

## PEER-REVIEWED CME ARTICLE: MEDICAL EDUCATION

### What If a Resident or Medical Student Is Raped? Hospitals' and Academic Medical Centers' Title IX Obligations

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#### Abstract

Title IX of the Education Amendments of 1972 protects medical students and residents from all forms of sexual discrimination, including sexual harassment and assault. Hospitals that train residents as well as medical students must follow Title IX mandates, including investigating and addressing all reports of sexual discrimination, harassment, or violence. While these processes can help eliminate potential barriers to women in medical training, the pressure to participate in an internal investigation can discourage some medical students and residents from seeking help. Hospitals should work closely with university Title IX officials to design and implement effective policies and procedures to both prevent and address all types of sexual discrimination as well as to support trainees who have been victimized.

#### Introduction

Numerous studies show that sexual harassment is still a persistent issue in medicine. One study published last year reports that 30 percent of female clinical researchers and 4 percent of male researchers in academic health centers have experienced sexual harassment at some point in their training or career [1]. Residents and students can be more vulnerable to harassment and assault due to the inherent power differentials embedded within medical education [2, 3]. A 14-school study published in 2002 found that 83 percent of female students had experienced sexual harassment and/or gender discrimination during medical school [4]. On the other hand, less than 15 percent of students reported experiencing some type of sexual harassment or discrimination on the 2017 Association of American Medical Colleges (AAMC) [Graduation Questionnaire](#) [5]. Over a longer period, a 2014 meta-analysis of studies conducted between 1987 and 2011 showed that 33 percent of trainees (all genders) had experienced some form of sexual harassment during their training [6]. Sexual harassment can influence students'

decisions regarding residency placements [7], distract trainees from their studies, and negatively affect patient care [8].

Sexual assault is a criminal offense, but it is also classified as a severe form of sexual harassment, as it can interfere with one's educational opportunities [9]. Roughly 45 percent of women have experienced some form of sexual violence victimization other than rape in their lifetime [10]. And roughly 1 in 5 women and 1 in 71 men have been raped in their lifetime [10]. Although roughly a third of women who are raped are physically injured as a result, only 36 percent of those injured receive any immediate medical treatment [11]. There is little research on how many medical trainees are assaulted by coworkers. One older study of 916 female family practice residents found that 2.2 percent had been sexually assaulted by coworkers during their residency [12]. Research has shown that roughly 86 percent of all victims are assaulted by people they know [10], so a reasonable assumption can be made that some trainees are raped by acquaintances from their workplaces.

### **The Legal Landscape of Title IX and Sexual Harassment**

In 1972, Congress passed the landmark Title IX Amendment. This legislation mandated that "no person" can be denied any educational benefits or be discriminated against on the basis of sex. The law's impacts were immediate, as it applied to any public or private educational institution that received federal funding. Many more colleges and universities (including medical schools) were forced to open their doors to women, allow women on sports teams, and permit pregnant students to attend school [13].

*Alexander v Yale* (1977) helped establish the idea that sexual harassment is a form of sexual discrimination, holding that "academic advancement conditioned upon submission to sexual demands constitutes sex discrimination in education" [14]. When a student reports sexual harassment, an educational institution has a responsibility under Title IX to investigate and respond to the harassment in order to eliminate potential gender discrimination [14]. In order to convince policymakers to increase federal intervention in combating sexual discrimination in education, a landmark 1980 Department of Education report established a classification system for sexual harassment based on five categories of behaviors that formed a continuum of severity. The most severe category was titled "sexual crimes and misdemeanors" and included behaviors such as groping and rape [9].

In response to increased public awareness about campus sexual assault, the Department of Education issued a "Dear Colleague" letter in 2011 to help clarify schools' responsibilities for addressing all forms of sexual discrimination, including harassment and assault [15]. As specified in the letter, under Title IX mandates, whenever an institution becomes aware of potential student-on-student harassment, it must take "immediate action to eliminate the harassment, prevent its recurrence, and address its

effects” [16]. Certain employees, designated as “responsible employees” [17] (i.e., mandated reporters) are required to report any possible incidents to the schools’ Title IX officials. Schools are also required to institute grievance procedures to resolve students’ sex discrimination complaints that violate Title IX, as well as provide interim measures such as no-contact orders against the alleged perpetrators while allegations are being investigated [15]. However, in September 2017, the Department of Education formally withdrew this letter, so it is unclear which requirements remain in place [18].

The recent decision in *Doe v Mercy Catholic Medical Center* (2017) establishes that any hospitals that train residents are also subject to Title IX, as residency programs are a type of “education program or activity” [19]. Hospitals can be held civilly liable by the courts for failure to promptly address any form of sexual discrimination, including harassment and assault, as well as retaliation against trainees who report sexual discrimination [20].

### **When the Medical Trainee Is the Victim**

Sexual harassment and assault clearly have no place in a hospital environment. Medical workplace harassment has been shown to negatively affect individual performance and effectiveness as well as individual and group morale [21]. Female clinical researchers who have experienced harassment in their career often report that it hurts career advancement and confidence in their professional abilities [1].

There are multiple barriers that keep victims of sexual harassment, particularly sexual assault, from reporting, including shame, poor treatment by the criminal justice system, and fear of not being believed [22]. Residents and students assaulted by coworkers may face additional barriers, such as fear of retaliation from attending physicians and concerns that their privacy will be breached by their treatment team. They might have the added burden of seeing their assailant around the hospital.

Like other sexual assault victims, medical students and trainees can report to the police, but under Title IX if they are assaulted by a coworker (fellow trainee, attending physician, or other hospital staff), they also have the option of reporting it to their medical school or hospital for formal investigation and adjudication. The Department of Education gives institutions a great deal of leeway in how to conduct these investigations. Some institutions hold formal hearings in which both sides present evidence and call witnesses while others use a single decision maker who collects and reviews the evidence. When the accused are found “responsible” for violating the institution’s policies, sanctions can range from a formal reprimand to dismissal [17]. These processes, while well intended, may place additional stress on the victims due to time burdens as well as embarrassment. Hospital administrators conducting investigations might not be trained in [trauma-informed practices](#) and inadvertently cause emotional harm while interviewing victims.

Hospitals and medical schools' Title IX responsibilities can clash with the needs and desires of students and trainees who experience sexual assault. Research has shown that victims recover best when they are able to make their own informed choices regarding treatment and reporting [23, 24]. Some survivors may want support but no formal investigations or actions taken against their perpetrators [25, 26]. Mandatory reporting policies thus might keep students and trainees from seeking treatment post-assault for fear of triggering a formal investigation by the hospital or medical school. The increased federal and state scrutiny of the handling of sexual harassment and assault cases, however, may cause hospital and medical school administrators to pressure student and trainee victims to participate in internal investigations if the school or hospital learns of the assault [27]. Hospitals and medical schools might find themselves in a quandary, having to balance the autonomy and confidentiality of trainees with Title IX mandates to investigate all incidents, while also protecting other staff and patients from possible perpetrators.

### **Recommendations**

Medical schools and hospitals should have clear policies in place that discourage fraternization between trainees and attending physicians. Such policies help to establish clear boundaries between learners and teachers and eliminate some venues where sexual harassment and assault might take place. In addition, there should be increased training on professional boundaries for students, trainees, and attending physicians [28]. This training could help prevent [boundary violations](#) by attending physicians, students and trainees, and patients. Previous research has shown that poor education on proper boundaries is a common factor in this type of physician sexual misconduct [29].

Medical schools and hospitals should also reaffirm the confidentiality of medical records of students and trainees, as well as those of all staff members. It should be made clear that receiving treatment for sexual assault will not trigger a formal investigation. Title IX policies should make clear which staff members are "responsible employees" (i.e., mandated reporters) versus employees responsible for evaluating requests for confidentiality (i.e., confidential employees) [17]. Programs should consider establishing a confidential advocate on staff to guide victims through the reporting and investigation process and refer victims to other services such as counseling, legal assistance, and support groups. There should be explicit policies in place affirming that victims will not be retaliated against for reporting and that every effort will be made to separate their work assignments from the alleged perpetrators. For hospitals affiliated with colleges and universities, collaboration with existing Title IX offices is essential to create policies and procedures that are consistent with state and federal law and best practices [20].

## Conclusion

Unfortunately, medical education is not an inoculation from sexual harassment or assault. The medical community needs to make clear that sexual discrimination in any form will not be tolerated. Hospitals and medical schools have clear obligations under Title IX to address known incidents of sexual harassment and assault. Hospitals and medical schools should be proactive in protecting confidentiality, offer clear channels for reporting, and protect victims from retaliation. Special efforts need to be made to encourage vulnerable trainees to report incidences of sexual harassment or assault and receive appropriate medical and psychological care. Comprehensive research is sorely needed to assist in determining the prevalence of sexual assault within the medical community and to help inform future prevention activities.

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