



Written by [Raven Clabough](#) on August 16, 2016

Christian College Sues Obama Admin Over Sexual Assault Policy

Oklahoma Wesleyan University (OKWU), a Christian college, is the first university to join a lawsuit against the Obama administration over its five-year-old policy mandating how schools address allegations of sexual assault. The suit contends that the standards set by the Obama administration fail to protect innocent students, violate the Administrative Procedure Act, and amount to male gender bias.



In 2011, the Department of Education sent a “Dear Colleague” letter (DCL) to U.S. colleges instructing schools to handle sexual assault cases with a low “preponderance of the evidence” standard, based on the department’s interpretation of Title IX. By this standard, an accused student is considered guilty if they are simply more likely than not to be guilty. The new standard overrides the former and stricter standard that required “clear and convincing evidence” against the accused.

The Daily Caller reports that the new standard did not undergo the typical process for all new regulations, which entails a period of public comment and review before a final version is adopted. Instead, the Obama administration announced its new interpretation of a decades-old Title IX law, an action that the lawsuit notes is illegal.

Meanwhile, schools that do not adhere to this standard are in danger of being the target of federal investigations, notes the Daily Caller, which writes, “More than a hundred schools have been investigated at one point or another for possible Title IX [sexual violence] violations.” If found guilty, a school faces the risk of losing all federal funding.

According to OKWU, the new standard is an unfair one, as it places too many innocent students at risk of being found guilty of crimes that they did not commit.

“A growing number of innocent students have been trampled in the wake of these new requirements, found responsible for serious charges based often on the flimsiest of evidence,” the lawsuit reads.

OKWU will be joining the lawsuit of an unnamed former student at the University of Virginia, who claims that he was found responsible for sexual assault because of the Obama administration’s lax standard. Inside Higher Education reports on the student initiating the lawsuit:

The former University of Virginia student was found responsible of sexual assault last year when the university used the preponderance-of-evidence standard to decide his case, in which he was accused of assaulting an intoxicated woman. He was able to graduate but must complete four months of counseling before he is allowed to work as an attorney, and he is banned from returning to campus. According to the lawsuit, the retired judge who decided the case noted that it was a “very close” and “very difficult” decision, and that her ruling was based on the OCR’s requirement that she use “the weakest standard of proof.”

The lawsuit is sponsored by the Foundation for Individual Rights in Education (FIRE), a civil-liberties



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group that has opposed the Obama administration's Title IX actions.

"FIRE has spoken with numerous campus administrators nationwide who express frustration that the DCL has impeded their ability to afford accused students due process," the group said when announcing the lawsuit. "OKWU, however, has distinguished itself by being the only university in the nation willing to stand up in defense of institutional autonomy and the principles of fundamental fairness and due process."

FIRE's website further outlines the grounds for the suit, stating that the "Dear Colleague Letter" did not adhere to the requirements of the Administrative Procedure Act (APA), which mandates that regulations must be offered for public notice and comment, an observation offered by the Competitive Enterprise Institute's senior attorney Hans Bader earlier this year. "Requiring schools to apply that as gospel when they essentially made it up out of nothing — that's a plain violation of the APA because you have an entirely new legal obligation without notice and comment, without even the pretext of any real basis," Bader said.

The DCL has resulted in multiple lawsuits by male students accused of sexual assault who claim that they've lost their due process under the new guidance.

In April, for example, former Colorado State athlete Grant Neal filed a lawsuit against the Obama administration over the sexual assault guidance after he was suspended from school and lost his athletic scholarships because he was found to be likely responsible for sexual misconduct. Neal was accused of sexual misconduct not by the female with which he engaged in allegedly consensual intercourse, but by her friend.

Neal's attorney contends that the 2011 interpretation is ultimately male gender bias.

"We believe the 'Dear Colleague' letter issued by the U.S. Department of Education is illegal and unconstitutional," Neal's attorney Andrew Miltenberg told Newsweek. "By essentially encouraging male gender bias, the Administration's directive has violated Title IX and created new class of victims on campus — accused male students who have had their right to due process stripped away."

A Vassar College student was found guilty of sexual assault one year after he engaged in sexual intercourse with the daughter of a longtime professor, Newsweek reports. Court documents state that the female student sent a Facebook message to the male student stating she had "a wonderful time" after their encounter, but one year later, she reported that she had not consented to the intercourse. Following an investigation, the male student was expelled. He sued, but a judge dismissed his case.

Kimberly Lau, the lawyer who represented the Vassar student, said that her client's case is not a black and white one.

"I'm not representing students who are being accused of violent gang rapes," Lau said. "I'm talking about the gray area, the he-said, she-said, two people in a room, two people drinking ... and coming away the next day with different narratives of what occurred."

Research published in the journal *Violence Against Women* shows that two to 10 percent of campus sexual assault accusations are false. Perhaps the most notorious [example](#) of this is that of the Duke lacrosse rape scandal, in which 28-year-old black stripper Crystal Magnum accused three white lacrosse players of raping her at a party at which she had been paid to strip.

And while this should by no means prevent accusations of sexual assault from being investigated, it should provide fodder for the argument that the DCL unfairly tips the scales of justice away from the



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accused and ultimately runs roughshod over the maxim, “Innocent until proven guilty.”

Both the Fifth and 14th Amendments to the United States Constitution guarantee due process, which prevents the arbitrary denial of “life, liberty, or property,” but the 2011 DCL is yet another example of the Obama administration’s dangerous regulatory overreach that works in direct violations of the constitutionally protected rights of the American people.



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