



STOP ABUSIVE AND VIOLENT ENVIRONMENTS

P.O. Box 1221
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August 24, 2011

RE: Request to Rescind “Dear Colleague” Letter of April 4, 2011

Russlyn Ali
Assistant Secretary for Civil Rights
Department of Education
400 Maryland Ave., SW
Washington, DC 20202-1100

Dear Ms. Ali:

Stop Abusive and Violent Environments is a national victim-advocacy organization. We advocate on behalf of all victims of domestic violence and sexual assault. We also believe due process is a crucial component of justice in a free society.

SAVE is writing in regard to the Office for Civil Rights “Dear Colleague” letter of April 4, 2011, which requires federally supported universities to institute numerous changes to their policies and procedures regarding allegations of sexual harassment and sexual violence.

The Letter mandates that such cases involving potential violations of criminal law be adjudicated by disciplinary committees that were originally established to deal with allegations of cheating, plagiarism, and the like.

Most worrisome is the letter’s requirement to hear such cases using a “preponderance of the evidence” evidentiary standard, rather than the long-honored and widely-followed “clear and convincing” standard.

Combined with inadequately-trained campus disciplinary committees, student orientation programs that often feature dubious rape statistics, occasional over-wrought reactions by faculty members and students, and a reluctance to prosecute cases involving probable-cause of perjury, the “preponderance of the evidence” standard is tantamount to an evisceration of the presumption of innocence for persons so accused.

It is ironic that the Office of Civil Rights Dear Colleague letter was issued four years, almost to the day, after North Carolina Attorney General Roy Cooper declared three Duke University lacrosse players innocent of charges of rape made by Crystal Gail Mangum.

Indeed, false allegations of sexual assault appear to be widespread. One analysis of all the forcible rape complaints during a three-year period at two large Midwestern state universities found 50% of the accusations were false.¹

These false allegations victimize the wrongfully accused. As a August 20, 2011 *Wall Street Journal* editorial noted, "Not only is he [the accused] likely to be expelled, but he may well be barred from graduate or professional school and certain government agencies, suffer irreparable damage to his reputation, and still be exposed to criminal prosecution."

And with every rape false accusation, the integrity and credibility of all rape victims is diminished. Following a recent false claim in Texas, one woman wrote:

"Women like this hurt women like me who have survived sexual assault. What a horrible thing for her to do!"²

Finally, we note that the OCR "Dear Colleague" letter was published without advance notice or opportunity for prior comment, presumably based on the statement in footnote 1 this "letter does not add requirements to applicable law." This claim contradicts the fact that the OCR letter imposes several new requirements on federally supported colleges and universities, most notably the requirement to apply the "preponderance of evidence" standard. Therefore, we believe the OCR letter violates fundamental notice-and-comment requirements of the Administrative Procedure Act.

We therefore join with the Foundation for Individual Rights in Education, the American Association of University Professors, and numerous individuals who are calling on the Department of Education Office of Civil Rights to promptly rescind these odious standards.

Sincerely,

Philip Cook

Director

Cc: Secretary of Education Arne Duncan

¹ Kanin, Eugene J., Ph.D. "False Rape Allegations." Archives of Sexual Behavior, Vol. 23, No. 1 (1994), pp 81-92.; <http://www.anandaanswers.com/pages/naaFalse.html>

² http://blogs.houstonpress.com/hairballs/2011/08/comment_lying_about_rape.php