

NASPA Priorities for Title IX: Sexual Violence Prevention & Response

NASPA supports fair and balanced implementation of Title IX, a provision in the Education Amendments of 1972 prohibiting sex discrimination in schools supported by federal dollars. Under the Obama administration, college and university responsibilities for prevention and response to sexual assault incidents on campus were clarified, clearly outlining adjudication of sexual assault incidents as falling within the bounds of Title IX protections and requiring institutions to take action. Our national conversation around campus sexual assault has evolved greatly since the Obama administration directly addressed the culture of under-reporting on college campuses.

The September 2017 rescission of Obama-era 2011 and 2014 guidance and the release of interim guidance by Secretary of Education Betsy DeVos, with a promise of a forthcoming Notice of Proposed Rulemaking (NPRM) announcement from the Department of Education (ED), has caused uncertainty and confusion on college campuses. The release of regulations and subsequent comment period presents an opportunity for the Department to work more closely with the student affairs professionals who work on behalf of students – both survivors and accused – every day and who have spent countless hours in extensive training to ensure that campuses are handling these cases appropriately. We urge policymakers to take advantage of this opportunity to engage the expertise of campus-based professionals to release final guidance that provides clear recommendations for implementation of new options, such as alternative dispute resolution and the removal of an expected investigatory timeline.

NASPA priorities for Title IX sexual assault prevention, response, and campus adjudication processes include:

Regulations should provide clear direction for institutions. Interim guidance released in September 2017 not only removed guidance on the investigatory process and its appropriate timeline, it introduced new options for campus adjudication proceedings without sufficient detail to allow campuses to move forward with confidence.

- ***Guidance on the appropriate standard of evidence for campus adjudication of sexual violence incidents should be determined.*** The Association for Student Conduct Administration (ASCA) recommends a preponderance of evidence standard for all campus adjudication proceedings. Allowing campuses to single out sexual assault incidents as requiring a higher burden of proof than other campus adjudication processes make it – by definition – harder for one party in a complaint than the other to reach the standard of proof. Rather than leveling the field for survivors and respondents, setting a standard higher than preponderance of the evidence tilts proceedings to unfairly benefit respondents.
- ***Guidance on expectations for communication with parties on the status and progress of investigations.*** The removal of the 60-day adjudication timeline requirement provides needed flexibility to campuses working to balance investigative thoroughness with prompt resolution. However, the absence of any guidance related to what extenuating circumstances might be considered appropriate for extending adjudication of cases, or of communication expectations to the parties in a case creates unnecessary uncertainty for campuses as well as respondents and complainants involved in these processes.
- ***Guidance on the nature of informal resolution processes campuses may use.*** While the benefits of informal resolutions processes, such as restorative justice, may be in the best



interests of all involved parties, clarity on informal resolution processes is necessary to ensure parties are not unnecessarily pressured into pursuing informal resolution. Guidance from ED on by whom and how informal resolution processes can be initiated, appropriate ethical procedures to ensure someone is not pressured into informal resolution against their will, minimum expected training for professionals engaged in informal resolution processes, and acceptable approaches and processes to informal resolution processes will enable campuses to implement this option with more confidence.

Make evidence-based decisions about policies and protocols, including those related to mandatory or compelled disclosure. A new study by Holland, Cortina and Freyd (2018)¹, argues that mandatory reporting policies, or compelled disclosure policies as they term them, are not evidence-based and would result in fewer disclosures of sexual violence by survivors. Compelled disclosure policies are opposed by national medical associations such as the American Medical Association², the World Health Organization³ and victims' rights groups⁴ alike because they take the choice about reporting away from an adult whose very recovery depends on being able to regain control over their own lives. Instead, Holland, et al., outline several survivor-centered reforms, including policies that respect survivors' wishes, creating restricted reporting options for survivors while they decide what they ultimately wish to do, and providing confidential advocates on campus with whom survivors can discuss their options while accessing accommodations.

About NASPA

NASPA – Student Affairs Administrators in Higher Education is the leading association for the advancement, health, and sustainability of the student affairs profession. Student affairs is a critical component of the higher education experience, collaborating with colleagues across institutions of higher education to offer students valuable learning opportunities, meaningful social engagements, and safe and inclusive environments. NASPA's Public Policy Agenda is grounded in a commitment to ensuring opportunity for all institutional members' students and a belief that higher education is a great benefit to both individuals and society.

¹ Holland, K. J., Cortina, L. M., and Freyd, J. J. (2018). Compelled Disclosure of College Sexual Assault: <http://dynamic.uoregon.edu/jjf/articles/hcfaccepted2017.pdf>

² Sachs, C. J. (2007). Mandatory reporting of injuries inflicted by intimate partner violence. *AMA Journal of Ethics*, 9(12), 842-845.

³ World Health Organization (2013). Responding to intimate partner violence and sexual violence against women: WHO clinical and policy guidelines. Retrieved (1/19/2017) from <http://www.who.int/reproductivehealth/publications/violence/9789241548595/en/>

⁴ National Alliance to End Sexual Assault (2015, March 10). NAESV opposes mandatory referral legislation. Retrieved from <http://endsexualviolence.org/files/NAESVMandatoryReferralPositionStatement.pdf>

