Sexual Violence and College Athletics: An Examination of How Higher Education Institutions are Managing Sexual Violence and Sexual Misconduct Investigations

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On April 4, 2011 the Department of Education (DOE) issued a Dear Colleague Letter reminding educational institutions of their duty under Title IX to respond promptly and effectively to peer-to-peer sexual harassment and sexual violence on campus (DOE, 2011). The White House Task Force to Protect Students from Sexual Assault (2014) reported that 20% of female college students are victims of attempted or actual sexual assault and each year there are about 237,868 victims of sexual assault in the U.S. (NCDSV, 2014). This alarming statistic prompted the Association of American Universities (AAU) to conduct a comprehensive campus climate survey on sexual assault. The study, completed in fall of 2015, found that 23.1% of female undergraduate student respondents experienced sexual assault or sexual misconduct (AAU, 2015). Despite the 2011 Dear Colleague letter, sexual assault on campuses continues at an alarming rate, investigatory practices are inconsistent or ineffective, and remedies/punishments are often seen as inadequate (Lombardi, 2014).

The DOE has issued two clarifications to the 2011 Dear Colleague Letter including a 2014 guidance intended to assist universities in addressing their legal obligations relative to sexual violence (DOE, 2014a) and a 2015 clarification specifically related to the role and responsibilities of the mandated Title IX Coordinator (DOE, 2015). Since the 2011 Dear Colleague Letter more than 100 universities have been investigated for possible violations of federal law based on their handling of sexual violence and harassment complaints (DOE, 2014b). The White House, Congress, and many state legislatures have called for sweeping reform to hold colleges and universities more accountable for sexual violence on campus (Lombardi, 2014, Stratford, 2014a, and Stratford, 2014b). One concern, which is of particular importance to sport managers, is that a significant percentage of those accused of sexual violence are student athletes. More than 40 student-athletes at 37 universities have been accused of sexual assault or rape since 2012 (Boone, 2014, Harki, 2014, Jacobson, 2014, Schlossberg, 2014). Between 2011 and 2013, United Educators, a single liability insurance provider, tracked all reported incidents of sexual assault at client schools yielding 305 sexual assault incidents at 104 colleges and universities (Caputo, Pettiegrew, & Bennett, 2015). These records reveal that 25% of those accused are varsity athletes; 20% of repeat perpetrators are student-athletes, and 40% of multiple perpetrator attacks involve student-athletes. Additionally, United Educators reports that the number of claims has grown significantly between 2006-2010, with student-perpetrated sexual assault resulting in $36 million in losses for schools.

Equally concerning is that more than 20% of institutions surveyed nationally reported that allegations of sexual violence against athletes were handled within the athletics department rather than as part of a systemized investigatory university process (U.S. Senate Subcommittee of Financial & Contracting Oversight, 2014). Even in situations where the appropriate Title IX official is made aware of the case, investigations and/or hearings are often purposely delayed to a time during the off-season or following the graduation of the accused, allowing them to continue to participate in university sports (Williams v. Board of Regents, 2007). Few schools impose immediate sanctions, such as suspension from practice or games, and those schools that do impose sanctions are fairly minimal. Other athletics-related concerns involve ignoring a player’s history of accusations or charges of sexual violence during the recruiting or admissions process (J.K. v. Arizona State University, 2009). These practices have resulted in accusations that universities value athletics success over human rights. There have also been allegations that institutions and police departments have conspired to cover up these incidents (Dahl, 2014).

These criticisms together with expanding investigations by the Office of Civil Rights have led universities to rapidly implement or update investigatory procedures and processes. However, according to the AAU study approximately six in 10 student respondents believed that reporting sexual assault or sexual misconduct would be taken seriously by campus officials (AAU, 2015). On the other hand, more than 95 private lawsuits have been filed by accused
perpetrators against universities claiming mishandling of investigations or inappropriate disciplinary actions (Boys and Men in Education, 2015). Both victims and accused have filed OCR complaints and lawsuits (Keehan, 2014) but alleged perpetrators are twice as likely to file lawsuits than the alleged victim (Gordon, 2015).

This paper uses qualitative legal research techniques including document analysis, summation and interpretation of reported court decisions and formal complaint settlements involving actions filed by those accused of sexual violence or misconduct, interpretation of applicable state and federal legislation related to recommended and required investigatory procedures by universities, and analysis of sample university policies for conducting investigations of reported sexual violence or sexual misconduct on campus. Coding was guided by the legal requirements contained in the DOE’s 2011 Dear Colleague Letter and 2014/2015 guidance. Data will be analyzed to examine the effectiveness and consistency of university investigative processes with respect to protecting the rights of the accused during an on campus sexual violence investigation. Complete findings and results will be presented.