

TITLE IX

TALKING POINTS

Protecting Survivors of Sexual Assault on Campus: Myths and Facts

July 2014

Nearly 1 in 5 undergraduate women experience sexual assault or attempted sexual assault while in college.¹ Yet the vast majority of these crimes go unreported. Only 15% of sexual assault survivors report the crime to campus security or law enforcement.²

When women do come forward, they are often further penalized by their college's administrative system. Students report that college officials respond dismissively to claims of sexual assault and fail to address the situation adequately to ensure the safety of the survivor and the school community.³

On January 22, 2014, President Obama created the White House Task Force to Protect Students from Sexual Assault and charged it to issue recommendations for schools to prevent and respond to sexual assault.⁴ The Task Force's report found that many schools are not meeting their obligations to keep their campuses safe and identified initial recommendations to address campus sexual assault.⁵

Despite significant evidence to the contrary, some critics argue that survivors of sexual misconduct on college campuses have *too many rights*. Myths like these are inconsistent with the law and ignore the real experiences of students subjected to sexual harassment and violence and the hurdles they face when seeking justice. Below are a few other myths and facts about sexual assault and the law.

MYTHS AND FACTS

Myth:

Recent Department of Education guidance documents and enforcement agreements set up a new standard that would allow a student to be punished for asking someone on a date, or giving someone a valentine card; that a "hostile environment" could be created from a controversial op-ed in the newspaper or question in a classroom.

Facts:

- In order for sexual harassment to rise to the level of a "hostile environment,"—prompting a college to take steps calculated to stop the misconduct—it must be "unwelcome conduct of a sexual nature" that is "severe" or "pervasive" enough to "deprive a student of her access to education."⁶
- These legal interpretations, which the Department of Education consistently relies on in its guidance documents and resolutions, have been used by the Department for decades.

Myth:

Department of Education guidance stifles students' right to free speech.

Facts:

- Sexual assault and harassment are not free speech.
- But even if a student were to claim that it was, the speech must rise to the level of unwelcome sexual

conduct that is “severe” and “pervasive” in order to constitute a hostile environment.

Myth:

Students should take their claims of sexual misconduct to the police, and colleges should stay out of it.

Facts:

- These attacks ignore that colleges have a responsibility to their student body, and to the college community as a whole, to handle complaints of student misconduct and keep the entire community safe from violence. For too long the critical obligation to prevent sexual violence and provide a system to handle complaints has been ignored, even treating sexual violence with less regard than minor violations of student code, such as plagiarism. This approach left survivors and the broader campus community unprotected.
- Survivors of sexual violence should not have to take on their schools and their attackers to assure their safety. For this reason, Title IX requires that schools promptly investigate and take appropriate steps to resolve a report of sexual assault on campus. These standards have long been in place.

Myth:

Accused college students are routinely denied due process in college administrative proceedings.

Facts:

- Under Title IX and Department of Education guidance, both the complainant and the accused have the same rights and must be treated equally during all proceedings.
- The school’s investigation—and any school official taking part in it—must be impartial. Both parties must have the opportunity to present witnesses and other evidence. Both parties must have equal, timely access to information.
- If one party is permitted to have a lawyer at any stage of the process, the other party must be afforded the same opportunity. The same goes for the right to appeal the decision.

Myth:

When determining whether sexual misconduct occurred, schools are required to apply a standard of proof that unfairly penalizes the accused.

Facts:

- The purpose of a college administrative proceeding is to establish whether a violation of the school’s policies and procedures occurred—not to determine civil or criminal liability. Colleges cannot send students to jail, nor can they find them guilty of a crime or any other violation of the law.
- The “preponderance of the evidence” standard—which colleges are required to apply when determining whether a violation of college policy occurred—is the most commonly used standard of proof.
- Requiring that standard, which the Department of Education does consistently in other adjudications, aligns schools’ treatment of sexual violence complaints with other adjudications under Title IX and similar civil rights statutes, as well as courts’ handling of civil cases more generally.

Myth:

The fact that survivors on college campuses are speaking out about their experiences of sexual assault on campus signals a war on men in today’s society.

Facts:

- Sexual assault is a pervasive problem on college campuses today, for both men and women, and it must be addressed. Unfortunately, the small minority of students who report their assaults often experience further mistreatment by their colleges. Many college officials are dismissive of the survivors’ claims. Some officials even ignore ongoing harm the survivors are experiencing.
- The data on sexual assault among students show just how prevalent the problem is. In a 2009 study, 19 percent of undergraduate women reported that they had been sexually assaulted, or had experienced an attempted sexual assault, while they were students.⁷ Another study found that nearly 14 percent of undergraduate women had been sexually assaulted at least once during their time in college.⁸

- This myth also ignores growing research revealing high rates of male survivors of assault or attempted assault. One study conducted at the University of Missouri found that 43 percent of all high school boys and young college men report having unwanted sexual experiences.⁹ The Centers for Disease Control and Prevention found that one in seven men have experienced severe violence at the hands of an intimate partner, and one in 71 men have been raped.¹⁰
- Examples abound of reported sexual violence to which schools failed to properly respond:
 - o A recent front-page investigation by the New York Times revealed that officials at Florida State University did next to nothing in response to a student's report of rape, even though a witness admitted that he had videotaped part of the encounter. Her alleged assailant, a prominent football player, continued to play the full season without having to answer a single question about the incident from either the school or the police.¹¹
 - o A University of Southern California student said she reported a rape to her university—and played authorities a recording of her rapist admitting to the assault—but the school nonetheless dismissed her case, citing a “lack of evidence.”¹²
 - o When an Amherst College student told her school's sexual assault counselor about her sexual assault, she reported that the counselor advised her to “forgive and forget” instead of filing a report.¹³
 - o According to a complaint filed against Harvard University, when one student reported her assault to a college official, the official told her, “It's in your culture that men are gropey.” Another survivor obtained a no-contact order against her assailant, only to learn that the school had hired him to become the building manager of her dormitory, with access to all residents' information and keys to their rooms.¹⁴

Myth:

Sanctions resulting from college administrative proceedings have only served to ruin men's careers.

Facts:

- Currently, the disciplinary measures that schools take to rectify sexual misconduct are often too weak to address the seriousness of sexual assault:
 - o A 2013 complaint by 37 students at Occidental College alleged that the school attempted to discourage survivors from coming forward about sexual assault, retaliated against those who did come forward, and assigned only minor punishments to perpetrators who in some cases then allegedly committed further sexual misconduct. In one case, a student admitted to administrators that he had sexually assaulted a woman in 2011 and went on to warn officials that other survivors might come forward. The school disciplined the student by barring him from some campus activities and requiring him to write a letter of apology and a 15- to 20-page essay.¹⁵
 - o Lisa Simpson, while an undergraduate at the University of Colorado, brought a complaint against her school after her alleged gang rape by numerous college football players and high school recruits during a university recruiting event. Although the school found several of the players responsible for code of conduct violations, it did not pursue her allegations of sexual misconduct, and each of the players were eligible to play in all future football games. The school even continued to recruit one of her alleged attackers.¹⁶
 - o A group of twenty-three students at Columbia University filed a complaint alleging that University officials consistently discouraged students from formally reporting their assaults, permitted perpetrators to remain on campus even after multiple offenses, and disciplined perpetrators inadequately, if at all.¹⁷

1 C.P. Krebs et al., *The Campus Sexual Assault (CSA) Study, Final Report: January 2005 through December 2007*, vii (2007), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf> [hereinafter *The Campus Sexual Assault Study*].

2 Rana Simpson, DOJ Off. of Community Oriented Policing Services, *Acquaintance Rape of College Students 4* (2001), available at <http://cops.usdoj.gov/pdf/e03021472.pdf>.

3 See, e.g., *Simpson v. Univ. of Colo. Boulder*, 500 F.3d 1170 (10th Cir. 2007) (after alleged rape, football player assailant was punished through “extra running” and directed to write a letter of apology); *Wills v. Brown*, 184 F.3d 20 (1st Cir. 1999) (university recommended that a visiting professor who had sexually assaulted a

- student continue on the faculty for an additional year despite the fact that he had made “mistakes.”; *J.K. v. Arizona Board of Regents* (Arizona State University was forced to pay \$850,000 in a settlement when student was expelled for rape and then was permitted to return, only to commit another alleged rape).
- 4 Presidential Memorandum - Establishing a White House Task Force to Protect Students from Sexual Assault, 79 Fed. Reg. 4383 (Jan. 27, 2014), available at <https://federalregister.gov/a/2014-01645>.
 - 5 White House Task Force to Protect Students from Sexual Assault, *Not Alone: The First Report of the White House Task Force to Protect Students from Sexual Assault* 7 (April 2014), available at http://www.whitehouse.gov/sites/default/files/docs/report_0.pdf.
 - 6 Dep’t of Ed., Office of Civil Rights, 2001 Revised Sexual Harassment Guidance, available at <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>.
 - 7 C.P. Krebs et al., *College Women’s Experiences with Physically Forced, Alcohol- or Other Drug-Enabled, and Drug-Facilitated Sexual Assault Before and Since Entering College*, 57 J. AM. C. HEALTH 639 (2009).
 - 8 *The Campus Sexual Assault Study* at vii.
 - 9 Amer. Psychological Assoc., *Coerced Sex Not Uncommon for Young Men, Teenage Boys, Study Finds* (March 25, 2014), available at <http://www.apa.org/news/press/releases/2014/03/coerced-sex.aspx>.
 - 10 Ctrs. for Disease Control & Prevention, *The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report* 18 &19 (Nov. 2011), available at http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf.
 - 11 Walt Bogdanich, *A Star Player Accused, and a Flawed Rape Investigation*, N.Y. Times, April 16, 2014, <http://www.nytimes.com/interactive/2014/04/16/sports/errors-in-inquiry-on-rape-allegations-against-fsu-jameis-winston.html>.
 - 12 Claire Groden, *Campus Rape Victims Find a Voice*, Time, Aug. 08, 2013, available at <http://nation.time.com/2013/08/08/campus-rape-victims-find-a-voice/?iid=tsmodule>.
 - 13 Angie Epifano, *An Account of Sexual Assault at Amherst College*, The Amherst Student, Oct. 17, 2012, <http://amherststudent.amherst.edu/?q=article%2F2012%2F10%2F17%2Faccount-sexual-assault-amherst-college>.
 - 14 Tyler Kingkade, *Harvard’s Handling of Sexual Assault Reports Lambasted in Federal Complaint*, Huffington Post, April 3, 2014, available at http://www.huffingtonpost.com/2014/04/03/harvard-sexual-assault-complaint_n_5080708.html.
 - 15 Jason Felch & Jason Song, *Occidental College Settles in Sexual Assault Cases*, L.A. Times, September 18, 2013 available at <http://articles.latimes.com/2013/sep/18/local/la-me-occidental-settlement-20130919>.
 - 16 *Simpson v. University of Colorado*, 500 F.3d 1170 (10th Cir. 2007)
 - 17 Richard Pérez-Peña & Kate Taylor, *Fight Against Sexual Assaults Holds Colleges to Account*, N.Y. Times, May 3, 2014, available at <http://www.nytimes.com/2014/05/04/us/fight-against-sex-crimes-holds-colleges-to-account.html>.