

April 3, 2014

White House Task Force to Protect Students from Sexual Assault  
c/o Office on Violence Against Women  
U.S. Department of Justice  
145 N St., NE, Suite 10W.121  
Washington, DC 20530

Dear Members of the Task Force,

Thank you for the opportunity to meet with you on March 14 to discuss the work of the White House Task Force to Protect Students from Sexual Assault. We appreciate the time and effort you are devoting to issues related to sexual misconduct on college and university campuses. All campus leaders care deeply about our students and we want to work collaboratively and cooperatively with you to address sexual misconduct. Since our primary goal was to urge collaboration with us in your work, we were especially pleased to hear that the Task Force wants to work with campus leaders to address the problem, recognizing that an on-going dialogue will enhance the effectiveness of the Task Force's work.

We encourage the Task Force to recognize explicitly that colleges and universities are committed to, and are working hard to protect, the safety and well-being of their students. We hope that you will help the public to understand that by partnering with one another -- leveraging institutions' experiences on campus with the federal government's national perspective and resources -- we can further our joint goals of preventing sexual misconduct and, when it occurs, investigating and resolving it. Through this partnership, we can make meaningful progress, on our individual campuses and for all involved.

As we noted in our meeting, incidents involving sexual misconduct on college and university campuses are sometimes straightforward but more often are incredibly complex. We are undertaking this challenge every day, and ask that you recognize the complexity of the situations we must address. We shared with you our serious concern about the multitude of confusing and sometimes conflicting requirements with which institutions must comply. We therefore would also ask that the Task Force recommend a coordinated review of the regulatory and sub-regulatory guidance that applies to institutions as they work to comply with Title IX, the Clery Act and Campus SaVE. Our institutions implement every act, regulation and guidance document sent our way, but we are struggling with the fact that they are not necessarily clear, consistent, or coordinated. We can be of assistance in the preparation of future directives if we can have a discussion with the relevant agencies as to how they fit together, and, from a practical standpoint, the impact they will have in the context of the many different iterations of campus communities (e.g. large, small, public, private, independent, religiously-affiliated, residential, commuter, etc.).

We stand ready to work with you in examining existing and future mandates, and would appreciate the opportunity to do so before they are issued in final form. We also ask that once

such requirements are issued, that governmental leaders establish a mechanism by which to field questions from, and provide timely and consistent responses to colleges and universities.

We ask you to respect that colleges and universities are not law enforcement agencies, and the federal government's focus should be on prevention, education and cultural transformation, not adjudication. A guiding principle under which we all operate when addressing sexual misconduct is fairness to all of our students. We cannot and should not substitute for criminal law enforcement. We have grievance and disciplinary processes that are suited to our individual educational missions and environments, and are required to conduct fair and neutral proceedings, while providing support to all parties involved.

During our meeting, you specifically raised the issue of confidentiality vs. reporting. Since the issuance of the Dear Colleague letter, institutions have struggled with questions and practical implications related to the desire of some victims for confidentiality. While it is important for colleges and universities to be unambiguous in their communications regarding the level of confidentiality afforded to various individuals, offices and resources on campus, we also want information concerning sexual misconduct to make its way to the Title IX Coordinator (or other appropriate office on campus) so that we can ensure that the victim is being provided appropriate support, and we can assess the situation to determine whether it poses an ongoing risk to the campus community.

There is significant confusion regarding the DCL's discussion of confidentiality. The DCL states that "[i]f the complainant requests confidentiality or asks that the complaint not be pursued, the school should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the school should inform the complainant that its ability to respond may be limited." It is unclear how institutions are to "investigate ... the complaint consistent with the request ... not to pursue an investigation." It seems that this provision may be conflating the concepts of providing strict confidentiality with protecting the privacy expectations of a "reluctant complainant" (i.e. a victim who does not wish to participate in an investigation or student conduct process).

Many institutions have taken the position that employees who do not enjoy an established legal privilege must report allegations of sexual misconduct to the Title IX Coordinator, even if the victim desires confidentiality. The Title IX Coordinator, in turn, has to make a determination as to whether the institution will keep the incident confidential or disclose it as necessary to conduct an investigation (including speaking with the respondent) and, if necessary, take action to protect the campus community. It would be helpful if the government could confirm this interpretation and, if correct, to identify factors to consider in determining at what point the scales tip such that the matter must move forward despite the victim's desire for confidentiality.

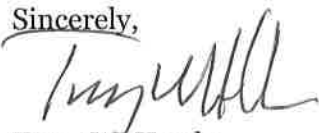
Additionally, as we discussed, several institutions have very capable women's resource and advocacy centers that would like to offer confidential support to victims. Those centers, however, are often staffed by individuals who wear several "hats" on campus, one of which makes them a campus security authority, such that they are not permitted to maintain confidentiality. Those individuals have to report detail sufficient not only for statistical purposes, but also to permit a determination to be made as to whether a timely warning must be issued. It would be helpful if the government could provide clarity on this point, including permitting institutions the flexibility to declare Campus Security Authorities (CSAs) to be acting in a non-CSA capacity while serving in these roles, and also specifically excluding these individuals from reporting obligations for Title IX purposes.

We also seek your help with regard to the broader cultural transformation that is required to prevent and educate regarding sexual misconduct. The challenges of addressing sexual misconduct in the larger society start well before students reach our campuses. We ask that you help us find ways to address issues that are often associated with sexual misconduct, including drug and alcohol abuse, and a lack of respect for others. We ask that you support collaborative research with our institutions. Help us and the nation's secondary schools educate our students through prevention programs, and with bystander intervention best practices. Additionally, all would benefit from additional resources being provided to law enforcement agencies and prosecutors in small or rural communities that may lack the experience and resources to handle the criminal prosecution of sexual assault cases occurring on campuses.

We hope this helps to reinforce our discussion at the meeting and attach another copy of the comments filed by the American Council on Education and other higher education associations on February 28, 2014. We also ask that you note the information provided by United Educators to Assistant Secretary Lhamon regarding the increasing number of "reverse Title IX" cases colleges are facing.

We hope that this is only the beginning of continued discussions and collaboration between the White House Task Force and colleges and universities. We look forward to partnering with you as we move forward on this important topic. We stand ready to be of assistance at any point and hope you will provide additional opportunities for us to continue conversations that will serve the needs of our students.

Sincerely,



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