

Schools Must Prevent the “Second Rape”

By DIANE L. ROSENFELD April 4, 2014

Dear Anonymous:

Harvard doesn't “win” unless and until it protects its students from sexual assault. As Harvard strives to “do better” in response to your article and the Harvard “Can Do Better” campaign, my hope is that we can transcend a conception of the university and sexual-assault victims as opposed parties. Harvard wins only if students in your position are treated with dignity, respect, compassion and above all, fairness.

Colleges and universities across the country are currently struggling to determine how best to fulfill their legal and moral obligations to prevent and address sexual assault. The issue has reached a tipping point: President Obama recently appointed a White House Task Force on Protecting Students from Sexual Assault; the federal [Campus Sexual Violence Elimination Act](#) (Campus SaVE Act) recently went into effect; and over 40 federal civil-rights complaints filed by students are currently under investigation by the Office for Civil Rights of the Department of Education.

Sexual assault on campus, we are coming to realize, is not merely a matter of isolated criminal behavior; it is also a civil-rights issue. Sexual harassment in an educational context, like sexual harassment in the workplace, abridges the civil right to be free from a hostile environment. Sexual assault is a particularly severe form of sexual harassment; its presence has been recognized to constitute a hostile environment under [Title IX](#).

To prevent or eliminate a hostile environment of this sort, schools are legally obliged to do three things. First, they must provide educational programs aimed at preventing rape. Second, they must provide academic accommodations and support to enable survivors of sexual assaults to stay in school and retain equal access to educational opportunities. Third, schools must investigate promptly and remediate equitably any claims of sexual assault.

Regrettably, some administrators continue to shirk their responsibilities. The president of the University of Connecticut, [recently](#) under the media spotlight after seven students filed a federal civil rights complaint, stated that, “no president or police chief can prevent all [sexual assaults], and we should never, ever be so naive to think so.” This is an unhelpful posture. Granted, schools might not be able to prevent all “first rapes.” But schools can and must reduce their frequency. Equally important, schools can and must eliminate altogether what has come to be known as “second rapes.” That phrase refers to the experience of degradation and betrayal that rape survivors encounter when they come forward seeking justice. Your description, as well as the stories told by countless other student survivors with whom I have worked through the years, analogizes the treatment by school administrators, to being assaulted a second time – suffering anew the senses of being helpless, hopeless, neither heard nor taken seriously.

As an academic who has developed legal policy on Title IX and campus sexual assault for a decade, my principal advice to Harvard and to all schools is this: in responding to any report of sexual violence you must avoid subjecting the student to a second rape.

Strive to reduce, rather than exacerbate, the trauma the student is experiencing from the assault. Bear constantly in mind that how you treat her or him will determine whether she or he will be able to continue her or his studies, whether she or he will recover or will spiral downward – and, finally, whether she or he becomes a complainant in a federal civil-rights lawsuit against the school.

Among the implications of this general principle: receive the information with gentle hands; do not blame the reporting student for the assault; do not force her or him to retell the story repeatedly; and provide academic accommodations that include one specific person assigned to coordinate the student's needs so that she or he is not left alone to navigate the traumatic effects that often emerge in the wake of an assault.

Schools can prevent the “second rape” through thoughtful implementation of their responsibilities regarding accommodations and investigations. Academic accommodations include addressing the aspects of the student's life that will enable her or him to stay in school with a feeling of safety and support. Living situations are of paramount importance to a victim's sense of safety. Leaving a student in the same house as her alleged assailant may subject her to possible re-traumatization at every encounter with the accused, predictably interfering with her ability to concentrate on her studies. Moreover, the Department of Education counsels specifically that removing a reporting student from her housing arrangement should not necessarily be the indicated response; changes in the accused's housing should be considered as well. This should not be surprising. Why should a survivor be further burdened by being forced to move, after being victimized by another student's misconduct?

Finally, schools are required to conduct a thorough investigation into any allegation of sexual misconduct and are prohibited from discouraging a student from pursuing a complaint. Again, this should not be surprising. How can a school determine what charges (if any) are appropriate if they do not conduct such an investigation? If a complainant wishes to remain confidential, the investigation might be limited. But if the victim wants to move forward, a full investigation must ensue. The newly enacted Campus SaVE Act requires that a school's investigation and resolution of a complaint be animated by victim safety and accountability. It is critical to remember here that it is a civil right violation being investigated, even though the underlying violation might also be a crime. This makes it much easier for schools to sanction gender-based discrimination and eliminate a sexually hostile environment on campus.

Anonymous, your story has already resonated with so many others across the country. One student survivor with whom I met yesterday saw your article and told me she could have written it herself. You are using your voice. It contributes to a national chorus of students stepping up to demand their rights to an education free of gender violence and sex discrimination. Thank you for speaking up. We hear you.

Diane L. Rosenfeld is a Lecturer on Law and the Director of the Gender Violence Program at the Harvard Law School.

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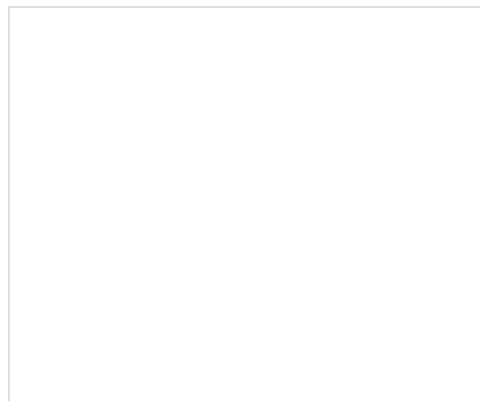
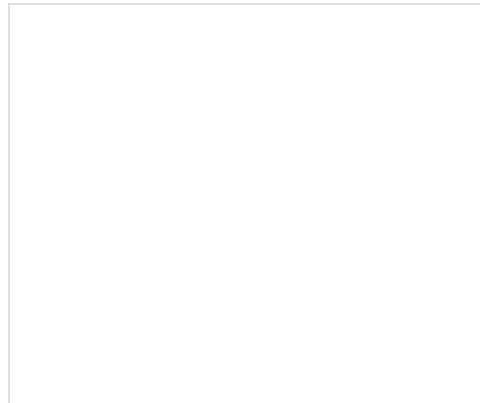
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