

Protecting children on college campuses

Institutions can take several precautions to safeguard underage youth

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When we think of the students served by institutions of higher education, we usually think of young adults the age of undergraduate and graduate students. But colleges and universities often offer programs to children and adolescents under the age of eighteen and as young as pre-kindergarten. These children and adolescents are more vulnerable than older students to sexual misconduct and are less likely to speak up if they are victims. The law also provides different reporting requirements, redress, and timelines for minors with legal claims. The biggest risk to colleges and universities at the moment is that their usual policies for dealing with students conflict with mandatory reporting laws in many states. The convergence of a few uncomfortable facts and recent developments serve as reminders to higher education to protect children and adolescents on campus or in school-sponsored programs.

More colleges and universities than you might think have programs for children and adolescents. Some have off-campus mentoring programs for students from pre-K to high school. Some have residential summer programs for elementary school, middle school, or high school students. Some allow other organizations to use their dormitories and facilities for programs during winter or summer breaks. In other words, programs aimed at children and adolescents at colleges and universities are not limited to special circumstances like Larry Nassar at Michigan State University or Jerry Sandusky at Penn State University.

Adults who prey on children and adolescents seek opportunities to work with them. Past concerns about the stranger in a trench coat stalking children on playgrounds are misguided caricatures. The most common and pernicious child predator wins the trust of adults, seeks a vulnerable child for special attention, and then abuses his position of power. He – and it is almost always “he” – is the physician, the coach, the teacher, or the pastor who uses that position of trust and authority to groom other adults and then children. One cynical artifact of this profile is that many of the signs of building trust are the same for adults who genuinely care about the welfare of children.

Tragic examples of child sexual abuse over many years have led to states lengthening or eliminating statutes of limitations for civil liability. Some states are making those changes retroactive and even permitting the revival of claims that have already expired. Many state laws already allow a statute of limitations to start running only when a victim recognizes a causal connection between past abuse and subsequent injury, which can be many years after the abuse. It is now common for a victim in his or her 50s or 60s to bring a claim against a perpetrator who is in his 80s or dead and his employer for abuse that occurred 40 or 50 years earlier. Because sexual offenders hide the abuse from others, the employer

might first learn of it only after the lawsuit is filed. There might be few witnesses alive or identifiable and even fewer records to permit the institution to build a defense.

Steps to Protect

The most important goal of any organization working with children and adolescents is to keep them safe. That safety is our collective responsibility as humans, as adults, and as professionals. Colleges and universities are in the business of asking parents to trust them with children, adolescents, and young adults, so youth protection is central to the higher educational mission. The best prevention cannot guarantee success, but there are several actions a college or university can take to improve youth protection.

Develop and implement an unrelenting youth protection program. Criminal background checks eliminate obvious problems but are not nearly enough: Nassar and Sandusky probably would have passed criminal background checks until they were arrested. Instead, every organization working with children and adolescents needs a youth protection education program and a commitment to follow it. For example, in order to minimize or eliminate the opportunity for sexual misconduct, one-on-one contact – including electronic contact – between an adult employee and a child or adolescent should be prohibited. Two adults should be present for all interactions with children at all times. That can be challenging to accomplish but can make an important difference in preventing sexual misconduct. Any violations of a no-one-on-one contact policy also can identify problems before they develop.

Colleges and universities should add a different protocol for victims under eighteen. Significant numbers of incoming first-year students may not yet be eighteen, and the first few months of college are a high-risk time for sexual assault. Any good-faith suspicion of sexual misconduct involving a child or adolescent should be reported to local law enforcement authorities as soon as practicable. Any good faith belief that an employee violated the college or university's youth protection policy should be reported to the proper administrator and action taken as soon as practicable. In all instances of sexual misconduct involving a minor, and in serious cases of an employee violating a policy, a college or university should engage counsel to investigate and report to the proper administrators or board committee. Employees who violate the law or policy should be fired or disciplined, depending on the severity of the violation.

Title IX and the Violence Against Women Act should not be obstacles to reporting to law enforcement. Many states require professionals at institutions of higher education to report suspected child abuse, whether by describing them as employees of public and private institutions of postsecondary and higher education or as persons who have responsibility for the care or treatment of minors. The January 2001 Revised Sexual Harassment Guidance – which is the Department of Education's operative policy on Title IX after withdrawal of the April 4, 2011 Dear Colleague Letter – states that “[i]n cases involving potential criminal conduct, school personnel should determine whether appropriate law enforcement authorities should be notified.” The Violence Against Women Reauthorization Act of 2013 requires institutions of higher education to develop procedures that give victims of sexual misconduct a choice to decline to notify law enforcement authorities. But the related statutory language appears directed at students over the age of majority and should not apply to minors, whose capacity is treated differently under the law.

Evaluate document retention policies. Be aware of applicable federal and state laws and anticipated changes to those laws (such as the elimination of a statute of limitations). This is a difficult legal balancing act. A complex web of federal and state statutes and regulations requires different kinds of documents to be retained for different periods with different levels of security. Documents are now kept in various places, including laptops, tablets, mobile phones, the cloud, and social media. If a college or university does not retain documents long enough, it may have difficulty defending itself. A school that discards records at the wrong time can be accused of or sanctioned for destroying evidence. If a college or university keeps too many documents for too long, however, it might face burdensome document production requirements in the event of litigation. And no one should underestimate the ability of a litigant to weave those documents into a pattern of questionable or bad past practices.

Some institutions may think their administration is more diverse, better trained, or particularly skilled at perceiving sexual misconduct and therefore is at much less risk, just as some administrators at Michigan

State took premature comfort that their institution was better off than Penn State. The sad fact is that no human institution employing adults to work with children and adolescents is immune from sexual predators. Most institutions that have a serious problem are not aware of what terrible events already have happened or are happening now, and they will not become aware until an arrest or a lawsuit in the future.

The most any of us can do is to use our best efforts to protect children and adolescents, and to prepare for a crisis that, with any luck, will never come.

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