

November 6, 2014

U.S. Department of Education
Office for Civil Rights
Lyndon Baines Johnson Department of Education Bldg
400 Maryland Avenue, SW
Washington, DC 20202-1100

**RE: Request for Clarification of Office for Civil Rights
Guidance on Gender-Based Violence to Better Address
Economic Issues**

Dear Secretary Duncan and Assistant Secretary Lhamon:

The 2011 Dear Colleague Letter proclaimed, “Education has long been recognized as the great equalizer in America [and] the sexual harassment of students, including sexual violence, interferes with students’ right to receive an education free from discrimination.”¹ We could not agree more.

In order to end this discrimination, the Department of Education requires schools “to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.”² Regarding this requirement to address the effects of violence, the guidance states:

Remedies for the complainant may include but are not limited to...providing counseling services; providing medical services; providing academic support services, such as tutoring; arranging for the complainant to retake a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant's academic record.³

Subsequent 2014 guidance noted that schools should not charge survivors for counseling if provided as an interim measure. In April 2014, the Department of Education took action to ensure Tufts University would reimburse a survivor for lost educational expenses.

¹ Department of Education. (2011). *Dear Colleague Letter*. Retrieved from The Office for Civil Rights website: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>.

² Ibid.

³ Ibid.

As students and advocates, we support the strong guidance from the Office for Civil Rights in the area of gender-based violence. However, we write to express our concern that the economic consequences survivors face as a result of violence constitute a gender-based barrier at our nation's schools and, accordingly, we ask that the Office for Civil Rights more explicitly clarify institutions' obligations to remedy this barrier.

Economic Penalties Survivors Incur as a Result of Violence

The economic penalties that survivors currently face as a result of violence are severe, especially for low-income students. Survivors suffer high rates of PTSD, depression, anxiety, and drug or alcohol abuse, which, as the White House has acknowledged, "can hamper their ability to succeed in school" and are linked to higher college dropout rates.⁴ According to the U.S. Census, leaving college prior to graduation could decrease earnings by up to 30% for year-round, full-time workers.⁵ The effects are compounded for students with student loan debt. Students who leave college prematurely are four times more likely to default on their student loans.⁶ This debt is substantial: One study of individuals with student debt indicated that 75% of respondents who completed only "some college" had debt exceeding \$10,000.⁷ Student debt disproportionately impacts students and communities of color.⁸

Survivors have testified to the effects of violence, including its economic consequences. These impacts include dropping out of school, taking leaves of absence, or seeing a drop in grades due to the trauma of the assault itself or mistreatment. Although further study is needed, it has become increasingly obvious that the violence survivors experience, compounded with the financial consequences

⁴ The White House. (2014). *Rape and Sexual Assault: A Renewed Call to Action*. Retrieved from http://www.whitehouse.gov/sites/default/files/docs/sexual_assault_report_1-21-14.pdf.

⁵ Day, J.C. & Newburger, E.C. (2002). *The Big Payoff: Educational Attainment and Synthetic Estimates of Work-Life Earnings*. Washington, DC: U.S. Census Bureau.

⁶ Casselman, B. (2012, November 22). The Cost of Dropping Out. *The Wall Street Journal*. Retrieved from

<http://online.wsj.com/news/articles/SB10001424127887324595904578117400943472068>.

⁷ Baylor, E., & Murray, O. (2014, June 24.). *Important Insights on College Choice and the Burden of Student-Loan Debt*. Retrieved from The Center for American Progress website: <http://cdn.americanprogress.org/wp-content/uploads/2014/06/StudentLoanDebtFINAL.pdf>.

⁸ Kerby, S. (2014). *How Student Debt Impacts Students of Color*. Retrieved from The Center for American Progress website: <http://www.americanprogress.org/issues/higher-education/news/2012/04/26/11375/how-student-debt-impacts-students-of-color/>.

of such, often jeopardizes their ability to get an education, with enduring consequences throughout their lives.

*“The woman, an A student, dropped out of school, left the city and underwent therapy for extreme depression, according to the family. ‘Going to F.S.U. had been a longtime dream for her,’ her mother said.”*⁹

*“Mallory said she constantly worried about running into Swilling on the small, tight-knit campus and dropped out of school after winter break. ... Mallory has yet to finish her degree. She moved to Boise, where she works in retail and cares for her infant son.”*¹⁰

*In the meantime, Dixon struggled with having her assailant still on campus, living in a dorm a courtyard away from her. Her grades slipped, causing her to lose a scholarship.*¹¹

*“Where’s my survivor privilege? Was expelled & have \$10,000s of private student loans used to attend school that didn’t care I was raped...”*¹²

*The survivor was pressured to leave in the middle of the semester and wait for her abuser to graduate before returning. When she ultimately returned, the school denied her a refund on her tuition, and failed to provide her (and other survivors) free counseling on campus. “I was essentially fined \$20,000 for being abused.”*¹³

⁹ Bogdanich, W. (2014, April 16). A Star Player Accused, and a Flawed Rape Investigation. *The New York Times*. Retrieved from <http://www.nytimes.com/interactive/2014/04/16/sports/errors-in-inquiry-on-rape-allegations-against-fsu-jameis-winston.html>.

¹⁰ Lavigne, P. (2014, August 19). Tulsa facing Title IX lawsuit. *ESPN*. Retrieved from http://espn.go.com/espn/otl/story/_/id/11371378/tulsa-faces-title-ix-lawsuit-sexual-assault-report-involving-patrick-swilling-jr

¹¹ Kingkade, T. (2014, February 4). University Of Akron Police Suggested Sexual Assault Victim Was A Liar, Complaint Says. *The Huffington Post*. Retrieved from http://www.huffingtonpost.com/2014/02/04/university-of-akron-sexual-assault_n_4725134.html.

¹² Arceneaux, M. (2014, June 19). Wagatwe Wanjuki: How To Fail A Rape Victim. *NewsOne*. Retrieved from <http://newsone.com/3022894/wagatwe-wanjuki-tufts/>.

¹³ This story has been submitted to Know Your IX and has been included with the consent of the survivor.

Request for Clarification of Existing Guidance

The 2014 guidance recognized that fees constitute a barrier to accessing needed support. It explicitly stated that schools cannot charge fees for interim counseling services provided, but did not identify the full of range of services for which schools are required to pay as part of addressing these barriers and fulfilling their Title IX obligations. The guidance should be clarified to recognize that the financial costs associated with other interim measures such as housing assistance, academic support, other mental health and substance abuse services, disability services, and medical services should not constitute a barrier for students to access them. There is no reason why one interim accommodation – counseling – should be free for survivors while other similarly essential services are not.

OCR should clarify that schools must provide or pay for services including but not limited to counseling, other mental health and substance abuse services, medical services not covered by health insurance, housing assistance, disability services, and academic support services at no cost to the survivor; if the school cannot provide these services on campus, it must pay to provide them off-campus. If students must pay to access the services they need to stay in school, equal access to education is a right only in theory.

In addition, guidance should make it explicit that schools are required to reimburse survivors for lost tuition (and the student loan interest incurred as a result) to avoid penalizing students for experiencing violence. Indeed, the Department of Education has already recognized a school's obligation to avoid penalizing survivors for experiencing violence: Specifically, the guidance states that, part of a school's obligation includes "arranging for the complainant to retake a course or withdraw from a class without penalty."¹⁴ In practice, however, withdrawing from a class or re-taking a course exacts a significant financial penalty, as survivors forfeit the tuition dollars they paid to take the course in the first place. Survivors who leave (or are forced to leave school in violation of Title IX) during a semester because of violence can incur costs of up to \$30,000 in lost tuition, on top of student loan interest.

The strong Tufts University and Princeton resolution agreements from 2014 suggest both the importance and feasibility of this approach. As an additional

¹⁴ Department of Education. (2011). *Dear Colleague Letter*. Retrieved from The Office for Civil Rights website: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>.

benefit, this requirement will incentivize schools to provide the highest quality accommodations up front, in order to ensure that students are able to remain in school.

Currently, survivors face economic consequences as a result of the violence they experience that create barriers to their continued education. In order to ensure educational access, schools must pay for interim accommodations and reimburse survivors for lost tuition. We are grateful for your leadership on this issue and look forward to working with the Department to further clarify students' rights to education and institutions' responsibilities. We are happy to answer any additional questions you may have.

Sincerely,

Know Your IX
United States Student Association (USSA)