

Insights, News & Events

# DON'T BE UNPREPARED FOR STUDENT-ON-STUDENT SEXUAL ASSAULT ALLEGATIONS

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Many are aware of the alarming rise in the number of student sexual assaults on college campuses across the country. The May 2015 issue of JAMA Pediatrics reported that one in five women will be the victim of a sexual assault while in college.

It is just as unfortunate, but not as widely publicized, that the situation is not much better at public and private prep schools. Statistics published in 2015 by the Journal of Adolescent Health show that women are just about as likely to fall victim of sexual assault incidents before college as they are in college. About 20 percent of female high school students, and just over 10 percent of male high school students, have been victims of dating violence.

This disturbing reality not only threatens the well-being of our children, but places administrators in the difficult position of having to act promptly, effectively, and fairly while balancing and protecting the interests of the complainant, the accused, other students, parents, the school, and the public. These interests are often at odds with one another, which leads some to prepare with the "I'll deal with it when I have to" approach – or worse yet, "I hope it won't happen here."

## Industry Focus

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However, these head-in-the-sand attitudes rarely lead to good outcomes. Schools that took this sort of approach have found themselves in the headlines when they were forced to pay huge monetary settlements or ended up on the wrong end of massive jury awards. The key to avoiding such a fate, and minimizing the chances of an unfortunate incident at your school, is preparation.

## **BE PREPARED WITH EFFECTIVE POLICIES**

Long before any allegation reaches a school official, you should have in place a student code of conduct and administrative policies that address critical issues, including the following:

- Be sure the policies prohibiting harassment include student-on-student contact. Old policies often did not include this type of behavior. Clearly define what constitutes sexual assault and delineate, without confusion or misunderstanding, what actions are in violation of the student conduct code, and the consequences of violating those rules.
- Clearly identify which school officials are responsible for receiving complaints of sexual assault and how a complaint is to be lodged.
- Identify any external persons or agencies that must be notified of the allegations.
- Describe the rights and expectations of both the victim and the accused as the investigation proceeds.
- Ensure the expected timeline for conducting the investigation will be prompt and efficient.
- Describe the level of confidentiality that will, or legally can, be afforded those involved.
- Identify the outcomes following a determination, including the process of implementing disciplinary measures (if warranted).

## **PREPARE WITH REGULAR COMMUNICATION TO ALL STAKEHOLDERS**

If not available, read, and understood by students, parents, teachers, administrators, and all of those who come in contact with the students (don't forget coaches and volunteers), your policies have no meaning. Students need to be aware of what is and is not acceptable, and what to do if they find themselves victims or witnesses to sexual abuse.

Your school's social media platforms can be an excellent avenue for publicizing this information and providing preventive suggestions. Also, you should have regular staff meetings and updates clearly outlining everyone's responsibilities and the severe consequences of not adhering to them.

## **BE PREPARED TO CONDUCT EFFECTIVE INVESTIGATIONS**

Remember the three keys to conducting an assault investigation – be prompt, thorough, and fair. Therefore, the first and perhaps most important decision is to identify an individual who can meet these requirements and conduct the investigation. Ensure your investigator is trained on investigating sexual assault issues, which are clearly more complicated and sensitive than looking into simple issues like the theft of a cell phone.

Understand that once a complaint is made, decisions must be made immediately as to limiting contact between the students, and, depending on the situation, possible home detention or temporary suspension. You may need to contact local authorities depending on the nature and severity of the allegation and the laws in your state. Have an action plan to interview the complainant, accused, and witnesses.

A "fair" investigation means you have no preconceived notion of the outcome and are prepared to treat the victim and accused equally. For example, if accusers are permitted to have their parents present during an interview, the same consideration should be given to the accused. For public school administrators and

others who must comply with Title IX, we expect a renewed emphasis by the Office of Civil Rights to ensure the accused is treated no less fairly than the victim.

Remind all those interviewed of the school's policy prohibiting retaliation for making a complaint or participating in the investigation. Also, avoid the common mistake of victim blaming. This is sometimes hard to spot. For example, do not ask questions of the complainant such as:

- Why didn't you tell him directly to stop commenting on your body?
- Why did you wait so long to report this?
- Were you flirting with the respondent?
- What were you wearing that evening?

These types of questions imply the complainant may somehow be responsible for the injury.

Asking open-ended questions is often the best approach to getting the story. After you have a better understanding of the facts, more focused questions can be used to follow up and clarify specific points.

## **BE PREPARED FOR THE OUTCOME**

Regardless of the outcome of the investigation, one side is likely to be unsatisfied. Be calm and dispassionate when conveying the results. If the recommendation states there is insufficient evidence to prove an assault has taken place, the victim should be reminded that this does not mean the complaint was not valid. If student discipline is warranted, be sure to understand and follow your school's procedures and any relevant state laws regarding notice and due process.

## **HOW TO BE BEST PREPARED**

We recommend you review your policies and procedures with legal counsel to spot policy omissions and errors. Counsel can also help you develop proactive measures to ensure a horrible situation is not made worse by an inadequate response.

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