

## CPI Statement Regarding the Letter from 18 Attorneys General to the Department of Education Regarding Campus Sexual Assault

Many persons recall the tragedy of former University of Virginia student Hannah Graham. Jesse Matthew had been previously accused of sexual assault at both Liberty University and Christopher Newport University. But consistent with the “hands off” attitude of local police, Matthew was allowed to leave both schools without sanction. He later moved to Charlottesville, where he abducted and murdered sophomore Hannah Graham on September 13, 2014.<sup>1</sup>

Now fast-forward to March 27 of this year, when 18 Attorneys General sent a letter to Department of Education Secretary Betsy DeVos calling for a pause in the issuance of her new sexual assault regulation. The Attorneys General argued that due to the coronavirus pandemic, “The changes outlined in the proposed rule would take a great deal of an institution’s time, resources, and effort in the best of circumstances.”<sup>2</sup>

But the fact is, most students have already left campus, resulting in a decrease in the number of new sexual assault complaints being filed.<sup>3</sup> What better time to develop new campus policies and training protocols than when Title IX administrators are enjoying a lighter than normal workload?

And why are the 18 Attorneys General supporting the current *status quo* of campus sex tribunals where the strongest possible sanction is expulsion, not imprisonment, of campus rapists? After all, the job of every Attorney General, the principal law enforcement official in each state, is to protect the public from criminal predators.

In case after case, campus disciplinary efforts have demonstrated a deplorable failure to follow even the most rudimentary precepts of criminal procedure and due process. In a recent case involving Penn State University, the Office for Civil Rights concluded,<sup>4</sup>

OCR is holding Penn State accountable for its failures to have systems in place that protect students, including when sexual misconduct involves athletic staff. The University must now provide for individual remedies for survivors whose complaints OCR determined that Penn State failed to handle promptly and equitably, revise its recordkeeping practices to ensure proper documentation of sexual harassment complaints, and report to OCR on the handling of all Title IX complaints for the 2019-2020 and 2020-2021 academic years.

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<sup>1</sup> <https://newsone.com/3367192/uva-killer-jesse-matthew-given-four-life-sentences-after-pleading-guilty/>

<sup>2</sup> <https://files.constantcontact.com/bfcd0cef001/71385110-7632-4adc-a7ae-0f47bc4f6801.pdf>

<sup>3</sup> <https://www.nationalreview.com/2020/03/coronavirus-is-no-excuse-to-delay-the-education-departments-new-title-ix-regulations/>

<sup>4</sup> <https://www.ed.gov/news/press-releases/us-department-education-holds-penn-state-accountable-its-failure-protect-students-sexual-misconduct-requires-major-overhaul-title-ix-procedures-following-compliance-review>

Ironically, the OCR issued this announcement just one day before the 18 Attorneys General released their poorly timed call for a delay to reform the campus “Kangaroo Courts.”

The cause of the problem can be traced back to 2011.<sup>5</sup> That’s when the federal Office for Civil Rights issued a “Dear Colleague Letter” requiring that campus committees handle all allegations of sexual assault. Although the mandate did not specifically instruct colleges to stop involving law enforcement, that was the policy’s effect.

Concerned about the marginalization of law enforcement in these criminal cases, prosecutors began to speak out.

In 2014 the National Association of Attorneys General issued a report on *Steps Attorneys General Are Taking to Reduce Sexual Violence on College Campuses* that highlighted the need for cooperative efforts between law enforcement and campus officials: “Collaboration between stakeholders, with a focus on protecting the rights of the complainants as well as the rights of the accused, is necessary to foster a safe environment that is conducive to learning.”<sup>6</sup>

Likewise, Terry Harman, assistant district attorney for Santa Clara County (CA), commented, “From our point of view, every campus, every dorm room is in Santa Clara County, and that rape should not be treated differently than a rape that occurs a mile away off campus.”<sup>7</sup>

The impending Title IX regulation<sup>8</sup> will improve the handling of campus sexual assaults in several ways:

1. Create a legal framework to handle sexual misconduct cases
2. Assure thorough investigations
3. Promote due process and fair proceedings for both complainants and the accused

According to the *ABA Criminal Justice Standards for the Prosecution Function*, “The prosecutor is an administrator of justice, a zealous advocate, and an officer of the court.”<sup>9</sup> In that capacity, Attorney Generals are legally bound to uphold the laws of the state. No state has a law that authorizes the criminal justice system to “out-source” the handling of criminal offenses to a campus disciplinary committee. And Attorney Generals are expected to protect the public from sexual predators, which can’t happen when a campus rapist is merely expelled from campus.

The March 27, 2020 letter from 18 attorneys general represents an abdication of Attorneys’ General legal and ethical responsibilities. The Center for Prosecutor Integrity calls on the 18

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<sup>5</sup> <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>

<sup>6</sup> <https://www.naag.org/publications/naagazette/volume-8-number-10/steps-attorneys-general-are-taking-to-reduce-sexual-violence-on-college-campuses.php>

<sup>7</sup> <https://www.paloaltoonline.com/news/2016/11/14/santa-clara-county-da-universities-host-symposium-on-campus-sexual-assault>

<sup>8</sup> <http://www.saveservices.org/sexual-assault/proposed-regulation/>

<sup>9</sup> [https://www.americanbar.org/groups/criminal\\_justice/standards/ProsecutionFunctionFourthEdition/](https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/)

attorneys general to rescind their call to delay release of the new Title IX regulation, and to instead work to assure justice for all students on college campuses.

Because we must not betray the memory of Hannah Graham.