Legal Obligation to Prevent Rape?
Tip of the Week authored by Brett A. Sokolow, J.D., Executive Director, ATIXA

In a response this week to a lawsuit from a rape survivor, Emerson College claimed it had no legal obligation to prevent her rape. "Absent unusual circumstances, there is no duty for a school to protect others from the criminal or wrongful acts of third persons," attorneys wrote on behalf of Emerson in a motion for dismissal of the lawsuit. In response to Emerson’s filing, activist groups took aim at Emerson. Clearly, the optics of this defense are awful. One group posted to Facebook, "Just an FYI to Emerson College: under Title IX, yes you do."

Q: So, what is the legal standard under Title IX and negligence law? Perhaps understanding lies in the difference between PREVENTION and RESPONSE. Duty is itself a negligence concept, not a Title IX doctrine, but both can apply in a case like this.

A: Emerson is right, legally, no matter how bad the optics of its legal defense might be. Colleges have a duty to REMEDY hostile environments and PREVENT their creation if possible. They have a duty to PREVENT known, foreseeable attacks with reasonable security measures and warnings. They have a duty to PREVENT recurrence (such as a second victimization by the same perpetrator). They don't have a legal duty to PREVENT all assaults, but under Title IX they do have a duty to RESPOND and REMEDY all assaults when they occur. We may not all fully agree with the fact that the law does not create an absolutely duty to PREVENT the victimization of all students, but why should colleges be 100% responsible for the criminal acts of all 3rd parties? I'll be the first to say that colleges don't always get this right, but that doesn't make it right to blame them for everything, either.