



## DeVos takes brave step with college sex assault policy

Debra Saunders

September 19, 2017

Education Secretary Betsy DeVos talked to lots of people — victims, students who said they were falsely accused, and the family members of both — before she started to reform a policy instituted under President Barack Obama that instructs college campuses on how to deal with allegations of sexual assault.

She came to a simple conclusion, she said in a recent speech: “One rape is too many. One assault is too many. One aggressive act of harassment is too many. One person denied due process is one too many.”

That last sentence is key as DeVos has taken upon herself the difficult task of righting a pendulum that has swung too far.

In the not so distant past, university administrators often failed to protect female students or establish a culture that discouraged aggressive predatory behavior. In such an atmosphere, victims of sexual assault had good reason to fear reporting crimes committed against them lest they be subjected to an onslaught of questions that looked for fault in their behavior, instead of that of their attackers.

With the rise of feminism, the paradigm shifted. Authorities generally stopped looking for excuses to explain away violent or abusive acts. In the criminal justice system, the word was out — don’t blame the victim.

In 2011, the Office of Civil Rights for the Education Department sent a “Dear Colleague” letter to colleges with new guidelines for handling sexual assault cases. The letter threatened to withhold funds from institutions that did not adhere to the new policy, which requires schools to investigate all complaints of sexual assault and details how they must conduct disciplinary proceedings.

Denied due process

Desperate not to appear insensitive to victims of sexual assault, academia went overboard. The burden shifted from the accuser to the accused. The horror stories made news. Male students charged with assault were presumed guilty. Tribunals had the ability to expel students who were denied due process.

“Definitions of sexual wrongdoing on college campuses are now seriously over-broad,” four Harvard law professors wrote in a paper, “Fairness to All Students Under Title IX,” that challenged the Obama policy. “They go way beyond accepted legal definitions of rape, sexual

assault, and sexual harassment. They often include sexual conduct that is merely unwelcome, even if it does not create a hostile environment, even if the person accused had no way of knowing it was unwanted, and even if the accuser's sense that it was unwelcome arose after the encounter. The definitions often include mere speech about sexual matters."

The Harvard law professors noted, "The procedures for enforcing these definitions are frequently so unfair as to be truly shocking. Some colleges and universities fail even to give students the complaint against them, or notice of the factual basis of charges, the evidence gathered, or the identities of witnesses."

Here's the interesting part. The four Harvard professors — Elizabeth Bartholet, Nancy Gertner, Janet Halley and Jeannie Suk Gersen — are self-described feminists.

Their decision to release this memo, said Walter Olson, a senior fellow at the Libertarian-leaning Cato Institute, sends the message that if you want to defend the policy, "you're not going to have to argue with Libertarians and conservatives" only, you are going to have to argue with left-leaning legal scholars who also care about fairness and due process.

DeVos didn't detail how the rules will change, but said her office will seek feedback from the public and universities.

"So much momentum has built up for federally driven changes in campus discipline and rules, so much momentum for unreasonableness," Olson said, but the unfairness was so striking that it brought together feminists, Libertarians and Trump supporters.

Still, he added, "It took a great deal of courage for her to do this. It would have been easy for her to find some way to dodge it, or postpone it."