



**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

*Washington, D.C. 20530*

May 8, 2014

The Honorable Claire McCaskill  
Chairwoman  
Committee on Homeland Security and Governmental Affairs  
Subcommittee on Financial and Contracting Oversight  
United States Senate  
Washington, DC 20510

Dear Madam Chairwoman:

This responds to your letter to the Attorney General dated April 1, 2014, requesting information regarding federal responses to sexual assault on college campuses. We appreciated meeting with you about this issue on April 9, 2014, and with your staff on May 7, 2014.

The Department of Justice (the Department) shares your sense of urgency regarding the problem of sexual violence on college campuses, and we are committed to using all our tools to combat sexual violence. In a Department-wide coordinated effort, we are devoting significant resources to addressing the problem and building on work we have done in this area over the last two decades. Our Office on Violence Against Women (OVW) provides critical grants, training and support to ensure that local governments, law enforcement, and schools have the ability to effectively address sexual assault. Moreover, our Civil Rights Division (CRT) is addressing sexual assault by vigorously enforcing civil rights laws.

OVW administers the Grants to Reduce Domestic Violence, Dating Violence, Sexual Assault, and Stalking on Campus Program (the Campus Program). The Campus Program seeks to encourage universities to adopt comprehensive and coordinated responses that ensure victim safety, offender accountability, and prevention of these crimes. In addition, because training is critical to ensuring that school employees understand their obligations to respond promptly and effectively to sexual assault and harassment, OVW provides extensive training and technical assistance to universities and colleges.

Moreover, we are committed to enforcing the several Federal laws aimed at making our campuses safer. Most notably, Title IV of the Civil Rights Act of 1964 (Title IV) and Title IX of the Education Amendments of 1972 (Title IX) prohibit sex discrimination, including sexual assault and harassment, in education programs. These laws require universities to respond to complaints of sexual assault, to investigate where appropriate, and to ensure that students are provided prompt and impartial resolution to their claims. When universities fail to respond adequately to campus sexual assault, they engage in their own sex discrimination by forcing the affected students to attend school in hostile sex-based environments.

For all students to have the opportunity to succeed, all students must feel safe and have confidence in schools' demonstrated commitment to protect them. For that reason, the Department will continue to vigorously enforce our nation's civil rights laws. This will mean expanding educational opportunities for women, ensuring that sex discrimination does not prevent students from achieving their goals, and enabling the creation of environments where every student has an equal chance to prosper.

Please find below responses to the specific requests for information contained in your letter.

**(1) Processes for conducting oversight of data reporting by colleges and universities**

The Department of Education (DOE) collects schools' campus sexual assault data through reporting obligations mandated by the Jeanne Clery Disclosure of Campus Security Police and Campus Crime Statistics Act (Clery Act). The Department does not collect or oversee this data. However, if CRT were considering opening an investigation or compliance review of a school's handling of sexual assault, the Department could access the school's public data, reported under the Clery Act, and ask DOE if it has additional data to help inform our enforcement decision.

Unrelated to the Department's enforcement work, OVW collects information from all grantees, including those receiving funds under the Campus Program. Through the submission of semi-annual progress reports, OVW collects information to monitor and assess grant-funded activities and qualitatively assess those activities. The semi-annual progress reporting form for the Campus Program, as well as past summary data reports, can be found at <http://muskie.usm.maine.edu/vawamei/campusmain.htm>.

**(2) Copies of written materials or guidance provided to colleges and universities, local law enforcement, and other relevant agencies regarding legal issues, policies, and procedures**

CRT has enforcement jurisdiction in this area under Title IX, Title IV, Section 3789d of the Omnibus Crime Control and Safe Streets Act of 1968 ("Safe Streets Act"), and Section 14141 of the Violent Crime Control and Law Enforcement Act of 1994.

CRT has not issued formal legal guidance regarding campus sexual assault under these statutes. However, in recent years, CRT has carefully reviewed and commented on relevant guidance issued by the DOE Office for Civil Rights (OCR). These include: a 2011 Dear Colleague Letter on Sexual Violence; a 2010 Dear Colleague Letter on Harassment; and Questions and Answers guidance regarding sexual violence released on April 29, 2014. CRT applies OCR's guidance in the Department's own Title IX enforcement work. We have cited it in letters of findings, motions, and amicus briefs.

Moreover, CRT's website contains court filings and settlement agreements with schools and campus police regarding sexual assault and harassment, including federal court complaints, complaints-in-intervention, motions, consent decrees, amicus briefs, and statements of interest. For example, in May 2013, CRT posted three letters of findings and three out-of-court

agreements addressing these findings with the University of Montana, the University's Office of Public Safety, and the Missoula, Montana, Police Department.

Court filings and settlement agreements do not constitute formal guidance. They do, however, articulate CRT's interpretation of relevant legal standards and its position on important legal issues pertaining to sexual assault and harassment. As a result, schools, students, and advocates across the country look to these documents for guidance on how to address campus sexual assault. Thus, they often serve as a roadmap to bring institutions into compliance. These documents also will be housed on the White House Task Force to Protect Students from Sexual Assault's website, thus making them more visible.

In addition, under Executive Order No. 12250, 3 C.F.R. 298 (1980), the Department coordinates and provides technical assistance across federal agencies on Title IX enforcement, including sexual assault and harassment. In 2000, CRT also coordinated the drafting and issuance of Title IX regulations for other federal agencies, except the DOE. These agencies, like CRT, use Title IX and its implementing regulations to combat sex-based discrimination, including sexual assault, in education programs and activities.

Finally, in addition to the Department's enforcement work, each year OVW issues competitive solicitations for the Campus Program. In order to be eligible for funds, grantees must, by statute: (1) create a coordinated community response including both organizations external to the institution and relevant divisions of the institution; (2) establish a mandatory prevention and education program about sexual assault, domestic violence, dating violence, and stalking for all incoming students; (3) train all campus law enforcement to respond effectively to sexual assault, domestic violence, dating violence, and stalking; and (4) train all members of campus disciplinary boards to respond effectively to situations involving sexual assault, domestic violence, dating violence, and stalking. Recent Campus Program solicitations and policy guidance on how to meet the statutory requirements can be found on the OVW website: <http://www.ovw.usdoj.gov>.

### **(3) Information regarding training (if any) provided to colleges and universities, local law enforcement, and other relevant agencies.**

Training is critical to ensuring that school employees understand their obligations to respond promptly and effectively to sexual assault and harassment. The Campus Program offers semi-annual training institutes for all universities and colleges that OVW funds support. Training and Technical Institutes (TTIs) are an opportunity for Campus Grantees and technical assistance providers to come together for intensive training, collaboration, and peer-to-peer learning. Experts in the field of domestic violence, dating violence, sexual assault, and stalking from across the country are brought together to facilitate trainings. TTIs are designed to equip grantees with the foundational knowledge necessary for them to build comprehensive response and prevention programs to address violence against women on their campuses. On average, approximately 325-360 people from 100 schools attend each institute.

In addition, OVW's Technical Assistance Program provides OVW grantees training to meet the challenges of addressing sexual assault, domestic violence, dating violence, and stalking. Specifically, OVW has entered into the following cooperative agreements to provide

technical assistance, including in-person and online educational opportunities, peer-to-peer consultations, site visits and tailored assistance, to recipients of OVW Campus Program grants:

- The California Coalition Against Sexual Assault provides expertise related to the response and prevention of dating violence, domestic violence, sexual assault, and stalking on college campuses, through the development of victim-centered, coordinated community responses;
- East Central University's Safety Training and Technical Assistance for Administrators, Boards, and Law Enforcement Campus Program, through collaboration and partnership with state and national law enforcement agencies, provides training and technical assistance to colleges and universities and their security/law enforcement departments in a targeted approach to campus-related interpersonal violence;
- Black Women's Blueprint, Inc. and the National Organization of Sisters of Color Ending Sexual Assault are partnering to provide targeted, culturally specific technical assistance, training, and support to address violence against women on campus for Historically Black Colleges and Universities across the nation that are grantees (and potential grantees) of the Campus Program;
- The Mississippi Coalition Against Sexual Assault provides basic training and technical assistance on the campus disciplinary and judicial board minimum requirements and develops essential skills training for newly created campus disciplinary and judicial boards through three training focus areas: legal compliance and policy; culturally informed competency and advocacy; and process and core competencies;
- Green Dot, etc. Inc. provides consultation, training, and curriculum development for colleges, universities, community-based groups, coalitions, and government agencies to prepare them to implement effective violence prevention strategies, including bystander intervention. Green Dot provides technical assistance to assist grantees to meet the grant requirement of establishing mandatory prevention and education programming for all incoming students;
- Men Can Stop Rape provides technical assistance on comprehensive programming to engage boys and men in preventing domestic violence, dating violence, sexual assault, and stalking; and
- The Clery Center for Security On Campus provides technical assistance to grantees to effectively implement Clery Act reporting requirements.

Finally, all of CRT's settlement agreements and consent decrees that remedy sexual assault and harassment include training requirements for school employees, and often students as well. For example, our agreements with the University of Montana, the University's Office of Public Safety, and the Missoula Police Department all require employee training, including more intensive training for those, such as campus law enforcement and disciplinary boards, tasked with responding to, investigating, and adjudicating complaints of sexual assault and harassment.

The agreement also requires training for all students. CRT and the Independent Reviewer, a position created pursuant to the agreements, have been carefully reviewing the university's training materials for students, first responders, faculty, and staff to ensure their adequacy and effectiveness and compliance.

**(4) Information regarding all enforcement actions entered into since 1991, including the name of the school, a brief description, the resolution of the action (including penalties, if any) and any subsequent oversight.**

Last year, CRT and the U.S. Attorney's Office for the District of Montana completed a series of investigations stemming from allegations of sexual assault and harassment at the University of Montana and in the greater Missoula community. These investigations included a review of the university's policies for handling sexual assault complaints, as well as an investigation of allegations that two local police forces were systematically failing to protect women victims of sexual assault.

In May 2013, working with OCR, CRT entered into a comprehensive agreement with the University of Montana to ensure that it responds swiftly and effectively to allegations of sexual assault and harassment by students. CRT also entered into agreements with both police forces to achieve reforms to ensure that police services are delivered in a nondiscriminatory fashion, that sex crimes are investigated, and that victims are treated fairly and with respect.

Because sexual assault is a form of sexual harassment and the legal standards that CRT applies to both types of misconduct are the same, we have included enforcement actions addressing sexual harassment in the list of filings and other enforcement activity in the list below. CRT's efforts to ensure that the courts and schools correctly interpret the federal civil rights obligation to redress sexual harassment clearly inform and benefit the application of these standards to cases of sexual assault on college and university campuses.

Moreover, because the legal standards that CRT applies to sexual assault and harassment claims under Titles IX and IV are the same for school districts and institutions of higher education, the list includes matters involving K-12 public school districts. CRT's enforcement actions in the K-12 school context help clarify the civil rights obligations of institutes of higher education to redress sexual assault on college and university campuses under Title IX and Title IV. (*See* 2013 Q&A at i-ii and 2011 Dear Colleague Letter on Sexual Violence at 1, explaining that the Title IX standards in OCR's guidance apply to sexual harassment in K-12 schools, colleges, and universities.)

Finally, court filings, such as amicus briefs, articulate CRT's interpretation of relevant legal standards and its position on important legal issues pertaining to sexual assault and harassment. As a result, schools, students, and advocates across the country look to these documents for guidance on how to address campus sexual assault. Thus, not only have these court filings been critical in advocating our position before courts – and thus influencing court rulings – the guidance they provide have led to schools changing their conduct.

Our information regarding the public investigations and compliance reviews and other court filings since 2001 is below (information prior to 2001 is not readily available):

- Through its amicus brief in the Supreme Court case of *Franklin v. Gwinnett County School District* (1992), the Department helped establish the availability of monetary damages under Title IX to private citizens in a teacher-on-student sexual harassment case;
- Through its amicus briefs in the Supreme Court cases of *Gebser v. Lago Vista Independent School District* (1998) and *Davis v. Monroe County Board of Education* (1999), the Department helped to establish the principle that schools are required to provide a safe environment for their students and must address sexual harassment of students by both teachers and peers under Title IX. In both cases, the Court held that a student may seek monetary relief from a school when subjected to sexual harassment, as the Department urged, but made clear that the student must show that an official of the school with authority to respond knew of and was deliberately indifferent to the harassment;
- In *U.S. v. Commonwealth of Virginia (VMI)* (1990-2001), CRT brought suit against Virginia under Title IV after receiving a complaint from a female high school student about the males-only admission policy of the Virginia Military Institute (VMI). After the Supreme Court's 1996 decision holding that Virginia had failed to justify its exclusion of women from VMI's unique educational program, and in preparation for the integration of women into VMI, the parties agreed that VMI would, among other things, adopt policies on sexual harassment;
- In *United States & Mellette v. Jones* (1997-2002), a case involving the males-only admissions policy of The Citadel, the parties entered into a court-ordered consent decree that required the Citadel to, among other things, establish informal complaint reporting mechanisms, including the establishment of a college Ombudsman to serve as a confidential recipient of complaints of harassment or abuse;
- In *Lovins v. Pleasant Hill Public School District* (1999), CRT intervened in a federal lawsuit involving allegations of sexual and sex-based harassment of a student over the course of his middle and high school years. The case resulted in a court-approved consent decree;
- In *Putman v. Board of Education of Somerset Independent School* (2000), CRT filed an amicus brief in support of a male student who claimed that his school failed to prevent severe sexual harassment by his peers based on gender stereotypes and his actual or perceived sexual orientation. CRT clarified that Title IX prohibits sexual harassment based on gender stereotyping and that sex-based harassing conduct is not insulated from Title IX because it also relates, in part, to actual or perceived sexual orientation. As a result, the school district modified its sexual harassment policies to prohibit discrimination based on actual or perceived sexual orientation;
- In *AB v. Rhinebeck Central School District* (2005 to 2009), CRT and the U.S. Attorney for the Southern District of New York intervened in a federal case alleging sexual

harassment by a high school principal and asserted Title IX claims. In 2006, the Department reached a consent decree requiring the school district to develop and implement a comprehensive plan to ensure a discrimination-free educational environment, revise its sex-based harassment policies, and train board members, employees, and students;

- In *Lopez v. Metropolitan Government of Nashville* (2008-present), a case involving alleged sexual assaults of students on special education buses, CRT's intervention resulted in the school district agreeing to a consent decree in 2010 that requires it to take substantial measures to prevent sexual assault and harassment against students with disabilities traveling on school buses;
- In *J.L. v. Mohawk* (2009-present), CRT moved to intervene in a federal case alleging sexual and gender-based harassment of a middle school student who was targeted because he did not conform to sex stereotypes. Prior to the court's ruling on CRT's motion to intervene, CRT negotiated a three-way settlement involving CRT, the private plaintiff, and the school district;
- In *Doe v. Allentown* (2009-present), CRT intervened in a lawsuit alleging that the district was deliberately indifferent to sexual assault of elementary school students. In 2012, the court approved a consent decree that required the district to, *inter alia*: develop and implement a comprehensive plan for addressing and preventing sexual harassment in all district schools; retain an expert consultant in the area of student-on-student harassment to draft and implement a sexual harassment policy and procedures; provide training to administrators, faculty, staff, students, and parents on sex-based harassment; and create procedures for identifying, monitoring, and supervising students with a confirmed history of sexual harassment toward other students;
- In *Doe v. Anoka Hennepin School District* (2010-present), following an extensive investigation into allegations of peer harassment against students who did not conform to gender stereotypes, CRT secured a far-reaching agreement in which the school district agreed to develop and implement a comprehensive plan to prevent and address student-on-student sex-based harassment; to enhance training for school staff on how to prevent and respond to harassment; to retain an expert consultant to review the district's policies and procedures concerning harassment; to appoint a Title IX coordinator to ensure the district's compliance with Title IX; and to improve investigations and recordkeeping;
- In *Doe v. Merrill Community School District* (6th Cir.) (2010), CRT filed an amicus brief to clarify the Title IX standards applicable to a case in which a middle school was alleged to have acted with "deliberate indifference" to the rape of a female student; and
- In *Tehachapi Unified School District* (2011-present), CRT and OCR reached a settlement in which the school district agreed to take preventive measures to protect students from sexual and gender-based harassment, to respond appropriately to harassment that occurs, and to eliminate the hostile environment resulting from

harassment. CRT's investigation followed the tragic suicide of a middle school student who was harassed based on sex.

**(5) Data related to how many sexual assault cases are adjudicated administratively by universities vs. how many are dealt with in the local criminal system.**

The Department does not collect this data.

**(6) The number and pay grade of full-time federal employees responsible for these issues at the Department of Justice.**

CRT's Educational Opportunities Section (EOS) is responsible for enforcing Title IX and Title IV to combat sex discrimination, including sexual assault, in education programs or activities. Approximately 12 of EOS' 22 attorneys (including four managers, seven trial attorneys, and one volunteer attorney) and three paralegals spend a part of their time on matters focused on school sexual assault and/or sexual harassment. However, EOS also is responsible for enforcing several other laws, including the Equal Educational Opportunities Act, Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act, the Rehabilitation Act, and the Individuals with Disabilities Education Act. EOS has a large existing docket consisting of approximately 184 school desegregation cases and roughly 85 other cases and matters involving discrimination and harassment based on race, color, national origin (including Limited English Proficient students), sex, religion, and disability. These cases and matters range from the initial investigative stage to the monitoring phase of a consent decree or settlement. As a result, the attorneys and paralegals assigned to open sex discrimination cases or matters each have a dozen or more other cases on their dockets.

In CRT's front office, a Senior Counsel, and ultimately the Acting Assistant Attorney General, review EOS matters, including significant filings and other actions in sexual assault and/or sexual harassment cases.

CRT's Special Litigation Section (SPL) works to combat sexual assault on college campuses through the Safe Streets Act and Section 14141 of the Violent Crime Control and Law Enforcement Act of 1994. For example, SPL secured the groundbreaking relief in agreements with the University of Montana's Office of Public Safety and Missoula, Montana, Police Departments. SPL has approximately four attorneys and one contract paralegal that each spends some part of their time working on these matters, although each of these individuals has a large docket of additional cases.

CRT's Federal Coordination and Compliance Section (FCS) provides both EOS and SPL with assistance related to Title VI and the Safe Streets Act in matters where the college receives federal financial assistance from the Department. FCS researches jurisdictional issues and provides guidance on procedure and substantive issues.

Finally, as noted, OVW addresses sexual assault through its Campus Program, which also addresses domestic violence, dating violence, and stalking. An OVW Associate Director oversees the administration and implementation of the Campus Program and supervises a unit of three Grant Program Specialists. However, the Associate Director and these OVW staff do not



work exclusively on the Campus Program and are involved in the administration and implementation of other OVW grant programs and initiatives. Moreover, a small percentage of an OVW Attorney Advisor and the OVW Chief of Staff's time is spent addressing policy issues related to campus sexual assault.

**(7) If contractors provide support services related to these issues, the number of full-time or equivalent contractors, their responsibilities, and the contract number of the contract under which they are employed.**

No paid contractors at EOS work on campus sexual assault cases or matters. Our consent decrees and agreements often require schools to hire outside consultants with expertise in preventing and responding to sexual assault to ensure the remedies are appropriately implemented, including effective training. The SPL paralegal assigned to Montana matter is a contract employee.

OVW has a contract for an Administrative Assistant who performs administrative duties to support a number of OVW grant programs, including the Campus Program.

**(8) Any audits, investigations, or other reports related to the Department of Justice's work on campus sexual assault dated from 1991 to the present, including any analyses prepared by private contractors.**

On April 20, 2014, the White House Task Force on Preventing Sexual Assault of Students issued a report that includes several documents to support college and university efforts to address sexual assault. CRT and OVW were active members of the Task Force and collaborated on the report, as well as most of the documents linked therein to ensure their legal accuracy and usefulness in preventing and responding to campus sexual assault.

On June 23, 2012, CRT commemorated the 40th anniversary of Title IX by creating a website that highlights the Department's Title IX work, including cases involving sexual assault and harassment, since 1972. This website links to a Title IX anniversary report of CRT's work to enforce Title IX in a range of areas, including sexual assault and harassment. Links to the website and report can be found on <http://www.justice.gov/crt/about/edu/>.

In August of 2012, the Department responded to recommendations contained in a GAO report entitled *School Bullying: Extent of Legal Protections for Vulnerable Groups Needs to be More Fully Addressed (GAO-12-349)*. These recommendations were not specific to campus sexual assault, but encouraged the Department, the DOE, and the Department of Health and Human Services to work together to assess the extent to which legal protections against bullying exist for vulnerable groups. As the Department indicated in its letter responding to these recommendations, we welcome the opportunity to identify ways to better serve vulnerable communities and have incorporated the information contained in the report in our work going forward.

In 2011, CRT responded to interrogatories and document requests from the U.S. Commission on Civil Rights seeking information about CRT's work to combat student-on-

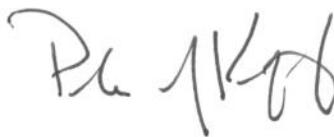
student violence in schools. Several of the Commission's questions pertained to the Division's work on sexual harassment and violence.

To better document the effect of Violence Against Women Act (VAWA) funding, VAWA 2000 required the Attorney General to report biennially on the "effectiveness" of activities carried out with VAWA grant funds, including the number of persons served and the number of persons seeking services who could not be served (42 U.S.C. § 3789p). These reports can be found on the OVW website, <http://www.ovw.usdoj.gov/>. Moreover, the statutory provisions of Section 826(d)(4) of the Higher Education Amendments of 1998 require the Attorney General to submit an annual report addressing the activities of grantees receiving federal funds under the Campus Program and information about the effectiveness of these programs, including a summary of persons served. These reports also can be found on the OVW website.

Finally, the Audit Division of the Department's Office of the Inspector General reports on the expenditure of federal funds by certain recipients of grants from OVW, including Campus Grant Program grantees. In 2012, this office completed an audit of East Central University in Oklahoma. See <http://www.justice.gov/oig/reports/2012/g6012014.pdf>.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter J. Kadzik". The signature is written in a cursive, somewhat stylized font.

Peter J. Kadzik  
Principal Deputy Assistant Attorney General

cc: The Honorable Ron Johnson  
Ranking Member