



**SASPA: THE KEY TO HANDLING SEXUAL ASSAULT ON CAMPUS IN NEW JERSEY**

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I. INTRODUCTION

On-campus sexual assault is a crisis affecting men and women all over the country.<sup>1</sup> Under Title IX of the Civil Rights Act,<sup>2</sup> all public institutions are “legally required to respond [to] and remedy hostile educational environments and [the] failure to do so is a violation that means a school could risk losing its federal funding.”<sup>3</sup> Title IX proceedings, however, can potentially lead to inefficient decision-making, and the remedies may vary dramatically, leaving survivors

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1. *See Campus Sexual Violence: Statistics*, RAINN, <https://www.rainn.org/statistics/campus-sexual-violence> (last visited Jan. 14, 2020).

2. Education Amendments of 1972, 20 U.S.C. §§ 1681–1688 (2012).

3. *Title IX, KNOW YOUR TITLE IX*, <https://www.knowyourix.org/college-resources/title-ix/> (last visited Jan. 14, 2020).

retraumatized and unsure of what to expect.<sup>4</sup> In 2018, the Secretary of Education, Betsy DeVos, published drafts of regulations that would give institutions greater leeway in deciding how to implement Title IX.<sup>5</sup> Therefore, it is likely that there will always be issues with the implementation of Title IX, as the law has become increasingly more affected by politics.<sup>6</sup> So, while it remains a choice for victims at public universities, Title IX may not always be the best choice for victims.

Although a victim of sexual assault on a public college campus always has the right to file a claim under Title IX and may obtain relief,<sup>7</sup> it may be easier to do so through the civil court system. In New Jersey, victims of acquaintance sexual assault may avail themselves of the Sexual Assault Survivor Protection Act (SASPA), which was passed in 2015, either in conjunction with a Title IX proceeding or instead of it.<sup>8</sup>

SASPA offers victims of sexual assault the option to get a final protective order against their abuser through a hearing in family court.<sup>9</sup> If the court issues a final protective order, the defendant is restricted from going anywhere that the victim goes frequently, including the victim's school.<sup>10</sup> If school is one of the locations in which the defendant is prohibited from going, it becomes a crime for the defendant to be on the premises.<sup>11</sup> A SASPA protective order could prevent the defendant from attending the university, even if it fails to expel the student during a Title IX proceeding.<sup>12</sup> A student victim going through the New Jersey court system to obtain a final protective order through SASPA will be guaranteed an efficient proceeding and potentially a powerful and enforceable remedy.<sup>13</sup> Therefore, obtaining a final protective order

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4. See Greta Anderson, *More Title IX Lawsuits by Accusers and Accused*, INSIDE HIGHER ED (Oct. 3, 2019), <https://www.insidehighered.com/news/2019/10/03/students-look-federal-courts-challenge-title-ix-proceedings>.

5. See Jeannie Suk Gersen, *Assessing Betsy DeVos's Proposed Rules on Title IX and Sexual Assault*, NEW YORKER (Feb. 1, 2019), <https://www.newyorker.com/news/our-columnists/assessing-betsy-devos-proposed-rules-on-title-ix-and-sexual-assault>. President Biden has suggested that he will revoke the regulations that DeVos put in place and focus on strengthening the protections Title IX offers victims of sexual assault on college campuses. See Greta Anderson, *A Long and Complicated Road Ahead*, INSIDE HIGHER ED (Jan. 22, 2021), <https://www.insidehighered.com/news/2021/01/22/biden-faces-title-ix-battle-complicated-politics-and-his-own-history>.

6. See Gersen, *supra* note 5.

7. See *Title IX*, *supra* note 3.

8. Sexual Assault Survivor Protection Act, N.J. STAT. ANN. §§ 2C:14-13–21 (West 2020).

9. § 2C:14-16(a).

10. § 2C:14-16(f)(1).

11. See *id.*

12. See *id.*

13. See generally § 2C:14-16.

through SASPA is likely the best way for a victim of acquaintance sexual assault on a college campus in New Jersey to get protection from his or her abuser.<sup>14</sup>

## II. GENERAL BACKGROUND

### A. *Sexual Assault on Campus*

The Rape, Abuse & Incest National Network (RAINN) has compiled statistics about the rates of sexual assault on college campuses and concluded that “[s]exual violence on campus is pervasive.”<sup>15</sup> According to RAINN, “[a]mong undergraduate students, 26.4% of females and 6.8% of males experience rape or sexual assault through physical force, violence, or incapacitation.”<sup>16</sup> When a sexual assault occurs on campus, it is most likely to happen to freshmen who live in dorms, and it will be likely that the victim knows his or her assailant.<sup>17</sup> This epidemic of “acquaintance sexual assault” is occurring on college campuses all over the country.<sup>18</sup> Even though a victim can always go to the police, “[o]nly 20% of female student victims, age 18-24, report to law enforcement.”<sup>19</sup> With the rate of victims seeking prosecution so low, “[t]he availability of civil protection orders is important because the protection they provide can be obtained upon a preponderance of the evidence rather than a higher evidentiary standard.”<sup>20</sup> Moreover, a protective order can “remove the assailant from the survivor’s life, which may make it easier for the survivor to recover from the rape.”<sup>21</sup> For survivors who are not interested in pursuing criminal charges against their assailant but do want protection, a final protective order is an ideal remedy.

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14. Final protective orders are final and are enforced by police, which is a strong remedy for victims. See § 2C:14-17(a).

15. *Campus Sexual Violence: Statistics*, *supra* note 1 (noting that “13% of all students experience rape or sexual assault through physical force, violence, or incapacitation (among all graduate and undergraduate students)”).

16. *Id.*

17. Andrea A. Curcio, *Institutional Failure, Campus Sexual Assault and Danger in the Dorms: Regulatory Limits and the Promise of Tort Law*, 78 MONT. L. REV. 31, 32.

18. See *id.* at 32–33.

19. *Campus Sexual Violence: Statistics*, *supra* note 1.

20. Leslie Berkseth, Kelsey Meany, and Marie Zisa, *Rape and Sexual Assault*, 18 GEO. J. GENDER & L. 743, 804 (2017).

21. *Id.*

*B. Title IX Background*

When a sexual assault on campus occurs and a student chooses to report it to the university, Title IX proceedings begin.<sup>22</sup> Title IX applies to every school that receives federal funding, from elementary schools to universities.<sup>23</sup> Schools are required to have “a grievance procedure outlining the complaint, investigation, and disciplinary process for addressing sex discrimination, sexual harassment, and sexual violence occurring within [an] ‘education program or activity.’”<sup>24</sup> Additionally, schools are required to be “prompt” and to conduct a “fair, impartial investigation in a timely manner.”<sup>25</sup> In a Title IX proceeding, both the accused and the victim have the same rights, including the ability to call witnesses, present evidence, and appeal any final decision made.<sup>26</sup>

The “Dear Colleague” letter, which was intended to “remind schools of their responsibilities to take immediate and effective steps to respond to sexual violence in accordance with the requirements of Title IX,”<sup>27</sup> has not survived the Trump Administration.<sup>28</sup> Secretary of Education Betsy DeVos rescinded it claiming, “the era of ‘rule by letter’ is over.”<sup>29</sup> In its place, her proposal released in November 2018 included plans to make treatment of the accused and the complainant more equal because in her view, “investigators and adjudicators have been trained to ‘start by believing’ the complainant rather than to start from a position of neutrality.”<sup>30</sup> DeVos’s goal was to essentially create a standard where the factfinders are more neutral and fair to the accused.<sup>31</sup>

Specifically, DeVos recommended making the “preponderance of the evidence” standard optional for institutions.<sup>32</sup> By making the “preponderance of the evidence standard” optional to intuitions, it allows them to implement a “clear and convincing evidence standard” for “sexual

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22. See generally *Title IX*, *supra* note 3.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Dear Colleague Letter: Sexual Violence Background, Summary, and Fast Facts*, U.S. DEPT OF EDUC. (Apr. 4, 2011), <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201104.html>.

28. See Gersen, *supra* note 5.

29. Amy B. Cyphert, *The Devil Is in the Details: Exploring Restorative Justice as an Option for Campus Sexual Assault Responses Under Title IX*, 96 DENV. L. REV. 51, 61 (2018).

30. Gersen, *supra* note 5.

31. *Id.*

32. Penny Venetis, *Misrepresenting Well-Settled Jurisprudence: Peddling “Due Process” Clause Fallacies to Justify Gutting Title IX Protections for Girls and Women*, 40 WOMEN’S RIGHTS L. REP. 126, 146 (2018).

misconduct” cases.<sup>33</sup> The “clear and convincing” standard of proof is a higher standard than “preponderance of the evidence” and is defined as “evidence [that] is highly and substantially more likely to be true than untrue; the fact finder must be convinced that the contention is highly probable.”<sup>34</sup> If universities can choose between the preponderance of the evidence standard and the clear and convincing evidence standard, then there may be an uneven application of the law, varying by institution.<sup>35</sup>

### III. SEXUAL ASSAULT SURVIVOR PROTECTION ACT

In New Jersey, SASPA was proposed to close a legal loophole, where “protective orders weren’t available for sexual assault survivors” absent a “charge or conviction.”<sup>36</sup> SASPA was passed in 2015 and became effective in May 2016.<sup>37</sup> Before SASPA, the only way a victim of sexual assault could seek protection was by filing criminal charges or obtaining a civil protective order through the Prevention of Domestic Violence Act (PDVA).<sup>38</sup> There was a void in the current statute, where protections for victims of acquaintance sexual assault were not addressed.<sup>39</sup>

The SASPA statute specifically states that “[a]ny person alleging to be a victim of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, and who is not eligible for a restraining order as a ‘victim of domestic violence’ . . . may . . . file an application with the Superior Court . . . seeking a temporary protective order.”<sup>40</sup> That section, entitled “Application for Temporary Protective Order,” clearly defines sexual contact, sexual penetration, and lewdness, making it clear what behavior comes within the purview of the statute.<sup>41</sup>

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33. Deborah L. Brake, *Fighting the Rape Culture Wars Through the Preponderance of the Evidence Standard*, 78 MONT. L. REV. 109, 124 (2017) (“But no issue is more hard-fought in the rape culture wars than the debate over the POE standard.”).

34. *Clear and Convincing Evidence*, CORNELL L. SCH.: LEGAL INFO. INST., [https://www.law.cornell.edu/wex/clear\\_and\\_convincing\\_evidence](https://www.law.cornell.edu/wex/clear_and_convincing_evidence) (last visited Jan. 10, 2021).

35. See Gersen *supra* note 5.

36. *Sexual Assault Survivor Protection Act*, N.J. COAL. AGAINST SEXUAL ASSAULT, <https://njcasa.org/find-help/saspa/> (last visited Jan. 10, 2021) [hereinafter *NJCASA Sexual Assault Survivor Protection Act*].

37. *Id.*

38. See N.J. LAW REVISION COMM’N, DRAFT FINAL REPORT RELATING TO THE DEFINITION OF “VICTIM OF DOMESTIC VIOLENCE” IN N.J.S. 2C:25-19D (2015), <https://dspace.njstatelib.org/xmlui/bitstream/handle/10929/37694/14152015s.pdf?sequence=1&isAllowed=y>.

39. See *id.*

40. N.J. STAT. ANN. § 2C:14-14 (West 2017).

41. *Id.*

Once the court grants a temporary restraining order, a hearing for a final restraining order “shall be held . . . within 10 [ten] days.”<sup>42</sup> At the hearing for the final restraining order, SASPA requires that the court consider specific factors in determining whether a final restraining order is appropriate.<sup>43</sup> These factors include, whether there was an “occurrence of one or more acts of nonconsensual sexual contact, sexual penetration, or lewdness,” and whether there is a “possibility of future risk to the safety or well-being of the alleged victim.”<sup>44</sup> The victim has to demonstrate these factors sufficiently to meet the preponderance of the evidence standard of proof.<sup>45</sup>

In determining whether to grant a final protective order, the court will consider what happened, give both parties an opportunity to speak, allow them to present evidence and witnesses, and then make a decision.<sup>46</sup> Notably, the SASPA statute dictates what the court *cannot* consider in making the decision by stating that “[t]he court shall not deny relief under this section due to: the applicant’s or alleged victim’s failure to report the incident to law enforcement,” “whether the victim did or did not leave the premises to avoid nonconsensual sexual contact,” or “the absence of signs of physical injury.”<sup>47</sup> This section is especially relevant because many victims may not report their assault, and the statute clearly states that this will not have any impact on whether or not a protective order is granted.<sup>48</sup>

A very recent Appellate Division decision, *V.M. v. S.G.*,<sup>49</sup> which was decided in August of 2019, addressed the scope of a SASPA protection order.<sup>50</sup> *V.M. v. S.G.* involved a pastor of a church who was accused of being involved in “nonconsensual sexual contact and lewdness” with a member of the church.<sup>51</sup> The victim was a parishioner of the church who was very involved in church activities.<sup>52</sup> In granting the final protective order, the court “barred defendant from the existing church location and any future relocation of the church.”<sup>53</sup> The Appellate Division upheld this decision by the lower court, saying “the judge properly barred defendant

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42. § 2C:14-16.

43. *Id.*

44. § 2C:14-16(a)(1)–(2).

45. *See* § 2C:14-16(a).

46. *See id.*

47. § 2C:14-16(b).

48. *See Campus Sexual Violence: Statistics, supra* note 1.

49. No. A-4774-17T3, 2019 N.J. Super. Unpub. LEXIS 1716 (App. Div. Aug. 1, 2019).

50. *Id.* at \*1.

51. *Id.*

52. *Id.* (stating that the plaintiff “worshipped and worked for eleven years” at the church).

53. *Id.* at \*6.

from the present church location or any future church location so that plaintiff and her family could return to the church without fear of further contact with defendant.”<sup>54</sup>

On appeal, one of the arguments the defendant made was that the “restraints imposed [were] impermissibly broad” and that his rights were being infringed upon.<sup>55</sup> The court then held that “[d]efendant’s rights are not unduly impacted” by the final protective order, because he “remains able to pray and exercise his religious beliefs.”<sup>56</sup> The court rejected the defendant’s argument that the restriction—preventing him from going to “the present church location or any future church location”—was too broad because “[m]any of the incidents described by plaintiff in her TPO complaint and trial testimony occurred in the church or during church functions.”<sup>57</sup> Therefore, the location of the attack, in the court’s view, was highly relevant in determining the restrictions imposed on the defendant.<sup>58</sup> This case illustrates the reach of SASPA protections—the removal of the pastor from his own church in order to protect the victim.<sup>59</sup> The court reasoned that the victim should not have to leave her church community that she had been a part of for many years, even though it was where the defendant was practicing as a pastor.<sup>60</sup> The court, in enforcing the final protective order against the defendant, prioritized protecting the victim over the comfort and convenience of the defendant.<sup>61</sup>

#### IV. WHY SASPA SHOULD BE UTILIZED BY VICTIMS OF ACQUAINTANCE SEXUAL ASSAULT ON COLLEGE CAMPUSES

For New Jersey victims, SASPA can be an excellent tool to get protection from their abuser, without going through the criminal system. College students at public institutions have the additional option of going forward with a Title IX proceeding to get help,<sup>62</sup> but they may want to get a protective order through the court either in addition to, or instead of trying to obtain remedies through Title IX. Because SASPA is intended to protect victims of acquaintance sexual assault, which is prevalent on

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54. *Id.* at \*10.

55. *Id.* at \*6.

56. *Id.* at \*11.

57. *Id.* at \*10.

58. *See id.*

59. *See id.* at \*6.

60. *See id.* at \*11.

61. *See id.* at \*5–6.

62. *See Title IX, supra* note 3.

college campuses, it seems like a natural fit for this class of victims to utilize the law to get protection.<sup>63</sup> The legislative history in New Jersey shows that the law was intended to extend these protections to college campuses.<sup>64</sup> In fact, the committee notes unambiguously state, “[t]he law was intended to provide protection for victims of sexual assault on college campuses.”<sup>65</sup> With the evidence of the legislative intent for the law to extend the protections to students who are sexually assaulted on college campuses, it seems even clearer that student victims could really benefit from this law.<sup>66</sup> By going through the court system and not the school, the victim can obtain a final protective order without having to even tell the school about the assault or go through Title IX proceedings.<sup>67</sup> The victim, as a student, may tell the school once he or she gets the order, so that the university can help with enforcement, but that is not a requirement.<sup>68</sup> Final protective orders operate independently of any other institution, including schools.<sup>69</sup> The violation of a final protective order under SASPA is a crime, and the defendant can be arrested if found at one of the locations that the plaintiff mentioned on the final protective order, which could be a school.<sup>70</sup>

#### A. *No Conflict of Interest*

SASPA lays out clear criteria for the courts to consider in deciding whether to grant a final protective order.<sup>71</sup> The statute explicitly states that the courts cannot consider extraneous information about the victim, including what he or she may have been wearing when attacked, or prior sexual conduct.<sup>72</sup> The court must consider whether or not the events happened as alleged, and whether or not the victim needs protection going forward.<sup>73</sup> Evidence can be presented, and witnesses can be examined, all pursuant to the court rules which are clearly established.<sup>74</sup>

In contrast, if Betsy DeVos’s new recommendations are implemented, the standard of proof in Title IX proceedings may no longer be clearly

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63. See *NJCASA Sexual Assault Survivor Protection Act*, *supra* note 36.

64. See FAM. PRAC. COMM. REP., 2015-2017 RULES CYCLE, at 49 (2017), <https://njcourts.gov/courts/assets/supreme/reports/2017/family.pdf>.

65. *Id.*

66. *See id.*

67. *See generally* N.J. STAT. ANN. § 2C:14-17 (West 2020).

68. *See id.*

69. *See id.*

70. *See id.*

71. *See* § 2C:14-16.

72. § 2C:14-16(c).

73. § 2C:14-16(a).

74. *See NJCASA Sexual Assault Survivor Protection Act*, *supra* note 36.



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established.<sup>75</sup> In a SASPA hearing, the standard of proof is always preponderance of the evidence, and that is not up to the discretion of any individual person in any particular class of cases.<sup>76</sup> Also, it is exceptionally hard to ensure impartiality when the school is responsible for investigating the claims, all while trying to run its business.<sup>77</sup> Universities are a business, and there may be an incentive for “university administrators to seek to protect the university’s interests by failing to properly investigate claims, or to discourage victims from filing complaints at all.”<sup>78</sup> Therefore, it may be more beneficial for a student victim to go through the court system where the standard is always preponderance of the evidence, especially if the institution he or she attends has chosen to implement a clear and convincing standard of proof.<sup>79</sup>

### B. Efficiency

A final protective order hearing will typically occur within ten days of the temporary protective order being granted.<sup>80</sup> For the defendant, an expedited proceeding is imperative, as he or she is subject to the restrictions of a temporary protective order until the judge makes a decision whether to issue a final protective order.<sup>81</sup> Universities do not necessarily have that same incentive as the court to come to a conclusion as quickly.<sup>82</sup> There are cases where following a one-month investigation period, “the student contacts the Title IX office and is told the investigation is still ongoing” and that there is no “updated timeframe.”<sup>83</sup> The court enforcing an expedited timeline will allow for the defendant to have an answer regarding the state of his rights within a reasonable time

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75. See Stephanie Saul & Kate Taylor, *Betsy DeVos Reverses Obama-Era Policy on Campus Sexual Assault Investigations*, N.Y. TIMES (Sept. 22, 2017), <https://www.nytimes.com/2017/09/22/us/devos-colleges-sex-assault.html>.

76. See § 2C:14-16(a).

77. See Lauren Van Driesen, Note, *The Campus Sexual Violence Elimination Act: Is It Enough to Combat Sexual Assault on Campus?*, 68 RUTGERS U. L. REV. 1841, 1865–66 (2016).

78. *Id.* at 1865 (citation omitted).

79. See Kelly Rice, *Understanding the Implications of the 2011 Dear Colleague Letter: Why Colleges Should Not Adjudicate On-Campus Sexual Assault Claims*, 67 DEPAUL L. REV. 763, 784 (2018) (“The amount of discretion that colleges are given in sexual assault proceedings is problematic.”).

80. *NJCASA Sexual Assault Survivor Protection Act*, *supra* note 36.

81. See § 2C:14-15(d).

82. See generally Kelly Alison Behre, *Ensuring Choice and Voice for Campus Sexual Assault Victims: A Call for Victims’ Attorneys*, 65 DRAKE L. REV. 293, 305–06 (2017).

83. *Id.* at 305.

period.<sup>84</sup> For the plaintiff, an expedited timeline is important because he or she is likely undergoing a lot of stress in coping with the assault. Having the proceeding drag on can be very traumatizing for a victim who is going through that process.<sup>85</sup> Therefore, the expedited timeline of a final protective order hearing, held within ten days after the issuance of the temporary protective order, will certainly be to the benefit of both the plaintiff and the defendant.

### C. *Strong Remedy*

With SASPA, the remedy is clear: a final protective order, which provides a very strong remedy for victims.<sup>86</sup> Because a final protective order provides ongoing protection, research shows that the protection of a civil protection order can lead to victims feeling safer.<sup>87</sup> The level of protection from a final protective order is much stronger than some of the varied remedies that the university may provide.<sup>88</sup> A campus protective order will only protect the victim on campus, whereas a SASPA final protective order will protect the victim from being contacted by the defendant at all, under any circumstances.<sup>89</sup> In addition, a SASPA protective order will only be issued against the defendant.<sup>90</sup> If the defendant wishes to seek a SASPA protective order against the victim in a case of mutual violence or assaults, the defendant will have to file for his or her own temporary protective order.<sup>91</sup> Final protective orders are in place forever, and will not be amended unless the judge finds that the circumstances have changed.<sup>92</sup>

Regardless of whether or not the victim obtains a remedy through a Title IX proceeding, if a final protective order is issued, the victim will be protected anywhere he or she goes.<sup>93</sup> Even if the school decides to expel the defendant, that may not ensure that the victim will be protected

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84. See § 2C:14-16.

85. See Brake, *supra* note 33, at 117 (“Wherever the consequences of sexual assault fall on the spectrum of severity, whether traumatic or relatively mild, the harm is compounded when educational institutions respond with insufficient sensitivity and inadequate measures.”).

86. See § 2C:14-16; see also Shawn E. Fields, *Debunking the Stranger-In-The-Bushes Myth: The Case for Sexual Assault Protection Orders*, 2017 WIS. L. REV. 429, 460 (2017).

87. See Fields, *supra* note 86.

88. See § 2C:14-17 (describing the enforcement of a final protective order).

89. See Merle H. Weiner, *Legal Counsel for Survivors of Campus Sexual Violence*, 29 YALE J.L. & FEMINISM 123, 149–150 (2017).

90. See § 2C:14-16.

91. *Id.*

92. § 2C:14-16(i).

93. See § 2C:14-16(e)–(f).

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outside of campus.<sup>94</sup> A final protective order makes it a crime for the defendant to contact the victim in any way, or for the defendant to go anywhere that the court finds is a protected space for the victim.<sup>95</sup> The court, in granting the final protective order, will consider the places that the plaintiff wants to have protection, and then decide whether or not the protection shall extend there.<sup>96</sup> A final protective order under SASPA can also prevent the defendant from contacting the victim's friends or family, or using anyone else to contact the victim.<sup>97</sup> When a final protective order is issued by a court, it makes it a crime for the defendant to have any contact with the victim at all, or to go to any of the places that the order restricts the defendant from.<sup>98</sup> For a student who is actively trying to avoid his or her abuser both on and off campus, a SASPA order of protection can be a very strong remedy.

## V. ENFORCEMENT ON COLLEGE CAMPUSES

A. *Extent of Coverage*

When a final protective order is granted, the victim will name places that he or she feels protection is most needed.<sup>99</sup> Those places may include a university, place of worship, or place of employment.<sup>100</sup> The statute itself expressly includes "school" as one of the places that the protective order can extend to.<sup>101</sup> Therefore, it seems plausible that in a case of on-campus sexual assault, the order would extend to the university that the victim attends, if that is where the assault occurred, because that is the location of the "future risk."<sup>102</sup> SASPA goes even further than protecting the victim where the victim is at risk of seeing the abuser. SASPA also extends its protection to places "frequented regularly by . . . the victim's family or household members."<sup>103</sup> So, even if the assault took place technically off campus, the order still should be able to include the school that the victim attends if it is relevant for his or her protection. A judge decides what kinds of protection the victim needs, after a hearing where

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94. See Weiner, *supra* note 89, at 149.

95. See § 2C:14-16(e)-(f).

96. See § 2C:14-16(f)(1).

97. § 2C:14-16(f)(2).

98. See § 2C:14-17(b) ("When a law enforcement officer finds probable cause that a respondent has committed contempt of an order . . . the respondent shall be arrested and taken into custody.").

99. See § 2C:14-16(f)(1).

100. *Id.*

101. *Id.*

102. See § 2C:14-16(a)(2).

103. § 2C:14-16(f)(1).

both the plaintiff and the defendant present evidence and make their case.<sup>104</sup>

There are only a few SASPA cases that have been published in New Jersey, but there have already been some unique situations where a SASPA protective order has been implemented. The best example of a unique situation is illustrated in *V.M. v. S.G.* discussed above. There, the court considered the primacy of the victim's protection against the pastor's right to participate in his church.<sup>105</sup> In doing so, the court chose to preserve the right of the victim to continue to attend her place of worship and remove the defendant's privilege of entering the church.<sup>106</sup>

*V.M. v. S.G.* could logically be extended to a college campus setting, because if the assault occurred on or near campus, it is very likely that the victim would fear the abuser while on campus.<sup>107</sup> This fear would be compounded if the victim knew that the defendant was a fellow student who had access to the same areas, for example classrooms, dining halls, and even dormitories.<sup>108</sup> The victim should not have to avoid going to school while the abuser can remain on campus.<sup>109</sup> Therefore, a final protective order under SASPA would be an optimal way for college students to get protection from their abusers. The coverage should extend to the campus, especially if it is the location of the assault.

### B. Right to an Education

The holding in *V.M. v. S.G.* strengthened the protections for victims in New Jersey under SASPA, making it an even more expansive remedy.<sup>110</sup> However, defendants who are involved in an acquaintance sexual assault on a college campus may argue that the protective order should not extend to the college campus because of their right to an education.<sup>111</sup> The right to education is an internationally recognized

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104. See § 2C:14-16(a).

105. See *V.M. v. S.G.*, No. A-4774-17T3, 2019 N.J. Super. Unpub. LEXIS 1716, at \*10 (App. Div. Aug. 1, 2019).

106. See *id.*

107. See Behre, *supra* note 82, at 318.

108. See Katherine Lamb, *U. Mishandled Sexual Assault Case, Victim Says*, BROWN DAILY HERALD (Apr. 23, 2014), <https://www.browndailyherald.com/2014/04/23/u-mishandled-sexual-assault-case-victim-says/> (“During that time, [the victim] said, she was constantly worried about [her assailant’s] presence on campus, unable to forget that he was ‘still living in that dorm — right over there.’”).

109. See *V.M.*, 2019 N.J. Super. Unpub. LEXIS 1716, at \*10 (accounting for where the incident occurred when deciding where to bar the defendant).

110. See *id.*

111. See JARED P. COLE & CHRISTINE J. BLACK, CONG. RSCH. SERV., TITLE IX AND SEXUAL HARASSMENT: PRIVATE RIGHTS OF ACTION, ADMINISTRATIVE ENFORCEMENT AND PROPOSED REGULATIONS 32–33 (2019), <https://fas.org/sgp/crs/misc/R45685.pdf>.

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fundamental human right and “states have the obligation to protect, respect, and fulfil[] the right to education.”<sup>112</sup> This right includes the right to “equal access to higher education.”<sup>113</sup>

Although courts have held that a public high school may expel a student for misconduct, the right to education has been protected under the Due Process Clause.<sup>114</sup> In *Goss v. Lopez*, the Supreme Court stated that “[h]aving chosen to extend the right to an education to people of appellees’ class generally . . . the State is constrained to recognize a student’s legitimate entitlement to a public education as a property interest.”<sup>115</sup> That entitlement is protected by the Due Process Clause and “may not be taken away for misconduct without adherence to the minimum procedures required by that Clause.”<sup>116</sup> The *Goss* case did not involve a college campus, but the premise still applies: a school may not suspend or expel a student without considering the student’s due process rights.<sup>117</sup> In *Goss*, the Court stated that a student may be expelled from school, as long as his or her due process rights are not violated.<sup>118</sup> Final protective orders are granted after there is a hearing, at which time the defendant is guaranteed due process.<sup>119</sup> Therefore, before a defendant loses his or her right to an education at the school where the victim is enrolled,<sup>120</sup> the defendant is first entitled to a hearing which will ensure that the protective order is not violative of any due process rights. Ultimately, there should be no difference between a student being expelled from a school and a student being prevented from entering campus due to a final protective order.

In *V.M. v. S.G.* the court took into consideration the fact that even if the pastor could no longer enter the church where he worked, his rights were not infringed upon, because he was still able to pray.<sup>121</sup> *V.M.* can be analogized to the case of a defendant being prohibited from attending a university campus due to a final protective order. The defendant remains perfectly free to go to any other university and exercise his right to an

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112. *Understanding Education as a Right*, RIGHT TO EDUCATION, <https://www.right-to-education.org/page/understanding-education-right> (last visited Jan 10, 2020).

113. *Id.*

114. *See Goss v. Lopez*, 419 U.S. 565, 573–74 (1975).

115. *Id.* at 574.

116. *Id.*

117. *See Venetis, supra* note 32, at 155–56 (“Although the holding in *Goss* only applied to primary and secondary school students . . . circuit and district courts have applied *Goss* to disciplinary proceedings against university students, including for sexual misconduct.”).

118. *Goss*, 419 U.S. at 573–74.

119. *See* N.J. STAT. ANN. § 2C:14-16(a) (West 2020).

120. *See* § 2C:14-16(f)(1).

121. *See V.M. v. S.G.*, No. A-4774-17T3, 2019 N.J. Super. Unpub. LEXIS 1716, at \*11 (“Defendant remains able to pray and exercise his religious beliefs.”).

education, just as the pastor is not prohibited from continuing to pray in *V.M.*<sup>122</sup> Therefore, the argument—that the protective order should not extend to a university campus setting as it interferes with the defendant’s right to an education—should be rejected because ultimately it only bars the defendant from one place of education.

## VI. CONCLUSION

Students all over the country attending public universities are at risk of being sexually assaulted.<sup>123</sup> If a student is sexually assaulted, it is likely that the student knows his or her attacker, making it a case of acquaintance sexual assault.<sup>124</sup> If the student does not want to go to the police to press criminal charges, one other option is to go through the university’s Title IX process.<sup>125</sup> Title IX has been in flux and may be subject to more changes in the future.<sup>126</sup> So, while Title IX may still be a viable option for students at public universities to seek remedies, it may become harder to do so.

For New Jersey residents, SASPA offers victims the opportunity to apply for a temporary protective order against their abuser.<sup>127</sup> SASPA gives the victims of acquaintance sexual assault a clear remedy of a final protective order.<sup>128</sup> A final protective order is granted after a court proceeding, which is both prompt and guarantees due process rights of all the parties involved.<sup>129</sup> The order will protect the victim from coming into contact with the defendant, including in a school setting because the statute explicitly mentions “school” as a possible place where the order can be extended.<sup>130</sup> A final protective order can be enforced by the police, giving the victim the best chance at being protected, and is valid forever.<sup>131</sup> For college students in New Jersey, who are victims of acquaintance sexual assault, obtaining a final protective order through SASPA is the ideal option.

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122. *See id.*

123. *See Campus Sexual Violence: Statistics, supra* note 1.

124. *See* Curcio, *supra* note 17, at 32.

125. *Title IX, supra* note 3.

126. *See generally* Anderson, *supra* note 4.

127. *See* N.J. STAT. ANN. § 2C:14-14(a) (West 2020).

128. *See* § 2C:14-16(e).

129. *See Procedural Due Process: Civil*, CORNELL L. SCH.: LEGAL INFO. INST., <https://www.law.cornell.edu/constitution-conan/amendment-14/section-1/procedural-due-process-civil> (last visited Jan. 10, 2020).

130. *See* § 2C:14-16(f)(1).

131. *See* § 2C:14-16(g).