

How should campus sexual assault accusations be judged?

## **Standards of evidence are politically contested. But the most crucial issue is due process.**

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When secretary of education Betsy DeVos announced that she was rescinding Obama administration guidelines for handling sexual assault on college campuses, there was reason to be suspicious. Given the president's behavior, the Trump administration has little credibility on issues of sexual assault. And victim advocates were alarmed earlier this year when a Justice Department memo called for making assault victims' sexual histories admissible in hearings. DeVos's push to tighten standards for determining guilt in assault cases on campus could be seen—and was

seen by many—as a retreat from supporting victims.

But DeVos raised an important issue acknowledged by observers across the political spectrum: universities have been ill-equipped to handle accusations of sexual assault, and their procedures need reform. As Laura Kipnis stresses in *Unwanted Advances* ([reviewed in this issue](#)), the effort to adjudicate assault charges to meet federal civil rights standards has led individual college administrators to violate norms of due process.

Current rules put schools in an unusually difficult position. They are called on to examine intimate aspects of students' lives and to resolve cases in which the alleged victim and alleged perpetrator are often living on the same campus. To reach a responsible conclusion, administrators must find a way resist gender and racial stereotypes about who is likely to be victim or perpetrator and to resist as well their instinct to protect the school's image.

The Obama administration guidelines required schools to use a “preponderance of evidence” standard in assessing such cases, which is often explained as a 50.1 percent chance that the accused is guilty. The Trump administration recommends using the more rigorous “clear and convincing” standard in judging whether evidence shows that a crime has been committed. Both standards are less than the “beyond a reasonable doubt” rule that prevails in criminal courts.

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Although politically charged, concerns about standards of evidence are not as crucial as concerns about overall due process. When a task force of the American Bar Association convened a meeting last spring on how to balance the rights of victims and the accused on campus, advocates for both parties could not agree on standards of evidence, but they could agree that the procedure for assessing guilt must be fair.

The task force concluded that a fair process would have these elements: the parties would have attorneys present at all hearings, and attorneys would be allowed to speak; the parties would be able to see all the evidence; written cross-examination would be allowed; and the outcome would be determined by the unanimous vote of a panel, not one person. Although the task force participants still disagreed on standards of evidence, they all judged that deliberations with such safeguards would be fair—and much more so than they are now.

Experiencing sexual assault is heartbreaking and often life-altering. Being wrongly accused is its own kind of trauma. Schools need a process that does a better job of providing justice to both parties.

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