

September 20th, 2017

Dear Secretary DeVos,

I am extremely disheartened by your desire to do away with the orders in the *Dear Colleague* letter¹ that came from the Department of Education in April 2011. This letter articulated several critical ways in which universities can prevent sexual violence from happening in their communities; it is vital that these recommendations and obligations stand as expectations for schools across the country.

While I write the following comments as a private citizen, I want to acknowledge that my work at Montana State University and UC Berkeley has strengthened my commitment to violence prevention and survivor support in a university setting. It is widely understood that 1 in 5 female undergraduate students, and 1 in 18 male undergraduate students, will be sexually assaulted while in college.² For transgender and gender nonconforming students, sexual assault rates are estimated to be between 1 in 2³ and 1 in 4⁴. Looking beyond the numbers, I have seen these statistics play out in real life. I have worked with many students who have been subjected to sexual assault and rape during their time in college. For each and every one of these students, the effects have been devastating. The consequences of experiencing this time of harm range from the short term-- immediate housing needs, medical care, needing to reschedule an exam-- to the long term-- symptoms of PTSD, needing to take time off of school, enforcing and renewing no-contact orders.

While Title IX of the Education Amendments of 1972 underscores the value of education as a civil right, to people of all sexes and genders, it is the *Dear Colleague* letter that truly connects this civil right to the need to protect students from sexual assault and harassment. Specifically, there are three key areas of the letter and its implications that I feel are particularly important to uphold:

1. **Campuses must prioritize primary prevention and culture change efforts, which include widespread activities to raise awareness of resources, policies, and procedures.** While many people in the general public are not aware of the field of violence prevention, it is in fact a well established and highly researched academic area of study. Violence prevention is a multidisciplinary field that draws from public health, social work, psychology, education, and other theoretical and practical realms. Decades

¹ Ali, R. (2011, April 4). [Letter]. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>

² Cantor, D., Fisher, B., Chibnall, S., Townsend, R., Lee, H., Bruce, C., & Thomas, G. (2015, September). Report on the AAU campus climate survey on sexual assault and sexual misconduct. Retrieved from Westat website: https://www.aau.edu/sites/default/files/%40%20Files/Climate%20Survey/AAU_Campus_Climate_Survey_12_14_15.pdf

³ <http://forge-forward.org/wp-content/docs/FAQ-10-2012-rates-of-violence.pdf>

⁴ Cantor et al., 2015

of continually evolving research has demonstrated clear best practices in terms of approaches to preventing sexual violence on college campuses. Among other outcomes, this evidence has proven that using effective primary prevention strategies leads to fewer incidents of people perpetrating harm^{5,6} and stronger intervention efforts by peers.⁷^{8,9} A follow-up report to the landmark 2015 AAU study on campus climate regarding sexual violence also found that understanding the definitions of sexual violence, and having been educated on the school's resources and processes, made a survivor of rape nearly twice as likely to utilize such resources.¹⁰ As the *Dear Colleague* letter says, schools should "implement preventive education programs and make victim resources, including comprehensive victim services, available." Promoting education and accurate information about expectations, social norms, and resources allows every student to both be held accountable for their actions and seek support from the appropriate resources should they be impacted by sexual violence.

2. **The criminal justice system is imperfect in its very nature, particularly when seen as a solution to sexual violence. Universities have an important opportunity to provide students with safety and healing outside of what the criminal justice system has to offer.** While many students do choose to report their experience to the police, they are more likely to seek other forms of resolution. In fact, studies have found that as many as 95-98% of nonconsensual sexual acts are *not* reported to the police.¹¹ The low law enforcement reporting rate is due to a vast number of reasons that vary case to case. However, there are themes that have arisen in the literature,^{12,13} and which I have seen first hand. Survivors of rape and other forms of sexual assault often blame

⁵ Foubert, J. D. (2000). The longitudinal effects of a rape-prevention program on fraternity men's attitudes, behavioral intent, and behavior. *Journal of American College Health*, 48(4), 158-163.

<https://doi.org/10.1080/0744848000959569>

⁶ DeGue, S., Valle, L. A., Holt, M. K., Massetti, G. M., Matjasko, J. L., & Tharp, A. T. (2014). A systematic review of primary prevention strategies for sexual violence perpetration. *Aggression and Violent Behavior*, 19, 346-362. <https://doi.org/10.1016/j.avb.2014.05.004>

⁷ Katz, J., & Moore, J. (2013). Bystander education training for campus sexual assault prevention: An initial meta-analysis. *Violence and Victims*, 28(6), 1054-1067. <https://doi.org/10.1891/0886-6708.VV-D-12-00113>

⁸ Banyard, V. L., Moynihan, M. M., & Plante, E. G. (2007). Sexual violence prevention through bystander education: An experimental evaluation. *Journal of Community Psychology*, 35(4), 463-481. <https://doi.org/10.1002/jcop.20159>

⁹ DeGue et al., 2014

¹⁰ Fisher, B., Pererson, S., & Cantor, D. (2016, July). Victims' use of resources, evaluation of resources, and reasons for not using resources. Retrieved from Westat website: <https://www.aau.edu/sites/default/files/%40%20Files/Climate%20Survey/Victims%E2%80%99%20Use%20of%20Resources%2C%20Evaluation%20of%20Resources%2C%20and%20Reasons%20for%20Not%20Using%20Resources.pdf>

¹¹ Fisher, B. S., Daigle, L. E., Cullen, F. T., & Turner, M. G. (2003). Reporting sexual victimization to the police and others: Results from a national-level study of college women. *Criminal Justice and Behavior*, 30(1), 6-38. <https://doi.org/10.1177/0093854802239161>

¹² See Fisher et al., 2003

¹³ See Fisher et al., 2016

themselves for the incident in a way that is unique among people who experience violence crime. In addition, the fact that 9 out of 10 female survivors of rape or attempted rape know the perpetrator,¹⁴ survivors often fear retaliation or an impact on their community by implicating someone they know in a sexual assault accusation. In general, the criminal justice system is designed to investigate crimes and sanction perpetrators. It is not designed to specifically meet the needs of college students impacted by sexual violence within their campus communities. Furthermore, the evidentiary standards for the criminal justice system are different than those used during Title IX investigations. The *Dear Colleague* letter explains:

[I]n order for a school's grievance procedures to be consistent with Title IX standards, the school must use a preponderance of the evidence standard (i.e., it is more likely than not that sexual harassment or violence occurred). The "clear and convincing" standard (i.e., it is highly probable or reasonably certain that the sexual harassment or violence occurred), currently used by some schools, is a higher standard of proof. Grievance procedures that use this higher standard are inconsistent with the standard of proof established for violations of the civil rights laws, and are thus not equitable under Title IX. Therefore, preponderance of the evidence is the appropriate standard for investigating allegations of sexual harassment or violence.

The *preponderance of evidence* standard creates an equal responsibility among all parties. Using this standard is the surest way to support the needs of survivors while delivering a fair process for all parties involved. The same cannot be said of the criminal justice system.

It is imperative that survivors have other options available to them to access safety and support. The Title IX reporting process is an important way that institutions can fill these gaps left by the criminal justice system. By taking, investigating, and acting on reports of sexual violence, universities can provide measures and options to students that are tailored to the ways in which sexual violence impacts a student's access to education.

3. **By acknowledging the sheer number of people on campuses across the country who have been impacted by sexual violence, institutions can address effects of trauma that are both general and also specific to that community.** The statistics mentioned above demonstrate the high prevalence of sexual violence on college campuses across the country. It is the unfortunate reality that it is possible for any person to experience and/or perpetrate sexual violence. We also know, however, that there are certain risk factors that make someone more likely to experience harm, and/or more likely to cause it. For example, as already discussed, people who are transgender and gender nonconforming are more likely to experience sexual violence than cisgender people. There are also important intersections between sexual violence and racism,

¹⁴ Fisher, B. S., Cullen, F. T., & Turner, M. G. (2000, December). The sexual victimization of college women. Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/182369.pdf>

sexism, ableism, religion, and classism; these intersections mean that every person who is impacted by, or who perpetrates, sexual violence has a different experience before, during, and after the incident. There has been extensive research done, for example, that has found that men are much more likely to perpetrate sexual violence,¹⁵ and further studies have explored how to apply our knowledge of masculinity to the primary prevention of sexual violence.^{16,17}

Universities must consider the widespread, national implications of sexual violence, as well as the nuanced ways specific communities and people are affected. Colleges function as microcosms, and the injuries of sexual violence reverberates throughout social groups, families, classrooms, dorms, and academic programs. Doing away with the expectation for universities to address sexual violence would immediately eliminate the ability for those impacted by sexual violence to receive the specific support they need based on their situations and identities. In short, context matters, and universities are uniquely positioned to prevent and respond to the violence that is happening within their communities.

Beyond the specific points outlined above, the *Dear Colleague* letter sends a pivotal message to all students: To survivors, you will be believed and we will take your experience seriously; to perpetrators, you will be held accountable for your actions and we will sanction those who fail to adhere to our community's expectations for healthy and consensual behavior; to all members of the campus community, we are committed to creating safe educational opportunities for all.

It is imperative that the provisions outlined in the *Dear Colleague* letter remain in place. Survivors across the country are counting on the Department of Education to center their rights and needs. Everyone deserves to have access to a safe education, and to the related supports and resources.

Sincerely,
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¹⁵ For example, Breiding, M. J., Smith, S. G., Basile, K. C., Walters, M. L., Chen, J., & Merrick, M. T. (2014, September). Morbidity and Mortality Weekly Report: Prevalence and characteristics of sexual violence, stalking, and intimate partner violence victimization. National intimate partner and sexual violence survey, United States, 2011. Retrieved from Centers for Disease Control and Prevention website: <https://www.cdc.gov/mmwr/pdf/ss/ss6308.pdf>

¹⁶ For example, Edwards, K. E., & Jones, S. R. (2009). Putting my man face on": A grounded theory of *Student Development*, 50, 210-258. Retrieved from <http://www.keithedwards.com/wp-content/uploads/2012/09/CMGID-JCSD.pdf>

¹⁷ For example, Katz, J. (1995). Reconstructing masculinity in the locker room: The Mentors in Violence Prevention project. *Harvard Educational Review*, 65(2), 163-175. <https://doi.org/10.17763/haer.65.2.55533188520136u1>