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What changes to Title IX mean for higher education

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Letters from Academia

The fight for civil rights in this country has a long history. It became particularly notable in the 1960s with the passage of The Civil Rights Act of 1964. Yet, such a law did not include any prohibition against gender discrimination in public education and federally assisted programs. After some legislative battles, Indiana Democratic Sen. Birch Bayh proposed in 1971 a provision that would eventually become Title IX within the Higher Education Act of 1965 and was signed into law by President Nixon in 1972.

In the words of Bayh, this provision would provide "an equal chance (for women) to attend the schools of their choice, to develop the skills they want, and to apply those skills with the knowledge that they will have a fair chance to secure the jobs of their choice with equal pay for equal work."

This legislation was used by the Obama Administration to investigate an increasing number of cases of sexual assaults on campuses. By 2014 nearly a hundred colleges and universities were under investigation for cases that ranged from sexual harassment to sexual assault.

Because the way these cases were being poorly handled by many institutions of higher education, the Department of Education issued as series of guidelines during the Obama Administration aimed at making colleges take allegations of sexual assault more seriously by demanding the lowest standard of proof, "preponderance of evidence," in deciding whether a student is responsible for sexual assault. The reason for that was that many institutions of higher education receiving federal funds were found to be biased against women who sometimes were depicted as the one "provoking" the sexual assaults, including the widespread use of certain drugs at campus parties that made females to lose conscience become easier targets of sexual assault.

Last Friday Secretary of Education Betsy DeVos scrapped a key part of government policy on campus sexual assault, saying she was giving colleges more freedom to balance the rights of accused students with the need to crack down on serious misconduct. She said that the new standard would be "clear and convincing evidence."

This was in fulfillment of the only specific promise made in the Republican platform in that last election cycle regarding higher education. This new policy has been heralded by conservative groups as a major victory.

Despite the announcement by DeVos, the change of standards is not mandated, so colleges and universities can continue to use old standards. Further, almost 50 percent of the states have enacted laws that effectively mirror the standards recommended by the Obama Administration.

Women's and legal groups have already condemned changes in policy by arguing that it will discourage students from reporting assaults and will create uncertainty for schools on how to follow the law, making campuses less safe.

The problem with these cases is that they are a matter of "he-said, she-said," so there is rarely hard evidence one way or another. Under the Obama interpretation of the law, the "preponderance" rule means colleges must find a student responsible if it is more likely than not that the student conducted a sexual act without the partner's consent. Also,

the definition of "clear and convincing" case meant that it was highly probable the misconduct occurred. Add to that the fact that many sexual assaults on campuses involve the use of alcohol and drugs and no witnesses.

Other effects of the change of policy by DeVos is that she eliminated a requirement that investigations be completed in 60 days, suggesting now that the investigation should be concluded "reasonably prompt." The department will also allow mediation – sessions in which an accuser and accused hash out their differences – if both sides agree. Mediation was not permitted under the Obama administration guidelines, in the belief that women would feel pressure to participate and confront alleged offenders.

This approval of mediation will create a slippery slope, leaving schools giving the thrust of the resolution of the case to others while maintaining secrecy of the outcome. Colleges and universities, for the most part, tend to be very secretive about these issues out of fear of bad publicity. This new rule will only enable even less public scrutiny.

But make no mistake about it, sexual assaults in colleges and universities are a widespread problem with more than 350 cases currently investigated by federal officials. Anyone well-informed about sexual assault statistics know that they represent only a small fraction of the number of actual cases, mostly because many women feel "shame' that prevents them from coming forward with their complaints. Further, there have been numerous complaints by women who feel that their schools have not appropriately handled their accusations.

For those of us who have been involved in higher education for many years, we all know that our institutions do not always handle well these types of accusations, nor do we create a climate of intolerance toward this kind of conduct. All you need to know to be convinced about the seriousness and magnitude of this problem is the read the news, particularly the pages of the Chronicle of Higher Education, where these kinds of incidents – and the scholarly studies about them – are commonly reported.

It is time for colleges and universities to change the climate about sexual assault on campuses by establishing rules that diminish the chances for incidents to occur, for everybody to see that the administration will act decisively and fairly to all complaints, and that they will be completely transparent about the handling of all cases. After all, more than half of the higher education population in this country is women whose rights must be protected.

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