



ATIXA POSITION STATEMENT

ATIXA POSITION STATEMENT: WHY COLLEGES ARE IN THE BUSINESS OF ADDRESSING SEXUAL VIOLENCE

ABOUT ATIXA

Founded in 2011, ATIXA is the nation's only membership association dedicated solely to compliance with Title IX and the support of our more than 3,000 administrator members who hold Title IX responsibilities in schools and colleges. ATIXA is the leading provider of Title IX training and certification, having certified more than 3,000 Title IX coordinators and more than 8,000 Title IX investigators since 2011. ATIXA releases position statements on matters of import to our members and the field, as authorized by the ATIXA Board of Advisors. For more information, visit www.atixa.org.

February 17, 2017

Sexual politics are front-and-center for higher education as the new administration settles in to its role in Washington. Many are questioning whether the administration will make changes to enforcement of Title IX, in sharp contrast to the rapid advancement of enforcement and administrative guidance during the Obama administration.

Opponents of Title IX are seizing on this opportunity to champion the idea that colleges should not be in the business of addressing sexual violence cases at all. These opponents see sexual violence solely as a criminal matter best handled by the courts.

Those who see the necessity of addressing sexual violence on college campuses need to be offering public counterpoint to these opponents, to ensure that the public debate airs all sides of this argument, and to ensure that the true intent of the opponents of Title IX is revealed.

Thus, unlike [previous position statements](#) from ATIXA, this one is provided in a bullet-point format, to proffer simple talking points that allies of Title IX can, and should, use to focus the debate. These points make the compelling case that colleges should continue to address sexual violence, irrespective of how the current Washington administration approaches Title IX enforcement.

- Colleges have addressed sexual violence as a policy violation for more than 40 years. Colleges did not get into the business of addressing sexual violence because of Title IX, and college engagement with issues of sexual violence pre-dates the issuance of the seminal Department of Education OCR [Dear Colleague Letter on Title IX and Campus Sexual Violence](#), dated April 4th, 2011. That letter helped to shape colleges' responses to sexual
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violence, but did not create the practice of addressing this issue by institutions of higher education.

- The idea that colleges should not be in the business of addressing rape cases is one of the most common misnomers that Title IX opponents try to spread. Colleges never have and never will address the crime of rape. Nor will colleges administratively address other crimes. Colleges have no administrative authority to address crimes of any kind. Crimes are the sole responsibility of law enforcement agencies.
 - *The college process and the criminal process are separate and distinct functions.* Colleges have sets of rules comprising codes of conduct. These rules address behaviors that often have parallels to crimes, but the behaviors themselves are treated as policy violations by colleges. These behaviors include underage drinking, vandalism, theft, hazing, arson, and more. While these offenses may constitute crimes which may (or may not) be addressed criminally, colleges also address these behaviors as policy violations.
 - To remain logically consistent, those who argue that sexual violence should not be addressed by colleges because it is a crime should argue by extension that no other misconduct that is also a crime should be addressed by colleges. The inconsistency of this argument is revealed by the fact that opponents of Title IX single out only sex offenses, a challenging position to maintain. Colleges must be able to self-regulate in order to maintain order and safety.
 - Opponents of Title IX also suggest that colleges should not be in the business of addressing sexual violence cases because law enforcement agencies are better trained to address these cases. While it is true that colleges struggle with difficult sexual violence allegations, so does the criminal justice system, leading to the current status quo, where most victims/survivors choose not to report these crimes to officials at all.
 - While any bureaucracy can have corrupting influences, the media narrative focuses on the rare exceptions and presents all colleges as incompetent or corrupt at addressing sexual violence. That just isn't the case. If the criminal justice system struggles with sexual violence cases, the tendency to hold colleges to a higher standard than criminal justice authorities is both an unrealistic and an unfair expectation.
 - Consider how the narrative broke down when the *Rolling Stone* article about the University of Virginia was examined carefully. A dean there recently won a \$3 million [defamation lawsuit](#) against the *Rolling Stone* because of its false narrative of administrative corruption. If that edited, vetted and published story of alleged college indifference and institutional betrayal was so dramatically inaccurate, consider how many others are as well.
 - Despite the prevalence of sexual violence on college campuses, criminal conviction rates for these cases remain remarkably low. The Brock Turner sentencing demonstrates that even when convictions do occur, significant flaws in the system remain. Perhaps it is best to acknowledge the reality of the situation: these cases are difficult, regardless of whether they are addressed by colleges or criminal authorities. When allegations of sexual violence proceed through the college process, and not through the courts, it is important to remember that it is because that is what the victim/survivor wants.
 - College policies addressing sexual violence almost always define the offenses differently than criminal statutes do, which further differentiates the college process from the criminal process.
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- More importantly, colleges consider sexual violence to be a form of sex discrimination, the correct legal status under Title IX. Sexual violence is an extreme form of unwelcome sexual conduct, which constitutes sexual harassment, which itself is a type of discrimination based on sex. Similarly, stalking and intimate partner violence on college campuses are behaviors addressed not as crimes, but as forms of sex discrimination. Thus, to remove sexual violence as an offense on college campuses would cause colleges to be in non-compliance with federal law under Title IX.
 - If the opponents of Title IX were to succeed, colleges would address all forms of sex discrimination under Title IX, except when sexual violence occurred. Yet, sexual violence and sexual harassment are legally indistinguishable under Title IX, so how would colleges address some forms of sexual harassment and not others? And, why would colleges refrain from addressing only the harassment that has a parallel in criminal law? The logic of this position is hard to support when analyzed from this perspective.
 - Several proposals (e.g.: in Washington, D.C. and the Georgia State Legislature) have been advanced to address perceived problems with the collegiate approach to sexual violence. These proposals would require that all acts of sexual violence reported to college officials be referred to appropriate law enforcement for resolution. This sounds reasonable until you acknowledge that the actual effect will not be the referral of all sexual violence on college campuses to law enforcement. The actual result will be that the vast majority of sexual violence simply won't be reported by victims/survivors at all. Rather than prosecuting more sex offenders criminally, the result will be a significant drop in the number of reported sex offenses.
 - ATIXA believes that sex/gender equity is an inherent good, that colleges benefit from the evolution toward being more equitable communities, and that victims/survivors must have a safe space within those college communities to report allegations of sexual violence.
 - Instead of using the criminal justice system to make colleges safer, the result of these proposals will be the absolute opposite. In fact, these suggested changes may embolden sex offenders, who will be assured that their offenses are unlikely to be reported. This in turn would result in an environment that would be far less safe than if colleges had maintained their own internal resolution systems.
 - Perhaps that's exactly what those who are opponents of Title IX want: a system where men aren't held accountable for their violence against women?
 - So, do the opponents of Title IX seek only to reassert male privilege over the autonomy of women's bodies? No, of course not. Some are genuinely concerned that colleges don't afford adequate due process to accused students. ATIXA shares these due process concerns. Unlike Title IX opponents however, we do not view this as a zero sum game, where providing for the needs of victims/survivors must inherently compromise the rights that attach to those who are accused of sexual violence. In fact, colleges must do both, and must do both better.
 - Yet, Title IX isn't the reason why due process is being compromised. In fact, OCR recently expanded the reach of Title IX to explicitly protect the rights of accused students [see the [Wesley College Resolution Letter](#)]. If Title IX is now a source of protection for the rights of accused students, it cannot also be the reason those students are being deprived of their due process rights, a theory that opponents of Title IX regularly promulgate.
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- Due process is at risk because of the small pockets of administrative corruption noted above, and because of the inadequate level of training currently afforded to administrators. College administrators need to know more about sufficient due process protections and how to provide these protections in practice.
 - The courts have recently been doing a very good job of scolding colleges that fall short of according students the process they are due. There remains a central debate underway between those – like ATIXA – which insist on robust protections within the existing court-constructed due process framework, and organizations like [FIRE](#) that are litigating in the courts and lobbying the President and Congress to expand due process in a way that will transform college resolutions of discrimination allegations into criminal court processes.
 - FIRE and other organizations like [SAVE](#) and [FACE](#) want full-blown adversarial college hearings with the right to attorney representation and a higher standard of proof than the now-mandated preponderance of the evidence standard. They ignore (conveniently) that turning the college process into the criminal process will have the same chilling effect on the willingness of victims/survivors to report offenses to their colleges that currently plagues the criminal justice system. Or, maybe that is exactly their intent? Opponents also ignore the wisdom of the last 55 years of due process jurisprudence, which has resisted imposing criminal levels of due process on college administrative proceedings in the United States.
 - Currently, students have the absolute right to be advised by counsel during every step of a college’s resolution process for allegations of sexual violence. Turning the process into an adversarial one with attorneys pitted against each other only makes sense when analogizing campus offenses to crimes and ignores the fact that students already have access to their counsels’ advice under existing law.
 - In the United States, employees facing discipline from their employers have the right to consult counsel, but rarely have the right to be represented by counsel in internal disciplinary matters. The same is true for most employees of colleges. Why should it be any different for students facing internal discipline, but no loss of life or liberty?
 - With respect to the preponderance of the evidence standard, this is a debate that will continue for many years to come. But there are two important points to consider. First, any standard higher than preponderance advantages those accused of sexual violence (mostly men) over those alleging sexual violence (mostly women). It makes it harder for women to prove they have been harmed by men. The whole point of Title IX is to create a level playing field for men and women in education, and the preponderance standard does exactly that. No other evidentiary standard is equitable.
 - Second, preponderance of the evidence is the standard used universally in civil rights resolutions in the United States. It is not unique to Title IX. It is the standard for Title IV, Title VI, and Title VII, at the federal level, and for almost all state civil rights laws. It is the standard utilized by OCR and all other federal agencies that oversee civil rights equity. In 2011, when OCR imposed the preponderance standard on schools under Title IX, it wasn’t imposing a new standard, it was simply stating the (already existing) fact that preponderance of the evidence is the applicable standard of the courts and of OCR, and thus must be applied by colleges to achieve equitable compliance. No other standard is appropriate because these are civil discrimination protections, not criminal statutes.
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With these 25 talking points, you will be well armed to contribute to the public debate on these important topics. ATIXA's goal in issuing this position statement is to encourage all stakeholders in the debate over campus sexual violence to embrace the need for fairness to all, not just for one party or the other. Colleges must strive to provide and promote equal dignity for all participants in the process, while the courts and OCR continue to protect those whose rights are violated. Many of the proposals touted today would make colleges less safe for women, and could have the very damaging result of creating a chilling effect on the willingness of all victims/survivors (men, women, and those who do not identify by the gender binary) to come forward to their colleges, to seek support, and to obtain the resources necessary for them to safely heal.

This statement was approved by the ATIXA Advisory Board, February 17, 2017.