



Megan Grace

November 16, 2015

Sexual Assault in Higher Education

Sexual Assault is an issue that is plaguing colleges and universities across the nation due to the partying culture and lack of administration action. The root problems stem from having no uniform definition of sexual assault, and broad federal statutes such as Title IX and the Clery Act leave much discretion to guide colleges and universities in forming and implementing their sexual assault policies. New York State under the leadership of Governor Cuomo has lead the way in codifying universal and system-wide sexual assault policies and practices that apply to all of its colleges and universities, both private and public.

Scope of the Problem

One in five women will be sexually assaulted during college. Over half of those female victims were raped by a current or former intimate partner, and 98% identified their attacker as male (White House 2014). Out of those rapes, only 28% are reported to an organization or agency, such as the Title IX office or law enforcement (Cantor et al. 2015). From those reports, only 30% of those found guilty of were expelled from school (Kingkaid 2014). However, undergraduate women are not the only ones affected, as the LGBT community shares similar risks. The root problem of sexual assault comes from its definition, as it varies state by state through statutory law.

There are two main reasons for these disturbing statistics, campus culture and lack of administrative action. The partying culture that dominates college campuses fuel the problem, as many victims are sexually abused while drunk, under the influence of drugs, passed out, or otherwise incapacitated. As one combines alcohol with campus hookup culture, consent and communication between intimate partners is muted. This makes it easy for the perpetrator to take advantage of his victim (White House, 2014). Colleges and universities are governed by broad federal statutes, but there is no uniform set of policies to adequately address reports and subsequent investigations of sexual assault. Thereby, with freedom to create their own policies and lack of federal oversight, schools inefficiently and ineffectively handle cases of sexual assault. Cases are often dismissed and perpetrators walk away with little to no punishment.

Past Policy

Colleges and universities are solely governed by federal statutes in terms of protecting students from sexual misconduct. Colleges and universities, private and public, are governed by Title XI of the Education Amendments of 1972, which protect people from discrimination based on sex in educational programs or activities that receive federal financial assistance (U.S. Department of Education, 2015).

Each school has a Title IX Coordinator who is responsible for the university's compliance with Title IX, which includes monitoring and evaluating policy and procedures that effectively and efficiently respond to complaints of sex discrimination, including sexual

assault (Siena College 2015; University at Albany 2015). The Department of Education has the right to impose fines on universities for not complying. Colleges and universities that violate student rights in sexual assault cases are also at risk for losing federal funding, although this punishment has never been applied (Steinhauer 2014). In regard to reporting, the Clery Act of 1988 requires colleges and universities who participate in Title IV financial aid programs to report all incidents of sexual assault, domestic violence, dating violence and stalking (Siena College 2015).



While there is no federal statute declaring a uniform sexual assault policy, it is well within a state's police power to codify and impose such policies on universities and colleges within its jurisdiction. New York was the first state to do so when Governor Cuomo worked with the SUNY Board of Trustees to pass a resolution that required all SUNY campuses to adopt a uniform and system-wide sexual assault victims' Bill of Rights, definition of affirmative consent, student reporting amnesty policy, comprehensive training requirements for administrators, staff, and students, and Confidentiality and Reporting Protocol. It also requires SUNY schools to increase public awareness through a year-round educational campaign, conduct campus climate assessments, and report aggregate data regarding reports of sexual violence acts to the State Education Department (Zimpher 2014).

Current Policy

This SUNY policy served as a policy experiment, for Cuomo hoped to codify this uniform policy into law so it would apply to all colleges and universities, public and private, in New York State. On July 7, 2015 Cuomo got his wish as the SUNY Policy was signed into law under its new name, Article B-129 (NYS Senate, 2015). Publicized as "Enough is Enough" legislation, it requires private colleges to adopt the uniform and system-wide policies and practices described above by October 5, 2015. In addition, the law includes the creation of the sexual assault victims unit within the State Police, a requirement for first responders to notify victims of their right to contact outside law enforcement, and a commitment of \$10 million to help combat campus



sexual assault through various partners (Governor 2015). SUNY Albany was ahead of the other regional colleges as it implemented a uniform sexual assault policy in 2014 under the direction of Governor Cuomo. The other area colleges just recently reformed their policies in the summer before the fall 2015 semester to comply with the new legislation. While it is clear that the policies

Key Organizations

Sexual assault is an issue that extends far beyond campus boundaries. Within the Capital Region, these statistics are alarming to prospective and current students of Rensselaer Polytechnic Institute, Sage Colleges, Siena College, SUNY Albany, The College of Saint Rose, and Union College along with the faculty of those institutions, the families of students, the state government, and the State Department of Education.

- **NY State Department of Education:** Reviews aggregate data from colleges and universities on reported incidents of sexual violence and their adjudication and handling. Withholds state aid or assistance if institutions fail to file a certificate of compliance on or before September 1st, 2016. After that date, the Department will conduct audits of institutions by random to insure compliance with the provisions.
- **NY State Police Sexual Assault Victims Unit:** Focus on advanced training in responding to sexual assaults and related crimes, will also provide assistance and training to campus police and local police units so they can better respond to sexual assault reports on campus.
- **Albany County Crime Victim and Sexual Violence Center:** A community partner to UAlbany and local colleges. The primary provider of rape crisis/sexual abuse services in Albany County. It also provides comprehensive crime victim services.

Policy Options

Policy 1

Statewide universal sexual assault policy

A statewide implemented policy that applies to all private and public universities in the state. It would contain a definition of consent, amnesty policy, victim bill of rights, comprehensive training requirements for administrators, staff, students, and reporting requirements to submit data on reported incidents of sexual assault and their adjudication and handling.

Policy 4

Mandatory reporting

Which would require university and college employees who obtains information that an act of sexual assault has been committed against a student to disclose that information to the Title IX coordinator, which would then be relayed to law enforcement in order to lead an investigation (Kinkade 2015).

Policy 2

Judicial process resemble criminal proceedings

Elevate the standard of review to clear and convincing evidence to better protect a respondent's due process rights during the adjudication process. Colleges and universities should hire specially trained investigators to handle reports, or even hand over reports to law enforcement and have no school involvement in the investigation process (Schow 2014).



Created by Matt Higgins
from Noun Project

Policy 3

Educational sanctions over punitive punishments

The Association for Student Conduct Administration of advised schools not be punitive when punishing guilty students, and instead to dole out educational sanctions. The ASCA emphasizes that campus proceedings are educational and the process is not punitive, so it should not represent criminal proceedings (Kinkade 2014).

Policy 5

Third party reporting

Schools can choose a third party reporting system called Callisto, which allows victims to choose when their report of sexual assault is submitted and who receives it. Victims can add electronic evidence, such as photos of their injuries. Once the report is completed, it comes with a timestamp marking of when it is stored in the database. This creates an environment in which victims feel comfortable reporting (Kinkade 2015).

Glossary of Terms

Sexual Assault: An umbrella term that refers to unwanted sexual acts; such as fondling, where one person touches another's genitalia, groin, breast or buttocks.

Rape: Where a person penetrates another's oral, anal or genital opening with any object without receiving consent.

Title XI of the Education Amendments of 1972: A Federal statute which protects faculty and students from discrimination based on sex in educational programs or activities that receive federal financial assistance.

Clery Act of 1988: A federal statute that requires colleges and universities who participate in Title IV financial aid programs to report all incidents of sexual assault, domestic violence, dating violence and stalking.

"Enough is Enough": New York law that requires private colleges to adopt uniform and system-wide sexual assault policies and practices.

References

Cantor, David, Bonnie Fisher, Susan Chibnall, Reanne Townsend, Hyunshik Lee, Carol Bruce, Gail Thomas. 2015. "Report on the AAU Campus Climate Survey On Sexual Assault and Sexual Misconduct." *Westat*, September 21. <http://www.aau.edu/>.

"Governor Cuomo Signs 'Enough is Enough' Legislation to Combat Sexual Assault on College and University Campuses." 2015. *Office of the Governor of New York*, July 7. <https://www.governor.ny.gov/news/governor-cuomo-signs-enough-enough-legislation-combat-sexual-assault-college-and-university>.

Kingkade, Tyler. 2014. "Fewer Than One-Third of Campus Sexual Assault Cases Result In Expulsion." *Huffington Post*, September 29. http://www.huffingtonpost.com/2014/09/29/campus-sexual-assault_n_5888742.html.

Kingkade, Tyler. 2015. "New System Seen As 'Promising' Alternative to Mandatory Reporting of Campus Sexual Assaults." *Huffington Post*, February 6. http://www.huffingtonpost.com/2015/02/06/mandatory-sexual-assault-reporting_n_6614278.html

Schow, Ashe. 2014. "Four Better Ideas to Fight Campus Sexual Assault." *Washington Examiner*, August 6. <http://www.washingtonexaminer.com/four-better-ideas-to-fight-campus-sexual-assault/article/2551716>.

Siena College. 2015. "Siena College Sexual Misconduct Policy." *Siena College*, September 1. https://community.siena.edu/assets/file_manager/insecure_file/2015%20Sexual%20Misconduct%20with%20Appendices.pdf.

Steinhauer, Jennifer. 2014. "White House to Press Colleges to Do More to Combat Rape." *New York Times*, April 28. http://www.nytimes.com/2014/04/29/us/tougher-battle-on-sex-assault-on-campus-urged.html?_r=2.

The New York State Senate. 2015. "Senate Bill S5965." Accessed October 5. <http://www.nysenate.gov/legislation/bills/2015/S5965>

Trianni, Francesca. 2014. "Columbia Student Pledges to Carry a Mattress Every Day Till Alleged Rapist Leaves Campus." *Time*, September 2. <http://time.com/3259455/columbia-student-pledges-to-carry-a-mattress-every-day-till-alleged-rapist-leaves-campus/>

University at Albany. 2015. "Title IX, Important Definitions." Accessed October 5. <http://www.albany.edu/titleIX/title-ix-important-definitions.php>

U.S. Department of Education. 2015. "Title IX and Sex Discrimination". Last modified April. http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html

White House Council on Women and Girls. 2014. "Rape and Sexual Assault: A Renewed Call to Action." *Office of the Vice President*, January. https://www.whitehouse.gov/sites/default/files/docs/sexual_assault_report_1-21-14.pdf

Zimpher, Nancy L. 2014. "Memorandum: Sexual Assault Response & Prevention." *Office of the Chancellor*, October 2. <http://www.suny.edu/about/leadership/board-of-trustees/meetings/webcastdocs/Sexual%20Assault%20Response%20and%20Prevention%20REVISED-Merged.pdf>

Community Policy Institute

The Community Policy Institute builds capacity surrounding policy within the Capital Region. We provide researched-based policy information to our community partners who use the information to modify best practices and advocate for policies that will further the development and effectiveness of direct community engagement.

This brief was produced by CPI Undergraduate Fellows, community experts, and faculty.

Megan Grace

Funding generously provided by:

The Review Foundation
&
The Corella & Bertram F.
Bonner Foundation

SIENAcollege
Community Policy Institute