



Confronting Campus Sexual Assault: An Examination of Higher Education Claims

Recent legal and regulatory mandates require virtually all colleges and universities to investigate and adjudicate reports of sexual assault. An analysis of claims reported to United Educators (UE) reveals that institutions respond to cases of sexual assault that the criminal justice system often considers too difficult to succeed at trial and obtain a conviction. Our data indicates these challenging cases involve little or no forensic evidence, delays in reporting, use of alcohol, and differing accounts of consent.

Claims Data and Methodology

Shortly after the U.S. Department of Education's Office for Civil Rights (OCR) issued its April 4, 2011, "Dear Colleague" letter (DCL), UE published *Sexual Assault: Weathering the Perfect Storm*, which examined student sexual assault claims reported from 2006 to 2010.¹ Our current study, *Confronting Campus Sexual Assault*, examines the nature of campus sexual assaults post-DCL to help educational institutions evaluate their strategies for responding to and preventing campus sexual assaults.

For this study, UE collected and analyzed data from claim files that:

- Involved a student victim
- Included allegations of sexual assault
- Occurred at a higher education institution
- Were reported to UE between Jan. 1, 2011, and Dec. 31, 2013

This study excluded claims involving allegations that faculty or staff sexually assaulted students. Also excluded were claim files for which the gender of both parties and whether they were students was unknown. The final data set included 305 claims reported from 104 colleges and universities throughout the United States. Files were reviewed individually to examine:

- Perpetrator and victim characteristics
- Circumstances of the assault
- Response from the institution
- Resulting litigation

Our analysis is subject to several limitations and conditions. Claims analysts and attorneys maintain claim files to manage litigation and resolve claims against UE members. Because research is not the primary purpose of claim files, our analysis is limited by the information contained in them. Nevertheless, the files contain valuable information that would otherwise be unavailable through other means such as self-report surveys. For example, a claim file can capture a more complete picture of campus sexual assault because it includes information from both parties as well as the institution's investigation and adjudication processes.

Finally, our analysis reflects only UE claims data and should not be generalized to represent all reports of sexual assault on college campuses. The claims data, however, enables institutions to draw some meaningful conclusions for use in responding to and preventing sexual violence on their campus.

1 Different methodology was used to obtain a larger data set for this study than in the previous study. We recommend that you not draw conclusions from any differences in the findings between the studies.

Definitions

We use the term "claim" throughout this report to mean a demand for damages as well as an event that could potentially give rise to legal action. Given the serious nature of student sexual assaults, UE policies require reporting of sexual assaults regardless of whether a threat of litigation exists. Accordingly, this study includes sexual assaults that were reported to the institution but never developed into a demand for damages or lawsuit.

Language is important when discussing sexual assaults. Throughout this report, we use the term "victim" to refer to an individual who alleges he or she has been sexually assaulted and "perpetrator" to refer to the individual who allegedly committed the act. These terms are consistent with language used by governmental agencies and organizations that publish sexual violence statistics. Our use of the term "victim" rather than "survivor" is not intended to diminish the strength of those who came forward to report a sexual assault. Likewise, our use of the term "perpetrator" is not intended as acceptance of the truth of the allegations against an individual.

For the purposes of this study, "sexual assault" is defined to include a range of conduct, including sexual coercion, nonconsensual sexual touching (i.e., fondling and kissing), and nonconsensual sexual intercourse, including vaginal, oral, or anal penetration.

Key Findings

Frequency

As [Figure 1](#) illustrates, prior to the DCL and for two years thereafter, UE saw a steady decline in the total number of reported sexual assault claims. However, by the end of 2013, the total number of claims more than doubled. We likely can attribute this increase to more institutions publicizing their policies and heightened campus awareness of sexual assault—whether from student-led advocacy or other means.

While this study draws from data through 2013, claims are also likely to increase in 2014 and beyond as institutions evolve their handling of sexual assaults to comply with Title IX and the Violence Against Women Act (VAWA).

Perpetrator Characteristics

- **Male.** Nearly all (99 percent) of the perpetrators were men.
- **Student.** As [Figure 2](#) shows, 84 percent of perpetrators were students at the same college or university as the victim.
- **Athletics and Greek life.** Fifteen percent of perpetrators were athletes, and 10 percent were members of a fraternity.

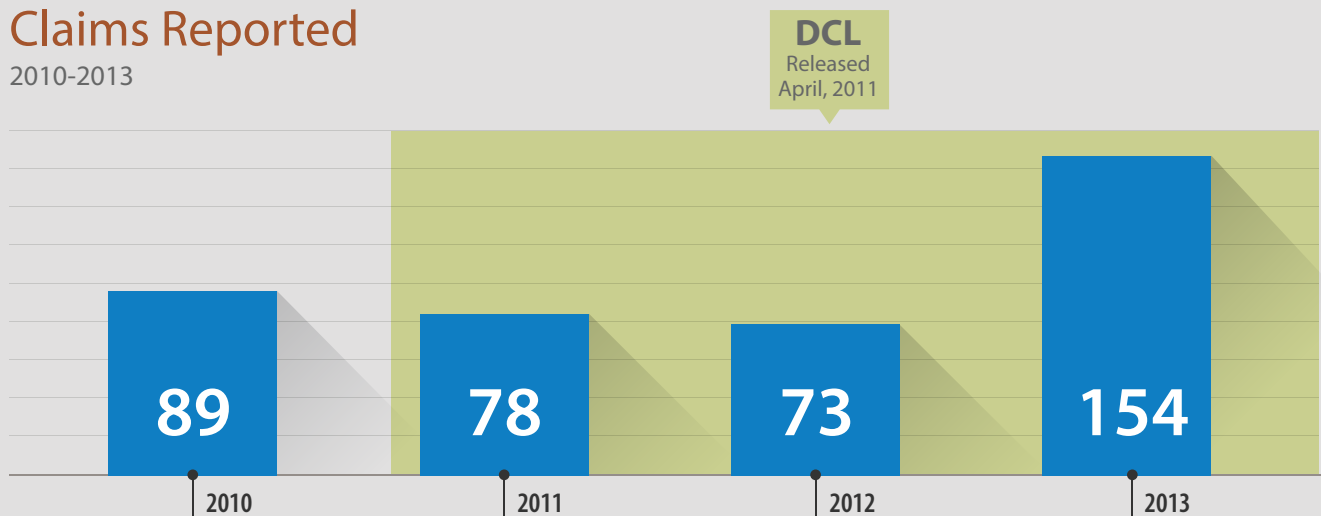
- **Multiple perpetrator sexual assaults.** Ten percent of all sexual assault claims involved a single victim and two or more perpetrators. More than half of multiple perpetrator sexual assaults involved athletes (40 percent) or fraternity members (13 percent). Our review of these claims suggests a subculture within some fraternities and teams that promotes hypermasculinity, sexual aggression, and excessive alcohol consumption. These sociocultural factors may encourage students within these groups to engage in or excuse sexual violence. Claims examples include:

- Members of a football team were accused of taking turns sexually assaulting a student who was unconscious from drinking too much.
- University basketball players pursued a female student who they described as “shy,” “quiet,” and “lonely” because she was “easy” to obtain sex from. Players had sex with the victim on multiple occasions. In one instance, five players showed up at her residence hall to have sex with her.

Figure 1

Claims Reported

2010-2013



- **Serial perpetrators.** One in five perpetrators was accused of sexually assaulting more than one student; 44 percent of these repeat perpetrators were athletes (20 percent) or fraternity members (24 percent). While the institution generally learned of potential multiple victims only after one victim came forward, in a few instances the perpetrator had previously been accused of violating the institution's sexual misconduct policy. For example, one institution placed a student on disciplinary probation and required him to do community service after he admitted to nonconsensual sexual touching of a female student. He sexually assaulted another student the following semester, this time escalating to nonconsensual sexual intercourse.

Victim Characteristics

- **Female.** Most (94 percent) victims were women.
- **Knew the perpetrator.** The majority (90 percent) of victims knew the perpetrator. The perpetrator was most often the victim's friend, acquaintance, classmate, boyfriend, or ex-boyfriend.

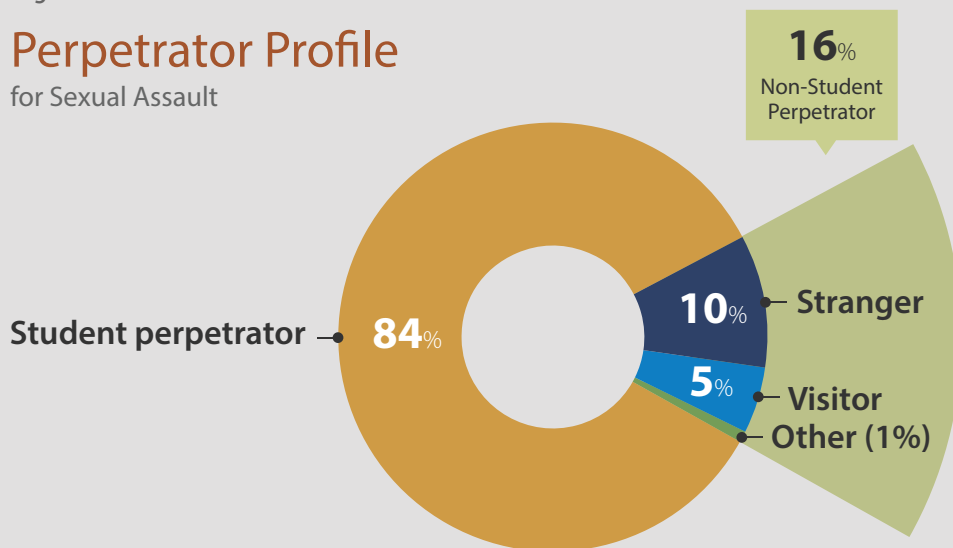
- **First- and second-year students.**² Nearly three-fourths (73 percent) of sexual assault victims were freshmen or sophomores (■ Figure 3). The highest rate of victimization occurred during freshman year, followed by a sharp decline sophomore year and every year thereafter. First-year students were also most vulnerable to multiple perpetrator sexual assaults. They accounted for 88 percent of those victims.
- **Reluctance to report sexual assault.** Nearly 40 percent of victims delayed reporting the sexual assault to their college or university. On average, victims delayed 11 months. A review of these claims revealed several reasons for the lengthy delay in reporting, including:
 - *The victim blamed herself because she was intoxicated.* Three-quarters of the victims who delayed in reporting consumed alcohol prior to the sexual assault. In fact, 26 percent of victims who delayed reporting had no clear memory of the assault.

2 This study only presents findings on victims' class year because there was insufficient information on perpetrators' class year in the claims files.

Figure 2

Perpetrator Profile

for Sexual Assault



Strangers: Perpetrators that were unseen or the victim did not recognize.

Visitors: Nonstudents visiting the campus who were acquaintances of the victim or other student.

Other: Family members and nonstudent acquaintances; these off-campus incidents were reported to the institution because the victim wanted protection from the perpetrator coming to campus.

- *The victim did not immediately label the incident a sexual assault.* In most cases, the victim labeled the incident a sexual assault only after talking with friends or attending prevention training.
- *The victim and perpetrator were in a romantic relationship.* We saw a slightly higher rate of delay when the victim and perpetrator were in a dating relationship. Nearly 60 percent of the victims in this subgroup did not immediately report their sexual assault to the institution and only came forward after the relationship ended.
- *One in five victims did not want the institution to investigate their sexual assault or take disciplinary action against the perpetrator.* In 52 percent of these claims, institutions did not investigate the complaint or could not complete their investigation, for two primary reasons:
 - The institution honored the victim's request and did not investigate or take disciplinary action against the perpetrator

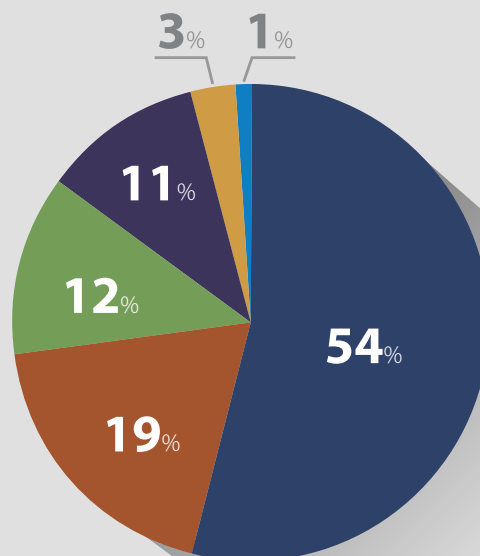
- The institution chose to investigate against the victim's wishes, and the victim became uncooperative, making it difficult to complete the investigation

Examples of these situations included:

- A university could not investigate a sexual assault complaint after the victim reported the assault as part of her recovery and refused to identify the perpetrator.
- A resident assistant (RA) reported a sexual assault to campus police that a victim shared in confidence with him. The college did not complete its investigation after the victim recanted her original statement to the RA.
- A student reported an incident of nonconsensual sexual contact but was unsure if it was "actually sexual assault." Although she did not want the university to investigate, she did want them to issue a no-contact order. The university complied, and the following semester the student changed her mind and requested a formal Title IX investigation.

Figure 3

Victims by Class Year



The Circumstances of Campus Sexual Assault

Location

- **More than half (60 percent) of sexual assaults occurred on campus.** The most frequent location for sexual assaults was the victim or perpetrator's residence hall (53 percent).
- **Role of off-campus parties.** In 41 percent of claims, the victim and perpetrator attended the same off-campus party before going back to campus, where the sexual assault occurred. These off-campus parties included institution-recognized sorority and fraternity houses, athletic team houses, and students' off-campus residences. Nearly 80 percent of the victims who attended off-campus parties were first and second-year students (■ Figure 4).

The data suggest that easy access to alcohol by underage students may explain the number of sexual assaults that occurred after off-campus parties. The binge drinking and large amounts of alcohol consumed at these parties is evident by our finding that 66 percent of the victims who had no clear memory of the assault drank alcohol at an off-campus party prior to the assault.



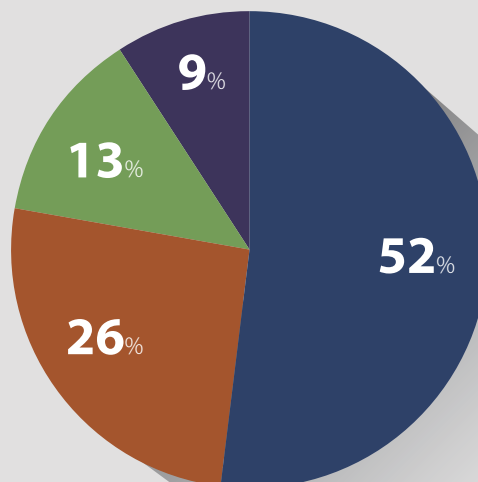
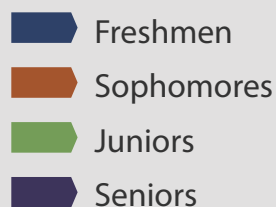
Connection to Alcohol

More than three-fourths (78 percent) of sexual assaults involved the perpetrator, victim, or both consuming alcohol. Both the perpetrator and victim consumed alcohol in 88 percent of sexual assaults involving alcohol. These findings seem to reflect the high rate at which students use alcohol in their sexual encounters.

We saw the lowest rate of alcohol use when the victim and perpetrator were in a dating relationship. Only 36 percent of the sexual assaults occurring in a dating relationship involved alcohol.

Figure 4

Victim Attendance at Off-Campus Parties



Methods of Sexual Assault³

■ **Figure 5** shows the frequency of each method of sexual assault seen in the claims. Our reason for labeling and quantifying the “methods of assault” seen in the claims is not to judge what constitutes assault. Rather, it is to demonstrate the spectrum of behaviors in the claims alleged as assault. We recognize that the definition of assault is defined by each campus.

■ **Incapacitated sexual assault.**⁴ Incapacitation of the victim was the most frequent method of sexual assault seen in the claims (■ **Figure 5**). Examples include:

- A student with no recollection of consenting to sexual intercourse was described by the perpetrator as “drunk but in control.” Other

witnesses described the perpetrator holding the victim up to walk and the victim as “clearly drunk” and “drunk but not stumbling down.”

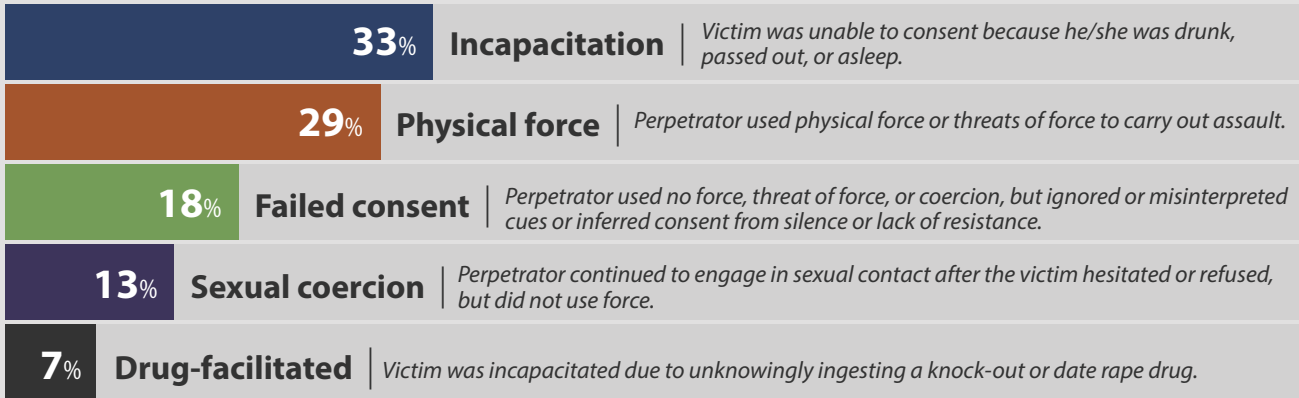
- A student alleged that an intoxicated friend propositioned him for sex when he helped her to bed after she threw up and passed out in a bathroom. During the college’s investigation he stated that the victim never said “no,” “stop,” or struggled.
- A group of students walked to an off-campus residence after a party where they were drinking. One of the students fell asleep on the living room sofa and woke to find another student having sex with her.

All of the study’s incapacitated sexual assaults involved alcohol. In 89 percent of these claims, both the victim and perpetrator were drinking (■ **Figure 7**). The remaining 11 percent of assaults involved only the victim consuming alcohol. While we could not identify the perpetrator’s intent in these claims, the unequal levels of intoxication could indicate that a small number of perpetrators targeted intoxicated students. In fact, serial perpetrators most frequently used a victim’s incapacitation to carry out the assault (■ **Figure 6**).

3 The dynamics of campus sexual assault are complex, and perpetrators may use more than one method to assault a victim. For example, a victim could be under the influence of alcohol and meet the standard for incapacitation, but the perpetrator may choke or hold the victim down to carry out the assault. For the purposes of this study, we looked only at the primary method used and therefore classified assaults such as this example as sexual assault by physical force.

4 For this study, it did not matter if the perpetrator gave the victim alcohol or other drugs, if the victim voluntarily consumed alcohol without involvement from the perpetrator, or if the institution’s adjudication determined incapacitation for it to be classified as an incapacitated sexual assault.

Figure 5
Methods of Sexual Assault





■ **Drug-facilitated sexual assault.**⁵ We saw a low rate of claims in which the victim was incapacitated due to unknowingly ingesting a knock-out or date rape drug. Examples of drug-facilitated sexual assaults include:

- A victim described meeting the perpetrator at an off-campus party. She was already intoxicated when she arrived at the party and remembered the perpetrator giving her a

⁵ For the purposes of this study, it did not matter if drugs were found in the victim's system.

“strong” drink. Later in the evening she blacked out and remembered only pieces of the assault.

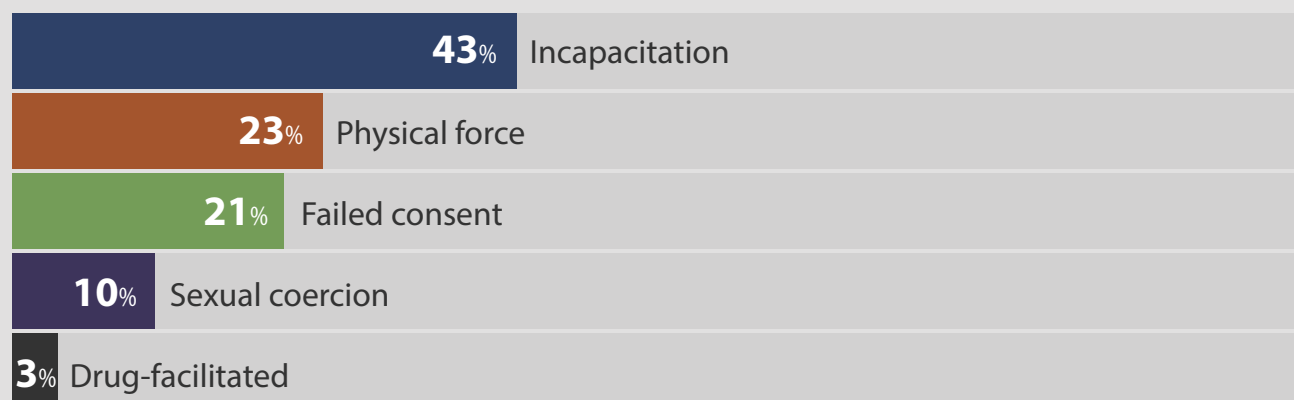
- A student woke up in her dorm room after drinking with friends at an off-campus party. She thought she may have been sexually assaulted and went to the emergency room. An examination at the hospital revealed MDMA or “Molly” in her system. The student told investigators that she only drank at the party and did not take any drugs.

■ **Sexual assault by physical force.** More than one-fourth (29 percent) of perpetrators used physical force or threats of force to carry out the assault (Figure 5). Examples include:

- A student consented to sexual intercourse, but when it started to hurt, she asked her partner to stop. He continued with sexual intercourse, telling her that it would “stop hurting in a second.”
- A student consented to protected sex, but when there was no condom he was held down and sexually assaulted.
- A student was walking to the bathroom at a fraternity house party when she was pulled into an empty room by an unknown man who beat and raped her.

Figure 6

Methods of Sexual Assault by Serial Perpetrators



None of the perpetrators used weapons. Instead, the perpetrator most often exploited the victim's vulnerability from intoxication. Overall, alcohol was involved in about half of the physical force sexual assaults with both parties consuming alcohol in most of these claims (Figure 7). Although we cannot determine each party's level of intoxication, the victims claimed they communicated to the other person they did not want to engage in sex. As a result, the perpetrator needed to use some force or threat of force to carry out the assault. The fact that 11 percent of the claims involving alcohol involved only the perpetrator consuming alcohol could also suggest that alcohol consumption by some students enables them to more easily use force to obtain sex when their partner hesitates or resists.

- **Failed consent.** In a number of the claims, the perpetrator used no force, threat of force, or coercion, but instead ignored or misinterpreted cues or inferred consent from silence or lack of resistance. Examples of failed consent include:
 - A student never asked if he had consent for sex. He believed, however, that his partner consented because she kissed him and helped take off his clothes although she was silent when they were having sex.

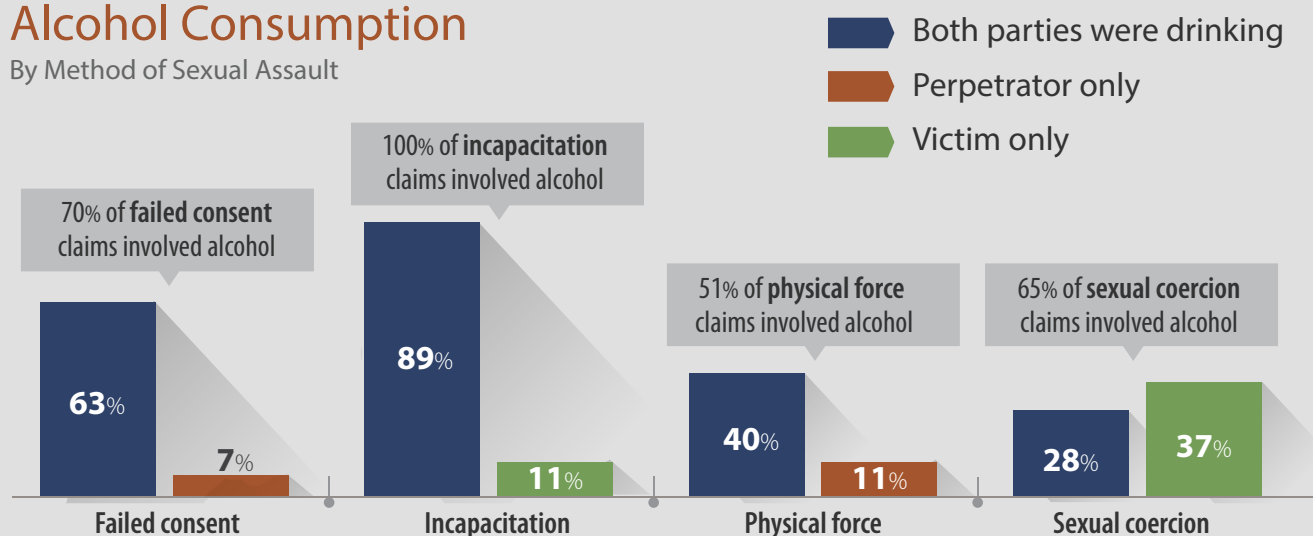
- A student engaged with another student in consensual kissing and touching in her dorm room. They briefly began having sexual intercourse before the female student asked the male student to stop because she was a virgin. The male student said he stopped and talked with the victim before he got dressed and left her room. The female student said that the male student stopped when she told him to, but that he still took things further than she wanted to.
- A student reported to her college that she thought she was sexually assaulted by another student. She told investigators that "I did not want to have sex, but it wasn't like I resisted."

We classified these as failed consent sexual assaults, and they accounted for 18 percent of the study's claims (Figure 5). More than two-thirds (70 percent) of failed consent sexual assaults involved alcohol. In those claims, both the perpetrator and victim consumed alcohol 63 percent of the time (Figure 7). In the remaining 7 percent of claims, only the perpetrator was under the influence. This could support the idea that alcohol consumption by some students contributes to misinterpreting sexual interest or ignoring their partner's hesitation.

Figure 7

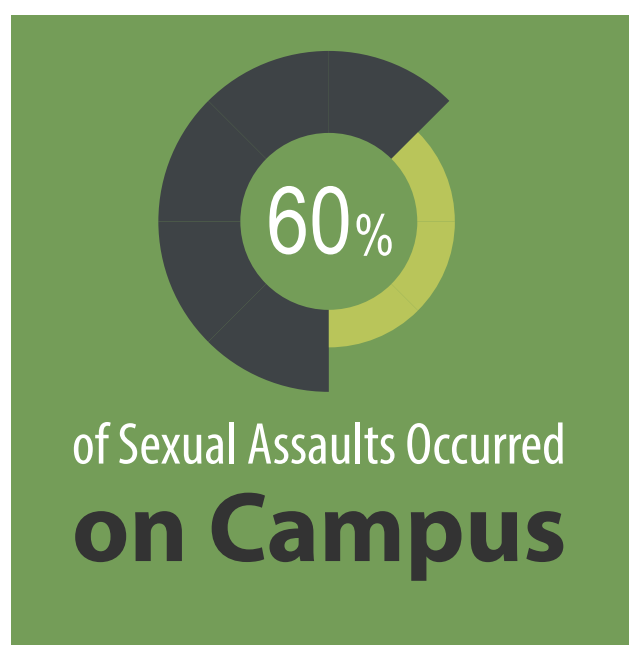
Alcohol Consumption

By Method of Sexual Assault



Failed consent sexual assaults also had the highest rate of freshman victims. Nearly half of all victims were freshmen. This seems to suggest that students new to the college environment have difficulty with sexual communications, especially when alcohol is involved.

- **Sexual coercion.** The least frequent method of sexual assault was sexual coercion or situations in which one party used no physical force but continued to engage in sexual contact after the



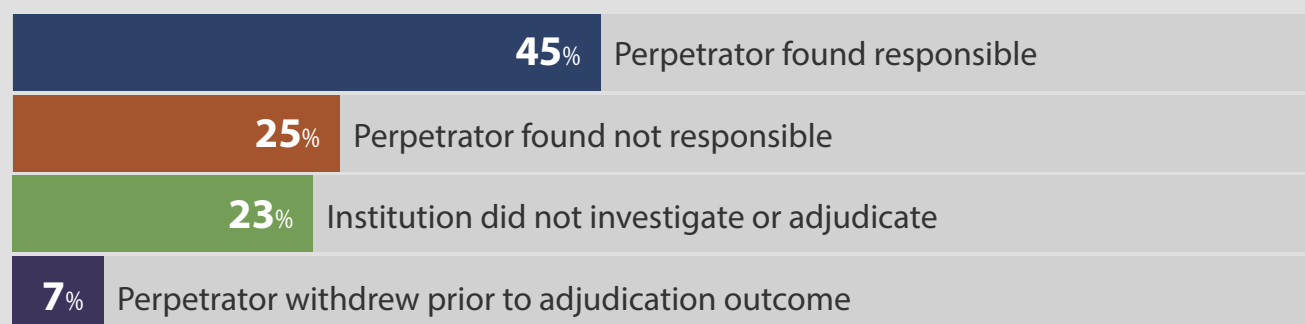
other hesitated or refused.⁶ However, for assaults occurring in a dating relationship, sexual coercion was the most frequent method—accounting for nearly 60 percent of these claims. Compared to other methods of sexual assault, sexual coercion claims had the lowest rates of alcohol use, although alcohol was still a contributing factor in 65 percent of the claims. Examples of sexual coercion claims include:

- During a sexual assault investigation an institution found several students who described the perpetrator as “persistent,” “wearing you down,” and “making you go further than you wanted to go.”
- A student reported that her boyfriend took consensual naked photos of her, but then threatened to post them on social media unless she engaged in certain sex acts.
- A pledge was ordered to perform oral sex on someone in order to receive a bid from the fraternity.

⁶ The fact that we looked only at the primary method used to carry out the assault may be one reason for the lower rate of sexual coercion claims. Several of the physical force sexual assault claims involved the perpetrator using physical force after the victim hesitated or resisted.

Figure 8

Outcomes After Institution Received Sexual Assault Report



Friend **Ex-Boyfriend** Acquaintance **Boyfriend**
Classmate

90%

of Victims Knew the Perpetrator

The Institution's Response to Sexual Assault Complaints

Instances in Which the Institution Did Not Investigate or Adjudicate a Sexual Assault Report

In 23 percent of the claims, the institution did not investigate or adjudicate students' sexual assault complaints (■ Figure 8) for the following reasons:

- **Victims were uncooperative.** In more than half of these claims, the victim asked the institution not to investigate, and the institution honored that request or the victim became uncooperative, preventing the institution from fully adjudicating the complaint (■ Figure 9). Examples included:
 - A student was forcibly raped in her residence hall by another student. Her friend persuaded her to report the sexual assault

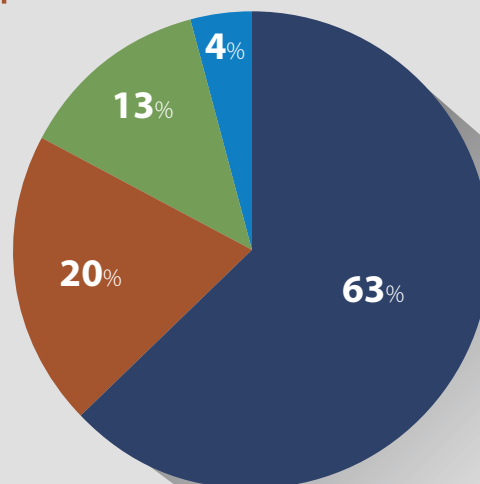
to campus police, and the school launched an investigation. The perpetrator hired an attorney and stopped cooperating with the school's investigation. The victim also became uncooperative because she was afraid she would lose her boyfriend and did not want to be known as the "girl who got raped." The perpetrator withdrew from school and the college never completed its investigation.

- A student came forward to report that her friend was sexually assaulted while passed out from drinking. During the college's investigation the victim became uncooperative because she feared her parents would find out about the rape. The victim ultimately recanted, saying she and the perpetrator engaged in consensual sex.

Figure 9

Reasons for No Investigation or Adjudication

- Uncooperative victim
- Unable to identify perpetrator
- Perpetrator withdrew
- Relied on police investigation



- **Victim could not identify perpetrator.** In 20 percent of these claims, victims had no clear memory of the assault, which impeded their ability to identify a perpetrator to investigate.
- **Perpetrator withdrew.** In 13 percent of these claims, the perpetrator withdrew from the institution before the complaint could be fully adjudicated.
- **Institution relied on a police investigation.** In 4 percent of these claims, the institution failed to use its internal process because it inappropriately relied on the criminal justice system to make a determination for them. For example, a student pressed charges with local police after he was sexually assaulted. He sought help from the institution for a no-contact order, which the institution issued. The institution, however, did not conduct an investigation because it believed that the criminal justice system would punish the perpetrator, which would remove the threat to the victim and the campus community.
- **Victim delayed reporting the sexual assault.** Based on this claims data, we suspect that victim delay in reporting may have contributed to an institution's inability to fully adjudicate a sexual assault report. On average, the complaints that were not fully adjudicated were reported to the institution 17 months after the alleged assault.

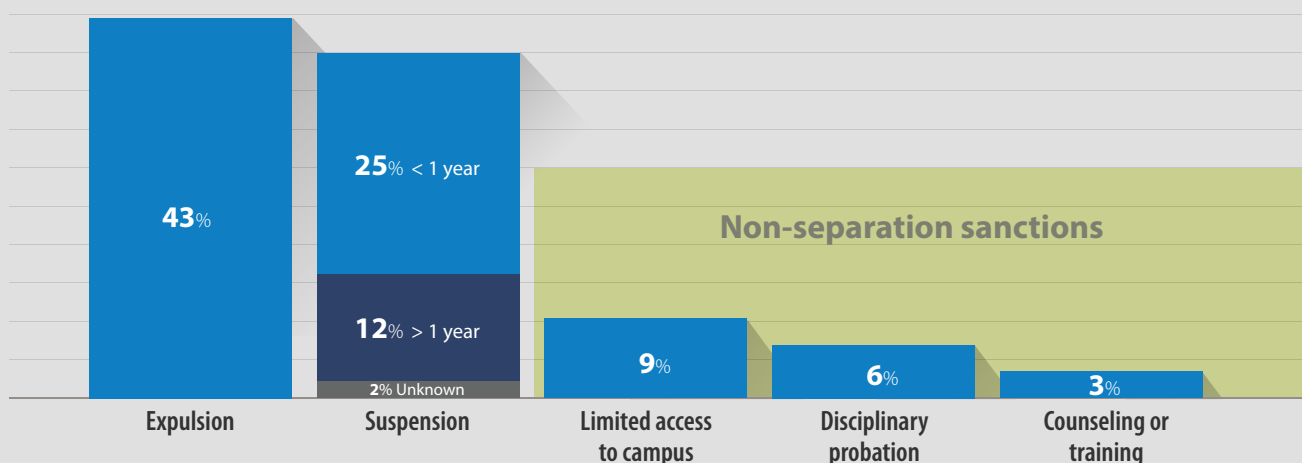


Institution's Adjudication of Sexual Assault Complaints

The perpetrator was found responsible in 45 percent of the study's student-on-student sexual assaults, while 25 percent of perpetrators were found not responsible. In 7 percent of the claims, the institution improperly ended the adjudication process without reaching a decision when the perpetrator withdrew from the institution (Figure 8).

Figure 10

Sanctions



- **Expulsion was the most frequent sanction.** Our data suggest that when sexual assaults are adjudicated, institutions frequently impose their severest sanction. Only 18 percent of claims involved sanctions in which the perpetrator did not receive a suspension or expulsion (Figure 10). In these instances, the student perpetrator was most frequently removed from on-campus housing and permitted access only to academic buildings on campus.
- **Method of sexual assault and likelihood of expulsion.** The method used by the perpetrator to carry out the assault may have been a factor in an institution's choice of sanction. More than four-fifths (82 percent) of expulsion sanctions were for perpetrators who either took advantage of a victim's incapacitation or used physical force (Figure 11). Disciplinary probation and lesser sanctions were most often imposed by institutions when the sexual assault involved failed consent (Figure 11).

Investigation and Adjudication of Complaints Against Athlete Perpetrators

- **Athletic department involvement in sexual assault investigations.** Our study found no athletic departments overseeing an institution's

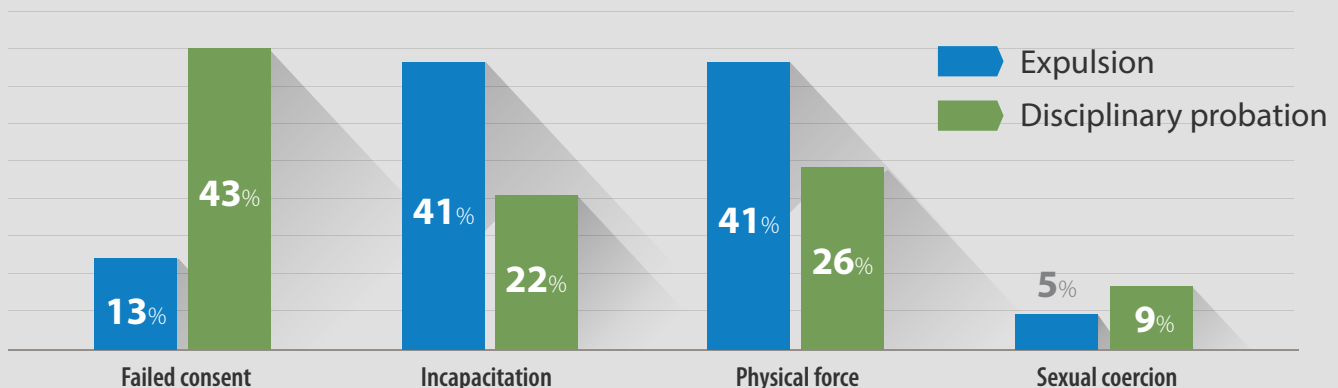
sexual assault investigation when athletes were involved. There were only two instances in which the athletic department had any role in the process. In both claims, the coaches initially thought the incidents involved only physical fighting and punished the players. When they learned that the incidents involved sexual contact, the coaches stepped back while the institution conducted a Title IX investigation. In each instance, the perpetrator was found responsible for violating the institution's sexual misconduct policy.

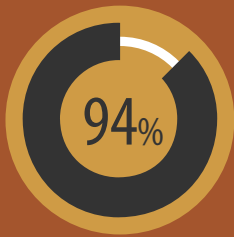
- **Adjudications involving athlete perpetrators.** Given the frequent media attention that describes institutions treating athletes more favorably and not holding them accountable for sexual misconduct, it was surprising that our claims data showed that almost two-thirds of athlete perpetrators were found responsible through the institution's adjudication process (Figure 12).
- **Addressing the role of team culture in athlete perpetrated sexual assaults.** While the claims data show that most athlete perpetrators were held accountable for violating the institution's sexual misconduct policy, the team itself was often overlooked during an institution's investigation. In a quarter of the multiple perpetrator assaults by athletes, the institution never assessed whether

Figure 11

Expulsion vs. Disciplinary Probation

By Method of Sexual Assault





of Victims Were
Female

41%
of Sexual Assaults Involved
OFF-CAMPUS PARTIES

the perpetrator's conduct was part of a larger team culture that created a hostile educational environment. In one claim, for example, a disciplinary committee found two athletes not responsible for sexual assault, but the investigation revealed that the team frequently threw parties at which players would take turns having sex with "drunk girls." The institution's investigation did not examine whether the team's conduct was a violation of the institution's sexual harassment policy or other provisions of the student code of conduct.

Litigation Arising From Campus Sexual Assaults

More than one-fourth (28 percent) of the sexual assaults reported to UE resulted in litigation.⁷ As [Figure 14](#) illustrates, there was an equal rate of OCR complaints and lawsuits filed against educational institutions.

⁷ The term "litigation" in this study refers to lawsuits, complaints filed with OCR, and demand letters from claimants that may never result in a lawsuit or OCR complaint.

Over the three-year period, UE and its members spent approximately \$17 million defending and resolving sexual assault claims. Defending the institution's investigation and adjudication process was costly. Approximately \$9.3 million (or 64 percent of the total losses) was spent on defense costs. Half of these costs were for defending institutions in OCR investigations.

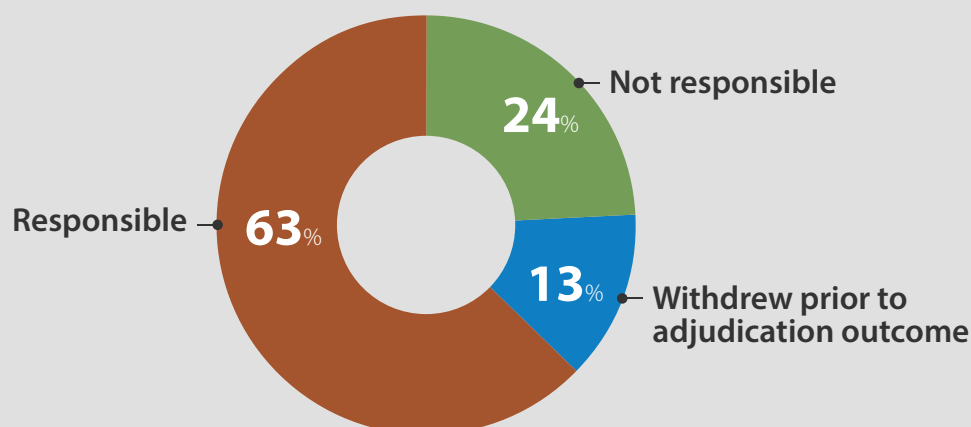
Litigation Brought by Victims

Victims brought the most litigation against educational institutions and accounted for 68 percent of the litigated claims in this study. All of the OCR complaints filed against educational institutions were initiated by victims. Victim-driven litigation was also the most costly for institutions. It accounted for 84 percent (or \$14.3 million) of the total losses.

Litigation does not appear to be driven by adjudicatory findings, but it may be driven by the severity of the sanctions issued. For example, in 48 percent of litigation brought by victims, the institution found the perpetrator responsible for

Figure 12

Athlete Perpetrators and Adjudicator Findings



violating its sexual misconduct policy. However, in only one-third of these cases where there was a finding of responsibility was the perpetrator expelled.

Victims' Allegations

■ Title IX

□ *Discouraged pursuit of a complaint.* Nearly three-quarters of the litigation initiated by victims alleged a Title IX violation (■ Figure 15). Less than half (41 percent) of these Title IX claims alleged that the institution discouraged the victim from pursuing an internal complaint or reporting the assault to the police. Examples include:

- Allegations that a staff member told the victim that the perpetrator had been “punished enough.”
- A college dean telling a victim that he would try to get the perpetrator to withdraw from the institution so she would not have to deal with the disciplinary process.
- When trying to manage expectations about the investigation and disciplinary process, a staff member told a victim to expect a “grueling” process if she wished to pursue her complaint.

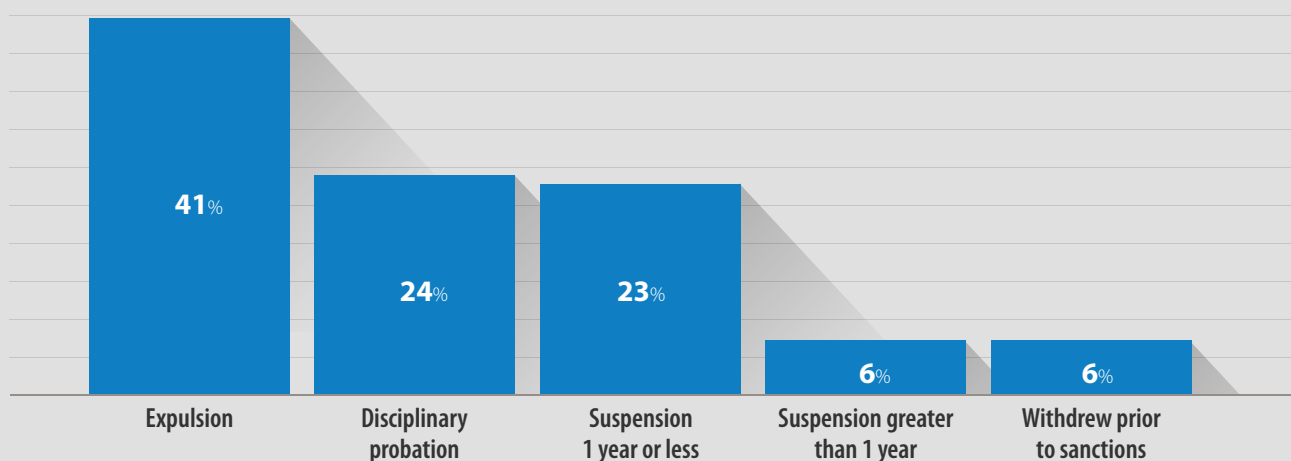
□ *Failed to conduct timely investigation.*

Additionally, victims' Title IX claims frequently alleged that the institution did not conduct a timely investigation. A review of these claim files revealed that many of the allegations concerned students and staff misunderstanding reporting obligations and confidentiality under the institution's sexual misconduct policy. Examples include:

- A student reported that she was sexually assaulted to a counselor at the university's counseling center. The student thought her disclosure would launch a Title IX investigation, but the counselor never disclosed the assault due to confidentiality.
- A student told her resident advisor (RA) that she was sexually assaulted, but the RA never reported it to the college's Title IX coordinator. A friend of the victim eventually reported the assault to the Title IX coordinator and the institution began its investigation.
- A student athlete told her coach that she had been missing practice because she had been raped earlier in the semester. The coach notified the athletic director who recommended that she direct the

Figure 13

Athlete Perpetrators and Sanctions



student to the counseling center. Neither contacted the Title IX coordinator or campus police.

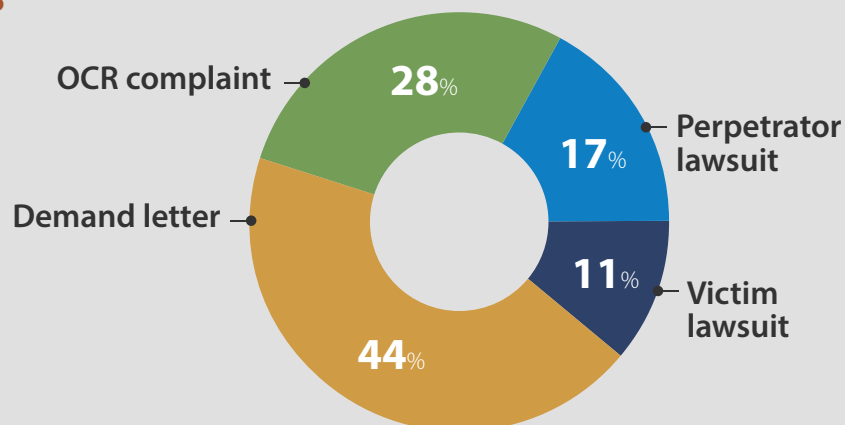
- **Inadequate sanctions.** Nearly a quarter of victims' Title IX claims alleged that the sanctions imposed were inadequate and created a hostile environment for the victim on campus. Examples include:
 - A perpetrator was permanently removed from campus housing after being found responsible for sexual harassment and sexual assault. The victim challenged the sanction alleging that it was inadequate and that the perpetrator had received special treatment due to his popularity.
 - A student complained when her perpetrator received only a one-semester suspension and 10 hours of community service after he was found responsible for nonconsensual sexual intercourse.
- **Negligence.** Nearly half (40 percent) of victims alleged that the institution was negligent in its investigation or negligent in training staff to handle sexual assault reports (■ Figure 15). Victims' claims against the institution were

particularly compelling when the adjudicator's written decision signaled problems with understanding the dynamics of sexual assault or the institution's sexual misconduct policy. Examples include:

- A hearing panel had trouble understanding and applying the preponderance of the evidence standard to a sexual misconduct case. It ultimately found the student not responsible, but noted in its decision that it was "more likely than not" that the perpetrator failed to obtain the victim's consent.
- An institution's sexual misconduct policy provided that students should not assume consent and that it was the responsibility of the initiator of the sexual contact to confirm the other party's consent. A disciplinary committee found two students not responsible for violating the sexual misconduct policy, but noted in its written decision that the students "acted recklessly" in assuming the victim's consent and ignored all of the "signals of apprehension, anxiety, and mixed messages."

Figure 14

Litigation* Against Educational Institutions



*The term "litigation" in this study refers to lawsuits, complaints filed with OCR, and demand letters from claimants that may never result in a lawsuit or OCR complaint.

- A hearing panel found a student not responsible for violating the institution's sexual misconduct policy, but ordered him to participate in consent training because they were troubled by his admission that he had sex with other intoxicated students besides the victim.

■ **Breach of contract.** Nearly one-third (32 percent) of victims alleged the institution failed to follow its own process and procedures when investigating and adjudicating sexual assault reports (■ Figure 15). In their breach of contract claims, victims most often challenged the sanctions imposed on the perpetrator. Specifically, a seemingly arbitrary appeal process and negotiating with the perpetrator to avoid litigation formed the basis of victims' breach of contract claims. Examples include:

- After finding a student responsible for violating the institution's sexual misconduct policy, the disciplinary committee recommended expulsion. The student appealed and the president reduced the sanction to one-semester suspension. The president did not articulate a reason for reducing the sanction or communicate the change to the victim.

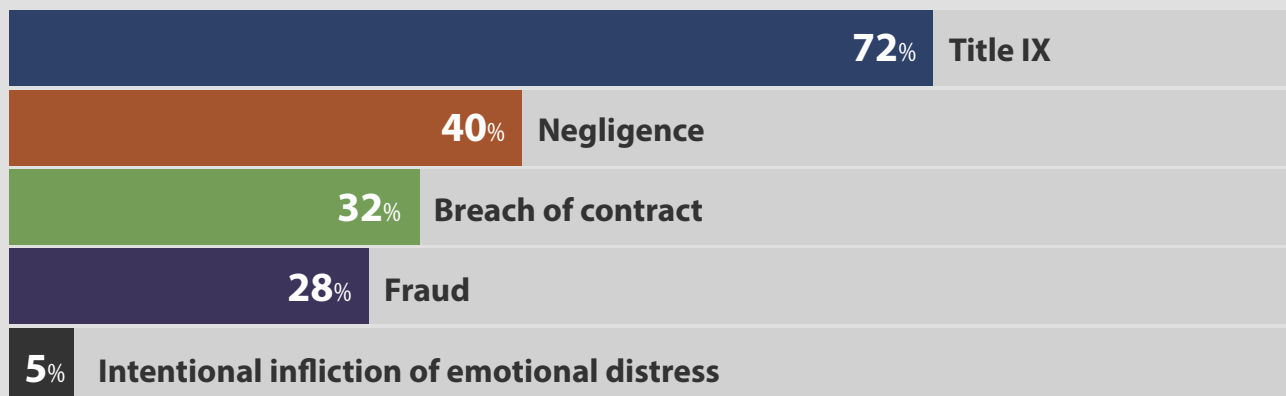
- A student was found responsible for sexual assault and suspended, but while he appealed the decision, his attorney negotiated a settlement to avoid litigation. The student was able to choose whether to proceed to a new hearing or withdraw from the institution and receive a tuition refund.
- An institution considered an accused student's appeal because his attorney threatened litigation, although the student failed to meet the appeal filing deadline and did not have sufficient grounds for the appeal under the institution's grievance policy.
- As a result of negotiating with the perpetrator, an institution agreed not to issue the recommended sanction until after the accused student withdrew, enabling him to transfer to another college.

Litigation Brought by Perpetrators

Nearly one-third (32 percent) of the litigation against institutions was initiated by students accused of sexual assault. Sanctions often drove the litigation. More than half of the perpetrators who brought litigation had been expelled from the institution. However, a little more than a third of the perpetrators were given

Figure 15

Victim Allegations



The complainant often makes multiple allegations against the institution.

Nearly 3 of 4 Victims Were FRESHMEN — or — SOPHOMORES

light sanctions or no sanctions at all. Additionally, 72 percent of perpetrators who sued the institution also sued the victim for defamation or slander. These findings may suggest that, for some perpetrators, litigation is a means to repair their reputation.

Perpetrators' Allegations

■ **Figure 16** depicts the five most frequent allegations made by perpetrators against educational institutions.

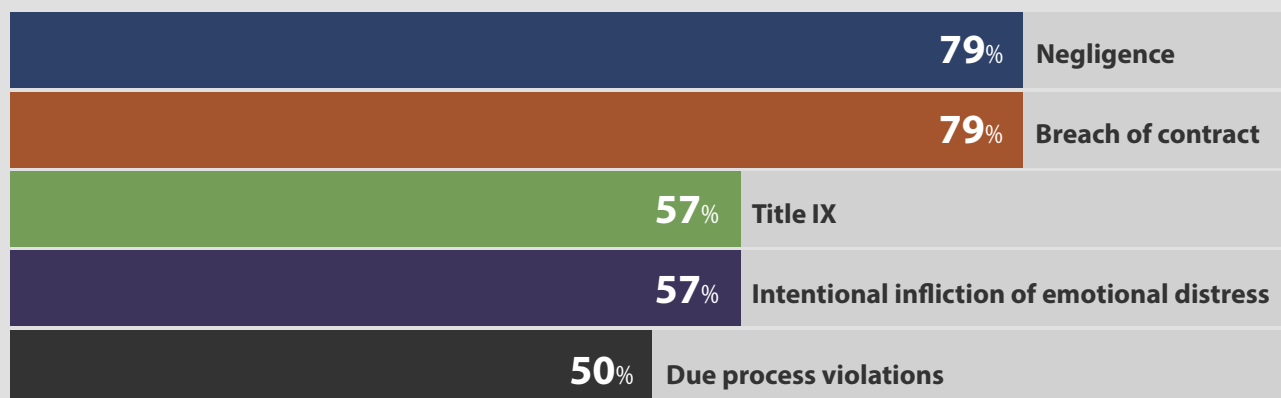
- **Negligence and breach of contract claims rooted in the adjudicatory process.** Student perpetrators were most often dissatisfied with the institution's adjudicatory process and challenged its fairness. Typical allegations included:

- The institution imposed harsh and disproportionate sanctions.
- The institution did not consider the student's good disciplinary and academic records when imposing sanctions.
- To show a pattern of predatory behavior, the institution considered allegations of prior misconduct that were either unrelated to the pending matter or were unsubstantiated.
- The institution did not consider exculpatory evidence such as text messages from the victim in which she did not refer to the incident as sexual assault.
- The institution did not allow the student to present evidence about the victim's sexual history or reputation.

- **Title IX.** In their Title IX claims, perpetrators focused on the institution's sexual misconduct policy. Specifically, they argued that the policies and process were inherently discriminatory toward men or that an unfair outcome was reached to stave off adverse OCR findings. For example, a perpetrator alleged that the university found male students responsible for sexual assault based on their gender regardless of the evidence or lack thereof.

Figure 16

Perpetrator Allegations



The perpetrator often makes multiple allegations against the institution.

- **Requests for injunctive relief.** More than a third (36 percent) of perpetrators sought a temporary restraining order (TRO) or preliminary injunction to stop the institution's adjudication process or the imposition of sanctions. Courts granted approximately 20 percent of perpetrators' requests. This tells us that some courts are willing to examine the fairness of an institution's policy and process. Examples include:
 - A court denied a student's request to be immediately readmitted to the university, but ordered the institution to reconsider the length of the suspension imposed. The institution ultimately decided to shorten the suspension and allow the student to return to campus prior to the victim's graduation.
 - A student was at the end of his final semester before graduating when he was found responsible for sexual assault and suspended. He filed a TRO, which the court granted. The student was allowed back on campus to finish his courses and graduated from the institution.
 - Although the court denied a student's TRO, it voiced several concerns about the institution's internal process and noted that it seemed "arbitrary and capricious."

Conclusion

UE claims show that colleges and universities respond to some of the most difficult sexual assault cases. Although addressing student sexual assaults is a formidable task, the information from this study can help institutions understand this complex environment and develop an integrated and comprehensive plan for responding to and preventing sexual assaults on campus.

Acknowledgment

"Confronting Campus Sexual Assault" was prepared under the direction of Alyssa Keehan, JD, director of risk research at UE. Emily Caputo, JD, served as the primary researcher, and Hillary Pettegrew, JD, and Melanie Bennett, JD, served as assisting researchers.



EduRisk™ provides education-specific risk management resources to colleges and schools and is a benefit of membership with United Educators (UE). As a member-owned company, UE is committed to helping educational institutions by offering stable pricing, targeted insurance coverage, extensive risk management resources, and exceptional claims handling.

To learn more, please visit www.UE.org.

The material appearing in this publication is presented for informational purposes and should not be considered legal advice or used as such.

Copyright © 2015 by United Educators Insurance, a Reciprocal Risk Retention Group. All rights reserved. Permission to post this document electronically or to reprint must be obtained from United Educators.

UE-113199r2w 02/15