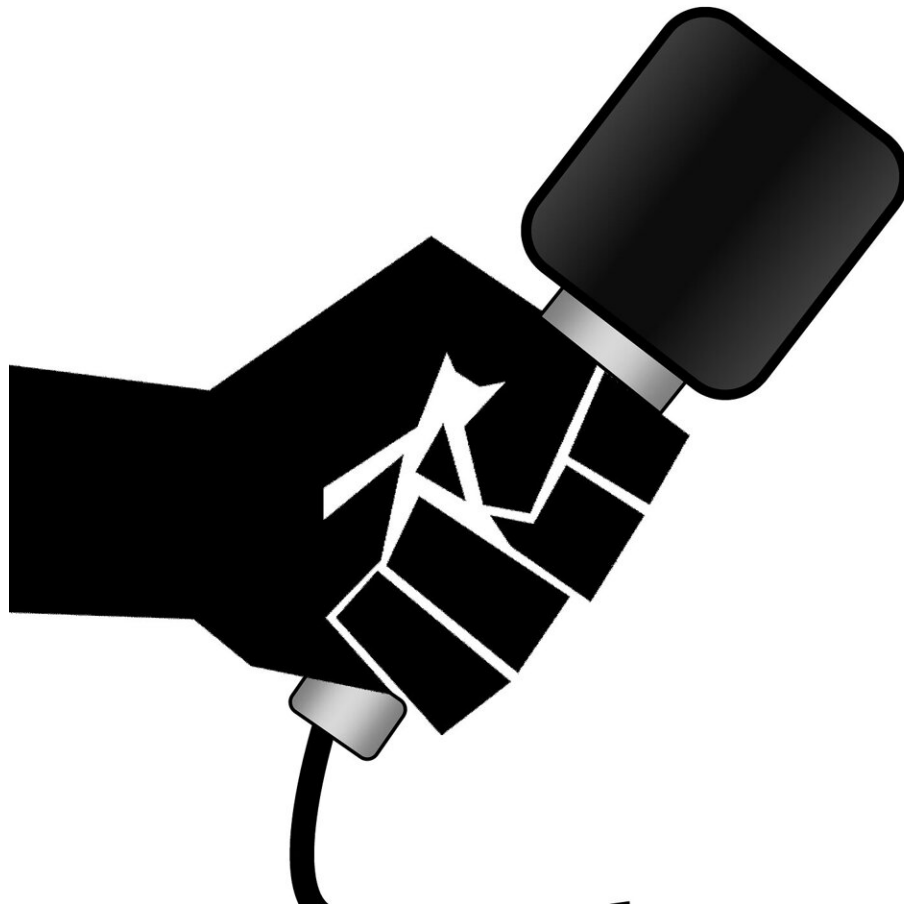


# Study recommends how to prevent 'weaponizing' Title IX to cover up sexual assault

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When a sexual assault survivor tells their story to a journalist, they may have any number of reasons for doing so, but almost certainly not because that reporter would be required to pass the information on to university administrators. Yet Title IX, the landmark gender equality in higher education legislation, has been used to make student and university-affiliated journalists required reporters of sexual assault in an attempt to prevent them from reporting publicly on the issue. A new study from the University of Kansas titled "Investigative vs. Mandatory Reporting: Weaponizing Title IX Against Journalists" explores such situations and recommends how to avoid such use of the law.

In 2019, National Public Radio and Pro Publica published several articles about [sexual assault](#) by faculty at the University of Illinois. Administrators responded by designating affiliated journalists at the Springfield NPR station mandatory reporters. While that may be one of the most high-profile cases, it is not the only situation in which institutions have used Title IX as a way to prevent reporting on sexual assault. That indicates a troubling trend of using the law to cover misdeeds instead of as a way to protect and help survivors, the authors wrote, noting that it could be stopped through legal and policy changes as well as "extra-legal" practices by journalists.

Genelle Belmas, associate professor of journalism & [mass communications](#), and Harrison Rosenthal, an attorney who recently completed his doctorate in media law at KU, have published their study in the NYU Journal of Legislation and Public Policy.

During the Obama administration, Title IX was expanded to include "wide-net" requirements of "mandatory reporting" or "responsible employees." Any university employee with such a designation is required to report to supervisors any case of sexual harassment or sexual assault they hear of. While the intent is to ensure cases of abuse are not ignored, it has been used to ensure student journalists or those associated with

public media affiliates such as National Public Radio stations do not have anonymity with sources discussing abuse.

"It frustrates the purpose and objective of Title IX when it's weaponized like this," Rosenthal said. "We've learned it is unfortunately not a unique incident and student journalists especially have been designated mandatory reporters in higher ed and in K-12."

In the Illinois case, the stories still came to public light because of the partnership with Pro Publica, a [media outlet](#) not affiliated with any university, unlike roughly two-thirds of National Public Radio affiliates, the authors wrote. In that case, the university was not able to prevent the outlet's coverage and did not attempt to do so. However, the designation of NPR affiliates associated with the university represents a troubling effort to keep publicly damaging information from reporting in the media, the authors wrote.

The authors traced how Title IX guidelines both widened reporting and later gave more leeway to those accused of sexual harassment or assault under former President Trump's Secretary of Education Betsy DeVos.

"There is nothing stopping universities from implementing these rules on any employees they'd like. The DeVos rules are very clear on that," Belmas said. "K-12 rules are also very clear: Everyone reports, but higher ed rules have more leeway on who is a 'responsible employee.'"

The authors wrote that there is no blanket policy at American institutions for how they designate which employees are mandatory reporters, though schools in the South tend to use a wide-net approach, while northern schools tend to be narrower. Authors wrote, however, that legislators and universities should do away with the wide-net approach, especially as it applies to student and affiliated journalists.

"It is a perfect confluence for an end run around the rules and the intention of the law," Belmas said. "If these requirements are in place for journalists, they cannot guarantee anonymity to these students anymore."

Belmas and Rosenthal made several recommendations to prevent misuse of Title IX.

"The most effective way to do this would be to amend the law itself," Rosenthal said. "That probably will never happen, given the divided, political nature of the country and federal government and what would need to happen to make it a reality."

State governments would have the ability to prevent such tactics, however. Title IX provides states authority to amend their own laws on who is required to be a mandatory reporter. Perhaps the simplest route, the authors wrote, is for institutions to change their own policies on who is a mandatory reporter and ensure that both student and affiliated journalists are not designated as such.

"It's as simple as universities knowing this is a problem, and because of that, through the stroke of a pen, saying, "We are going to excuse journalists from being mandatory reporters," Rosenthal said. "Title IX and the [federal government](#) give them the power to make that change."

Whether governments or institutions make legal or policy changes, journalists have options to ensure their reporting on sexual assault or harassment is not stifled, the authors wrote. They can partner with off-campus affiliates such as NPR's work with Pro Publica in the Illinois case. Reporters can also share information via methods universities cannot regulate, such as personal social media accounts or news outlets outside of the university's purview to bring such information to light. In the meantime, misuse of Title IX is damaging to victims, free press and the public, the authors said.

"That is a direct assault on Title IX and the First Amendment. It's subverting a law intended to provide protections for sexual assault survivors," Belmas said. "That is very pernicious to me. How dare anyone hide their misdeeds behind the law itself?"

**More information:** Investigative vs. Mandatory Reporting: Weaponizing Title IX Against Journalists: [nyujlpp.org/wp-content/uploads ... Belmas Rosenthal.pdf](https://nyujlpp.org/wp-content/uploads/2022/06/Belmas-Rosenthal.pdf)

Provided by The University of Kansas

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