



TO: MEMBERS OF THE WHITE HOUSE TASK FORCE TO PROTECT STUDENTS FROM SEXUAL ASSAULT

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SUBJECT: RECOMMENDATIONS TO THE TASK FORCE

INTRODUCTION

If one in five women were robbed at gunpoint at college, parents, lawyers, doctors, insurance companies, and others would besiege institutions of higher education (hereinafter, “schools,” “universities,” or “colleges”). Although decades of research documents this level of prevalence of sexual assault on college campuses, meaningful reforms have occurred slowly, unevenly, and only at a handful of schools. Many colleges’ practices regarding sexual assault retraumatize survivors and fail to deter perpetrators.

President Obama’s creation of the White House Task Force to Protect Students from Sexual Assault (hereinafter, “Task Force”) represents a watershed moment. President Obama has demanded transformative change. The Task Force has a unique opportunity to demand and implement dramatic reforms to prevention and response efforts addressing not only sexual assault, but also other forms of gender-based violence on campus: domestic violence, dating violence and stalking.

Through Title IX and the Clery Act, the Task Force has the legal foundation to implement much-needed improvements. Title IX and the Clery Act already require schools to take necessary actions to prevent and respond appropriately to sexual assault, and require the federal government to enforce these requirements. The challenge lies in assisting schools to fulfill their obligations to protect students from sexual assault, to support survivors, to discipline perpetrators, and to hold schools accountable for failing to comply with federal law. By providing appropriate guidance, the Task Force has the capacity to catalyze an unprecedented shift towards eliminating sexual assault, domestic violence, dating violence, and stalking on college campuses, and to significantly improve the trajectory of survivors.

We respectfully submit this memorandum outlining recommendations to enable the Task Force to maximize its impact. This memo proposes specific approaches that the Task Force can utilize to foster improvements in areas where gaps between schools’ policies and/or practices and

existing federal requirements prove particularly damaging to students, survivors, or employees. The recommendations emphasize two themes: the broad need for development and dissemination of promising practices, and the critical importance of ensuring that relevant stakeholders across all issues related to preventing and responding to gender-based violence act from a trauma-informed perspective.

This memo offers recommendations in the following areas:

| | | |
|------|---|--------|
| I. | Prevention and Awareness Education | (p. 2) |
| II. | Crisis Intervention, Advocacy and Resources for Survivors | (p.11) |
| III. | Complaint Reporting Procedures and Investigations | (p.17) |
| IV. | Disciplinary Proceedings and Sanctions | (p.20) |
| V. | Workplace Policies and Practices | (p.22) |
| VI. | Data Collection and Evaluation | (p.25) |
| VII. | Federal Coordination and Enforcement | (p.26) |
| | Appendix 1 | (p.28) |

I. PREVENTION AND AWARENESS EDUCATION

Preventing sexual assault should be a central priority at every school in the country. The personal price that survivors pay in the wake of sexual violence is far too high for schools to eschew effective primary prevention efforts, which they are required to implement pursuant to Title IX and the Clery Act. Most schools currently are not fulfilling their prevention obligations under Title IX, and will need guidance to comply with the primary prevention requirements of the Clery Act that will become effective for the 2014-2015 academic year.

A. Require Pre-College Prevention and Awareness Education

Although Title IX applies to all public schools, there is lack of focus on prevention education in middle and high schools regarding healthy relationships, dating violence, domestic violence, sexual violence, or stalking. These programs are necessary for Title IX compliance at the high school level because nearly half of female rape survivors are raped before they are 18.¹ The absence of an educational mandate from the U.S. Department of Education results in a failure to protect students, prevent sexual assault, and address the impact of the sexual assault on the survivor's education. This failure is amplified when students enter college without an adequate educational foundation on these issues. This is particularly egregious because a woman is at an elevated risk for sexual assault during the beginning of her freshman year.²

¹ M.C. Black et al., *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (Nov. 2011).

² *Factors that Increase Sexual Assault Risk*. Washington, DC: National Institute of Justice, U.S. Dep't of Justice, available at http://www.nij.gov/topics/crime/rape-sexual_violence/campus/Pages/increased-risk.aspx.

Middle and high school education programs should include:

- Primary prevention aimed at encouraging healthy relationships, fostering understanding of affirmative consent and the continuum of sexual consent, challenging gender and hetero-normative stereotypes, debunking rape myths, and preventing sex- and gender-based bullying, including the bullying based on sexual orientation or gender identity.
- An explanation of the elements of sexual assault, sexual harassment, stalking, acquaintance rape, bullying (specifically due to gender or sexual orientation), dating and domestic violence, and other acts of gender-based violence. Discussions should foster empathy for survivors and be inclusive of all survivors, regardless of gender identity, race, class, sexual orientation, or immigration status. Education should also include how to support a victim and what to do if you have been impacted by gender-based violence.
- Age-appropriate bystander education that empowers students to identify risky situations and to safely and effectively intervene in these situations to prevent bullying, sexual violence, dating violence, domestic violence, and stalking. Coaching Boys into Men is an example of a scientifically validated primary prevention program aimed at high school male athletes.³
- Requiring a written attestation from the parent of a high school freshman that the parent and his/her high school freshman watched a mandatory educational video on primary prevention and risk reduction. The Centers for Disease Control has implemented a similar requirement involving concussion education, called the Heads Up Program, for parents with children participating in sports.⁴
- In addition to the required video, schools should develop follow-up age-appropriate annual programming on primary prevention and risk reduction.

B. Establish Key Elements of Campus Primary Prevention and Awareness Education

The Clery Act requires “primary prevention and awareness programs for all incoming students and new employees.” Title IX requires schools to act effectively to prevent sexual assault. Research shows that primary prevention efforts are the best means of preventing sexual assault.⁵ The following recommendations outline promising practices for campuses. Additionally, please see **Appendix 1, Effective Primary Prevention Initiatives**, for examples of promising practices.

³ See Coaching Boys Into Men, <http://www.coachescorner.org/>. See also E. Miller et al. *Coaching Boys into Men: A Cluster-Randomized Controlled Trial of a Dating Violence Prevention Program*, 51 *Journal of Adolescent Health*, 431, 431-438 (Nov. 2012), available at [http://www.jahonline.org/article/S1054-139X\(12\)00052-3/fulltext](http://www.jahonline.org/article/S1054-139X(12)00052-3/fulltext).

⁴ Centers for Disease Control and Prevention, *Heads Up: Concussion in Youth Sports*, <http://www.cdc.gov/concussion/headsup/youth.html>.

⁵ See, e.g., R. S. Bannon et al., *Sorority women’s and fraternity men’s rape myth acceptance and bystander intervention attitudes*, 50 *Journal of Student Affairs Research and Practice* 74 (2013), available at <http://journals.naspa.org/jsarp/vol50/iss1/art5/>.

1. Establish and Disseminate Key Elements of Prevention Education for Incoming Students and New Employees

Upon a student's acceptance into a college, the campus should disseminate to parents and prospective students expectations regarding campus culture. Schools should consider innovative online programming as a tool to achieve this goal. For example, the University of San Francisco has developed a highly engaging online education program, "Think About It," which is required before a student arrives at campus.

Universities must communicate to incoming students and new employees a campus culture of respect and a supportive environment for survivors. Immediately establishing expectations about attitudes and behaviors related to consent, sexual respect, and a lack of tolerance for sexual violence can have a lasting impact on new students and employees.

During orientation, all students -- including undergraduate, graduate, transfer, and international students -- should receive primary prevention and awareness education. Programs should also foster empathy for survivors. Universities should require completion of sexual assault prevention programming, such as the online course recommended above, before a student may attend classes. Schools' current prevention efforts often are limited to cramming risk reduction strategies into a short information session during freshman orientation. This practice utterly fails to comply with Title IX or Clery Act requirements. Students often report that they feel less supported and more confused after participating this type of programming.

Successful orientation programs at colleges across the country utilize in-person discussions in large groups about sexual assault, dating violence, domestic violence, and stalking, with the requirement or opportunity for small-group discussions. Schools should always have a mental health professional available during any sexual assault training in case a survivor is triggered by the discussion.

Schools should also require new employees, including faculty, staff, and students employed by the university, to attend an orientation that includes primary prevention education. New employees also must, when hired, attend training on complying with campus policy on reporting and responding sensitively to a survivor's disclosure.

The focus of primary prevention efforts should be to foster social norm change that results in a reduction of sexual assaults by altering perpetrator behaviors and reducing cultural toleration of sexual violence. Based on this understanding, campuses should incorporate the following items into primary prevention programs: encouraging healthy relationships; fostering understandings of affirmative consent and the continuum of sexual consent; challenging gender and hetero-normative stereotypes; debunking rape myths; and anti-bullying education, with a focus on bullying of LGBT students and harassment for gender nonconformity or for perceived or actual sexual orientation. Primary prevention programs should be developed using culturally-informed, community-based, data driven strategies. In order to effectively impact students from historically marginalized communities, it is important to identify culturally-specific strategies that are effective prevention tools in those communities.

School leadership should make a public statement that the school prohibits bullying, domestic violence, dating violence, sexual assault, and stalking. Primary prevention programs should include jurisdiction-specific definitions of domestic violence, dating violence, sexual assault, and stalking, and jurisdiction-specific definitions of consent, in reference to sexual activity.

Schools should consider offering women's empowerment programming, including self-empowerment self-defense models that incorporate assertiveness and healthy sexuality education.

Bystander intervention programs should empower students to identify risky situations and to safely and effectively intervene in these situations to prevent bullying, sexual violence, dating violence, domestic violence, and stalking. These programs should be conducted by an organization that utilizes a training model with existing validated research.

Students and employees should be informed in a training session of each of the required elements of the “written explanation of the student or employee’s rights and options”⁶ that, under the Clery Act, must be provided to a survivor when the survivor reports an incident of domestic violence, dating violence, sexual assault, or stalking.⁷ See Section II.A.2 for the specific items on this list.

Title IX already requires “that schools inform students that the schools’ primary concern is student safety, that any other rules violations will be addressed separately from the sexual violence allegation, and that use of alcohol or drugs never makes the victim at fault for sexual violence.”⁸ We urge the Task Force to go further and require schools to issue a policy that offers survivors, perpetrators, and third parties amnesty from violations such as underage drinking under certain circumstances. By allowing victims the opportunity to report without fear of reprisal, schools will send a strong message that the safety of the survivor and the larger school community are of primary concern.

Students should have easy electronic and hard copy access to the content of primary prevention programs, including but not limited to bystander intervention. This information should be available after a simple search on a school’s website. In physical form, the information should be provided at multiple, high-traffic locations across campus, such as the health center, library, and dean’s office. The language used should be clear, easy to understand, and translated options should be offered to ESL students.

Risk reduction strategies should not be a prominent focus of a school’s prevention efforts. Risk reduction focuses on reducing alcohol consumption, drug use and partying to avoid sexual

⁶ Violence Against Women Reauthorization Act of 2013, 20 U.S.C. § 1092(f)(8)(B)(vii), sec. 304(a)(4), Pub. L. No. 113-4, 127 Stat. 39, 91 (2013).

⁷ 20 U.S.C. §1092(f)(8)(C).

⁸ U.S. Dep’t of Educ., Office for Civil Rights, Dear Colleague Letter, at 15 (Apr. 4, 2011), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf> [hereinafter “2011 Dear Colleague Letter”].

assault. This reflects a limited comprehension of college sexual assault and often leads to victim blaming and the creation of a hostile campus environment for survivors. Risk reduction should be included in a comprehensive primary prevention program, but not as a central component. Risk reduction should be framed within primary prevention programs as a misguided strategy for preventing sexual assault because it places the onus for avoiding victimization on victims, rather than seeking to alter the behavior of potential perpetrators.

Protection from retaliation is a critical issue for survivors and for employees who are charged with upholding a survivor's rights or advocating for a survivor within the university. Survivors report that the fear of retaliation by the perpetrator, the perpetrator's friends, or, in instances where the perpetrator is a high-profile student, by the broader campus community, is one of the single largest factors that chills reporting. Schools should educate students that retaliation is illegal. To eliminate retaliation, we urge the Task Force to take the following steps:

- Students must be informed that sexual harassment, including retaliation, can include harassment via social media. Harassment and/or retaliation against a survivor or a survivor's advocate for making a report is a violation of federal law and should be disciplined by the school. If a school has a peer advocacy program for sexual assault survivors, training should make clear that retaliating against or harassing a peer advocate constitutes prohibited behavior.
- Employees must be informed, in addition to the above items, about an employee-survivor's additional protection from retaliation in the context of sexual assault, domestic violence, dating violence, or stalking under relevant employment laws such as Title VII of the Civil Rights Act of 1964 ("Title VII") and the Americans With Disabilities Act (the "ADA"). Additional implications of Title VII and ADA sexual harassment, anti-discrimination, and anti-retaliation provisions are discussed in Section V. Employees also should receive notice of adverse employment consequences, up to and including termination, that may result from retaliating against a survivor in violation of the Clery Act and Title IX.
- School presidents should be put on notice that survivors and a survivor's advocate often are implicitly or explicitly threatened with retaliation, especially if the accused is a high-profile student. School presidents, and all employees involved in assisting a survivor to access accommodations or support services or with the investigatory or disciplinary process should be put on notice that retaliation against a survivor is foreseeable and should be evaluated with the survivor in every instance and on an ongoing basis. A school's failure to take these steps to prevent and remedy retaliation constitutes violations of Title IX and the Clery Act.
- Schools should require those likely to interface with a survivor advocate (dean of students, academic affairs, etc.) upon the annual completion of anti-retaliation training, to sign a statement indicating their understanding that retaliation is illegal and they may be terminated for retaliating against a survivor or survivor's advocate. Furthermore, failing to prevent harassment of a survivor, which is foreseeable, is a Title IX violation.

2. Disseminate Elements of Effective Ongoing Prevention and Awareness Education Programs

In addition to providing incoming students and employees with primary prevention and awareness education, the Clery Act requires “ongoing prevention and awareness campaigns for students and faculty,”⁹ and Title IX has an overlapping requirement. The Clery Act specifies that the content of these *ongoing* campaigns must include the same issues as programs provided to all incoming students and new employees. Critically, ongoing campaigns must focus on the primary prevention and awareness issues described above in Section I.B.1.

Elements of an effective ongoing primary prevention and awareness education program include:

a. Engaging a broad population of male students

Ongoing campaigns should focus on engaging male students in prevention and awareness initiatives; no meaningful sexual assault prevention can occur without the help and support of men. While the specific tools that will be useful to engage a school’s male student population are highly context-specific, schools often have found it beneficial to support the creation of a “Men Against Rape and Sexual Assault” organization that works in conjunction with a campus women’s center.

b. Focusing education on high-risk male subgroups

Schools should target their prevention efforts at subgroups whose members are known to be overrepresented among perpetrators. The over-representation of members of fraternities and male sports teams—particularly football teams—is well documented.¹⁰

A dean of students or similarly situated administrator should engage with students to identify subgroups of males whose members have a reputation for hypermasculine, misogynistic, and/or sexually-aggressive behavior. In addition to completing the prevention programs required of all other students, these high-risk groups should receive additional primary prevention and bystander intervention education, which includes the following elements:

- Scientifically-validated programs such as The Men’s Program.¹¹
- Peer-facilitated training that includes the impact of sexual assault on survivors, how to support survivors, definitions of sexual assault, opportunities engage in prevention/education initiatives, possible disciplinary sanctions against students found

⁹ 20 U.S.C. § 1092(f)(8)(B)(ii).

¹⁰ See, e.g., Bonnie S. Fischer *et al.*, “Sexual Victimization of College Women (182369),” National Institute of Justice, U.S. Dep’t of Justice (Dec. 2001) (10.3% of rapes take place in fraternity houses); Bannon, *supra* note 5, at 76.

¹¹ One in Four, “The Men’s Program,” <http://www.oneinfourusa.org/themensprogram.php>.

guilty of sexual assault, and anti-retaliation education covering survivors and survivors' advocates.

- Engaging high-risk male groups in peer education efforts.

c. Engaging campus influencers such as student leaders

Officers of student organizations, school government officeholders and officers of fraternities and sororities, among others, may have an outsized impact on the school's culture, including a campus's tolerance for sexual assault and attitudes towards survivors. Training tailored to these students should include the following:

- Peer-facilitated training that includes the impact of sexual assault on survivors, how to support survivors, definitions of sexual assault, opportunities to be engaged in prevention/education initiatives, possible disciplinary sanctions against students found guilty of sexual assault, and anti-retaliation education covering survivors and survivors' advocates.
- A student's participation in student government or as an officer of a student organization should depend on the student's active, respectful engagement in the training session, and must be confirmed in writing by the trainer.
- Encouraging student-run organizations and the school social council to focus on promoting safer partying practices and to understand the dynamics of sexual assault. Specifically, drinking and drug use should not be portrayed as the sole cause of sexual assaults, because many perpetrators use alcohol as a weapon to target a student or as an excuse for perpetrating a sexual assault. At the same time, schools should encourage safe partying practices. Safe practices include looking out for friends, especially friends who have been drinking, how to communicate consent and how to communicate boundaries. Students should also be encouraged to hold parties in spaces that are not male-dominated and to allow non-traditional groups to host parties (remove restrictions against sororities throwing parties, especially if fraternities are allowed to), and create other initiatives.

d. Providing ongoing opportunities for interactive education about the school's sexual assault policy

To feel comfortable seeking help and reporting a sexual assault, the survivor must understand the reporting process, available accommodations and support services, and the investigatory and disciplinary process. Additionally, the survivor must have a basic level of trust that the school will fairly implement the written policy, which often hinges on word-of-mouth experiences of other survivors. A school can promote these goals through frequent and effective educational opportunities for faculty, students, and staff. Opportunities to attend an information session about the school's sexual assault policy should be provided at least twice a semester, with timely and sufficient notification to all students and employees.

e. *Wide distribution of the school's sexual assault policy*¹²

Faculty should be required to attach the school's sexual assault policy to all syllabi. Schools should post uncomplicated, easily accessible information on their sexual assault policy in high-trafficked areas around campus, including bathroom stall doors (both genders), campus libraries, all dormitories, athletic facilities, the health/counseling center, student unions and administrative offices. These posters should include the following information: definition of sexual assault, dating violence, domestic violence, and stalking; how to respond supportively when someone discloses as a survivor; hotlines to call in case of assault; where a survivor can access help after an assault; and a description of possible sanctions for sexual assault and retaliation.

f. *Providing transparency through quarterly reports*

Schools should be required to provide updated information about sexual assault policy changes and implementation, recent investigations and adjudicatory proceedings, disciplinary sanctions, and Clery Act numbers via a quarterly email to all students, employees, parents, and alumni. This information also should be easily accessible on a school's website. *See* Section I.C.1. Survivors should not be the sole group engaged in monitoring a school's sexual assault policy and ensuring compliance. Campuses should engage parents and alumni with these issues since they often hold financial leverage over a school in a way that students do not, and therefore can act as unique catalysts of change.

g. *Conducting ongoing primary prevention education for employees*

Primary prevention and awareness education should be mandatory for all employees on an annual basis at minimum. The content of the education program should be tailored to different groups of employees depending on their roles on campus. Faculty and staff who regularly interact with students should be educated on the respective policies that apply when the survivor is a student and employee. By creating a more knowledgeable workforce, the college increases the likelihood that a survivor will encounter a positive response when disclosing.

C. Host Websites to Disseminate Information and Collect Promising Practices Concerning Prevention and Awareness

1. Create a "One Stop" Website to Help Educate Students and Parents About Schools' Various Obligations and Policies

A range of laws apply to school's obligations with respect to sexual harassment and assault, including the Violence Against Women Act ("VAWA"), the Clery Act, Title IX, Titles VI-VII of the Civil Rights Act of 1964, and the Family Educational Rights and Privacy Act ("FERPA"). Given this complex framework, it can be difficult for students to understand their rights and discern how to report assault and/or access services at their school.

¹² Title IX already requires that procedures for resolving complaints of sex discrimination be written in language appropriate to the age of the school's students, easily understood, easily located, and widely distributed. *See* 2011 Dear Colleague Letter at 9.

Much like it does for school bullying at bullying.gov, the federal government could host a site that brings together in one place a variety of sources of information about sexual assault education, prevention, and response. This should include, at a minimum, the following:

- an explanation of universities' obligations under Title IX and the Clery Act
- information about how to file a complaint alleging a violation of Title IX
- information on how to file a complaint under the Clery Act
- a database of data reported pursuant to the Clery Act, searchable by school
- a database collecting schools' gender-based violence policies
- a database listing schools' Title IX coordinators

By creating a "one stop" website, the federal government can assist students to be better informed about rape and sexual assault, policies and procedures at their schools, their rights, and resources available to them. In addition to helping current college students, this website would provide prospective parents and students with the opportunity to easily examine and compare schools' policies and programs. By making schools' policies and practices publicly accessible to consumers, the federal government can create a significant incentive for improvements in these areas.

This site could also help to bring transparency to the Title IX enforcement process. Currently students in the school community, future students, and alumnae have no idea whether their schools are under investigation or a complaint resolution with the Department of Education's Office for Civil Rights ("OCR"). As a result, there have been repeat OCR complaints alleging very similar problems against schools that are already under resolutions with the Department to fix the problem. By including links to all resolution agreements between OCR and schools, this site can assist students to better advocate for their rights and hold schools accountable. The resolutions could also help to serve as models for other institutions.

2. Host a Website That Collects and Encourages Sharing of Prevention and Response Practices

There is a large unmet need for the dissemination of promising practices in sexual assault prevention and response, and for individuals engaging in this work to connect with each other across institutional boundaries. People with an interest in sexual assault prevention and response efforts from all different perspectives—administrators, students, parents, survivors, among others— would be well-served by a website that facilitates both of these objectives. The website could provide a consistently updated list of promising initiatives that schools can implement, including examples of prevention and response efforts and ways to improve them.

Schools, activists, trainers, and others should be encouraged to share promising practices and initiatives to add to the website.¹³ This website should also have a forum where students, administrators, trainers, prospective students, and parents can share information.

II. SURVIVOR ADVOCACY AND SUPPORT SERVICES

Gender-based violence is a traumatic experience for many if not all survivors. In the aftermath of an assault, survivors frequently experience a range of psychological, emotional, physiological, and neurological consequences.¹⁴ Traumatic reactions are mitigated or exacerbated by a survivor's experiences at school in the aftermath of trauma.¹⁵ To fulfill their Title IX duty to provide women with equal educational opportunities, schools must have trauma-informed policies aimed at enabling survivors to continue their education with minimal disruption and at recovering from the trauma. Schools must implement these policies with recognition for the powerful capacity they have to impact the short- and long-term consequences of the sexual assault in a student's life. Schools should be instructed that they are responsible for ensuring that employees respond in a trauma-informed manner to the disclosure of sexual assault, domestic violence, dating violence, or stalking. In this context, a trauma-informed response includes responding to a disclosure in a caring, supportive manner. Additionally, a crucial hallmark of a trauma-informed approach is the primacy of promoting the restoration of a sense of control. This requires that schools work with survivors to create plans for accommodations and support services, and about other steps that are taken in response to assault. More survivors will access services when schools respond to their disclosures with appropriate services and accommodations.

A. Require Schools to Provide Seamless Access to Appropriate Advocacy and Support Services

1. Ensure Schools Make Information Accessible

Providing appropriate trauma-informed accommodations and support services starts with ensuring that students and employees are informed about their rights and options to access these services. Options for accessing help must be widely disseminated online and posted around campus. Additionally, there must be multiple entry points that enable the diverse range of survivors to obtain assistance.

¹³ One example of website that serves as a clearinghouse for promising practices among service providers serving children, youth, and parents experiencing domestic violence is Promising Futures. See <http://promising.futureswithoutviolence.org/>.

¹⁴ J. A. Boscarino, *Post-traumatic stress disorder, exposure to combat and lower plasma cortisol among Vietnam veterans: findings and clinical implications*, 64 J. Consult. Clin. Psychol. 191(1996); K.M. Saltzman et al., *The psychobiology of children exposed to marital violence*, 34:1 J. Clin. Child Adolesc. Psychol. 129, 129-39 (Mar. 2005).

¹⁵ R. Campbell et al., *Social reactions to rape victims: healing and hurtful effects on psychological and physical health outcomes*. 16 Violence Vict. 287, 287-302 (Jun. 2001).

2. Require Schools to Provide Written Explanations of Rights and Options

Under existing Clery Act protocol, upon first interaction with a survivor, a school must provide a comprehensive, written explanation to the survivor (whether student or employee) of the following:

- Options for changing academic, living, transportation, and working situations, even if the Survivor chooses not to report the crime to campus police or law enforcement;
- Information about and options for counseling, health, mental health, victim advocacy, legal assistance, and other services available for survivors, both on and off-campus;
- Information about how to preserve evidence and how to report the crime to law enforcement and campus authorities, including information about the right to receive assistance from campus authorities in reporting to law enforcement, and the right to decline to report the crime to campus police or law enforcement;
- Procedures for institutional disciplinary actions involving allegations of domestic violence, dating violence, sexual assault, and stalking, and possible sanctions or protective measures that the college or university may impose after a disciplinary action;
- Information about how the college or university will protect the confidentiality of victims, including withholding identifying information about the victim to the extent permissible by law;
- Information about how to obtain an order of protection or similar order available under state law;
- An explanation of the on campus and off campus options for nonconfidential,¹⁶ confidential, and anonymous reporting; and
- A statement that the university has a duty to protect the survivor from retaliation and harassment from the perpetrator and from other students and employees, and that this right to protection applies regardless of whether or not the survivor chooses to receive accommodations or other services or pursue a disciplinary proceeding or criminal justice response.

¹⁶ The term “nonconfidential” as used in this document means a report that does not maintain the survivor’s confidentiality *only insofar as the survivor’s name or identifying information may be disclosed to the following individuals*: employees who are responsible for providing or coordinating accommodations, assisting the survivor in accessing support services, investigating the survivor’s report, or involved in a disciplinary proceeding; students or other individuals who are potential or actual witnesses or parties to a disciplinary proceeding. At all times, under the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g, and the Clery Act, Violence Against Women Reauthorization Act of 2013, 20 U.S.C. § 1092(f)(3), sec. 304(a)(2), Pub. L. No. 113-4, 127 Stat. 37, 89 (2013), a university is responsible for keeping the name and identifying information of a survivor confidential from all other individuals inside and outside of the university community, unless the university receives prior written consent from the survivor. Schools should be reminded of this requirement.

While schools should communicate that they would like to hold all perpetrators accountable, schools should not discourage survivors from utilizing any of the available options. Schools should be guided by the understanding that empowering survivors to make decisions about their needs is a fundamental component of an effective institutional response to sexual assault, domestic violence, dating violence, or stalking.

3. Help Campuses Identify and Address Gaps in Access to Advocacy and Services

The diversity of survivors and schools means that there is no one-size-fits-all approach to support services. It is, however, incumbent upon all schools to consider the diversity of their students in creating policies on support services.

There are patterns in service gaps across schools. The Task Force should instruct schools on promising practices regarding the following groups of students:

a. Underserved and historically marginalized students

Survivors are as diverse as the school's community. To effectively respond to sexual assault, domestic violence, dating violence, and stalking, a school must provide culturally-sensitive support and advocacy services, recognizing that different subgroups of survivors tend to have different concerns. Moreover, employees responsible for interfacing with survivors must be trained on and be responsive to concerns that tend to arise for historically marginalized survivors. The Task Force should instruct schools on how to train employees who interface with survivors to respond sensitively to the needs of male students, students under the Deferred Action for Childhood Arrivals ("DACA") program, students of color, and low-income students. Additionally, the Task Force should take specific steps to address needs for the following groups of survivors:

- LGBTQ survivors and survivors of same-sex sexual assault

OCR should issue a guidance specifically instructing schools on providing appropriate prevention education, advocacy, and support services for LGBTQ students. The guidance should address all forms of gender-based violence.

- International student survivors

Visa concerns inhibit survivors from reporting to law enforcement and from seeking support services. Schools should implement policies that allay these concerns. Additionally, while always striving to provide support for survivors to remain in school, a survivor advocate should be able to answer questions or assist survivors in obtaining information about the impact of a temporary withdrawal from school or a reduction in course load on their visa.

- ESL students

The written disclosure of rights and options should be readily available in appropriate languages other than English for non-native English language students.

b. Students assaulted off campus

Schools must make advocacy and support services available to all students, regardless of whether they were assaulted on campus or off campus. The Task Force should clarify to schools that although the location of the assault is relevant to assessing Clery Act reporting obligations, Title IX and the Clery Act require that schools make the same advocacy and support services available to all student survivors, whether they were assaulted on or off campus. The same principle is true for employee-survivors.

Additionally, schools should recognize that many students arrive at schools with a history of traumatic experiences, and should make advocacy and support services available to support these students as well, as necessary.

c. Students interacting with neighboring schools

Schools often have student populations that frequently interact with students at one or more nearby universities, whether in the context of academics, parties, sports, or otherwise. Schools should be encouraged to partner with neighboring schools through Memoranda of Understanding (“MOUs”) or broader school-community task forces to create a framework for assisting survivors in navigating services and disciplinary proceedings when the perpetrator attends a neighboring school. For example, the effective implementation of a no-contact order may need to involve appropriate employees at both schools.

Women’s colleges should be instructed to review their policies and practices with particular attention to partnering with neighboring schools and providing support for students assaulted off campus.

d. Students at urban schools, commuter schools, community colleges, and vocational schools

While these schools are as different from each other as they are from other types of universities, they tend to share certain characteristics that are relevant in this context. When a school’s population resides primarily or exclusively off campus, or the school has multiple satellite campuses, it is particularly appropriate for the school to form MOUs with other nearby schools and/or local law enforcement, or to utilize a school-community task force to ensure that schools facilitate the seamless provision of advocacy and support services to survivors. The Task Force should also highlight that notwithstanding the particular characteristics of the physical campus, schools in these settings have the same obligations as schools in other settings as it relates to appropriate policies and practices for survivor advocacy, accommodations, and support services.

B. Demand That Schools Provide Robust Advocacy for Survivors

1. Require Universities to Designate a Sexual Assault Response Coordinator

The Task Force should require colleges to designate a single Sexual Assault Response Coordinator (“SARC”) or office to ensure that students have seamless assistance in accessing the accommodations and support services to enable them to remain in school and heal.

The SARC must truly be positioned to serve as the survivor’s advocate. It is critical that the SARC is not required to balance multiple roles that create a perceived or actual conflict of interest. For example, the Task Force should categorically prohibit employees with the following roles and responsibilities from serving as the SARC: the school’s Title IX Coordinator, individuals involved in the investigatory or disciplinary process, and the dean of students. This is a nonexhaustive list, and on an individual campus, there are undoubtedly other employees who cannot serve as the SARC due to the employee’s other duties, or due to other dynamics that create an actual or perceived conflict of interest for a particular employee. Large schools may need multiple SARCs to provide effective advocacy to survivors. The need for strong anti-retaliation protections for this employee is discussed in Section I.B.1 of this memo.

Schools should recognize that individual survivors may want the SARC to play a greater or lesser role in advocating for the survivor inside and outside of the campus, and the survivor should be free to decline assistance from the SARC. Generally, the SARC should serve as a single point-of-contact that interfaces between the survivor and other offices on campus that may be implicated by the need for accommodations, support services, and investigatory and disciplinary proceedings. The responsibilities of a SARC should include arranging for academic, housing, transportation, and employment accommodations, as requested by the survivor and reasonably available. Specifically, in providing housing accommodations, schools should consider whether it is appropriate to move the perpetrator’s dormitory rather than moving the survivor.

While the particular survivor’s preference is always paramount, schools should assume that a survivor will need academic accommodations such as extensions for school work and other assistance to minimize the predictable impact of an assault on the survivor’s grades. Academic accommodations should be offered to survivors in all instances.

A SARC should also continually be sensitive to whether the survivor has experienced retaliation or harassment for accessing services or for pursuing an investigation, and should advocate for remedies to any retaliation or harassment.

Additional support that the SARC should consider pursuing in appropriate instances include setting up counseling and/or medical examinations for a survivor; preventing a survivor from losing financial aid, grants, scholarships, etc. if the money is dependent on maintaining a performance level a survivor cannot meet due to trauma; explaining the investigation, adjudication, and disciplinary systems and ensuring that the survivor understands these proceedings and is being treated respectfully throughout the process; and assisting a student in

the process of transferring if a student decides to withdraw from or transfer out of her or his current school.

The identity and contact information for a school's SARC, or office, and the school's Title IX coordinator must be published on the school website, in student handbooks, and on informational posters. OCR should monitor the existence and role of these officials by requiring disclosure of the name of both the SARC and Title IX coordinator in Clery Act reports.

2. Require Universities to Provide an Off-campus Option for Survivor Advocacy Services

In addition to designating a SARC, schools should provide survivors with the option of an appropriately trained off-campus advocate. Local rape crisis centers or domestic violence service providers may be appropriate sources of these services. When a survivor chooses to partner with an off-campus advocate, the advocate plays a central role in assisting the school to fulfill its Clery Act and Title IX obligations. Schools' policies and practices must reflect this fact. If a survivor chooses to partner with an off-campus advocate for assistance in obtaining accommodations and support services, after obtaining requisite written consent from the student for the disclosure of information, the school must work with the survivor's off-campus advocate to provide a survivor with appropriate support.

C. Ensure Trauma-Informed Support Services are Accessible

1. Require Schools to Provide On-campus Health and Counseling Services

On-campus resources will vary depending on the size and financial means of a campus; however, schools always must make on-campus accommodations available to maximize a survivor's ability to stay in school, succeed, and recover. Survivors must be offered accommodations and a college's SARC should be the primary person in charge of helping a student access accommodations. A college's priority should be ensuring that the survivor obtains services necessary to remain in school with minimal disruption.

Schools should provide the services of on-campus health and counseling centers to assist survivors. We ask the Task Force to require the following from all on-campus health and counseling centers:

- All health and mental health providers should be prepared to provide guidance on respectful and safe relationships to students;
- Health providers should be trained how to screen for and respond to domestic and sexual violence;
- Providers should offer health services that will prevent negative health consequences caused by violence. This should include screenings for and treatment of STIs;

- Providers, like all campus employees, must go through an orientation and annual trainings regarding a college's gender based violence policies and how to react to a student's report of gender based violence.

The Task Force additionally should require the following of on-campus counseling centers:

- If a school policy states that it offers on-campus counseling services, the school must ensure that its staff is trained in trauma-informed responses to gender-based violence.
- For survivors who do not have health insurance, services should be provided free of charge as an accommodation in response to gender-based violence.

2. Require Schools to Provide Information About Appropriate Off-campus Options

All policies must provide information about off-campus counseling options. Schools should partner with local sexual assault and domestic violence programs to provide supportive, confidential, survivor centered services. Based on current research about trauma recovery, schools should consider providing referrals for alternative healing modalities that are supported by clinical research.

III. COMPLAINT REPORTING PROCEDURES AND INVESTIGATIONS

A. Ensure Schools Offer a Clear and Fair Reporting Process to Address the Serious Problem of Underreporting

The vast majority of sexual assaults go unreported—only 12% of all incidences of sexual assault are reported to law enforcement.¹⁷ When survivors of sexual assault take the courageous step of coming forward, they are often re-traumatized by their schools' response. Instead of incentivizing reporting, schools regularly dismiss survivors' claims and outright discourage them from reporting, present survivors with a confusing patchwork of reporting options and do not inform survivors of the repercussions of each option, make promises about confidentiality that they do not keep, and abdicate their obligation to investigate and resolve complaints.

A process that ensures survivors are treated appropriately and fairly in accommodations, support, and grievance procedures is critical to addressing the serious problem of underreporting. An essential part of this process is requiring schools to ensure that survivors understand their options and the repercussions of reporting through different channels.

¹⁷ D. G. Kilpatrick et al., Medical University of South Carolina, National Crime Victims Research & Treatment Center, *Drug facilitated, incapacitated, and forcible rape: A national study* (NCJ 219181) (Feb. 1, 2007), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/219181.pdf>.

B. Require Schools to Clarify Policies on Confidentiality, Offer Survivors Multiple Avenues to Report, and Ensure Survivors and School Employees Understand School Confidentiality and Reporting Policies

Title IX requires schools to inform and obtain consent from the survivor (or the survivor's parents if the survivor is under 18 and does not attend a postsecondary institution) before beginning an investigation.¹⁸ If the survivor requests confidentiality or asks that the complaint not be pursued, the school must 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 survivor insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the school is to inform the survivor that its ability to respond may be limited. In addition, a school is required to evaluate requests by survivors for confidentiality or not to pursue an investigation in the "context of [schools'] responsibility to provide a safe and nondiscriminatory environment for all students."¹⁹ Separate from Title IX, the Clery Act requires school employees to report incidents of sexual violence but protect the survivor's confidentiality.

Unfortunately, these various rules have created confusion about the extent to which information about the survivor or the incident complained of will be kept confidential by the school or by individuals to whom the survivor has reported the incident. In addition, some schools have interpreted the 2011 Dear Colleague Letter as a requirement that schools link access to support services with survivors' participation in an investigation. We urge the Task Force to provide schools with promising practices regarding the treatment of confidentiality in a way that is consistent with schools' obligations under federal law. It is important, for example, that survivors be able to report incidents to someone that they trust, including a fellow student or faculty member or other school employees, and for both the survivor and the individual who receives the report to understand the reporting obligation of the individual who receives it, including that he or she can do so without revealing the identity of the survivor or the particular details of the incident.

In addition, the Task Force should clarify that schools' obligations to investigate reports of sexual harassment and assault under Title IX and/or the Clery Act should not prevent or affect survivors' ability to access support services, and to do so without revealing their identity or the particulars of the incident to anyone except those who will be providing the services to them – who are themselves bound by confidentiality. Finally, the Task Force should ensure that schools provide the campus community with effective training on these policies, all of which will help a school avoid subjecting a survivor to the further trauma that results when she or he discloses an incident to a school employee without understanding the degree to which that disclosure will or will not be kept confidential.

¹⁸ See 2011 Dear Colleague Letter at 5.

¹⁹ *Id.*

C. Require Schools to Offer Survivors Anonymous Reporting Options

Although schools may choose to provide several anonymous reporting options, at a minimum the Task Force should require schools to offer at least the following anonymous reporting avenues:

- A campus hotline to anonymously report incidents of sexual harassment and sexual assault; and
- A list of off-campus sexual assault and domestic violence service providers where an individual who has experienced an incident of sexual harassment or sexual assault may obtain supportive, survivor-centered services, without the risk of revealing her or his identity to the school.

The Task Force should provide schools with promising practices to guide them in adopting effective anonymous reporting practices.

D. Assist Universities to Establish Investigatory Practices That are Effective, Sensitive to the Trauma a Survivor Has Suffered, and Respectful of Confidentiality

1. Ensure Investigations are Conducted by Investigators with Specialized Training

Campus police officers and administration officials charged with investigations should be required to undergo specialized training on how to investigate reports of sexual violence and how to interact with victims of trauma. Only trained staff and officers should conduct investigations of sexual violence. Schools should develop an MOU with local law enforcement for working together to handle investigations; these MOUs should require local law enforcement to undergo specialized training on sexual assault and trauma investigation as well. In some instances, a survivor may file a complaint with both the school and the local police. Under Title IX, schools may not postpone their own internal investigations of an incident while a criminal investigation is pending, although a slight delay may be necessary while the police gather evidence.²⁰ The MOU should streamline investigation logistics so that campus police and local police can work well together. For example, a streamlined investigation can limit the number of times a survivor has to tell her/his story, which can have a re-traumatizing effect.

The school's investigation protocols should ensure that students who – for classes, activities, parties, or other reasons – spend time at neighboring universities and who are assaulted on other campuses will still be entitled to their own school's support services. School investigation protocols should explain how investigations of such incidents will be handled. Having an MOU with neighboring schools in place that covers jurisdictional questions about investigations and adjudications can help ensure that if such situations arise, all responsible entities are prepared to react appropriately.

²⁰ *Id.* at 10.

2. Establish Promising Practices for Conducting Effective Confidential Investigations

When a survivor chooses to report on a confidential basis, a school's ability to investigate the incident as thoroughly and sensitively as possible but maintain the survivor's confidentiality has important implications for the survivor and for the safety of the campus community. The Task Force should provide schools with promising practices on how to accomplish this, including by ensuring specialized training of campus law enforcement or security and all individuals with investigatory responsibilities on:

- Steps to maintain a survivor's confidentiality while investigating;
- Evidence-gathering techniques that may be particularly useful in confidential investigations in the context of sexual assault, domestic violence, dating violence, and stalking;
- Appropriate use of the "Knock and Talk" tactic in confidential investigations, which may enable law enforcement to approach alleged perpetrators to convey that the alleged conduct has come to their attention. This may assist in deterring a perpetrator from future misconduct; and
- How to document, count and interpret confidential reports.

IV. **DISCIPLINARY PROCEEDINGS AND SANCTIONS**²¹

Title IX and the Clery Act require schools to have policies that prohibit retaliation.²² When an incident is reported nonconfidentially, schools should offer to issue a "no contact order" between the parties to protect survivors from further harm or retaliation. As the disciplinary process continues, schools should continue to monitor the need for protection from retaliation and harassment.

A. Ensure Adjudications are Prompt, Fair, and Impartial as Required by Law

The Clery Act requires that a disciplinary proceeding is "prompt, fair, and impartial," but schools often fall short in this area.²³ A disciplinary action must be conducted by officials who, at a minimum, receive annual training on issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct a hearing process that protects the safety of victims and promotes accountability.²⁴ Given the seriousness of the hearings and the training required, hearing officers and disciplinary board members should not be students.

²¹ We thank the National Women's Law Center for collaborating on and drafting earlier versions of Parts IV and VII of this Memorandum.

²² 2011 Dear Colleague Letter at 16.

²³ 20 U.S.C. §1092(f)(8)(B)(iv).

²⁴ *Id.*

To make survivors more comfortable, schools should offer them options to participate in the hearings by video link or telephone, or to sit behind a curtain if they do not want to face their attacker.²⁵ Hearing officers should never allow parties to personally question or cross-examine each other during the hearing. Doing so can be re-traumatizing for a victim and can contribute to a hostile environment in violation of Title IX. Regardless of whether a survivor participates in person or remotely, Title IX requires that both parties be afforded equal opportunity to present relevant witnesses and other evidence, and timely access to any information that will be used at the hearing.²⁶

B. Disseminate Recommendations to Ensure Disciplinary Sanctions are Appropriate and Proportional

Disciplinary sanctions are an integral component of any schools' prevention and response programs and procedures. The Clery Act requires schools to have a policy that addresses possible sanctions or protective measures that may be imposed following a final determination of a disciplinary proceeding.²⁷ Sanctions send a message to the entire school community that the school does not tolerate sexual harassment and assault, deterring potential perpetrators.

A school's sexual assault policy should provide a range of sanctions. While schools should have flexibility, particularly to allow the survivor to have input into the sanction sought, we urge the Task Force to instruct schools that expulsion is generally appropriate in instances where a student is found responsible for sexual assault. Expulsion is often necessary to enable survivors to continue their education without the presence of the perpetrator on campus. Allowing a perpetrator to remain on or return to campus may create a hostile environment for the survivor in violation of Title IX. The Task Force should instruct schools that expulsion is also a critically important remedy in many situations because perpetrators frequently are serial offenders—one study found that 63% of males who admit to committing rape or attempted rape also admitted to committing multiple offenses, averaging six rapes each.²⁸ Allowing a student found responsible for sexual assault to remain on campus may endanger other students. Similarly, by failing to eliminate serial offenders from campus, schools create a hostile environment for its students in violation of Title IX.

Notwithstanding these guiding principles, expulsion should not be the only or automatic remedy. Survivors should be consulted. At times, a survivor may be deterred from reporting sexual assault or pursuing a disciplinary proceeding if expulsion is the only option. The appropriate use of certain restorative justice principles by service providers trained to use these

²⁵ Additionally, OCR has made it clear that mediation between the parties is *never* appropriate in cases of sexual assault and that schools should clarify in their grievance procedures that mediation will not be used to resolve sexual assault complaints. *See* 2011 Dear Colleague Letter at 8.

²⁶ *Id.* at 11.

²⁷ 20 U.S.C. §1092(f)(8)(B)(ii).

²⁸ David Lisak & Paul M. Miller, *Repeat Rape and Multiple Offending Among Undetected Rapists*, 17(1) *Violence Vict.* 73, 73-84 (2002).

principles in the context of sexual and domestic violence may be useful in some instances. These principles put the focus on the survivor’s needs for healing, rather than focusing on punishing the perpetrator. In all instances, the safety of the broader campus community must remain a critical concern.

Critically, sanctions must be proportional to the offense in comparison to sanctions imposed for other forms of misconduct. For example, schools that expel students for cheating or plagiarism but do not use comparable sanctions for perpetrators found responsible for sexual assault send the wrong message to the survivor, the perpetrator, and the rest of the campus community. The Task Force also should instruct schools to impose strong sanctions for retaliatory conduct, which is prohibited by Title IX and the Clery Act,²⁹ and can further traumatize a survivor and create a hostile environment that impedes her from completing her education.

V. WORKPLACE POLICIES AND PRACTICES

In addition to being educators of students, campuses are employers of large numbers of faculty and staff. Dating violence, domestic violence, sexual assault/harassment, and stalking can occur in many different configurations of relationships on campus, such as between students and faculty, students and staff, between and among faculty and staff, and may involve other nonemployee and nonstudent community members. Colleges should ensure that prevention, intervention, disciplinary and support mechanisms and activities address the rights and responsibilities of the institution and its employees -- as bystanders, survivors, or perpetrators -- under the Clery Act, Title IX, and relevant employment laws such as Title VII of the Civil Rights Act of 1964 (“Title VII”), the Americans With Disabilities Act (the “ADA”), and the Family and Medical Leave Act (the “FMLA”).

Campus policies and practices will have the greatest impact if they consistently use the term “employee” to include faculty, staff, and students employed by the university. Subgroups of employees may receive different programming or be subject to different policies, in some instances. All employees should receive education and training that includes information on prevention, crisis intervention and advocacy, complaint and grievance procedures, and relevant policies.

A. Require Schools to Provide Prevention Education to All Employees

The Clery Act requires “primary prevention and awareness programs for all incoming students and new employees.”³⁰ As a promising practice, campuses should construe “employees” to mean faculty, staff, and students employed by the university. *See* Section I.B.1 for a discussion of key elements of primary prevention and awareness programs.

²⁹ 20 U.S.C. §1092(f)(17).

³⁰ 20 U.S.C. § 1092(f)(8)(B)(i)(I).

The Clery Act requires “ongoing prevention and awareness campaigns for students and faculty.”³¹ Campuses should ensure that these campaigns are provided to *all employees*, not merely faculty, and appropriately tailored for different subgroups of employees. *See* Section I.B.2 for a discussion of recommended components of ongoing prevention and awareness campaigns.

B. Ensure Schools Provide Intervention Training to All Relevant Employees

Title IX and the Clery Act require schools to train employees annually on how to respond appropriately to a student or employee’s disclosure of sexual assault, dating violence, domestic violence, and stalking. In order to promote efficiency and consistency, colleges should include information about sexual harassment and discrimination under Title VII and the ADA in the trainings discussed in Sections II.A, II.B, III.B, and III.D. Schools should construe “employees” to mean faculty, staff, and students employed by the university.

Individuals designated as campus security authorities in a school’s policy must receive appropriate training when first hired and annually, as discussed in Section III.D.

Individuals with responsibility for investigating or adjudicating student or employee disciplinary proceedings; providing or coordinating accommodations; assisting the survivor in accessing support services; or providing health and counseling services to a survivor must receive appropriate training when first hired and annually thereafter for their respective roles, as described in Sections III.B and III.C.

Additionally, employees responsible for investigating or adjudicating employee disciplinary proceedings or assisting employee survivors in accessing support resources should be trained annually on the school’s relevant workplace policies -- such as sexual harassment -- so they are aware of an employee-survivor’s additional potential rights and remedies.

C. Ensure Employees Can Access Appropriate Crisis Intervention and Advocacy Services

The Clery Act requires schools to provide employee-survivors with a comprehensive written explanation of their rights and options at the time that the employee-survivor initially discloses to the school. The content of this written disclosure must include the material described in Section II.A.2. Faculty, staff and students employed by the university should be considered “employees” to whom this explanation should be provided.

Campuses should consider whether to offer the same services to employee-survivors as student survivors, or whether different services/assistance are appropriate and available. Information about services for employee-survivors should be made available in appropriate and high-trafficked locations throughout campus facilities.

Additionally, schools should ensure that employee health care providers and employee assistance programs are trained to address sexual assault, domestic violence, dating violence, and

³¹ 20 U.S.C. § 1092(f)(8)(B)(i)(II).

stalking. Employee assistance providers should be prepared to make appropriate referrals for employee-survivors.

D. Ensure Overlapping Workplace Policies/Practices Address Gender-Based Violence Consistently

Any relevant university policies should explicitly address the procedures that apply in the context of domestic or dating violence, sexual assault/harassment, or stalking between and among different subgroups on campus; i.e., between students and faculty, students and staff, among faculty members, between and among faculty and staff, as well as those instances involving nonemployee and nonstudent community members.

Any relevant university policies should account for the rights, responsibilities or assistance available under other workplace policies, such as sexual harassment, anti-discrimination, anti-retaliation, leave/vacation, discipline, accommodations, and collective bargaining agreements, and their interaction with the requirements of Title VII, the ADA and the FMLA.³² Schools should ensure that these policies complement those addressing sexual assault, so the rights, responsibilities, and remedies available under each policy are clear and, in practice, operate as seamlessly as possible.

Schools should consider whether it is appropriate to create different reporting and grievance processes for faculty and staff survivors to report other faculty or staff members who are perpetrators of violence. This process should be sensitive to the power differential between and among different employee subgroups, and between students, faculty, and staff.

Universities should ensure that if an employee reports violence that occurred at location within the campus for purposes of Clery Act reporting, the incident is included in the school's Clery Act statistics.

An employee disciplinary policy should include the possibility of sanctions up to and including the loss of tenure or employment for faculty found responsible for perpetrating sexual assault, harassment, dating violence, domestic violence or stalking through the applicable disciplinary proceeding. Similarly, a disciplinary policy should include sanctions up to and including termination of employment for staff found responsible for perpetrating violence through a disciplinary proceeding.

³² A recent fact sheet from the Equal Employment Opportunity Commission may assist schools in assessing the application of Title VII and the ADA in these contexts. See Equal Employment Opportunity Commission, "Questions and Answers: The Application of Title VII and the ADA to Applicants or Employees Who Experience Domestic or Dating Violence, Sexual Assault, or Stalking" (Oct. 2012), available at http://www.eeoc.gov/eeoc/publications/qa_domestic_violence.cfm.

VI. DATA COLLECTION AND EVALUATION

A. Require Schools to Collect and Evaluate Data

Title IX and the Clery Act require schools to ensure that their prevention and response efforts are tailored to prevent sexual harassment and violence at school, effectively address it when it occurs, and protect those who experience it. To this end, schools must consistently monitor their progress and assess their success at providing high quality prevention and response programs. There are a number of ways in which this can be done, and the Task Force should clarify for schools that these steps are *required* in order to effectively comply with the law.

At a minimum, schools should administer annual, campus-wide anonymous surveys to collect data from students and employees on the incidence and prevalence of sexual violence, dating violence, domestic violence, and stalking, as well as the effectiveness of various prevention, training and response efforts. These surveys would aid schools in gathering information on the reporting rates for these crimes. Comparing the reporting rate to the rate of actual incidents should help schools to assess the overall effectiveness of their policies, and measure the actual need for services among students. Additionally, the surveys should gather information from students about the use and accessibility of support resources and satisfaction with the school's response efforts. In addition to an option to report an incident anonymously, the survey should provide students with the ability to report incidents of sexual violence, dating violence, domestic violence, and stalking confidentially instead of anonymously. Finally, we urge the Task Force to ask schools to include a survey question providing survivors with the option of reporting the specific name of a perpetrator who committed a sexual assault against them in the past year. The Task Force should disseminate promising practices in relation to the collection and use of this information. This is an important and appropriate step since most males who commit rape on college campuses are serial offenders. By carefully collecting this information, schools can identify and investigate patterns.

Schools that conduct evaluations of their prevention and response programming can help ensure that their programs meet the needs of their students, as well as send the message to their students that these programs are taken seriously by the school. This in turn can strengthen the anti-violence climate at the school and help make it possible for more survivors to feel comfortable coming forward to report their experiences and seek the services they need to continue their education.

B. Improve Existing National Data Collection and Assessment Efforts to Capture Critical Information

We strongly urge the federal government to create or adapt a national survey to measure collective progress in addressing sexual assault prevalence, prevention and response. Currently, we are not aware of any nationally representative survey that measures incidence and prevalence of gender-based violence in college. The most comprehensive (though not representative) college health survey is the American College Health Association National College Health

Assessment.³³ While the assessment does address violence in some form, the existing survey questions should be strengthened to collect data on sexual assault, domestic violence, dating violence, and stalking, and the impact of these incidents on survivors.

We urge the Task Force to review existing adolescent health surveys and extend them through the college years, so that the college-age data can be examined separately. College surveys should explore the following:

- Incidence and prevalence of victimization
- Incidence and prevalence of perpetrators
- Incidence and prevalence of pre- meditated perpetration
- Student involvement in training and prevention campaigns
- Bystander behavior
- Help seeking behavior of survivors
- Support offered to survivors
- Responsiveness of the school, such as provision of accommodations
- Disciplinary sanctions for perpetrators
- Rehabilitative options for perpetrators

VII. FEDERAL COORDINATION AND ENFORCEMENT

The federal government must use its resources more effectively to combat sexual assault. We strongly urge the Departments of Education and Justice to use existing authority to proactively conduct compliance reviews of schools, and to continue consulting both Clery Act data and Civil Rights Data Collection data to trigger compliance reviews. In particular, the Departments of Education and Justice should make inquiries at schools that report little to no incidences of sexual misconduct. Although Title IX complaints may play an important role in bringing schools into compliance, relying on survivors and other third parties to alert the federal government to Title IX violations has proven insufficient as an enforcement strategy. The federal government should regularly and randomly examine schools' practices to ensure compliance.

Additionally, in response to individual Title IX complaints, OCR has the authority to take several steps to better meet the needs of students who have experienced sexual violence. First, we urge you to prioritize the prompt resolution of administrative complaints. Too many students

³³ See American College Health Association, National College Health Assessment, *About ACHA-NCHA*, <http://www.acha.org/HealthyCampus/student-obj.cfm#viol>.

are dropping out of school or transferring schools due to unchecked harassment and violence. Typically, investigations drag on for years, denying survivors from obtaining any meaningful remedies, and concurrently, allowing hostile environments to fester. An appropriate time frame for an investigation and resolution must be judged in the context of the length of time that students typically attend college. Resolving grievances in a reasonable time period is essential to allow complainants to realize maximal benefits from their education. Additionally, OCR should ensure that complainants are consulted as OCR investigates their complaints. This would foster transparency and would be more likely to lead to resolutions that effectively remedy complainants' grievances.

Finally, we believe that comprehensive remedies are necessary to attempt to put complainants back in the position they would have been in if they had not experienced harassment or violence. We urge OCR to use its authority to achieve robust individual remedies for students. Also, OCR should make public the sort of remedies available. For example, sexual harassment and assault victims often require long-term counseling in addition to other make-whole remedies. OCR should consider requiring schools to pay for such services in limited, appropriate circumstances. If a student has been forced out of a college or otherwise subject to an egregious violation, OCR may require schools to pay for a student's education or other increased financial burdens resulting from the school's failure to comply with federal law.

APPENDIX 1

EFFECTIVE PRIMARY PREVENTION INITIATIVES

The organizations and ideas outlined below are positively viewed and respected by students and administrators on their respective campuses, though not independently validated. These programs are included as suggestions that schools may adapt and implement. Our hope is to increase the visibility of these programs to encourage further research on their efficacy with different populations. Every college campus is unique and the success of an initiative at one school does not guarantee its universal success. Schools should make a concerted effort to initiate and support new and effective approaches to preventing sexual assault and assisting survivors.

Helping Advocates for Violence Ending Now (HAVEN)—University of North Carolina

“The HAVEN Program is a campus initiative to train non-employee students how to help a friend who has experienced interpersonal violence (harassment and stalking, abusive relationships, and sexual assault) by connecting those students to reporting options and confidential support services.”

Key areas of focus: Education initiative, yearlong education and training, engaging student organizations, campus organization, bystander/advocacy training

<https://safe.unc.edu/get-involved/haven-training/>

It Happens Here—Originally Middlebury College, now a national organization

“Discussing sexual violence through story.”

Key areas of focus: Education initiative, student/survivor driven, campus organization, narrative based anti-sexual assault education, survivor empowerment

<http://www.ihhproject.org/>

<http://www.ihhmidd.org/>

Men Against Rape & Sexual Assault (MARS)—Northwestern University

“MARS is an all-male organization dedicated to combating sexual violence and rape culture at Northwestern.”

Key areas of focus: Education initiative, student/survivor driven, campus organization, orientation training, yearlong education and training, engaging male students, engaging fraternities/male athletes

<https://www.facebook.com/northwesternmars/info>

<http://www.northwestern.edu/care/get-involved/men-against-rape-and-sexual-assault.html>

Men for Consent—Williams College

“We aim to educate people about and advocate against sexual assault and violence to cultivate a healthier and safer sexual culture on campus.”

Key areas of focus: Education initiative, engaging male students, student driven
<https://www.facebook.com/MenForConsent>

Party With Consent—Colby College, Williams College

“Party with Consent is a movement that brings excitement to the social culture of campuses and communities through focusing on what you can do and what you can look forward to. By developing comfort and safety in party atmospheres Party With Consent ensures optimal levels of fun and safety for everyone involved.”

Key areas of focus: Student/survivor driven, engaging male students, safe partying initiatives, education initiative, marketing and social media driven campaign

<http://student-life.williams.edu/student-involvement/leadership-development/consentfest/>
<https://www.facebook.com/partywithconsent>

Sexual Assault Free Environment (SAFE)—Old Dominion University

“The SAFE program educates the ODU community on issues of relationship and sexual violence, provides advocacy and support for survivors, and empowers everyone on campus to recognize and stop abuse and sexual assault.”

Key areas of focus: Education initiative, engaging male students, sponsored by school administrators, survivor empowerment, advocacy training

<https://www.odu.edu/life/gettinginvolved/programming/safe>

Sexual Assault and Misconduct Information—Hamilton College

Informational sheets posted on bathroom stall doors in all dormitories and other high-trafficked locations on campus. Four sheets are primarily circulated: how to support a friend who is a survivor of sexual assault, extensive definitions of consent and sexual assault, help and support information for survivors of sexual assault, and information on how to report an assault and disciplinary sanctions.

Key areas of focus: Education initiative, sponsored by school administrators, improved reporting initiative, bystander awareness, engaging male students, engaging faculty and staff members