Bonuses, and Their Treatment in the Computation of Overtime Payments to Hourly Employees
  - Review of the Method Used to Track Hours Worked and Breaks Taken by Non-exempt Employees
  - Review of the Method of Calculation Utilized to Determine Overtime Compensation for a Colleague Working More Than One Job or Shift at Different Rates of Pay
  - Review of the Method of Calculation Used to Determine Overtime for Colleagues Who Work on the Sixth or Seventh Day of the Week
  - Review of Procedures for Overtime Authorization, and for Payment of Overtime Work Not Authorized
  - Review of Payment Policies for Travel Time, Time Spent On-call, and Time That Non-exempt Employees Are Required to Be on the Premises during Hours They Are Not Regularly Scheduled to Work
- XVII. Other Key Wage Issues
- Review of the Pay Period and Pay Dates Following Close of Pay Period
  - Review of any Independent Contractors Utilized by the School, Including the Nature of Any Agreement Used with Independent Contractors That Set Forth the Relationship
  - Identify Any Positions Where Male Colleagues Receive Pay Different from That of Female Colleagues for Reasons Other Than Seniority, Merit, or a System Measuring Productivity
  - Review of the Method Used for the Payment of Final Wages to an Employee

- Separated from Employment by Termination or Resignation (Including Any Deductions from Final Paychecks and the Timing of Payment)
  - Review of the Policy Regarding the Payment of Earned but Unused Vacation and Sick Leave upon Termination, Whether Compensatory Time Off Is Offered
  - Identify and Assess All Reasons for the Docking of Amounts from Paychecks
  - Review Whether Colleagues Receive an Itemized Statement of Deductions
  - Review Whether Direct Deposit Is Offered
- XVIII. Separation from Employment
  - Review of Written Termination Policy and Procedure
  - Termination Process
  - Use of Releases and Separation Agreements
  - Employment Reference Policy
  - Policy and Process of Payments to Terminated and Resigning Employees
  - Severance Pay Policy
  - Exit Interview and Procedures Policy
  - Procedures for Return of School Property
- XIX. Student Issues
  - Student Handbook Policies
  - Admissions Document Review and Revisions
  - Enrollment Contracts
  - Disciplinary and Honor Code Policies
  - Permission Slip and Emergency Forms
  - Due Process (Honor Code Procedures) Prior to Suspension or Discipline
  - Academic Dishonesty
  - Theft Investigations
  - Internet and Email Policies
  - Appropriate Role of School in Custody and Domestic Issues
  - Drug and Alcohol Policies and Discipline
  - Accommodation of Learning Disabilities
  - Acceptable Use Policies and the Proper Use of Technology
  - Reporting Requirements for Abuse
- XX. Benefits Review
  - 403(b) Plans
  - 457 (b) or (f) Plans
  - Cafeteria Plans
  - Tuition Remission Plans
  - Education Assistance Plans
- XXI. International Students and Home Stays
  - Review Process for Selecting, Enrolling, and Housing International Students
  - Review of All Forms, Materials, and Related Documentation, Including Third-party Agreements
- XXII. International Travel
  - Review Practices and Procedures Related to Establishment of International Travel

Program

- Review of Permission Slips and All Related Documents
- Review of Agreements with Third Party
- Review of International Home Stay Arrangements

XXIII. Student Injury and Concussion Plans

- Review Practices and Procedures Related to Establishment of Concussion Plans, Response and Obtaining Baseline Assessments
- Review of Policy Related to Responding to Emergency Situations, Including during Sports Events, during the School Day, and on Trips

We hope this memorandum assists you in gaining a better understanding of the Report Card process. Please do not hesitate to contact us if you require any additional information.



## Protecting Your Campus: Sound Approaches to Handling Abuse, Bullying, Harassment and Sexual Misconduct Claims April 21, 2016

### Articles and Resources

#### ✚ Thinking Deeply About Prevention and Response

- ❖ [SUNY Sexual Assault & Violence Response \(SAVR\) Resources website](https://www.suny.edu/violence-response/)  
<https://www.suny.edu/violence-response/>
- ❖ [Free webinar series \(NYDOH, OPDV, NYSCASA, NYSCADV, DOH\)](#)
  - Preparing Peer Educators for Sexual Violence Prevention Work, April 19 and April 29, 2016  
<http://system.suny.edu/sexual-violence-prevention-workgroup/training/webinars/04-22-16-preparing-peer-educators/index.html>
  - #JustAsk: Developing A Comprehensive Sexual Violence Prevention and Awareness Campaign for the College Community, May 24 and June 2, 2016  
<http://system.suny.edu/sexual-violence-prevention-workgroup/training/webinars/06-02-16-justask/index.html>
  - Beyond Boundaries: Prevention and Response Strategies for Study Abroad and International Student Programs, June 16 and July 26, 2016  
<http://system.suny.edu/sexual-violence-prevention-workgroup/training/webinars/06-16-16-study-abroad/beyond-boundaries-prevention-and-response-strategies-for-study-abroad.html>
- ❖ [SUNY Working Group Site with Policies](#)
  - Sexual Violence Prevention Workgroup
  - <http://system.suny.edu/sexual-violence-prevention-workgroup/>
- ❖ [Crime and Incident Reporting Guidelines](#)
  - Guidelines for Writing and Distributing Incident Reports
  - [http://www.oneskyservices.org/files/downloads/Incident\\_Rept\\_Guidelines.pdf](http://www.oneskyservices.org/files/downloads/Incident_Rept_Guidelines.pdf)
- ❖ [Reporting Obligations](#)
  - Reporting Obligations of Confidential, Semi-Confidential, and Private Resources On- and Off-Campus, Andrea Stagg, Associate Counsel, Office of General Counsel, December 2014
  - <http://www.nacua.org/securedocuments/resourcepagedocs/CleryAct/ReportingObligationsCollegeEmployees.pdf>



- ❖ [Victim Notification Chart](#)
  - Notifications Following Student Conduct Hearings, Andrea Stagg & Joseph Storch, State University of New York, July 2014  
<http://www.nacua.org/securedocuments/resourcepagedocs/CleryAct/VictimNotificationChartJuly2014.pdf>
- ❖ [Special Resource for Immigrants Who Are Victims of Violence](#)
  - Violence Against Women Act Visa and Immigration Resource for Colleges and Universities  
<http://www.suny.edu/violence-response/Visa-and-Immigration-Resource/>
- ❖ [Inside Higher Ed: Sexual Violence: Responding to Reports Is Not Enough](#)
  - Sexual Violence: Responding to Reports Is Not Enough:, Joseph Storch, March 14, 2016  
<https://www.insidehighered.com/views/2016/03/14/colleges-must-not-only-respond-reports-sexual-violence-also-prevent-it-essay>

## ✚ New York State Ed Law 129-B

- ❖ [Article 129-B](#)
  - "Enough is Enough" Legislation  
<http://www.sunyra.com/guide-article-129-b/>  
<http://legislation.nysenate.gov/pdf/bills/2015/S5965>

## ✚ State University of New York System Administration Social Media Policy

- ❖ <https://www2.sysadm.suny.edu/EmployeeServices/pdf/SocialMediaPolicyMay.17.2011.pdf>

## ✚ Clery, VAWA and Title IX

- ❖ [White House First Report](#)
  - The First Report of the White House Task Force to Protect Students From Sexual Assault, April 2014  
<http://www.nacua.org/documents/WhiteHouseTaskForceonSexualAssaultReport.pdf>
- ❖ [VAWA Statute](#)
  - Violence Against Women Reauthorization Act of 2013
- ❖ VAWA Redline against Clery
  - Policy and Programming Changes Pursuant to the Campus SaVE Provisions of the Violence Against Women Act (SUNY 93 Page Guidance)  
<http://system.suny.edu/media/suny/content-assets/documents/generalcounsel/SUNY-VAWA-Guidance-2014.pdf>
- ❖ [VAWA Brief Review](#)
  - Brief Analysis of the The Violence Against Women Act (VAWA) and Changes to the Clery Act & Title IX Compliance, Andrea Stagg, Joseph Storch, March 2014  
<http://www.nacua.org/documents/Vawasummary.pdf>



- ❖ [VAWA Proposed Department of Ed Regulations](#)
  - A Proposed Rule by the Education Department on 06/20/2014  
<https://www.federalregister.gov/articles/2014/06/20/2014-14384/violence-against-women-act>
- ❖ [2011 Clery Handbook](#)
  - A Handbook for Campus Safety and Security Reporting, U.S. Department of Education  
<http://www2.ed.gov/admins/lead/safety/handbook.pdf>
- ❖ [Clery Act Hierarchy Resource](#)
  - Clery Act Hierarchy Following the Final Rules Implementing the Violence Against Women Act, Joseph Storch, November 2014  
[http://www.nacua.org/securedocuments/resourcepagedocs/CleryAct/CleryActHierarchy\\_FinalRulesImplementVAWA.pdf](http://www.nacua.org/securedocuments/resourcepagedocs/CleryAct/CleryActHierarchy_FinalRulesImplementVAWA.pdf)
- ❖ [Properly Classifying Geographic Locations for Clery Act Annual Security Report Purposes](#)
  - Properly Classifying Geographic Locations for Clery Act Annual Security Report Purposes, Joseph Storch, May 2013,  
[http://www.higheredcompliance.org/resources/resources/ProperlyClassifyingGeoLocale\\_CleryAct.pdf](http://www.higheredcompliance.org/resources/resources/ProperlyClassifyingGeoLocale_CleryAct.pdf)
- ❖ [April 2011 Dear Colleague Letter \(DCL\)](#)
  - U.S. Department of Education, Office For Civil Rights, The Assistant Secretary, Dear Colleague Letter, April 4, 2011  
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>
- ❖ [April 2014 OCR Dear Colleague Letter \(DCL\) Follow Up](#)
  - U.S. Department of Education, Office For Civil Rights, The Assistant Secretary, Questions and Answers on Title IX and Sexual Violence, April 29, 2015  
[http://www.nacua.org/documents/OCRQandA\\_TitleIXSexualViolence.pdf](http://www.nacua.org/documents/OCRQandA_TitleIXSexualViolence.pdf)
- ✚ **University Risk Management and Association (URMIA) Journal 2015**
  - ❖ Building a Proactive Compliance Program in Higher Education, Nedra Abbruzzese-Werling and Joseph Storch, State University of New York  
[https://higherlogicdownload.s3.amazonaws.com/URMIA/afec0d8f-84a3-4a20-a673-b744a68477fd/UploadedFiles/nXRp5D7TSkuytavcUEvD\\_URMIAJournal2015\\_TEXT\\_PRINT\\_20151005.pdf](https://higherlogicdownload.s3.amazonaws.com/URMIA/afec0d8f-84a3-4a20-a673-b744a68477fd/UploadedFiles/nXRp5D7TSkuytavcUEvD_URMIAJournal2015_TEXT_PRINT_20151005.pdf)
- ✚ **United Educators Video – Shine a Light**
  - ❖ Short video for higher education employees to learn how to recognize, prevent and report sexual misconduct.  
<https://www.youtube.com/watch?v=esIbBoSgc70>





## Protecting Your Campus: Sound Approaches to Handling Abuse, Bullying, Harassment and Sexual Misconduct Claims

## Your Notes:

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.