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Student on Student Sexual Harassment on Campuses:

Emerging Standards in the Law

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**Student on Student Sexual Harassment on College Campuses:
Emerging Standards in the Law**

Abstract

Legal cases regarding student on student sexual harassment and Title IX are on the increase in both pre-K – 12 and college campuses. Case law related to student on student harassment policies in institutions of higher education remain unclear for the most part. This paper provides a summary of federal guidelines and a chronological review of case law. It also explores the current legal situation and institutional liability related to student on student sexual harassment on college campuses. It concludes by providing recommended steps that administrators should take to reduce liability in Title IX and sexual harassment cases.

Title IX continues to be a heated topic of discussion on college and university campuses across the country. Usually the discussion surrounds the issue of athletics and institutions creating a fair playing field for women athletes and athletic programs. More recently, Title IX has become a concern for campus administrators with respect to sexual assault and sexual harassment issues.

More than 59% of college and university Title IX complaints involve sexual harassment (National Coalition for Women and Girls in Education [NCWG], 2002). "Evidence suggests that sexual harassment has overtaken 'slips and falls' to become the number one source of liability claims against higher-education institutions, said Brett A. Sokolow" (Pulley, 2005, p. 1). Sokolow "attributed the spike largely to decisions by the U. S. Supreme Court in the late 1990's. Those cases established precedents for victims of sexual harassment in educational settings to seek redress for civil rights violations under Title IX of the Education Amendments of 1972." (Pulley, 2005, p.1)

Student on student sexual harassment is on the increase in both pre-K-12 and college campuses. This trend coupled with the increase in law suits against institutions of higher education is likely to affect colleges and universities (Sherer, 1993). The New Jersey Supreme Court ruled [on February 21, 2007] that public schools may be held responsible if they permit sexual harassment of students by other students to go on over time without taking any steps to

remedy the problem. As stated in *The Chronicle of Higher Education* (February 21, 2007) “the implication of cases [involving high school students] for colleges is that they may not stand idly by when presented with evidence of sexual harassment of students by their classmates”(¶ 3). Such cases are on the rise so administrators must be prepared to address these issues (Sherer, 1993). Courts have held college and university administrators liable for monetary damages under Title IX, in cases of student on student sexual harassment (*Williams v. Board of Regents of the University of Georgia, 2006*).

Federal guidelines outline standards that administrators must meet to respond to this trend successfully. Title IX of the Education Amendments of 1972 states “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance” (Title 20 U.S.C. Section 1681). “Sexual harassment is unwanted and unwelcome sexual behavior that creates a hostile environment, limiting full access to education and work” (NCWG, 2002, p. 43). On college campuses, sexual harassment includes sexual assault, rape and what many campus policies define as sexual misconduct. Title IX protects students from harassment whether the harasser is an employee or another student (Aquila, 1981).

This paper focuses on student on student sexual harassment and reviews institutional liabilities to determine what legal implications exist for administration in higher education. A summary of federal guidelines and case law provide recommended steps that institutions should take to reduce liability in Title IX and sexual harassment cases.

The Supreme Court defined student on student sexual harassment as any misconduct that “is so severe, pervasive, and objectively offensive that it effectively deprives the harassed student of access to educational opportunities” (AAUW, 2005). The AAUW (2005) found “80% of students who experienced sexual harassment have been harassed by a student or a former student” (p. 20). This suggests a student culture that accepts or at least tolerates student on student harassment. The AAUW report (2005) suggested “of students at large campuses that have 10,000 or more undergraduate students, at least 500 will experience some type of sexual

harassment while at college. About 1,000 students will be blocked, cornered, or followed in a sexual way during their college lives” (p. 14).

Cases related to student on student harassment policies in institutions of higher education remain unclear for the most part (Baker, 1996; Cawley, Hunton, & Williams, 1997; Sherer, 1993). College and university administrators are unsure at times about their responsibilities to protect students from crime on campus (Kaplin & Lee, 2006). One reason is because “universities do not exercise the extreme regulatory control over students that a strict vicarious liability rule would require” (Faber, 1992, p.31) since most students are considered adults, who are responsible for their actions. However, when something adverse occurs, both students and their parents accuse the administration for not protecting them and claim the institution has a duty to do so based on its “special relationship” with the students (Kaplin & Lee, 2006).

Prior to the 1970’s administrators acted as surrogate parents for young adult students under the in loco parentis paradigm, which typically resulted in courts holding universities liable for harm to students (Faber, 1992). The Vietnam War and campus unrest of the 1960s ended this trend when universities and courts considered students as mature adults, who were responsible for their actions. Accordingly, after the 1960’s, courts generally refused to hold higher education accountable for student safety (Faber, 1992).

There can be exceptions in cases where students living in resident halls face violence from an intruder (even when the assailant is a student of that university) - courts will commonly find institutions have the duty as a landlord to protect the inhabitants of the halls (Kaplin & Lee 2006). However, the courts do not typically hold the colleges or universities liable “unless the institution has supported, condoned, or ignored the harassment” (Kaplin & Lee, 2006, p. 749). The foreseeability doctrine is applicable when administrators know there is an offender on campus but they do nothing to warn other students of the potential for a violent act (Smith & Fossey, 1995).

Sexual Harassment Defined

U.S. Federal courts recognize two types of sexual harassment: Quid pro quo (AAUW, 2005; Baker, 1996; Cawley, Hunton, & Williams, 1997; Smith & Fossey, 1995) refers to faculty / staff harassment of employees or students. Hostile environment, on the other hand, exists when actions toward members of one sex actually changes the work or educational setting so drastically that a member of one sex feels uncomfortable and intimidated (AAUW, 2005; Baker, 1996; Cawley, Hunton, & Williams, 1997; Smith & Fossey, 1995; Sherer, 1993).

Types of Student on Student Sexual Harassment:

A report entitled “Peer Harassment: Hassles for Women on Campus” from The Association of American Colleges’ Project on the Status and Education of Woman (1988) identified sexual harassment as occurring whenever, the following take place:

- “Scoping” or the activity of men rating the attractiveness of passer-bys on a scale of one to ten;
- Shouting obscenities at woman;
- “Mooning”; surrounding a single woman and demanding that she expose her breasts before she can leave a room or a party;
- Vandalizing sororities in the middle of the night in a version of the “panty raid”;
- Giving women sexually explicit posters in common areas such as student lounges

Student on student sexual harassment not only takes place between students of opposite sex but it also takes place among the same sex. An American Association of University Women (AAUW) Report entitled “Drawing the Line: Sexual Harassment on Campus” (2005) identified various other types of sexual harassment that takes place on campus:

- showing, giving or leaving sexual pictures, web pages, illustrations, messages or notes.
- spreading sexual rumors about the opposite sex

- calling someone gay or lesbian or any other homophobic name
- spying on someone as they dressed or showered.
- pulling at someone's dress in a sexual way
- blocking, cornering or following someone in a sexual way
- pulling off or down someone's clothes
- intentionally brushing up against someone in a sexual way
- forcing someone to kiss them.

When asked harassers gave the following reasons for why student on student sexual harassment occurs on campus (AAUW, 2005):

- 59% thought it was funny
- 32% thought the person liked it
- 30% said it was a part of school life
- 17% wanted a date with the person
- 10% said they did it as a result of peer pressure

Apart from these reasons harassers gave for their actions, the AAUW (2005) reported that 63% of male students were more likely than female students (54%) to think sexual harassment was funny (AAUW, 2005).

Research by AAUW (2005) on sexual harassment identified the following regarding student on student sexual harassment on college campuses:

1. Nearly two-thirds of students experience some form of sexual harassment during their college education.
2. Sexual harassment is more common on large campuses than smaller ones and more prevalent at four-year colleges than two-year colleges.
3. Sexual harassment is more common at private than public colleges (although public college students are more likely to say it is happening on their campuses). (AAUW, 2005, p.24)

Options for Students

There are two options for students to remedy violations of Title IX. The first option is to file a complaint with the Department of Education, Office for Civil Rights (OCR). Complaints must be filed within 180 days. The OCR process can usually move along relatively quickly, allowing the college or university to voluntarily make corrective action (Hogan, 2005). The second option is to file a civil lawsuit. A civil lawsuit generally takes longer due to the possibility of monetary damages being awarded to the plaintiff (Hogan, 2005).

Victims of student on student sexual harassment have started to use Title IX to prove instances of hostile environment (Beckham & Dagley, 2005). Student on student sexual harassment is a violation of Title IX of the Education Amendments of 1972 in that it may interfere with a student's ability to benefit from an educational program as the issue of potential institutional liability for student on student sexual harassment under Title IX remains unclear (Kaplin & Lee, 2006). Even though students do not represent the institutions, Title IX creates a duty upon college and university administrators to provide equal access to academic programs, and that sexual harassment by students denies woman students that equal access (Kaplin & Lee, 2006).

Standard of Proof

There are four elements that must be proven to establish a violation of Title IX in student on student harassment: (a) the defendant must be a Title IX recipient; (b) a college or university must have actual knowledge of, or reasonably should have known of the discrimination or harassment, and taken appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps to end any harassment; (c) a college or university acts with deliberate indifference and (d) the act must be so "severe, pervasive, and objectively offensive that effectively bars the victim's access to an educational opportunity or benefit" (*Williams v. University System of Georgia*, 2006, p. 12-13).

Case Law

A more detailed investigation of how cases regarding student on student sexual harassment on campus will enable university administrators to clearly see how this situation has evolved and what precautions need to be taken to avoid the situation. We discuss five important cases which deal with student on student sexual harassment to show how courts can reach a variety of different conclusions.

Historically, cases involving sexual harassment between faculty and student have been approached from a standard perspective by the Supreme Courts. Sexual harassment as a violation of Title IX rights was litigated in *Alexander v. Yale University (1980)* since then, courts have recognized that college and university administrators can be held legally accountable for sexual harassment of students by their employees (Sherer, 1995).

Franklin v. Gwinnett Public Schools (1992)

The first U.S. Supreme Court's case involving student on student sexual harassment claims under Title IX was *Franklin v. Gwinnett County Public Schools*, (503 U.S. 60, 1992). This K-12 case was related to a faculty member's harassment of a student but it did not discuss or resolve issues related to student on student sexual harassment. This case involved a student that alleged that public school authorities took no action even though they were aware that a teacher/coach was harassing the student. The Supreme Court established there is an implied private right of action. Students can use Title IX to seek monetary damages from school districts for harassment by school personnel (McCarthy & Eckes, 2005).

Gebser v. Lago Vista Independent School District (1998)

The Supreme Court case clarified the Title IX standard for sexual harassment in *Gebser v. Lago Vista (1998)*. School officials with authority to take corrective action must have 'actual knowledge' of the harassment and be 'deliberately indifferent' toward the victim to establish a Title IX violation (McCarthy & Eckes, 2005). This issue was covered in *Davis v. Monroe County Board of Education 1999* but it was not clear whether this standard would also apply to an institution's liability for student on student harassment.

Davis v. Monroe County Board of Education (1999)

The Supreme Court decision in *Davis v. Monroe County* (1999) regarding student on student sexual harassment ruled that sexual harassment is discrimination in the school context under Title IX. Educational institutions whose personnel were aware of the possibility of harassment taking place needed to take some kind of preventative action. Additionally, the court found that “unlawful sexual harassment is not shielded by free speech protections” (Beckham & Dagley, 2005, p. 282).

Free speech protections make applying the standards in *Davis* to higher education more difficult (Beckham & Dagley, 2005). The court emphasized that school administrators had an absolute duty of protecting students from sexual harassment inflicted by their peers if the administration was aware of the fact. “The Supreme Court held that this duty [was] triggered only if the harassment [was] severe and persistent and if it interfered with the victim’s ability to benefit from educational opportunities” (Beckham & Dagley, 2005, p. 281). This is not an easy task to prove under Title IX for victims of student to student harassment, but it can be done (Beckham & Dagley, 2005).

Even though there have been instances where a few courts said institutions had the duty of protecting students against foreseeable harm, like the aforementioned cases, courts generally reject holding colleges responsible for the safety of their students (Kaplin & Lee, 2006).

By highlighting the “limiting circumstances” that confine a school’s liability, and adding them to those already articulated in *Gebser*, the Court in *Davis* created the same four-part standard of violating Title IX, as stated previously, for determining when an educational institution would be liable in damages for student on student sexual harassment.

The *Davis* Court’s emphasis on *control* also suggests that student on student harassment claims will be even more difficult to establish in higher education litigation. “A university [would not]... be expected to exercise the same degree of control over its students. It should follow that colleges and universities, in general, have less risk of money damages liability under Title IX for

student to student harassment than do K-12 institutions because they exert less control over students and over the educational environment" (Kaplin & Lee, 2006, p.752)

Another example of the ambiguity concerning student on student sexual harassment is illustrated by *Adusumilli v. Illinois Institute of Technology* (1999). In this case, a female student reported being sexually harassed by six students and four faculty members at the institution. When administrators did not take necessary action, she filed suit saying that instead of helping her, they penalized her with low grades. The Seventh Circuit applied *Davis* and found that her allegations were unfounded as she never alleged that any of the professors were themselves school officials and as only two of the incidents had been reported. The court looked at the two incidents that were actually reported and saw those as single incidents of student misconduct. Each incident ceased as soon as it occurred, and was not repeated. The court stated that they were convinced that neither incident involved "pervasive" and "offensive" harassment of the type that would be actionable under Title IX (Beckham & Dagley, 2005, p. 289).

Williams v. University System of Georgia (2006)

This case was heard at the U.S. Court of Appeals for the 11th Circuit. This was an appeal to question whether the plaintiff's alleged facts were sufficient to withstand defendants' motion to dismiss her Title IX claim based on student-on-student sexual harassment.

Background

On January 14, 2002, at 9:00pm, Tiffany Williams, as student at the University of Georgia (UGA) received a phone call from UGA basketball player Tony Cole who invited Williams to his residence hall room. Williams and Cole engaged in consensual sex. Cole had allowed Brandon Williams, a UGA football player, to hide in Cole's closet before Williams' arrival. After Cole left the room, B. Williams emerged from the closet, naked, and sexually assaulted Williams and attempted to rape her (*Williams v. University System of Georgia, 2006*).

Cole returned to the room and called Steven Thomas, also a basketball player, and Charles Grant, a football player. Thomas, the UGA basketball player, came to Cole's room and

with Cole's encouragement, he sexually assaulted and raped Williams (*Williams v. University System of Georgia*, 2006).

At 11:00 pm, Williams returned to her room and called a friend to come over. Williams recounted the incident to her friend, Jennifer Shaughnessy, who encouraged her to call the police. After receiving a phone call from Thomas, Williams called her mother. William's mother then notified UGA Police. The UGA Police came to Williams' room at 1:00am on January 15th and arranged for Williams to have a sexual assault exam performed. Williams requested that UGA Police process the charges against Cole, B. Williams and Thomas. Williams then withdrew from UGA (*Williams v. University System of Georgia*, 2006).

UGA Police performed an investigation and within 48 hours UGA Police notified UGA's Director of Judicial Programs. The actions of Cole, B. Williams, and Thomas constitute harassment under the Sexual Harassment Policy of the University of Georgia. Cole, B. Williams and Thomas were charged with disorderly conduct under UGA's Code of Conduct. The three were also involved in a criminal trial during this time. A judicial hearing was not held until almost a year later, it was decided not to sanction Cole, B. Williams, or Thomas (*Williams v. University System of Georgia*, 2006).

Williams's complaint also alleges that the former head basketball coach, the Athletic Director, and the University President were personally involved in recruiting and admitting Cole, even though they had prior knowledge of his disciplinary and criminal problems. Cole had been dismissed from the basketball team at Wabash Valley College in Mount Carmel., Illinois, because of disciplinary problems. He had also pleaded no contest to criminal charges of misdemeanor trespass in connection with charges of sexual assault at the Community College of Road Island. (*Williams v. University System of Georgia*, 2006).

Findings

Williams brought suit against the individual employees of UGA and the Board of Regents under 42 U.S.C. 1983, civil action for disruption of rights, in addition to charges against Cole, B. Williams, and Thomas for state law torts. One of several questions of the appeals was "whether

the District Court erred in dismissing Williams's Title IX claims" (*Williams v. University System of Georgia*, 2006).

The Appeals Court found that the four elements of the Title IX violation were met and so the court ruled that the case could move forward against UGA and University of Georgia Athletics (UGAA). On the first element, UGA is a Title IX funding recipient. On the second element, UGA and UGAA, (a) had actual knowledge of the harassment, (b) were aware of Cole's prior problems, (c) were aware of the January 14th incident with Williams, and (d) UGA's sexual harassment policy failed to include sexual harassment policies and procedures with student-athletes (*Williams v. University System of Georgia*, 2006). The third element was proven because (a) UGAA ignored Cole's previous misconduct and admitted him to UGA anyway (b) the university's response was insufficient, failing to hold a hearing for more than eight months, and (c) the defendants failed to implement effective procedures for dealing with student-on-student harassment and informing student-athletes about the defendants' policies (*Williams v. University System of Georgia*, 2006). As for the final element, the Court agreed that the alleged incident was "severe, pervasive, and objectively offensive". Williams's withdrawal from the university was in direct response to the traumatic events (*Williams v. University System of Georgia*, 2006).

Legal Implications for Administrators in Student on Student Sexual Harassment Cases

The *Williams v. University of Georgia* case will be closely watched by colleges and university administrators. "Because the cases (Title IX) are brought under federal law even state institutions that normally are protected by sovereign immunity, (which usually significantly limits the amount of money damages against state entities), may face multi-million dollar damages awards" (Security On Campus [SOC], 2006, p. 1).

SOC Inc. (2006) notes two important outcomes of the *Williams v. University of Georgia* case. First, colleges and universities will need to be much more diligent in the recruitment of student athletes. The Court's decision means that "a college could be held liable under federal Title IX sexual harassment law for recruiting, then failing to properly supervise a student athlete with a history of sexual misconduct who subsequently was accused of masterminding a gang

rape (SOC, 2006). This is the 'prior knowledge issue.' Second, campuses must deal with campus rape cases in a timely manner because the Court found that it was not proper for the institution to wait until criminal proceeding to be over (SOC, 2006).

The Higher Education Act of 1965 has been amended by the Federal Government legislature and is now called "Student Right-to-Know and the Crime Awareness and Campus Security Act" (1990). This obligates college and university administrators to report and investigate the number of sex offenses that occur on campus (Kaplin & Lee, 2006). The law also requires colleges to include in their policy (a) educational programs to promote the awareness of rape and acquaintance rape, (b) sanctions that will follow a disciplinary board's determination that a sexual offense has occurred, (c) procedures students should follow if a sex offense occurs, and (d) procedures for on-campus disciplinary action in cases of alleged sexual assault (Kaplin & Lee, 2006).

Suggestions for Reducing Institutional Liability in Student on Student Sexual Harassment Cases

The essential element to reducing legal liability is to be in compliance with federal policies. Administrators must review their campus policies and become very familiar with the policies related to Title IX, the OCR Guidelines and the Clery Act, mandatory reporting procedures.

Title IX Obligations

At the very minimum, college and university administrators must meet the obligations established by Title IX. First, administrators must have established harassment grievance procedures. The policy must outline how a student makes a complaint, and what happens after the complaint is made. They must provide for "prompt and equitable resolution of complaints" (Hogan, 2005). Administrators must also designate a trained coordinator for sexual harassment complaints.

Administrators must discuss the options with the student and provide responsive action after knowledge of harassment. If officials learn of the harassment from someone other than the victim, they must follow the same responsive action and promptly investigate (Hogan, 2005). It

may be difficult to pursue a case without a victim willing to be involved, but the institution must still make a reasonable effort (Sokolow, 2001) The institution must make every effort to keep the names of those involved confidential (Hogan, 2005).

OCR Guidelines

The OCR guidelines suggest that college administrators can be liable for incidents about which they should have known. Although the *Davis* case did not endorse this, the *Williams* case held UGA responsible because UGAA had knowledge of Cole's prior record. Therefore, college administrators must be aware of students prior history before they decide to recruit them.

Clery Act

The Clery Act establishes guidelines for mandated reporting. Institutions must investigate and report complaints of sexual harassment. This can be somewhat confusing if a victim comes forward, but wants to keep the report confidential. The report can only remain confidential if reported to a counselor, clergy, medical provider, or other individual who does not have significant responsibility for campus life and activities. The Clery Act allows for anonymous reporting, but the campus community must still be notified. In this type of case, there is no duty to act in a judicial manner (Sokolow, 2001).

Risk Management Recommendations and Conclusion

Legal standards outlined by the Supreme Court, Title IX, OCR and the Clery Act should be considered as the minimum institutional response mechanisms. Administrators at colleges and universities should aggressively address sexual harassment issues that may arise on their campuses. Recommendations fall into several categories: institutional response, campus and judicial policies, and education.

It is important for colleges to have a comprehensive response, which involves everyone from campus law enforcement authorities, to grounds keeping and maintenance departments, student services, medical staff, counselors, and housing personnel. This is crucial as "the task of protecting the campus community from sexual assaults and harassment must become an integral

part of the institution's day-to-day mission of providing a safe and secure learning ... environment" (Smith & Fossley, 1995, p. 99).

The deliberate indifference point is extremely important. In the past colleges and universities might have preformed a "systemic indifference" (Sokolow, 2001, p. 3) approach to student on student sexual harassment, meaning that usually more than one administrator needed to have known for a victim to file a Title IX complaint. However, this is not the case with current mandatory reporting guidelines now in place. Therefore, it is extremely important to train campus employees, including campus student employees, such as resident advisors, how to report harassment.

Sokolow (2001) recommended that student judicial system policies include both sexual assault and sexual harassment charges. An option is to establish a coordination and referral system. Colleges and universities must take reasonable steps to end the harassment. "A college may counsel, warn or discipline the harassing student in accordance with the severity of harassment, prior incidents, or both" (Hogan, 2005, p. 3). Some institutions have adopted "no-contact orders", asking the harasser to agree to avoid the victim, but these are difficult to enforce. Brett Sokolow suggests that colleges and universities use interim suspensions, and in more serious cases, expulsion to protect students from harassers (SOC, 2006). It is better to err on the side of the victim than the accused harasser.

College administrators should also raise students and faculty awareness of such incidents but they should be careful not to seem like they are following every student around. They should do this in such a way as not to harm the campus atmosphere. They should have security systems like emergency phones, well light walk ways, in place, in case anything happens.

Sokolow (2001) provided several best practices for compliance. In relation to jurisdiction, policies that confine college jurisdiction solely on-campus should be redrafted to include behavior that takes place between students off-campus. Similarly, policies should be rewritten to include

complaints by non-students against students, and where victims are students and the harasser is a non-student. Mediation can be useful in some harassment cases such as:

- showing, giving or leaving sexual pictures, web pages, illustrations, messages or notes.
- spreading sexual rumors about the opposite sex
- calling someone gay or lesbian or any other homophobic name
- spying on someone as they dressed or showered.

However, mediation is not appropriate for cases of sexual assault. In an incident with an uncooperative victim, college officials should fully investigate and document the outcome. If victims do not want to proceed in the case against the accused perpetrator, administrators should have victims sign a document indicating their understanding of his/her refusal. Investigators and judicial board members should be trained in Title IX (Sokolow, 2001).

Having a strict anti-sexual harassment policy would naturally limit the number of cases due to its value as a deterrent for potential violators. Research carried out by Kalof et al (2001) found sexual harassment policies had a dual purpose for universities: “to empower the complainant through internal grievance procedures and insulate [the university] from legal liability” (p. 87). Even though institutions have policies in place, some might question the extent to which they are enforced. Kalof et al’s (2001) research found that minority women were reluctant to report being sexually harassed in fear of losing their educational rewards, or their cultural upbringing prevented them from reporting sexual harassment.

College and university administrators should also make every effort to educate the entire campus community about the policies as well as the negative consequences of sexual harassment. They can also do this by offering students, faculty and staff a series of workshops and educational programs. These programs should address the legal requirements and complaint procedures as well as the negative effects of sexual harassment in the US for both the victim and the institution. This is especially important when considering Kalof et al (2001) research that

identified a possible difference between cultural understandings of what sexual harassment behavior actually was. Women in some cultures are conditioned to trust authority, which would hinder their willingness to recognize a professor's behavior as sexual harassment (Kalof et al, 2001). Research has shown student cultural and ethnic background should be considered as much as possible in training on the aspects of sexual harassment (Kalof, Eby, Matneson & Kroska, 2001). This point asserts the necessity of conducting training on what sexual harassment is: what kind of behavior is considered to be sexual harassment in the US; what students and staff can do to avoid it; and what procedures there are in place at the university if such adverse actions happen.

Providing formal training on sexual harassment to both students and employees will lead to a reduction of such incidents and also a possible decrease in institutional liability (Beckham & Dagley 2005). Education will raise awareness of the policies and the procedures to follow if sexual harassment occurs. These sessions also send the message that the university is serious about solving and preventing sexual harassment (Kelley & Parsons, 2000). Counseling programs should also be in place for victims (McCarthy & Eckes, 2005).

Campus administrators need to be made aware of the legal liability institutions might encounter as a result of student on student sexual harassment, mainly the increasing trend of courts holding institutions liable for such cases (Smith & Fossey, 1995).

In conclusion, after having reviewed the existing case law, this paper identified legal aspects related to student on student sexual harassment in college campuses that are still unclear. It continued by recommending three precautions college administrators should consider taking against student on student sexual harassment:

1. Have sexual harassment policies.
2. Apply "foreseeability" doctrine of civil liability. If administrators know they have an offender in their employ but do nothing about it, they and the college or university may be liable to anyone injured by subsequent abuse that might have been interdicted.

3. Assign a campus coordinator for enforcing sexual harassment and sex discrimination policies and he or she should be a person well respected on the campus.(Smith & Fossey, 1995, p.89).

The paper also emphasized how crucial the final outcome of the *Williams v. University of Georgia* case is going to be for college and university administrators. In the interim, we strongly suggest that college and university administrators review their policies, federal guidelines, make changes where needed, and educate and train the campus community about sexual harassment. They should not do this just to avoid lawsuits but because college and university authorities have a responsibility to their students to maintain a safe campus and implement policies that are responsive to students. If administrators apply some of the suggestions we have made through out this article, college and university campuses might be safer places and the rate of campus crime decrease.

References

- American Association of University Woman (2005). *Drawing the line: Sexual harassment on campus*. Washington, D.C.: AAUW Educational Foundation
- Aquila, F. D. (1981). *Title IX: Implications for education of woman*. Indiana: Phi Delta Kappa Educational Foundation.
- Baker, T. (1996). *Sexual misconduct among students: Title IX court decisions in the aftermath of Franklin V. Gwinnett County*. Iowa:
- Beckham, J., & Dagley, D. (Eds.). (2005). *Contemporary issues in higher education law*. Ohio: Education Law Association.
- Cawley, T. J., Hunton, & Williams. (1997). *Legal issues surrounding peer sexual harassment*. VSBA School Law Conference. Charlottesville, Virginia.
- Faber, J. (1992). Expanding Title IX of the education amendments of 1972 to prohibit student to student sexual harassment. *UCLA woman's law journal*. Retrieved September 15, 2006 from http://web.lexis-nexis.com.ezproxy.lib.vt.edu:8080/universe/document?_m=bb5ffe45db2f0333b12c7ee535cc2d48&_docnum=2&wchp=dGLbVlb-zSkVA&_md5=80525c4f7f84a09074a286cd9e17e215.
- Hogan, H. (2005). *Title IX requires colleges and universities to eliminate the hostile environment caused by campus assault: A guide to understanding what is expected of colleges and universities under gender equity requirements when a sexual assault is reported*. Security On Campus, Inc. Retrieved November 3, 2006 from www.securityoncampus.org.
- Kaplin, W. A., & Lee, B. A. (2006). *The law of higher education* (4th Ed.). California: Jossey-Bass.
- Kaplin, W. A., & Lee, B. A. (1995). *The law of higher education* (3rd Ed.). California: Jossey-Bass.
- McCarthy, M. & Eckes, S. (2005). Sexual harassment. In J, Beckham, & D. Dagley, D. (Eds.). *Contemporary issues in higher education*. Dayton, OH: Education Law Association.
- National Coalition for Women and Girls in Education (NCWG). (2002). Title IX at 30: A

- report card on gender equity. A Report of the National Coalition for Women and Girls in Education. Washington, DC. www.ncwg.org.
- N.J. Supreme Court Finds School Liable for Student-on-Student Sexual Harassment (2007). [Electronic version]. Retrieved February 21, 2007 from <http://chronicle.com/news/monthly/2007/02>.
- Pulley, J. L. (2005, October 7). College health-care cost rise 10%; Sexual assault and harassment claims climb. *The Chronicle of Higher Education*. Retrieved November 10, 2006, from <http://chronicle.com>.
- Security On Campus Inc. (2006, March 15). Federal appeals court permits rape victim's suit against UGA to go forward. *Security On Campus Newsletter*. Retrieved, November 8, 2006, from <http://www.securityoncampus.org/update/031506.html>.
- Sherer, M. L. (1993). No longer just child's play: School liability under Title IX for peer sexual harassment. *The University of Pennsylvania Law Review*, 141, 2119 -2168. Retrieved September 17, 2006 from <http://www.jstor.org>.
- Smith, M. C., & Fossey, R. (1995). *Crime on campus: Legal issues and campus administration*. Pheonix, Arizona: Oryx Press.
- Sokolow, B. (2001). Title IX and sexual misconduct: what does recent case law mean for institutions in cases of student-on-student sexual assault? *The National Center for Higher Education Risk Management*. Retrieved November 1, 2006, from www.ncherp.org.
- Title 20 U.S.C. Sections 1681. Retrieved November 12, 2006, from <http://www.dol.gov/oasam/regs/statutes/titleix.htm>.