Title IX And Sexual Assault On Campus

Insights
10.01.14

In January this year, President Obama created the Task Force to Protect Students From Sexual Assault to provide colleges and universities with recommendations to prevent and respond to sexual assault and enhance efforts to hold educational institutions accountable when they fall short in addressing sexual assault on their campuses. Recently, the Task Force issued its first report containing action steps and recommendations to assist colleges and universities in meeting their obligations to protect students from sexual violence.

While the first report is far from comprehensive, it offers a foreshadowing of the government's increased effort to enforce Title IX and provides initial steps to assist institutions to prepare for upcoming enforcement efforts.

Does Title IX Apply?

Title IX requires federally funded educational institutions to ensure that students are neither denied nor limited in their ability to participate in or benefit from the school's educational programs and activities because of their sex.

Student-on-student sexual violence violates Title IX when the alleged conduct is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's educational program, and the institution allegedly fails to take prompt, effective steps to end or remedy the conduct after being put on notice.

Task Force Report's Recommendations

The report offers substantial guidance to educational institutions on how to begin combating campus sexual assault and improve their compliance with Title IX. The Task Force set out specific steps to begin addressing the problem: 1) identify the problem using climate surveys; 2) implement preventive programs and strategies, and research new ideas and solutions; 3) implement effective response programs; and 4) increase transparency and improve enforcement.

To assist in addressing each of these steps, the Task Force provided specific guidelines on how to

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To assist in addressing each of these steps, the Task Force provided specific guidelines on how to conduct and use climate surveys, a checklist for developing an effective sexual misconduct policy, a sample confidentiality policy, and other tools meant to facilitate working relationships between schools and rape crisis centers.

Key Takeaways

Campus sexual assault will be a major enforcement priority in the near future.

Closer scrutiny of existing campus policies is coming, and the Department of Education is likely to ramp up efforts to identify and correct Title IX violations. This means more work spent by colleges and universities to review and revise existing policies, reexamine the investigative process, and step up prevention efforts in new and creative ways. Educational institutions should immediately start preparing to avoid upcoming scrutiny.

Step up your efforts to prevent sexual assaults from occurring.

The Task Force has concluded that educational institutions continue not to do enough to prevent sexual assaults on their campuses. Schools should consider the reinforcement of education and awareness programs while also implementing strong disciplinary action when complaints are substantiated. In addition to these measures, though, institutions must explore ways to engage students in their advocacy and prevention programs, such as engaging influential or visible males on campus (e.g., student-athletes, coaches, fraternity/social club leaders) as active participants in their educative efforts.

Confidentiality is an important component

While the new guidance suggests a strong preference for honoring a complainant's request for confidentiality, Title IX and the Clery Act impose investigatory and reporting obligations that may be at odds with this preference. Schools should strive to honor requests for confidentiality, yet refrain from compromising investigation efficacy. Consult counsel to ensure compliance with reporting requirements in a manner reasonably calculated to preserve a complainant's confidentiality concerns. Finally, publicize proper methods for reporting incidents to ensure that confidentiality requests are honored to the extent possible.

Clarify reporting obligations.

Review the reporting requirements of the Clery Act and Title IX to ensure that mandatory reporters are accurately designated and clearly identified to students and staff. Mandatory reporters must be adequately trained on their reporting obligations (including the limits of confidentiality they can provide). It is essential that institutions have competent legal advice on these matters to minimize the risks of liability for inadequate reporting or inappropriate disclosure of confidential information.

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Pay attention to how complainants are treated.

The Task Force report focuses heavily emphasizing the need to ensure that victims feel safe making a report of sexual assault. Therefore, schools must craft their investigation policies around striking a balance between confidentiality and efficacy. Advise complainants of: 1) their rights under Title IX; 2) their right to file a criminal complaint; and 3) the availability of resources to help them deal with the situation. And offer complainants available interim accommodations (e.g., schedule changes or alternative housing arrangements) to protect them during investigations.

Conclusion

Although the recent Task Force announcements are not groundbreaking, they shed further light on the Obama administration's intense focus of sexual assaults on college and university campuses. Astute education administrators have already seen the signs on the horizon and, with effective planning and competent advice, management may weather the ramping up of enforcement actions, and avoid becoming the federal government's next example of how not to address sexual assault on campus.

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