



Stanford Swimmer Case And Baylor Athletics Report Return Focus To Title IX And Campus Sex Assault

Insights

7.01.16

The light criminal sentence meted out to former Stanford swimmer Brock Turner, coupled with a scathing independent report about the way Baylor University purportedly responded to claims of sex misconduct in general and sex misconduct claims against athletes in particular, has once again focused the nation's collective attention on campus sex assault.

Lessons Learned From The Baylor Report

Regarding the Baylor report, the internal report detailed alleged failings within the Athletics Department concluding that the university "created a cultural perception that football was above the rules." According to the report, athletics and football personnel handled allegations of sexual violence within the athletics department, failed to report incidents to appropriate university personnel (including the Title IX Coordinator), and conducted their own investigations into sexual violence allegations.

The report is a depressing read for a number of reasons, but perhaps most prominently because it details obvious missteps with respect to Title IX that virtually all practitioners thought we were well beyond. There are four practical takeaways from the Baylor report:

First, while this is old news, it bears repeating. **All** reports of sexual misconduct or any form of sex discrimination must be funneled to the Title IX Coordinator for handling consistent with institutional policy, and to the institutional personnel responsible for Clery compliance. This allows the university to determine whether an incident warrants a timely warning notice or inclusion in the annual security report.

Second, all campus personnel who serve as "responsible employees" pursuant to Title IX must be notified that they are "responsible employees" and trained on their duties.

Third, universities should provide specialized training to all athletics personnel on institutional obligations with respect to allegations of sexual violence. The training need not be long, but it has to make clear that athletics personnel must stand down, report incidents to the appropriate university personnel, and not interfere in any way with the institution's handling of these cases. Indeed, such requirements should be explicit in coaching contracts and job descriptions, and harsh discipline should be meted out by the institution in the event athletics personnel do not respond appropriately.

Finally, in virtually every state, the highest paid public employee is a university football coach. It goes without saying that many coaches wield considerable power and influence within a university. For those who cannot heed point three above, Baylor's termination of its head football coach and athletics director should serve as Exhibit A of the potential personal ramifications.

Moreover when this happens, Title IX personnel, who continue to have some of the hardest jobs in all of higher education, need to be brave and empowered to go to the president or chancellor to order the coach to stand down. The fate of former Baylor President Ken Starr, who apparently failed to meaningfully address widespread concerns about sexual misconduct within Baylor's athletics program, again serves as a powerful reminder of what can happen when university leaders fail to respond appropriately in this area.

Stanford Responds Appropriately

In contrast to the situation at Baylor, the Stanford swimmer rape case provides an example of a proper institutional response to a heartbreaking situation. The university's response appears to be textbook:

- the university aggressively pursued disciplinary action against Turner even though his victim was not a member of the university community and the matter was simultaneously being investigated by the local police department;
- the university's investigation was prompt (lasting less than two weeks) and Turner was given the harshest sanction possible (expulsion);
- Stanford reached out to the victim to offer support services and kept her informed of the steps it was taking; and
- two student bystanders were courageous enough to intervene and restrain Turner until the police arrived, an action which proved pivotal in securing his criminal conviction.

One sex assault is too many. However, higher education institutions should not ignore the possibility that one could occur on your campus. You would be well served revisiting your sexual assault prevention programs, monitoring your campus climate surveys to assess which programs are working, and ramping up your efforts with respect to bystander intervention programs.

Perhaps more importantly, though, the victim in this case has provided an amazing service with the time she spent crafting a remarkably powerful impact statement. This letter should be featured prominently in your campus prevention efforts, with the aim of hopefully changing behavior.

For more information, contact the author at SSchneider@fisherphillips.com or 504.312.4429.

Industry Focus

Education

Higher Education

Sports