



## CAMPUS COUNSEL

A legal blog written for administrators, HR professionals, in-house counsel, and deans at colleges and universities

### What Colleges and Universities (and the Public) Can Learn From the Stanford Rape Case

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Back in May-several weeks before the Stanford case became national news-local media covered a terrifying story of a student at Boston University who was sleeping in her dorm room, when she awoke to a stranger sexually assaulting her. When the woman demanded the stranger to stop, he allegedly refused, saying, “baby, you want some more.” Investigation, which included surveillance camera footage, revealed that the unwelcome intruder was a blonde-haired, blue-eyed MIT student and basketball player named [Samson Donick](#). Not surprisingly, Donick’s attorney says he’s “looking forward to the true facts coming out in this case,” and that his criminal record-free client has a “wonderful character.” In the meantime, Donick has been banned from Massachusetts-except for court appearances and the like-and most likely hightailed it out of here [once his father posted his \\$10,000 bail](#).

Fast forward about a month later to the Stanford case: another blonde-haired, blue-eyed, top national university student athlete, who attempted to have sex with a woman who was unconscious and got caught in the act. This one also had soap-opera-like name, Brock Turner, a previously spotless criminal record, and a father who supports him unconditionally. One can only hope that if the Bay State proves its burden against Donick, he will receive a harsher punishment than 6 months in jail and a [loss of appetite](#).

The similarities between Donick and Turner are striking, as will be the public outcry if Donick is convicted and receives a similarly light sentence. Comments written about Stanford in response to the media coverage of the Brock Turner rape trial also bring to light the many misconceptions that the public has about the role colleges and universities play in responding to allegations of sexual misconduct by and against its students.

One common misconception is that Stanford could have done a better job in its response to the complaint. Under Title IX, colleges are required to conduct adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence. It appears that Stanford did this by conducting an investigation within two weeks of receiving the allegations, and banning Turner from stepping foot on its campus as a student or [otherwise](#).

However, because Stanford cannot reveal much more about its investigation than that, it leads to another misconception that the university is hiding something untoward. In reality, the Family Educational Rights and Privacy Act (FERPA) prohibits a postsecondary institution from disclosing anything other than the final results of a disciplinary proceeding to a person other than the alleged victim. Such disclosure can only be made if the institution determines that the accused student is an alleged perpetrator of a crime of violence or a non-forcible sex offense, and that the accused student has committed a violation of the institution's rules or policies. Moreover, the disclosure of final results may include only the name of the student perpetrator, the violation committed, and any sanction imposed by the institution against the student. Many colleges would welcome the chance to prove their good faith and appropriate actions in responding to allegations of sexual assault, [but FERPA simply does not allow it](#).

Other misconceptions include that Stanford's obligations would somehow have been different had the incident occurred off campus or if the victim was also a student. [The Office of Civil Rights \(OCR\)](#) has clarified that colleges have an obligation to investigate alleged off-campus sexual violence "that occurs in the context of an education program or activity of the school," and activities at fraternity houses (and reasonable extension, their surrounding areas) are "clearly covered." In this regard, OCR has also explicitly stated that "Title IX protects third parties from sexual harassment or violence in a school's education programs and activities." Although the victim was not a student, [Stanford reached out confidentially to offer her support and to tell her the steps it was taking](#). This is something all colleges should do when they learn the identity of third-party victims in Title IX cases.

**Client Tip:** *The Stanford rape case serves to remind institutions of their legal obligations under Title IX and FERPA, and helps to clarify some of the common misconceptions about what these obligations are. Colleges and universities must be prepared to respond to cases involving sexual assault, regardless of whether victim is a student or where the incident occurred, and protect private records even in the face of intense public scrutiny.*