**Which Matters More: Reporting Assault or Respecting a Victim's Wishes?**

A conservative reading of Title IX has some schools ordering faculty and staff to report cases of sexual harassment even when the victim has pleaded for secrecy.

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At Barnard-Columbia's Take Back the Night Speak Out, the mood in the room is expectant and somber. The lights are dim, and in the darkness the silhouettes of the students sitting against the back wall look like witnesses in a trial.

One by one, people stand behind a temporary wall and share their sexual harassment and assault survival stories. They whisper, shout and occasionally cry. As each of them finishes their story and goes silent, the crowd responds, "We support you!"

The speak-out is supposed to be a safe, anonymous space for survivors to share their stories with others. However, this year for the first time ever, any student residential advisor (RA) who recognizes the voice of a speaker must report that person's name and story to Columbia or Barnard's Title IX coordinator. Supervisors warned student RAs not to attend, but a few days prior the*Columbia Daily Spectator* suggested another solution. "We urge RAs who wish to participate to do exactly that and maintain the anonymity of the speak-out," said the [staff editorial](http://photo.columbiaspectator.com/2013/04/18/everyone-should-be-able-take-back-night). "When a policy doesn't embody the values it's supposed to protect, sometimes it's worth breaking."

Columbia University's and Barnard College's policy was introduced in 2011. It requires all members of staff and faculty to report any sexual harassment/assault to the administration, regardless of the victim's wishes for privacy. Like similar policies on other campuses where "mandatory reporting" is becoming the new buzzword, this one was produced in response to strict warning from the federal government.

In April 2011, the Department of Education's Office of Civil Rights sent the 19-page "Dear Colleague" letter, as it is now known, to elementary, secondary, undergraduate, and graduate schools across the country. The letter said that if a school doesn't have systems in place to deal with sexual violence, then they're violating Title IX -- a gender discrimination law passed by Congress in the 1970s.

In the past, the highest-profile Title IX cases dealt with funding inequality in men's and women's sports programs, but the "Dear Colleague" letter reminded schools that sexual harassment also counts as discrimination under Title IX. The directive came about because many schools weren't conducting sexual assault investigations when they should. The latest universities to make headlines for ignoring rape reports include [Occidental, Swathmore](http://www.slate.com/blogs/xx_factor/2013/04/22/rape_at_occidental_and_swarthmore_three_new_title_ix_cases_challengin), and [Amherst](http://www.nytimes.com/2013/03/20/education/activists-at-colleges-network-to-fight-sexual-assault.html?pagewanted=all&_r=0), following in the footsteps of the [University of North Carolina](http://www.charlotteobserver.com/2013/03/25/3940104/unc-student-files-a-federal-complaint.html),[Princeton](http://www.dailyprincetonian.com/2011/04/19/28314/) and [Yale](http://www.huffingtonpost.com/claire-gordon/yale-sexual-harassment-title-ix_b_843273.html), among others.

The letter sent schools scrambling to tighten their sexual harassment procedures or risk losing federal funding. Though the letter included clear orders that colleges should change the way they prosecute sexual harassment crimes, develop brochures explaining procedures, and choose one employee to be the permanent "Title IX coordinator," other parts of the letter were less clear. Who on campus must report issues of sexual harassment to the Title IX coordinator so that the school can address it? The president of the school? The adjunct professors or assistant teachers? The student RAs? Janitors?

An unclear answer can be found in 50 pages of "[guidance](https://www2.ed.gov/about/offices/list/ocr/docs/shguide.html)" on sexual harassment the Office of Civil Rights released in 2001, which states that a responsible employee is "any employee who has the authority to take action to redress the harassment ... or an individual who a student could reasonably believe has this authority or responsibility."

Confused? So are all the schools. The Victim Rights Law Center has advised hundreds of colleges following the "Dear Colleague" letter. Colby Bruno, Managing Attorney at the Center, says that schools are constantly inquiring who has to report to the Title IX coordinator. "It is the single most question we get asked," Bruno sighed.

W. Scott Lewis, partner at the National Center for Higher Education Risk Management, a firm specializing in gender discrimination law, explained that the Office of Civil Rights wanted deans, directors, assistant directors, VPs, and provosts to be the "responsible employees" who must report sexual harassment. These are the people who can do suspensions or no-contact orders, move people from residence halls, or find other solutions to a sexual harassment problem.

But the 2001 guidance memo doesn't cite these roles specifically. Because the letter was written to apply to every school in the nation -- primary, secondary, private, and public -- it had to define "responsible employee" vaguely. As a result, the Office of Civil Rights has essentially left the choice up to the school as to who must report sexual harassment to the Title IX coordinator. "Because Title IX applies to thousands of ... schools around the country," Rachel Gettler, a staff attorney at the Office of Civil Rights explained by email, "we are unable to keep track of policy changes made by every individual school."

In what victims' advocates say is an overreaction to the "Dear Colleague" letter, universities like Columbia and Barnard aren't just making employees with authority mandatory reporters. They're making every single member of staff or faculty on campus report, aside from a few exceptions like Counseling Services or the Rape Crisis Center. The [University of Oregon](http://dailyemerald.com/2012/04/15/survivor-empowerment-alliance-discusses-first-mandatory-reporting-policies/), the California State college system, and [Duke](http://today.duke.edu/2011/11/sexualmisconduct) have all introduced or started retraining staff on similar mandatory reporting, while other universities are considering adopting such procedures.

Once a staff member reports sexual harassment to the Title IX coordinator, the coordinator will contact the victim to find out what happened, and to see whether a more formal investigation is needed. Columbia won't release guidelines for when a formal investigation might happen. "Because our response is case-by-case," said Rosalie Siler, Assistant Director of Student Services for Gender-Based and Sexual Misconduct, "it's difficult to give specific examples."

The Title IX coordinator, according to the federal government's newly articulated policy, must decide whether the school can respect the victim's wishes for confidentiality. "For example," Office of Civil Rights attorney Rachel Gettler elaborated, "if the Title IX coordinator has information indicating that the alleged perpetrator has previously sexually assaulted other students on campus, it may be necessary to override this student's request for confidentiality in order to pursue disciplinary action against the alleged perpetrator."

Faculty at Columbia are less than thrilled by the new policy. In a recent Columbia Journalism gender misconduct training, a group of staff sit in stony silence, staring at a corporate Power Point. A petite, pretty woman in pumps reads scenarios off the screen, while professors interrupt to ask about other hypothetical situations:

You see a fellow colleague massaging a student's shoulders in the hall. That student looks uncomfortable. Do you report it?

A student comes to you and says they're being sexually harassed. The student wants advice, but begs you to keep it private. Do you report it?

You hear in the faculty office that a professor was flirting while intoxicated on his/her book tour, and making people uncomfortable. Do you report it?

"Yes," asserts the woman, in response to the questions. "The answer to all of these is yes." She follows up by explaining that not only would staff need to report these incidents, but they'd also need to pass on the name of the victim to university administration.

A chorus of voices clamor in contention, professors angrily arguing against the new policy. Given the sensitive nature of sexual harassment charges, many staff members can't believe the school is asking them to violate their students' trust.

In contrast, Columbia's Rape Crisis Center is a minority voice on campus that supports the mandatory reporting policy. Center coordinators suggest that it has resulted in "an increased awareness of gender-based misconduct and sexual violence as well as knowledge of on-campus resources available to survivors." Rosalie Siler, Columbia's Deputy Title IX Coordinator, explained the reasoning behind the stiff new procedures: "The [reporting] requirement clearly communicates that such conduct is not tolerated in our community."

Not everyone buys that explanation. The Dear Colleague letter opened the door for universities to be sued under the Title IX law if they aren't doing enough to address sexual harassment. So when schools implement sweeping mandatory reporting requirements that don't protect victim confidentiality, Colby Bruno from the Victim Rights Law Center wonders why. "The cynical side of me says they're worried about liability," she explained. "The softer side of me says they want to help victims in their time of need. But the counter argument is, if you want to help victims in their time of need, why not leave it up to the victim?"

Those waiting to tell their stories at the Barnard-Columbia Take Back the Night Speak Out sit in the Alumni Office. Peach-colored chairs, a striped gold couch, and white shelves of old books dot the cozy beige room. White pieces of paper with text are taped above the fireplace and on blue vases around the room. They read:

"The Speak Out is meant to be a safe space for survivors and co-survivors to share their stories. However, anonymity has its limits. Any university official informed of an allegation of gender-based misconduct involving students is expected to file a report."

"What's that sign?" asked a woman with a high ponytail waiting on the couch, tilting her head to the side.

Another woman wearing running shoes and tights answered. "I think it's promising confidentiality, that this is a safe space."

"No actually it's the opposite. It's warning you that it's not confidential," corrected a student with a big book pack at her feet and wire-rimmed glasses. "It's ambiguous with the RAs. But they could report you."

A tense silence descended over the group.

In the corridor outside the Speak Out, volunteer Leah Reis mans the pamphlet table. With shoulder length curly brown hair, a heart-shaped face and warm smile, she greets people entering the gym. "Sexual harassment or assault is a crime of power," Reis says, her smile disappearing. "The survivor is stripped of their power and control, and one of the only aspects that remains in their control is if, how, when, and to whom to share their story. So this removes that last aspect of control that a survivor has."