

# At Issue

A RISK MANAGEMENT NEWSLETTER FOR  
COLLEGES AND UNIVERSITIES



## Due Process Protections Required IN COLLEGE AND UNIVERSITY SETTINGS

By: **Jennifer Hein**, Esq., Wright Specialty Insurance

It is not news that Title IX prohibits sex discrimination in education programs and activities receiving federal financial assistance — including virtually all private and public colleges and universities. The law is given broad scope covering sexual harassment and sexual violence. It is well known that recipient colleges and universities are required to designate a Title IX Coordinator to coordinate the efforts to comply with and carry out the college and university's responsibilities under Title IX, including investigation of any complaints alleging sex discrimination in an education program. Colleges and universities are also required to notify all students and employees of the coordinator's name and contact information, adopt grievance procedures, and implement specific and continuing steps to provide notice that it does not discriminate on the basis of sex in its education programs or activities. Colleges and universities understand that, under Title IX, they are legally required to respond to and remedy

hostile educational environments and failure to do so is a violation that could result in loss of federal funding.

The problem now appears to be the flip-side of the same coin. The Department of Education has failed to emphasize due process when enforcing its policies. Silence on procedures is perhaps equally as problematic as the prior confusion as to how to best put Title IX protections in place. Now, in turn, colleges and universities are going beyond what Title IX requires in ways that infringe on the rights of the accused. In some cases, colleges and universities have been quick to remove the accused, often without providing the benefit of notice or even a cursory investigation before meting out swift discipline with often serious, long-lasting and damaging consequences.

This recent increase in legal setbacks for colleges and universities, both public and private, in student conduct cases has been caused by a failure to provide an accused student the right to a fair

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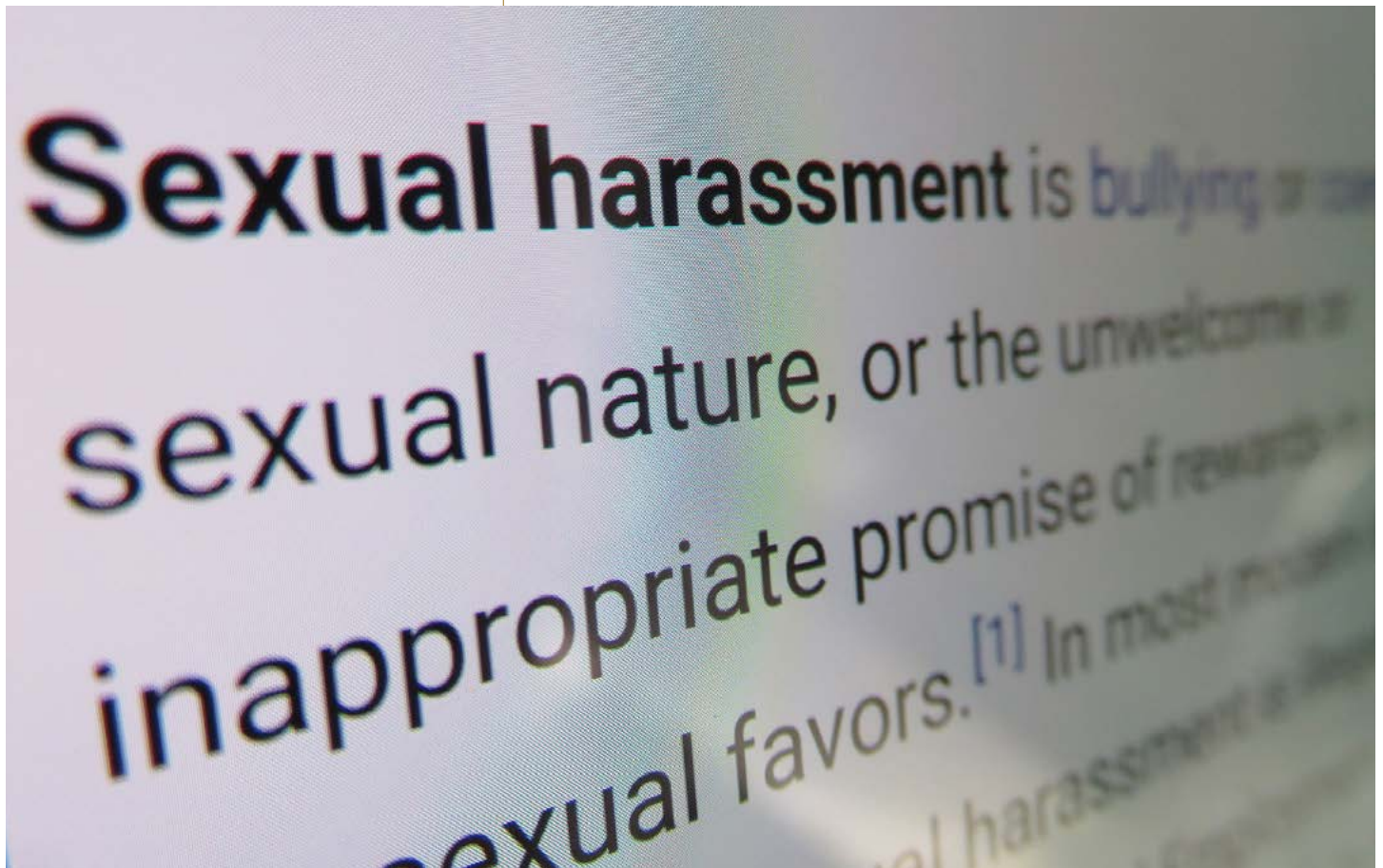
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and impartial process. Cases in which disciplined students have prevailed in court (when it was shown they were not given even rudimentary procedural requirements) suggest that colleges and universities are eliminating basic procedural protections in an attempt to more vigorously combat sexual assault and harassment. Indeed, several recent court opinions note that botched hearings occurred soon after a college or university received criticism for failing to protect a sexual assault victim or after the Department of Education began investigating an institution for violating Title IX. These cases depict, for example, colleges and universities having violated the accused's due process rights by: presuming guilt ahead of a hearing; not allowing the accused access to witnesses and evidence; informing a hearing panel of guilt instead of letting the panel reach its own conclusion; prohibiting the accused access to file materials involving the case; denying the accused prior notice of meetings or hearings; failing to provide investigation findings; and refusing to allow the accused an appeal process.

Going forward, colleges and universities are advised to focus on ensuring their response to a complaint takes both Title IX and procedural fairness into account. Strict adherence to sexual harassment policies and procedures could help clear up messy situations that lead to costly and time-consuming litigation. It is recommended

that Title IX grievance procedures require: (1) accessible notice of the grievance procedures to students and employees, including where complaints may be filed; (2) application of the grievance procedures to complaints alleging discrimination or sexual harassment or violence carried out by employees, other students, or third parties; (3) provisions for prompt, adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and accused to present witnesses and evidence; (4) clear and prompt time frames for the major stages of the complaint process; (5) notice to the complainant and accused of the outcome of the complaint process; and (6) assurance that the colleges and universities will take steps to prevent recurrence of any sexual violence and remedy discriminatory effects on the complainant and others, if appropriate.

For more information on this issue, please see the Title IX Resource Guide issued by the U.S. Department of Education, Office of Civil Rights found at: [www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf](http://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf)



# Opioid Use Decreasing Among College Students

By: Robert Bambino, CPCU, ARM, Wright Specialty Insurance

Information from the Centers for Disease Control and Prevention (CDC) about drug overdose and opioid-involved deaths is alarming. In Opioid Overdoses – Understanding the Epidemic (<https://www.cdc.gov/drugoverdose/epidemic/index.html>), the CDC reports that more than six out of ten drug overdose deaths involve an opioid. From 1999 to 2015 the number of overdose deaths involving opioids (including prescription drugs and heroin) has quadrupled. Ninety-one Americans die daily from an opioid overdose. However, overdose deaths from commonly prescribed opioids have leveled-off somewhat since 2012. The most common drugs involved in prescription opioid overdose deaths include: Methadone, Oxycodone (such as OxyContin®) and Hydrocodone (such as Vicodin®). The states with the highest death rates were West Virginia, New Hampshire, Kentucky, Ohio and Rhode Island.

## OPIOID USE AND COLLEGE STUDENTS

The 2015 report: Monitoring the Future: National Survey Results on Drug Use 1975-2015, Volume 2 ([http://www.monitoringthefuture.org//pubs/monographs/mtf-vol2\\_2015.pdf](http://www.monitoringthefuture.org//pubs/monographs/mtf-vol2_2015.pdf)) paints a more optimistic picture for college-age students. Sponsored by the National Institute on Drug Abuse at the National Institutes of Health, the report indicates a downward trend of opioid use among this population. While the overall use of all illicit drugs (without inhalants) increased to a 41.4% annual prevalence rate (up 2.8% from 2014), the use of OxyContin and Vicodin has decreased. For OxyContin, the annual prevalence rate in 2015 was 1.5% as compared to the survey high of 5.0% in 2009. The 1.6% rate in 2015 for Vicodin use compares very favorably to the previous rates of 9.6% in 2005 and 8.4% in 2009.

Heroin use is also trending downward for college students. The annual prevalence rate in 2015 was 0.1% as compared to the high of 0.4% in 2009.

## WHY THE DECREASE IN ANNUAL PREVALENCE RATE FOR COLLEGE STUDENTS?

The cause may not be completely clear, according to Lloyd Johnston of the University of Michigan, Institute for Social Research, in a discussion with National Public Radio. "When someone sees a substance is dangerous, they tend to avoid it," he says. "And one of the



things we've seen is an increase in perceived risk for a number of drugs." Further, in the Summary and Conclusions part of Chapter Two of the report dealing with Key Findings, the authors indicate that the declines in prevalence are explainable in terms of changes in attitudes about drug use, beliefs about the risks of drug use, and peer norms against drug use. This is documented in the report. When respondents were asked: how much do you think people risk harming themselves (physically or in other ways), if they used different substances, the respondents in the 19- to 22-year-old age group perceive even infrequent use of heroin, and narcotics other than heroin, as a high risk activity. One other reason cited for the decline in other reports is better, more cautious prescribing practices and prescription drug monitoring programs.



# Bring Your Own Device Policies (BYOD)

By: **Robert Bambino**, CPCU, ARM, Wright Specialty Insurance

College campuses may be home for more personal devices than any other institution. In addition to what is required, staff and students often prefer using their own devices to access information, conduct research, communicate and check texts and emails. According to an EDUCAUSE study — “The Consumerization of Technology and the Bring-Your-Own-Everything (BYOE) Era of Higher Education” — college students, on average, now own between three and four internet-enabled devices each. And that number is expected to grow over the next several years.

Traditionally, college IT departments had a good handle on security since internet-enabled devices were owned and provided by the college with staff as the primary users. Now, there may be more personal internet-enabled devices than devices owned by the college. More devices with access to the college’s network create additional access points. Extra access points equal increased vulnerability for the institution. This presents a significant challenge for administration and IT staff.

## BYOD POLICIES

A BYOD policy, like other college policies, allows the institution to establish and distribute rules, regulations and expectations. A BYOD policy sets the manner in which students, staff and visitors use their own devices when they are on or off campus. However, developing a BYOD policy is challenging. Colleges have different philosophies about access, information sharing, the role of IT and how much freedom or control the college

desires over staff and students. Additionally, unlike other areas that are subject to institutional policies, technology often runs ahead of policy development. While there is no one policy that works for every institution, there are topics that are usually included in BYOD policies.

- Minimum security requirements
- Recommended devices
- Password requirements
- Student responsibilities (managing battery life, registering devices, maintaining updates)
- Guidelines regarding access to the college network
- How to address information subject to HIPAA or FERPA rules
- Prohibited activities while connected to the college network (storing or distributing illicit material, harassment, violating copyrights, illegal duplication of material, violation of law, etc.)
- Prohibited apps that cannot be used while connected to the college network
- The level of IT support for personal devices
- Procedure when employment ends or if an employee’s device is lost
- College’s responsibilities for loss or damaged personal devices
- Ramifications for policy violations

Involve your IT director, HR administration and college counsel when developing a BYOD policy.



# News&Views

## Sports Injuries.

What sports cause the most injuries? An article from Property Casualty 360 (April 25, 2016) lists the 20 sports that result in the most injuries to participants. <http://ow.ly/z2l730e6OcQ>

Property Casualty 360, April 25, 2016



## Studying or Traveling Abroad?

Students heading to Europe? The Centers for Disease Control and Prevention (CDC) issued a press release dealing with a measles outbreak in Europe. <https://www.cdc.gov/media/releases/2017/p0719-europe-measles.html>

## Amusement Ride Warning.

The Dutch manufacturer of the ride that malfunctioned at the Ohio State Fair — KMG International BV — told ride operators to suspend use of the “Fireball” and other similar rides.

Reuters, U.S. Legal News, July 27, 2017

## Hurricane Forecast

Colorado State University increased its 2017 Hurricane Forecast to 15 named storms and eight hurricanes, an increase from its April prediction of 11 named storms and four hurricanes.

Colorado State University Tropical Meteorology Project, July 5, 2017



# ResourceCenter

**Training or information about today's risk management-related subjects can be found in the Wright Specialty E-Learning or Title IX Learning Centers online.**

Wright Specialty is host to a number of online risk management resources. Take advantage of the free safety education courses available on Wright's 24/7 web-based training center. Visit our Title IX Resource Center to keep up with changing developments or browse our seasonal Risk Alerts to stay up-to-date on college-based risk management and safety issues. With years of experience insuring academic risks, Wright Specialty Insurance provides valuable guidance for administrators to help reduce injuries to students, staff and visitors, and to prevent damage to property. You can access our national Employment Liability Hotline for help with every day employment-related issues. The Hotline is available Monday - Friday from 8:30 a.m. to 6:00 p.m. eastern time. Call 866-758-6874.

**For easy registration for our e-Training Center and for access to the Resource Center, contact Amy Kielb to receive your access code at: 516-750-9457 or [akielb@wrightinsurance.com](mailto:akielb@wrightinsurance.com)**



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