

LAW WEEK COLORADO

Sending Your Sons to College? The Title IX Process Might Send Them Home

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I wrote an opinion piece in 2015 for Law Week Colorado on how Title IX is being used against young male students. Then and now, Title IX is meant to secure equality and safety for young people in educational environments. Then and now, Title IX is being misused by institutions violating the dignity and rights of male students. I know this because I represent them.

My clients are these young, impressionable male students who are being accused of sexual assault while in college. They are finding themselves in a lawless void that is ripe for litigation and lawsuits rather than due process through regulations and procedures. Yes, women are being sexually assaulted on college campuses. And yes, it is a huge problem. However, it cannot be denied that the process behind disciplinary actions for sexual assault allegations is egregious.

Since 2014, when Rolling Stone Magazine published and then retracted a high-profile but deeply inaccurate article regarding fraternity gang rape, the conversation surrounding rape on college campuses has been a point of contention in all political, educational and legal realms. Betsy DeVos' appointment to Head of the U.S. Department of Education by President Donald Trump reignited the conversation surrounding sexual assault on college campuses when, in 2017, she rescinded the 2011 and 2014 Guidance Letters. These letters, called "Dear Colleague" letters, put colleges and universities on notice that the federal government was going to be aggressive on sexual misconduct. The 2011 letter specifically warned colleges and universities that they could lose substantial federal funding if they did not comply. It was those letters

that universities used as justification for the subsequent biased and slanted investigations in which the findings were in favor of the accusers.

When rescinding the "Dear Colleague" letters, DeVos issued a Q&A guide to be used until new regulations could be enacted. This Q&A guide was intended as a temporary placeholder to reverse wrongs, specifically against the accused, until formal regulations could be issued. Then, in November 2018, the Department issued the long-awaited Title IX Proposed Regulations for the first time in Title IX's history. The Proposed Regulations give detail and definition that was previously lacking. The Proposed Regulations level the playing field — for the first time allowing accused young men some due process before being branded sex offenders and expelled from college. As of January 2019, the Department has accepted nearly 100,000 comments on the Proposed Regulations.

So, what does all of this mean for your children entering college in 2019?

Effectively, as young men and women enter universities for the 2019–2020 year, there are still no regulations in place when it comes to Title IX claims of sexual assault on college campuses. Specifically, universities in Colorado have failed to adopt the Q&A guide and have continued to use outdated and deeply discriminatory methods under the guise of "protecting" young women in order to summarily expel young men.

Their reasoning? These old policies and procedures, which are innately rooted in the aspirations of the revoked guidance letters, "promote their core values of safety, fair and equitable processes for all, and compliance with the current legal framework."

The use of these outdated and discriminatory procedures has resulted in backlash



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against the schools. While the colleges claim their policies promote equitable process, they are not using current guidance, the Q&A guide, to ensure equity. The Q&A guide, which provides that students should be notified of the claims against them, provided

the so-called evidence against them, allowed a hearing and an unbiased investigator and decision maker, are still not available to male students in Colorado. Basically, because Colorado schools are using outdated policies and procedures, male students accused of sexual

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assault in the Colorado college school system are subjected to unfair discrimination and deprivation of due process in their disciplinary hearings.

Unfortunately, two prominent schools in Colorado, the University of Denver and the University of Colorado, continue to engage in unfair process, as well as discriminatory and one-sided disciplinary punishments as a result of unproven sexual assault allegations. Young men in this state continue to be deprived of due process by the educational establishment that is supposed to educate them and help boost them into the next phase of their lives. Instead, these 17–21 year old men’s lives are being ruined by allegations that may not be true. As a result, universities across the country are facing and will continue to face hundreds of lawsuits filed by young men expelled by the rescinded process, using the Q&A guide as their best evidence to overturn their expulsion and award them damages.

Right now in Colorado, when a young

woman accuses a male student of sexual assault, regardless of the facts or the young man’s character, the university takes action against the accused male student. Typically the case begins by a female student making a complaint to the university’s Title IX compliance office. Immediately following this complaint, the male student accused will receive a “move out” letter. This letter is sent solely based on the complaint, with no physical, documented or other corroborating evidence. If the male student lives on campus, he has a 24-hour period to remove himself from the premises. These letters are usually accompanied by a no-contact and no-retaliation policy.

Colleges have cited students for retaliation when their lawyers talk to witnesses and conduct investigations. Their lawyers are both attempting to protect their client’s due process at the college and also against allegations made in the criminal context which could land them in prison for life.

A few days after the “move out” letter,

comes a letter from the Title IX office emailed to the male student advising him of the section of the student code he has allegedly violated (“sexual misconduct”). The letter lists the rights that he should have in the process.

The rights include that he must be treated “fairly and with dignity,” he can submit to an interview with the investigators, a right to a prompt investigation, a right to privacy, a right to be informed of the consequences if the complaint is sustained against him and the names of people the investigators can contact.

The letter does not indicate the facts surrounding the complaint, the name of the complainant, or even the date and location of the alleged incident. These steps are just the beginning of a long and arduous process that never once gives the accused a chance to fairly make his own case.

The 2017 Q&A guide and Proposed Regulations instruct the school to make every effort to avoid depriving the student of his education, which includes an individualized plan

that does not favor one party or the other. In Colorado, however, male students are currently not being afforded these rights as the universities continue to use the outdated and discriminatory policies outlined above.

The overarching problem is that colleges still follow the processes of the rescinded guidance letters because there is still no definitive law in place for universities to follow when it comes to sexual assault allegations and disciplinary action.

While it seems inherent that Q&A guide is evidence that the outdated policies contained in the guidance letters are unfair and in violation of due process, the Q&A guide does not provide a permanent solution to the problem. Until there are permanent regulations in place, universities across the nation will continue to choose fighting potential lawsuits brought by male students instead of committing to implementing and executing fair and unbiased investigations. •

— *Iris Eytan is a co-founder of criminal defense firm Eytan Nielsen.*