

The Right to Safe Housing on College Campuses



for Survivors of Sexual Assault, Stalking, Domestic Violence, and Dating Violence

Students have the right to an effective response from their college or university when they report that they have been the victims of stalking, sexual assault or harassment, or intimate partner violence. A key component of a school's response is providing safe housing. The law prohibits schools from discriminating against students in residential services because they suffered gender-based violence, and requires schools to present victims with housing options.

How do sexual assault, stalking, and dating and domestic violence jeopardize equal educational opportunity and student housing?

Sexual harassment, stalking, sexual assault, and intimate partner violence can have devastating effects on the ability of students to continue their education. Students often know the perpetrators of the violence or harassment against them and see them on a regular basis. In the case of sexual assault, for example, a staggering 80-90% of on-campus victims know their attackers.¹ About six times as many sexual assaults occur in on-campus residence halls than do off-campus.²

Because students who experience gender-based violence are likely to know and live nearby the perpetrators, they need particular attention to their housing concerns. A victim may be in danger because the perpetrator has easy access to the building (either as a fellow student or residential life staff member), or because they were living together and the perpetrator needs to be removed from the home. Even if the perpetrator is not connected to the school, the victim may feel unsafe because the perpetrator knows where the student lives. Being forced to cross

SARAH'S STORY PART ONE*

Not long after Sarah's order of protection against her stalker expired, he sent her an e-mail. "I couldn't tell whether or not the e-mail was meant as a veiled threat, but I was definitely scared. He'd broken into my home before, and I was worried he would start showing up at my new apartment at school. The police were not willing to arrest him based solely on the e-mail, but I couldn't sleep and I couldn't study. I was too scared to go outside, and I was too scared to stay inside. I didn't have enough money to move off-campus. I felt really stuck."

* Names have been changed to protect confidentiality. Sarah's story is based on an interview with a graduate student in New York.

paths with a perpetrator can re-traumatize the victim, causing further psychological and emotional harm. Unless victims' housing needs are addressed, they may feel so unsafe that they are forced to drop out of school.

Students have a legal right to safe housing

Schools often have internal policies offering housing to incoming or continuing students and rules regarding housing transfers or evictions. Those policies must be fairly applied to all students and respond to the concerns of victims of sexual assault and dating violence. There are federal laws that protect students' housing rights: Title IX of the Education Amendments of 1972; the Fair Housing Act (FHA); and the Clery Act.³

■ Under Title IX, a college or university may be held legally responsible when it knows about and ignores sexual harassment or assault in its programs or activities, whether committed by a faculty member, staff, or student.⁴ A school could be liable for failing to accommodate a victim's request for safer housing once it is aware of an incident of violence or harassment.

■ The Fair Housing Act (FHA) prohibits landlords from discriminating on the basis of sex.⁵ Dorms, fraternities/sororities, and other forms of on-campus housing are covered by the FHA. Under the FHA, housing policies and rules that hurt victims of stalking, sexual assault, and intimate partner violence can be found to discriminate based on sex because women are disproportionately victims of these crimes. Sexual harassment by a housing owner or manager is also considered unlawful.

■ The Clery Act requires colleges and universities to disclose information about crime on or near campus, including sexual assault and other crimes involving bodily injury in which the victim is selected because of gender.⁶ Schools are also required to notify victims about their options for reporting the crime and their options for changing classes and dormitory assignments in order to avoid their alleged assailants.

Sexual harassment can qualify as discrimination under Title IX if it is "so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit." Courts have generally found that even a single instance of rape or sexual assault meets this standard.

For example, the following could be found unlawful under the FHA:

- Campus policies that deny on-campus housing to individuals who have obtained an order of protection;
- Campus policies requiring eviction of a student whenever a crime occurs in her housing;
- Constant unwanted sexual comments, touching, and sexual advances from a residential life manager toward a student in the dormitory.

The Clery Act is named after Jeanne Clery, a college freshman who was raped and murdered in her residence hall in 1986.

- Under the Clery Act, colleges and universities must describe whether the crimes they are reporting occurred on campus, in or on a noncampus building or property, on public property, or in a dormitory or residential facility.⁷
- If the school has substantially misrepresented its crime data, the law authorizes the federal Department of Education to impose a fine of up to \$25,000 for each misrepresentation.⁸

What are some examples of discrimination that may violate the law?

- A student summoned the police when being assaulted by a partner. She decided to press charges, but the college sent her an eviction notice anyway because it has a “zero-tolerance” policy for violence in campus housing.
- Following a student’s report of being raped by another student in the same dorm, the school began an investigation but refused to remove the alleged perpetrator from the dorm or to offer alternative housing to the victim, despite the victim’s request.
- A student applied for on-campus housing but was found ineligible because she had an order of protection against someone who assaulted her.
- A student was sexually harassed and stalked by a co-worker from a work study job. The co-worker figured out the student’s schedule and often waited outside of the student’s dorm. The police refused to make an arrest, so the student asked his school for help but was told there was nothing they could do because the stalker was not a student.

How should schools address the housing needs of students who have experienced sexual assault, stalking, domestic violence, and dating violence?

The Clery Act requires schools to notify students that **“the institution will change a victim’s academic and living situations after an alleged sex offense and of the options for those changes, if those changes are requested by the victim and are reasonably available.”**⁹ Although schools have this legal obligation, some are better than others at informing students about their housing rights. Here are a few good ways that schools can enhance their campus safety and sexual assault policies as they relate to student housing:

- ✓ Create a separate section within the sexual assault policy that deals exclusively with housing and residential services.¹⁰
- ✓ Mandate that the Director of Housing or a similar school official be notified immediately so that the victim and the accused may be provided alternative housing assignments during the investigation.¹¹ Make clear whom students should contact in a situation where different residence hall directors have jurisdiction over only certain areas.¹² Any protocol should take into account situations where the residential life staff are the perpetrators of violence and should focus on how to keep victims safe who remain in their housing.
- ✓ Designate a room within a residence hall or an apartment in a university guest house as temporary safe housing for victims who need to leave their current residences.¹³
- ✓ Provide training to RAs and housing staff regarding how best to respond to sexual assault, stalking, and intimate partner violence, how to comply with restraining or stay-away orders, and how to ensure safe housing.¹⁴
- ✓ Notify students about organizations that can assist with filing reports, arranging alternative housing, and obtaining a restraining or stay away order.¹⁵
- ✓ Provide resources for students living off-campus, such as community crisis hotline numbers and contact information for local victim advocate groups.¹⁶

How can students protect their rights to safe housing?

When a student believes that his or her school has violated its legal obligations following a report of sexual harassment, sexual assault, stalking, or intimate partner violence, the student should consult with an attorney to gain a better understanding of applicable rights and options. The ACLU Women's Rights Project (contact information below) is one possible resource.

To help change campus policies, students can also take part in the SAFER/V-Day Campus Accountability Project (CAP). CAP collects information provided by college students regarding the strengths and weaknesses of their school's sexual assault policy—including whether their school is transparent about helping students with housing changes in the event of an assault. For more information, go to <http://safercampus.org/campus-accountability-project>.

SARAH'S STORY PART TWO

Sarah told her Dean of Students about the e-mail after the police refused to do anything. "The Dean was really understanding—and she totally trusted my judgment about the situation." Sarah's school offered to move her to a new on-campus apartment with a doorman while covering the additional rental cost with a supplemental grant. A referral to the campus police to keep her stalker off of university grounds also helped. "Knowing that he would be kept away from school and my apartment helped me to be able to get back to focusing on work instead of worrying about my safety."

Note: Although the Dean's response was compassionate and proactive, not all schools handle these matters in the same way.

¹ Bonnie S. Fisher, Francis T. Cullen & Michael G. Turner, U.S. Dep't of Justice, Nat'l Inst. of Justice, *The Sexual Victimization of College Women* 17 (2000), available at <http://www.ojp.usdoj.gov/nij/pubs-sum/182369.htm>.

² U.S. Dep't of Educ., Summary Crime Statistics for 2006-2008, Criminal Offenses 5, <http://www2.ed.gov/admins/lead/safety/campus.html#data>.

³ Certain state or local housing laws may offer additional protections not discussed here. A lawyer can offer information and advice specific to a particular situation.

⁴ 20 U.S.C. § 1681(a); *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 633 (1999).

⁵ 42 U.S.C. § 3604.

⁶ 20 U.S.C. § 1092(f).

⁷ 20 U.S.C. § 1092(f)(12).

⁸ 20 U.S.C. § 1092(f)(13).

⁹ 34 C.F.R. § 668.46(b)(11)(v).

¹⁰ See San Francisco State University's Sexual Assault Policy, http://www.sfsu.edu/~safe_plc/Assault_Policy.htm.

¹¹ *Id.*

¹² See Michigan State University's Statement on Sexual Assault, Reporting Procedures and Resources, <http://splife.studentlife.msu.edu/information-and-services/michigan-state-university-statement-on-sexual-assault/information-and-programs-on-sexual-assault/reporting-procedures-and-resources>.

¹³ See Marilyn Best & Debbie Nelson, Nat'l Resource Ctr. on Domestic Violence, *Organizing College Campuses Against Dating Abuse*, 27-30 (1999) (describing the policy at the University of Illinois, Urbana-Champaign), available at http://new.vawnet.org/Assoc_Files_VAWnet/nrc_camp-full.pdf.

¹⁴ *Id.*

¹⁵ See Fairfield University's Jeanne Clery Disclosure of Campus Security Policy, http://www.fairfield.edu/student/ps_clery.html.

¹⁶ *Id.*

For more information about guaranteeing safe housing for survivors of sexual assault, stalking, domestic violence, and dating violence:

ACLU Women's Rights Project

125 Broad Street, 18th Floor,
New York, New York 10004
womensrights@aclu.org
www.aclu.org/fairhousingforwomen
www.aclu.org/womens-rights

Students Active for Ending Rape (SAFER)

32 Broadway, Suite 1801,
New York, NY 10004
(347) 465-7233
contact@safercampus.org
www.safercampus.org

SEPTEMBER 2010