

UNIVERSITY SECURITY

How to Investigate Campus Sexual Assaults

Prompt, thorough and impartial inquiries will help protect victims of sexual violence and ensure your institution is in compliance with Title IX.

By Robin Hattersley Gray | June 05, 2012



This is the third part in a series of four Campus Safety magazine articles covering sexual assault, relationship violence and stalking. Some of the material in this article is explicit and might not be appropriate for younger readers. Our next installment will cover relationship violence. To read our first installment on stalking, [click here](#). Our second installment on sexual violence prevention can be found [here](#).

Let's say your campus is doing everything right in [preventing sexual assaults](#). You are providing sexual violence prevention education to incoming freshmen and other students, as well as fraternities, sororities and athletic teams. You have enlisted [the help of](#)

[bystanders](#), including staff, coaches, teachers, administrators and strangers, so they will intervene and hopefully avert a sexual assault from actually happening to a targeted victim. You have effective alcohol and drug prevention/intervention programs available. You have done your very best to develop a culture in your community that fosters respect and healthy relationships.

Despite all of your hard work, you know that not all assaults in your community can be prevented. When assault allegations arise, your institution's administration — in addition to law enforcement — will be tasked with the investigation.

Don't Delay Your Inquiry

The Department of Education Office for Civil Rights (OCR) "[Dear Colleague](#)" [letter sent to educational institutions last year](#) instructs campuses to not wait for the conclusion of a criminal investigation before [beginning their own Title IX investigation](#). The inquiry should be prompt, thorough and impartial. Additionally, OCR estimates that a typical administrative investigation should take approximately 60 days following the receipt of the complaint, depending on the complexity of the investigation and severity and extent of the incident.

[Related Article: Not Complying with Title IX Could Cost You](#)

In order for an investigation to be effective, however, campus/district administrators and police must recognize the impact of trauma and rape on victims, advises Dr. Gary Margolis, who is managing partner

of Margolis, Healy & Associates.

"There is no normal victim response to trauma," he says. "The victim might not remember the assault, or they may have a significant change in behavior. A normally outgoing person might become withdrawn (or vice versa). The survivor might suddenly become promiscuous (or vice versa). She or he might gain or lose weight. Perhaps they can't sleep or are sleeping much more than before. She can't recall the penetration but can tell us that there were 722 holes in the acoustic ceiling tile above the bed. (To protect herself emotionally, she disassociated by counting the holes while the assault was occurring.)"

Most, but not all, victims of sexual violence don't physically resist. The attack may trigger a survival mechanism that allows them to subconsciously evaluate fight/flight options and they remain calm and subservient as a survival strategy. Conversely, they may be in shock or have been, either knowingly or unknowingly, [incapacitated by alcohol, drugs or both](#).

Margolis claims most victims who experience the trauma of sexual violence have a better recollection of the details or sequence of events over time. Educated police officers, investigators, hearing officers and prosecutors understand this and conduct their investigations, hearings and prosecutions accordingly, with deference and explanations for this phenomenon. Often survivors' accounts of what happened change, which can play into the respondent's (defendant's) hands if not appropriately taken into consideration. Furthermore, many victims might not even realize that they were raped for reasons that include incapacitation and loss of memory. In one study, only 27% of the women whose sexual assaults met the legal definition of rape thought of themselves as rape victims (Koss, 1988; Koss et al., 1987).

Assault Victims Often Don't Come Forward

More than half of college women who are raped tell no one of their victimization, and the others who do tell often wait for days, weeks or months [before making a report](#). Margolis says investigators must understand why they are reluctant to talk, especially to police or university officials.

"Most women feel they won't be believed," he says. "She knows someone is going to ask her why she was wearing a dress that came up above her knees. Why was she drinking? [Why did she drink so much](#)? Why did she go to the party alone? Why did she stay for the after-party? Why was her cell phone battery not charged? Why did she kiss him if she wasn't interested in sex? Those are questions that send a very clear message to the person reporting: 'I'm going to get blamed, and they aren't going to believe me.'" (Note: [only about 2% of all sexual assault accusations reported to police turn out to be false](#). This is the same rate of false reporting as other types of violent crimes.)

To overcome this reluctance, OCR recommends campuses provide educational programs that [encourage students to report incidents](#). OCR also suggests schools develop specific sexual violence materials that include the schools' policies, rules and resources for students, teachers, coaches and administrators. The materials should include where and to whom students should go if they have been assaulted or subjected to sexual harassment. These materials should also provide information on what to do if they learn of an incident.

"We have to make sure we are empowering victims to make the decision that is right for them while also encouraging them to report so we can investigate," says Tom Tremblay, who formerly was Vermont's public safety commissioner and is now a consultant with Margolis, Healy & Associates.



Campuses must also determine if their disciplinary policies have a chilling effect on or discourage



reporting. OCR recommends that schools inform students that the institution's primary concern is student safety. Any other rules violations will be addressed separately from the sexual violence allegation, and the use of alcohol or drugs never makes the victim at fault for sexual violence.

"We have to recognize the difference between an alcohol violation and the violent and serious nature of sexual violence," adds Tremblay. "While an alcohol violation is one thing we look at, victims have to

know and understand that the priority is the [prevention of sexual violence](#)."

Police, Administrators Must Coordinate

Because both campus administration and law enforcement will be conducting separate investigations of the incident, a multi-disciplinary response is critical. Police, mental health, child services, victim advocacy and nurse examiners should all be coordinated. How claims of assault are handled should be agreed upon beforehand by administrators and police so the cases are not jeopardized.

"They should absolutely work together because there is a lot of potential for conflict in this," Tremblay says. "Both come at it with very different approaches."

Victims (complainants) are often required to provide two statements: one to campus administrators and one to law enforcement. However, police and campus officials can agree to conduct a joint interview (similar to how child sexual abuse cases are handled).

For respondents (the person who is accused of the assault), campus and police should develop a deliberate strategy.

"Sometimes, the university might want to approach the respondent before the police, and the police may want to catch the respondent without him having knowledge that this has been reported to law enforcement," Tremblay says.

Investigations Must Be Thorough

Both Margolis and Tremblay emphasize that investigations should focus on the behavior of the respondent, not the complainant. Investigators should receive appropriate training in conducting sexual and gender investigations, and institutions need to understand the differences (and limitations) between criminal and administrative investigations. According to Tremblay, without proper training and experience, administrative investigators may only interview both sides in sexual assault cases before filing "he said, she said" reports that can't be adjudicated.

"If you were [suspected of drug dealing](#), we wouldn't just ask you, 'Are you dealing drugs?' You would just say, 'No,'" he says. Instead, investigators must do a better job of collecting and reviewing evidence.

"Look at the pre- and post-assault behavior," recommends Margolis. "In some cases, you and I are in class together and are friends. Friday night happens and I presumably sexually assault you, and on Monday, I don't even talk to you in class anymore. Or, I call you on Saturday and apologize for what happened the night before."

[Comments made on Facebook](#) are another good source of incriminating evidence.

Was Grooming or Stalking Involved?

Investigators should also examine why the respondent chose the complainant. Was the victim being groomed?

"If this particular person was getting her five, six, seven, eight or nine drinks and being almost forceful about it, did they get drinks for anyone else at the party?" asks Tremblay. "Why were they getting drinks just for this person?"

Investigators should also look for contrived circumstances to determine [if the respondent was stalking the complainant](#). The respondent might show up more in the complainant's life. A GPS tracking device might be installed on the phone that the respondent gave to the complainant.

"Did the offender manipulate the environment to get the victim into a position of vulnerability?" asks Tremblay. "Take a look at the chosen location of the assault. Does it occur in an isolated area?"

Also, if the respondents are sexual predators, they could have MOs they use repeatedly in grooming their victims.

Tremblay recommends that administrators and police look at the respondent's social circles and previous relationships to determine if the respondent has assaulted others. Often sexual assault, [intimate partner violence and stalking are interconnected](#).

The complainant's social circle should also be interviewed.

"Most of the time the victim will first disclose to a roommate or a very close friend, if at all," he adds. "You want to follow up with those outcry witnesses."

What Did 'No' Look Like?

Investigators must also determine if there was consent. Often respondents don't know what consent is in a healthy relationship.

"In my experience sitting down with men who have been accused of sexual assault, they have a really hard time explaining the difference between consent and submission," says Tremblay. "When you don't have consent, that's when it becomes a problem with the law."

Of course, then investigators must determine what 'no' looked like to the victim and offender in that particular situation. Was there lubrication? Were the victim's legs forced apart?

"Where we see forced sexual intercourse — rape — we often see tearing and bruising," says Margolis. "A two-centimeter tear of the walls of the vagina is not a normal result of consensual intercourse."

Investigators can ask "What did 'no' feel like?" If the complainant went to the doctor, police can obtain her medical records with her consent. Whether or not administrative hearings will allow admission of this information in judicial hearings is open to debate and should be explored with the dean of students office and the general counsel.

All of the findings must be thoroughly documented. Additionally, Margolis believes describing the incident correctly is important.

"'Having sex' isn't the same as 'forcibly penetrating her vagina with his penis without consent,'" he says.

Preponderance of Evidence Standard Is Recommended

Once the administrative investigation is complete, campus officials can determine the appropriate disciplinary response. It should be noted that OCR encourages schools and universities use the "preponderance of evidence" standard ("more likely than not" standard) rather than the "clear and convincing" standard. This means that conduct could constitute a violation of Title IX even if police determine there isn't enough evidence to prove a crime was committed.

The maximum punishment that colleges and K-12 districts can hand down is expulsion, although according to a 2011 study completed by the Center for Public Integrity, only 10% to 25% of the college men found to have engaged in sexual assault were actually expelled.

Anne Munch, who was formerly a prosecutor in Denver, Telluride and Jefferson County, Colo., is a firm believer in accountability, particularly for young offenders.

"If a juvenile is committing serious crimes, such as domestic violence, stalking or sexual assault, that needs to be addressed very, very seriously," she says. "We find out that most sex offenders begin their careers in their adolescence and they rack up hundreds upon hundreds of victims in their lifetime. We need to be prepared to have interventions that call attention to the problem and marshal as many resources as we can for those young offenders and their victims to see if that cycle can be interrupted. The worst thing we can do is brush it off and say, 'It's no big deal; boys will be boys.'"

Steps Campuses Must Take to Protect Complainants

A school must promptly take the following steps once it has received notice of an allegation of sexual harassment or violence. The protections should remain in place until the investigation has concluded.

- Notify the complainant of his or her options to avoid contact with the alleged perpetrator
- Allow students to change academic or living situations as appropriate (e.g. The school may prohibit the respondent from having any contact with the complainant pending the results of the school's investigation)
- Minimize the burden on the complainant
- Inform complainant of their Title IX rights and any available resources (counseling, health services, etc.)
- Have policies in place to protect complainants against retaliatory harassment
- Let complainants know how to report any subsequent problems
- Remedies for the complainant might include, but aren't limited to:
 - Providing an escort to ensure the complainant can move safely between classes and activities
 - Ensuring the complainant and respondent do not attend the same class
 - Moving the complainant or respondent to a different dorm or, in the case of an elementary or secondary school student, to another school within the district
- Providing counseling
- Providing medical services
- Providing academic support services, such as tutoring
- Arranging for a complainant to re-take a course or withdraw from a class without penalty
- Reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the complainant being

disciplined

OCR's Instructions on Confidentiality

- Schools should inform and obtain consent from the complainant (or the complainant's parents if the complainant is under 18 and does not attend a postsecondary institution) before beginning an investigation
- If the complainant requests confidentiality or asks that the complaint not be pursued, the school should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation
- If a complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the school should inform the complainant that its ability to respond may be limited
- The school should tell the complainant that Title IX prohibits retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs
- If the complainant continues to ask that his or her identity not be revealed, the school should evaluate that request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. Thus, the school may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the complainant's age; whether there have been other harassment complaints about the same individual; and the alleged harasser's rights to receive information about the allegations if the information is maintained by the school as an "education record" under the Family Educational Rights and Privacy Act (FERPA). The school should inform the complainant if it cannot ensure confidentiality.
- Even if the school cannot take disciplinary action against the alleged harasser because the complainant insists on confidentiality, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence

For more guidance on Title IX and the OCR's "Dear Colleague" letter, [click here](#).

Source: OCR "Dear Colleague Letter"

Helpful Online Resources

- Association of Title IX Administrators (ATIXA): www.atixa.org
- California Coalition Against Sexual Assault: www.calcasa.org
- Conference On Crimes Against Women: www.conferencecaw.org
- Domestic Violence, Sexual Assault and Stalking Data Resource Center: www.jrsa.org/dvsa-drc
- FBI Victim Assistance: www.fbi.gov/stats-services/victim_assistance
- IACP Sexual Assault Incident Reports Investigative Strategies: www.campussafetymagazine.com/iacpsexassaultinvestigations
- Margolis Healy Title IX Gender & Sexual Violence Response Compliance: www.campussafetymagazine.com/margolishealy
- Men Can Stop Rape: www.mencanstoprape.org
- National Crime Victims Center: www.ncvc.org
- National Sexual Violence Resource Center: www.nsvrc.org
- National Stalking Resource Center: www.ncvc.org/src
- OJP NIJ Sexual Assault on Campus: www.campussafetymagazine.com/OJPNISexassaultoncampus
- Rape Abuse & Incest National Network (RAINN): www.rainn.org

- Resources for Sexual Assault Response Teams (SART Toolkit): <http://ovc.ncjrs.gov/sartkit/>
- Safe Horizon: www.safehorizon.org
- Security On Campus: www.securityoncampus.org
- Violence Prevention Coalition of Greater Los Angeles: www.vpcgla.org
- U.S. Department of Education's Higher Education Center for Alcohol, Drug Abuse, and Violence Prevention: www.higheredcenter.org/database
- U.S. Department of Justice: Office on Violence Against Women: www.ovw.usdoj.gov

Related Articles:

- [Preventing and Responding to Campus Sexual Assaults](#)
 - [How to Comply With the Dept. of Ed's Title IX Sexual Violence Guidance](#)
 - [Bystanders: Your Best Weapon Against Sexual Assault](#)
 - [Stalking on Campus: A Silent Epidemic](#)
 - [The Federal Campus Sexual Assault Victims' Bill Of Rights](#)
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