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Senior Whip

September 13, 2016

The Honorable Catherine Lhamon
Assistant Secretary for Civil Rights
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Assistant Secretary Lhamon:

Thank you for the extraordinary work you are doing to protect students by holding schools accountable and working to eradicate sexual assault and harassment on our college campuses. I am writing to request that you consider further support of survivors who are struggling to complete their education in the aftermath of a sexual assault. Specifically, I would like to suggest that you use your authority to ensure that student loan debt incurred as a result of sex assault does not constitute an additional barrier to students meeting their educational goals.

Under your leadership, the Office of Civil Rights (OCR) has worked hard to make sure that schools are complying with Title IX, which includes the requirement that universities take affirmative action to help survivors of sexual assault and harassment continue their education.¹ However, one of the areas that must be improved is the way in which schools remedy financial harms caused by sex assault, such as additional student loan debt.

To illustrate the importance of making this change, I have included survivor testimonials that were provided to the anti-sexual violence organization Know Your IX with permission to be shared. Some survivors have had to take out additional loans to pay for expensive mental health services or for tutoring that their schools should have provided free of charge per OCR's 2014 *Frequently Asked Questions* document.² Other survivors have had to withdraw from classes due to lack of academic support or accommodations, and if the tuition is not reimbursed they are forced to take on increased student loan debt if they re-enroll at a later date. If survivors fall below half-time enrollment, they often need to begin paying their loans—a tall order for individuals without a degree who are already struggling with the traumatic effects of sexual assault.

¹ See Office for Civil Rights, Dear Colleague Letter from Assistant Secretary for Civil Rights Russlynn Ali, U.S. DEP'T EDUC. (Apr. 4, 2011), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf> [hereinafter DCL 2011].

² See OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., FREQUENTLY ASKED QUESTIONS ABOUT SEXUAL HARASSMENT, INCLUDING SEXUAL VIOLENCE (2015), <http://www2.ed.gov/about/offices/list/ocr/qa-sexharass.html> [hereinafter 2014 FAQ].

In the most severe cases, survivors have been cut off from federal student aid for reasons connected to their assault, effectively making it impossible for them to access educational opportunities. For example, some survivors who drop classes after experiencing violence may need more time than others to complete their program. However, if they exceed 150 percent of their program length, they lose eligibility for direct subsidized loans. Other schools have failed to suspend the requirement that survivors make “satisfactory academic progress,” causing the survivor to lose federal aid if their grades fall while they recover from trauma.

OCR has publicly stated that the economic harms experienced by survivors as a result of their schools’ failure to comply with Title IX can constitute a “financial injury” that a school must rectify.³ Your office has required schools to reimburse survivors for lost tuition and other educational expenses in some of its voluntary resolution agreements.⁴ Your office has also stated that schools may not charge survivors for interim measures that they need to access education, such as counseling and tutoring.⁵

These efforts are great steps forward. I believe more can be done, however, regarding student loan debt. To eliminate financial obstacles to equality in education I ask that OCR, in consultation with the Secretary of Education and the Office of Federal Student Aid, consider taking the following actions:

³ See E-mail from Helen Boyer, on behalf of Catherine E. Lhamon to Know Your IX (Dec. 3, 2014, 5:08 PM EST) (on file with author) noting that, “The effects of sexual violence on an individual can manifest themselves in many ways, some of which can lead to financial injuries. These financial injuries can range from out-of-pocket expenses (like medical payments) to the lost value of educational services already paid for (when a survivor cannot benefit from classes). Loan interest accrued is another type of financial injury that could result from sexual violence and therefore, in some instances, a school may need to address it. The scope of a school’s responsibility is tied to the scope of a school’s culpability. Thus, when a school’s actions or inactions (after it knows or should have known of the hostile environment created by sexual violence) augment the survivor’s injury, more can be expected of the school by OCR. By contrast, when a school takes prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, and prevent its recurrence, OCR would not normally expect the school to reimburse a survivor for financial injuries that can be traced back to an incident of student-on-student sexual violence.”

⁴ See *Office for Civil Rights, U.S. Dep’t of Educ., Case Processing Manual 21* (2015), <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf> (stating that, when OCR issues a determination of noncompliance at the end of an investigation, the proposed resolution agreement must include “action steps that, when implemented, will remedy both the individual discrimination at issue as well as any systemic discrimination”); see also *Voluntary Resolution Agreement, No. 02-11-2025*, Princeton Univ. (Oct. 12, 2014), <http://www2.ed.gov/documents/press-releases/princeton-agreement.pdf>; *Voluntary Resolution Agreement, Nos. 06112126, 06132081, 06132088*, SMU (Nov. 16, 2014), <http://www2.ed.gov/documents/press-releases/southern-methodist-university-agreement.pdf>.

⁵ See *Letter from Department Re: Schools Obligations to Remedy Financial Consequences of Violence*, KNOW YOUR IX, <http://knowyourix.org/letter-from-department-of-education-11-17-2014/> (stating that, “Our [OCR’s] most recent guidance on this topic specifically noted that ‘[i]nterim measures are determined by a school on a case-by-case basis.’ We highlighted a concrete question about whether a school’s provision of access to all students to counseling on a fee basis would suffice for providing counseling as an interim measure before the completion of its investigation when necessary to ensure equal access to education programs and to protect a complainant. In our answer, we noted that ‘[i]f a school determines that it needs to offer counseling to the complainant as part of its Title IX obligation to take steps to protect the complainant while the investigation is ongoing, it must not require the complainant to pay for this service.’ The principles in that answer apply more broadly to the provision of remedies. If remedies are necessary to ensure equal access to education programs, a school cannot require a student to pay for receipt of those remedies.”)

1) Allow survivors to access forbearance under the ‘poor health and other acceptable reasons’ justifications.

Borrowers can access forbearance for their federal student loans for a number of reasons, including if “the Secretary [of Education] determines that, due to poor health or other acceptable reasons, the borrower or endorser is currently unable to make scheduled payments.”⁶ While the regulation requires the Secretary to make a determination ostensibly based on evidence, it does not outline the specific documentation required to prove an individual is suffering from “poor health.” Nor does it define what would constitute an “other acceptable reason.” Therefore, survivors may not know they can apply for forbearance, and schools and loan servicers may inappropriately deny forbearance if they do not understand that survivors qualify.

In order to rectify these inconsistencies, I would like to recommend that OCR clarify that experiencing sexual assault and harassment qualifies a borrower under *both* the “poor health” and “other acceptable reasons” justifications for forbearance. This adjustment can also be made on existing forms to simplify the process for survivors and alert them to their rights.

Finally, I recommend that OCR articulate clear and expansive standards as to what constitutes sufficient documentation for accessing forbearance, taking care to avoid burdensome requirements such as a police report. The Ruth Moore Act of 2015 (H.R. 1607), which seeks to create manageable documentation standards for individuals experiencing military sexual trauma (MST), is a model in this regard. H.R. 1607 would require the Department of Defense to “resolve every reasonable doubt in favor of the veteran” if an individual claims to have experienced military sexual trauma and if that opinion is shared by a mental health professional. This evidentiary standard would apply even if there is no official record of such an occurrence. Furthermore, rebutting the claim would require “clear and convincing evidence to the contrary.”⁷

Within this context, the classification of “mental health professional” should be broadly inclusive to ensure survivors can access documentation regardless of their income or location. I would recommend the definition of “mental health professional” include licensed professional counselors, mental health counselors, clinical social workers, and marriage and family therapists. OCR could also accept the testimony of these professionals without bias as to their place of employment (i.e. rape crisis centers, telemental health providers, non-profit mental health providers, etc.).

2) Clarify that schools must offer student loan counseling to survivors as an interim remedy.

In its 2011 Dear Colleague Letter, your office stated that if a school determines that a hostile environment exists “it must take immediate action to eliminate the hostile environment, prevent its recurrence, and address its effects.” This may include:

Remedies for the complainant, as well as changes to the school’s overall services or policies [...] remedies for the complainant might include, but are not limited to:

⁶ 34 CFR 685.205

⁷ H.R. 1607 (2015)

providing an escort to ensure that the complainant can move safely between classes and activities; ensuring that the complainant and alleged perpetrator do not attend the same classes; moving the complainant or alleged perpetrator to a different residence hall or, in the case of an elementary or secondary school student, another school within the district; providing counseling services; providing medical services; providing academic support services, such as tutoring; and arranging for the complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant's academic record.⁸

Given that failure to pay student loans can interfere with an individual's ability to access education, I would recommend that OCR include student loan counseling as a remedy that schools must provide to survivors. Currently, a survivor is expected to navigate the repayment process like any other student if she or he drops below half-time enrollment – an unrealistic prospect for a student already struggling to complete assignments in school because of trauma. OCR could also make sure that that counseling includes information about income-driven repayment plans, particularly the income-based repayment (IBR) option.

3) Consistently support access to reimbursement through Voluntary Resolution Agreements for complainants.

Over the past several years, OCR has negotiated resolution agreements that require schools which have failed to comply with Title IX to reimburse complainants for expenses they incur due to the school's conduct. I applaud these efforts, and I encourage OCR to ensure that this type of reimbursement also covers costs incurred as a result of student loan debt.

For example, in its November 16, 2015 voluntary resolution agreement with Southern Methodist University (SMU), OCR required SMU to reimburse a complainant for university-related expenses:

No later than sixty (60) calendar days after January 1, 2015, the University shall provide to the Complainant in Case No. 06132088 reimbursement, upon presentation of appropriate documentation, for (a) all university-related expenses (tuition/fees, housing/food, and books) incurred for the fall 2012 semester minus any scholarship and grant assistance received, and (b) all counseling expenses incurred from September 23, 2012 through November 16, 2014.⁹

In this case, the Complainant in Case No. 06132088 submitted their withdrawal to the university in November 2012.¹⁰ While the borrower status of the survivor is not public, they would have entered repayment prior to the conclusion of OCR's investigation if they had federal student loans and did not meet the criteria for a deferment. While the agreement does reference "scholarship and grant assistance received," it does not explicitly mention student loan interest as

⁸ See DCL 2011; *supra* note 1, at 16-17.

⁹ U.S. Dep't of Educ., Office for Civil Rights, Voluntary Resolution Agreement with Southern Methodist University 15 (Nov. 16, 2014), <http://www2.ed.gov/documents/press-releases/southern-methodist-university-agreement.pdf>

¹⁰ U.S. Dep't of Educ., Office for Civil Rights, Letter of Findings to Southern Methodist University 15 (Dec. 11, 2014), <http://www2.ed.gov/documents/press-releases/southern-methodist-university-letter.pdf>

a part of the required reimbursement. If SMU did not also reimburse the interest that the survivor might have incurred in repaying his loans, the survivor may still have experienced a financial penalty as a result of SMU's conduct. OCR should therefore explicitly require reimbursement of expenses resulting from student loans, including student loan interest, where applicable in its resolution agreements under Title IX.¹¹

4) Improve survivors' access to information by updating the OCR Case Processing Manual.

Finally, while income-driven repayment plans will be a superior option to deferment and forbearance in many cases, survivors of sexual assault and harassment are often unaware of these options.¹² In order to increase enrollment in these programs, I recommend that OCR create online educational resources specifically tailored to survivors. Furthermore, OCR should alter its Case Processing Manual in order to provide information about student loans and income-driven repayment plans in its communications with complainants.

Thank you for your consideration of these requests. Feel free to call me or Molly Fishman at (202) 225-3531 should you have any questions or want to follow up. I look forward to your response and to continuing to work with you to ensure that every student can access an education free from harassment and violence.

Sincerely,



Jackie Speier

CC: The Honorable John B. King, Jr., Secretary of Education, U.S. Department of Education
The Honorable James W. Runcie, Chief Operating Officer, Federal Student Aid,
U.S. Department of Education

¹¹ See Email from Helen Boyer, *supra* note 3 (noting that, "Loan interest accrued is another type of financial injury that could result from sexual violence and therefore, in some instances, a school may need to address it").

¹² See Shahien Nasiripour, *Education Department Lets Borrowers Default On Student Loans, Ignoring Helpful Alternatives*, THE HUFFINGTON POST (Sept. 11, 2013), http://www.huffingtonpost.com/2013/09/11/income-based-repayment_n_3903208.html.

SURVIVOR TESTIMONIALS

- 1) When I reported my assault, I was ignored. Because of this, I transferred schools and lost about a year and half of credits. My grades dropped and I lost financial aid for 2 semesters; one of which I'm still paying for after having an appeal denied. I've been in school for 5 years (with at least 1.5 years to go) which has resulted in more debt (about \$27,000 in total).
- 2) I left school in the middle of summer classes because I was assaulted two floors above my apartment and wasn't allowed to change my housing. When I tried to report the assault, I was ignored. I was told the only way I could dispute my grades or get any of my aid back would be if I could find a doctor who would advocate for me. I dropped out of that school, and I've had to start repaying my loans.
- 3) I stopped attending a class because the man who raped me had a class in the same building at that time, and I ended up with an "F" as a result. I wasn't able to get my tuition refunded for that class, which added to my debt. There were a few other classes where my gender & sexual orientation (bi & femme) caused problems. One student harassed me online and was exceedingly sexist (called me a bitch in class), and my professor never addressed it. Instead, he stopped helping me with my school and career goals (he's the head of the department for a language I studied). These experiences have made it harder to get jobs now. I also feel like I can't access the references I need for jobs, as I was essentially blacklisted after I filed a complaint with the Department of Education for violating Title IX after it mishandled my rape report. Staff and faculty that used to support me no longer will speak to me or reply to emails. My school is still being investigated. My rape was in 2012. I reported it to the school in 2013, and I filed a complaint with the Department of Education in 2014. Two years later, the investigation is still happening. It makes it hard to deal with debt (about \$28,000 in total) when all of this is still ongoing.
- 4) I used to go to [redacted]. I was raped by a student – they did not expel him and were hostile towards me throughout the process. I had to transfer schools and paid for a semester of tuition that I didn't get any credit for because I withdrew.
- 5) I was sexually assaulted by a man who was a part-time lecturer at my university, and had an abortion because of it. I had severe PTSD for a semester to a year after. Because of my poor academic performance, I was placed on academic probation and lost my ability to take out loans for a semester. When I fell below half-time enrollment, I had to start repaying and the interest rate went up. This incident and its aftermath also prolonged my graduate studies by a year. I have around \$100,000 in student loan debt.
- 6) I had to travel to another university to complete courses because the only courses available in my major were taught by the professor who assaulted me. I had to borrow additional money in order to pay for those classes and commute. I have not been able to do anything with my degree because of the trauma I experienced due to the actions of my major professor, but I have \$172,000 in student loans.

7) After I was raped twice in college, I developed PTSD and struggled to get a professional job in my field as a result. In the years after, I was homeless and worked at low-paying bike delivery and coffee shop jobs while getting free counseling from a rape crisis center. I went to grad school, and then I used my student loans to pay out-of-pocket for therapy after I wasn't able to get timely and supportive, help from student health counselors. I now have \$86,000 in debt.

8) Being stalked in college made it hard to concentrate emotionally and mentally; I had to retake a few classes and, in avoiding areas my stalker frequented, missed out on opportunities for career advancement through job fairs, club meetings, and meeting new people and potential clients. I did not know interest on my loans (about \$13,000 in total) was accruing, and had to pay about \$400 more than I expected.