

Lessons From Losses in UE's Student Sexual Assault Claims

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Agenda

- UE Claims Data
- Lessons, Part 1
- Q&A
- Lessons, Part 2
- Q&A



UE's Student Sexual Assault Claims With Losses

- Review period: Jan. 1, 2011 – Dec. 31, 2015
- **Claim** means an event that could give rise to legal action as well as a demand for damages
- **Loss** means a financial loss to the member institution and/or UE, including payments to claimants and defense counsel
- **Sexual assault** means “a range of misconduct that includes sexual coercion, nonconsensual sexual touching (i.e., fondling and kissing) and nonconsensual sexual intercourse with vaginal, oral, or anal penetration.”



Total Losses in UE Claims

- Victim claims:
 - \$21,826,989
 - Largest losses: \$2 million (two claims)

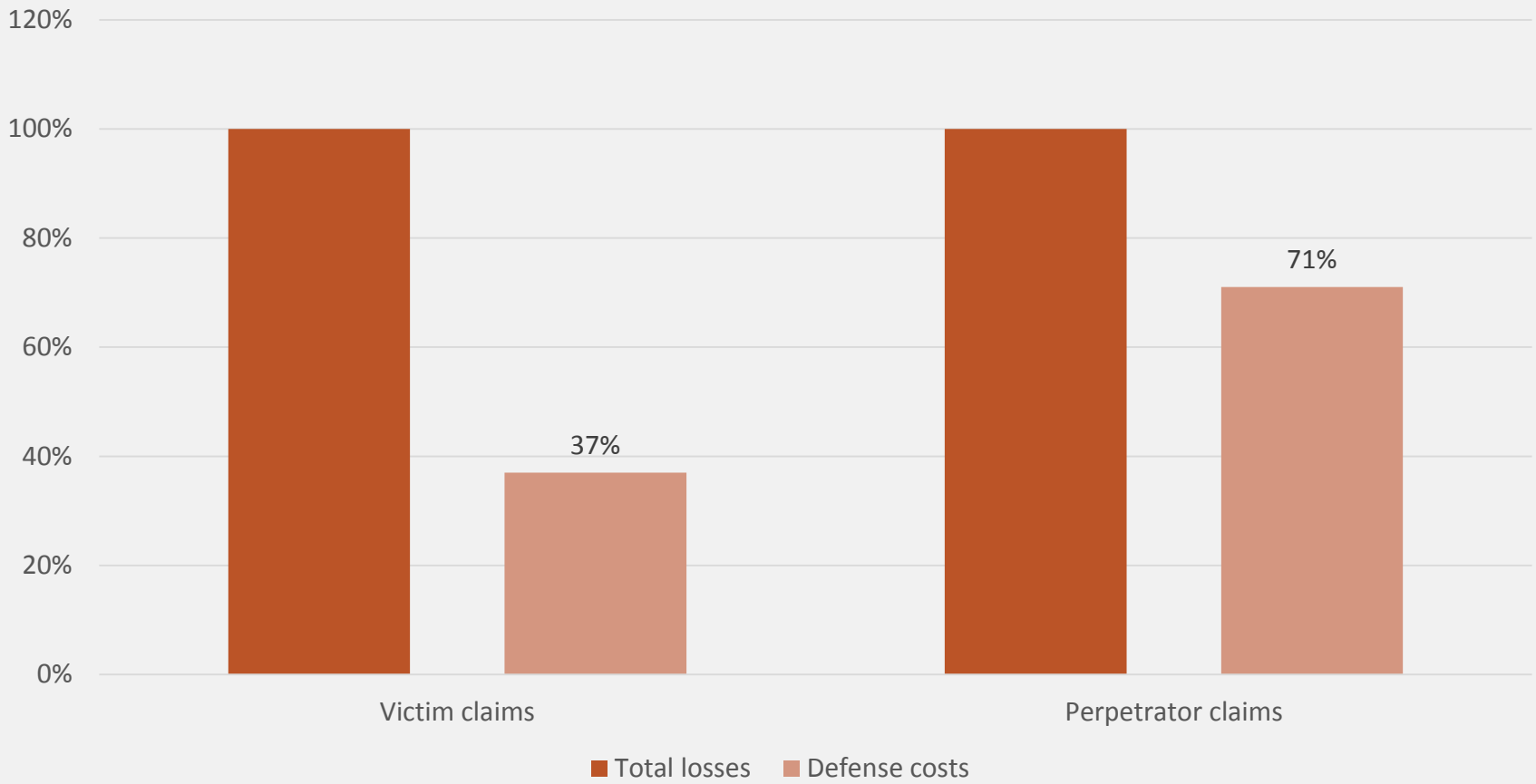
- Perpetrator claims:
 - \$8,998,135
 - Largest loss: \$1,076,680 (all defense costs)



Average Total Loss and Defense Costs per Claim



Defense Costs as Percentage of Total Losses



Sanctions Challenged by Perpetrators

- 50% were expelled
 - *33% were seniors expelled shortly before graduation*
- 27% were suspended
 - *Ranged from a few weeks to several years*
- 6% received lesser sanctions
 - *No contact order, disciplinary warning, education/training, removal from team*
- 17% were found not responsible
 - *Often alleged damages from campus ban*



The Lessons: Reporting and Confidentiality

- Clarify reporting obligations vs. confidential disclosure options
 - VAWA/Campus SaVE Act and OCR guidance require both
 - Reporting: triggers institution's duty to respond
 - Confidential disclosure: enables victims to share their stories and get help
 - Make the difference clear in written policies
 - Train employees and students on the distinction



The Lessons: Title IX Coordinators

- Make sure Title IX Coordinators are properly prepared before they begin working
 - Title IX Coordinators and others need to understand the scope of the role on your campus
 - Compliance requires oversight and monitoring, but not (necessarily) the hands-on work
 - Title IX Coordinator must always be neutral and advocate for the process, not any party



The Lessons: Investigators

- Investigators need appropriate experience or training
 - Potential pitfalls
 - Inappropriate tone/demeanor
 - Failure to conduct trauma-informed interviews
 - Poorly prepared/vetted external investigators

- Be clear internally about investigator's role
 - What is investigator required to do?
 - Just as important, what should he or she NOT do?



The Lessons: Adjudicators

- Ensure adjudicators are trained to:
 - Understand their role under your policies
 - Know the standard of proof and how to apply it
 - Make credibility assessments
 - Explain rationale for determination and any sanctions
 - Connect them to factual findings and policy language



Questions and Answers



The Lessons: Perception Problems

- Watch for “perception of unfairness” problems, such as
 - Potential influence of open OCR investigation or active victim advocacy groups
 - Campus protests
 - School newspaper coverage
 - Overt administrator statements of support or sympathy for one party



The Lessons: Sanctions

- Severity of the sanction helped drive losses in many perpetrator claims, yet ...
 - In almost one-fifth of claims, the alleged perpetrator was found not responsible
- Exercise caution when determining sanctions—and before altering them on appeal
 - Review proposed actions for consistency with written policies and past practices
- VAWA/Campus SaVE Act require listing range of sanctions in policy



The Lessons: Perpetrator Exoneration

- “Exoneration” can be more important than \$\$ to perpetrators
 - Readmission, degree, or expungement of disciplinary record
 - 40% of claims—exclusive or primary goal
 - On average, this subgroup was 65% more expensive to defend than perpetrator claims as a whole



The Lessons: Campus Security

- Be careful about security practices
 - Two of UE's highest loss claims from victims involved poor residence hall security
 - Propped open/unlocked doors are perennial problem
 - Review/enhance security practices
 - Train students



The Lessons: Appeals

- Handle any appeals with care
 - Policy should specify:
 - Grounds for appeal
 - Type of evidence that may be considered
 - When exceptions may be permissible
 - Ability of appeal official to change any sanction
 - Ensure all officials understand the policy and their own authority
 - Appeal officials should have no previous involvement with case



The Lessons: Retaliation

- Watch for retaliation—and be prepared to address allegations promptly
 - Check policy definition: does it include threatened and attempted as well as actual retaliation?
 - Consider whether retaliation allegations are included in original or separate investigation
 - Is it retaliation, or (just) more harassment?
 - Train employees involved in process on
 - Recognizing different forms of retaliation
 - Explaining how to report incidents



The Lessons: Mental Health Issues

- Mental health issues played significant role in 21% of UE's victim claims
- If either party raises mental health or institution has reason to suspect it's an issue, seek legal advice and involve disability services office
- Accept that disability issues will slow down the internal process
- Should disabilities affect sanctions?
- What about disclosure of disability to other party?



The Lessons: Consent

- Many students simply do not understand consent and may:
 - Assume consent can't be revoked/withdrawn
 - Believe silence equals consent
 - Think consent to one act implies consent to others
 - Fail to grasp the effect of alcohol/drugs on capacity to consent



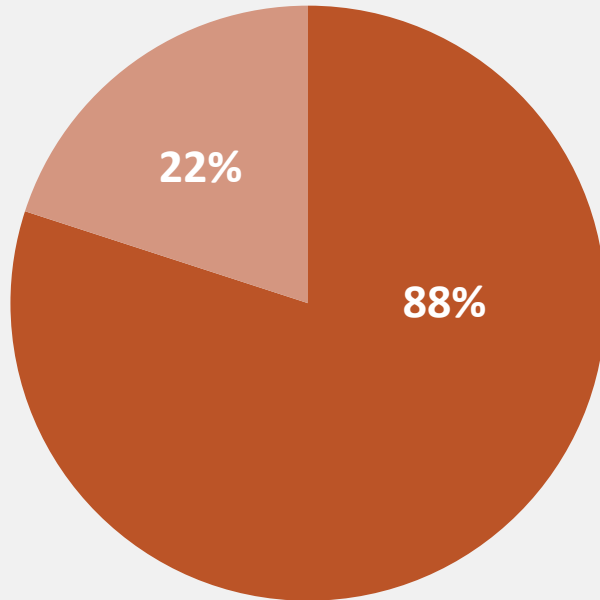
The Lessons: Training on Consent

- Institutions must train on consent
 - Start before students arrive on campus—and don't assume any existing knowledge
 - Continue with refresher training (not “one and done”)
 - Focus on small group, interactive workshops; consider peer training models
 - Base hypotheticals on past disciplinary cases (perhaps trade with peer institution), UE claims scenarios
 - Make explicit connection between use of alcohol/drugs and inability to consent
 - Explain where burden of proving consent lies



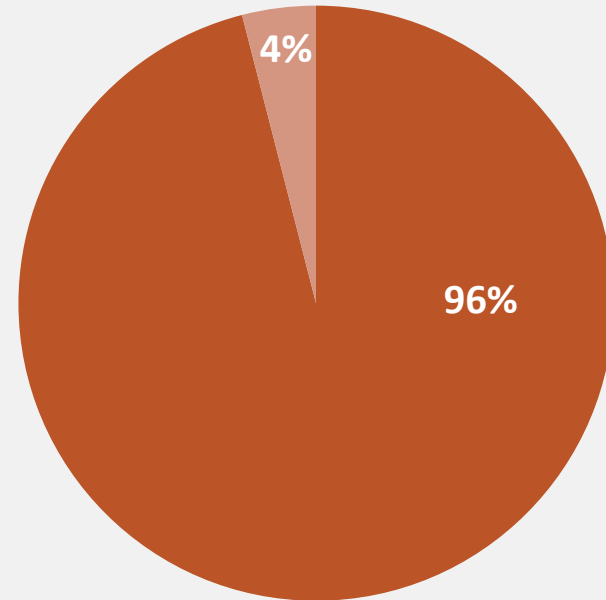
The Lessons: OCR Played Small Role in UE Losses

Victim claims



■ Litigation ■ OCR matters

Perpetrator claims



■ Litigation ■ OCR matters



The Lessons: Student Litigation is the Big Risk

- Litigation is a greater liability threat than OCR action
 - Even in litigation, Title IX is not the primary danger
 - Negligence and breach of contract tend to pose higher risks for schools
 - Usually easier to successfully litigate than Title IX claims
 - Title IX requires supported allegations of *deliberate indifference* or *gender-motivated bias*

The Future?

- Do not assume campus sexual assault issue will recede under the Trump administration
 - So far, the April 2011 Dear Colleague Letter remains official OCR guidance
 - Cultural shifts, public perception and student activism mean the issue (and lawsuits) will not go away – regardless of what happens with OCR
 - Don't forget about VAWA/Campus SaVE Act requirements



UE's Campus Sexual Violence Resources

The screenshot shows the EduRisk website interface. At the top, the logo for EduRisk (By United Educators) is on the left, and navigation links for ASSESS RISK, TRAINING TOOLS, and BLOGS are in the center. A search bar and a Login button are on the right. Below the navigation is a dark bar with 'BROWSE RESOURCES' and categories: Administration, Crisis Management, Employment, Facilities & Public Safety, and Student Affairs. The main content area features a large banner image of four students walking on a campus path. Overlaid on the banner is the text 'Title IX and Campus SaVE Act Resources'. Below the banner is a list of resource links under the heading 'Title IX and Beyond Series':

- The Adjudicatory Process
- Campus Sexual Violence and the Confidentiality Conflict
- FAQs on Federal Laws and Guidance
- Title IX Coordinator Roles and Responsibilities Regarding Campus Sexual Violence
- Revising Nondiscrimination Policies and Grievance Procedures
- Federal Training Requirements for Employees
- Federal Training Requirements for Students
- Investigations
- Interim Measures, Remedies, and Sanctions

To the right of the list is a small image of four students (three women and one man) sitting around a table, looking at a laptop screen.

EduRiskSolutions.org/TitleIX/



Project IX

... SERVICES OFFERED SAMPLE PROJECT EVENTS AND PROGRAMS ASK A QUESTION THE TEAM

Project IX

A non-profit corporation dedicated to helping schools and colleges become self-sufficient in their approach and response to incidents of sexual violence.

CUSTOMIZED, HANDS-ON, SCHOOL-CENTERED

Project IX provides schools with hands-on, customized help in crafting Title-IX and VAWA-compliant sexual assault response procedures. Project IX does this by working closely with each school to identify ways to utilize their existing talent, resources, infrastructure and unique campus environment, along with available community and national resources, to gain self-sufficiency in their handling of sexual violence on their campuses.

We offer a customized, low cost approach. This means schools are able to keep the resources spent on addressing sexual misconduct within their school so that the funds be used for education, prevention and scholarship. By working closely with each

ProjectIX.education



Questions and Answers

