



# U.S. Department of Education Finds Students Accused of Sexual Misconduct Had Title IX Rights Violated by Wesley College

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The U.S. Department of Education recently announced that Wesley College, a private, liberal arts university in Dover, Delaware, violated Title IX of the Education Amendments of 1972 ("Title IX") by allegedly disregarding the due process rights of male students accused of sexual misconduct.

By way of background, Title IX prohibits sex discrimination in education programs and activities receiving federal financial assistance. Traditionally, this statute was utilized in the context of college athletics, however, in recent years, the federal government has determined that discrimination on the basis of sex includes sexual harassment and sexual violence. An institution violates an individual's rights under Title IX when the following conditions are met: (1) the alleged conduct is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's educational program, i.e., creates a hostile environment; and (2) the institution, upon notice, fails to take prompt and effective steps reasonably calculated to end the sexual misconduct, eliminate the hostile environment, prevent its recurrence, and remedy its effects.

To date, more than 200 colleges are currently being investigated by the U.S. Department of Education's Office for Civil Rights (OCR) over the handling of sexual misconduct cases under Title IX. In addition, at an increasing rate, students who have been accused of sexual misconduct are suing their institutions under Title IX, while complainants use the same statute to sue their institutions for allegedly failing to properly investigate claims of sexual misconduct. In this regard, traditionally, the alleged victim of campus sexual misconduct was the party who filed a Title IX claim against the educational institution. Recently, however, accused parties have started bringing Title IX claims similar to those available to alleged victims, claiming that the institution unfairly punished the accused male students because of their gender status. Legal experts call these claims "reverse Title IX" lawsuits.

Although OCR has conducted Title IX investigations at almost 200 institutions, "very few of those investigations were prompted by accused and disciplined students, and even fewer have concluded with a finding in those students' favor." [1] With regard to the recent Wesley decision, "[i]t is the first time that the agency has found Title IX violations in response to a complaint by a disciplined student," said Erin Buzuvis, an expert on Title IX and director of the Center for Gender and Sexuality Studies at Western New England University.

More specifically, on October 12, 2016, the U.S. Department of Education **announced** that OCR reached an **03152329-** agreement with Wesley College after finding that students accused of sexual misconduct had their Title IX rights violated by Wesley. OCR found that Wesley violated Title IX by “failing to provide accused students with essential procedural protections and also by not adhering to its safeguards provided for in its own disciplinary policies and procedures.” Furthermore, OCR specifically stated that “the accused student about whom the complaint was filed was not provided a full opportunity to respond to the charges, rebut the allegations, or defend himself at his hearing.” According to OCR, the student was not interviewed during the investigation of the complaint, he did not receive a copy of the incident report prior to the hearing, and he was not given the full opportunity to present witnesses and other evidence at his hearing. Further, violations resulted because: (1) an interim suspension was imposed the same day as the college received the report against the student even though the college had not interviewed the student; (2) the student was provided the wrong policies and procedures by the college and reported that he went to the hearing expecting to participate in an initial conference; and (3) the accused student was not provided a full opportunity to provide witnesses and other evidence at the hearing.

In addition to the specific case discussed above, OCR also reviewed other cases at Wesley spanning from 2013 to 2015 and determined that the college violated Title IX in failing to provide equitable investigations for several other students accused of sexual misconduct. OCR has reached an agreement with Wesley College in which the college has agreed to take action to remedy the violations of Title IX, including:

- Determine whether it engaged in a sufficient level of inquiry prior to imposing interim suspensions and provide specific remedial actions as warranted.
- Complete its investigation of the April 2015 incident.
- Re-investigate or address the investigative deficiencies the Office of Civil Rights identified for specific case files from 2013 to 2015.
- Provide the Office of Civil Rights with copies of incident files for the 2017-2018 and 2018-19 academic years.
- Publish an anti-harassment statement and revise its Title IX grievance procedures.
- Provide regular training on issues related to the sexual harassment and violence requirements of Title IX.
- Enhance outreach to and feedback from students.
- Convene a Title IX committee, composed of staff and students, to develop a plan for educating students and employees about sexual harassment and assault.

These types of cases are becoming prevalent and this sanction demonstrates the possible adverse exposure to an unwary institution. Needless to say in addition to the specter of an OCR investigation, poor policies, practices, and lack of proper training expose the institution to significant monetary damages. Institutions must not only be diligent about handling accusations of sexual assault and harassment, but they must also follow their own policies and procedures that have been implemented to ensure that any accused student is granted due process rights in defending such accusations.

Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

[1] <https://www.insidehighered.com/news/2016/10/13/us-says-wesley-college-violated-rights-students-punished-over-sexual-misconduct>