What Has Changed in the Era of #MeToo? How Higher Education Can Respond to the New National Conversation

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Not Just Hollywood . . .

University of Minnesota

Michigan State University

Penn State

HARVARD UNIVERSITY

United States Court of Appeals, Ninth Circuit

NIKE

SVA NYC

The White House
The Problem Persists…
On Campus and Off…
Education Department Under Trump

- Uncertain policy environment
- “The era of rule by letter is over”
  Betsy DeVos, Secretary of Education
- 2011 “Dear Colleague Letter” on sexual violence withdrawn
- 2016 Guidance regarding transgender students rescinded
- 2017 Q&A on campus sexual misconduct
  - Burdens of proof:
    - Preponderance of evidence
    - Clear and convincing evidence
  - No fixed time frame to complete Title IX investigation
  - Appeals process
- New rules on Title IX anticipated, not yet issued
What Can We Expect Next?

- EEOC charges alleging sex-based harassment
  - 2011: 12,461
  - 2013: 12,379
  - 2015: 12,573
  - 2017: 12,428

- Reports of sexual assaults on campuses (2017 Bureau of Justice statistics)
  - 2001: 2,200
  - 2013: 5,000
  - 2014: 6,700
What’s Expected of Schools?

- Proactive
- Innovative
- Immediately responsive
Assessing Culture

- Common theme
- Tone at/from the top?
- Open and honest discourse
- Culture of respect
- Demonstrated accountability
What Policies Are Implicated?

- Prohibition on sexual harassment, sexual violence, relationship violence, stalking, and related misconduct
- Code of student conduct
- Prohibition on discrimination
- Drug and alcohol policy
- Upstander/bystander intervention
- Fraternity and sorority risk management
- Privacy and confidentiality
- Student athlete code of conduct
- NCAA Board of Governors Policy on Campus Sexual Violence
- Anti-retaliation
Best Practices for Policies

• **What works:**
  – Coherent, consistent policy throughout the institution, covering all campus constituencies
  – Taking into account unique campus culture and values
  – Carefully defined terms, with detailed discussion of conduct that is prohibited/problematic
  – Participation of all segments of campus community (administration, faculty, staff, students)
  – Clear reporting guidelines with multiple reporting channels

• **What does not:**
  – Policies not specifically tailored to the institution
  – Inadequate publicity of policies
What Constitutes Consent?

- Verbal consent
- Implied by conduct
- Pressured or bullied into consent
Training

- **Who?**
  - All employees
  - All students – men and women, bystanders
  - Fraternities and sororities
  - Student athletes
  - “First responders” and investigators
- **What?**
  - Sexual violence
  - Relationship violence
  - Sexual harassment
  - Discrimination
  - Substance and alcohol abuse
  - Campus culture and values
- **How?**
  - Coordinated and integrated education
  - Structured training
  - Informal focus groups/roundtables
  - Peer education and prevention
  - Staff courses
  - Campus-wide programming
Best Practices for Protocols

- Title IX coordinator
- Responsible reporter/employee
- Standardized procedures
- Tracking of reports
- Investigative capacity
- Victim support services
- Resources for respondents
- External reports
- Ongoing review and assessment
Effective Enforcement

- Educational objectives
- Discipline
  - Second chances
  - Zero tolerance
- Proactive measures
Tricky Issues

- Handling “stale” claims
- Confidentiality
- Overcorrection
  - “The Mike Pence Rule”
- Interim measures
- Crisis management
Questions
Thank You!

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