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Essay Defending OCR Letter on Colleges and Sexual Assault

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opinion

Open Letter to Anonymous

Four women involved in providing services for women on campuses respond to a recent essay criticizing the Education Department's guidance on responding to reports of sexual assaults.

By [Scott Jaschik](#)

// November 8, 2011

23 COMMENTS



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We write in response to the essay [“An Open Letter to OCR,”](#) by “Anonymous.” As higher education professionals who work with survivors of sexual assault and in prevention efforts on our respective campuses, we could not disagree more with the comments and conclusions of this author.

This article reinforces a number of rape myths including:

- Women routinely claim to have been raped when they merely wish they hadn't consented to sex (what Anonymous refers to as “regrettable sex”).
- Women are convinced by others to label their experiences sexual assault when it's really their own fault, and rape happens because men haven't been taught how to treat women respectfully.
- Women get raped because of low self-esteem – and more.

The writer demonstrates an overarching lack of understanding of the need for consent in any healthy sexual encounter. The situation described in this essay sounds a good deal like the practices of a serial rapist. And, in fact, [research shows that a majority of sexual assaults on campuses are committed by serial rapists, and are premeditated and intentional.](#) Sexual activity without consent (which is what this author describes) is sexual assault. Active consent must be sought and received, and consent cannot be freely given when one is incapacitated by alcohol or other mind-impairing substances. Alcohol and drug-facilitated assaults are a serious and significant problem on all of our campuses. Often victim-survivors are encouraged by the perpetrator to overimbibe as a way to ensure vulnerability and incapacity.

Anonymous implies that victim-friendly policies are bad for accused perpetrators and for institutions of higher education. This is a false dichotomy. This is not a contest between having victim-friendly policies or protecting the rights of the accused. The best policies accomplish both (and the Office for Civil Rights [Dear Colleague Letter](#) mandates protection for both parties). In fact, [Nancy Cantalupo's work](#) demonstrates that the adoption of victim-friendly policies benefit everyone.

In the essay, the author wishes that mediation were an option, but mediation is never appropriate in sexual assault cases. Mediation is based on the assumption that what's at issue is simply a misunderstanding and that common ground and agreement can be achieved. Sexual assault is a crime rooted in power and control, and it is thus ludicrous to expect that putting victims of power-based crimes in a room with those who have already stolen their power in the most intimate and violative of ways could result in positive outcomes – especially for the victim-survivor.

Sexual assault is a substantially underreported crime. This often means that perpetrators escape consequences and victim-survivors do not get needed services and support. The attitudes expressed by Anonymous have a chilling effect on reporting. The author's references to the process as something that "never ends well" and that traumatizes "all students" indicate a process and practice in need of improvement, not one that should be abandoned.

There is also significant discussion in this essay about the difficulty of the author's job and, in particular, how challenging it is to contact and interact with the accused and the victim, as well as their parents. The author does not take into account, however, the ways that privacy laws, in particular the Family Educational Rights and Privacy Act (FERPA) can complicate open discussion with parents. Further, it is our job, as professionals in higher education to work with students, to work with the victim-survivor and the alleged perpetrator appropriately and in accordance with campus policy and the law. Yes, these cases are complex and challenging. But so are many of the issues that face college and university campuses and their students and employees. It's unfortunate that the author sees the requirement to take meaningful action to address sexual assaults on campus as an imposition.

Anonymous appears to be so focused on protecting accused perpetrators from being accountable for their actions, and on protecting student affairs officials and their institutions from any accusation of violations of Title IX, that Anonymous discounts the trauma and violation of sexual assault victims. Certainly, we have all had situations where the media have misrepresented or distorted a situation of sexual violence, sometimes in ways that are profoundly harmful. That makes it our job and our allies' job to educate the media – as well as our own campuses. Rape myths circulate throughout society and the media is no exception. The focus on avoiding negative or incorrect media coverage is misplaced; our focus should be on eradicating rape culture and the widespread acceptance of rape myths.

The author attempts to pre-empt criticism from "victims' rights groups" and "vociferous colleagues" by saying we will think Anonymous is "soft" on these issues. We do not believe that Anonymous is "soft"; rather, we think Anonymous is dangerously misguided and borders on incompetent. This essay does

nothing to contribute to the needed conversation and dialogue about how to deal productively with the challenges of carrying out the Dear Colleague Letter recently sent by the U.S. Department of Education, what promising practices exist, and how they could be more fully enacted.

The author rejects being seen as a "colleague" of employees at the U.S. Department of Education. In contrast, we are proud to work with local, regional, national and global communities dedicated to ending sexual violence. We work to educate our campuses and communities about sexual assault; we work with victim-survivors to provide support and services; we work in campus conduct systems to hold perpetrators accountable and achieve justice; we design prevention programs and bystander responsibility initiatives. We work toward safe and inclusive campuses so that all of our students can be successful and healthy.

We all struggle with issues of sexual violence and issues of alcohol at our institutions. We all work to reduce alcohol and drug-facilitated sexual assaults. But blaming the victim and favoring the perpetrator is no way to address the epidemic of sexual assault on our campuses. This author claims that the clarifying letter from the Office of Civil Rights "undermines my judgment" in its effort to hold campuses accountable for fair, coordinated, evidence-based policies and processes. We would argue that the OCR guidelines, while not perfect, instead provide valuable guidance to campuses looking to support all of their students equitably.

Bio

Donna Bickford is director of the Carolina Women's Center at the University of North Carolina at Chapel Hill. Brenda Bethman is director of the UMKC Women's Center and acting director of the Women's & Gender Studies Program at the University of Missouri at Kansas City. Michelle Issadore is executive director of the School and College Organization for Prevention Educators. Michelle Kroner is victim services adjudication advisor at the University of Missouri at Kansas City.

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