

THE CHRONICLE of Higher Education

LEGAL

A Student Is Expelled After Multiple Sexual-Assault Accusations. Could the University Have Stopped Him Sooner?

By Sarah Brown | JUNE 14, 2019

✓ PREMIUM



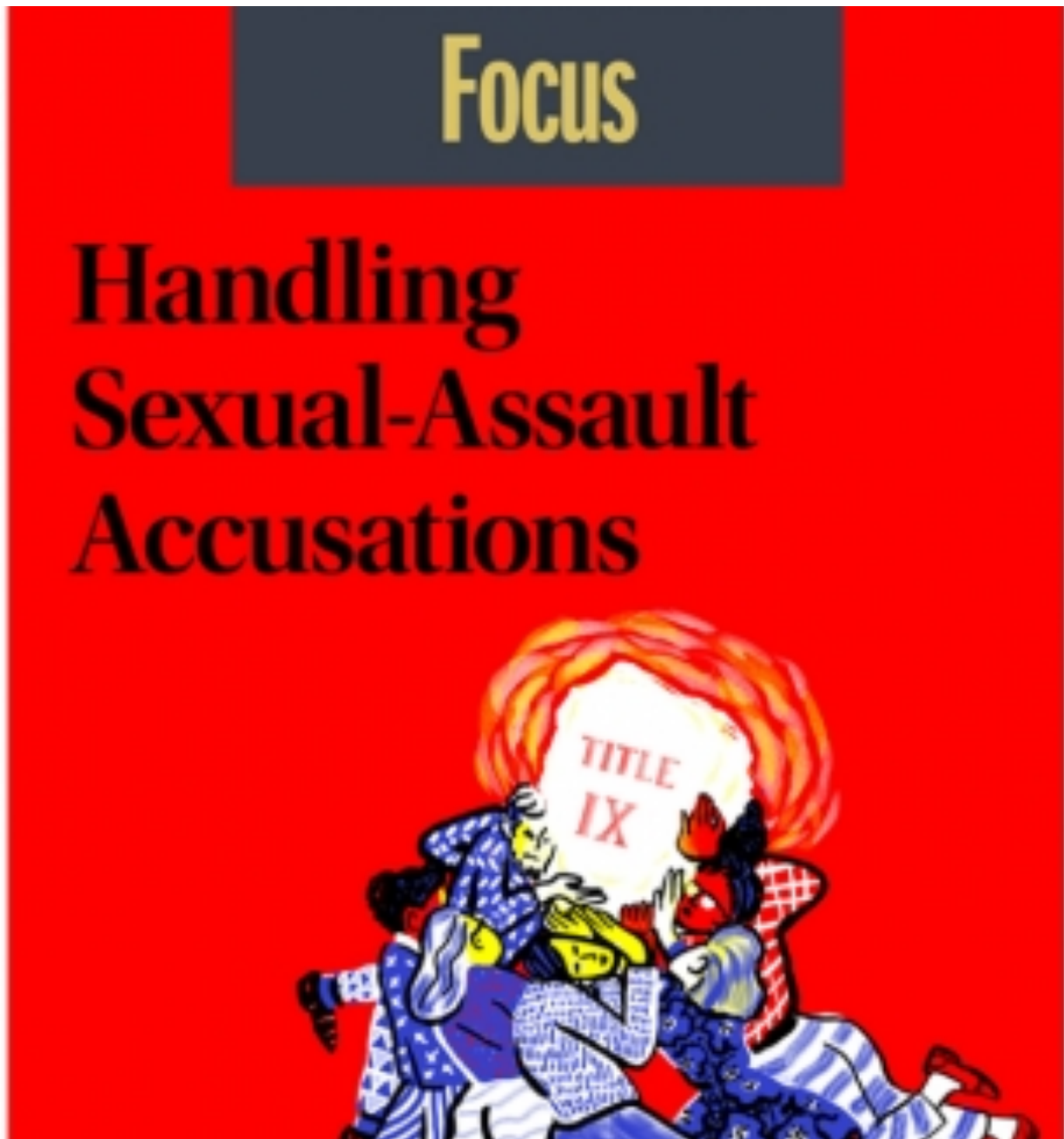
The Herald-Dispatch

Joseph Chase Hardin, 22, appears in court last Wednesday.

The optics of the situation don't look good: A Marshall University student was found responsible for sexual assault in 2016, cleared on appeal, and allowed back on campus in 2017. He then allegedly committed two more sexual assaults in 2018.

But Joseph Chase Hardin's case also highlights the difficult decisions college administrators must make about students accused of sexual misconduct, how tricky campus Title IX cases can be, and how due-

process concerns, the criminal-justice system, and federal policy don't always align.



How Colleges Are Responding

The 11 articles in this collection look at the latest guidance on the enforcement of Title IX, the federal gender-equity law that applies to sexual violence; best practices for evaluating allegations fairly; and the roles that various people on campus play in arriving at just solutions. **Download the collection here.**

Marshall expelled Hardin, now 22, on Wednesday. Last week he was named in a local indictment charging him with four felony counts of second-degree sexual assault, related to the 2018 incidents.

Alicia Gonzales, the woman who initially accused Hardin of sexually assaulting her, in 2016, said the West Virginia university hadn't done enough to keep her safe. In a federal lawsuit Gonzales asserts that Hardin's presence on the campus during the three-month investigation and appeal process forced her to leave Marshall, and that officials mishandled the disciplinary proceedings.

Marshall officials, meanwhile, said they had followed their processes and had done everything they were supposed to do. They said they expelled Hardin on Wednesday because they had investigated and determined that he'd violated Marshall's policies.

The two alleged 2018 assaults involved students but didn't happen on the campus, and the university learned about them only several months after the victims had reported them to the police, Ginny Painter, a university spokeswoman, wrote in an email. That's why the campus review of those incidents had just been completed, Painter said.

But the question remains: Could the university have stopped those assaults from happening altogether?

An Expulsion, Put On Hold

In February 2016, Hardin was accused of sexually assaulting Gonzales in her dorm room. She also reported the incident to law enforcement, which opened a criminal investigation.

The university initially found that Hardin had violated campus policy and expelled him, effective immediately, according to court documents. Hardin appealed the next day, and his expulsion was put on hold. He remained on the campus and continued to attend classes during the appeal process.

A student-conduct board heard the appeal and overturned the initial finding because of a lack of evidence, clearing Hardin, court documents say. A week later, hoping to protect Gonzales, the university decided to ban him from the campus until the conclusion of his criminal case. Gonzales ended up leaving Marshall at the end of the 2015-16 academic year.

In court, Hardin entered a plea to misdemeanor battery, accepting punishment but not admitting guilt, and was put on probation for three years. He then asked university administrators to let him return to Marshall. In 2017 they did, because “there was no reason to keep him banned from campus,” according to court documents. Initially, he was subject to “social hold restrictions,” but those were eventually lifted.

Then, this month, Hardin was accused of sexually assaulting two other Marshall students last fall.

Marshall officials have maintained that they have done nothing wrong and continue to protect students, in court documents and public statements.

While the university was investigating the 2016 incident, officials said they had immediately put in place a no-contact order to separate Hardin and Gonzales. While the criminal investigation continued, Hardin was allowed to take online classes only.

As a precaution, when Hardin returned to Marshall, in 2017, university officials said they had initially restricted him from entering residence halls, participating in extracurricular activities, or going to the campus gym. Gonzales was no longer a student at Marshall, so there was no chance that the two would run into each other. The university lifted the social restrictions after the 2017-18 academic year.

“Marshall University maintains that it properly followed all processes in the 2016 incident, including state law and the federal regulations set forth by the U.S. Department of Education,” Painter, the spokeswoman, said.

The two new alleged sexual assaults took place during the first semester that the restrictions on Hardin had been lifted.

What Should Universities Do?

In such situations, college officials must try to do “the least harm possible” while protecting their campuses, said Jody Shipper, a consultant and former Title IX official who works with colleges on sexual-assault issues.

Six or seven years ago, Shipper said, some colleges started immediately suspending students accused of sexual assault, before the disciplinary process had been completed.

It wasn't a good strategy, she said, and it led some angry students to sue their colleges and assert that they hadn't received enough due process. Now, she said, administrators are careful not to punish accused students before investigations and appeals are done. They instead rely on interim measures, like class changes and no-contact orders.

Shipper stressed that the facts aren't all out about Marshall's handling of the Hardin case. Maybe officials didn't reach the right decision in the 2016 case, when Hardin was cleared on appeal. Or maybe they got it right, based on the evidence they had at the time, she said.

But the bottom line, she said, is this: If the campus disciplinary process finds a student not responsible for sexual assault, administrators can't kick him or her out.

Still, there are things administrators can do. They should recognize that the alleged victim feels wronged, no matter the outcome, she said. "You can still have a conversation," she said. "How can we support you?"

Sarah Brown writes about a range of higher-education topics, including sexual assault, race on campus, and Greek life. Follow her on Twitter @Brown_e_Points, or email her at sarah.brown@chronicle.com.

© 2019 The Chronicle of Higher Education

1255 23rd Street, N.W.
Washington, D.C. 20037