

In Focus

SEXUAL
ASSAULT

A Promise Unfulfilled

Students hope Title IX complaints will transform colleges' response to sexual misconduct. So far the process has rarely met their expectations.

By JONAH NEWMAN and LIBBY SANDER

IN A RECENT SURGE of demands that colleges step up their response to rape, students have put their faith in the federal civil-rights law known as Title IX.

Meant to prohibit sex discrimination, the law requires colleges to investigate and resolve reports of sexual misconduct—including assault—whether or not the police

are involved. It has inspired the name of a national network of self-described survivors (the IX Network) and a grass-roots campaign to end sexual violence on campus (Know Your IX). Two women who filed a federal complaint against their university last year, alleging that it mishandled their cases, had the law's Roman numerals tattooed on their ankles.



JASON P. SMITH FOR THE CHRONICLE

"Maybe nothing comes from my Title IX complaint," says Angie Epifano, who filed one against Amherst College. But it's out there, she says, bearing a message: "You don't have to be silent."



JOON POWELL FOR THE CHRONICLE

Sarah O'Brien, a 2013 Vanderbilt U. graduate, filed a Title IX complaint, calling the university's response to victims of sexual assault inadequate. She has serious doubts about the process: "I don't see these complaints making the changes that we want."

Since then, students and alumni around the country have filed dozens of complaints with the U.S. Department of Education, against the Universities of Chicago, of Colorado, and of Texas-Pan American, as well as Harvard, among other institutions, faulting them for inadequate responses to reports of rape and asking federal authorities to scrutinize campus policies.

But the power and influence that students attribute to Title IX to transform how colleges handle sexual assault might be more than the law's enforcement process can deliver. A *Chronicle* analysis of Title IX complaints filed with the Department of Education shows that from 2003 to 2013, fewer than one in 10 led to a formal agreement between federal and college officials to change campus policies.

That fraction reveals a process that, for all the hope students place in it, can be fraught with confusion and conflicting expectations, and which often brings unsatisfying outcomes. In the 10-year span, about three-quarters of Title IX complaints involving alleged sexual harassment, a category that includes assault, were dismissed or administratively closed. Sometimes that was because a student didn't provide consent for an investigation, or filed the complaint after too much time had passed.

Yet the Education Department's Office for Civil Rights receives more Title IX complaints each year. The number of complaints against colleges involving alleged sexual violence has tripled since the office began tracking them, from 11 in the 2009 fiscal year to 33 in just the first half of 2014. Complaints of sexual harassment represent a growing share of all Title IX complaints: nearly 30 percent in the 2012-13 academic year, the *Chronicle* analysis shows.

Students who fault their institutions for mishandling reports say that filing a federal complaint can be a catharsis. They are telling their stories—and seeking justice. The appeal of the process, they say, is that it allows them to apply public pressure, hold colleges accountable, and push for change beyond their own experiences.

As the movement against campus sexual assault has gained momentum, the Obama administration has raised the bar on expectations for colleges. Last week a White House

Sexual Assault in Context

- The federal civil-rights law known as Title IX **requires colleges to investigate and resolve reports of sexual assault** whether or not the police are involved.

- Dozens of colleges **face federal** complaints and investigations under Title IX over their handling of alleged assaults on campus.

- The White House Task Force to Protect Students From Sexual Assault **released recommendations** last week to provide a "road map" for students who want to file complaints, and to help colleges combat campus rape.

task force released a set of stringent guidelines to help colleges combat rape on campus and unveiled a website, NotAlone.gov, to provide victims with a "road map" in filing complaints.

White House officials are taking a closer look at the Title IX enforcement process, too. The administration has declared that federal agencies will work together in a more coordinated fashion to ensure that colleges follow the law. And they'll be more transparent in their efforts, sharing key documents and data with the public on the new website.

These promises come as students and college officials alike are questioning how the enforcement process works, and for whom.

Students say that the law lacks teeth, and that its enforcement tilts toward helping colleges comply with the law rather than punishing them. Some victims of assault say they see parallels between how colleges treat alleged perpetrators and how the Office for Civil Rights treats colleges: trusting that all parties acted in good faith and will do what's right in the future.

Despite existing federal guidance, campus

officials say they want a clearer sense of their legal obligations under Title IX before they, too, get hit with complaints from students or a compliance review by the department. Many colleges are hiring new staff—Title IX coordinators in particular—and turning to a burgeoning market of legal and risk-management consultants for help interpreting those obligations in practical terms.

Catherine E. Lhamon, the department's assistant secretary for civil rights, believes that Title IX has great potential to show colleges how they can improve the way they deal with sexual misconduct.

Enforcing the law, she says in an interview, can't erase past trauma. "But we can say, 'This shouldn't happen again in the future, and here are the steps to make sure those things don't happen again.' I'm a believer in the value of holding people to a promise about what they will deliver."

IN THE FALL of 2012, Angie Epifano published a first-person account of her rape by a fellow student at Amherst College, where campus officials, she said, had brushed off her report. The article went viral.

Around the same time, Andrea L. Pino, a student at the University of North Carolina at Chapel Hill who said she was assaulted there that year, was reading up on federal law, including colleges' obligations under Title IX. Students aren't aware of this, she thought. We don't know Title IX guarantees us protection.

Ms. Pino soon linked up with Annie E. Clark, a recent graduate who also felt that

"We had been betrayed by an institution we had trusted. Then ... we put our faith in another institution that betrayed us."

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Catherine Lhamon, assistant secretary of education for civil rights, says enforcing Title IX can't erase past trauma. But, she adds, "We can say, 'This shouldn't happen again in the future, and here are the steps to make sure those things don't happen again.'"

LEXEY SWALL FOR THE CHRONICLE

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university officials had not responded properly to her report of rape. In January 2013, the two joined several other women in filing a federal complaint—and then got the “IX” tattoos. Elsewhere, other students were also soon drafting complaints against their institutions: Occidental College, the University of Southern California, the University of Connecticut.

For many students, filing a federal complaint under Title IX seems like the best available option. The criminal-justice system can seem daunting, and prosecutors often decline to pursue cases involving one party's word against another's. In civil lawsuits, courts generally adhere to a narrower interpretation of colleges' obligations under Title IX than the Education Department does.

Connected with one another by social media and a shared sense of urgency, sexual-assault victims on dozens of campuses have placed Title IX at the center of their strategy for change. Ms. Clark and Ms. Pino, presiding over the IX Network, have traveled around the country to

meet with students and help many of them file complaints, too.

Several months after publishing her account, Ms. Epifano, who had left Amherst, learned that the college had hired a legal team to look into her allegations and a host of grievances that surfaced from other students. Amherst had strong policies in place, the team concluded. But in some cases, like hers, those procedures hadn't worked very well.

Jarred by the findings, which she interpreted as an attempt to characterize her case as an “outlier,” Ms. Epifano began thinking that she might file a federal complaint. She had heard about Title IX's promise, and also its flaws. In November 2013, she and an Amherst alumna jointly filed a 113-page federal complaint against the college.

Nearly six months later, Ms. Epifano is hopeful but realistic. For her, the outcome of the process is not the only value of filing.

“Maybe nothing comes from my Title IX complaint or any other Title IX complaint,” she says. What matters is that it's out there,

White House Raises the Bar for Colleges' Handling of Sexual Assault

The White House Task Force to Protect Students From Sexual Assault last week provided practical instructions for colleges to identify, prevent, and respond to sexual misconduct. It also prescribed several steps to improve and bring more transparency to federal enforcement of applicable civil-rights laws.

President Obama created the group in January, promising a coordinated federal response to sexual assault on campuses. The group's membership includes the U.S. attorney general and leaders of several other cabinet-level agencies, including the Departments of Defense and Education.

The task force spent the past three months gathering information from thousands of people—students, victims, alumni, administrators, law-enforcement officials, campus professionals—about how colleges handle sexual assault. Under the new guidance, colleges will answer to heightened expectations from Washington.

Among other recommendations, the task force calls on colleges to:

- Conduct “climate surveys,” beginning next year, to gauge the prevalence of sexual assault and learn more about students' attitudes toward it.
- Train campus officials in how to respond to victims of sexual assault.
- Amend existing policies to provide victims with better options to speak confidentially with certain campus officials.
- Adapt campus disciplinary processes to abide by new directives from the Department of Education.

The report also makes clear that the federal government will take a harder line on enforcing Title IX—which outlines colleges' legal obligations to investigate and resolve reports of sexual assault whether or not law-enforcement authorities get involved—and provide much more information about it.

A new website, NotAlone.gov, provides not only a greater array of resources to victims of sexual assault, but also a collection of previously hard-to-find data and documents. Those include court filings from the Department of Justice related to campus sexual violence, and agreements between colleges and the Department of Education's Office for Civil Rights on similar matters.

bearing a message to other students: “You don't have to be silent.”

SHIFTS IN POLICY and politics, meanwhile, have opened the door to complaints. Education Department guidance in 2001 increased colleges' responsibility to recognize and act upon reports of sexual misconduct; another round of guidance a decade later set a lower standard of evidence for campus sexual-assault cases and reminded institutions, in firm language, that they must investigate and resolve all reports.

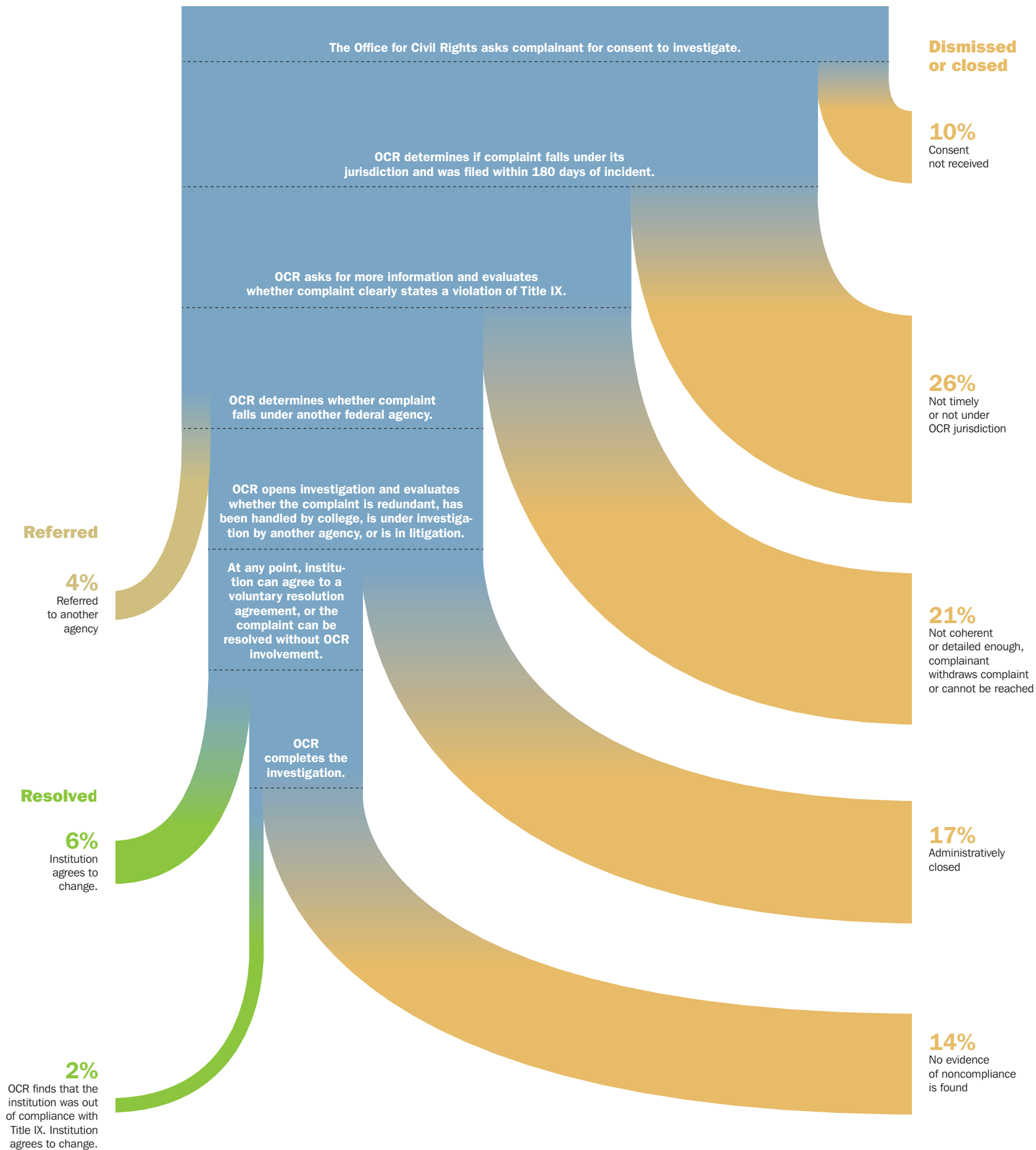
When Ms. Lhamon was tapped to lead the Office for Civil Rights in June 2013, campus sexual assault had already begun to draw national attention. Almost a year into her tenure, it has become a marquee issue for the Obama administration.

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How a Title IX Complaint Is Processed

About three-quarters of sexual harassment complaints under Title IX are dismissed or closed by the Office for Civil Rights, based on a *Chronicle* analysis of 801 complaints filed from 2003 to 2013. Here's what the process looks like, and why most complaints don't lead to the changes on campuses that student activists are looking for.

After a complaint is filed ...





TOM BAUER

Royce Engstrom, president of the U. of Montana at Missoula, says officials there had to sign off on a federal agreement before knowing the full results of the government's investigation.

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"Colleges and universities can no longer turn a blind eye or pretend rape and sexual assault don't occur on their campus," Vice President Joseph R. Biden said last week as the White House released the new guidelines for colleges. "Everybody has a responsibility to act, from college presidents to college students."

Two Democratic senators who pushed this year to reform the way the military handles sexual assault within its ranks have also taken notice. Before the White House released its report, Sen. Kirsten Gillibrand, of New York, and Sen. Claire McCaskill, of Missouri, called for additional funds for the Office for Civil Rights to expand its work on campus sexual violence.

Ms. Lhamon, meanwhile, has visited OCR's 12 regional offices, given speeches at think tanks and colleges, and invited campus officials to share their questions and concerns. However, absent additional funds, she is leading an office that has been asked to do more with less. Responsible for enforcing several civil-rights laws in educational settings, the office has 27 percent fewer staff members today than it did 20 years ago, to field three times as many complaints.

Ms. Lhamon acknowledges that the Office for Civil Rights expected an increase in complaints when it issued its policy guidance in 2011. Despite the heavier workload and smaller staff, she is working on new processes, she says, that allow for timely, "fulsome" investigations. The office now tries to "step back" from a particular complaint against a college, she says, and determine whether broader patterns of noncompliance exist. How has the institution responded to other, similar incidents? Does a hostile environment exist?

The message Ms. Lhamon and her office send to colleges is alternately collaborative and tough. In February, at a gathering of about 250

college presidents, Title IX coordinators, and student-affairs leaders at the University of Virginia, she urged them to act quickly to update their policies on sexual assault and improve the climate for victims. "I know we can do that together," she said. "And I also know that if you don't want to do it together, I will do it to you."

WHETHER THE CIVIL-RIGHTS office investigates a complaint or initiates its own compliance review, it may work with campus officials to draw up a "resolution agreement" detailing how a college must change its policies. The agency may also issue a "letter of findings" after concluding an investigation.

Sometimes those two documents leave college officials wondering if they're being punished or shown a way forward.

At Tufts University, perceived contradictions between a resolution agreement and a letter of findings in April led to a public standoff with the Department of Education. Tufts withdrew from a binding agreement after learning that the agency would include in a letter of findings that the university was in violation of Title IX.

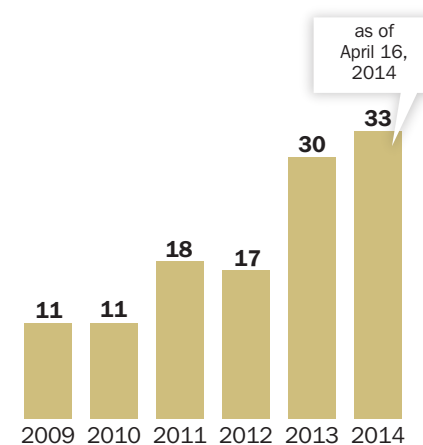
"I felt that I was sort of misled," said Mary R. Jeka, the university's senior vice president and general counsel.

In another case, at the University of Montana at Missoula, officials from the Departments of Education and Justice—which jointly investigated the university's handling of rape allegations against football players—praised the ensuing agreement as a "blueprint" for colleges to prevent sexual harassment and assault.

Such agreements are specific to institutions and, technically, are not directives from the Education Department meant for all colleges to follow. "But you'd be a fool not to be guided

Sexual-Violence Complaints Rise Sharply at Colleges

Since the Office for Civil Rights began tracking sexual-violence-related Title IX complaints in 2009, the number of complaints filed against colleges has tripled.



Note: The fiscal year begins October 1.

SOURCE: DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS

by them," says Peter F. Lake, a law professor and director of the Center for Excellence in Higher Education Law and Policy at Stetson University College of Law. "That's a confusing message for anybody to hear."

The enforcement process can mystify even colleges in the midst of an investigation. In Montana's case, university administrators collaborated for several months with federal

officials to craft the resolution agreement. It codified many practices that Montana had recently put in place and also laid out new ones: developing a confidential tracking system for reports of sexual misconduct, for instance, and conducting annual “climate surveys” to gauge students’ familiarity with the process.

But university officials didn’t see the Department of Justice’s 31-page letter of findings until just before it was released. “We were in what I felt was a difficult position of signing off on a resolution agreement without ever seeing the findings,” says Royce C. Engstrom, the university’s president.

There were other surprises, like the government’s use of the term “blueprint” to describe the policies set forth in Montana’s agreement as a model for colleges across the country.

One provision in particular, defining sexual harassment, sparked protests from civil-liberties advocates. Ms. Lhamon later said the settlement applied only to Montana and did not represent the official policy of the Departments of Education or Justice.

Mr. Engstrom shared that view. “We were working on the situation before us at our university,” he says. “We weren’t trying to solve the rest of the world’s problems. We weren’t trying to put in place something that we felt applied to other institutions.”

Resolution agreements often create more confusion than clarity for other colleges trying to understand their obligations under Title IX, says Brett A. Sokolow, chief executive of the National Center for Higher Education Risk Management, a consulting and law firm. Federal officials “wait until the college screws up, they write a letter, they call it a ‘blueprint,’ and nobody knows what they are supposed to do,” he says.

So they turn to consultants like him, who offer training sessions and webinars, professing to have the answers. Mr. Sokolow’s Association of Title IX Administrators offers a free sexual-misconduct model policy.

“This policy has helped hundreds of campuses as they strive to comply with Title IX,” the website states. “Let it help yours.”

AS COMPLAINTS have proliferated, word is getting around among students that the process can be taxing. For the 16 percent of sexual-harassment complaints that the agency fully investigates, resolution takes, on average, almost nine months. And only one in 10 of those investigations ends with a finding that a college was in violation of Title IX.

In addition to the long period of waiting and uncertainty, some students say, there is plen-

ty of legal and policy jargon to decipher, often without the help of a lawyer. And occasionally, filing a complaint requires difficult conversations with investigators about the details of an assault and its aftermath.

It can also mean not having a say in the final outcome. Alexandra Brodsky, a Yale University law student who was an undergraduate when she and 15 students and alumni filed a Title IX complaint against the university in 2011, says they were surprised and disappointed to real-

“We were working on the situation before us at our university. We weren’t trying to solve the rest of the world’s problems.”

ize that they wouldn’t be at the negotiating table as the Education Department and the university crafted a resolution agreement.

“We were a group of people who felt that we had been betrayed by an institution we had trusted,” she says. “Then, to resolve that, we put our faith in another institution that betrayed us.”

The resolution agreement in the Yale case called, among other things, for the university to conduct periodic assessments of the campus climate on sexual misconduct, and praised the university for “proactively” introducing new policies to create a safer, more supportive environment. The agreement did not, however, “constitute an admission that the university is not in compliance with Title IX,” it stated.

When it was announced, Ms. Brodsky says, Yale was able to frame that as a positive development. “It really halted the conversation,” she says. “What most of the country heard was everything was fine in New Haven.”

Sarah O’Brien, too, has doubts about the process. Ms. O’Brien, who graduated from Vanderbilt University in December, says she

was assaulted in 2010. She filed a Title IX complaint against the university this past November, alleging that its response to victims of sexual assault was inadequate. The Office for Civil Rights has since begun a broader compliance review of the university.

Now, even as Ms. O’Brien leads campus workshops teaching students, male and female, about their rights under Title IX, she has left the IX Network and says she no longer advises students to file complaints under the law. Instead, she is pouring her energy into a nonprofit group she started to create a home in Nashville where college-age victims of sexual assault can begin, as she puts it, a “healing journey.”

Title IX enforcement is “a horribly broken process that needs to be re-evaluated,” Ms. O’Brien says. “I don’t see these complaints making the changes that we want.”

But the dozens of complaints now before the Education Department—and the heightened scrutiny from the White House—may spell change. Some complaints filed in this recent wave of activism have been pending for more than a year, and Ms. Lhamon says her staff is working to resolve them.

Student activists with the Know Your IX campaign say they are encouraged by the White House’s new recommendations. But those steps, they say, still fall short, and don’t address a central tenet of students’ activism: that the Office for Civil Rights impose fines on colleges that run afoul of the law.

Ms. Brodsky, in particular, is troubled by flaws in the enforcement process and the low proportion of complaints that lead to change. She and other activists have pushed the Education Department to more forcefully compel colleges to comply with Title IX. Last week, the department satisfied one of the activists’ demands by making public the names of institutions—55 in all—under investigation for alleged violations involving sexual harassment and assault.

Students would also like to see the department involve complainants in negotiating resolutions, and resolve cases more quickly. Ms. Brodsky is hopeful that such steps can achieve the kind of culture change that she and other victims want.

“There’s an incredibly affirming promise lurking in there,” she says of Title IX. To students, especially survivors of an assault, Ms. Brodsky says, the law carries a weighty message: You have rights.

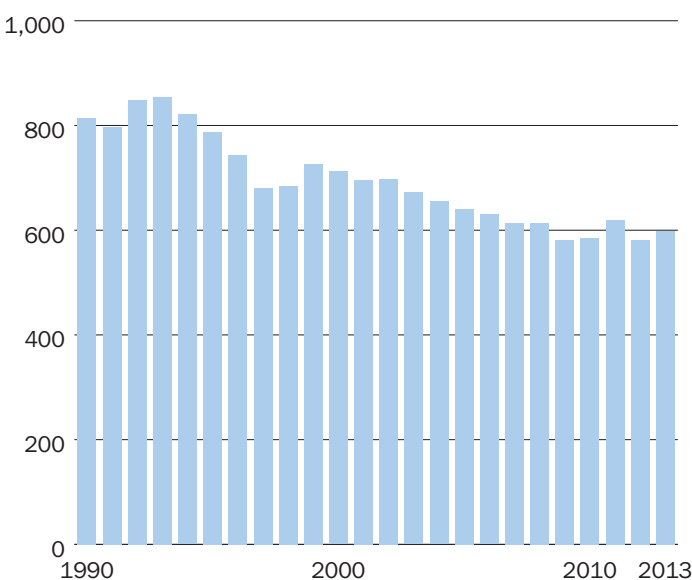
“We’re clinging to the promise,” she says. “I don’t want to give up on Title IX.” ■

Sara Lipka contributed to this article.

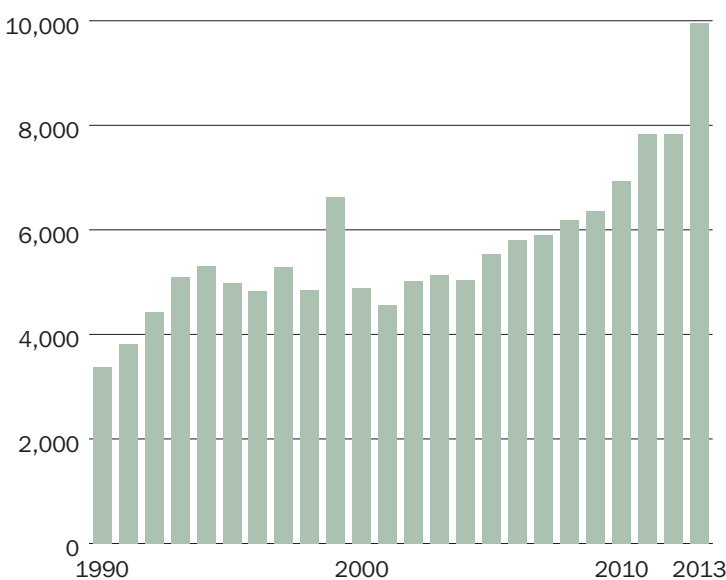
A Civil-Rights Office Squeezed for Resources

Since 1990, the Office for Civil Rights has seen its staff shrink by 27 percent as the number of complaints it receives has tripled. The office enforces laws relating to discrimination based on sex, age, race, color, national origin, and disability in educational institutions.

OCR staff



Total complaints received



SOURCE: DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS