

## Advice from an Attorney

Campus Sexual Assault Defense - Justin Dillon & Matt Kaiser

If you are a student who has been accused of sexually assaulting another student, the single best thing you can do is to get help immediately.

Do not face this alone, as tempting as that might be. You are probably not, as hard as it might be to admit this, in any kind of emotional place to do so. You likely have no experience with your school's Title IX machinery or any part of its disciplinary system. And between classes, studying, and whatever else is going on in your life, you won't be able to put in the time and energy that's necessary to defend yourself on your own.

And on top of all of that, your school has almost surely stacked the deck against you. This is probably going to be one of the hardest things you've gone through in your life.

The absolute first thing to do, almost without exception, is to tell your parents or another adult you trust, no matter how uncomfortable that might be. Even though you might not believe it at this moment, they will probably understand, and they will want to help. And you will need them—to consult with, to lean on, and even to help you construct your defense.

The second thing to do—as soon as possible after you've talked to your parents or another responsible adult—is to find a good lawyer. If you don't have the resources to hire one, you can use [our self-representation guide](#) to help you navigate the process. But if you do have the resources, hire a lawyer immediately. And not just any lawyer—you need one who has specific experience doing Title IX work. Some people hire a local criminal defense lawyer. While there are some criminal defense lawyers who can do good work in a Title IX case, not all can.

Title IX defense, it turns out, is very different from standard criminal defense. It has its own rules, its own recurring cast of characters, and a national narrative that always looms over the proceedings. The best strategies for defending against criminal charges can sometimes be the worst in mounting a Title IX defense. More than once, we've been asked to salvage a client's case from the damage caused by well-meaning, and otherwise competent, criminal defense lawyers who simply had never handled a Title IX case before. In short, Title IX defense is specialized work; you will be better off if you have a specialist handle it.

### THE SCHOOL'S INTEREST

Your school's primary interest is to protect itself. It wants to protect itself from controversy on campus or by an investigation by the Department of Education. And your school's Title IX office, like many Title IX offices these days, may be run by activists who have made this their career, who have been trained at the same conferences together, and who are invariably told that almost all sexual assault claims—especially claims brought by women against men—are true.

Some school officials are fair people who want to do the right thing. But prepare yourself and protect yourself if the officials you deal with do not treat you fairly.

## **YOUR FUTURE HANGS IN THE BALANCE**

Don't make the mistake of thinking that it's no big deal if your school ends up finding you guilty of something like this. A school's determination that you sexually assaulted another student can follow you for the rest of your life. That is because, if you are found guilty of sexual assault, your school will almost surely suspend or expel you. And if that happens, you may have to explain for the rest of your life, every time you apply for a job or to any other school, why there's an educational gap on your resume or why you didn't finish college at all.

Worse still, the school can put a mark on your transcript noting that you were disciplined for sexual assault. If it does that (and many of them do), then every school or job you apply to in the future will see that you were found guilty of sexual assault by your school. That can make it hard to transfer to another school or get into a graduate or professional school.

Your school, in short, can alter your entire life without ever calling the police. You need someone, ideally a lawyer, who can push back against the school and see that you get a fair and thorough process.

## **A UNIVERSITY DISCIPLINARY HEARING**

In a university disciplinary proceeding, you don't have the same rights as in a courtroom:

- You are presumed innocent, but only nominally so. As a practical matter, a complainant's allegations are often treated as presumptively true unless and until an accused student pokes holes in them.
- You don't get to have any kind of back-and-forth questioning of your accuser.
- You may never get to ask your accuser any questions at all.
- You don't have a right to force your accuser to turn over evidence.
- The school may not have to tell you what evidence they have against you.
- Your judges may be biased against you.
- You can be found guilty if they think your accuser's version is just *barely* more likely than yours.
- You may not have the right to appeal—and if you do, your appeal rights may be very limited.

## **YOUR BEST CHANCE AT SUCCESS IS ALWAYS YOUR CURRENT ONE**

As unfair as a university hearing can be, it is your best chance at defeating the charges against you. Winning an appeal is more difficult than winning a hearing—most schools only let you appeal based on a few very narrow grounds. Winning a lawsuit is more difficult still, even

though the forum may be fairer, because litigation takes a long time and is both expensive and emotionally trying.

That is why it's so important to get help as early in the process as you can. Bringing a lawyer in to handle your appeal is better than bringing one in for the first time to file a lawsuit. Bringing a lawyer in to assist at your hearing is better than waiting to do so for the appeal. And bringing a lawyer in while the investigation is still going on is better than waiting to do so just before the hearing.

At no point in this process are things hopeless for you. We have prevailed for our clients at all stages of this process, including when they have come to us at only the appeal or litigation stage. But the sooner you get help, the more there is that can be done for you.

### **INVESTIGATION IS ABSOLUTELY CRITICAL**

Hiring a lawyer early in the investigation is the very best thing you can do to boost your chances of winning your case. The investigation uncovers and collects all of the evidence that will be considered in weighing your innocence. It is absolutely critical that all of the evidence that helps you gets ferreted out and collected. Promptly doing an investigation to help your case is the best way to bring out the truth and to clear your name.

Whether you have a lawyer or not, you should immediately find and save every email, text message, or other communication that is relevant to the accusation against you. The truth is only on your side if you find it quickly and preserve it. You or someone else (ideally a lawyer or trained investigator) also needs to talk to each person who could be a witness to what happened—assuming, of course, that your school's rules allow it.

### **THE RULES ARE COMPLEX**

The rules used by schools to investigate and adjudicate sexual assault claims vary from school to school. Your school's rules will be set out in your student handbook or Title IX policy. Most courts have held that these documents form a contract between you and the school, meaning that the school has to follow its own rules when it tries to discipline you. Deviation from these rules is one of the clearest bases for a lawsuit against a school. You and your advisor should keep close watch to ensure that your school is following its own procedures closely.

### **CONCLUSION—GET HELP NOW**

By diligently investigating the facts and navigating the University procedures, you can take dramatic steps to protect your future and your good name. Whether it's our firm or another one, you need someone with experience, poise, and determination to help you navigate this process. And the sooner you bring in that help, the better.

We wish you all the best with your case. Whatever happens, you will get through it.