

February 25, 2016  
*Via electronic mail*

Chairman Lamar Alexander  
Committee on Health, Education, Labor and  
Pensions  
455 Dirksen Senate Office Building  
Washington, DC 20510

Ranking Member Patty Murray  
Committee on Health, Education, Labor and  
Pensions  
154 Russell Senate Office Building  
Washington, DC 20510

Dear Chairman Alexander and Ranking Member Murray:

We write to commend the DOE and OCR for their unflinching commitment to addressing the problem of sexual violence on campuses, and to urge the HELP committee not to turn the clock back by challenging the Assistant Secretary's right to issue much-needed clarification and guidance—guidance created in consultation with legal scholars and experts.

As members of Faculty Against Rape (FAR), a group of more than 300 faculty and civil rights activists from across the U.S., we want to share some of what we have learned in our efforts to make college campuses a safe place for all. We started FAR in the summer of 2014 as an ad-hoc volunteer collective whose mission is to get more faculty involved in preventing sexual assault and sexual harassment and improving response on campus. FAR is also committed to protecting faculty who experience retaliation for doing so. Over the past two years, FAR has provided resources for faculty to learn how to best support survivors, tools for faculty who want to get more involved in reform efforts, and support for faculty who face retaliation. We have also developed curriculum and facilitated workshops for faculty around the country on integrating information about campus sexual assault into the curriculum, both as syllabi clauses and as key themes. Collectively, our members have supported literally hundreds of survivors at campuses across the country. Many of them have endured significant retaliation from university administrations who want to protect the university brand, even at the cost of the safety and well-being of students.

Our experience has afforded us a unique perspective on key issues in understanding the efficacy of the DOE's response to the problem. Here are two points we believe the HELP committee should be aware of:

**1. Higher education is at a watershed moment in understanding the problem of faculty sexual predators:**

The problem of serial sexual predators who move from campus to campus—of “open secrets,” or known problems within a specific discipline—has become an issue of increasing concern. Over the past 2-3 years, there have been national news exposés about

faculty sexual predators at Yale University<sup>1</sup>, the University of Miami<sup>2</sup>, Northwestern University<sup>3</sup>, Berkeley<sup>4</sup>, UCLA<sup>5</sup>, Arizona State University<sup>6</sup>, Southern Connecticut State University<sup>7</sup>, Vanderbilt<sup>8</sup>, Columbia University<sup>9</sup>, and Montana State University<sup>10</sup>, to name just a few.

Although some of these faculty have been sanctioned by the university or disciplines they work in, it is often impossible to know whether a professor has harassed or assaulted students at other universities due to non-disclosure agreements and/or labor laws.

In other words, in order to deal with the problem of faculty sexual predators, universities need external help. We are dealing with a problem that is likely to be as widespread as the problem of sexual abuse in the Catholic Church. In philosophy alone, for example, there have been three significant cases of faculty sexual misconduct reported in the media over the past four years, and some activists in philosophy report that they are aware of as many as 30-40 similar “open secrets,” that is, faculty who are serial predators.

It is not only appropriate—but in fact *necessary*—for the Department of Education to be actively involved in regulating the response to the problem because: (1) faculty predators can move easily across state and national lines, from institution to institution, and (2) unlike the Catholic Church, institutions of higher education have no governing body, no way of ensuring that a serial predator does not simply accept a proverbial “golden parachute” or voluntary severance agreement with a confidentiality clause that enables a problem-free transition to another university.

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<sup>1</sup> Cf. Tamar Lewin, “Seven Allege Harassment by Yale Doctor at Clinic,” *New York Times*, April 13, 2015; Nick DeSantis, “Campaign Raises Money to Aid Lawsuit Accusing Yale Philosopher of Sexual Assault,” *The Chronicle of Higher Education*, May 13, 2014.

<sup>2</sup> Cf. Tyler Kingkade, “University Of Miami Sued Over Handling Of Colin McGinn Harassment Claims,” *Huffington Post*, October 16, 2015.

<sup>3</sup> Cf. Rebecca Schuman, “Title Nein: Northwestern University found that a star professor violated the sexual harassment code in his treatment of a student. Why is he still teaching?,” *Slate*, February 24, 2014.

<sup>4</sup> Cf. Azeen Ghorayshi, “Famous Berkeley Astronomer Violated Sexual Harassment Policies Over Many Years,” *BuzzFeed*, October 9, 2015.

<sup>5</sup> Cf. Carla Rivera, “UCLA Graduate Students’ Lawsuit Alleges Sexual Harassment,” *Los Angeles Times*, June 15, 2015.

<sup>6</sup> Cf. Nicholas Palomino Mendoza, “Students Seek Clarity, Closure in Student-Professor Relationship Investigations,” *The State Press*, May 7, 2014.

<sup>7</sup> Cf. Jim Shelton, “SCSU Protest Centers on Sexual Misconduct Claim,” *New Haven Register*, September 13, 2013.

<sup>8</sup> Cf. Peter Jacobs, “Former Vanderbilt Grad Student Files \$20 Million Lawsuit Claiming Sexual Harassment by Professor,” *Business Insider*, July 17, 2014.

<sup>9</sup> Cf. Barabara Ross, “Former Students Sue Columbia University, Accuse Professors in Sexual Harassment Suit,” *New York Daily News*, January 23, 2013.

<sup>10</sup> Cf. Gail Schontzler, “MSU Investigation Finds Professor Sexually Harassed Student,” *Bozeman Daily Chronicle*, September 3, 2011.

For each serial predator, there are multiple—even dozens, in some cases—scientists, writers, thinkers who have left the field that they love, whose talents have been lost, because of the discrimination they have been subject to. Clearly, if our goal as a nation is to provide equal access to educational opportunities, to tap the talent of the widest and most diverse pool possible, to avoid the brain drain that is caused by widespread sexual misconduct in academia, we need to talk about the problem – to break the unwritten code of silence implied by the norms of collegiality. Higher education needs the Department of Education to continue to actively provide guidance, clarification, and support. We are a close-knit family, and cannot clean up our own problems without external support.

To put it even more succinctly and explicitly: *with new stories about faculty sexual misconduct breaking every month, this is a watershed moment. Higher education is on the brink of a crisis similar to the sex abuse scandals that rocked the Catholic Church, and the OCR and DOE are the only agencies empowered to provide the guidance needed to chart a path through the storm. We respectfully urge the HELP committee not to undermine federal oversight at precisely the point at which it is most needed.*

## **2. The Dear Colleague Letters serve as much-needed non-legal guidance documents:**

In the past three years, faculty who have served as advocates for survivors on campus have been subjected to both overt and covert forms of retaliation; some were denied tenure, others were prevented from teaching courses on these issues, and a few faculty members were pushed out through legal agreements. Those who remain involved have experienced marginalization. The message of college administrators has been clear: faculty have been discouraged from playing an active role in addressing the problem. Evidence of retaliation against faculty who have demanded accountability has had a chilling effect on junior faculty as well as students.

The 2013 Dear Colleague Letter, which reminds universities of the fact that retaliation for engaging in an action protected under Title IX is itself a violation of Title IX, has been an absolutely essential tool for faculty, students, and activists on both sides of the debate to use as a means of securing the right to free speech.

The same is true of the 2011 Dear Colleague Letter, which provided important guidance in understanding what constitutes sexual harassment. Although the material provided in the guidance was in theory available in the 1997 and 2001 document, which included citations to relevant case law discussing the types of conduct that might constitute sexual harassment, the reality was that the information was more or less inaccessible. Similarly, although the preponderance of evidence standard described in the 2011 DCL was being used by an estimated 80% of institutions<sup>11</sup> prior to 2011, and is the standard used for all other civil rights laws, there was confusion regarding the appropriate standard due to the fact that certain types of sexual violence are also not just civil rights violations, but also criminal acts. (To arbitrarily require that complainants in Title IX cases adhere to a higher standard of proof than is required for other civil rights laws would be to discriminate against the Title IX complainants, most of whom are female.)

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<sup>11</sup> See, for example, <http://www.thefire.org/pdfs/8d799cc3bcca596e58e0c2998e6b2ce4.pdf>.

In other words, the Dear Colleague Letters have been an important tool in helping clarify the requirements—and limits—of Title IX as it was already being interpreted in both case law and practice. They were issued at critical junctures, in response to the surge of interest and attention to campus sexual assault, and in response to confusion about specific and well-established aspects of the law that were buried in relatively inaccessible documents. Given current confusion regarding issues such as the acceptable range of sanctions for perpetrators, the permissibility of sharing information about perpetrators who move from campus to campus, and the question of whether faculty accused of sexual misconduct should be permitted to continue teaching, it is reasonable to think that additional guidance will be warranted in the near future.

As faculty who have worked tirelessly supporting hundreds of student survivors across the country, we have seen first hand, time and again, that the problem of sexual misconduct on college campuses is real and serious; and the on-campus systems meant to address it are, by in large, broken. In virtue of this experience, we believe the OCR's continued ability to offer much needed clarification and guidance is not only welcome, but crucial to achieving gender equity in educational institutions.

Sincerely,

Faculty Against Rape