

JOINT STATEMENT OF  
SETH GALANTER, PRINCIPAL DEPUTY ASSISTANT SECRETARY,  
OFFICE FOR CIVIL RIGHTS, U.S. DEPARTMENT OF EDUCATION;  
JAMES CADOGAN, SENIOR COUNSELOR TO THE ASSISTANT ATTORNEY GENERAL,  
CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE; AND  
ALLISON RANDALL, CHIEF OF STAFF,  
OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEPARTMENT OF JUSTICE

BEFORE THE U.S. COMMISSION ON CIVIL RIGHTS

July 25, 2014

**I. Introduction and Background**

Thank you for inviting the Department of Education's Office for Civil Rights (OCR) and the Department of Justice's (DOJ) Civil Rights Division and Office on Violence Against Women to the Commission's briefing on our efforts to reduce the prevalence of sexual harassment, including sexual violence, that can create hostile environments in elementary and secondary schools and institutions of higher education. It is critically important that we ensure safe, nondiscriminatory learning environments for all students in a lawful manner. We know that is a shared goal of all members of the Commission as well.

We are pleased that the Commission has undertaken the effort to address this issue and welcome the opportunity to share with you our offices' work on this important issue. We will discuss the work of our respective offices, as well as our collaborative work as members of the White House Task Force to Protect Students from Sexual Assault (Task Force).

The problem of sexual harassment and sexual violence has marred too many students' experiences in schools and institutions. While there may be no definitive answer about the prevalence of sexual harassment and violence that creates hostile environments in educational institutions, there can be no question that there is too much.

Multiple sources of data point to that same conclusion. Focusing first on sexual violence, the best available research based on surveys of students suggests that nearly 20% of college women, and roughly 6% of college men, are victims of attempted or completed sexual assault.<sup>1</sup> And the rate for gay, lesbian, bisexual, and transgender students is estimated by some to be even higher.<sup>2</sup>

The problem, moreover, is not limited to college. According to the federal Centers for Disease Control and Prevention, again based on surveys of students, more than 10% of high school women and 4% of high school men were physically forced to have sexual intercourse when they did not want to.<sup>3</sup> The percentage of students reporting such forced sexual intercourse was significantly higher for gay and lesbian high school students.<sup>4</sup> Sexual assault is all too commonly reported by children who are in elementary and middle school as well.<sup>5</sup> And such sexual misconduct and abuse is undertaken both by other students and adults, including school personnel.<sup>6</sup>

---

<sup>1</sup> Christopher P. Krebs et al., *The Campus Sexual Assault Study Final Report* at xiii, 5-5 (National Criminal Justice Reference Service, Oct. 2007), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>. See also Peter Wood, *How Often? How Bad?: New Evidence on Self-Reported Sexual Assault on Campus* (National Association of Scholars Article, June 17, 2014) (initially expressing “doubt about how good an estimate 1-in-5 really is,” but noting that in yet-unpublished data from a nationally-representative study of American adults, 18% of women who had at least a four-year degree and were no older than 25 reported they had been physically forced to have sexual activity against their will, leading the author to opine that the 1-in-5 number “appear[s] to be a slight exaggeration, but close enough”), available at [http://www.nas.org/articles/how\\_often\\_how\\_bad\\_new\\_evidence\\_on\\_self\\_reported\\_sexual\\_assault\\_on\\_campus](http://www.nas.org/articles/how_often_how_bad_new_evidence_on_self_reported_sexual_assault_on_campus).

<sup>2</sup> American Association of University Professors, *Campus Sexual Assault: Suggested Policies and Procedures*, at text accompanying n.7 (2012), available at <http://www.aaup.org/report/campus-sexual-assault-suggested-policies-and-procedures>.

<sup>3</sup> Laura Kann et al., *Youth Risk Behavior Surveillance—United States, 2013*, 63 *Morbidity and Mortality Weekly Report* No. 4, at 10 (June 13, 2014), available at <http://www.cdc.gov/mmwr/pdf/ss/ss6304.pdf>.

<sup>4</sup> Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Risk Behaviors Among Students in Grades 9–12 — Youth Risk Behavior Surveillance, Selected Sites, United States, 2001–2009*, 60 *Morbidity and Mortality Weekly Report* (Early Release), at 63 (June 6, 2011), available at <http://www.cdc.gov/mmwr/pdf/ss/ss60e0606.pdf>.

<sup>5</sup> David Finkelhor et al., *The Victimization of Children and Youth: A Comprehensive, National Survey*, 10 *Child Maltreatment* 11 (Feb. 2005) (reporting data from the National Survey on Children’s Exposure to Violence), available at <http://www.unh.edu/ccrc/pdf/jvq/CV73.pdf>; see also David Finkelhor, Office of Juvenile Justice and Delinquency Prevention, *Children’s Exposure to Violence: A Comprehensive National Survey* (Oct. 2009), available at <https://www.ncjrs.gov/pdffiles1/ojdp/227744.pdf>.

<sup>6</sup> Finkelhor (2005), *supra* note 5, at 11; Government Accountability Office, *Child Welfare: Federal Agencies Can better Support State Efforts to Prevent and Respond to Sexual Abuse by School Personnel*, at 1-2 (Jan. 2014), available at <http://www.gao.gov/assets/670/660375.pdf> (citing Charol Shakeshaft, *Educator Sexual Misconduct: A Synthesis of Existing Literature* 20 (2004) (stating that a study that reported that nearly 9.6% of students are targets of sexual misconduct by school personnel sometime during their school career, including 6.7% of students who were targets of some form of sexual misconduct involving physical contact, was “the most accurate data available”), available at <http://www2.ed.gov/rschstat/research/pubs/misconductreview/report.pdf>).

Reports to school personnel and law enforcement confirm the existence of a significant amount of sexual violence in educational institutions. According to data collected under the Jeanne Clery Disclosure of Campus Security and Crime Statistics Act (Clery Act), over 4,800 sex offenses were reported on college campuses in 2012 alone.<sup>7</sup> And the Department of Education's National Center for Education Statistics (NCES) reports that during the 2009-2010 school year, there were 600 incidents of rape or attempted rape and 3,600 incidents of sexual battery other than rape recorded by public schools.<sup>8</sup> Although these numbers are staggering, they don't even reflect the full scope of the problem since we know that sexual assault is among the least reported crimes.<sup>9</sup>

In addition to sexual violence, research reflects that the broader phenomenon of sexual harassment is also present at schools and institutions. A 2005 survey of college students ages 18 to 24 found that nearly two-thirds of them experienced some type of sexual harassment and less than 10 percent of these students told a college or university employee about their experiences.<sup>10</sup> Based on an NCES survey of a nationally-representative sample of public schools, almost two-thirds of public schools in the country reported that student-on-student sexual harassment – defined to mean conduct that is unwelcome, sexual in nature, and denies or limits a student's ability to participate in or benefit from a school's education program – happened at least occasionally in their school during the 2009-2010 school year; and more than 3 percent of

---

<sup>7</sup> Office of Postsecondary Education, U.S. Department of Education, Aggregated Clery Data for 2010-2012, available at <http://www.ope.ed.gov/security/GetDownloadFile.aspx>. This figure is based on data submitted annually by all postsecondary institutions that receive funding under Title IV of the Higher Education Act of 1965 (i.e., those that participate in federal student aid programs).

<sup>8</sup> Simone Robers et al., *Indicators of School Crime and Safety: 2013* at 117 (National Center for Education Statistics, U.S. Department of Education and Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, June 2014), available at <http://nces.ed.gov/pubs2014/2014042.pdf>.

<sup>9</sup> Lynn Langston et al., *National Crime Victimization Survey: Victimization Not Reported to the Police, 2006-2010* at 4 (Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, Aug. 2012), available at <http://www.bjs.gov/content/pub/pdf/vnrrp0610.pdf> (“From 2006 to 2010, the two highest percentage of unreported crime were among household theft (67%) and rape or sexual assault (65%) victimizations...”); Krebs, *supra* note 1, at 5-25 (“A similarly small proportion of victims of [physically forced and incapacitated sexual assault] stated that they reported the incident to a law enforcement agency, with incapacitated sexual assault victims ...being less likely to report the incident to this type of agency (2% vs. 13%). However, of victims who reported to law enforcement, a much higher proportion of incapacitated assault victims, compared to physically forced assault victims, reported to campus police (86% vs. 25%, respectively).”)

<sup>10</sup> Catherine Hill and Elena Silva, *Drawing the Line: Sexual Harassment on Campus* at 15, 32 (American Association of University Women Educational Foundation, Dec. 2005), available at <http://www.aauw.org/files/2013/02/drawing-the-line-sexual-harassment-on-campus.pdf>. Sexual harassment was defined for the survey as “unwanted and unwelcome sexual behavior which interferes with your life. Sexual harassment is not behaviors you like or want (for example wanted kissing, touching or flirting)... Throughout the survey, students were asked to think about sexual harassment specifically in the context of their college lives, e.g. in class, on campus, or at college-related events.” *Id.* at 6.

schools reported that it happened on a daily or weekly basis.<sup>11</sup> In another survey co-sponsored by NCES and the Bureau of Justice Statistics of a nationally-representative sample of households, 9.1% of public and private school students ages 12-18 reported being the target of hate-related words at school during that same school year, including 2.4% of female students and .7% of male students being targeted based on their gender.<sup>12</sup>

The Departments of Education and Justice are committed to using their available tools to deter sexual harassment, including sexual violence, that can create hostile environments in education programs and activities. Our offices' policy guidance, enforcement actions, technical assistance, and work on the Task Force aim to provide schools with clear direction about their obligations under federal civil rights laws and to educate students, school officials, and other community members about students' rights under these laws.

Our work to address sex-based discrimination is primarily conducted pursuant to Title IX of the Education Amendments of 1972 (Title IX) and Title IV of the Civil Rights Act of 1964 (Title IV). These statutes protect all students from sex-based discrimination at covered schools, colleges, and universities: male and female students; straight, gay, lesbian, bisexual, and transgender students; students with and without disabilities; and students of different religions, races, national origins, and immigration and citizenship status.

Title IX prohibits discrimination on the basis of sex in all education programs and activities receiving federal funds, and Title IV prohibits discrimination against students in public schools and colleges and universities based on sex, race, color, religion, and national origin. The Justice Department has the sole responsibility for enforcing Title IV. Upon receipt of a signed, written complaint, the Attorney General, through the Civil Rights Division, can file suit to enforce Title IV.

---

<sup>11</sup> Robers, *supra* note 8, at 122. The survey asked principals: "how often do the following types of problems occur at your school? ... Student sexual harassment of other students." "Sexual harassment" was defined for the survey as "conduct that is unwelcome, sexual in nature, and denies or limits a student's ability to participate in or benefit from a school's education program. ... Both male and female students can be victims of sexual harassment, and the harasser and the victim can be of the same sex. The conduct can be verbal, nonverbal, or physical." *School Survey on Crime and Safety: Principal Questionnaire: 2009-10 School Year*, at 2, 13 (U.S. Department of Education), available at [http://nces.ed.gov/surveys/ssocs/pdf/SSOCS\\_2010\\_Questionnaire.pdf](http://nces.ed.gov/surveys/ssocs/pdf/SSOCS_2010_Questionnaire.pdf).

<sup>12</sup> Robers, *supra* note 8, at 128. The survey asked students: "During this school year, has anyone called you an insulting or bad name at school having to do with your race, religion, ethnic background or national origin, disability, gender, or sexual orientation. We call these hate-related words." If the student answered yes, the student was asked: "Were any of the hate-related words related to .. Your gender?" *School Crime Supplement to the National Crime Victimization Survey: Final Questionnaire: 2009-10 School Year*, at 9 (U.S. Department of Justice), available at [http://www.docstoc.com/docs/170679035/School-Crime-Supplement-SCS\\_-2011](http://www.docstoc.com/docs/170679035/School-Crime-Supplement-SCS_-2011).

OCR shares responsibility for enforcing Title IX in schools and institutions of higher education with the Justice Department's Civil Rights Division, and we work together closely on investigations, resolution agreements, and policy development to ensure strong consistent enforcement of, and to increase voluntary compliance with, the law. We recently entered into an agreement to enhance our collaboration, which is publicly available online. We are resolved to continue our successful partnership and to improve the Administration's collective efforts to ensure that schools comply with Title IX and Title IV and that all students can attend school free from discrimination.

Partly due to the work of our offices, there is increased public awareness about sexual harassment, including sexual violence, its pervasiveness in our schools, and the damage it can cause when not taken seriously or addressed adequately. In response, many schools are taking greater initiative to keep their students safe. And parents, students, educators, and entire communities are working hard to determine the most effective policies for identifying, responding to, and preventing sexual harassment, including sexual violence. For example, within months of releasing OCR's 2011 guidance on sexual violence, many colleges and universities revised their sexual violence policies and procedures consistent with that guidance. We applaud these schools for taking steps to keep their students safe without waiting for enforcement intervention from OCR or the Department of Justice.

But some schools still are responding inadequately to sexual harassment, including sexual violence against students. For those schools, our offices and this Administration have made it clear that the time for delay is over. This Administration is committed to using all appropriate means to ensure that all schools comply with Title IX and Title IV and make campuses safer for students across the country.

## **II. Sexual Harassment and Sexual Violence Prohibited under Title IX and Title IV**

Sexual harassment is unwelcome conduct of a sexual nature and can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment can also include acts of sexual violence, including physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. The Supreme Court, Congress, and the Departments of Education and Justice have long recognized that sexual harassment, including sexual violence, of students can create a hostile learning environment that schools must rectify to meet their obligation not to discriminate on the basis of sex.

Schools' core mission to educate students necessarily includes ensuring that their students are safe to learn in class, in school facilities, on their campuses, and in all of their education programs and activities. A school violates a student's rights under Title IX and Title IV when

(1) sexual harassment is sufficiently serious to limit or deny a student's ability to participate in or benefit from a school's educational program or activity *i.e.*, creates a hostile environment; and (2) the school, upon actual or constructive notice, fails to take prompt and effective steps reasonably calculated to end the sexual harassment, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

In determining whether sexual harassment has created a hostile environment to which a school must respond, consistent with the Supreme Court decision in *Davis v. Monroe County Board of Education*, OCR and DOJ consider the conduct in question from both a subjective and objective perspective. Specifically, the standards our offices apply require that the conduct be evaluated from the perspective of a reasonable person in the alleged victim's position, considering all the circumstances.

When schools fail to respond adequately to sexual harassment, including sexual violence, they may be forcing the affected students to attend school in a sexually hostile environment. Such an environment deprives students of the equal opportunities of their peers: the freedom to safely stay late at the library, attend a party on campus alone, or participate in athletics and other extracurricular activities; the freedom to go to class without being re-traumatized by a perpetrator sitting a few seats away; the freedom to walk on campus without being harassed by a perpetrator's friends. And it can profoundly damage students' physical and emotional well-being in ways that deprive them of the opportunity to obtain an education altogether. In some cases, students who have been targets of sexual violence withdraw from school, either temporarily or permanently, because their school failed to respond promptly or appropriately.

Since the Title IX regulations were adopted almost 40 years ago, the Departments have required that every educational institution have a process to promptly and equitably resolve sex discrimination complaints. As part of their Title IX obligations, schools must conduct adequate, reliable, and impartial investigations of student complaints of sex discrimination, including sexual harassment and sexual violence.

The Departments recognize that educational institutions have legal obligations in addition to the legal obligation not to discriminate on the basis of sex. In particular, OCR has repeatedly acknowledged that students and employees have certain due process rights under the U.S. Constitution and may have additional rights under state law. OCR has consistently stated in its guidance on sexual harassment and sexual violence that the rights established under Title IX must be interpreted consistently with any federally guaranteed due process rights involved in a complaint proceeding. Schools need to be aware of these rights and their legal obligations to individuals accused of sexual harassment, including sexual violence. Although hypotheticals can and do abound, we have not encountered a situation where there has been an actual conflict

between a school's Title IX obligations involving sexual harassment and a school's other legal obligations, and we are not aware of any court that has found such an actual conflict.

Title IX does not reach curriculum or in any way prohibit or abridge the use of particular textbooks or curricular materials. Additionally, OCR has made it clear that Title IX and the other civil rights laws OCR enforces protect students from prohibited discrimination and are not intended to restrict the exercise of speech or other expressive activities protected under the U.S. Constitution. Therefore, OCR has consistently maintained that when schools work to prevent and redress discrimination, they must respect the free speech rights of students, faculty, and other speakers. While it is true that sexually harassing conduct may take many forms, including verbal acts and name-calling and written statements, it is not enough that a person find the expression personally offensive. Rather, to create a hostile environment that requires the school to respond in ways that both eliminate and remedy that environment, the harassing conduct must be sufficiently serious to a reasonable person in that circumstance that it limits or denies a student's ability to participate in or benefit from a school's educational program or activity.<sup>13</sup>

In this regard, we note that in 2012, this Commission's California Advisory Committee recognized that the OCR hostile environment standard is protective of speech. The Advisory Committee recommended to all public colleges and universities in California that, in order to "comply with controlling United States Supreme Court precedent, [and] ensure the First Amendment rights of students," the "standard employed by the OCR should be used, i.e., in order to form the basis for any type of student disciplinary action, speech must 'be considered sufficiently serious to deny or limit a student's ability to participate in or benefit from the educational program.'"<sup>14</sup>

---

<sup>13</sup> This standard appears consistent with that recommended by some of the others who are testifying before the Commission today. See, e.g., American Association of University Professors, *Sexual Harassment: Suggested Policy and Procedures for Handling Complaints*, at 244-45 (1995) ("conduct of a sexual nature" constitutes prohibited sexual harassment outside the teaching context when "such speech or conduct is reasonably regarded as offensive and substantially impairs the academic or work opportunity of students, colleagues, or co-workers"), available at <http://www.aaup.org/file/sexual-harassment-complaints.pdf>.

<sup>14</sup> *Equal Educational Opportunity and Free Speech on Public College and University Campuses in California* at 11 (California Advisory Committee to the United States Commission on Civil Rights, Oct. 2012), available at <http://www.usccr.gov/pubs/CA-Free-Speech-Report.pdf>.

### **III. OCR's Efforts to Address Sexual Harassment and Sexual Violence That Can Create Hostile Environments in Schools**

Over decades of work in this area, OCR has investigated and resolved hundreds of sexual harassment and sexual violence cases, issued policy guidance regarding sexual harassment and sexual violence, and provided technical assistance related to sexual harassment and sexual violence. In the process, OCR has developed significant expertise in this area that we regularly share with our federal partners in the effort to address unlawful sexual misconduct in schools.

OCR's work begins with the recognition that each school has the ultimate responsibility for creating a nondiscriminatory learning environment and ensuring that its policies, practices, and procedures protect all students from discriminatory harassment and violence. There is no universal, one-size-fits-all approach that will be right for every school or all students; and the Department of Education makes no effort to mandate a single approach. School policies will vary in detail, specificity, and components, reflecting differences in state or local legal requirements and each school's size, and administrative structure, and what it has learned from past experiences.

#### **A. Issuing Policy Guidance on Title IX and Sexual Harassment and Sexual Violence**

OCR issues policy guidance to inform schools and the public about critical and emerging issues arising under the laws and regulations OCR enforces, as a complement to our technical assistance and enforcement activities. This policy guidance offers clear direction to schools in areas of pressing concern, including sexual violence.

OCR first issued guidance on schools' obligation to protect students from sexual harassment in 1997, supplementing OCR's 1994 guidance on racial harassment and the Supreme Court's 1991 holding in *Franklin v. Gwinnett County Public Schools* that Title IX's prohibition on sex discrimination extends to sexual harassment of students. In January 2001, OCR released revised guidance on the sexual harassment of students by school employees, other students, or third parties. Each of these documents went through a formal notice and comment process.

In order to reaffirm that the Title IX's regulations and OCR's policies do not require or prescribe speech, conduct, or harassment codes that impair the exercise of rights protected under the First Amendment, OCR issued a Dear Colleague letter on this topic in July 2003. In October 2010, OCR issued a Dear Colleague letter to help schools understand when bullying constitutes discriminatory harassment, and to explain how failing to recognize discriminatory harassment when addressing student misconduct may lead to inadequate or inappropriate responses that fail to remedy violations of students' civil rights.

Responding to issues arising in OCR's enforcement work and dialogue with members of the education community, OCR issued a Dear Colleague letter in April 2011 (2011 DCL) to help schools better understand their obligations under Title IX to prevent and respond to sexual violence. OCR's 2011 DCL marked the first time that any Administration had issued guidance under Title IX specifically dealing with sexual violence.

The 2011 DCL affirms that the Title IX requirements for sexual harassment and OCR's 2001 guidance on sexual harassment also apply to sexual violence and lays out the specific Title IX requirements applicable to sexual violence. It addresses the unique concerns that arise in sexual violence cases, such as the role of criminal investigations and a school's independent responsibility to investigate and address incidents of sexual violence, regardless of whether a criminal violation is found. It also provides guidance and examples about key Title IX requirements and how they relate to sexual violence — including schools' obligations to have a policy against sex discrimination, the important role of Title IX coordinators, and the requirements for a school's grievance procedures to be prompt and equitable. The 2011 DCL discusses the proactive efforts schools can take to prevent sexual violence and to educate employees and students and provides examples of the types of remedies that schools and OCR may use to respond to sexual violence.

OCR's release of the 2011 DCL is widely credited with having sparked significant changes at schools as they worked to meet Title IX's requirements consistent with the DCL. Those efforts generated many further questions from schools and students about how to apply the requirements and recommendations articulated in the 2011 DCL. To answer those questions, OCR issued a Question and Answer document on Title IX and sexual violence (Q&A) on April 29, 2014, to give schools and students the information they need to ensure compliance with Title IX and, more importantly to prevent and effectively respond to victims of sexual violence.

The Q&A answers questions OCR has received since the release of the 2011 DCL, provides perspective based on OCR's more recent sexual violence investigations and resolutions, and offers recommendations for good policies and practices. Key clarifications made in the Q&A include:

- Interim Measures. OCR investigations have revealed that schools do not consistently take steps to protect and support complainants after they report incidents of sexual violence. The Q&A gives examples of appropriate measures schools should take to protect and support students before and during an investigation, suggests that the school make sure the complainant is aware of any available resources, and notes that it should minimize the burden on the complainant.

- Students Protected. OCR has heard from students that some groups of students face unique challenges when dealing with sexual violence, and schools have not always afforded all students the same protections. The Q&A makes clear that Title IX protects all students from sexual violence, regardless of whether they have a disability or are international or undocumented, and regardless of the sexual orientation and gender identity of the target or offender.
- Reporting and Confidentiality. Many potential problems can be prevented when students and employees understand their role and responsibilities. The Q&A provides answers to a number of questions OCR has received with respect to employees' reporting obligations and students' interest in confidentiality.
- Title IX Coordinator's Role. The Q&A provides detailed information on the importance and recommended role of the Title IX coordinator, including in evaluating students' requests for confidentiality.
- Training, Education, and Prevention. Educators and staff play an important role in preventing, addressing, and ending sexual violence. The Q&A also provides more information on training, education, and prevention, including detailed guidance on training employees to understand their role in protecting students' rights and education and prevention programs aimed at students.
- First Amendment. The Q&A affirms OCR's previous guidance on the First Amendment, which makes clear that when a school works to prevent and redress discrimination, it must respect the free-speech rights of students, faculty, and other speakers.<sup>15</sup> It also clarifies that the 2011 DCL did not expressly address First Amendment issues because it focuses on unlawful physical sexual violence, which is not speech or expression protected by the First Amendment.
- Due Process. The Q&A reiterates OCR's previous guidance that the rights established under Title IX must be interpreted consistently with any federally and state guaranteed due process rights. It also notes that a balanced and fair process that provides the same opportunities to both parties will lead to sound and supportable decisions. The Q&A explains that OCR strongly discourages allowing the parties to personally cross-examine each other during a hearing on alleged sexual violence because it may be traumatic or intimidating, and may perpetuate a hostile environment. As an alternative to personal cross-examination, the Q&A explains that schools may allow the parties to submit questions to a trained third party (e.g., the hearing panel) to ask questions on their behalf.

---

<sup>15</sup> This reaffirmation comports with the recommendation made by the Commission's California Advisory Committee that OCR "reaffirm the Department of Education's 2003 guidance letter." *Id.* at ii (Letter of Transmittal).

## **B. Providing Resources and Technical Assistance**

OCR has 12 regional offices around the country that are equipped to provide technical assistance to school officials, parents, students, and others to inform them of their rights and responsibilities under the law. OCR does this through a variety of methods, and the form of our assistance is dictated largely by the needs of the school, group, or individuals requesting information. In some instances, a school will contact OCR because it has questions about the best way to comply with Title IX, and OCR will have a phone or in-person meeting with the relevant administrators of the school to listen to their concerns and provide guidance on how to comply. This provides schools with a way to come into compliance without the need for enforcement action.

Likewise, OCR routinely participates in trainings and conferences conducted by groups that count college, university, and elementary and secondary school leadership among their members, such as the National Association of College and University Attorneys and the National School Boards Association. Again, this type of assistance provides schools with an outlet to ask questions and receive answers directly from OCR – without worrying about opening themselves up to an enforcement action. OCR also participates in community meetings and publishes and disseminates materials to students, parents, teachers, administrators, schools, and community organizations.

## **C. Enforcing Title IX Through OCR's Investigations, Findings, And Resolutions**

OCR's complaint process allows any member of the public to file a complaint with its office. Since the beginning of this administration, OCR has received 1,669 complaints involving sexual harassment in educational institutions as of July 7, 2014. Of those, 265 complaints involved sexual violence.

OCR also launches proactive investigations, such as compliance reviews and directed investigations, to remedy possible violations of students' rights. OCR initiates compliance reviews to examine potential systemic violations based on various sources of information, including statistical data, news reports, and information from parents, advocacy groups, and community organizations. OCR can also initiate directed investigations when a report or any other information indicates a possible failure to comply with the regulations and laws enforced by OCR. A directed investigation is a review that allows for immediate investigation of urgent and critical civil rights problems where the effects of possible discrimination are sufficiently serious to deny or limit the ability of students (and others) to participate in, or benefit from, the educational program or activity.

Since January 2009, OCR has initiated 25 proactive investigations (i.e., compliance reviews and directed investigations) focused on sexual harassment and sexual violence. OCR in this

Administration has prioritized addressing sexual harassment and sexual violence in our nation's schools: sexual harassment and sexual violence compliance reviews are almost sixteen percent of the total number of compliance reviews that OCR has initiated since 2009, while sexual harassment and sexual violence complaints are less than one percent of the total number of complaints OCR receives. OCR has also been fortunate to work with the Department of Justice's Civil Rights Division on some joint investigations, which will be discussed later in this statement.

Under the statutory enforcement scheme, when OCR finds a recipient of Department of Education funding to have violated Title IX or any of the civil rights provisions OCR enforces, it attempts to obtain voluntary compliance by the recipient. In the voluntary resolution process, which can occur either before the completion of an investigation or after OCR has found violations of the civil rights laws, the recipient commits to taking the necessary steps to come into compliance and to allow OCR to monitor the recipient until OCR determines it is in full compliance. If OCR cannot secure voluntary compliance from the recipient, OCR may initiate an administrative action to terminate and/or refuse to grant federal funds to the school or institution or refer the case to the Justice Department to file a lawsuit. To revoke federal funds – the ultimate penalty – is a powerful tool because institutions receive billions of dollars a year from the federal government for such things as student financial aid, academic resources and many other functions of education. OCR has not had to impose this severe penalty on any institution recently because our enforcement has consistently resulted in institutions agreeing to take the steps necessary to come into compliance and ensure that students can learn in safe, nondiscriminatory environments.

OCR has strengthened its enforcement procedures, including instituting time limits for negotiating voluntary resolution agreements. The voluntary resolution process is usually much faster than litigation, but it can still take time and include frustrating delays. To ensure efficient as well as effective resolution of noncompliance findings, and to guard against the risk that a school might extend negotiations to delay enforcement, OCR has placed a 90-day limit on voluntary resolution agreement negotiations where it has found a school in violation of the civil rights laws we enforce, including Title IX. In addition, OCR has changed its procedures to make explicit that schools should provide survivors with interim relief – such as changing housing or class schedules, issuing no-contact orders, or providing counseling – where necessary because of safety concerns pending the outcome of an OCR investigation.

OCR responds to possible Title IX violations related to a school's response to sexual harassment and sexual violence of students with a comprehensive investigation of the school's system for addressing sexual harassment and sexual violence. As noted earlier, if OCR finds that a school has violated Title IX, it works to obtain voluntary compliance through a resolution agreement. We want to briefly highlight a few of the recent agreements that OCR has reached with

institutions of higher education and school districts. These outcomes highlight the robust remedies OCR requires in our resolution agreements, which are designed to empower the entire school, college, or university community to address issues of sexual harassment and violence. The remedies engage schools and communities to create lasting and meaningful change, and OCR remains actively involved in monitoring to ensure that paper promises translate into lived reality for students in affected schools.

Following a comprehensive investigation, OCR found in part that the Virginia Military Institute (VMI) failed to respond in a prompt and equitable manner to complaints of sexual harassment and sexual violence of which it had notice and that this failure permitted a sexually hostile environment to exist for cadets that was sufficiently serious to deny or limit their ability to participate in VMI's program. In May of 2014, VMI entered into a resolution agreement with OCR which requires VMI to conduct annual climate surveys, hold annual trainings for students and employees, and identify strategies for sexual harassment and sexual violence prevention.

OCR's investigation at Tufts University found that Tufts had not remediated a sexually hostile environment and had denied the student complainant access to educational opportunities at the school. Tufts also failed to provide prompt and equitable responses to student complaints of sexual violence and sexual harassment of which it had notice and did not have a permanent Title IX coordinator for more than a year-and-a-half during recent academic years. In April of 2014, Tufts entered into a resolution agreement in which it commits to provide timely and effective interim relief to complainants, ensure that students and staff are aware of students' rights under Title IX, and seek input from the campus community and conduct periodic climate surveys.

Following OCR's proactive investigation of the State University of New York (SUNY), OCR concluded that the grievance procedures adopted by SUNY and its campuses were inadequate to provide for the prompt and equitable resolution of complaints of sexual harassment, including sexual violence. In addition, OCR reviewed 159 individual cases of alleged sexual harassment from four of SUNY's individual campuses and determined that the vast majority of these cases involved reports of sexual assault or violence sufficiently serious to create a sexually hostile environment for the affected students. In some of the cases OCR reviewed, complainants did not receive prompt or adequate investigations of their complaints, notice of the outcome of their complaints, or equal opportunities to attend prehearing conferences or present evidence and witnesses at the hearing. In October of 2013, SUNY entered into an agreement in which it agreed to seek input from the campus community, including from past complainants, and conduct periodic assessments of the campus climate.

As noted above, sexual harassment and violence are not limited to institutions of higher education. OCR's proactive investigation of West Contra Costa Unified School District revealed sexually harassing student-on-student behavior that was sufficiently serious to deny or limit

students' ability to participate in or benefit from the education program and activities, thus creating a hostile environment throughout multiple school sites. OCR further found that the district had not undertaken school-wide or district-wide initiatives sufficient to address this hostile environment. The inappropriate sexual behavior included frequent unwelcome sexual touching between students at all school levels, sexual assault, and rape. OCR also found that students had been subjected to unlawful sexual harassment by employees. The resolution agreement reached in September 2013 committed the district to designate a Title IX coordinator and revise its policies, procedures, and practices related to sexual harassment and sexual violence; create a task force composed of parents, students, community members, and representatives of community-based organizations to identify strategies to improve the school climate and prevent sexual harassment and sexual violence; and conduct annual assessments of the climate at district schools to evaluate the effectiveness of actions being taken and to inform future proactive steps.

#### **D. Increasing Transparency**

OCR is also focused on improving compliance with Title IX by increasing transparency. OCR now posts nearly all recent resolution letters and agreements with recipients on our website, except those documents that raise individual privacy concerns. In addition, OCR has posted sexual violence resolution agreements and letters on NotAlone.gov to make them more accessible to students, parents, and community members. We hope that these agreements will be helpful for schools seeking to address similar problems. At the same time, we note that each agreement represents the resolution of a particular case, not OCR or Administration policy. Every school needs to take into account the circumstances on its own campus in adopting practices to comply with Title IX.

OCR has also made public, for the first time, a list of all colleges and universities under OCR investigation for the handling of sexual violence and harassment complaints. Our hope is that this increased transparency spurs community dialogue about this important issue. OCR expects that this additional transparency regarding resolution agreements, as well as institutions under investigation will be an important enforcement tool, raising public awareness regarding the issues and prompting action at additional schools to achieve fuller compliance with the laws. In fact, we are already seeing colleges and universities voluntarily engaging in this important conversation. For example, over 50 colleges and universities sent representatives to a Sexual Assault Summit this July, where experts, educators, Title IX coordinators, student affairs officials, legal counsel, and others came together to learn about sexual assault on campus and to begin a broader effort to share resources, information, and expertise on this issue. Both OCR and DOJ attended the Summit to share the federal perspective on sexual assault and to hear from campuses about the challenges they face in eradicating sexual assault at their schools.

Moreover, consistent with these transparency efforts, the Department of Education is in the process of requiring both public school districts and colleges and universities to report the name and contact information of Title IX coordinators through two existing data collections, and we intend to make the collected information publicly available. Every school district and college and university is required by law to designate at least one Title IX coordinator, an employee charged with coordinating the school's Title IX responsibilities. Schools are required to notify students and employees of the name and contact information of the Title IX coordinator. However, there is currently no central, national repository of coordinator contact information. We hope these collections will make it easier for anyone to locate the name and contact information of a particular Title IX coordinator, and will allow Title IX coordinators to collaborate and share information with each other.

Colleges and universities will now be required to submit the name and contact information for their Title IX coordinator as part of the annual Clery Act data collection. The Department of Education plans to begin collecting this information in the 2015 Clery Act data collection, and we expect the information will be available to the public that same year.

And now, for the first time, public school districts are required to report the name and contact information for their Title IX coordinator as part of OCR's biennial Civil Rights Data Collection (CRDC). School districts will submit this information in the Fall of 2014, and we expect the information will be available for the public to access in 2015.

#### **IV. The Justice Department's Civil Rights Division's Efforts to Address Sexual Harassment and Sexual Violence in Schools**

As previously discussed, equal access to educational opportunities is a civil rights issue – one that the Department of Justice takes very seriously. In order to ensure such access, a school must appropriately respond to allegations of sex-based harassment, including sexual violence. Schools must provide survivors of sexual violence with access to support services, equitable grievance procedures to resolve Title IX complaints, and interim remedies while their complaints are being investigated and adjudicated. Schools also should notify students of their right to file a criminal complaint and should not dissuade a student from doing so. All parties that respond to reports of sexual assault – be they educational institutions, police, or prosecutors – need to respond promptly and fairly to such reports and maintain public safety. Their responses must be nondiscriminatory and should encourage survivors to report and seek help, not dissuade them from coming forward.

Despite its prevalence, sexual assault remains one of the most under-reported serious crimes today. This is because, too often, survivors are afraid to report sexual assaults not only to school administrators, but also to campus law enforcement, community law enforcement, or

prosecutors' offices out of fear of biased treatment that denies victims access to fair and impartial resolutions and that can traumatize and re-victimize survivors.

To reverse this trend of under-reporting, survivors of sexual assault must believe that their reports will be taken seriously, and will be handled without bias or stereotypes throughout the entire process – that means from the time the survivor first reports an assault through any subsequent law enforcement investigation or prosecution. It is not enough for victims to feel safe reporting to one entity that responds to campus sexual assault, such as a sexual assault resource center (SARC). We need to ensure that schools, their Title IX coordinators, their campus police, and local law enforcement are all considered safe and effective sources of help so that all students are protected and that survivors of sexual assault are treated with dignity and respect, and have equal access to education and justice.

### **A. DOJ's Holistic Approach to Sexual Assault**

The Justice Department is focused on a holistic approach to ensuring non-discriminatory educational environments, including prompt, fair, and effective responses to reports of campus sexual assault. The Department conducts investigations of schools in a thorough and comprehensive manner to ensure that it gathers all the relevant facts needed to make an informed determination regarding the school's compliance with its civil rights obligations. If the Department finds noncompliance, it seeks the voluntary cooperation of the school and works hard to design resolutions that will help the school meet its obligations in a timely manner, bring meaningful relief to survivors, and create lasting change that improves the climate on campus for all students. This holistic approach is illustrated by the Department's work in Missoula, Montana.

In May of 2012, the Department of Justice opened a four-pronged investigation into allegations that the University of Montana, Missoula, the University's campus police, called the University's Office of Public Safety, the Missoula Police Department (MPD), and the Missoula County Attorney's Office discriminated against women by failing to adequately respond to reports of sexual assault. The investigation of the University of Montana was conducted jointly with OCR. The Department engaged in these investigations of unlawful gender discrimination using the full breadth of its enforcement authorities: Title IX, Title IV, the Violent Crime Control and Law Enforcement Act of 1994, and the anti-discrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968. The Department did so because it knew that if one or more of these entities were not meeting their civil rights obligations, this likely was negatively impacting the willingness of women in Missoula to report sexual assault and the ability of the other entities to respond effectively to such reports. Experience has shown that coordinated and informed community responses to sexual assault are more likely to produce better outcomes.

As part of our investigations in Missoula, we carefully examined the conduct of each entity to determine whether its policies and practices discriminated against women. But we also looked at how each entity's role in the larger community impacted the experience of women in Missoula and their access to education and justice. We sought evidence from all members of the community by interviewing numerous employees of these entities, current and former students, survivors of sexual assault, and victim advocates. We learned that college students who had been sexually harassed or raped felt belittled, disbelieved, and/or blamed for speaking up or reporting that they had been assaulted. We also carefully analyzed voluminous documents to evaluate each entity's policies, procedures, and responses to reports of sexual assault.

Our comprehensive investigation resulted in detailed findings of noncompliance. While we won't share all of them today, we want to highlight some that DOJ and OCR made regarding the University of Montana that are relevant to today's discussion. First, the reported incidents of rape or sexual assault were sufficiently serious that they interfered with or limited female students' ability to participate in or benefit from the school's program. As a result, students faced a hostile environment – they could not engage in or complete their academic work; they experienced negative mental health consequences, including thoughts of suicide; they felt unsafe on campus; and some left the University. Second, the University did not take effective action to fully eliminate this sexually hostile environment, prevent its recurrence, and remedy its effects. Third, the University's sexual harassment and assault policies did not provide clear notice of the conduct prohibited by the University or clear direction about where and how to file complaints. Fourth, the University's grievance procedures did not ensure prompt and equitable resolution of complaints of sex-based harassment. And lastly, the individuals investigating sexual assault and harassment complaints and those coordinating the University's Title IX efforts did not receive adequate training.

In addition, DOJ's investigation found that the University's Office of Public Safety (OPS) and the Missoula Police Department, the law enforcement agencies responsible for the initial response to incidents of sexual assaults on campus and in Missoula, failed to do so appropriately and that their policies and training related to sexual assault response were insufficient. Further, DOJ's investigation determined that these deficiencies in responding to sexual assaults were in large part due to reliance on gender-based stereotypes. For example, because of the Office of Public Safety's absence of sexual assault policies and training, and its ineffective communication and coordination with its law enforcement and advocacy partners, the Office did not adequately fulfill its role as a first responder to reports of sexual assault on campus.

With regard to MPD, DOJ found there was an inability to gather necessary evidence or testimony due to practices that discouraged female victims of sexual assault from cooperating with law enforcement and thus compromising the investigative process. In addition, there was substantial confusion between officers' understanding of the roles and responsibilities of OPS and MPD in

responding to reports of sexual assaults on campus and what type of information could be shared between the two offices. This lack of communication hindered the Missoula law enforcement community's ability to protect women from on-campus sexual assault.

DOJ's investigation also identified statements by OPS and MPD officers and leadership that suggested bias against female victims of sexual assault – for example, by suggesting that women victims of sexual assault were lying or exaggerating reports of sexual assault or by expressing disproportionate concern for the impact of a law enforcement investigation on the men accused of assault. Given that sexual assault is the serious crime most likely to affect college students, and college women in particular, these omissions and statements indicated a troubling, and institutionalized, indifference to sexual assault.

Prosecutors also play a critical role in providing an effective law enforcement response to sexual assault. Accordingly, DOJ also found it necessary also to assess the propriety of the practices of the Missoula County Attorney's Office, the law enforcement agency with primary responsibility for prosecuting sexual assault cases in Missoula County, related to sexual assault. A successful prosecution of a sexual assault case requires a prosecutor to be not only an effective advocate within the criminal justice system but also a proficient investigator who collaborates and communicates effectively with its law enforcement partners. With regard to the Missoula County Attorney's Office, DOJ found that sexual assaults of adult women were given low priority and that there was insufficient training to effectively and impartially investigate and prosecute these cases. Particularly, DOJ concluded that victims of non-stranger sexual assault and rape were often treated with disrespect, not informed of the status of their case, and re-victimized by the process – in many instances, victims were not even interviewed by a prosecutor before the decision was made to decline charging their case or to offer a plea agreement to the perpetrator. In addition, the County Attorney's Office neither had its own dedicated victim-witness personnel, as are routinely employed in prosecutors' offices across the nation, nor sufficiently coordinated with the Missoula Crime Victim Advocate Office to ensure the proper and respectful treatment of and communication with victims. Finally, prosecutors routinely failed to engage in the most basic communication about its cases of sexual assault with other law enforcement partners and generally did not develop evidence in support of sexual assault prosecutions, either on its own or in cooperation with other law enforcement agencies.

## **B. Securing Comprehensive, Systemic Relief to Address Sexual Assault**

Working cooperatively throughout with University President Royce Engstrom, the Justice Department and the Department of Education's Office for Civil Rights were able to resolve these findings through a voluntary agreement with the University of Montana. DOJ also entered into groundbreaking agreements with the University's Office of Public Safety, the Missoula Police Department, and the Missoula County Attorney's Office (MCAO). These agreements set in

place systemic reforms to eliminate gender bias in law enforcement practices and improve each entity's response to allegations of sexual assault. We commend each of these entities for recognizing the structural changes needed to ensure a non-discriminatory response to reports of sexual assault and for working collaboratively with the Justice Department to comprehensively integrate law enforcement, community, and school-based responses to sexual assault.

The agreements put in place commonsense reforms that responded to our investigative findings in a straightforward and effective manner. For example, we found that none of the entities had provided adequate training to their employees tasked with responding to and investigating sexual assault. All four agreements require extensive training to ensure investigations and related decisions are made by informed and properly trained personnel and are not infected by gender bias. The Title IX-Title IV agreement with the University also requires training for students to ensure they know how to recognize and report sexual assault and harassment and to prevent its occurrence by, for example, understanding risk factors like drug and alcohol use and engaging safely in bystander intervention.

With regard to law enforcement and prosecutor offices, appropriate training is essential to improve their response to sexual assault, including by combating gender bias. This training must encompass the most effective way to seek the truth, understanding how to encourage victim participation in a case and making certain that sexual assault investigations and prosecutions do not rely on gender-based assumptions and stereotypes. For MPD and OPS, these agreements require training on fundamental topics including: effective law enforcement response to non-stranger sexual assault; dynamics of and relevant core scientific concepts related to sexual assault; crime scene investigation; taking statements from individuals reporting sexual assaults; the impact of bias in response to sexual assault; and strategies to ensure this bias does not undermine investigations. For the County Attorney's Office, the agreement requires training on methods of proving non-stranger, drug- or alcohol-facilitated sexual assault, sexual assault where consent is a defense, the body of scientific knowledge commonly accepted as necessary for prosecuting sexual assault cases, effective techniques for interviewing sexual assault victims, and addressing misinformation about bias and sexual assault victimology, including misinformation about victim response to sexual assault.

The agreements also require all four entities to develop or revise their sexual assault policies and procedures to encourage reporting and deliver effective and fair responses. To ensure the new policies are implemented appropriately, the agreements require training of all individuals engaging in the sexual assault response process on how to apply the new policies and investigate in a fair, non-biased, and objective manner that does not discourage victims from reporting or continuing with their complaints. In the school setting, the purpose of an effective policy and proper training is two-fold: first, policies should ensure not only proper responses to reported sexual assault but also encourage reporting and help prevent sexual assault from occurring.

Second, with proper training, investigators of sexual assault can determine if reported sexual misconduct has created a hostile environment so that the school can take appropriate actions to eliminate that hostile environment, prevent its recurrence and address its affects. In the law enforcement setting, these agreements require revised sexual assault policies that take into account initial officer response to reports of sexual assault, development of a victim interview protocol, contacting and interviewing suspects, medical forensic examinations, coordination with the forensic examiner and participation of victim advocates.

Our investigation found that the University of Montana's myriad sexual misconduct policies were inconsistent, confusing, and likely contributing to underreporting. Thus, our Agreement produced one clear, comprehensive nondiscrimination policy that encourages reporting of sexual harassment, including sexual assault. The policy explains that to establish a hostile environment, sexual harassment must be objectively offensive and severe, pervasive, or persistent so as to deny or limit a person's ability to participate in or benefit from the University's programs, services, opportunities, or activities. However, the policy also encourages students to report sexually harassing conduct and not to wait to report until they think the conduct has created a hostile environment – particularly since this is a legal determination that students are ill equipped to make. In circumstances where there is escalating harassing conduct, students need not wait to report and schools need not wait to respond until a student is subjected to sexual violence. The revised policy thereby creates an early warning system so that the University can respond to harassing conduct before it escalates to a rape or otherwise creates a hostile environment. An early warning system allows schools to respond to sexual harassment or other sexual misconduct – e.g., through counseling, warnings, training, and other measures – before it reaches the point of denying or limiting other students' access to educational opportunities or benefits. Put simply, the Agreement is intended to create a safe space for concerns about sexual assault and harassment to be raised and reported, and to give the University and its students the tools to address those concerns and prevent the serious problems of sexual assault and harassment.

Stakeholder engagement is key to the success of these reform measures, as without such input, schools and law enforcement agencies cannot effectively determine whether the policies and procedures set in place are resulting in the intended positive effects. The agreements require each institution to evaluate whether its reforms are successful by seeking community input. For example, the Title IX-Title IV agreement requires the University to conduct annual climate surveys of students that: assess their attitudes and knowledge regarding sexual assault and harassment, gather information regarding their experience with sex discrimination at the University; determine whether they know when and how to report such misconduct; gauge their comfort level with reporting such misconduct; identify any barriers to reporting; assess their familiarity with the University's outreach, education, and prevention efforts to identify which strategies are effective; and solicit input on how the University can encourage reporting of sexual harassment, sexual assault, and retaliation, and better respond to such reports. The Agreement

also requires the University to conduct an annual assessment of the effectiveness of its reforms and to consider any recommendations from community members, parents, and law enforcement upon sharing information gathered for the annual assessment with such stakeholders.

In addition, the agreements with OPS, the Missoula Police Department and the County Attorney require these entities to work with community-based organizations and other stakeholders, to assist in developing and implementing the reforms described previously. For example, a sexual assault safety and accountability audit will be designed to assess how the City, Missoula County and the University respond to and collaborate to address sexual assault, with a focus on enhancing victim safety, support and participation in the law enforcement process. There will also be an external review group made up of sexual assault prosecutors, investigators, public defenders and advocates to serve as an external review group for all sexual assault cases.

These agreements also require MPD, OPS and MCAO to develop procedures for gathering and analyzing data to assess the incidence and outcomes of reports of sexual assault and putting in place systems and oversight that will prevent patterns or practices of unconstitutional conduct from recurring in the future. Finally, the OPS and MPD agreements require independent oversight to assess and report whether the requirements of the agreement have been implemented. The Independent Reviewer will also analyze the data collected and conduct regular compliance reviews, outcome assessments and investigation reviews.

We intend that the agreements the Department entered into with these four entities, and the systems that have been and will be created as a result, provide examples for schools, prosecutors, and law enforcement agencies around the country to improve their response to the serious crime of sexual assault.

### **C. Efforts to Address Sexual Assault and Harassment in K-12 Public Schools**

The Justice Department's work in elementary and secondary school districts is similarly focused on ensuring nondiscriminatory learning environments and that schools have effective sexual misconduct policies and staff who are adequately trained in responding to and investigating such misconduct. Many schools lack clear, readily accessible, user-friendly sexual misconduct policies that provide appropriate responses to reports of sexual misconduct, encourage reporting, and promote prevention. Similarly, those tasked with investigating and adjudicating sexual assault often do not have the proper training to engage in the process in a way that is fair to both victims and perpetrators. Ineffective policies and improper training are issues that we also have found in our sexual assault investigations in school districts. One priority of the Department's remedies is to have school districts enact and implement policies and procedures that ensure reports of sexual harassment, including sexual assault, are handled promptly and appropriately by trained school officials and campus police.

For example, in July 2009, the Department intervened in a lawsuit alleging that the school district in Allentown, Pennsylvania was deliberately indifferent to the sexual assault of young students at a local elementary school. After an extensive investigation, the Department's complaint-in-intervention alleged that sexual assaults occurred on at least five separate occasions and that the district was made aware of each incident immediately after it occurred. Despite this notice, the district took either inappropriate action, or in some circumstances no action, to prevent the assaults from recurring. The Department alleged that the inadequate response to the sexual assault stemmed from the district failing to adopt and implement adequate and effective sexual harassment policies and procedures as required by federal law. Working closely with the district, the Department drafted a consent decree that required the district to work with an expert to develop and implement a comprehensive plan for addressing and preventing sexual harassment in all district schools, including revised policies. The decree also required the district to provide training to administrators, faculty, staff, students, and parents on sex-based harassment so that in the future, sexual harassment could be identified and responded to before it created a hostile environment.

In 2008, the United States intervened in the lawsuit of *Lopez & U.S. v. Metropolitan Government of Nashville and Davidson County*. In that case, a nine-year old boy with autism was raped by another student with disabilities on a special needs school bus in the Nashville Tennessee Public School District. There was a well-documented history of the perpetrator sexually harassing other students and the victim being victimized by other students. While aware of these facts, the district still placed these two students together on the same bus without a monitor. The United States, working together with counsel for the private plaintiff, settled with the school district: the district paid \$1.475 million to the victim, and entered into a comprehensive consent decree that required Nashville to take substantial steps to enhance the security of students with disabilities on its public school transportation system.

In June of 2011, working in collaboration with the Office for Civil Rights, the Department also entered into a resolution agreement with the Tehachapi Unified School District in California after a thirteen-year-old middle school student took his own life after suffering severe and persistent peer-on-peer sex-based harassment. The investigation found that the student suffered sexual and gender-based harassment by his peers for more than two school years because of his nonconformity with gender stereotypes, including his predominantly female friendships and stereotypically feminine mannerisms, speech, and clothing. The harassment included ongoing and escalating verbal, physical, and sexual harassment by other students at school. Despite being aware of the harassment, the district did not adequately investigate or otherwise respond to it. As part of the agreement, the district was required to revise its policies and regulations related to sexual and gender-based harassment, and provide training regarding the subject to all students and staff who interacted with students.

These four cases, as well as our Montana case, are just examples of the critical work the Justice Department is doing to respond to sexual assault and harassment on school campuses. Much of this work has been done in close collaboration with our sister agency the Department of Education. Both of our Departments remain committed to enforcing the laws that Congress has placed under our responsibility to ensure that all students can learn in safe, nondiscriminatory environments. We appreciate the opportunity to share our work with the Commission.

## **V. The Justice Department’s Office on Violence Against Women’s Multifaceted Work to Reduce Sexual Assault in Colleges and Universities**

The Justice Department’s work to protect students from sexual assault goes beyond enforcement to include support for prevention, victim services, policing, and prosecution. The Office on Violence Against Women (OVW) helps colleges and universities, as well as communities throughout the United States, improve their response to crimes of sexual violence. As our colleagues from OCR and DOJ’s Civil Rights Division have described, sexual assault is a devastating and prevalent crime on college campuses.

### **A. Severity of Campus Sexual Assault**

These assaults are not simply misunderstandings or mistakes; they are crimes – and they are often committed by serial, violent criminals. In one study, 63% of college rapists reported committing repeat rapes, averaging six each.<sup>16</sup> In that study’s sample, 76 rapists committed an estimated 439 rapes and attempted rapes. These individuals committed other crimes as well. More than two-thirds (68%) of the repeat rapists admitted to other forms of interpersonal violence, averaging 14 violent acts. Their level of violence was nearly 10 times that of non-rapists, and nearly 3.5 times that of single-act rapists.<sup>17</sup> This portrait of college rapists is consistent with data on rapists and sex offenders in non-college settings.<sup>18</sup>

---

<sup>16</sup> Lisak, D., & Miller, P (2002). Repeat Rape and Multiple Offending Among Undetected Rapists. *Violence and Victims*, 17, 73-84.

<sup>17</sup> *Id.*

<sup>18</sup> For example, Navy personnel who had committed a completed rape before entering the military were ten times more likely to perpetrate another rape during their first year of military service. Seventy-one percent of these men reported perpetrating multiple incidents. Another study found that 60% of men from a large urban community who had committed any type of sexual assault had committed multiple assaults. Like other crimes, the strongest predictor of sexual assault is having committed a previous sexual assault.

McWhorter, S., Stander, V., Merrill, L., Thomsen, C., Milner, J. (2009). *Reports of Rape Reperpetration by Newly Enlisted Male Navy Personnel*. San Diego, CA: Naval Health Research Center.

Abbey, A., Parkhill, M., Clinton-Sherrod, A. M., Zawacki, T. (2007). A Comparison of Men Who Committed Different Types of Sexual Assault in a Community Sample. *Journal of Interpersonal Violence*, 22(12), 1567-580.

Hall, M., & Joshua R. Hall (2011). *The Long-Term Effects of Childhood Sexual Abuse: Counseling Implications*. Alexandria, VA: American Counseling Association;

Alcohol is often used to render victims helpless – as well as less credible. Perpetrators often prey on women who are already incapacitated from drinking and may encourage them to drink more, or they may surreptitiously provide their victims with drugs or alcohol.<sup>19</sup> Individuals who are uniquely vulnerable for other reasons, such as people with disabilities<sup>20</sup> and LGBTQ<sup>21</sup> people, are also disproportionately targeted by rapists.

Sexual assault causes serious physical and psychological harm, which frequently interferes with a victim's access to education. Fifty-eight percent of all female victims of sexual assault sustained an injury.<sup>22</sup> Survivors on college campuses also suffer from a wide range of mental health problems, including depression, anxiety, post-traumatic stress disorder, and drug and alcohol abuse.<sup>23</sup> This hampers their ability to succeed in school,<sup>24</sup> and many survivors see their grades slip or lose the energy for sports, which can, in turn, cost them their scholarships. Others transfer schools, drop out, and struggle to complete the education they had worked hard to attain. Some have even committed suicide.

---

Loh, C., Gidycz, C., Lobo, T., Luthra, R. (2005). A Prospective Analysis of Sexual Assault Perpetration Risk Factors Related to Perpetrator Characteristics. *Journal of Interpersonal Violence*, 20(10), 1325-348.

<sup>19</sup> Kilpatrick, D. G., Resnick, H. S., Ruggiero, K. J., Conoscenti, L. M., & McCauley, J. (2007). *Drug facilitated, incapacitated, and forcible rape: A national study* (NCJ 219181). Charleston, SC: Medical University of South Carolina, National Crime Victims Research & Treatment Center.

<sup>20</sup> Harrell, E. (2012). *Crime Against Persons with Disabilities, 2009-2011 – Statistical Tables*. Bureau of Justice Statistics, U.S. Department of Justice.

<sup>21</sup> Walters, M.L., Chen, J., & Breiding, M.J. (2013). The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Findings on Victimization by Sexual Orientation. National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.

Testa, R. J., Sclaccia, L. M., Wang, F., Hendricks, M. L., Goldblum, P., Bradford, J., & Bongar, B. (2012). Effects of Violence on Transgender People. *Professional Psychology: Research and Practice*, 43(5), 452-459.

<sup>22</sup> Planty, M., Berzofsky, M., Krebs, C., Langton, L., & Smiley-McDonald, H. (2013). *Female victims of sexual violence, 1994-2010*. Washington, DC: U.S. Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics.

<sup>23</sup> National Council on Disability (n.d.). *Section 3: Post Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI)*. Available at <http://www.ncd.gov/publications/2009/March042009/section3>; National Institute of Mental Health (n.d.). *Anxiety Disorders*. Available at <http://http://www.nimh.nih.gov/health/publications/anxiety-disorders/index.shtml>

Kilpatrick, D. G., *supra* note 19.

<sup>24</sup> Eisenberg, D., Golberstein, E., & Hunt, J. B. (2009). Mental Health and Academic Success in College. *B E Journal of Economic Analysis & Policy*, 9(1), 1-35.

Arria, A. M., Garnier-Dykstra, L. M., Caldeira, K. M., Vincent, K. B., Winick, E. R., & O'Grady, K. E. (2013). Drug use patterns and continuous enrollment in college: results from a longitudinal study. *Journal of Studies on Alcohol and Drugs*, 74(1), 71-83.

Research has helped us better understand how rapists target their victims and escape justice. College rapists may avoid the justice system by attacking acquaintances, picking women who will not be considered credible due to alcohol use or other factors, and by minimizing injuries by plying their victims with alcohol rather than using physical force. Rapes involving alcohol are more prevalent than rapes involving date-rape drugs<sup>25</sup> and risk of rape while the victim is incapacitated increases significantly during college.<sup>26</sup> In one study, over 80% of undetected college rapists reported raping women who were incapacitated because of drugs or alcohol.<sup>27</sup> Rapists prey on victims whose credibility might be questioned if and when the victim reports the rape, and indeed, only 2% of victims who were raped while they were incapacitated reported the assault to law enforcement.<sup>28</sup>

Despite the scope and severity of sexual assault – as well as the opportunity to reduce a large number of assaults by addressing repeat perpetrators – schools often fail to respond effectively to college rapists.<sup>29</sup> Even the best-intentioned universities’ adjudication and other processes frequently blame the victim rather than discipline the perpetrator.<sup>30</sup> Researchers have documented the profound negative effects that victim-blaming or unsupportive responses from legal, medical, or mental health professionals have on assault victims.<sup>31</sup>

OVW has been inundated with victim accounts of the profound impact of not only rape but inadequate or plainly harmful responses from college and university administrations. Media reports about bungled responses by colleges and universities appear regularly. As part of the White House Task Force to Protect Students from Sexual Assault, OVW hosted 15 online listening sessions, each attended by 100-500 people. We also collected written testimony totaling nearly 1,000 pages. The accounts participants gave, along with the many reports from survivors found in increasingly prevalent news accounts, paint an alarming picture of the response to sexual violence on campus. As one commenter said, “It is not only the rape that causes the trauma to the victim: schools can also compound the trauma by how they respond.”<sup>32</sup>

---

<sup>25</sup> Krebs C. P., *supra* note 1.

<sup>26</sup> *Id.*

<sup>27</sup> Lisak, D., *supra* note 16.

<sup>28</sup> Krebs, C. P., *supra* note 1.

<sup>29</sup> Lombardi, K., Jones, K., Dattaro, L., Jimenez, C., Cheek, L., et al. (2010, February 24). *Sexual assault on campus: A frustrating search for justice*. Washington, DC: The Center for Public Integrity. Available at [http://www.publicintegrity.org/investigations/campus\\_assault/](http://www.publicintegrity.org/investigations/campus_assault/)

<sup>30</sup> *Id.*

<sup>31</sup> Campbell et al (1999). Community Services for Rape Survivors: Enhancing Psychological Well-Being or Increasing Trauma? *Journal of Consulting and Clinical Psychology*, 67, 847-858.

<sup>32</sup> Comments submitted to the White House Task Force to Protect Students from Sexual Assault.

The section below provides examples based on the Task Force’s listening sessions and media coverage that illustrate the pervasiveness of higher education institutions’ failure to respond adequately to sexual assault on campus.

### ***Lack of Support and Remedies for Survivors***

- One student reported that rapes were “labeled by residence hall staff or student judicial affairs as mistakes of judgment made by both parties, rather than one student’s intentional incapacitation of another, or one student’s seeing another’s vulnerability as an opportunity.”<sup>33</sup>
- Another survivor reported, “I was not given any sort of help on campus, the most I got was a new mattress for my bed.”<sup>34</sup>
- One mother of a victim reported that, “Throughout the adjudication process, my daughter was treated callously, and multiple extra burdens were imposed on her, such as being asked her to interview her abuser’s roommate who was a possible witness to her screaming during [the] sexual assault.” The young woman eventually withdrew and transferred to another institution.<sup>35</sup>
- A survivor at Tufts University tried to report her attacker to her school but, according to the Huffington Post, “the university told [her] their legal counsel said they didn’t have to take action.” While her attacker was not even interviewed, the survivor’s grades fell and she was eventually expelled “due to academic concerns.”<sup>36</sup>

### ***Minimal or Lenient Punishments for Perpetrators***

- One survivor at Brandeis University was told her assaulter would get off with a warning and merely have to go to “sensitivity training” classes.<sup>37</sup>
- A survivor who later transferred reported, “My rapist was found ‘responsible’ for breaking four different conduct policies, including the rule that equates to rape in Ohio law. BUT, he was not expelled, not even suspended. . . . He WAS allowed to continue in

---

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> The Woman Behind #SurvivorPrivilege Was Kicked Out of School After Being Raped, *available at* [http://www.huffingtonpost.com/2014/06/12/survivor-privilege-wagatwe-wanjuki\\_n\\_5489170.html](http://www.huffingtonpost.com/2014/06/12/survivor-privilege-wagatwe-wanjuki_n_5489170.html)

<sup>37</sup> Brandeis University Punishes Sexual Assault with Sensitivity Training, *available at* [http://www.huffingtonpost.com/2014/06/11/brandeis-sexual-assault\\_n\\_5476508.html?utm\\_hp\\_ref=college](http://www.huffingtonpost.com/2014/06/11/brandeis-sexual-assault_n_5476508.html?utm_hp_ref=college)

his ROTC program. . . . I spent the next year and a half terrified and paranoid on that campus.”<sup>38</sup>

- Another survivor said that, despite the fact that “there was proof” that a faculty member had assaulted her, the school’s only response was to allow her to park in the employee’s parking lot, while the faculty member continued working at the school.<sup>39</sup>
- At Bowdoin College, a student athlete who was found responsible for a sexual assault was given a “‘non-academic suspension’ — in effect, social probation,” which allowed him to attend class and remain on campus for much of the day. This penalty was further reduced to allow the athlete to attend home baseball games.<sup>40</sup>
- Three James Madison University students who videotaped themselves sexually assaulting a fellow student were expelled “after graduation,” meaning they received essentially no punishment and were allowed to graduate on time.<sup>41</sup>
- Indiana University suspended a rapist for the summer, a time when “he was unlikely to attend school anyway.” The student who was raped said that decision alienated and traumatized her almost as much as the initial assault and made her feel that her school “not only harbors rapists, but also completely disregards, ignores, and fails women.”<sup>42</sup>
- At Pennsylvania State University, a student was given a “temporary expulsion,” which only delayed his diploma by a year. The survivor was not given a chance to appeal the decision. Days later, the survivor attempted to commit suicide. She later dropped out of school, eventually transferring.<sup>43</sup>

---

<sup>38</sup> *Supra* note 32.

<sup>39</sup> *Id.*

<sup>40</sup> A Lack of Consequences for Sexual Assault, available at <http://www.publicintegrity.org/2010/02/24/4360/lack-consequences-sexual-assault>

<sup>41</sup> James Madison University Punished Sexual Assault with “Expulsion After Graduation,” available at [http://www.huffingtonpost.com/2014/06/18/james-madison-university-sexual-assault\\_n\\_5509163.html](http://www.huffingtonpost.com/2014/06/18/james-madison-university-sexual-assault_n_5509163.html)

<sup>42</sup> *Supra* note 40.

<sup>43</sup> *Id.*

### *Uninformed and Harmful Responses to Victims*

- One survivor at Texas A&M recounted how her experiences were dismissed by judgmental staff. “When I went and I did my rape kit, the lady said, ‘Well, were you drunk?’ — like, ‘It’s your fault because you were drinking.’ It made me feel bad.”<sup>44</sup>
- A rape survivor at Bob Jones University was told that she was responsible for her rape because she had “sinned.” “He [the dean of students] goes, ‘Well, there’s always a sin under other sin. There’s a root sin.’ And he said, ‘We have to find the sin in your life that caused your rape.’ And I just ran.”<sup>45</sup>
- A survivor in her senior year said, “[The IX coordinator] told me that I am not a ‘reasonable person’ and that she ‘was sorry my feelings got hurt.’”<sup>46</sup>
- A recent graduate of Occidental said she had been “discouraged by a dean” from reporting her rape. She stated that, for the rest of her college career, “I continued to live every day in fear. In May, I watched as my rapist shook the hand of our college’s president and received his diploma.”<sup>47</sup>
- LGBT survivors are often ignored because they don’t fit the “traditional” narrative. A male survivor has testified before Congress about how his experience at Tufts was “traumatizing and humiliating,” and how he was asked invasive and inappropriate questions that seemed to doubt the possibility that gay men could be victims of rape.<sup>48</sup>
- One survivor who filed a Title IX complaint complained about facing “general ignorance and hostility towards my gender identity ... even [the] dismissal of my rape because it didn’t fit the normative ‘boy-rapes-girl’ narrative.”<sup>49</sup>

---

<sup>44</sup> “Undetected Rapists” on Campus: A Troubling Plague of Repeat Offenders, *available at* <http://www.publicintegrity.org/2010/02/26/4404/undetected-rapists-campus-troubling-plague-repeat-offenders>

<sup>45</sup> Rape Victims Say Bob Jones University Told Them to Repent, *available at* <http://america.aljazeera.com/watch/shows/america-tonight/articles/2014/6/18/bob-jones-universitysexualabuse.html>

<sup>46</sup> *Supra* note 32.

<sup>47</sup> 2 More Colleges Accused of Mishandling Assaults, *available at* [http://www.nytimes.com/2013/04/19/education/swarthmore-and-occidental-colleges-are-accused-of-mishandling-sexual-assault-cases.html?\\_r=1&](http://www.nytimes.com/2013/04/19/education/swarthmore-and-occidental-colleges-are-accused-of-mishandling-sexual-assault-cases.html?_r=1&)

<sup>48</sup> College Student Details His Sexual Assault for Senate Committee, *available at* <http://news.yahoo.com/college-student-details-sexual-assault-senate-committee-215106096--abc-news-politics.html>

<sup>49</sup> Students File Title IX Sexual Assault Complaint Against Columbia University, *available at* <http://time.com/76762/students-file-title-ix-sexual-assault-complaint-against-columbia-university/>

- The University of Southern California refused to refer one sexual assault complaint to the Los Angeles Police Department because the attacker “didn’t orgasm.” The survivor said she was told, “‘Because he stopped, it was not rape. Even though his penis penetrated your vagina, because he stopped, it was not a crime.’”<sup>50</sup>

### *Discouragement from Reporting Assaults*

- A student at Amherst said she was told that “pressing charges would be useless, he’s about to graduate, there’s not much we can do.” She was also asked “‘Are you SURE it was rape? It might have just been a bad hookup... You should forgive and forget.’” She recounted how she was told she could not change dorm rooms to get farther away from her attacker because “‘there are too many students right now.’”<sup>51</sup>
- A student at Hanover College says she was retaliated against for filing a harassment complaint against her assailant. “The Hanover student misconduct board decided that [the complainant’s] attempts to have the male student punished for the alleged offenses, ‘whether through campus security, the campus conduct review process, his fraternity, the court system, or the Department of Education, do appear to be a type of harassment.’”<sup>52</sup>
- A student at Emerson College was told by college administrators that she should stop working with an ongoing Cambridge Police investigation and instead use the school judicial process. The school investigated for several months and then declined to hold a hearing.<sup>53</sup>
- One student at University of North Carolina was threatened with expulsion for “intimidating” her assailants by talking about her case publicly and criticizing the school’s handling of the case, even though she never released the assailants’ names.<sup>54</sup>

---

<sup>50</sup> USC Student: Police Said I Wasn’t Raped Because He Didn’t Orgasm, *available at* [http://www.huffingtonpost.com/2013/07/22/usc-rape-investigation\\_n\\_3607954.html](http://www.huffingtonpost.com/2013/07/22/usc-rape-investigation_n_3607954.html)

<sup>51</sup> An Account of Sexual Assault at Amherst College, *available at* <http://amherststudent.amherst.edu/?q=article/2012/10/17/account-sexual-assault-amherst-college>

<sup>52</sup> Hanover College Told Rape Victim that Attempting to Have her Alleged Rapist Punished is Harassment, *available at* [http://www.huffingtonpost.com/2014/01/27/hanover-college-rape-investigation\\_n\\_4670543.html?ir=College](http://www.huffingtonpost.com/2014/01/27/hanover-college-rape-investigation_n_4670543.html?ir=College)

<sup>53</sup> Emerson College Vows to Improve Sexual Assault Investigations, *available at* <http://www.bostonglobe.com/metro/2013/10/09/emerson-college-vows-improve-sexual-assault-investigations-after-student-complaints/SGcGn14JcasnJiEmxsgNaN/story.html>

<sup>54</sup> UNC Student Who Says She Was Raped Facing Honor Code Violation, *available at* <http://www.wral.com/unc-student-who-says-she-was-raped-facing-honor-code-violation/12150684/>

## **B. Violence Against Women Act Grants: Funding Proven Solutions**

We are not powerless to change this narrative. OVW administers grants under the Violence Against Women Act (VAWA) that help equip schools and communities with effective tools to prevent and respond to rape. Over the last two decades, OVW has awarded more than \$5 billion in grants to states, tribal governments, educational institutions, and victim service providers, and this year we will award nearly \$400 million more to provide communities and campuses with resources to help address sexual assault, domestic violence, dating violence, and stalking. VAWA has led to significant improvements in the criminal and civil justice systems<sup>55</sup> and reductions in rape and assault.<sup>56</sup> Even small investments in VAWA make a difference.<sup>57</sup>

### ***Prosecution, Policing, and Victim Services***

We know what works to reduce sexual violence – and we fund those proven strategies in cities, counties and states around the country, as well as on college and university campuses. For example, we know that the first people to respond to an assault must understand the dynamics of sexual assault and the impact of trauma on the body and brain, and that campus or community law enforcement must know how to investigate sexual assault.<sup>58</sup> Prosecutors – or campus judicial boards and Title IX coordinators – are more effective when they are well trained on sexual assault and able to devote resources to addressing this crime.<sup>59</sup> Providing victims – be they at the local hospital or at a university – with advocates and sexual assault nurse examiners leads to better outcomes for the victims and to more successful prosecutions (or to holding

---

<sup>55</sup> Roe, K. J. (2004). *The Violence Against Women Act and its impact on sexual violence public policy: Looking back and looking forward*. Available at [http://www.vawnet.org/Assoc\\_Files\\_VAWnet/VAWA-SVPubPol.pdf](http://www.vawnet.org/Assoc_Files_VAWnet/VAWA-SVPubPol.pdf)

<sup>56</sup> Boba, R., & Lilley, D. (2008). Violence Against Women Act (VAWA) funding: A nationwide assessment of effects on rape and assault (No. NCJRS 225748). *Violence Against Women*, 15(2), 168-185.

<sup>57</sup> *Id.*

<sup>58</sup> Friday, P., Lord, V. B., Exum, M. L., & Hartman, J. L. (2006). *Evaluating the impact of a specialized domestic violence police unit* (No. NCJRS 215916). Washington, DC: U.S. Department of Justice.

Townsend, M., Hunt, D., Kuck, S., & Baxter, C. (2006). *Law enforcement response to domestic violence calls for service* (No. NCJRS 215915). Washington, DC: U.S. Department of Justice.

Jolin, A., Feyerherm, W., Fountain, R., & Friedman, S. (1998). *Beyond arrest: The Portland, Oregon domestic violence experiment, final report* (No. NCJRS 179968). Washington, DC: U.S. Department of Justice;

Holleran, D., Beichner, D., & Spohn, C. (2010). Examining charging agreement between police and prosecutors in rape cases. *Crime & Delinquency*, 56(3), 385-413.

<sup>59</sup> Smith, B., Davis, R., Nickles, L., & Davies, H. (2001). *An evaluation of efforts to implement no-drop policies: Two central values in conflict, final report* (No. NCJRS 187772). Washington, DC: U.S. Department of Justice.

Harrell, A., Schaffer, M., DeStefano, C., & Castro, J. (2006). *The evaluation of Milwaukee's judicial oversight demonstration, final research report* (No. NCJRS 215349). Washington, DC: U.S. Department of Justice.

perpetrators accountable through the campus judicial system).<sup>60</sup> Providing funding that enables institutions to focus on sexual assault works. For example, from 2008 to 2012, OVW Arrest Program-funded prosecutors' offices accepted for prosecution a remarkable 73% of sexual assault cases.<sup>61</sup> Even more impressive, 75% of felony sexual assault cases prosecuted by those offices resulted in conviction or deferred adjudication.<sup>62</sup> Efforts to address sexual assault are particularly effective when they are combined and integrated into a coordinated community response or Sexual Assault Response Team – something OVW requires of both campus and community grantees.<sup>63</sup>

---

<sup>60</sup> Campbell, R. (2006). Rape survivors' experiences with the legal and medical systems: Do rape victim advocates make a difference? *Violence Against Women*, 12, 30-45.

Campbell, et. al. (2001). Preventing the "second rape:" Rape survivors' experiences with community service provides. *Journal of Interpersonal Violence*, 16, 1239- 1259. Wasco et al (2004). A statewide analysis of services provided to rape survivors. *Journal of Interpersonal Violence*, 19, 252-263.

Wasco, S. M., Campbell, R., Howard, A., Mason, G. E., Staggs, S. L., Schewe, P. A., & Riger, S. (2004). A statewide evaluation of services provided to rape survivors. *Journal of Interpersonal Violence*, 19, 252-263.

Campbell (1998). The community response to rape: Victims' experiences with the legal, medical, and mental health systems. *American Journal of Community Psychology*, 26, 355-379.

Campbell, R., Patterson, D., & Bybee, D. (2011). Using mixed methods to evaluate a community intervention for sexual assault survivors: A methodological tale. *Violence Against Women*, 17(3), 376–388. doi:10.1177/1077801211398622

Campbell, R., Bybee, D., Ford, J., & Patterson, D. (2008). Systems change analysis of SANE programs: Identifying the mediating mechanisms of criminal justice system impact (No. NCJRS 226497). Washington, DC: U.S. Department of Justice.

Bulman, P. (2009). Increasing sexual assault prosecution rates. *National Institute of Justice Journal*, (264), 14-17;

Campbell, R., Patterson, D., & Lichty, L. F. (2005). The effectiveness of Sexual Assault Nurse Examiner (SANE) programs: A review of psychological, medical, legal, and community outcomes. *Trauma, Violence, & Abuse*, 6(4), 313-329.

Shaw, J. & Campbell, R. (2011). Rape crisis centers: serving survivors and their communities. In T. Bryant-Davis (Eds). *Surviving sexual violence: A guide to recovery and empowerment* (pp.112-128). Laham, Maryland: Rowman & Littlefield.

Campbell, J. (2005). Assessing dangerousness in domestic violence cases: History, challenges, and opportunities. *Criminology & Public Policy*, 4(4), 653-672.

<sup>61</sup> Semi-annual, aggregate summary reports for OVW grant programs can be found at <http://muskie.usm.maine.edu/vawamei/summaryreports.htm>.

<sup>62</sup> *Id.*

<sup>63</sup> DePrince, A., Belknap, J., Labus, J., Buckingham, S., & Gover, A. (2012). The impact of victim-focused outreach on criminal legal system outcomes following police-reported intimate partner abuse. *Violence Against Women*, 18(9).

Nowell, B., & Foster-Fishman, P. (2011). Examining multi-sector community collaboratives as vehicles for building organizational capacity. *American Journal of Community Psychology*, 48(3-4), 193–207. doi:10.1007/s10464-010-9364-3.

### *Prevention Strategies*

The vast majority of rapes are committed by serial rapists, who are unlikely to be reached by prevention messages or education about rape. The more promising strategies are to equip bystanders to intervene, particularly in cases of alcohol-facilitated rape. These strategies reach individuals who can be swayed by prevention messaging and who have the opportunity to stop an assault before it happens. Although we tend to think of sexual assault as a crime involving only two people, sexual assaults are often witnessed by at least one person in the bystander role,<sup>64</sup> and 28% of forcible and 58% of alcohol-facilitated rapes occur at parties.<sup>65</sup>

Bystander intervention training is an innovative and evidence-based strategy to end violence against women.<sup>66</sup> This prevention model empowers and trains potential bystanders. It builds on research about community members' expressed willingness to get involved in these issues and helps to minimize negative long-term consequences for survivors by strengthening informal safety nets in their social and community networks. Campus-based sexual violence prevention programs have been found to increase active bystander behavior – students intervening to stop or prevent a sexual assault.<sup>67</sup> Published results exist for a number of model programs, including

---

Zweig & Burt (2007). Predicting women's perceptions of domestic violence and sexual assault agency helpfulness: What matters to program clients? *Violence Against Women, 13*, 1149-117.

Zweig & Burt (2003). Effects of interactions among community service agencies on legal system responses to domestic violence and sexual assault in STOP funded communities. *Criminal Justice Policy Review, 14*, 249-272.

Salazar, L. F., Emshoff, J. G., Baker, C. K., & Crowley, T. (2007). Examining the behavior of a system: An outcome evaluation of a coordinated community response to domestic violence. *Journal of Family Violence, 22*(7), 631-641. doi:10.1007/s10896-007-9116-9.

Campbell (1998). The community response to rape: Victims' experiences with the legal, medical, and mental health systems. *American Journal of Community Psychology, 26*, 355-379.

<sup>64</sup> Planty, M. (2002). Third-party involvement in violent crime, 1993-1999. Bureau of Justice Statistics Special Report. (No. NCJRS 189100). Washington, D.C.: U.S. Department of Justice.

<sup>65</sup> Krebs, C. P., *supra* note 1.

<sup>66</sup> Miller, E., Tancred, D. J., McCauley, H. L., Decker, M. R., Virata, M. C. D., Anderson, H. A., Silverman, J. G. (2012). "Coaching boys into men": A cluster-randomized controlled trial of a dating violence prevention program. *Journal of Adolescent Health, 51* 431-438.

Katz, J. & Moore, J. (2013). Bystander education training for campus sexual assault prevention: An initial meta-analysis. *Violence and Victims, 28*, 1054-1067.

<sup>67</sup> Coker, A. L., Cook-Craig, P. G., Williams, C. M., Fisher, B. S., Clear, E. R., Garcia, L. S., & Hegge, L. M. (2011). Evaluation of Green Dot: An active bystander intervention to reduce sexual violence on college campuses. *Violence Against Women, 17*(6), 777-796. doi:10.1177/1077801211410264.

MVP, Bringing in the Bystander™, One in Four, Coaching Boys to Men (for high school students), and Green Dot.<sup>68</sup> The Coaching Boys to Men program and Bringing in the Bystander have both shown higher self-reported bystander behaviors among participants in these programs.<sup>69</sup>

Social marketing campaigns have been developed to raise awareness across many different populations. On campuses, Know Your Power™ models positive bystander actions and has been evaluated.<sup>70</sup> Research suggests that these campaigns increase awareness of the problem of relationship abuse and sexual violence, as well as positive attitudes about being an active

---

Banyard, V.L., Moynihan, M.M., & Plante, E.G. (2007). Sexual violence prevention through bystander education: An experimental evaluation. *Journal of Community Psychology, 35*, 463–481.

Cares, A.C., Banyard, V. L., Moynihan, M. M., Potter, S. J., Williams, L. M., & Stapleton, J. G. (in press). Changing attitudes about being a bystander to violence: Translating an in-person education program to a new campus. *Violence Against Women*.

<sup>68</sup> Ahrens, C. E., Rich, M. D., & Ullman, J. B. (2011). Rehearsing for real life: The impact of the interACT sexual assault prevention program on self-reported likelihood of engaging in bystander interventions. *Violence Against Women, 17*, 760-776.

Banyard, V.L., Moynihan, M.M., & Plante, E.G. (2007). Sexual violence prevention through bystander education: An experimental evaluation. *Journal of Community Psychology, 35*, 463–481.

Cares, A.C., *supra* note 67.

Coker, A. L., Cook-Craig, P. G., Williams, C. M., Fisher, B. S., Clear, E R., Garcia, L. S., & Hegge, L. M. (2011). Evaluating Green Dot: An active bystander intervention to reduce sexual assault on the college campuses. *Violence Against Women, 17*, 777-796.

Gidycz, C. A., Orchowski, L. A., & Berkowitz, A. D. (2011). Preventing sexual aggression among college men: An evaluation of a social norms and bystander intervention program. *Violence Against Women, 17*, 720-742.

Foubert, J.D., Langhinrichsen-Rohling J., Brasfield, H. & Hills, B. (2010). Effects of a rape awareness program on college women: increasing bystander efficacy and willingness to intervene. *Journal of Community Psychology, 38*, 813-827.

Katz, J., Heisterkamp, A. & Flemming, A. M. (2011). The social justice roots of the Mentors in Violence Prevention model and its application to a high school setting. *Violence Against Women, 17*, 684-702;

Langhinrichsen-Rohling, J., Foubert, J. D., Brasfield, H. M., Hill, B., & Shelley-Tremblay, S. (2011). The Men's Program: Does it impact college men's self-reported bystander efficacy and willingness to intervene? *Violence Against Women, 17*, 743-759.

Miller, E., Tancredit, D. J., McCauley, H. L., Decker, M. R., Virata, M. C. D., Anderson, H. A., Silverman, J. G. (2012). "Coaching boys into men": A cluster-randomized controlled trial of a dating violence prevention program. *Journal of Adolescent Health, 51* 431–438.

<sup>69</sup> Miller, E., Tancredit, D. J., McCauley, H. L., Decker, M. R., Virata, M. C. D., Anderson, H. A., Silverman, J. G. (2012). "Coaching boys into men": A cluster-randomized controlled trial of a dating violence prevention program. *Journal of Adolescent Health, 51* 431–438.

<sup>70</sup> Potter, S. J. (2012). Using a multi-media social marketing campaign to increase active bystanders on the college campus. *Journal of American College Health, 60*(4), 282-295.

bystander.<sup>71</sup> Social marketing campaigns are likely to be particularly useful when linked with other prevention tools.<sup>72</sup> The Men's Project (combining bystander intervention and social norms change) may reduce perpetration of sexual assault among some participants in the program and change men's norms about coercion in relationships.<sup>73</sup>

Engaging college men in prevention efforts is crucial. What young men believe *other* men think is one of the strongest determinants of how they act – even when these perceptions and beliefs are mistaken.<sup>74</sup> Research has found that most men incorrectly assume that many other men accept the use of violence in relationships.<sup>75</sup> Because of this belief, they remain silent when they witness perpetration or feel empowered to use violence themselves.<sup>76</sup> Men who speak out against beliefs, attitudes, and behaviors that condone sexual violence, stalking, and intimate partner violence – such as media portrayals that glamorize violence – can change the perceptions of these social norms in their peer groups, schools, and communities.<sup>77</sup>

### ***Bringing It All Together: OVW's Campus Grant Program***

OVW's Grants to Reduce Sexual Assault, Domestic Violence, Dating Violence, and Stalking on Campus Program (Campus Program) supports the many successful strategies described above – from prosecution to prevention – in a university setting. The Campus Program distributes funds to institutions of higher education, and grantees are required to implement evidence-informed bystander education prevention programs. The Campus Program strengthens on-campus victim services, advocacy, security, and investigation and improves both prosecution and prevention of sexual assault, domestic violence, dating violence, and stalking. Campus Program grantees are statutorily mandated to: provide prevention programs for all incoming students; train campus law enforcement or security staff; educate campus judicial or disciplinary boards on the unique dynamic of sex-related crimes; and create a coordinated community response to enhance victim assistance and safety while holding offenders accountable.

---

<sup>71</sup> *Id.*

<sup>72</sup> Banyard, V., Potter, S. J., Cares, A. C., Williams, L. M., Moynihan, M. M., & Stapleton, J. G. (unpublished manuscript). Bystander interventions to prevention sexual violence on diverse campuses: A test of multiple prevention tools.

<sup>73</sup> Gidycz, C. A., *supra* note 68.

<sup>74</sup> Berkowitz, A. D. Social Norms Theory and Research. "The Social Norms Approach: Theory, Research, and Annotated Bibliography." August 2004.

<sup>75</sup> Berkowitz, A. D. (2003). Applications of Social Norms Theory to Other Health and Social Justice Issues. Chapter 16 in HW Perkins (Ed). *The Social Norms Approach to Preventing School and College Age Substance Abuse: A Handbook for Educators, Counselors, Clinicians*, San Francisco, Jossey-Bass.

<sup>76</sup> Berkowitz, A. D., *supra* note 74.

<sup>77</sup> Black, B. M., Tolman, R. M., Callahan, M., Saunders, D. G., & Weisz, A. N. (2008). When will adolescents tell someone about dating violence victimization? *Violence Against Women*, 14(7), 741-758.

Since the inception of the Campus Program in 1999, the Office on Violence Against Women has funded approximately 388 projects, totaling more than \$139 million, that address domestic violence, dating violence, sexual assault, and stalking on campuses. Demand for grants far exceeds supply: in Fiscal Year 2013, OVW received 127 applications and made only 28 awards.

The University of Montana, Missoula (UM) is a good example of the Campus Program in action. Funded by OVW in 2012, UM uses funds to expand, reorganize and streamline the campus-wide approach to addressing sexual assault, domestic violence, dating violence, and stalking. UM reports using OVW Campus Program funding to address the types of concerns raised by the DOJ and OCR investigation:

- A team of advocates is working with the Missoula Police Department and the UM Office of Public Safety to do extensive reviews of past cases of sexual assault and rape with support from DOJ experts. Overall, communication among law enforcement, campus and community advocates, and the forensic medical unit (First STEP) has improved immensely because of Campus Program funding. UM now has in place two additional advocates at the Student Advocacy Resource Center and one counselor who specializes in issues surrounding interpersonal violence and stalking at Curry Health Center's Counseling Program. UM reports that this "was simply not possible before Campus Program funding," and the school hopes that these staffing increases will increase reporting, crisis counseling options, and healing.
- Representatives of Men of Strength Club and Curry Health Center on campus have worked with the Missoula Family Violence Council to coordinate violence prevention efforts on campus and in the community. This has enabled campus, government, and community organizations to enhance prevention efforts through partnership while concurrently conserving resources and preventing duplication of efforts. Men of Strength members have also worked closely with the Make Your Move Missoula campaign, which promotes bystander intervention. This campaign has received national attention for its original delivery and grassroots, community-based programming.

OVW grantees are making great strides, each in a unique way appropriate to the great diversity of colleges, universities, and community colleges. In late April, Department of Justice and Department of Education leaders enthusiastically joined OVW to participate in a nationwide university tour to raise awareness of campus sexual assault. They visited 11 schools across the country to meet with students and faculty, many of whom are working every day to fight intimate partner and sexual violence on campus and to train young people about how to prevent and report this type of activity. Administration officials, including the Attorney General, were inspired by the work of OVW grantees, rape crisis centers, local police, and the words of

survivors, and reminded again of the change possible when schools commit to reducing sexual assault.

### *Sharing Best Practices Nationwide*

To reach beyond Campus Program grantees, OVW is working to share information with colleges and universities across the country. In the coming weeks, OVW will launch the first phase of a comprehensive online technical assistance project for campus officials. Key topics will include victim services, coordinated community responses, alcohol- and drug-facilitated sexual assaults, and Clery Act compliance. Webinars and materials will include the latest research, promising practices, training opportunities, policy updates, prevention programming, and recent publications. The project will feature strategies and training materials for campus and local law enforcement.

OVW also uses VAWA grant funding to help communities institute sexual assault response teams, support sexual assault nurse examiners, train law enforcement on trauma and special investigative techniques, and develop special prosecution units. The Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program is particularly focused on supporting these proven-effective strategies. In addition, OVW's Training and Technical Assistance Program funds cutting-edge technical assistance projects with leading national associations, including the International Association of Chiefs of Police, the Police Executive Research Forum, the International Association of Forensic Nurses, and End Violence Against Women International.

- OVW funded the International Association of Chiefs of Police (IACP) to develop the Trauma Informed Sexual Assault Investigation curriculum, which develops officers' skills to effectively respond to and investigate sexual assault cases IACP worked with OVW to produce model policies, investigative strategies, guidelines, tip cards, and a roll-call training video to help law enforcement respond to reports of sexual assault.
- Ending Violence Against Women International used OVW funds to develop training bulletins that incorporate trauma-informed best practices in law enforcement investigations of sexual assault, as well as how to classify rape and address unfounded versus baseless reports.
- Police Executive Research Forum (PERF) has a DOJ award to help jurisdictions implement the new FBI Uniform Crime Report definition of rape and strengthen the jurisdictions' response to sexual assault. PERF has selected four jurisdictions to help develop and implement a guide to improving sexual assault investigations.

- On April 24, 2013, the Attorney General announced the release of the National Protocol for Sexual Assault Medical Forensic Examination (2<sup>nd</sup> Edition), also known as the SAFE Protocol. This important resource offers recommendations to help standardize the quality of care for sexual assault victims throughout the country, and is updated to reflect current technology and practice. Working in partnership with the International Association of Forensic Nurses (IAFN), OVC is disseminating the SAFE Protocol and offering training and technical assistance on its implementation. IAFN is also implementing a Sexual Assault Nurse Examiner (SANE) Sustainability Education Project to help programs provide consistent and reliable sexual assault medical forensic examinations.

All of these resources will be available to help campus law enforcement, Title IX coordinators, and other school administrators, as well as strengthening campus partnerships with community law enforcement. Universities and colleges can collaborate with these local police and prosecutors to improve and ensure the most effective responses to sexual assault.

## **VI. Sexual Assault Task Force**

This Administration has listened to the concerns of survivors and is committed to producing meaningful, impactful change in schools across the country. The Administration understands that combating sexual assault is a collaborative effort that requires assistance from schools, local police, and federal agencies. The President's establishment of the White House Task Force to Protect Students from Sexual Assault is responsible for strengthening federal enforcement efforts and providing schools with additional tools to help combat sexual assault. The Task Force builds on the great policy and enforcement work that the Departments of Education and Justice conduct on an ongoing basis. The Task Force seeks to streamline and correct the most pressing issues for survivors to better assist schools, local law enforcement, and communities with sexual assault enforcement.

The Task Force is making sexual assault prevention its top priority. Participants in the Task Force's listening sessions roundly agreed that prevention programs should be a key component of sexual assault enforcement. Federal law now requires schools to provide sexual assault prevention and awareness programs.<sup>78</sup> The Administration understands that implementing these policies can be a large undertaking, so the Task Force has released new guidance and tools to help schools with these efforts.

---

<sup>78</sup> See 20 U.S.C. § 1092(f) (The Jeanne Clery Disclosure of Campus Security and Campus Crimes Statistics Act, commonly known as the Clery Act). The Department of Education published proposed regulations on June 20, 2014 that would implement the amendments to the Clery Act included in the Violence Against Women Reauthorization Act of 2013. Those amendments include requirements that institutions of higher education provide education and awareness programs and improve their campus security policies. Final regulations will be issued later this year and will be effective July 1, 2015, but schools are expected to make a good faith effort now to meet the new statutory requirements.

The Task Force is also helping survivors regain control of the reporting process. Survivors respond to sexual assault in different ways. Some are ready to make a formal complaint right away while others may not feel as empowered. The Task Force advocates that schools produce response policies that give survivors options that accommodate their varied needs. To assist schools, the Task Force has released sample reporting and confidentiality protocols. While there is no one-size-fits-all model of victim care, the Task Force expects, at a minimum, that schools publicize both confidential resources and formal reporting options widely so that a survivor can make an informed decision about where best to turn.

Many schools are working to address sexual assault, but lack assessment tools to understand the scope or nature of the problem on their campuses. Schools are looking to climate surveys to fill this gap in knowledge, because conducting regular climate surveys is a valuable component of an institution's overall response to campus sexual assault on campus. Understanding other climate issues, such as students' knowledge about reporting policies and resources for victims, their attitudes about prevention, and their perceptions about how their community is addressing the problem of sexual violence, are critical pieces of information for improving campus responses. Universities frequently have both the capacity and the will to conduct meaningful climate surveys, but may not know where to start, how to conduct the survey, and what questions to ask. Given the demand for more information and the demonstrated value of climate surveys, the Task Force created a guide to climate surveys, including examples of climate survey questions. Schools may see additional benefits from conducting climate surveys. For example, when campuses seek out information about the prevalence of sexual violence on campus and then address sexual violence when it occurs, victims may feel more comfortable coming forward. This may enable the school or local law enforcement to deal with serial perpetrators and help victims heal from the trauma they have experienced.

Additionally, the Task Force is aiding schools as they reform their sexual misconduct policies. Each school is unique, so policies will vary from school to school. The Task Force has therefore provided schools with a checklist for a sexual misconduct policy. This checklist provides both a suggested process for developing a policy, as well as the key elements a school should consider in drafting one. Importantly, the checklist urges schools to bring all the key stakeholders to the table when drafting a policy. Effective policies will vary in scope and detail, but an inclusive process is common to all effective policies.

Finally, the Task Force is promoting transparency on sexual assault enforcement. Many survivors and students are unaware of the resources available to them. Consequently, the Task Force launched a dedicated website – [NotAlone.gov](http://NotAlone.gov) – to make enforcement data public and to make other resources accessible to students and schools. It also helps students wade through often complicated legal definitions and concepts, and point them toward people on campus who can give them confidential advice – and those who can't. The website contains the relevant

guidance on a school's federal obligations, best available evidence and research on prevention programs, and sample policies and model agreements. The website also gives students a clear explanation of their rights under Title IX and Title IV, along with a simple description of how to file a complaint with OCR and DOJ and what they should expect throughout the process.

## **VII. Conclusion**

The Departments of Education and Justice are committed to ensuring that every student has the opportunity to receive a high-quality education at a safe school, free from sexual harassment and sexual violence. Again, thank you for allowing us to address the Commission, and for taking on this important issue.