

# What a Finding in a Title IX Case Means for Colleges Wrestling With Sex Assault.

*By Sarah Brown* OCTOBER 13, 2016 PREMIUM



*Wesley College, in Delaware, violated the Title IX rights of a male student who was accused of sexual assault, the Education Department said in findings released on Wednesday. Experts say the case sends a message to colleges about the importance of conducting fair investigations.* Photo by Lance Rogers

In an apparent first, federal officials have found a college in violation of Title IX, the gender-equity law, for infringing on the rights of students accused of sexual violence. The Department of Education's Office for Civil Rights had opened an investigation of Wesley College, in Delaware, in July 2015. That investigation was one of more than 300 the office, known as OCR, has conducted into colleges for possibly mishandling reports of sexual violence.

In the past, OCR's findings about colleges have occasionally alluded to the rights of accused students. But experts say the [findings in the Wesley case](#), released Wednesday, seem to mark the first time that the office has cited unfair treatment of an accused student as the primary Title IX violation.

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The federal investigation into Wesley was based on a complaint filed with OCR in 2015 on behalf of a male student who was expelled seven days after being accused of sexual misconduct, and only weeks before he was supposed to graduate. The complaint alleged that the college had withheld from the student numerous due-process rights during its sexual-assault investigation, and that three other male students had been treated the same way.

Experts on Title IX and sexual assault say the finding is significant. They say OCR seems to be making a statement about what colleges need to be doing to ensure fairness during sexual-violence investigations.

The office ramped up its [enforcement of Title IX in cases of sexual violence](#) in 2011, after releasing a "Dear Colleague" letter that required colleges to [pursue their own investigations of sexual harassment and assault](#). Since then, federal officials have received [a flood of complaints](#) alleging that colleges have violated the rights of alleged victims and created a hostile environment for learning.

The experts emphasized, though, that Title IX has always required colleges to protect the rights of those accused of sexual assault. While the underpinning of OCR's work is remedying hostile environments, the core of Title IX is equity, said S. Daniel Carter, an independent campus-safety consultant and longtime victims' rights advocate.

"The longstanding expectation under Title IX is that the accused and the accuser will both be treated equitably," Mr. Carter said. "That's not a new principle by a longshot."

The Wesley decision comes as some accused students are finding more success in lawsuits against colleges. Many of those cases have been based on constitutional due-process rights, but [one recent win](#) involved Title IX. A suspended male student alleged that Columbia University had subjected him to sex discrimination during its investigation of a sexual-assault report against him. A federal appeals court [revived his lawsuit](#) in July after a lower court threw it out last year.

The letter of findings released by the Office for Civil Rights on Wednesday includes a laundry list of things that Wesley College officials failed to do for the student about whom the complaint was filed — along with some scathing comments from the OCR officials who investigated the complaint.

The investigation found, among other things, that the accused student wasn't given a chance to respond to the allegations in an interview; that he was never informed of his options for resolving the sexual-assault complaint; and that he did not receive a copy of the incident report or other evidence against him before the hearing.

"In processing the complaint against the accused student, the college did not satisfy Title IX, the college did not comply with its own procedures and, in fact, the college acted in direct contradiction of its procedures and as a result the resolution of the complaint was not equitable," OCR's investigators wrote. They said the college had also failed [to protect the rights of other students](#) accused of sexual misconduct between August 2013 and April 2015.

### Unbalanced Enforcement?

Many advocacy groups for accused students will probably see the finding as a victory, said Colby Bruno, senior legal counsel at the Victim Rights Law Center. "All of a sudden people are going to say, See, I told you [men were getting railroaded](#)," she said. In her view, however, that's a stretch: "I don't think we have to overthink what it is."

If you read the letter of findings, Ms. Bruno said, "it's much of the same stuff that victims have brought forward under Title IX, and the schools have been found in noncompliance."

Although OCR wrote the 2011 "Dear Colleague" letter on behalf of victims of sexual assault, she said, "it's very clear that both parties need to be afforded equality."

More OCR decisions centered on complaints by accused students will probably roll out in the near future, said Brett A. Sokolow, president of the Ncherm Group, a consulting and law firm that advises colleges on sex assault and other issues. Federal officials are now looking into at least six such complaints, he said.

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The big question for Mr. Sokolow is whether the office's decisions will state that accused students have Title IX rights or conclude more specifically that men are being discriminated against under Title IX. The Wesley letter falls into the former category, he said.

One violation that OCR cited in the Wesley case was that the college had put the accused student under interim suspension before interviewing him. That language struck Peter F. Lake, a professor at Stetson University's College of Law who is an expert on Title IX, as noteworthy. Temporarily suspending an accused student is among the interim measures that colleges often take to try to ensure that the alleged victim of a sexual assault is safe.

"That may change some practices out there," Mr. Lake said of OCR's conclusion. "They clearly don't like the idea of going to interim measures without giving someone the chance to chime in." Such situations could prove thorny, he said: Officials might be unable to interview an accused student right away — if the student refuses to cooperate, for instance.

Mr. Sokolow sees the Wesley letter as a wake-up call for colleges. "We've been saying for some time that colleges seem to be out of balance in terms of the rights of equal dignity," he said. Many college officials seem to believe that Title IX primarily protects the rights of sexual-assault victims, he said. "Now OCR is saying that there needs to be equity for all parties."

More accused students may turn to OCR complaints as a form of recourse after the Wesley finding, Mr. Lake said.

Ms. Bruno said there's a clear lesson for colleges in this case: "If you have a policy, and it doesn't violate Title IX, stick with your policy — no matter how hard it is."

*Correction (10/13/2016, 1:17 p.m.):* An earlier version of this article mentioned Brandeis University as one of the colleges with complaints involving accused students that the Office for Civil Rights would soon be deciding. OCR has in fact closed that case, which is moving through the courts. The article has been updated to reflect that.

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