



Roundtables on Addressing Violence Against Women in the Campus Student Conduct Process

Meeting Summary

October 28-29 and December 8-9, 2015
Washington, DC



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Purpose and Background

In an effort to better understand the current student conduct landscape as it impacts sexual assault, domestic violence, dating violence and stalking on campus, the Office on Violence Against Women (OVW) funded the Mississippi Coalition Against Sexual Assault and the Victim Rights Law Center to convene two roundtable discussions on October 28-29, 2015 and December 8-9, 2015. The purpose was to gather expertise and best practices on the campus conduct process. Four goals were identified for the two roundtables:

- 1) Identify the strengths and challenges of student conduct models when addressing sexual assault, domestic violence, dating violence and stalking
- 2) Identify any evidence/studies on the effectiveness of existing student conduct models to address these crimes
- 3) Discuss the use of sanctions including those beyond expulsions and suspensions and non-disciplinary models
- 4) Discuss current and emerging issues impacting the student conduct process

The October 2015 roundtable (“national experts”) brought together a group comprised of primarily national experts, including education consultants with expertise related to Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688 (“Title IX”), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“the Clery Act”), 20 U.S.C. § 1092(f), campus law enforcement, conduct and resolution processes, individual campus conduct investigators, campus confidential advocates, private counsel, and community providers for both victims and offenders, who helped detail the impact of campus violence on the surrounding communities.

The December 2015 roundtable attendees (“practitioners”) included a wide range of campus practitioners from a diverse group of institutions nationwide. Each institution was chosen to provide a unique perspective. The roundtable included representatives from 2-year and 4-year institutions, geographically diverse rural and urban communities, public and private institutions, and those campuses who serve a wide range of populations such as historically black colleges and universities and primarily Hispanic-Serving Institutions. Practitioner positions represented at the roundtable included Title IX and Victim Services Coordinators, heads of Student Conduct and Student Affairs, and Ethics and Compliance Officers. Rounding out the institutional perspective were student victims of sexual violence, which kept their experience as part of the discussion.

This report will focus on the similarities and differences between the two groups, highlighting any recommendations or next steps made by the groups. While agendas for both days were similar, they were not identical, allowing for greater discussion in the varying expertise areas of the attendees. Indications of a change in agenda are noted where necessary.

What is the role of the Student Conduct Process?

After a brainstorming session, the national experts determined the three most important roles/purposes to be:

- 1) The guarantee of civil rights of students (i.e. Title IX's equal access to education);
- 2) The opportunity to educate all students, including the offender, within the community about the impact of violence on the broader community; and
- 3) The opportunity to help the victim recover from harm.

The practitioners group brought a different perspective to the question. Participants focused on the conduct process as the "public face" of the institution's response, educating all students on the behaviors that are unacceptable and what consequences can be expected. While the national experts did provide some thoughts on the intersections between the campus and criminal justice systems, the practitioners group was emphatic about the differences in their roles from law enforcement and prosecution.

There was significant interest in solidifying relationships with local law enforcement, including ensuring that local law enforcement understood their respective student conduct processes and would refer students to the institutional process as well.

How have federal laws (e.g. Title IX, Clery Act, etc.) affected the objectives of the student conduct process?

The national experts group was first asked to identify in what ways federal laws have helped the process. Most agreed that these laws have led to an overall heightened awareness of the issue of sexual assault. Others were enthused about the recent addition of domestic/dating violence and stalking to the Clery Act as a result of amendments made by the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), bringing more awareness to these critical problems along with sexual violence. Others mentioned that having a dedicated Title IX Coordinator has sharpened the response by higher education.

The 2- year institutions at the roundtable noted the challenges of implementing certain practices designed for 4-year institutional settings. One 2-year institution practitioner said, "We don't have an orientation, don't choose our students since we are open enrollment, we don't have fraternities, etc., so we have circumstances that are not covered. The prevention and awareness campaign is the most difficult piece. Students don't come to these extracurricular sessions - they come to class, then leave."

Equitable, Fair and Impartial Process

Both groups discussed how institutions are required to have an equitable, fair, and impartial process. While both groups addressed equity within the conduct process, the national experts group had the lengthier conversation. After first providing some definitions of equitable, the national experts group tackled issues with equity within the conduct system. Conversation centered around four areas:

- *Involvement of attorneys* – Experts noted that attorneys were present more frequently in sexual assault cases, but not in domestic/dating violence and stalking cases. Another discussion focused on institutions providing legal services to the parties, but there was concern about whether it was for both parties and the inequity of providing for only the reporting or responding party.
- *Equity in advisor of choice* – Many expressed concern and confusion about who could be named as an “advisor of choice.” There was apprehension about institutional employees serving as “advisors of choice” and the potential conflict of interest for that employee. Others expressed concern about parties choosing friends or co-workers as advisors and that person also being a witness in the case. One institution was putting together a template for advisors, letting them know the parameters of their involvement.
- *Equity in cases between employees and students* – Experts discussed the inherent appearance that employees may have more rights than students when involved in a gender-based violence complaint. They mentioned that employees may be unionized, which can include union-provided counsel and special procedures, or employees could may have additional rights under Title VII of the Civil Rights Act of 1964.
- *Equity between sexual violence, domestic/dating violence and stalking cases* – Given the recent inclusion of domestic/dating violence and stalking in the Clery Act, experts felt some of the response was inconsistent. Some institutions were essentially approaching domestic/dating violence and stalking under the same policy and conduct rubric as sexual violence. Without specific, informed language in policies, experts feared that domestic/dating violence and stalking victims would not come forward. Others worried that conduct processes allowed abusers greater access to the victim which could increase harm or lethality.

Current obstacles to achieving the objectives of the Campus Student Conduct Process

The national experts group brainstormed a lengthy list of obstacles and then voted to determine the top two obstacles to the conduct process. The group determined that the need for training/untrained adjudicators and the impact of rape culture on campus were the two biggest issues. Regarding the need for training, several key areas surfaced.

- Many felt that domestic/dating violence and stalking were treated as “step-children” to sexual violence, resulting in adjudicators who were not trauma-informed about these issues.
- The group also identified training for appeals adjudicators as a major area of need.
- Some noted that for those communities where local law enforcement is not required to take any trauma-informed training (unlike campus law enforcement) it can lead to a disparity in the experience of students working with both.

As for the impact of rape culture on campus, the national experts group outlined several ways it has affected the conduct process. Many discussed the inability of the conduct process to change the perceptions of their decision-makers, who many felt were predominantly white and affluent. Given the general messages in our culture about sexual violence, the group talked about the results of several climate surveys that suggested that students “expected that they would experience sexual assault/rape on campus” and indicated that they would not report because it was not a “big deal.”

The practitioners group also brainstormed a list of obstacles to achieving the objectives of the student conduct process and identified several that they felt were the most significant.

- *Adequate training for investigators and hearing body; adequate staffing for Title IX coordinators*
- *Decentralization of decision-making authority throughout the university*
- *Complications that arise when institutions do not have a dedicated Title IX Coordinator, but instead have an administrator with multiple roles*

Training and Capacity of Campus Stakeholders

While both groups agreed that the list of those who should be trained was lengthy, most felt that institutions were not meeting all of the needs. Those gaps included students understanding the process, decision-makers in the appeals process, and addressing inclusivity and accessibility (ie English as a second language, domestic/dating violence victims, and people of color.)

- National experts suggested that each campus should have one person with the “big vision” of how to create a strategic and cohesive training curriculum. It was encouraged to have a training calendar and a structured plan. Experts also worried about Title IX Coordinators “straying into other areas” such as prevention.
- Student access to information about the process was a big concern for many practitioners. One had instituted a system where they reached out to every student three times within the first six weeks on campus: online, in-person and through the mail. Their outreach was through a system of peer educators, who had been specifically trained to work with different populations, as well as consider the differences between undergraduate and graduate level students. Additionally, it was mentioned that higher education could be better served by learning about other communication techniques used in the marketing and psychology fields when addressing young adults, people of color and other student populations to gain insights into how young adults learn and what student networks consist of.
- Many practitioners felt it was imperative to use “multiple methods through multiple streams” to train their communities.
- Several OVW Campus Grantees found the four core requirements¹ of their grant helped them structure their teams and training curriculums. They suggested that prior grantees be contacted about how the grant influenced their current programs and structures.

¹ OVW’s Campus Program four core requirements are: 1) create a coordinated community response (CCR) including both organizations external to the institution and relevant divisions of the institution; 2) establish a mandatory prevention and education program about sexual assault, domestic violence, dating violence, and stalking for all incoming students; 3) train all campus law enforcement to respond effectively to sexual assault, domestic violence, dating violence, and stalking; and 4) train all members of campus disciplinary boards to respond effectively to situations involving sexual assault, domestic violence, dating violence, and stalking.

- As it related to training and domestic/dating violence training, comments focused on two gaps: 1) the impact of a culture shift around the definition of “dating” for young adults and helping to set norms for healthy relationships and 2) the ability to evaluate technology issues in stalking cases.

Campus Culture and Structure

What are the cultural, structural and societal factors that influence the school response (reporting, investigation, adjudication) to gender-based violence on campus?

The national experts group brainstormed a list of factors and determined their top factors to discuss as a group. One of the most engaged discussions was about the emphasis placed on legal compliance as a factor influencing the institutional response.

Institutions that did not fully explain their role when proceeding with a case against the victim's wishes created distrust not only from that victim, but from other victims considering their reporting options. Other experts found that it can be confusing and even dangerous for victims of domestic/dating violence and stalking to interact with institutional conduct processes, especially if conduct staff are not trained properly.

Further discussion about how culture impacts the conduct response elicited candid conversation about race and the use of the word "culture." One expert noted that victims who are people of color consider race when reporting. For instance, women of color may not report a man of color because they fear law enforcement bias or the impact an expulsion would have on the males' family or community. Another talked about how the word "cultural" is really a way to side step a discussion about race; how anything non-white is viewed as "cultural." Working with international students was explored, especially as it pertained to how different cultures perceive gender-based violence. One expert on stalking mentioned that in some countries stalking is not considered a crime and it makes educating those students about the potential for conduct violation difficult. Another consequence for first generation immigrant students is the fear of deportation and/or fear of retaliation against themselves or family in their home country.

Practitioners shared similar sentiments to those of the national experts group, but again used their day-to-day experiences to highlight specific instances, especially as it pertained to LGBTQ populations on campus. One practitioner stated, "Only one white female has reported to [our institution]. We get most of our reports through security, but they don't make the connection that a male following a male might be dating violence." Another comment, "We had a female on female incident; one of whom was intoxicated. The police did not understand what was happening; they took the intoxicated person in to sober up."

When specifically asked about the intersections of race, gender, sexual orientation, religion and disability throughout the student conduct process, many practitioners agreed that students are savvy about language, often when administrators are not. One practitioner invited students to help with language. One institution has a multidisciplinary team that investigators can utilize to ask for expertise about a population they are working with. Others mentioned that lesbian, gay and bisexual issues are very different from transgender issues, and grouping them all together can lead to a one-size-fits-all approach, which does not benefit students.

Campus Student Conduct Process Models

Which resolution models are being used on your campuses and discuss the pros/cons of each?
Both groups discussed the three main conduct models: investigation, hearing and hybrid.

Single Investigator Model

- Pros focused on the process being more confidential and less traumatizing in that both parties only have to go through it once. Furthermore, the investigators have the ability to build trust with the parties and there is an ability to train small groups for the investigations. This model alleviates perception of conflict if using an external investigator, and there is potential for small institutions to "consortium-ize" the investigative process to drive down costs.
- Cons focused on the high cost of this process, the fact that the process outcome is reliant on the quality and training of the investigator, how the investigation process can be lengthy when conducted by one person, and how it is hard to shake a perception of bias if there are allegations against the investigator.

Hearing Board Model

- Pros focused on how some students are empowered by their experiences at a hearing, and a hearing can be clear about the seriousness of the complaint.
- Both groups were critical of a hearing board only and listed several cons including lack of capacity to train volunteer employees/students compared to investigators, the fact that board members with influence may control board deliberations, scheduling can cause delays, diversity can be a problem, for domestic/dating violence and stalking cases boards can be more dangerous/lead to violence because they provide more opportunities for parties to be in the same room for longer periods of time. It was suggested that institutions using boards create a small dedicated pool of members who are trained and potentially compensated for their time.

Hybrid Model

Generally, the hybrid model is defined as a single investigator who compiles a report and deliberative board then reviews the report and determines responsibility and sanction.

- Pros are well-trained investigator can get "into the weeds" of a case allowing the board more opportunity to focus on the factual inconsistencies and make a determination. The hybrid model also allows for "checks and balances" on the investigation without parties having to repeat every detail of the incident again.
- Neither group discussed cons for the hybrid model.

Restorative Justice Model

Only the national experts group discussed Restorative Justice (RJ) as a model, as a few members of the Roundtable had experience with the process. None of the practitioners group had established a RJ resolution process.

Experts on RJ were quick to point out that it was a set of core values versus a conduct model. The typical RJ process is as inclusive as possible, ensuring everyone a voice in the process and is viewed as a facilitated dialogue. The national experts group discussed the potential applications for RJ in gender-based violence cases and suggested a use for prevention

(engaging students in conversations about rape culture/sexual assault), facilitated dialogues with parties other than a victim/offender and the reintegration of students who have been found responsible for gender-based misconduct violations at their institution or are transferring to a new institution. Many expressed concerns that RJ principles may conflict with Title IX requirements that investigations be prompt and Title IX guidance discouraging mediation between victims and offenders. Almost all felt there were not enough knowledgeable experts on the RJ process to make it a viable model at this stage, but some were open to a continued discussion about its focus on addressing the harm to the victim versus an accountability-only model.

Sanctions

Do the sanctions we impose do what we want them to do? How does sanctioning fit in with the objectives of the campus student conduct process?

Both groups had a lively discussion about sanctions around the underlying theme of effectiveness. Both groups were concerned about the distinction between educational versus punitive sanctions, what role assessment and rehabilitative measures played and how much weight to give to the victim's wishes in a particular case. The practitioners group included sex offender management experts who provided some detail about research needed and current guidelines. One stated, "Sex offenders are a very diverse [group] – we need to make informed, assessment-driven decisions. Speaking as a forensic psychologist, there is nothing unethical about assessment. Sanctions and treatment are based on a level of risk and level of need." The same expert said a risk assessment tool was being developed which would not require a forensic psychologist to administer.

Another practitioner noted that many counselors would not accept "mandated clients" as it was not consistent with professional ethics for those counselors. She noted that at her institution they were "looking at a mentoring model." The model incorporated volunteer mentors and a packet of information developed specifically for the program. Another institution had created "sanctioning guidelines" while another expert suggested that suspension combined with a treatment program prior to any reinstatement was another alternative.

The national experts mirrored the need for more research on effectiveness of sanctions, as well as concern about the need for more options for domestic/dating violence and stalking cases. Many were concerned that the pattern of behavior exhibited in these kinds of cases crimes was being ignored, resulting in sanctioning for one incident at a time. Others were concerned about the intersection of mental illness and other disabilities (e.g. autism) and the respondent's intent and understanding of consent.

Understanding Student Conduct Investigations

What are the typical obstacles when investigating incidents of gender-based violence? How do schools address these obstacles?

The practitioners group detailed a lengthy list of obstacles, including incapacitation definitions, participation of students and witnesses, the need for a timely investigation, and concerns over adjudicating affirmative consent. The national experts group wondered about the effectiveness

of MOUs with local law enforcement, given that previous relationships (or lack thereof) influence the need for the MOU. Others expressed concern about oversharing of information between local and campus law enforcement and how to provide better structure for that exchange.

Alcohol and Drug Facilitated Sexual Assault

Both groups contemplated the definitions of “incapacitation” and helping their communities to understand many of the nuances. Practitioners felt that the lack of education about alcohol facilitated sexual assault and medical definitions of incapacitation are leading to confusion and victim-blaming attitudes.

- One practitioner noted, “In cases where she was drinking, the administration might be inclined to handle it by patting her on the head and maybe giving her a lecture on problem drinking.” Another stated that, “One of the challenges is the attitude about deserving it if you have been drinking. We need to come up with language to talk about alcohol use in a way that is not victim-blaming and...connects with sexual assault training.”
- Others expressed that the standard for what constitutes incapacitation has been set so high that “only catatonic” is considered incapacitated.

National experts felt that a trauma-informed lens must be used in the investigation when asking the victims about the details of alcohol consumption. Questions such as how drunk they were without the further questioning about type of alcohol, amount consumed and body weight contribute to a lack of information on incapacitation.

Emerging Issues to Be Addressed

National Experts

- Would expanding the definition of sexual violence from the victim’s perspective – such as preservation of bodily integrity or sexual autonomy – promote an understanding of the harm from the victim’s perspective in the conduct process?
- Managing hostile environments on social media. Is there an overlap or tension between free speech rights and retaliation?
- Impact of anonymous reporting and the ability of the conduct process to respond in compliance with Title IX. Would restorative justice or other means approach this in a fairer way?
- Impact of affirmative consent on conduct process. How can we ensure that students have been adequately informed of the new rules, especially when society has not embraced these new constructs?
- The intersection between incapacity and consent and the need for more precise language and training for investigators on these concepts.

Practitioners

- The role of notations on student transcripts. When would notations be warranted? Should transcripts include a notation if a student withdraws during the conduct process? Does this create a label for a young person with no ability to reassess later? Could institutions issue a “dean’s letter” as a screening mechanism for an institution admitting a transferring student?

- The intersection of Title VII and Title IX and the impact on employee and student gender-based misconduct cases.
- How to address the needs of online students and provide resources to them?

Recommendations

Based on these meetings, the groups recommended the following:

- Collaboration between institutions to share promising practices or resources is a key component to a better response to gender-based violence on campus.
- Throughout all phases of the campus response protocol, institutions need to be using trauma informed practices.
- In order for the campus community to adequately understand the distinction between the criminal process and the campus process, it is important for institutions to remove criminal language from their policy and procedures.
- Institutions also need to specify who is considered “an advisor of choice” and what their role and limitations are in the campus process. Additionally, institutions need to carefully define in campus policy and then consistently implement definitions of domestic violence, dating violence, sexual assault, and stalking.
- More ongoing, comprehensive, and focused training is needed. Training needs to address the differences between sexual violence, domestic violence, dating violence, and stalking so that the campus response protocol reflects an understanding of these differences. For example, safety considerations differ depending on the type of gender-based violence involved. Training is also needed for those individuals involved throughout the campus response protocol and especially for those involved in the resolution of a complaint. This is necessary in order for the process to be equitable, fair, and impartial, as well as effective.
- Campuses should conduct an audit of their student and employee populations to help identify why they may not be coming forward to report gender-based violence and whether campus response options are accessible to meet the needs of the varying populations on campus.
- Appeals continue to be a common area of struggle for institutions. Additional federal guidance specifically addressing appeals would be useful.
- Since sanctions are a critical part of the resolution process, further research into the goals and effectiveness of sanctions is needed. Additionally, inclusion of research and experts on sex offender behavior may be a useful direction.

Conclusion

While participants had concerns about the existing state of affairs with the conduct process, they noted that the campus resolution process addresses the impact of gender-based violence on a victims’ educational opportunities. Participants agreed that there is no one-size resolution model that meets the needs of all campuses. Participants also found value in having an opportunity for a national dialogue about the student conduct process and sharing best practices.