

**NOMINATIONS OF CATHERINE  
LHAMON, ELIZABETH BROWN,  
AND ROBERTO RODRIGUEZ**

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**HEARING**  
OF THE  
**COMMITTEE ON HEALTH, EDUCATION,  
LABOR, AND PENSIONS**  
**UNITED STATES SENATE**  
**ONE HUNDRED SEVENTEENTH CONGRESS**

FIRST SESSION

ON

EXAMINING THE NOMINATIONS OF CATHERINE ELIZABETH LHAMON,  
OF CALIFORNIA, TO BE ASSISTANT SECRETARY FOR CIVIL RIGHTS,  
WHO WAS INTRODUCED BY SENATOR MURRAY, ELIZABETH MERRILL  
BROWN, OF MARYLAND, TO BE GENERAL COUNSEL, WHO WAS INTRO-  
DUCED BY SENATOR VAN HOLLEN, AND ROBERTO JOSUE RODRI-  
GUEZ, OF THE DISTRICT OF COLUMBIA, TO BE ASSISTANT SEC-  
RETARY FOR PLANNING, EVALUATION, AND POLICY DEVELOPMENT,  
WHO WAS INTRODUCED BY FORMER REPRESENTATIVE GEORGE MIL-  
LER, ALL OF THE DEPARTMENT OF EDUCATION

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JULY 13, 2021

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**NOMINATIONS OF CATHERINE  
LHAMON, ELIZABETH BROWN,  
AND ROBERTO RODRIGUEZ**

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**July 13, 2021**

U.S. SENATE,  
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10 a.m., in room 430, Dirksen Senate Office Building, Hon. Patty Murray, Chair of the Committee, presiding.

Present: Senators Murray [presiding], Casey, Baldwin, Murphy, Kaine, Hassan, Smith, Rosen, Lujan, Hickenlooper, Burr, Collins, Cassidy, Murkowski, Marshall, and Tuberville.

**OPENING STATEMENT OF SENATOR MURRAY**

The CHAIR. Good morning. The Senate Health, Education, Labor, and Pensions Committee will please come to order. Today, we are holding a hearing on the nominations of Catherine Lhamon to serve as Assistant Secretary for Civil Rights at the Department of Education, Roberto Rodriguez to serve as Assistant Secretary for Planning, Evaluation and Policy Development, and Lisa Brown to serve as General Counsel.

Ranking Member Burr and I will each have an opening statement and then we will introduce our witnesses. After the witnesses give their testimony, Senators will each have 5 minutes for a round of questions. And while we were again unable to have the hearing fully open to the public or media for in-person attendance, live video is available on our Committee website at [help.senate.gov](https://help.senate.gov). And if you are in need of accommodations, including closed captioning, you can reach out to our Committee or the Office of Congressional Accessibility Services. We received Ms. Lhamon's formal nomination on May 13th, her Office of Government Ethics paperwork, including her public financial disclosures and ethics agreement on May 24th, and her Committee paperwork on May 28th.

We received Mr. Rodriguez's formal nomination on April 29th, his Office of Government Ethics paperwork on June 8th, and his Committee paperwork on May 24th. And we received Ms. Brown's formal nomination on May 27th, her Office of Government Ethics paperwork on June 9th, and her Committee paperwork on June 10th. I would like to thank all of our witnesses for joining us and also welcome their families, Ms. Lhamon's husband, Giev Kashkooli, Mr. Rodriguez's wife, Rosio Rodriguez and their two

children, and Ms. Brown's husband, Kevin Cullen. We have three excellent nominees before us today, each with a track record showing they are experienced, committed to serving students, and exactly who we need in these roles.

In 2013, Ms. Lhamon was confirmed by voice vote to be the Assistant Secretary for Civil Rights, the same position she is nominated for now. As Assistant Secretary, she proved herself as a champion for all students through her work to protect students' civil rights, combat sexual assault, and more. She continued this work as chair of the U.S. Commission on Civil Rights and as the Deputy Director of the Domestic Policy Council for President Biden.

Mr. Rodriguez has similarly proved himself as a champion for schools and students through his current work as Chief Executive Officer of Teach Plus, an education advocacy organization, and his work on the Domestic Policy Council under President Obama to increase educational equity for students, including his work to support community colleges, reform student loans, and increase Pell Grant awards. And he is also a HELP Committee alum who worked for Chairman Kennedy on major education legislation that some of us remember. Welcome back to you. Our third nominee, Ms. Brown, has served students at Georgetown University as Vice President and General Counsel since 2013.

Ms. Brown also worked in the Obama administration as Assistant to the President and Staff Secretary and Acting Chief Performance Officer at the Office of Management and Budget. It is clear that all of our witnesses are well qualified for the positions they have been nominated for, and I look forward to hearing from them about how we tackle the challenges facing schools and students across our Country. Unfortunately, the previous Administration took major steps backward when it came to supporting and protecting students.

For example, significantly reducing efforts to enforce civil rights protections, undermining efforts to hold for-profit colleges accountable, and rescinding important policies addressing campus sexual assault. I am especially glad to see Secretary Cardona and the Biden administration are working to get us back on track in the fight against sexual assault and actually listening to students and survivors instead of ignoring them. The previous Administration's Title IX rule made it hard for a student to report an incident of sexual assault or harassment, and easier for a school to sweep this kind of violence under the rug.

The Department's ongoing review of the device Title IX rule is a critical step toward undoing the last Administration's harmful policies. I hope following its review, the Biden administration will protect students and survivors by putting forward a new, strong rule to prevent schools from avoiding responsibility for responding to sexual harassment and assault by limiting their responsibility if students report to the wrong person, provide a robust definition of sexual harassment, ensure survivors can share their story in a way that avoids re-traumatization, provide more information to the public about sexual harassment and assault cases, including making sure the public can tell which schools have requested religious exemptions from Title IX, and protect student confidentiality.

Of course, the Department's efforts here are just a start. There is a lot more we need to do to protect all of our students. I am looking forward to working with the Biden administration to ensure every student can learn in a safe environment free from discrimination, harassment, and assault. And we must keep pushing on other fronts as well, like making sure every student receives a high quality public K-12 education, families can access affordable and high quality child care and pre-K, students can access and persist in higher education while minimizing the burden of student debt, and schools and child care facilities are safe from pandemics, environmental hazards, gun violence, and more. We also need to tackle the deep education inequities in our Country, meaning we need to root out systemic racism that continues to plague our Nation's education system, uphold our civil rights protections for all students, including students with disabilities, address inequities in school funding, support and protect LGBTQ+ students, and address sexism, racism, ableism, bigotry, and bullying in our schools.

Ultimately, what it comes down to is this, you should be able to receive a high quality education and thrive in this country regardless of your race, family income, disability, sex, or zip code. I am pleased to say that Ms. Lhamon, Mr. Rodriguez, and Ms. Brown have worked throughout their careers to make sure that is the case. I have no doubt they will continue to do so when confirmed, and I look forward to working with all of them in their new roles.

Now, before I turn it over to Ranking Member Burr for his opening remarks, I seek unanimous consent to put in the record more than 20 letters in support of Ms. Lhamon's nomination from nearly 230 organizations, one letter in support of Mr. Rodriguez's nomination, and one letter of support in Ms. Brown's nomination. So ordered.

[The following information can be found on page 37 in Additional Material]

The CHAIR. Senator Burr.

#### OPENING STATEMENT OF SENATOR BURR

Senator BURR. Thank you, Madam Chair. Count me as one that support Mr. Rodriguez. It is good to see you again. Thanks for our time together. I think we all on this dais miss Ted Kennedy, extremely, much. To our witnesses, congratulations on your nominations and welcome. These are important education policy positions. Today I am going to spend most of my time talking about the role that Ms. Lhamon will play at the Office of Civil Rights and the serious concerns I have from the last time she held that job. I have two chief concerns.

First, if confirmed, it seems that Ms. Lhamon will charge ahead to unraveling significant pieces of the previous Administration's Title IX rule. Second, I am convinced Ms. Lhamon understands or at least appreciates the limits of her authority.

When Secretary DeVos issued the Title IX rule on campus sexual assault, Ms. Lhamon tweeted about it, saying this, "Secretary DeVos presides over taking us back to the bad old days that pre-date my birth when it was permissible to rape and sexually harass students with impunity. Today's students deserve better, including

fair protections consistent with the law.” Quite frankly, that is just plain offensive. This type of overheated rhetoric doesn’t reflect the actual facts or ease partisan tensions on important and sensitive topics. Ms. Lhamon admitted in her meeting with me and her interview with Committee staff that she agrees with many aspects of the rule. Yet by her tweet, no one would know that. I imagine that she was taking aim at the due process protections of the rule, the opportunity for a hearing and cross-examination. But those two provisions are rooted in Federal court precedent. For example, the Sixth Circuit has said, and I quote, “the due process clause mandates that a university provide accused students a hearing with the opportunity to conduct cross-examination. If a public university has to choose between competing narratives to resolve the case, the university must give the accused student or his agent an opportunity to cross-examine the accuser and adverse witnesses in the presence of a neutral fact finder.”

The Third Circuit Court has said, “the basic elements of Federal procedural fairness in Title IX, sexual assault misconduct proceedings, include a real and meaningful hearing, and when credibility determinations are at issue, the opportunity for cross-examination of witnesses.” And there is no greater authority on legal protections for women than the late Supreme Court Justice Ruth Bader Ginsburg, when she echoed a similar position telling *The Atlantic* in 2018, “there has been criticism of some college codes of conduct for not giving the accused person a fair opportunity to be heard, and that is one of the basic tenets of our system. As you know, everyone deserves a fair hearing.” But I have concerns Ms. Lhamon doesn’t share these views. The last time she had this job, she issued guidance that allowed schools to forgo hearings and the due process rights of both parties to have cross-examination.

Instead, the guidance allowed schools to use what is known as a single investigator model, which vested in one person the power to be judge, jury, and executioner. So it seems to me, instead of listening to Justice Ginsburg, our nominee is listening to Lewis Carroll and has a sentence first verdict—verdict afterwards mentality. I don’t think due process protections or even the concept of cross-examination warrants the level of vitriol aimed at the DeVos rule. And I think Secretary DeVos deserves an apology. And if Ms. Lhamon is confirmed, I think she will need to be careful about any changes to this rule.

Federal courts will stand up for due process for the accused even if this Administration won’t. My second concern is that Ms. Lhamon doesn’t seem to appreciate the limits of the power of the executive branch. For example, she expressed a distorted view of the appropriate use of agency guidance, which is unlike regulations, they do not go through a formal notice or comment process. At a hearing before this Committee in 2014, Ms. Lhamon told the former Chairman, Lamar Alexander, that she believes the guidance is binding on the institutions of higher education. Yet here is what the experts say on that. The Administrative Conference of the United States says the guidance documents are nonbinding statements of interpretation, policy, and advice about the implementation of statutes or regulations.

The Supreme Court has said that guidance is meant to advise the public and does not have the force and effect of law. However, Ms. Lhamon bullied schools into complying with guidance by telling them that they could lose Federal funding, the ultimate punishment that has rarely been used. If they did not abide by guidance documents saying, and this is a quote, “do not think it is an empty threat.” While Ms. Lhamon told me that her enforcement practices were enforcing the law not guidance, her guidance laid out overly prescriptive requirements in institutions like a specific standard of evidence and specific investigative practices not found anywhere in civil rights law.

Courts have also criticized its enforcement posture of OCR under Ms. Lhamon’s leadership. The Seventh Circuit pointed out that multiple circuit courts have considered the guidance and accompanying pressure of the Department of Education’s Title IX investigation, gives an accused student a story about why an institution, “might have been motivated to discriminate against males accused of sexual assault.” Even OCR employees during Ms. Lhamon’s tenure recognized the pressure OCR put on universities.

A lawyer who worked in OCR in both the Obama and the Trump administration said in an interview that, “we did see some bad cases in the Obama era, cases where it basically didn’t matter what the evidence there was, the college was going to find against the defendant, the male defendant, no matter what. I think the schools felt pressure under the Obama guidance.” So colleges and universities are right to be confused if she is saying to them following her guidance is mandatory and then telling Congress that she means something different. That sort of pressure comes from the top and Ms. Lhamon’s history is deeply troubling, if not outright disqualifying.

Last, I would like to submit six letters into the record representing over 100 professors, attorneys, Title IX experts, and other professionals opposing Ms. Lhamon’s return to the OCR at the Department of Education.

The CHAIR. Thank you, Senator Burr. Oh, so ordered.

[The following information can be found on page 98 in Additional Material]

Senator BURR. Next, I want to touch briefly on the General Counsel position. The General Counsel probably has the most difficult job of making sure Department officials follow the law the way we here in Congress wrote it. So I hope that as a lawyer, Ms. Brown, you will see that happens. One of the big issues I am concerned about in this Administration is going to take the position that they have the authority to issue mass student loan forgiveness. The Department of Education is expected to issue a legal opinion on that issue.

However, the Trump administration determined that the Department did not have such authority, and their legal argument, quite frankly, is very convincing. Ms. Brown, you will likely play a role in formulating and signing off on the legal opinion for this Administration, so I am interested in hearing your thoughts on that. In my view, nowhere in the law do I see the authority.

To quote the Supreme Court, “Congress does not, one might say, hide elephants in mouseholes.” To find the Federal Government

has had this authority and no one knew it until now would be a huge elephant. Last, before I close, I want to mention an issue I am having with this Administration when it comes to responses, Madam Chair, for nominees. As part of the vetting process, I have been asking all nominees about their social media accounts. One, tell me if they have them and what they have posted, and two, to tell me if they have ever deleted posts or accounts. For some reason, none of the nominees want to answer the second question.

To me, this is unacceptable, and it makes it seem like these nominees have something to hide. I have written the White House about this, and I expect to get an answer soon. So to our witnesses, again, welcome. I look forward to hearing from all of you today in asking how you will do on these important issues that affect your job within the Department of Education. I thank the Chair. I yield the floor.

The CHAIR. Thank you, Senator Burr. We will now introduce today's witnesses. And I will begin with Catherine Lhamon, President Obama's nominee to serve as Assistant Secretary for Civil Rights at the Department of Education. She has a proven record as a champion for students and civil rights. When she was previously nominated to serve in this role by President Obama and confirmed in the Senate by a voice vote, she worked to combat sexual assault on college campuses, protect transgender students, worked to reduce the use of seclusion and restraint, fought to eliminate racial disparities in school discipline, and enforced civil rights laws to protect students across our Country.

Before joining the Administration, she worked on legal and civil rights issues as Director of Impact Litigation at Public Counsel, a California based pro bono law firm, as Assistant Legal Director at the ACLU of Southern California, where she practiced law for a decade, and as a teaching fellow and supervising attorney in the appellate litigation program at Georgetown University Law Center. And after her last stint as Assistant Secretary, she went on to continue the work of fighting for civil rights through her time as Chair on the U.S. Commission on Civil Rights, her work litigating civil rights cases with the National Center for Youth Law, and as Legal Affairs Secretary to the Governor of California.

She currently serves as the Biden—in the Biden administration, as Deputy Assistant to the President and Deputy Director of the Domestic Policy Council for Racial Justice and Equity. Mr. Lhamon is a graduate of Amherst College and received her J.D. at Yale Law School. Ms. Lhamon, I am so pleased to have you with us and I am absolutely thrilled the President chose to nominate you. And I look forward to your testimony. Next, we have Senator Van Hollen, who has joined us today, who will be introducing Lisa Brown.

Senator Van Hollen, welcome.

#### STATEMENT OF SENATOR VAN HOLLEN

Senator VAN HOLLEN. Well, thank you. Thank you, Chair Murray, Ranking Member Burr, to all the Members of the Committee for the opportunity to introduce the President's nominee to serve as General Counsel for the Department of Education, Lisa Brown. Ms. Brown is an accomplished lawyer and a proud Marylander with an exemplary record of public service. And I know that if con-

firmed, her experience, her character, and her values will be a great benefit to the Department of Education and to our Country at this pivotal moment in our history. Lisa Brown has spent her career at the intersection of public service, education, justice, and the law.

After receiving her B.A. magna cum laude from Princeton and her J.D. with honors from the University of Chicago, Ms. Brown served as a Staff Attorney at the Center for Law in the Public Interest in Los Angeles, where she fought against employment discrimination, stood up for the rights of the homeless, and protected our fellow citizens against consumer fraud. She later joined the firm of Shane Gardner and was made partner in 1994. While working there, she continued to pursue public interest law on a pro-bono basis.

Her passion for public service eventually led her to the American Constitution Society for Law and Policy, where she served as Executive Director and was responsible for strengthening an organization dedicated to equal justice under law, serving the public interest, and guarding against the concentration of power. For the last 8 years, she has been a Vice President and General Counsel for Georgetown University. In that capacity, she has been a key adviser to the University's President at top levels of decision-making and coordinates a vast team of lawyers and outside counsel. And as has been the case throughout her career, Lisa Brown has always made time to work hands on with those she served. She has been a mentor to countless first generation college students on campus and actively makes herself available and her wisdom available to all members of the Georgetown community.

As you mentioned, Madam Chair, her experience includes deep knowledge of the Washington and Federal Government. She served in two White Houses. First in the Office of Al Gore as Counsel to the Vice President, and later as Assistant to the President and Staff Secretary under President Obama. She has also held positions as an Attorney Advisor in the Office of Legal Counsel at the Department of Justice and as Acting Chief Performance Officer at OMB. Colleagues, we need Lisa Brown's experience and knowledge in this moment, one where we have a real opportunity to address the challenges facing all our students and educators head on from tackling the education rifts exasperated by COVID-19, to expanding access to quality early education, to fully funding Title I and IDA to confronting a skyrocketing higher education affordability crisis and much more.

Colleagues, on a personal note, the reason I can so confidently testify to Lisa Brown's unassailable character and her integrity is I have known Lisa for most of my life. We attended grade school together and we have kept in touch over the years. And I am really thrilled that Lisa has decided to rededicate herself, if the Committee votes and Congressional votes are willing, to public service. I do also want to acknowledge her wonderful family members who are here, Kevin Cullen, who is a nationally renowned Oncologist and Director of Oncology at University of Maryland Cancer Center, and their son, Philip.

In closing, there is no doubt in my mind that, if confirmed, Lisa Brown will serve the country well as the next General Counsel in

the Department of Education. I think she will make us all proud and I urge her confirmation.

The CHAIR. Thank you so much, Senator Van Hollen. And Ms. Brown, thank you for joining us today as well. And now I am going to virtually welcome Congressman George Miller to introduce Roberto Rodriguez.

#### STATEMENT OF CONGRESSMAN MILLER

Mr. MILLER. Thank you very much, Madam Chair, Ranking Member Burr. It is interesting to hear your testimony, Senator Burr. You have delved into it deep. I loved working with you in the past. Roberto Rodriguez is President Biden's nominee to be Assistant Secretary for Planning, Evaluation and Policy Development at the U.S. Department of Education. He is joined today in the hearing room, as you mentioned, Madam Chair, by his wife, Rosio and his children, Isabella and Andres.

I have known Roberto for 20 years, for 20 years or more as a leader who listens and is laser focused on advancing equity and improving outcomes for students. This year, the pandemic caused unprecedented changes—challenges and changes. Students' in-person learning was curtailed, access to preschool and child care was limited. The pursuit of a college degree was interrupted for too many. Educators stretched to learn new ways to connect remotely with their students and families. The pandemic took its toll on the social, emotional, and mental health needs of our students.

The lack of access to broadband and to technology necessary for learning widened the inequities in our system—in our systems, excuse me. It was a critical time to meet the President Biden's—the President's charge to build back better and to shape the future of our schools and colleges and universities. Roberto Rodriguez will take on the task of developing solutions for these and other problems in our education system, crafting policies to meet the challenges head on, and shaping change for the future of our Nation's educational system. He has expertise and proven leadership and the dedication needed to meet these challenges and make these changes. I believe Roberto Rodriguez is the perfect leader for this time and for this position.

Roberto has spent his career working to tackle the challenges of education that impedes progress for our students, first as an advocate and later as an aide—a senior aide to Senator Ted Kennedy on this Committee, and then to the Obama White House. Most recently, he has been at the helm of a nonprofit organization called Teach Plus, working to bridge policy and practice to prepare teachers to craft and lead solutions beyond their classrooms for their colleagues, students, and schools. The results have been truly remarkable. Under his leadership, Teach Plus has been invited to work by Governors, state school superintendents, and state legislators to craft policies and policy solutions from Texas to Mississippi to Massachusetts and beyond.

Cities across the country to district and system leaders have sought out Teach Plus to coach and support teachers in shaping and leading instructional change. Policy makers and educational leaders are recognizing the value of this productive partnership. It proves the importance of bottom-up change in education with the

power of teachers working in partnership with policy makers, system leaders, and families to gain this impact. Roberto is known for his determination and for working with purpose to build common ground. His Democratic colleagues know him as someone who is committed and can unite diverse interests around a unified agenda. And his colleagues across the aisle respect him as a peer who listens and engages in fair and productive ways to work to build the agreement.

As a member of the Senate staff, he brought together Ted Kennedy, Judd Gregg, John Boehner, and myself to reach agreement on the legislation, No Child Left Behind. No easy task with that room full of people. Fortunately, this Committee has worked to improve on our Act and worked on it. And I say you are doing the right thing. And it is very important that you have continued the oversight here, whether you agree with what we wrote originally or not, it is important that oversight continue. It required team legislative and political strategy, careful management of our caucus and staff, and clarity in policy objectives and mission lessons Roberto honed working under seven authorizations, even closely with me and my staff.

Roberto brings deep knowledge and experience to make systems and policy changes in the Federal, state and local levels. In 2009, President Obama tapped him to work swiftly to implement the American Recovery and Reinvestment Act. He went on to frame the cradle to career education agenda for the President. He listened and accounted for the needs of students, parents, educators, and borrowers. He placed a high value on his evidence and was aimed at for new ideas and policy changes that would make public education more responsive to their needs. To work closely with this Committee in 2015 to forge the support of the passage of Every Student Succeeds Act, the bill President Obama called the Christmas miracle when he signed it in the White House.

Most importantly, he brings a strong service of character and sincere commitment of his personal values and mission. He will ascribe to those values in his upbringing, and his examples are set by his parents. But they also will come from his time working for underserved families and change in Detroit, Michigan, and from his time helping high school students reach their dreams of attending college in Cambridge, Massachusetts, and from his leadership in a broad coalition of civil rights organizations working to improve education in Washington, DC. I have seen these values applied to his work to build the movement of teacher leadership and to prepare a network of hundreds of educators across 12 states to become agents of change and to shape the future of education in their school districts and their states.

To those of you who know Roberto well, and for those of you who are meeting him for the first time, I am confident that you will agree that President Biden has made an excellent choice for nominating him as Assistant Secretary for Planning, Evaluation and Policy Development. Thank you very much for this opportunity.

The CHAIR. Thank you, Congressman Miller. And with that, we will—and Mr. Rodriguez, welcome to you. And with that, we will begin with our witness testimony.

We will begin with Ms. Lhamon. You may start.

**STATEMENT OF CATHERINE LHAMON TO BE ASSISTANT  
SECRETARY FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION**

Ms. LHAMON. Chair Murray, Ranking Member Burr, distinguished Members of this Committee, thank you for the honor of appearing before you today, and Chair Murray thank you for your gracious introduction. I am humbled by and grateful to the President for nominating me to this crucial position. And I was deeply honored that the Senate confirmed me for the same position by unanimous consent in 2013. And I am delighted that you now consider me for returning to the work I love at the Office for Civil Rights at the U.S. Department of Education.

I know from my prior experience there that the work is hard and critically important. I also know that if I am privileged to be confirmed for this role, I will continue to work with you on ways to advance the civil rights guarantees Congress has enacted and protected for more than six decades. I have been privileged to work in Federal Government roles for 1 month shy of 8 years protecting civil rights, and I worked for 2 years advising California's Governor on legal affairs, including during this once in a century pandemic.

I am familiar with the work necessary to honor the public's trust, and I love and respect it. I learned that reverence for public service from my mother. We had no lawyers in our family, but I chose to become one after hearing my mother's stories of growing up in racially segregated Virginia and the profound difference that public interest lawyering made in her life. National civil rights heroes, including Oliver Hill, who among others, litigated *Brown v. Board of Education*, were family friends and neighbors.

My mother passed Mr. Hill's house every day on her way to school, and Mr. Hill often drove her to school along with his son. Oliver Hill's child's experience and my mother's in segregated schools informed his passion to help this country live up to our constitutional ideals. My mother attended racially segregated schools before and after *Brown*. She was not yet 10 years old when the case was decided. But the Supreme Court's ruling in *Brown v. Board of Education* that the circumstances of my mother's schooling violate our Constitution shaped her understanding of justice and of the American promise. Her experiences ultimately informed my own expectations for what it means to serve and for why I wanted and still want to serve.

I will bring those lessons with me back to OCR if I have the privilege to return. People across America come to OCR with their deepest hurts, asking the Office to evaluate whether their rights have been violated and if so, how to correct it. I love the challenge of applying law to specific facts, working with the expert staff in OCR's 12 regional offices to do as much justice as we can because those students and school communities who come to OCR need us to make real in their lives the laws of this body and enacts.

OCR does its job best when it efficiently, fairly, and thoroughly resolves investigations to protect student rights, shares its expertise about how to apply the law to facts to prevent discrimination from occurring in the first instance, and works with school districts and colleges and universities around the country to satisfy the law before students are hurt. That work is and has been bipartisan. OCR in Republican as well as Democratic Presidential Administra-

tions has achieved breathtaking results for students and schools serving as stewards against harms Congress promised the country no person should live.

In Republican as well as Democratic Administrations, OCR has ended segregated schooling, protected students with disabilities from exclusion and from bullying, and stopped sexual harassment from recurring. Now, as this Nation recovers from the global pandemic and our students and educators return to schools together, the beautiful civil rights promises Congress has long made for us have particular importance.

OCR's work now is as urgent as it ever has been. If confirmed, I would be so pleased to rejoin OCR staff as they bring their talent, their expertise, and their dedication to do right by people who turn to them. I look forward to today's hearing and I thank you for this opportunity.

[The prepared statement of Ms. Lhamon follows:]

PREPARED STATEMENT OF CATHERINE LHAMON

Chair Murray, Ranking Member Burr, and distinguished Members of this Committee:

Thank you for the honor of appearing before you today. I am humbled by and grateful to the President for nominating me to this crucial position. I was deeply honored that the Senate confirmed me for this same position by unanimous consent in 2013 and am delighted that you are now considering me for returning to the work I love at the Office for Civil Rights at the U.S. Department of Education.

I know from my prior experience there that the work is hard and critically important. I also know that if I am privileged to be confirmed for this role that I will work with you and continue the conversation. I would be so pleased to engage with you and your offices on ways to advance the civil rights guarantees Congress has enacted and protected for more than six decades.

I have been privileged to work in Federal Government roles for 1 month shy of 8 years protecting civil rights, and I worked for 2 years advising California's Governor on legal affairs, including during this once-in-a-century pandemic. I am familiar with the work necessary to honor the public's trust, and I love and respect it.

I learned that reverence for public service from my mother. We had no lawyers in our family, but I chose to become one after hearing my mother's stories of growing up in racially segregated Virginia, and the profound difference effective public interest lawyering made in her life.

National civil rights heroes, including Oliver Hill who, among others, litigated *Brown v. Board of Education*, were family friends and neighbors. My mother passed Mr. Hill's house every day on the way to school and Mr. Hill often drove her to school along with his son. Oliver Hill's child's experience, and my mother's, in segregated schools informed his passion to help this country live up to our constitutional ideals. My mother attended racially segregated schools before and after *Brown*—she was not yet 10 years old when the case was decided—but the Supreme Court's ruling in *Brown v. Board of Education*—that the circumstances of my mother's schooling violated our constitution—shaped her understanding of justice and of the American promise. Her experiences ultimately informed my own expectations for what it means to serve and for why I wanted, and still want, to serve.

I will bring those lessons with me back to OCR if I have the privilege to return. People across America come to OCR with their deepest hurts, asking the office to evaluate whether their rights have been violated and if so how to correct it. I love the challenge of applying law to specific facts, working with the expert staff in OCR's 12 regional offices to do as much justice as we can, because those students and school communities who come to OCR need us to make real in their lives the laws this body enacts.

OCR does its job best when it efficiently, fairly, and thoroughly resolves investigations to protect student rights; shares its expertise about how to apply the law to facts to prevent discrimination from occurring in the first instance; and works with school districts and colleges and universities around the country to satisfy the law before students are hurt.

That work is and has been bipartisan. OCR in Republican as well as Democratic Presidential Administrations has achieved breathtaking results for students and schools, serving as stewards against harms Congress promised the country no person should live. In Republican as well as Democratic Administrations, OCR has ended segregated schooling, protected students with disabilities from exclusion and from bullying, and stopped sexual harassment from recurring.

Now, as this Nation recovers from the global pandemic, and our students and educators return to schools together, the beautiful civil rights promises Congress has long made for us have particular importance. OCR's work now is as urgent as it ever has been. If confirmed, I would be so pleased to rejoin OCR's staff as they bring their talent, expertise, and dedication to do right by people who turn to them.

I look forward to today's hearing and I thank you for this opportunity.

The CHAIR. Thank you very much.

Ms. Brown.

**STATEMENT OF ELIZABETH BROWN TO BE GENERAL  
COUNSEL, DEPARTMENT OF EDUCATION**

Ms. BROWN. Chair Murray, Ranking Member Burr, and Members of the Committee, it is my honor to appear before you today as President Biden's nominee to serve as General Counsel of the Department of Education. I want to thank Senator Van Hollen for that wonderful introduction. I am deeply appreciative of and humbled by President Biden and Secretary Cardona's trust in me. And if confirmed, I will do my absolute best to justify that trust. I would like to thank the Committee for considering my nomination today and for the opportunity to meet with members of your staff before this hearing.

I also want to thank my family and especially my husband, Kevin Cullen, and my son Philip Cohen for their constant love and support and for their shared dedication to educational opportunities for all. My parents believed that the most important thing they could give us was a good education. My father frequently told us that with quality education and hard work, you can do or be anything you want. My parents instilled in me not just a personal love of education, but also a dedication to providing educational opportunities to others as a teacher, a board member, and a lawyer. The American dream, the promise of opportunity for those who work hard depends upon a quality education.

The ability to achieve that dream should not be limited to those with resources or living in certain zip codes. An excellent education should be available to everyone. This is only more urgent today as we emerge from the COVID pandemic. The Department's role in supporting students whose academic progress and mental health have been deeply impacted, and in closing the widening achievement gap, and in providing opportunity to adults reentering the workforce are of critical importance to the recovery of our Nation. I believe that the work of the Department's General Counsel is vital to that effort. Together with the over 100 career lawyers and other professionals in the Office of General Counsel, the General Counsel plays a critical role in advancing the Department's mission by providing sound legal advice and counsel to the Secretary and officials across the Department.

The General Counsel's responsibilities include advising colleagues on faithful implementation and enforcement of the laws that Congress has enacted and working with colleagues across the

Department to further the Department's mission. It is a position I have come to admire and respect over the course of my career. After serving in a number of different legal positions, I found my calling in the role of in-house Counsel. I was first introduced to the job when I served as counsel to Vice President Gore and have spent the past eight and a half years as Vice President and General Counsel of Georgetown University. There is nothing better than helping a mission driven organization achieve its goals while avoiding legal shoals.

The opportunity to combine my two passions, public service and education, with my favorite job by serving as General Counsel of the Department of Education is compelling to me. I believe that my more than 30 years of experience working for the Government, a Presidential transition team, a major university and a law firm has prepared me for this role. It has given me a broad and deep understanding of both how Government works and the role of a General Counsel. I understand the roles of each branch of Government and the distinction between policymaking and legal analysis. I have had the opportunity to work and advise on a wide range of legal matters, including litigation, financial transactions, ethics investigations, regulatory matters and compliance, and I am familiar with many of the legal issues that are within the Department's purview.

I enjoy leading a team of expert lawyers and would relish the opportunity to work with the excellent lawyers in the Department of Education's Office of General Counsel and across the Government to give American people the best representation possible, guided by what the law and constitution require. If confirmed, I promise to do my best to provide sage advice and counsel to help the Department achieve its mission so that every parent can tell their children, as my father told his three daughters, that if you work hard and earn a quality education, you can do anything you want.

It would be an honor to serve as General Counsel of the Department of Education and to partner with you to provide students across the country with the best possible education. Thank you again for the opportunity to appear before you and I look forward to your questions.

[The prepared statement of Ms. Brown follows:]

PREPARED STATEMENT OF LISA BROWN

Chair Murray, Ranking Member Burr, and Members of the Committee, it is my honor to appear before you today as President Biden's nominee to serve as General Counsel of the Department of Education. I am deeply appreciative of and humbled by President Biden and Secretary Cardona's trust in me. If confirmed, I will do my best to justify that trust.

I would like to thank the Committee for considering my nomination and for the opportunity to meet with members of your staff before this hearing.

I also want to thank my family, and especially my husband Kevin Cullen and our son Philip, for their love and support and their shared commitment to educational opportunities for all.

My parents believed that the most important thing they could give their three daughters was a good education. My father frequently told us that, with a quality education and hard work, we could do or be anything we wanted. My parents instilled in me not only a personal love of learning, but also a dedication to providing educational opportunities for others, as a teacher, board member and lawyer.

The American Dream—the promise of opportunity for those who work hard—depends upon a quality education. The ability to achieve that dream should not be lim-

ited to those with financial resources or living in certain zip codes. An excellent education should be available to everyone. This is only more urgent today, as we emerge from the COVID pandemic. The Department's role in supporting students whose academic progress and mental health have been deeply impacted, closing the widening achievement gap, and providing opportunity to adults reentering the workforce are of critical importance to the recovery of our Nation.

I believe the work of the Department's General Counsel is vital to that effort. Together with the over 100 career lawyers and other professionals in the Office of General Counsel, the General Counsel plays a critical role in advancing the Department's mission by providing sound legal advice and counsel to the Secretary and officials across the Department. The General Counsel's responsibilities include advising colleagues on faithful implementation and enforcement of the laws that Congress has enacted, and working with colleagues across the government to further the Department's mission. It is a position I have come to admire and respect over the course of my career.

After serving in a number of different legal positions, I found my calling in the role of in-house counsel. I was first introduced to the job when I served as Counsel to Vice President Gore and have spent the past eight and a half years as Vice President and General Counsel of Georgetown University. There is nothing better than helping a mission-driven organization to achieve its goals while avoiding legal shoals. The opportunity to combine my two passions—public service and education—with my favorite job—by serving as General Counsel of the Department of Education is compelling to me.

I believe that my more than thirty years of experience working for the government, a Presidential transition team, a major university and a law firm has prepared me for this role. It has given me a broad and deep understanding of both how government works and the role of a general counsel. I understand the roles of each branch of government, and the distinction between policymaking and legal analysis. I have had the opportunity to work and advise on a wide range of legal matters, including litigation, financial transactions, ethics, investigations, regulatory matters and compliance, and am familiar with many of the legal issues that are within the Department's purview. I enjoy leading a team of expert lawyers, and would relish the opportunity to work with the excellent lawyers in the Department of Education's Office of General Counsel and across the government to give the American people the best representation possible guided by what the law and Constitution require.

If confirmed, I promise to do my best to provide sage advice and counsel to help the Department achieve its mission, so that every parent can tell their children, as my father told his three daughters, that if you work hard and earn a quality education, you can do anything you want. It would be an honor to serve as General Counsel of the Department of Education and to partner with you to provide students across the country with the best possible education.

Thank you again for the opportunity to appear before you. I look forward to your questions.

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The CHAIR. Thank you, Ms. Brown.  
Mr. Rodriguez.

**STATEMENT OF ROBERTO RODRIGUEZ TO BE ASSISTANT SECRETARY FOR PLANNING, EVALUATION AND POLICY DEVELOPMENT, DEPARTMENT OF EDUCATION**

Mr. RODRIGUEZ. Madam Chair, Ranking Member Burr, Members of the Committee, thank you for the opportunity to appear before you today. I am proud to share this dais as well with Ms. Brown and Ms. Lhamon. And thank you for the opportunity to introduce my wife, Rosio, my two children, Isabella and Roberto Andres, before this Committee. They are my pride and joy and I am so pleased they are here with me.

I am honored by the trust that President Biden and Vice President Harris have placed in me with this nomination to serve as Assistant Secretary for Planning, Evaluation and Policy Development at the Department of Education. And if confirmed, I will bring

steadfast commitment and a sense of duty to the Department that have been the hallmark of my public service. Educational equity and opportunity stand as guiding principles in my own career.

I learned from a young age the value of education from my parents and from my grandparents who came to our Country with a strong belief that education and hard work are pathways to a better life. As the son of educators growing up in public education, I learned the importance of service, community, and opening doors for those whose voices are seldom heard.

As migrant and labor leader Cesar Chavez said, once of education, “our ambitions must be broad enough to include the aspirations and needs of others for their sake and for our own.” Our collective charge of providing all children an excellent education from the earliest years through workforce readiness and college success is one that involves us all. It calls us to listen to one another and to build common ground as policymakers, educators, community members, and parents working together to get things done for students. It requires us to remove barriers to opportunity and to address inequities in our system. If I am fortunate to be confirmed, I look forward to working closely with Secretary Cardona, with President Biden and his staff, and with each of you to meet that charge.

Equal access and educational excellence are at the heart of the Department’s mission, and there has never been a more important time to fulfill that mission as we recover from this pandemic and look to a brighter future. The pandemic has posed great hardships. It has tested our resolve. But it has also revealed resilience and ingenuity among teachers, parents, and students. The Department plays an important role in harnessing innovations, ideas, and best practices that have emerged in this challenging year.

If confirmed, I commit to promoting communication and awareness to foster shared learning of those lessons, as well as accountability for meeting the requirements set forth by Congress under the American Rescue Plan. I will also fulfill the other duties of this position, including developing and reviewing the Department’s budget and utilizing data to inform the Department’s programs. I bring commitment, experience, and an affinity for public policy to these responsibilities. I bring those from early in my career leading a diverse civil rights coalition to advance policy and advocacy and better meet the needs of Latino and bilingual students. I bring these from my time working on this esteemed Committee under one of my great mentors, Senator Kennedy, building common ground and shared purpose to forge bipartisan agreements on Federal policy.

I bring these from my time on the White House Domestic Policy Council working to build and advance President Obama’s education agenda and to craft interagency efforts to improve outcomes for youth and adults. More recently, I have had the privilege of working with hundreds of exceptional educators across the country, bringing their voices and vision to systems change. Leading that teacher leadership movement has inspired me to connect the expertise of educators to policymaking.

Working across diverse states and communities geographically and politically also taught me about the importance of shaping pol-

icy in a manner responsive to local needs. I worked hard to bring teachers' voices into that policy conversation because I know effective policy is a tool that can respond to urgent challenges, and a tool to inspire us to envision something better. Effective policy is solutions oriented. It focuses on the assets and aspirations of our students and families. Effective policy should emerge from robust evidence and from knowledge about what we know works to support teaching and learning.

If confirmed, you have my commitment to bring a holistic, bottom up, and inclusive approach to policymaking, to promote innovation and a learning culture that will complement and inform policy and programs at the Department, and to pursue the strategic use of data in ways that are open and transparent, but also actionable to benefit students and borrowers, educators and families. Thank you for the opportunity to share my background and priorities.

I am eager to get to work, and I look forward to learning about your interests and answering your questions. Thank you.

[The prepared statement of Mr. Rodriguez follows:]

PREPARED STATEMENT OF ROBERTO RODRIGUEZ

Chair Murray, Ranking Member Burr, Members of the Committee, thank you for the opportunity to appear before you today.

Before I begin, it's a pleasure to introduce my wife, Rocio, and my children, Isabela and Roberto Andrés to the Committee. They are my pride, joy, and constant source of support.

I am honored by the trust that President Biden and Vice President Harris have placed in me with this nomination to serve as Assistant Secretary for Planning, Evaluation and Policy Development at the Department of Education.

If confirmed, I will bring steadfast commitment and a sense of duty to the Department that have been the hallmark of my public service.

Educational equity and opportunity stand as guiding principles in my own career. I learned from an early age of the value of education from my parents, and from my grandparents who came to our Country with the strong belief that education and hard work are pathways to a better life. As the son of educators growing up in public education, I learned the importance of service, community, and opening doors for those whose voices are seldom heard. As Cesar Chavez said of education, "... our ambitions must be broad enough to include the aspirations and needs of others, for their sake and for our own."

Our collective charge of providing all children an excellent education—from the earliest years through workforce readiness and college success—is one that involves us all. It calls us to listen to one another and build common ground as policymakers, educators, community members, and parents, working together to get things done for students. It requires us to remove barriers to opportunity and address inequities in our system. Education policy is an important tool to advance these principles. If confirmed, I look forward to working closely with Secretary Cardona, with President Biden and his staff, and with each of you to meet this charge.

Equal access and educational excellence are at the heart of the Department's mission. There has never been a more important time to fulfill that mission as we recover from this pandemic and look forward to a better future.

This pandemic has posed great hardships and tested our resolve. It has also revealed resilience and ingenuity among teachers, parents and students. The Department plays an important role in harnessing the innovations, ideas and best practices that emerged during this challenging year. If confirmed, I will commit to promoting communication and awareness to foster shared learning of those lessons as well as accountability for meeting the requirements set forth by Congress under the American Rescue Plan. I will also fulfill the other duties of this position, including developing and reviewing the Department's budget and utilizing data to inform the Department's programs.

I bring commitment, experience, and an affinity for public policy to these responsibilities.

- Early in my career working at a national civil rights organization, I led a coalition of over 20 organizations to author policy recommendations and advocate at the Federal level to address the needs of Latino and emergent bilingual learners;
- As Senator Kennedy's education counsel on this esteemed Committee, I worked to build common ground and shared purpose to forge bipartisan agreement on Federal policy, from No Child Left Behind to the Higher Education Opportunity Act;
- On the White House Domestic Policy Council, I worked to build, promote and advance President Obama's cradle-through-career education agenda, crafting interagency efforts to improve outcomes for youth and adults.

More recently, I've had the privilege of working with hundreds of exceptional educators across the country, helping to bring their voices and vision to systems change. Leading this teacher leadership movement inspired me to connect the expertise and experience of educators to policymaking. Working across diverse states and communities—geographically and politically—also taught me about the importance of shaping policy in a manner responsive to local needs. Those diverse perspectives can yield stronger solutions across rural, urban, and tribal communities—in red states and in blue states.

I worked to bring teachers into the policy conversation because I know effective policy is a tool that can help us respond to challenges while also inspiring us to envision something better. Effective policy is solutions-oriented—it focuses on the assets and aspirations of our students and families. Effective policy should emerge from robust evidence and knowledge about what works best to support teaching and learning.

If confirmed, you have my commitment to bring a holistic, bottom-up and inclusive approach to education policymaking; to promote innovation and a learning culture that will complement, inform and guide policy and program implementation; and to pursue the strategic use of data in ways that are open, transparent and actionable for the benefit of educators, families, students and borrowers.

Thank you for the opportunity to share my background and priorities. I am eager to get to work and look forward to learning about your interests and answering your questions.

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The CHAIR. Thank you very much. We will now begin a round of 5 minute questions. I ask my colleagues again to keep close track of your clock, stay within the 5-minutes. We do have two votes beginning at 11:30 a.m. Ms. Lhamon, not only do you have extensive experience advancing civil rights at both the state and the Federal level, but you have previously served as the Assistant Secretary for Civil Rights, giving you particular insight into the role's responsibilities and requirements. Unfortunately, since you led the Office for Civil Rights, there were efforts to roll back the enforcement of civil rights protections for students.

Over the last 4 years, the Office backed away from progress made to protect the rights and safety of women and transgender students and rolled back the use of systemic investigations and lost staff. I am relieved to see the Biden administration and Secretary Cardona have already taken critical steps to return the office to its core mission.

I want to hear about your vision for OCR moving forward. So I wanted to ask you, if confirmed, how will your prior experience inform your approach to ensuring that all students have equal opportunities to obtain a high quality education?

Ms. LHAMON. Thank you so much for the question, Senator Murray, and also for the recognition that experience in Government informs the way that the work can and should be done. And I am very grateful to be on the cusp of, if confirmed, being able to return with that experience. And having known that career staff who are

so dedicated in the 12 offices around the country and the staff who are dedicated in the Office itself, it is a pleasure to consider the nomination together with my colleagues here on the dais, and I have an expectation that I would be able to work with them and with others in the front office, also at the office at the Department of Education.

Specifically for the Office for Civil Rights, it is crucially important to make sure that the Office returns to evenhanded enforcement that is fully consistent with the law, that the Office prioritizes all of its jurisdictional areas and so is advancing race discrimination, disability discrimination, and sex discrimination enforcement in an even handed manner. That the Office returns to civil rights data collection, which is statutorily mandated in a way that is comprehensive and gives the Office sufficient information to be able to evaluate civil rights concerns that exist in schools around the country, and also makes that information transparent and useful for families and educators around the country, not only for the experts at the Office for Civil Rights.

I am devastated about the loss of staff that I have witnessed in the four and a half years since I last was at the Department. And it is very important to me to be able to rebuild the offices and make sure that staff are able to carry a workload that is reasonable and that they can bring their expertise to civil rights in a way that we can expect civil rights enforcement to be real and lived for students in schools.

It is crucially important that the civil rights enforcement actually adhere to the statutes that Congress has written and give meaning to those promises that Congress has shared with all of us. And those are my priorities if I am able to be returned to the Office.

The CHAIR. Thank you very much for that. Mr. Rodriguez, the COVID-19 pandemic disrupted the last two school years for our Nation's students and upended school improvement efforts that were previously underway around the country. We also know the pandemic has in many ways worsened persistent achievement gaps. In recognition of the enormous undertaking facing the education system, Congress has provided, as you know, an unprecedented amount of funding to school districts to support students and educators and schools.

If confirmed, how will you help states, school districts, and educators use that funding effectively to help students recover from the pandemic and also get back to the important school improvement work that was required under the Elementary and Secondary Education Act?

Mr. RODRIGUEZ. Well, thank you, Senator, for the question. And undoubtedly we have faced an unprecedented set of challenges in this year. If confirmed, I would look forward to working closely with my colleagues at the Department and with the secretary to reinvigorate and further reinforce the strong partnership between the Federal Government and state and local leaders to reopen our schools safely and make sure that we are supporting all of our students in getting back to full time in-person learning, mitigating some of the challenges that we have seen around the social, emotional, academic, and well-being of our students, and doing more to

support their success and to support the strong partnership with families and parents in that process.

Implementing—sound implementation of the American Rescue Plan is a top priority, and the communities across the country have really relied on the strong partnership with the Department of Education and on the needed resources that Congress has provided to be able to reopen effectively, as well as to take on some of the challenges around bridging the digital divide, around doing more to make sure that we support the mental health infrastructure and support for our students who have experienced tremendous trauma during this time. So that would be a top priority for me if confirmed at the Department.

I also would look forward to continuing to implement with fidelity the, Every Student Succeeds Act that this Committee so carefully considered and helped enact years ago and has been a really important roadmap for state and local leaders to be able to close the achievement gap, hold our schools accountable.

Certainly, it has been an unprecedented year with respect to accountability and assessment, but I would look forward to making sure that states and districts have the guidance that they need to implement the, Every Student Succeeds Act with fidelity moving forward.

The CHAIR. Thank you.

Senator Burr.

Senator BURR. Thank you, Madam Chair. Ms. Brown, welcome. Even before you have had a hearing, the Office of the Department of General Counsel has been stacked with appointees who believe that student loans can just be canceled out of thin air. Here is my question. If confirmed, how would you manage conflicting legal opinions among you and your staff and who has the final determination of the legal opinion?

Ms. BROWN. Senator, thank you very much for that question. This is a very important issue. I understand that the White House has asked the Department of Education to work with the Justice Department in crafting a legal opinion on the ability to cancel student debt. If I am confirmed as General Counsel, I will dig into this issue. I will learn, read everything I can and analyze it to the very best of my ability.

My style, when deciding any issue actually is very much to bring different people around a table and to—so that I can thoroughly understand an issue and make sure that I am hearing different perspectives on it as I am making a decision. And then as General Counsel, I will make the best decision that I can and make the best recommendation to the Secretary.

Senator BURR. But can I interpret the buck stops with you? You

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Ms. BROWN. In my office, absolutely.

Senator BURR. Correct. Right. Ms. Lhamon, I have got a series of questions and they really require a yes or no answer. Do you believe in the concept of innocent until proven guilty?

Ms. LHAMON. I do.

Senator BURR. Do you believe an accused student is entitled to due process in a school disciplinary proceeding?

Ms. LHAMON. I don't want to over-lawyer my answer. Due process applies in public institutions and fair process applies in private, and I believe that students should have a fair process in administrative proceedings in schools.

Senator BURR. How about in public schools? You gave a different—

Ms. LHAMON. Yes, I think the umbrella applies in both places and I wanted to be precise about the term.

Senator BURR. You think an accused student should have the right to see all the evidence against them before they are asked to defend themselves against an allegation?

Ms. LHAMON. Senator, you asked about it right. And I expect that means a legal right. And in the current context, the timeline regulation that is operational now and that I would enforce if returned to the Office for Civil Rights does afford that right to students.

Senator BURR. Should an accused student be allowed to see evidence against them that could clear them of charges?

Ms. LHAMON. Likewise, Senator, the current timeline regulation, which is operational now, gives students that right.

Senator BURR. Do you think a complainant and an accused student should be entitled to a hearing?

Ms. LHAMON. Senator, the current regulation entitles, in a higher education institutions, students to a hearing. There is a different rule applicable for K–12.

Senator BURR. Do you believe a complainant and an accused student should have a right to cross-examine—cross-examination?

Ms. LHAMON. The current regulation affords, in the hearing process, a right of cross-examination, not student to student, but through a representative.

Senator BURR. Of the questions that I asked relative to current Title IX guidelines—of those, how many do you plan to change?

Ms. LHAMON. Senator, I won't be in control of what change does or does not happen with respect to the Title IX regulation. There is a process that has begun at the Department of Education and that process will involve the Department. And I, if I am privileged to return, evaluating public comments and listening to the expertise of staff who are at the Office for Civil Rights now, who have in the four and a half years since I left, been honing that expertise and applying it to enforcement experience that I don't have because I have not been there.

Senator BURR. When you and I met, you told me that you have been painted as someone who only believes victims, but that you didn't agree with that. Would you support keeping a presumption of innocence requirement in the current Title IX rule, if the Title IX rule was changed?

Ms. LHAMON. Again with the—I am trying not to over-lawyer, but there isn't a presumption of innocence in the existing Title IX regulation. And in fact, the Title IX regulation in that the Trump administration issued took pains to note that criminal procedure does not apply in schools.

Senator BURR. Correct. My question was, would you support keeping a presumption of innocence?

Ms. LHAMON. Yes, Senator, I understand that, but that—I couldn't keep something that is not there. It is not there now.

Senator BURR. Last question. My understanding is that during your time at OCR, you did not conduct any notice and comment rulemaking, is that right?

Ms. LHAMON. That is correct, Senator.

Senator BURR. Yet during your time, you issued more than 20 guidance documents. These documents include the expanded definition of sexual harassment, discrimination based on sex, prescriptive grievance procedure, scrutiny over how school discipline students. None of these documents went through any notice or comment process, meaning people had the opportunity to comment and you could digest that in your final decision. Am I right?

Ms. LHAMON. Senator, we did not use the notice and comment process. We did take in quite a bit of information from people with all kinds of views on the various topics, including, for example, on the sexual harassment guidelines. There were more than 35 listening sessions at the White House, and there were 3 years of meetings with people of a whole variety of interests on the topic before the Department issued that guidance.

Senator BURR. Thank you, Chair.

The CHAIR. Senator Casey.

Senator CASEY. Thank you, Chair Murray. I wanted to start, I have some questions for Ms. Lhamon and Mr. Rodriguez, but I wanted to start where Senator Burr left off on some of the—under broad heading of campus sexual assault issues. I worked on this for a lot of years and got passed my bill, passed back in 2014 as part of the reauthorization of the Violence Against Women Act. It was called the Campus Save Act. It imposed on colleges and universities a lot more reporting and a lot more by way of practices they had to put in place than they had been—than had previously governed this set of issues. And I have to say, and I know I will offend lots of people in multiple Congresses, multiple administrations, Democrat or Republican, and I will even offend colleges and universities.

But prior to 2014, or I should say, prior to the work the Obama administration did, I guess, starting back in 2010, 2011, and then ultimately we put into effect the changes that Campus Save brought and then ultimately changes with the guidance by the Department. Prior to that, I think when it came to sexual assault on college campuses, I think our Federal policy was an insult to women. We went generation after generation of young men on college campuses engaged in acts of sexual assault with virtually no repercussions at all. Generation after generation.

If colleges and universities are offended by my characterization or members of different administrations, Democrat and Republican or Congress, I don't really care if I have offended them. It was an insult where instance after instance—one Justice Department study in 2016, which was challenged over and over again and then was confirmed, 1 in 5 women as of 2016, 1 in 5 women experiencing sexual assault on college campuses, and very few people in either party were doing enough about it until President Obama, Vice President Biden, the Department of Education, the Administration overall and some Members of Congress were working on it.

There are still debates about how to implement these changes. But the idea that everything was Okay until the 2011 guidance and the 2014 legislation that I led, the idea that everything was Okay is really insulting to women who are preyed upon by young men for generations. So should every student be treated fairly? Absolutely. And colleges must ensure they have unbiased, transparent, and consistent processes for dispensing justice. Colleges must also have a process in place that focuses on sexual assault with the seriousness that it merits.

I would argue that prior to the last Administration, the Obama administration, I should say, that was not the case. Ms. Lhamon has, in her work previously, committed to protecting students and ensuring a fair process. I have no doubt that upon confirmation she will continue to act in accordance with those beliefs and those practices. So let me move on. Ms. Lhamon, I want to ask you about civil rights data collection. You spent some time in your previous work strengthening the survey.

One of the benefits of this civil rights data collection survey was the ability to identify when districts and even states were disproportionately using discipline measures, discipline procedures with groups of students such as expelling students of color at a greater rate than white students. The data also made it possible to examine referrals and eligibility for special education services and if students of color were being over identified or under identified for services.

I just wanted to ask you, in terms of the work you hope to be doing, what are your plans for the civil rights data collection work that you will be doing and if you think additional data should be collected?

Ms. LHAMON. Thank you, Senator, for your passion on Title IX and also for your passion about civil rights across the board. And the tool that Congress gave the Office for Civil Rights when Congress established it to collect the civil rights data collection is such an important tool for having eyes on what students experiences are. One of the things that is so important to me is to make sure that the civil rights data collection is universal so that we actually know that each data point represents a person, that we are not making assumptions from some data about what other students experiences may be.

I also think it is really crucial, in particular following the pandemic, to be able to understand what kinds of opportunities are available to students in schools and to whom so we continue to disaggregate that data, to make sure that we can know how students with disabilities, how English language learners are doing, how students of color are doing, how the full range of experiences take place in schools across the country is really crucial.

I would want to be able to hear from the staff about what worked in the most recent data collections, as well as where we saw gaps or where there were states and school districts having difficulty meeting the expectations for the Department about what the data would look like. And so I want to be able to have those conversations to figure out exactly what should be amplified. But priorities for me are to know what kinds of opportunities are available to whom.

Senator CASEY. Thanks very much. Sorry to go over, Chair Murray.

The CHAIR. Thank you.

Senator Tuberville.

Senator TUBERVILLE. Thank you very much. Thank you for your service. Thanks for being here today. This is pretty interesting. I would like to agree with Senator Casey and Senator Burr. I was in coaching and teaching for 40 years, and I have seen it all. And when we come to—when we get to the point about sexual harassment, if we don't start holding the universities accountable through funding, that is the only thing that they recognize is money, they will straighten up.

Until we do that, we can keep politics out of it because we are now going to straighten it out. It is not going to happen. I have been involved in many of them. Look a lot of cases, but we have got to get the politics out of it. We have to start holding these universities accountable because they are nothing but businesses. That is all they are. And again, I made money with these businesses as coach. So they are great organizations.

Let me tell you, education is a key to our Country. And we have got politics so deep in education, I don't know whether we are going to be able to get ourselves out, but this is not a Republican or a Democratic problem, this is an American problem that we have got in our education system. And I hope you all would—hope you understand that and kind of understand that with us, because we are all Americans. And if we don't educate our kids, we are not going to have a chance in the future. We are not going to have a chance. And one reason I ran for this position was because of education. Because I have seen the last 15, 20 years how bad it has gotten. 37th in the world in education, in the world. We ought to be embarrassed.

But that being said, I have got a couple of things I am going to ask Ms. Lhamon. In 2016, when you first held this position, you changed a couple of processes and we forced 100,000 K through 12 schools to permit transgender students to join sex segregated athletic teams consistent with their gender identity. Now, I felt like—for years for young girls, Title IX, and I hate to see us ruin that. There has to be an answer because we get more letters on Title IX and this transgender problem than anything. And I am on a lot of committees. We have got to find an answer. We have got to keep young girls interested in sports. That is why we started Title IX.

Now we are letting transgender athletes involve, dressing in the same dressing rooms, using the same restrooms. There has got to be an answer to this. I don't know what it is, but you all get paid the big bucks. We have got to find that answer. We have got to find that answer. So given your record, do you believe, Ms. Lhamon, that allowing transgender women to compete in women's sport should come at the cost of discriminating against biological women? Your thoughts.

Ms. LHAMON. Senator, first I want to thank you for your passion about Title IX, which I share, and for your leadership and for what you stand for, for sports and schools. On the question about Title IX, the promise of Title IX is that no person shall be subject to discrimination on the basis of sex. So I could not countenance dis-

criminating against any student in the context of Title IX if I were the CR enforcing Title IX.

Senator TUBERVILLE. But do you not think that putting biological men in women's sports is not discriminating? Can we not have a biological transgender team of their own? We have got to find something, or we are going to lose thousands and thousands of young women that say, I am not getting involved in this or their parents are not going to let them get involved in this. We have got to look at the repercussions of this.

I am all for everybody. I have coached 80 percent of the kids. I coached for minorities for 40 years. But we have got to come to a conclusion here and help the women that we helped so much in Title IX. We did so much for women's sports and now we are bringing it to its knees because of common sense. I am for kids, transgender kids, but we have got to find another way where they can compete. Do you agree or not?

Ms. LHAMON. Senator, if I may, could I share with you the lens that I bring to this—that when I led the Office for Civil Rights in the Obama administration, we had a complaint that came into the Ohio office for a student who uses a wheelchair, who wanted to be able to compete with his team using the wheelchair on the track team and to have his times count. And first, the school told him no. Then they told him he could compete, but his times wouldn't count. He would be on the special track. And then the State Athletic Association raised a set of concerns.

The resolution in that agreement found a way for that student to compete safely, fully as a member of the team, to have his time to come, and to do it in a way that was safe and work for all of the students. I would want to bring that lens to the work in any athletics context so that we are finding a way not to discriminate against a student who is unusual, not to discriminate against a student who wants to be on the team, who wants to get the benefits of athletics, and to be able to make sure that the Title IX protection, that instance of Title IV protection applies to every single student on the team. That is the lens I would want to bring.

Senator TUBERVILLE. Well, thank you and thanks for your passion. And you believe in it.

Ms. LHAMON. Thank you. I do.

Senator TUBERVILLE. Again, education is the whole key to what we are doing in this country. That is the reason we are the best country on the face of the earth and a lot of it starts in athletics. Gets people involved working together. I have got a couple more questions. I will just submit them, Madam Chair. Thank you very much. Thank you.

Ms. LHAMON. Thank you.

The CHAIR. Thank you.

Senator Smith.

Senator SMITH. Thank you, Madam Chair and Ranking Member Burr. And welcome Ms. Brown and Ms. Lhamon, Mr. Rodriguez. And thank you to you and your families for your willingness to serve our Country and for your commitment to public service. You all bring such rich life experiences to these roles. And, it is my hope that as America emerges, recovers from the tragedy of the COVID pandemic and as our Country wrestles with systemic rac-

ism and the injustice of that, that you will hold fast to your commitment to the value that every student in this country should have the opportunity to learn in an enriching, safe, and supportive environment, no matter who you are, no matter where you live, or no matter how much money your family has. I truly believe that access to an excellent public education is the foundation of our democracy.

I believe that is what Senator Tuberville is also saying. And it is up to all of us to make that promise a reality for every student. So Ms. Lhamon, I would like to turn to the question of school discipline and disparities in school discipline. Here is some data from Minnesota. Students of color make up about 31 percent of Minnesota students but receive two-thirds of all suspensions and expulsions.

Native American students are ten times more likely to be suspended or expelled than white students. Black students were eight times more likely to be suspended or expelled than white students. So not only is this traumatizing, but it leads students of color to enter this prison, this school to prison pipeline where the punishment that they receive disproportionately in school affects them for the rest of their lives.

Now in Minnesota, the Department of Human Rights is working with 41 districts and charter schools to address this significant disparity. But all students deserve to have their civil rights protected in schools. So could you please talk about this, address this, tell us how you would lead the Department of the Office of Civil Rights in working with states and school districts to address this disparity, and what you have seen around best practices here.

Ms. LHAMON. Thank you so much for the question. As it happens, I have worked with Minnesota educators who are trying to address this specific issue, and I am so impressed with the leadership and the thoughtfulness in the state specifically about the crisis that you are talking about that and the harm to students. And in addition to this school to prison pipeline, which in itself is obviously very distressing, we are pushing children out of school where they are losing educational time and we are not holding our whole communities so that our students can get the education that is their right.

I am passionate about it. It is—this topic was among the very first issues that the Office for Civil Rights addressed when it first started, when we only had—the Office only had jurisdiction over Title VI and was addressing school desegregation. But this issue of disparities in discrimination and discipline was part of those original desegregation agreements.

That it has persisted to this day means that we have not gotten our arms around it as a country, and we are not doing enough right by our kids. But we do have so many educators like those you describe in Minnesota who are working specifically on it. It would be important to me to be able to work with school communities to identify practices that are going well and to hold hands to figure out how to make sure that we don't see those kinds of disparities persist and that we don't see discrimination.

Those are different things, but that we don't see discrimination take place in schools. And I think it is crucial to reinstate guidance on the topic. And I think it is crucial to be clear with school com-

munities about what the civil rights obligations are and how best to do the work in their classrooms.

Senator SMITH. Thank you so much. You said in your testimony that our job is to make real in the lives of students the laws that Congress has enacted, and that the Constitution guarantees. So I hear that in your answer. And I really appreciate that. Mr. Rodriguez, I just have a little bit of time left, but I wanted to talk with you a little bit about the, Every Student Succeeds Act and how it supports opportunities for students to receive high quality STEM education and also pursue advanced coursework while they are in high school, as well as, getting advanced coursework done.

We have a great program in Minnesota, the post-secondary enrollment option, which is a huge benefit to students as they—it helps them get the coursework that they want. It also helps them to save money once they are entering higher education. So in just a few seconds I have left, could you just talk a little bit about how you see these kinds of options, how important they are for students and our Country, and what we should do to support them as well?

Mr. RODRIGUEZ. Yes, well thank you, Senator, for the question. And it is such an important issue. We have to do better to provide our young people the opportunity to prepare fully and to engage more fully and earlier in their career, even in middle and high school, in terms of what comes next, whether that is post-secondary education, career training, workforce readiness. And we know there is so much promise in some of these dual enrollment and early college high school programs.

We also know that the data tells us that our students of color and our students that are concentrated in high poverty schools are much less likely to have access to those programs. So, if confirmed, I would be looking forward to looking more at that data and determining what we can do to really help partner and provide more guidance to our districts and more support to expand those opportunities to earn early college credit, to gain the workforce readiness skills and the post-secondary readiness orientation that they need to be able to transition into higher education and complete their degree, and there is just so many countless examples of where communities have done that well.

Our young people are looking forward to their future. They want to engage in that opportunity to prepare for college and for their future earlier. And so, much of that is about our catching up as a system to be able to support them and to meet them where they are.

Senator SMITH. Thank you so much. Thank you, Madam Chair. The CHAIR. Thank you.

Senator Collins.

Senator COLLINS. Thank you. First, let me welcome all three of our nominees today. Ms. Lhamon, let me start with you. I want to follow-up on Senator Smith's question to you about school discipline. Do you believe that school discipline should primarily be a state and local matter, or should it be dictated by the Federal Government?

Ms. LHAMON. Oh, I hope very much that school discipline would be a local matter in the main—in the first instance.

Senator COLLINS. Thank you. I would hope that it would go without saying, but I am going to say it nevertheless, that each and every Member of this Committee is very concerned about sexual assault on campus. We should have a no tolerance policy. The Sixth Circuit, along with other courts, has ruled, however, that in conducting Title IX investigations of sexual assaults, that public institutions of higher education must provide parties with an opportunity to see the evidence, to cross examine before a neutral fact finder.

At your interview with the HELP Committee staff, you stated that you do not believe that accused people should necessarily have that right in all instances to know the evidence being used against them. And in fact, your Title IX guidance that you issued in 2014 did not provide for the opportunity for cross examination. The Title IX rule issued by—that is in effect right now grants equal rights to both the accuser and the accused to access and inspect relevant evidence in sexual misconduct or assault cases in schools.

Will you ensure, as you look at this issue, that there are due process protections for both the accuser and the accused in any Title IX reform that your office undertakes and that it is in accordance with decisions such as that issued by the Sixth Circuit?

Ms. LHAMON. Thank you so much for the question, Senator Collins. And this is an issue that I struggle with. I think is an issue I understand to be important to your constituents and around the country. I will say several things. One, I will absolutely follow the law. The Sixth Circuit is binding on the states that are within it and I would absolutely ensure that the enforcement practice of the Office for Civil Rights follows binding law. In addition, you asked what I would do with respect to changes in the regulation, and I don't control that on my own.

The regulation that the Department is considering will go through a process that includes the Department of Education, all of the other Departments that have equities in Title IX, the Department of Justice, the White House, and there will be an ultimate decision. I am not there. I don't know what public comment has been. I don't know how that process is going. I would—it would be very important to me to ensure that there is absolute fealty to what the law is and that colleges and universities, school districts, students are not subject to competing authorities.

I can promise you that. In addition, I just want to clarify that the 2014 guidance that I signed, did not direct that cross examination could not happen. And it also did direct that if it happened, that there should be parity as between ACU students and complainants. And it strongly discouraged that the students themselves participate in the cross examination, which is consistent with the Title IX regulation that is current now.

Senator COLLINS. When you were Assistant Secretary, as Senator Burr mentioned, you often relied on informal guidance to implement significant policy reforms. That concerns me because I think that the APA, the Administrative Procedure Act, is really important to get public input, and that when we get public input, we usually come out with better informed regulations. Do you still intend to, if you are confirmed, to rely on guidance or dear colleague letters rather than going through the formal process?

Ms. LHAMON. Senator, the Department has begun the formal process now with respect to Title IX. So——

Senator COLLINS. I mean in general.

Ms. LHAMON. I will say I am really excited about the opportunity to participate in the regulatory process. I didn't have that opportunity when I led the Office for Civil Rights in 2013 through 2017. When I came that time, the regulatory agenda was largely set. I was there in the second term of the Obama administration. So it is really a thrill to me to contemplate being able to participate in that process. And I look very much forward to it. That would be very different for me.

Senator COLLINS. Thank you.

The CHAIR. Thank you.

Senator Murphy.

Senator MURPHY. Thank you very much, Madam Chair. Good to see all three of you. Simon, great to see you back reentering public service. I was grateful to work with you during your prior time at the Department. Two quick comments. I suspect that Senator Tuberville's line of questioning will be the last time that we hear in this Committee about the issue of transgender athletes. And I am not speaking to the intent of anybody on this Committee, but I do know that the intent of many others behind this public relations campaign isn't really to protect female athletes. The number of female athletes that are going to be impacted by high level transgender athletes is fairly, fairly infinitesimal.

Much of this agenda really is, unfortunately, about trying to marginalize these kids and make people fear them, make people see them as a threat. Nothing could be further from the truth. These are kids who, just like all of our kids, want to participate in athletics, an experience that is central to coming of age for millions of kids all across this country. And the idea that we would deny that to anyone in this Nation simply because of their sexual orientation I think is deeply un-American. Second, I want to associate myself with the comments and the questions from Senator Smith.

I won't spend time asking questions about school discipline here, but I want to thank Senator Murray for being such a great partner on a number of initiatives that I hope the Committee will be taking up, in particular initiatives around the way in which we restrain and seclude children when they are acting out. Far too many kids are effectively being physically hurt, often shuttered into what some schools call scream rooms when they are acting out and often as a manifestation of their disability. And I hope that we will pursue legislation that is going to try to make sure our schools are using best practices when it comes to restraining our kids, best practices writ large on matters of school discipline.

I agree with Senator Collins. This is a local matter, but the Federal Government has helped school districts by providing some really solid guidance and enforcement when necessary, when school discipline is being meted out very differently to kids of color or kids with disabilities. But I want to ask you about another topic, and that is a really disturbing trend that has been playing out for a number of decades. I mean, it is essentially what we have seen

across the country is in some ways a resegregation of American schools.

I think we just took it for granted over a number of years that we had gotten beyond the days in which White kids and Black kids and Hispanic kids went to school differently, that we were on a path to be able to make sure that everybody had the opportunity to go to schools that were racially and economically diverse. But if you look at just the time since 1988, the share of what we call intensely segregated nonwhite schools has more than tripled in this country today. More than one third of White students in this country go to racially isolated schools where their schools are 90 to 100 percent white.

I think that robs kids—I don't think the Federal Government needs to play a heavy hand here, but I think that does rob kids of a really critical experience of going to school with kids that come from different backgrounds than you. I have introduced legislation that would simply provide some Federal funding to help voluntary efforts at the state and local level when states and local Governments want to try to offer opportunities for school districts to integrate both socially and economically.

My question just to you is, how important do you think it is for students to attend racially and socially, economically diverse classrooms? And what role do you think the Federal Government can play in making sure that all our schools can be diverse and inclusive learning environments?

Ms. LHAMON. Well, I think it is crucial, Senator. I think that giving our students an opportunity to learn in environments that reflect the world is really important and prepares them for their working lives and for democratic participation thereafter. So I think it is crucial and that one of the programs that I love that the Office for Civil Rights has an opportunity to manage is the Magnet Schools Assistance Program.

Connecticut schools are huge beneficiaries actually in that program historically and have really led the Nation in terms of the kinds of integration and truly amazing kinds of experiences that schools can offer that I think many other states could benefit from watching and replicating that. But for me, that is a program I am eager to be able to return to and to be able to help facilitate that desegregated, integrationist efforts that follow from it.

Senator MURPHY. Well, this wasn't a set up, but I appreciate your—I appreciate your championing of the Magnet School program. We have a Federal grant fund that I lead a letter every year of Republicans and Democrats asking for increased funding for magnet schools because they are a wonderful way for school districts and states to be able to bring kids together from across a broad spectrum of backgrounds. So look forward to working with you on that. Thank you, Madam Chair.

The CHAIR. Thank you.

Senator Cassidy.

Senator CASSIDY. Thank you all for offering to serve. Really appreciate it. Mr. Lhamon, you had mentioned in your response to Senator Burr about how you would enforce current law. But I have a tweet here from May 2020 in which you say, @betsydevosed pre-sides over taking us back to the battle old days a pre-date my birth

when it was permissible to rape and sexually aroused students with impunity. Students deserve better, including very protections consistent with the law. Now, that was your tweet about the law that you are currently saying that you will enforce.

Do you want to square that circle? Do you see what I am saying? It seems as if you are saying to Senator Burr that you are going to defend something which you say gives permission to rape and sexually harass students with impunity. Would you really use those laws or do you have an issue with the laws or would—I don't—there seems to be a cognitive dissonance here.

Ms. LHAMON. If I am privileged to be confirmed in this role, Senator, thank you for asking—if I am privileged to be confirmed in the role, my responsibility would be to enforce the law as it exists, and that is the law.

Senator CASSIDY. Even though the law says that it gives permission to rape and sexually harass with impunity, you would enforce that law?

Ms. LHAMON. Yes.

Senator CASSIDY. Okay. I presume therefore you would—just begging the question that you would then advocate to change the law as it currently stands?

Ms. LHAMON. Well Senator the Department has begun—I am not there, but the Department has begun a process to evaluate that—evaluate that regulation and to determine whether and how it should be changed.

Senator CASSIDY. Do you think as if the law has been implemented, that it is given the right to rape and sexually harass with impunity?

Ms. LHAMON. I think the regulation—I think what I said in the tweet so that the regulation permits students to rape and sexually harass with impunity. I think that the law, that the regulation has weakened the intent of Title IX the Congress wrote.

Senator CASSIDY. If somebody rapes, they can do it with impunity? I mean, if a college kid goes out and rapes a woman, he has no penalty whatsoever under the current regulation?

Ms. LHAMON. It allows a student to rape—maybe Senator I could give an example of what I had in mind that I was worried about when I wrote that tweet. Among the resolutions that I oversaw when I led the Office for Civil Rights included resolutions where, for example, at Michigan State a student reported that she had been sexually harassed by a counselor in the counseling office when she went to counseling about sexual harassment. She reported it to the counseling office. Under the current regulation, there would be no responsibility for the school to investigate.

Senator CASSIDY. If he raped her, would there be, or she raped her would there be a consequence under current rules? There certainly would be under criminal law, right?

Ms. LHAMON. If someone chose to prosecute, the criminal process would apply. If a student had been raped and did not report to the Title IX coordinator or to someone else at the school designated as able to bind the school, the school would have no responsibility to take action under the current—

Senator CASSIDY. I assume the DA would.

Ms. LHAMON. The DA would have an option to choose whether to prosecute.

Senator CASSIDY. Okay, let me ask you something else. I am going to bring up transgender, not because, as Senator Murphy suggested, want to discriminate against these kids. It is just I am a doctor. If you take a child who is post adolescent and who was born a male, he or she, if he is undergoing the transition, is going to be physiologically much stronger than the female. Period. End of story. That is objective truth.

Now, that said, if he or she, she has made the transition, competes on a track event, she is going to win. If she is throwing the shot-put and she is built that way, she is going to win. It seems as if the discrimination cuts both ways. And I think that is what Senator Tuberville was saying that you don't want to discriminate against the young person who is undergoing transition, but it is effectively a discrimination against the young lady who was born a biologic female because she has no chance. It will be effectively an inability for her to win.

I agree, it is infinitesimally small. On the other hand, isn't it something that we should consider? Now, do you feel as if the young lady is being discriminated against in those circumstances, the biologic female?

Ms. LHAMON. Senator I would need to know more facts to be able to answer that in the abstract. I think you are absolutely right to lift up the concern for every student and that nondiscrimination right to Title IX provides applies to every student. And that if I were at the Office for Civil Rights and we were investigating a complaint or a set of circumstances of the type that you are describing, we would be absolutely concerned to make sure that—

Senator CASSIDY. You are being a little lawyerly there. Ms. Brown, real quickly, my last, you will be tasked with looking at the legality of debt cancellation. And there is just an article in The Wall Street Journal out, Columbia University, the average person going to their master's in film ends up with debt of \$181,000 and they get paid \$30,000.

That is because I am told that for graduate programs, the amount of debt that is allowed is uncapped. Aren't we creating a moral hazard for school like Columbia to charge even more for a program which really pays very little relative to the cost if we begin to do debt cancellation? I mean, do you have an opinion on that?

Ms. BROWN. Excuse me, Senator. If I am lucky enough to be confirmed, my job is to advise on the legal aspects and I am not the policymaker, so I have to defer to the policymakers on any policy questions.

Senator CASSIDY. Your opinion.

Ms. BROWN. This is—student debt is a very, as you know, very highly regulated area with a number of congressional authorities. And I will very much look forward to ensuring that the Department is enforcing those authorities—

Senator CASSIDY. Columbia may have a real payday in the future. Anyway, thank you very much. I yield back.

The CHAIR. Senator Lujan.

Senator LUJAN. Thank you to Chair Murray and to Ranking Member Burr for holding this important hearing. And thank you to each of the witnesses and for all the families joining us today to effectively serve and educate all of their students. Hispanic serving institutions require up to date and smart infrastructure. Unfortunately, many HSI classrooms are out of date.

Their libraries lack essential digital asset holdings, and their buildings are not equipped with the necessary broadband and technology that enhances the teaching and learning experiences for students. That is why I led a letter with Senators Maria Menendez and Cortez Masto to leadership advocating for additional infrastructure funding for each site.

Mr. Rodriguez, how would you, as Assistant Secretary for Planning, Evaluation and Policy Development, address the disparities we see in HSI infrastructure funding?

Mr. RODRIGUEZ. Well, thank you, Senator, for the question and thank you for your leadership in helping to further secure and strengthen our Hispanic serving institutions. They are critical sources of support and higher education for millions of our students. And if confirmed, I would look forward to working closely with our Office of Post-Secondary Education, with the Office of Undersecretary and with the Secretary to explore how we can further support and strengthen all of our minority serving institutions, but certainly our Hispanic serving institutions.

I know that there is a need for more dedicated dollars, specifically for infrastructure, for broadband, but also for modernization of facilities across our HSIs. And they play an important role not just in supporting higher education attainment for our Latino community, but also for supporting a robust learning community in many of our Latino communities around the country. So I would look forward to working closely with you and with my colleagues and the Administration to that end.

Senator LUJAN. Well, and as a reminder, 66.8 percent of Hispanic students, 41.3 percent of Asian students, 35.6 percent of Native Hawaiian Pacific Islander, 26.2 percent multiracial, 24.2 percent of Black, 15 percent of White students attend HSIs. And so we are providing more of a reach when there is support here. Mr. Rodriguez, in your role as Chief Executive Officer of Teach Plus, you emphasize the importance of educators having a role in setting policy. As the Assistant Secretary for the Office of Planning, Evaluation and Policy Development, how will you advise Secretary Cardona to support the recruitment and retention of diverse teachers?

Mr. RODRIGUEZ. Well, Senator, thank you for the question. This is a really important priority for me personally, and I have worked hard over my tenure at Teach Plus to raise the voices and the vision and the support of our teachers to diversify our teacher pipeline and to do better in terms of how we are preparing and supporting the success in the early years of our diverse educators across the country. We know that over half of our public school enrollment now are students of color, and yet fewer than 20 percent of our teachers are teachers of color. When we look at our Latino teachers, for instance, are Latino male teachers, we are looking at less than 5 percent of the teaching workforce.

It is an important signal and opportunity for students to be able to have windows and mirrors, to be able to see themselves in their education and to be able to have that level of mentorship and support across their learning. The—as you know, Senator President Biden’s budget places a high priority on improving the preparation and building the pipeline for our diverse educators. Beyond that, in addition to that pre-service experience, we know that we have much more work to do to build opportunities for leadership and advancement in the field so that we not only are recruiting but retaining our teachers of color in their buildings.

That is about building a stronger school culture. That is about providing opportunities for our teachers of color to not have to pay an invisible tax alongside their nonminority peers in terms of their professional career, to be able to take on opportunities to shape instruction, shape culture, support learning, alongside their principles. And it is also about doing better in terms of training and orienting our principles in our other teachers.

I would look forward, I am excited about that agenda and about the opportunity to contribute to that further. And we will look forward to working with you and others to that end.

Senator LUJAN. Thank you. And Chair, I do have another question, but I will submit it into the record for a response. Thank you again. And thank you to the witnesses and your families for being here.

Mr. RODRIGUEZ. Thank you.

The CHAIR. Senator Kaine.

Senator KAINE. Thank you, Chair Murray, Ranking Member Burr, and congratulations to the nominees. Ms. Lhamon, I want to talk to you about a topic that I know is very important to you from your time working with the commission, the Civil Rights Commission, but it is also a huge part of the workload of the office to which you are nominated and to which I hope you will be confirmed, and that is students with disabilities. I was surprised to learn in my discussion with you that the biggest component of the workload of your office is issues dealing with students with disabilities. Maybe describe that, if you would.

Ms. LHAMON. Sure. Thank you, Senator. Historically, at the Office for Civil Rights, roughly 60 percent of the complaints that come in are complaints that address issues related to students with disabilities, and that has held steady over time. So the vast majority of the work that the Office for Civil Rights does is to protect the civil rights of students with disabilities. And I am passionate about it.

Senator KAINE. How—what are some areas of just sort of right out of the gate, should you be confirmed, that you would be focused on in trying to advance the educational success of students with disabilities?

Ms. LHAMON. Well Senator, first, I strongly believe that so much of the work of the Office for Civil Rights is complaint driven. It tends to receive more than 10,000 complaints a year. And so some of that would be depending on what kinds of complaints are coming in and what are the range of issues that people are addressing. The kinds of issues that I have not lost sight of in the four and a half years since I left the Department include times when schools sub-

jected students unlawfully to restraint and seclusion. And there was one case in particular, I remember the mom driving up to the school and hearing her 9 year old inside the school screaming because the child was subject to restraint.

In that case, the child had been subject to prior restraint in the school year for more time than the child had not at school. And that is unconscionable. I mean, that child may never recover from the harm that the school visited on the child and the child could have died. So those kinds of circumstances are ones I hope never to see repeated. And I was so proud to be able to work with the Office to correct that for the family and also to ensure that no other child would be subjected to that harm. Another investigation I think of, and this one sounds small, but it was enormous for the family, it was a child who had been admitted to a charter school. And charter schools are public, as we know, and that once admitted the family had come to an admission and school leadership had seen that the child had difficulty walking down a short distance.

The school communicated to the family that the child couldn't come. They disenrolled with the child and said we don't serve mental disabilities and we can't serve your child. It was a five inch drop to the playground for this kindergarten to be able to get down. And it would require a ramp to make sure that he could get there, and the school was going to exclude him because of his disability. And we stopped that from happening.

You know that the inclusion, that the assurance that every child is valuable, that every child can be part of a school community is what I want to return to. And I will say, so, this is very personal for me. My brother has cerebral palsy, and I grew up watching educators ensure that my brother could be fully included in class and the difference that it made in his life and my family's life.

He is a teacher now. So, it meant the world for him, and he is giving back. And I want to make sure that every other student, like my brother, has that kind of opportunity.

Senator KAINE. This is extremely important to me personally. And I know many Members of the Committee feel the same way. And one of the things I have always noticed about education policy for students with disabilities is whatever Congress does in education, like No Child Left Behind, you will get Governors and folks in states and localities saying you shouldn't have done that, please repeal it.

Nobody has ever said repeal IDEA, except we should fund it better or sometimes the paperwork is too intense. But it is probably like the only law that has ever been passed in an area where there is controversy about everything that no one has ever said repeal it because the delta between what students with disabilities were able to achieve pre-IDEA and what they have achieved because of the IDEA is so vast and there is still so much more that we can do. Let me ask you one other question on this topic, the pandemic has been horrible. However, we have learned some things during the pandemic that we shouldn't lose sight of the lessons we have learned.

The ability of educators, both K-12 and higher level, to advance virtual online zoom learning does provide some opportunities for students, some students with disabilities and some families that we

shouldn't let go of. We should continue to incorporate that if it is the right thing for the student. Would you agree with me on that?

Ms. LHAMON. I absolutely agree that we should incorporate what is right for students and I would want to make sure that we have appropriate civil rights guardrails in place also. But I am very grateful that there are some silver linings that we can find from this pandemic, including ways to best serve students and schools.

Senator KAINE. Great. Thank you so much. Thank you, Chair Murray.

The CHAIR. Thank you.

Senator Burr.

Senator BURR. Madam Chair, just a couple of follow-up questions, if I can. Ms. Lhamon, the circuit court decisions that have been referenced to, Third and Sixth respectively, were determined in 2018 and 2020. Were those decisions in place when you were at OCR before, would that have limited what you would have been able to impose on Title IX in your estimation?

Ms. LHAMON. Senator had those decisions been in place, the Office for Civil Rights absolutely would have followed them in their jurisdictions where they are controlling.

Senator BURR. Okay, thank you for that. Earlier, you said that the current Title IX regulation didn't include a presumption of innocence standard. And in fact, in sections 106.45, the regulation says this, "include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process." So you gave me a crafty answer.

Let me ask you again, the current regulation requires a presumption that the respondent is not responsible until proven otherwise, which we commonly call presumption of innocence. My question is not about the current regulation, but what you think should be the standard. Should the standard be presumption that the respondent is not responsible until proven otherwise?

Ms. LHAMON. Senator if I may, I did not mean to over-lawyer you on that answer and I appreciate that chance to come back to it. I, maybe because I am a lawyer, I am so focused on a criminal process that is different from an administrative process in school. And I will enforce the standard that exists. And to your question about what should or shouldn't be there, I want to say that the views I hold sitting here are not the views that I would be able to impose or not impose.

There is a regulatory process that involves lots of people, not only me, not me at all at the moment, that is underway at the Department of Education. But my view is that civil rights investigators, investigators at schools need to start from the presumption that the facts are what they are, and you need to find out what they are. So they shouldn't be assuming somebody is guilty because the person has been accused, shouldn't be guilty—guilty is not even the right word. So now I have walked into the criminal process.

They shouldn't be assuming that someone is responsible because a person has been accused. They should be open to the possibility that the person is not. And I absolutely support that. I think that is important in an investigative process.

Senator BURR. I am appreciative. That clears some things up. It doesn't go unnoticed that you have repeatedly answered on this side of the aisle that you really are not in control, that there is a process. But when you answered over there, your answer was, you accept that you will have authority and responsibility for policy and recommendations made by your office. Can't be both ways. And it is not a question, I just want to point it out because I think sometimes it is good to reflect on what you have said and to whom you have said it.

I think that we have tried to emphasize the fact that public comment, transparency, input comments are an important part. And that was not necessarily the path that you chose last time you were in the Office. I hope this time we will choose a pathway that does include public comment, if that is what the officer is doing currently before you are confirmed. Great. I look forward to sharing those comments with us prior to any decision that you might make. I thank the Chair.

The CHAIR. Ms. Lhamon, do you want to respond?

Ms. LHAMON. Thank you. Senator Murray and Senator Burr. First, I appreciate your confidence I will be confirmed. So thank you for that. And I did not mean to communicate a different answer to one side of the aisle than to the other. I said in my opening that I believe civil rights are bipartisan. I believe that they are. And I would be evenhanded in the ways that I work with Members of Congress, and I would be evenhanded in the ways that I would be enforcing the law if I were confirmed to the Office.

The CHAIR. Thank you. That will end our hearing for today. And I want to thank all of our colleagues for their participation. I really want to thank all of our witnesses, Ms. Lhamon, Ms. Brown, Mr. Rodriguez, for your time and for your very thoughtful answers to all of you. I look forward to working with each of you to tackle the challenges that students and educators and schools are facing.

For any Senators who wish to ask additional questions, questions for the record will be due tomorrow at 5 p.m.. The hearing record will remain open for 10 business days for Members who wish to submit additional materials for the record.

This Committee will meet next on Thursday, July 15th at 10 a.m. at Dirksen 430 for a hearing on the nominations of David Weil to serve as Administrator of the Wage and Hour Division of the Department of Labor, and Gwynne Wilcox and David Prouty to serve as members of the National Labor Relations Board. And with that, the Committee stands adjourned. Thank you.

## ADDITIONAL MATERIAL



1831 K Street  
Sacramento, CA 95811

June 3, 2021

The Honorable Patty Murray  
Chair  
US Senate HELP  
Committee Washington, DC

The Honorable Richard Burr  
Ranking Member  
US Senate HELP  
Committee Washington, DC

Dear Chair Murray and Ranking Member Burr:

I write to express my strong support for Catherine Lhamon's nomination to be Assistant Secretary for the Office for Civil Rights at the US Department of Education. I first met Ms. Lhamon when she was the Assistant Secretary for the Office for Civil Rights at the US Department of Education during the Obama Administration, and I have had the opportunity to work with her in her subsequent roles as the Chair of the US Commission on Civil Rights, as Legal Affairs Secretary to Governor Newsom, and in her current role as the Deputy Director of the Domestic Policy Council at the White House with a focus on equity. I have always found Ms. Lhamon to be a passionate champion for the rights of children and adults with disabilities, to be smart and strategic in her approach to policy and civil rights enforcement, and to be able to work in a bipartisan manner to tackle difficult issues.

As a former Disability Policy Director for Chairman Tom Harkin on the HELP Committee, I appreciate the central role your committee plays in defining the scope of civil rights in education. When I was the Executive Director of the Association of University Centers on Disabilities, we presented Ms. Lhamon with a Special Recognition Award in appreciation for her leadership at the US Department of Education under President Obama. In my 30 years working in disability advocacy and policy, I can

say unequivocally that Ms. Lhamon was the most effective civil rights enforcement official for children with disabilities during this period and I am confident that she will continue to show tremendous leadership and get great outcomes if she is confirmed to return to that role under President Biden and Secretary Cardona.

During her time leading the US Commission on Civil Rights, Ms. Lhamon took on the issue of fair wages for adults with disabilities under the Fair Labor Standards Act. As part of this work, she organized and presided over an historic hearing where Neil Romano, who was Chair of the National Council on Disability appointed by President Trump; and former Governor Tom Ridge both spoke passionately about the need to end the practice of paying people with disabilities less than minimum wage, as authorized under Section 14(c) of the Fair Labor Standards Act. She recognized the importance of taking a bipartisan approach to this issue, and the report the Commission issued helped California and other States to introduce legislation to end this discriminatory practice.

Thank you for taking the time to consider my input on your important deliberations, and thank you both for your leadership on behalf of children and adults with disabilities.

Sincerely,



Andrew J. Imparato  
Executive Director

The Leadership Conference  
on Civil and Human Rights

1620 L Street, NW  
Suite 1100  
Washington, DC



July 12, 2021

### SUPPORT STUDENTS' CIVIL RIGHTS: CONFIRM CATHERINE LHAMON

Dear Senator,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 220 national organizations to promote and protect the civil and human rights of all persons in the United States, and the 27 undersigned organizations, we write to strongly urge you to support the confirmation of Catherine Lhamon to serve as Assistant Secretary for Civil Rights at the U.S. Department of Education. Ms. Lhamon has demonstrated a willingness and ability to enforce civil rights law and protect all students in our country from discrimination, and she is well-suited to lead the Department of Education's Office for Civil Rights.

The Office for Civil Rights (OCR) has a unique responsibility to enforce core nondiscrimination laws in schools. These laws were passed by Congress in response to the widespread denial of equal protection and equal opportunity by states, districts, and schools. Although considerable progress has been made in the decades since these laws were passed, they continue to serve a vital function in the face of ongoing discrimination.

The Assistant Secretary for Civil Rights serves as the agency's chief legal advisor on civil rights matters and is responsible for leading the Department of Education's work to:

- Ensure justice for students who report discrimination on the bases of race, color, national origin, sex (including sexual orientation and gender identity), disability, or age through the department's complaint process
- Investigate systemic discrimination
- Issue clarifying policy guidance and provide other technical assistance to assist schools, districts, and states in meeting their obligations under federal law
- Collect and report the data needed to identify where students do – and do not – have equal opportunity in education

These enforcement, policy, and data responsibilities have considerable impact on whether or not students' constitutional and statutory rights to equal protection under the law are meaningful and whether marginalized students receive the support and attention they deserve to achieve their dreams. And they are core to the work of the Department of Education. As our nation continues to face the COVID-19 pandemic, which has disproportionately harmed students of color, students with disabilities, LGBTQ students, pregnant and parenting students, and other marginalized students, and as the country grapples with a long overdue

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Judith L. Lichtman  
National Partnership for  
Women & Families  
Vice Chairs  
Derrick Johnson  
NAACP  
Farhana Khana  
Muslim Advocates  
Thomas A. Saenz  
Mexican American Legal  
Defense and Educational Fund  
**Secretary**  
Fatima Goss Graves  
National Women's Law Center  
**Treasurer**  
Lee A. Saunders  
American Federation of State,  
County & Municipal Employees  
**Board of Directors**  
Kimberly Churches  
AAUW  
Alphonse B. David  
Human Rights Campaign  
Rory Gamble  
International Union, UAW  
Jonathan Greenblatt  
Anti-Defamation League  
Mary Kay Henry  
Service Employees International Union  
Damon Howard  
Lawyers' Committee for  
Civil Rights Under Law  
Sherrilyn Ifill  
NAACP Legal Defense and  
Educational Fund, Inc.  
David H. Joyce  
Japanese American Citizens League  
Benjamin Jealous  
People for the American Way  
Derrick Johnson  
NAACP  
Virginia Kass  
League of Women Voters of the  
United States  
Samer C. Khallaf  
American-Arab  
Anti-Discrimination Committee  
Marc Morie  
National Urban League  
Janet Murguía  
UndocuUS  
Debra L. Nees  
National Partnership for  
Women & Families  
Christian F. Nunes  
National Organization for Women  
Rabbi Jonah Prosser  
Religious Action Center  
Of Reform Judaism  
Rebecca Pringle  
National Education Association  
Lisa Rice  
National Fair Housing Alliance  
Anthony Romero  
American Civil Liberties Union  
Faen Sharp  
National Congress of American Indians  
Marta Tovar  
American Association of  
People with Disabilities  
Richard L. Trumka  
AFL-CIO  
Randi Weingarten  
American Federation of Teachers  
John C. Yang  
Asian Americans Advancing Justice |  
AAJC  
**Interim President & CEO**  
Wade Henderson

July 12, 2021



reckoning with racism and white supremacy, it is more important than ever that the person leading OCR be committed to facing these challenges and advancing equity for all students.

The Assistant Secretary for Civil Rights is one of the most important roles in the education of our nation's students, and Ms. Lhamon is an exemplary nominee for this position. She has a demonstrated record of support for our nation's civil rights laws and marginalized communities and a demonstrated commitment to the belief that every student has a right to learn free from discrimination and be treated with dignity. Ms. Lhamon was unanimously confirmed by the Senate and served as Assistant Secretary for Civil Rights at the Department of Education from 2013-2017. Under her leadership, OCR utilized many of the tools at its disposal to make significant progress in realizing our nation's federal civil rights promises for all students. As Assistant Secretary, Ms. Lhamon worked to increase the quantity, quality, transparency, and reach of OCR's policy and enforcement efforts. She also worked with the office to emphasize the importance of data by releasing a new, expanded Civil Rights Data Collection that provided transparency around equity indicators in schools and districts across the country. In her time at OCR, the office worked to make the data known to the public through presentations, technical assistance, and the media, and staff intensified efforts to improve the data collection system and to work with districts to ensure data quality.

Importantly, Ms. Lhamon also led OCR in developing and releasing essential comprehensive policy guidance documents to support schools and families in understanding their legal obligations and rights. These documents addressed urgent and complex questions, such as schools' responsibilities to respond promptly and effectively to sexual violence and to unequal school discipline policies and practices. They also addressed how schools should promote equitable access to resources relating to students' rights on the basis of race or national origin, immigration status, and pregnant and parenting status — including their rights to enroll in and attend school. These policy documents provided timely resources on the use of race in voluntary efforts to increase diversity and reduce racial isolation and the prohibition against retaliation under civil rights laws. In her time as Assistant Secretary for Civil Rights, she oversaw the issuance of a Dear Colleague letter that provided much needed clarity for schools, students, and families regarding Title IX's protections for transgender students. Ms. Lhamon also worked to ensure robust investigation of all complaints of discrimination. Without thorough and prompt responses to reports of discrimination in educational programs or activities, Congress' commitments to the nation's students, families, and taxpayers would ring hollow.

Following her time with the U.S. Department of Education, Ms. Lhamon was appointed to the U.S. Commission on Civil Rights (USCCR) by President Obama. During her time at USCCR, the Commission released a report on civil rights enforcement,<sup>1</sup> and she has most recently served as Deputy Director of the Domestic Policy Council for Racial Justice and Equity where she managed President Biden's equity portfolio. Her extensive background in civil rights and particularly the rights of young people and students illustrates her devotion to uplifting equity for all. Ms. Lhamon's direct experience with OCR as well as her commitment to ensuring students have the protections they need to thrive in schools demonstrate that she is not only well-qualified for this role, but that she is also well-prepared to take on

<sup>1</sup> See: <https://www.usccr.gov/pubs/2019/11-21-Are-Rights-a-Reality.pdf>

July 12, 2021



the task of once again overseeing OCR in carrying out its mission. At this pivotal time, Ms. Lhamon will provide the leadership OCR needs to fulfill its obligation to protect the civil rights of all students.

The Senate HELP Committee has a unique responsibility to ensure that the Department of Education faithfully and effectively implements and enforces federal laws, protects the interests of the nation's students, and ensures that individuals nominated to serve in the department are qualified, prepared to fulfill their duties, and committed to upholding federal law and the Constitution. The person responsible for leading the OCR must be absolutely committed to respecting, valuing, and protecting every single student in this country — without regard to LGBTQ identity, race, ethnicity, home language, gender, religion, disability, pregnant or parenting status, or immigration status. Our nation's laws, economy, future, and children deserve no less. As such, we strongly urge your support for Catherine Lhamon's confirmation to be Assistant Secretary for Civil Rights at the Department of Education.

If you have any questions, please reach out to Arielle Atherley, policy analyst, at [atherley@civilrights.org](mailto:atherley@civilrights.org).

Sincerely,

The Leadership Conference on Civil and Human Rights  
 American Association of University Women (AAUW)  
 Americans United for Separation of Church and State  
 Asian Americans Advancing Justice | AAJC  
 Augustus F. Hawkins Foundation  
 Autistic Self Advocacy Network  
 Bazelon Center for Mental Health Law  
 Center for Learner Equity  
 Clearinghouse on Women's Issues  
 Council of Parent Attorneys and Advocates  
 Disability Rights Education & Defense Fund  
 Feminist Majority Foundation  
 GLSEN  
 Hispanic Federation  
 Human Rights Campaign  
 Lambda Legal  
 NAACP Legal Defense and Educational Fund, Inc. (LDF)  
 National Alliance for Partnerships in Equity (NAPE)  
 National Center for Learning Disabilities  
 National Center for Transgender Equality  
 National Disability Rights Network (NDRN)  
 National Education Association  
 National Urban League  
 National Women's Law Center  
 SPLC Action Fund  
 Teach For America  
 UnidosUS YWCA USA

June 30, 2021

The Honorable Patty Murray  
Chair,  
Committee on Health, Education, Labor, and  
Pensions  
428 Senate Dirksen Office Building  
Washington, DC

The Honorable Richard Burr  
Ranking Member,  
Committee on Health, Education, Labor, and  
Pensions  
428 Senate Dirksen Office Building  
Washington, DC

Dear Chair Murray and Ranking Member Burr,

On behalf of the undersigned organizations, we urge you to support the confirmation of Catherine Lhamon to be the next Assistant Secretary for Civil Rights (OCR) at the United States Department of Education (ED). All students deserve to have equal access to an education that is free from discrimination and harassment. Unfortunately, students with disabilities face significant barriers to success and safety due to inappropriate school discipline policies, higher rates of bullying, less access to high-quality education, and educational segregation. Our organizations strongly support Catherine Lhamon to be the next Assistant Secretary for Civil Rights and urge you to confirm her nomination. Ms. Lhamon has demonstrated a commitment to upholding the civil rights of all students, especially those with disabilities, and advancing equity and equality during her tenure at the U.S. Department of Education (ED).

**The Importance of the Office of Civil Rights at the U.S. Department of Education**

Education is a civil right in the United States and we must ensure the nation's students have equitable access to quality public educational opportunities. At ED, OCR's core mission is to enforce nondiscrimination laws passed by Congress in schools. As the Assistant Secretary, Ms. Lhamon would serve as the primary legal advisor on civil rights at ED. She would lead the critically important charge of protecting the rights of students who report discrimination on the bases of race, color, national origin, sex, disability, and age. Of particular importance to the populations we serve, Ms. Lhamon would be responsible for enforcement of Section 504 of the Rehabilitation Act which prohibits discrimination on the basis of disability and guarantees equal access to education. OCR also plays a critical role in not only resolving individual complaints of discrimination, but investigating systemic discrimination, collecting and reporting data, and offering technical assistance to schools to better assist them in meeting their obligations under the law. The National Center for Education Statistics estimated over 50 million students are currently enrolled in public elementary and secondary schools. And with 7.1 million, or 14 percent of all public school students receiving education services under the Individuals with Disabilities Education Act (IDEA) and 1.3 million or 2.7% of all public school students covered under Section 504 of the Rehabilitation Act, it is of the utmost importance that OCR be led by someone with a commitment to civil rights as well as the technical background and expertise to ensure equitable access to public education for all students.

#### **Catherine Lhamon's Expertise and Accomplishments**

Ms. Lhamon has a demonstrated commitment to the enforcement of civil rights and a record of accomplishments when she previously served as Assistant Secretary for Civil Rights at ED from 2013 to 2017. Ms. Lhamon has deep expertise in the practice of civil rights law having worked on cases at the National Center for Youth Law, Public Counsel Law Center, and the American Civil Liberties Union Foundation of Southern California. In addition to her prior government service at ED, Ms. Lhamon has chaired the U.S. Commission on Civil Rights and currently serves as a domestic policy adviser at the White House, focusing on racial justice issues. At a pivotal time when schools are preparing to usher in a new school year following one of the most difficult school years in our nation's history, we cannot think of anyone more qualified to take on this important role.

Ms. Lhamon also has a long list of accomplishments from her previous time at ED which serve as indisputable evidence that she is a most qualified candidate to build on previous work and lead the office toward even more equitable outcomes. For example, she led the publication of a large number of Frequently Asked Questions and Dear Colleague letters on the rights of people with disabilities, many of which are still in force today two Administrations later. Notably, she listened to the concerns of the disability community about inappropriate uses of restraint and seclusion and discipline and addressed them through OCR's discipline,<sup>1</sup> and restraint and seclusion guidance<sup>2</sup> documents. These documents are of particular importance to our communities as students with disabilities and students of color are disproportionately negatively impacted by punitive disciplinary practices and harmful and sometimes lethal seclusion and restraint techniques<sup>3</sup> deployed in our nation's schools.

#### **Dear Colleague Letter on School Discipline**

In 2014, ED under the leadership of Ms. Lhamon at OCR, jointly with the U.S. Department of Justice released guidance clarifying the manner in which federal law applies to the prevention of discrimination on the basis of race and ethnicity.<sup>4</sup> This document was often cited by advocates, and provided critical information to the field about the manner in which these laws apply to disciplinary analyses. This guidance document and other departmental decisions during the period were informed by data drawn from the Civil Rights Data Collection (CRDC), an important source of information that was championed by Ms. Lhamon during her appointment. While the 2014 joint guidance has been rescinded, it is indicative of her laser focus on the disproportionate impact discrimination has on underserved student populations and the desire to address these long standing issues in our nation's schools. As more and more schools return to in-person instruction, discipline issues will come to the forefront and it will be incumbent

<sup>1</sup> <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>

<sup>2</sup> <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201612-504-restraint-seclusion-ps.pdf>

<sup>3</sup> Civil Rights Data Collection (CRDC) reveals that 101,990 students were subjected to seclusion or restraint in the United States during the 2017-18 school year, 78 percent of whom were students with disabilities and disproportionately Black boys.

<sup>4</sup> U.S. Department of Justice, Civil Rights Division and U.S. Department of Justice, Office for Civil Rights (2014) Dear Colleague Letter, Discipline, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>

upon OCR to ensure schools do not discriminate against students under the guise of discipline protocols.

**Dear Colleague Letter on Responding to Bullying of Students with Disabilities**

Students with disabilities are harassed or bullied based on sex, race, and disability at rates higher than their representation in the total school enrollment.<sup>5</sup> However, Ms. Lhamon has a long history of working to protect students with disabilities from bullying and harassment. On October 14, 2014, Ms. Lhamon issued guidance on responding to bullying of students with disabilities. Under her leadership, ED clarified that anti-bullying protections extend to students receiving services under Section 504 of the Rehabilitation Act.<sup>6</sup> This resulted in over three quarters of a million additional students being protected from bullying and harassment. When bullying occurs, schools must assess whether the bullying is related to a student's disability and whether the bullying affects a student's ability to receive a free, appropriate public education (FAPE). Until the guidance was issued, students receiving services under Section 504 who were bullied did not have any legal standing and this could result in a denial of FAPE. The guidance highlighted schools' obligations to address behavior that may constitute disability-based harassment, and explained schools' responsibilities to remedy any denial of FAPE for students who receive services either through the Individuals with Disabilities Education Act (IDEA) or Section 504. Without this clarification led by Ms. Lhamon, thousands of students with disabilities could be bullied or harassed and schools would not be obligated to remedy the effects of bullying on the services that the student with a disability receives to ensure FAPE.

**Dear Colleague Letter on Charter Schools**

Ms. Lhamon has played a significant role in addressing the emerging issues of civil rights in new education spaces, including in public charter schools. In 2014, Ms. Lhamon released guidance to detail how federal civil rights laws are to be equally applied to charter schools, including the services and activities (academic and nonacademic) that charter schools must provide, and that this must be in a manner that students with disabilities are given an equal opportunity to participate<sup>7</sup>. Since that time, charter schools have seen an increase in enrollment of students with disabilities and a narrowing gap between enrollment in charter schools and traditional public schools. In 2015-2016, students with disabilities comprised 10.79% of charter school enrollment (compared to 12.84% in traditional public schools); in 2009-2010, the enrollment was only 8.2% (compared to 11.2% in traditional public schools).<sup>8</sup> The inclusion of students with disabilities in charter school settings is beneficial to both students with and without

<sup>5</sup> U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2015–16

<sup>6</sup> Lhamon, C. E. (2014). Dear Colleague Letter: Responding to Bullying of Students with Disabilities. Office for Civil Rights, US Department of Education.

<sup>7</sup> Lhamon, C.E. (2014). Dear Colleague Letter: Charter Schools. Office of Civil Rights, US Department of Education.

<sup>8</sup> Rhim, L. M., Kothari, S., & Lancet, S. (2019). Key Trends in Special Education in Charter Schools in 2015-2016: Secondary Analysis of the Civil Rights Data Collection. *National Center for Special Education in Charter Schools*.

disabilities. This guidance was rescinded in 2020 and the disability community believes that Ms. Lhamon, if confirmed, could play a valuable role in ensuring that students with disabilities and their families are protected from discrimination in public charter school settings.

#### **Improved OCR Data Collection and Operating Procedures**

In addition to her policy accomplishments at OCR, Ms. Lhamon also has a distinguished record of improving OCR data collection and operating procedures. Under her tenure, she strengthened the CRDC by beginning a process to obtain more reliable data from school districts, which is an important aspect within OCR as it gives ED a national data set and helps improve overall strategy for administering and enforcing the civil rights statutes. CRDC data is also used by many organizations in our community to identify disproportionate impacts on students with disabilities and other student subgroups. She also listened to our community's concerns about the inconsistency in decisions across OCR Regional Offices and took effective measures to bring about more consistency, including selective review of decisions. This was particularly apparent in OCR's decisions on restraint and seclusion in schools where we saw a much more consistent approach to these complaints and the legal framework became the basis for the Dear Colleague Letter on restraint and seclusion. Finally, Ms. Lhamon was successful in persuading OCR Regional Offices to consider more than the facts of an individual complaint and consider opening a broader systemic investigation when called for. This enabled OCR to better fulfill its mission of protecting the rights of all students with disabilities. It is almost indisputable that Ms. Lhamon is the person who can rise to the challenge of ensuring all students have equitable access to educational opportunities and there is a clear record to point to which supports her nomination and confirmation to this position. While much is left to be done at OCR, we are confident that Ms. Lhamon is best positioned to lead OCR to success.

We can think of no more crucial time than now to ensure that the OCR at ED has a leader committed to enforcement of laws that protect students from discrimination, unfair discipline practices, harassment, and bullying on the basis of disability status. The person responsible for leading OCR must be committed to enforcing federal laws on behalf of every single student in this country. Our nation's students — those with disabilities and those without — deserve nothing less. As such, we urge you to support the confirmation of Catherine Lhamon to be the next U.S. Assistant Secretary for Civil Rights.

Sincerely,

Alliance for Excellent Education  
 American Occupational Therapy Association  
 Association of People Supporting Employment First (APSE)  
 Association of University Centers on Disabilities (AUCD)  
 Autistic Self Advocacy Network  
 Center for Learner Equity

Council for Exceptional Children  
 Council of Parent Attorneys and Advocates  
 Disability Rights Education & Defense Fund (DREDF)  
 EDGE Consulting Partners  
 Educators for Excellence  
 Learning Disabilities Association of America  
 Legal Clinics at Southwestern Law School  
 Mass Insight Education & Research  
 National Association of Counsel for Children  
 National Center for Learning Disabilities  
 National Council of Jewish Women  
 National Council on Independent Living  
 National Crittenton  
 National Disability Rights Network (NDRN)  
 National Education Association  
 National Urban League  
 New Leaders  
 Next100  
 Public Justice  
 TASH  
 Teach Plus  
 Texas Appleseed  
 The Advocacy Institute  
 The Civil Rights Project at UCLA  
 The National Federation of the Blind

CC: Senate Health, Education, Labor and Pensions Committee Members



July 6, 2021

The Honorable Patty Murray  
Chair,  
Committee on Health, Education, Labor,  
and Pensions  
428 Senate Dirksen Office Building  
Washington, DC

The Honorable Richard Burr  
Ranking Member,  
Committee on Health, Education, Labor,  
and Pensions  
428 Senate Dirksen Office Building  
Washington, DC

Dear Chair Murray and Ranking Member Burr,

The undersigned Protection & Advocacy (P&A) agencies support the confirmation of Catherine Lhamon to be the next Assistant Secretary for Civil Rights (OCR) at the United States Department of Education (ED). All students deserve to have equal access to an education that is free from discrimination and harassment. Unfortunately, students with disabilities face significant barriers to success and safety due to inappropriate school discipline policies, higher rates of bullying, less access to high-quality education, and educational segregation. Ms. Lhamon has demonstrated a commitment to upholding the civil rights of all students, especially those with disabilities, and advancing equity and equality during her tenure at the U.S. Department of Education (ED).

P&As are a nationwide network of congressionally mandated, cross disability organizations operating in every state, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands). There is also a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navajo, and San Juan Southern Paiute Nations located in the Four Corners region of the Southwest. Thousands of individual education cases comprise a significant percentage of P&A caseloads each year and tens of thousands are impacted by the systemic education work carried out by the P&As.

Education is a civil right in the United States and we must ensure the nation's students have equitable access to quality public educational opportunities. At ED, OCR's core mission is to enforce nondiscrimination laws passed by Congress in schools. As the Assistant Secretary, Ms. Lhamon would serve as the primary legal advisor on civil rights at ED. She would lead the critically important charge of protecting the rights of students who report discrimination on the bases of race, color, national origin, sex, disability, and

age. Of particular importance to the populations we serve, Ms. Lhamon would be responsible for enforcement of Section 504 of the Rehabilitation Act which prohibits discrimination on the basis of disability and guarantees equal access to education.

The National Center for Education Statistics estimated over 50 million students are currently enrolled in public elementary and secondary schools. And with 7.1 million, or 14 percent of all public school students receiving education services under the Individuals with Disabilities Education Act (IDEA), it is of the utmost importance that OCR be led by someone with a commitment to civil rights as well as the technical background and expertise to ensure equitable access to public education for all students.

Ms. Lhamon has a demonstrated commitment to the enforcement of civil rights and a record of accomplishments when she previously served as Assistant Secretary for Civil Rights at ED from 2013 to 2017. Ms. Lhamon has deep expertise in the practice of civil rights law having worked on cases at the National Center for Youth Law, Public Counsel Law Center, and the American Civil Liberties Union Foundation of Southern California. In addition to her prior government service at ED, Ms. Lhamon has chaired the U.S. Commission on Civil Rights. At a pivotal time when schools are preparing to usher in a new school year following one of the most difficult school years in our nation's history, we cannot think of anyone more qualified to take on this important role.

Ms. Lhamon also has a long list of accomplishments from her previous time at ED which serve as indisputable evidence that she is a most qualified candidate to build on previous work and lead the office toward even more equitable outcomes. For example, she led the publication of a large number of Frequently Asked Questions and Dear Colleague letters on the rights of people with disabilities, many of which are still in force today two Administrations later. Notably, she listened to the concerns of the disability community about inappropriate uses of restraint and seclusion and discipline and addressed them through OCR's discipline,<sup>1</sup> and restraint and seclusion guidance<sup>2</sup> documents. These documents are of particular importance to our communities as students with disabilities and students of color are disproportionately negatively impacted by punitive disciplinary practices and harmful and sometimes lethal seclusion and restraint techniques<sup>3</sup> deployed in our nation's schools.

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<sup>1</sup> <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>

<sup>2</sup> <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201612-504-restraint-seclusion-ps.pdf>

<sup>3</sup> Civil Rights Data Collection (CRDC) reveals that 101,990 students were subjected to seclusion or restraint in the United States during the 2017-18 school year, 78 percent of whom were students with disabilities and disproportionately Black boys.

Students with disabilities are harassed or bullied based on sex, race, and disability at rates higher than their representation in the total school enrollment.<sup>4</sup> Ms. Lhamon has a long history of working to protect students with disabilities from bullying and harassment. On October 14, 2014, Ms. Lhamon issued guidance on responding to bullying of students with disabilities. Under her leadership, ED clarified that anti-bullying protections extend to students receiving services under Section 504 of the Rehabilitation Act.<sup>5</sup> This resulted in over three quarters of a million additional students being protected from bullying and harassment. When bullying occurs, schools must assess whether the bullying is related to a student's disability and whether the bullying affects a student's ability to receive a free appropriate public education (FAPE). Until the guidance was issued, students receiving services under Section 504 who were bullied did not have any legal standing and this could result in a denial of FAPE. The guidance highlighted schools' obligations to address behavior that may constitute disability-based harassment, and explained schools' responsibilities to remedy any denial of FAPE for students who receive services either through IDEA or Section 504. Without this clarification led by Ms. Lhamon, thousands of students with disabilities could be bullied or harassed and schools would not be obligated to remedy the effects of bullying on the services that the student with a disability receives to ensure FAPE.

In addition to her policy accomplishments at OCR, Ms. Lhamon also has a distinguished record of improving OCR data collection and operating procedures. Under her tenure, she strengthened the CRDC by beginning a process to obtain more reliable data from school districts, which is an important aspect within OCR as it gives ED a national data set and helps improve overall strategy for administering and enforcing civil rights statutes. CRDC data is also used by many organizations in our community to identify disproportionate impacts on students with disabilities and other student subgroups. She also listened to our community's concerns about the inconsistency in decisions across OCR Regional Offices and took effective measures to bring about more consistency, including selective review of decisions. This was particularly apparent in OCR's decisions on restraint and seclusion in schools where we saw a much more consistent approach to these complaints and the legal framework became the basis for the Dear Colleague Letter on restraint and seclusion. Finally, Ms. Lhamon was successful in persuading OCR Regional Offices to consider more than the facts of an individual complaint and consider opening a broader systemic investigation when called for. This enabled OCR to better fulfill its mission of protecting the rights of all students with disabilities. It is almost indisputable that Ms. Lhamon is the person who can rise to the challenge of ensuring all students have equitable access to educational opportunities

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<sup>4</sup> U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2015–16

<sup>5</sup> Lhamon, C. E. (2014). Dear Colleague Letter: Responding to Bullying of Students with Disabilities. Office for Civil Rights, US Department of Education.

and there is a clear record to point to which supports her nomination and confirmation to this position. While much is left to be done at OCR, we are confident that Ms. Lhamon is best positioned to lead OCR to success.

We can think of no more crucial time than now to ensure that the OCR at ED has a leader committed to enforcement of laws that protect students from discrimination, unfair discipline practices, harassment, and bullying on the basis of disability status. The person responsible for leading OCR must be committed to enforcing federal laws on behalf of every single student in this country. Our nation's students — those with disabilities and those without — deserve nothing less. As such, we support the confirmation of Catherine Lhamon to be the next U.S. Assistant Secretary for Civil Rights.

Sincerely,

Alabama Disabilities Advocacy Program  
 Arizona Center for Disability Law  
 Disability Law Center– Massachusetts Protection and Advocacy  
 Disability Law Center of Alaska  
 Disability Law Center, Utah  
 Disability Law Colorado  
 Disability Rights Arkansas  
 Disability Rights California  
 Disability Rights Center - New Hampshire  
 Disability Rights Center of Kansas  
 Disability Rights Connecticut  
 DisAbility Rights Idaho  
 Disability Rights Iowa  
 Disability Rights Louisiana  
 Disability Rights Maine  
 Disability Rights Michigan  
 Disability Rights Nebraska  
 Disability Rights New Jersey  
 Disability Rights New Mexico  
 Disability Rights New York (DRNY)  
 Disability Rights North Carolina  
 Disability Rights Oregon  
 Disability Rights Pennsylvania  
 Disability Rights Rhode Island  
 Disability Rights South Carolina

Disability Rights Tennessee  
Disability Rights Vermont  
Disability Rights Washington  
Disability Rights Wisconsin  
Indiana Disability Rights  
Kentucky Protection and Advocacy  
Minnesota Disability Law Center/Mid-Minnesota Legal Aid  
Native American Disability Law Center  
Nevada Disability Advocacy & Law Center

CC: Senate Health, Education, Labor and Pensions Committee Members

July 08, 2021

*Sent via email*

The Honorable Patty Murray  
Committee on Health, Education, Labor, & Pensions  
428 Senate Dirksen Office Building  
Washington, DC

The Honorable Richard Burr  
Committee on Health, Education, Labor, & Pensions  
428 Senate Dirksen Office Building  
Washington, DC

**Re: Nomination of Catherine Lhamon as Assistant Secretary of the Office for Civil Rights at the U.S. Department of Education**

Dear Chair Murray and Ranking Member Burr,

The seventy undersigned lesbian, gay, bisexual, transgender, non-binary, queer, gender non-conforming, and intersex (LGBTQ+) missioned organizations write to express our strong support for the nomination of Catherine Lhamon as Assistant Secretary for the Office for Civil Rights (OCR) at the U.S. Department of Education.

Ms. Lhamon's prior experience protecting the civil rights of LGBTQ+ students will be invaluable as the Department of Education works with educators, administrators, and other stakeholders to prevent discrimination based on gender identity, transgender status, sex stereotypes, or sex characteristics, including intersex traits, and promote inclusive schools for all students. During her previous tenure as Assistant Secretary for Civil Rights at USED, from 2013 to 2017, Ms. Lhamon proved to be a fierce advocate for students' civil rights. Ms. Lhamon defended transgender students' equal protection from discrimination<sup>1</sup> and, in 2016, issued guidance to educators on the equal treatment of transgender students, jointly with the Civil Rights Division of the U.S. Department of Justice.<sup>2</sup> The Department of Education had previously defined sex discrimination as inclusive of discrimination on the basis of gender identity, but this was the first time the Department issued guidelines and recommendations for how schools should specifically support transgender students.

Ms. Lhamon also improved OCR's Civil Rights Data Collection by initiating collection of data on incidents of bullying and harassment based sexual orientation. LGBTQ+ young people experience higher rates of bullying.<sup>3</sup> More than two in three LGBTQ+ students (68.7%) were verbally harassed in the past year because of their sexual orientation, one-quarter (25.7%) were physically harassed, and more than one in ten (11.0%) were physically assaulted based on their sexual orientation.<sup>4</sup> Students of color commonly experience multiple forms of victimization—40.0% of both Black and Asian American/Pacific Islander students, 41.2% of Indigenous students, and 41.6% of Latinx students reported bullying based on both their sexual orientation and their race.<sup>5</sup> Recent studies indicate that the harm of bias-motivated harassment and bullying is especially severe,<sup>6</sup> and is associated with a range of adverse educational outcomes, including increased absences, lower GPAs, and a decreased likelihood of pursuing post-secondary education.<sup>7</sup> By improving data collection, Ms. Lhamon helped illuminate the scope of bullying based on sexual orientation and signaled to schools that these incidents were on par with other forms of bias-motivated violence that schools must work to prevent in order to protect students' right to education.

As Assistant Secretary for Civil Rights at USED Ms. Lhamon also worked to improve how schools and colleges handle accusations of sexual assault and sexual harassment, expressly acknowledging that

LGBTQ+ youth report high rates of sexual harassment and sexual violence.<sup>8</sup> A majority of LGBTQ+ secondary school students (58.3%), reported being sexually harassed in the past year.<sup>9</sup> At the undergraduate level, one in four transgender, non-binary, and gender-nonconforming students report have been sexually assaulted.<sup>10</sup> LGBTQ+ young people often face obstacles to reporting sexual harassment and assault.<sup>11</sup> Under Ms. Lhamon's leadership, OCR increased enforcement and provided guidance on schools' responsibilities to address sexual violence. Ms. Lhamon's leadership would again be invaluable as schools work to address sexual violence.

Ms. Lhamon also championed the rights of all students to be free from harmful and punitive discipline,<sup>12</sup> which disproportionately impacts students who are LGBTQ+, Black, Indigenous, people of color (BIPOC), and people with disabilities. More than one in four LGBTQ+ students (28%) reported being disciplined for public displays of affection that are not disciplined if it does not involve LGBTQ+ students, 7.3% were disciplined after reporting their own victimization to school staff, and 3.0% were disciplined simply for identifying as LGBTQ+.<sup>13</sup> Disparities in the use and severity of discipline suggest that LGBTQ+ students of color and LGBTQ+ students with disabilities are more likely to be disciplined unfairly and punitively. LGBTQ+ students who are BIPOC report experiencing more school discipline than white LGBTQ+ youth and are far more likely to report being disciplined by removal from school.<sup>14</sup> LGBTQ+ students who are people with disabilities are more likely to have experienced school discipline than their LGBTQ+ peers without disabilities (47.8% vs. 36.9%) and are also more likely to have been involved in the justice system as a result of school discipline.<sup>15</sup> Ms. Lhamon's leadership in preventing unfair and punitive discipline is precisely what we need to make progress on these persistent inequities and protect all students' civil and education rights.

In 2016, Ms. Lhamon was appointed and unanimously confirmed to chair the U.S. Commission on Civil Rights, where she continued fighting for the equal rights of communities that experience marginalization by clarifying the authority and responsibility of U.S. government agencies to ensure equal protection and equal access. In addition to her service in the federal government, Ms. Lhamon brings decades of experience litigating civil rights cases at the National Center for Youth Law, Public Counsel Law Center, and the ACLU Foundation of Southern California.

Ms. Lhamon was unanimously confirmed by the U.S. Senate to her earlier appointment as Assistant Secretary for the Department of Education's Office for Civil Rights on August 1, 2013. Since that time, Ms. Lhamon's record as a civil rights leader has only been strengthened. We strongly support Ms. Lhamon's nomination and urge you to do the same. We thank you for your consideration. If you have any questions, please contact Aaron Ridings of GLSEN.

Sincerely,

GLSEN

Alliance for Excellent Education

Athlete Ally

Campus Pride

Center for Disability Rights

Center for LGBTQ Economic Advancement & Research (CLEAR)

CenterLink: The Community of LGBT Centers  
EDGE Consulting Partners  
Family Equality  
FORGE, Inc.  
Hispanic Federation  
Human Rights Campaign  
Lambda Legal  
Movement Advancement Project  
National Black Justice Coalition  
National Center for Lesbian Rights  
National Center for Transgender Equality  
National Education Association  
National LGBTQ Task Force Action Fund  
PFLAG National  
The Trevor Project

**State & Local Organizations**

Birmingham and Covington School Diversity Equity and Inclusion Committee  
Education Law Center-PA  
GLSEN Albuquerque  
GLSEN Arkansas  
GLSEN Austin  
GLSEN Bluegrass  
GLSEN Bucks County  
GLSEN Central New Jersey  
GLSEN Central Ohio  
GLSEN Collier County  
GLSEN Connecticut  
GLSEN Greater Cincinnati  
GLSEN Greater Fort Wayne  
GLSEN Greater Huntsville  
GLSEN Greater Kansas City  
GLSEN Greater Tulsa

GLSEN Green Bay  
GLSEN Hawaii  
GLSEN Kansas  
GLSEN Los Angeles  
GLSEN Lower Hudson Valley  
GLSEN Maryland  
GLSEN Massachusetts  
GLSEN Merced  
GLSEN Mid-Hudson  
GLSEN New Hampshire  
GLSEN Northeast Ohio  
GLSEN Northern New Jersey  
GLSEN Northern Utah  
GLSEN Northern Virginia  
GLSEN Northwest Ohio  
GLSEN Omaha  
GLSEN Oregon  
GLSEN Phoenix  
GLSEN Richmond  
GLSEN San Diego County  
GLSEN Southeast Michigan  
GLSEN Southern Maine  
GLSEN Southern New Jersey  
GLSEN Springfield  
GLSEN Tampa Bay  
GLSEN Tennessee  
GLSEN Upstate New York  
GLSEN Washington State  
GLSEN Yuma  
Mazzoni Center  
Michigan Teacher of the Year Network  
Oasis Legal Services  
Q Center

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**Notes**

- <sup>1</sup> Smith, M., Davey, M. (November 3, 2015). Illinois District Violated Transgender Student's Rights, U.S. Says. The New York Times. <https://www.nytimes.com/2015/11/03/us/illinois-district-violated-transgender-students-rights-us-says.html>.
- <sup>2</sup> U.S. Department of Justice, Civil Rights Division, and U.S. Department of Education, Office of Civil Rights. (May 13, 2016). Dear Colleague Letter on Transgender Students. <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>. Accessed June 28, 2021. This guidance was rescinded in 2017 and is currently archived.
- <sup>3</sup> Johns, M. M., Lowry, R., Haderxhanaj, L. T., Rasberry, C. N., Robin, L., Scales, L., Stone, D., & Suarez, N. A. (2020). Trends in Violence Victimization and Suicide Risk by Sexual Identity Among High School Students - Youth Risk Behavior Survey, United States, 2015-2019. MMWR supplements, 69(1), 19-27. <https://doi.org/10.15585/mmwr.su6901a3>.
- <sup>4</sup> Earnshaw, V. A., Reisner, S. L., Juvonen, J., Hatzenbuehler, M. L., Perrotti, J., & Schuster, M. A. (2017). LGBTQ Bullying: Translating Research to Action in Pediatrics. Pediatrics, 140(4). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5613818/>.
- <sup>5</sup> Kosciw et al. (2020). The 2019 National School Climate Survey, p. 28-29.
- <sup>6</sup> Truong, N. L., Zongrone, A. D., & Kosciw, J. G. (2020). Erasure and resilience: The experiences of LGBTQ students of color, Asian American and Pacific Islander LGBTQ youth in U.S. Schools. New York: GLSEN. <https://www.glsen.org/sites/default/files/2020-06/Erasure-and-Resilience-AAPI-2020.pdf>.
- <sup>7</sup> Truong, N. L., Zongrone, A. D., & Kosciw, J. G. (2020). Erasure and resilience: The experiences of LGBTQ students of color, Black LGBTQ youth in U.S. Schools. New York: GLSEN. <https://www.glsen.org/sites/default/files/2020-06/Erasure-and-ResilienceBlack-2020.pdf>.
- <sup>8</sup> Zongrone, A. D., Truong, N. L., & Kosciw, J. G. (2020). Erasure and resilience: The experiences of LGBTQ students of color, Latinx LGBTQ youth in U.S. Schools. New York: GLSEN. <https://www.glsen.org/sites/default/files/2020-06/Erasure-and-ResilienceLatinx-2020.pdf>.
- <sup>9</sup> Zongrone, A. D., Truong, N. L., & Kosciw, J. G. (2020). Erasure and resilience: The experiences of LGBTQ students of color, Native and Indigenous LGBTQ youth in U.S. Schools. New York: GLSEN. <https://www.glsen.org/sites/default/files/2020-06/Erasure-and-ResilienceNative-2020.pdf>.
- <sup>10</sup> Russell, S. T., Sinclair, K. O., Poteat, V. P., & Koenig, B. W. (2012). Adolescent health and harassment based on discriminatory bias. American Journal of Public Health, 102(3): 493-495.
- <sup>11</sup> Birkett, M., Newcomb, M. E., & Mustanski, B. (2015). Does it get better? A longitudinal analysis of psychological distress and victimization in lesbian, gay, bisexual, transgender, and questioning youth. Journal of Adolescent Health, 56(3):280-285.
- <sup>12</sup> Kosciw et al. (2020). The 2019 National School Climate Survey, p. xviii.
- <sup>13</sup> U.S. Department of Education. (April 29, 2014). Questions and Answers on Title IX and Sexual Violence. <https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.
- <sup>14</sup> Kosciw et al. (2020). The 2019 National School Climate Survey, p. 30.
- <sup>15</sup> AAU. (Oct. 15, 2019). Report on the AAU Campus Climate Survey on Sexual Assault and Misconduct, ix. <https://www.aau.edu/key-issues/campus-climate-and-safety/au-campus-climate-survey-2019>.
- <sup>16</sup> Kosciw et al. (2020). The 2019 National School Climate Survey, p. 32-34.
- <sup>17</sup> Kingkade, T. (July 14, 2015). LGBT Students Face More Sexual Harassment and Assault, and More Trouble Reporting It, The Huffington Post. [https://www.huffpost.com/entry/lgbt-students-sexual-assault\\_n\\_55a332dfe4b0ecec71bc5e6a](https://www.huffpost.com/entry/lgbt-students-sexual-assault_n_55a332dfe4b0ecec71bc5e6a).
- <sup>18</sup> U.S. Department of Education. (January 8, 2014). Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline. <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>. Accessed June 29, 2021.
- <sup>19</sup> U.S. Department of Education. (December 28, 2016). Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities. <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf>.
- <sup>20</sup> Kosciw et al. (2020). The 2019 National School Climate Survey, p. 41.
- <sup>21</sup> Kosciw et al. (2020). The 2019 National School Climate Survey, p. 112.
- <sup>22</sup> Black and Indigenous LGBTQ+ students are close to twice as likely to report out-of-school discipline compared to white LGBTQ+ students: 8.8% of Black LGBTQ+ students and 9.0% of Indigenous LGBTQ+ students report out-of-school discipline, compared to 4.6% of white LGBTQ+ students.
- <sup>23</sup> Palmer, N. A., Greytak, E. A., Kosciw, J. G. (2016). Educational exclusion: Drop out, push out, and school-to-prison pipeline among LGBTQ youth. New York: GLSEN. <https://www.glsen.org/research/educational-exclusion-drop-out-push-out-school-prison-pipeline>.



Senator Patty Murray  
Chair  
Senate Health, Education, Labor and Pensions  
Committee  
428 Senate Dirksen Office Building  
Washington, DC

Senator Richard Burr  
Vice Chair  
Senate Health, Education, Labor and Pensions  
Committee  
428 Senate Dirksen Office Building  
Washington, DC

Dear Chair Murray and Vice Chair Burr:

On behalf of the Association on Higher Education And Disability (AHEAD), I write in strong support of Catherine Lhamon's nomination to be the Assistant Secretary for Civil Rights at the Office for Civil Rights (OCR) at the U.S. Department of Education. Through our work, we are well aware of OCR's efforts, including how it functioned under the leadership of Catherine Lhamon from 2013-2017. Ms. Lhamon is an excellent choice to lead the office once again.

Founded in 1977, AHEAD is the leading professional membership association for individuals committed to equity for persons with disabilities in higher education. We offer member experience to disability resource professionals, student affairs personnel, ADA coordinators, diversity officers, AT/IT staff, faculty and other instructional personnel, and colleagues who are invested in creating welcoming higher education experiences for disabled individuals. We have over 4,000 members, representing all 50 states. AHEAD members are actively engaged in service provision, consultation and training, and policy development on their campuses and promote accessibility across the field of higher education and beyond.

While most of the attention on students with disabilities is focused on K-12, the needs of these students do not end with their graduation from high school. Under Ms. Lhamon's prior leadership, OCR made sure the needs of college students with disabilities were addressed. The OCR offices our members engaged with were very helpful in providing technical assistance so that colleges and universities could provide the support these students needed. We were also pleased with our engagement with the national office. Our discussions with them were always respectful and productive, and OCR staff worked with us to keep our members informed.



I know that a well-functioning agency does not happen by accident, needing a skilled leadership throughout, starting at the top. Ms. Lhamon was a vocal advocate for students with disabilities while at the same time recognized that colleges and universities need support to ensure they do the right thing by their students. This is a difficult balance to strike, but Ms. Lhamon found a way to do it.

OCR, as well as students with disabilities and our members, would be extremely well served by having Ms. Lhamon once again lead the office. I urge her swift confirmation.

Thank you for giving me the opportunity to share AHEAD's views, and please let me know if AHEAD can be of any further service to you.



June 29, 2021

The Honorable Patty Murray  
Chair  
US Senate HELP Committee  
Washington, DC

The Honorable Richard Burr  
Ranking Member  
US Senate HELP Committee  
Washington, DC

**Dear Chair Murray and Ranking Member Burr:**

I write on behalf of the Association of Title IX Administrators (ATIXA) to express our strong support for Catherine Lhamon's nomination to be Assistant Secretary for the Office for Civil Rights at the US Department of Education. ATIXA is the primary industry voice for more than 7000+ members who are Title IX administrators for schools and colleges.

ATIXA has long admired Ms. Lhamon's dedication in her roles as the Assistant Secretary for Education for the Office for Civil Rights, Chair of the US Commission on Civil Rights, as Legal Affairs Secretary to Governor Newsom, and in her current role as the Deputy Director of the Domestic Policy Council at the White House with a focus on equity.

ATIXA has always found Ms. Lhamon to be a passionate champion for the rights of children and adults to be free from sex discrimination in educational settings. She is a leader who will help to deliver on the promise made by Title IX almost 50 years ago. During her leadership at the US Department of Education under President Obama, Ms. Lhamon was a tireless and effective civil rights enforcement official for children and adults with disabilities, and for individuals facing sex, gender, and race discrimination. ATIXA is confident that she will continue to show visionary leadership and achieve great outcomes if she is confirmed to return to that role under President Biden and Secretary Cardona.

During her time leading the US Commission on Civil Rights, Ms. Lhamon took on the issue of fair wages for adults with disabilities under the Fair Labor Standards Act. As part of this work, she recognized the importance of taking a bipartisan approach to this issue, and eschewed ideological dogmatism. The same was true of her first tenure with The Office for Civil Rights (OCR) from 2013-2017. Early on, she led efforts to ensure that victims of discrimination were well-protected, but her team at OCR also demonstrated that when circumstances indicated a need for Title IX to also be protective of the rights of respondents, including due process rights, Lhamon's team was responsible for issuing the Wesley College Resolution. This seminal document was widely circulated to higher education in 2017 to signal that OCR enforced Title IX to ensure fairness to all, not just to victims.

In addition, her work at OCR increased transparency, by ensuring that enforcement actions were widely promoted and disseminated from the OCR website to schools in the field, when a key investigation finding was added to the online database. ATIXA expects a return to that consistent practice during the current administration.

Further, Lhamon's team should be credited with successful unification efforts. Prior to her tenure, it was common to see differing decisions issuing from regional OCR offices, holding funding recipients to varying and inconsistent standards. Lhamon recognized the need for OCR to speak with one voice in its enforcement actions and implemented a framework to ensure that enforcement criteria were the same, regardless of which regional office received a complaint or conducted an investigation. These are not small tasks when considered in light of the vast and far-flung nature of OCR's bureaucracy.

Lhamon's previous tenure with OCR showed that she was not the same professional when she left as she was when she entered, and that is how it should be. Our jobs change and affect all of us, and challenge us to grow. ATIXA's members watched as Lhamon learned, recalibrated, and adjusted her approaches to the changing nature and needs of the field. Realizing that a key 2011 Dear Colleague Letter had not been sent to K12 administrators when it was issued, Lhamon's OCR team made sure to issue a 2015 follow-up to ensure that the key messages of the 2011 Letter were reiterated to every superintendent and school district in the country. We expect that her next tenure with OCR, if she is confirmed, will show the same willingness to grow, adjust, and ensure that her leadership is reflective of the needs of the times.

At the end of the day, ATIXA's members recognize Catherine Lhamon as an enforcer, often against them. That's OCR's job. It's always going to be an arms-length relationship, as it should be. While ATIXA's members will always prize guidance from OCR more than they welcome a tone of firm enforcement, they recognize that OCR must fulfill its role, and thus many ATIXA members have a grudging respect for this

enforcement function, and the way that Catherine Lhamon has conducted herself at OCR historically. Her confirmation is essential to advancing the Biden administration's goals for Title IX.

Thank you for taking the time to consider ATIXA's input on your important deliberations and thank you both for your leadership on behalf of those facing discrimination in educational settings.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brett A. Sokolow", written over a horizontal line.

Brett A. Sokolow, JD  
President, ATIXA

**From:** [Lisa Jones Lane](#)  
**To:** [Carter, Greg \(HELP Committee\)](#)  
**Subject:** Catherine Lhamon  
**Date:** Sunday, June 20, 2021 8:13:01 PM

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Mr. Carter,

I saw that Catherine Lhamon has been nominated to be the Assistant Secretary for Civil Rights at the Department of Education.

I had the pleasure of working for her as a Supervisory Attorney/Team Leader in the Cleveland Enforcement Office during her previous tenure in this role.

Catherine's leadership in civil rights is unquestioned. Working under her leadership was a highlight of my OCR experience. She not only champions civil rights for the children in America's schools but also is a true leader in looking for diversity and inclusion in the workforce. She sought out opinions differing from hers to ensure we brought the best legal arguments to the table in reaching our case conclusions. I hope she is able to bring that desire for diverse thought and differing options back to OCR as the hiring decisions over the last few years were fairly homogeneous.

In addition, Catherine is an empathetic leader. If her team ultimately overrules your decision, she does so with explanation and often a phone call so you are not left twisting in the wind about why the case turned out differently than expected.

Catherine took the time to know the federal workforce by name and amazingly remembered details about their lives. She's a leader you want to work for and I'm happy to support her return to OCR in any way I can.

Please let me know if I can provide any additional information to support her nomination.

Sincerely,

Lisa M. Lane  
Former OCR Cleveland Supervisory Attorney/Team Leader

**From:** [Rush, Carly \(HELP Committee\)](#)  
**To:** [Carter, Greg \(HELP Committee\)](#); [Sanchez, Michelle \(HELP Committee\)](#); [Letter, Elizabeth \(HELP Committee\)](#)  
**Subject:** FW: Letter of Support for Catherine Lhamon  
**Date:** Monday, June 21, 2021 2:15:33 PM

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**From:** Katy Parker  
**Sent:** Monday, June 21, 2021 1:23 PM  
**To:** (HELP Committee)  
**Subject:** Letter of Support for Catherine Lhamon

The Honorable Patty Murray  
Chairwoman  
Senate Committee on Health, Education, Labor and Pensions  
428 Senate Dirksen Office Building  
Washington, DC

The Honorable Richard Burr  
Ranking Member  
Senate Committee on Health, Education, Labor and Pensions  
428 Senate Dirksen Office Building  
Washington, DC

Dear Chair Murray and Ranking Member Burr:

I write to express my strong support for Catherine Lhamon's nomination as the next Assistant Secretary for Civil Rights at the Department of Education. As a civil rights advocate, I believe that this critically important position should be filled by someone with a proven track record for carrying out the mission of the Department of Education. Ms. Lhamon is incredibly qualified for this role and I hope you and the Committee on Health, Education, Labor and Pensions will support her and that the full Senate will quickly confirm her nomination.

The health and future of our nation requires ensuring equal access to education and promoting educational excellence. Further, the vigorous enforcement of civil rights in public education should be a wholly bipartisan effort. Ms. Lhamon is an excellent nominee for this role. Her demonstrated commitment to the work and experience of educators and students; her impressive record as a civil rights attorney with such esteemed offices as the National Center for Youth Law, Public Counsel Law Center, and the ACLU Foundation of Southern California; and her experience of working in both federal and state government makes her the right candidate for this role.

Thank you for your consideration and your public service.

Sincerely,  
Katherine L. Parker

**From:** [Rush, Carly \(HELP Committee\)](#)  
**To:** [Sanchez, Michelle \(HELP Committee\)](#); [Carter, Greg \(HELP Committee\)](#)  
**Subject:** FW: Letter of Support for Catherine Lhamon  
**Date:** Friday, June 18, 2021 4:47:38 PM

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**From:** Lareena Phillips  
**Sent:** Friday, June 18, 2021 4:11 PM  
**To:** (HELP Committee)  
**Subject:** Letter of Support for Catherine Lhamon

The Honorable Patty Murray  
Chairwoman  
Senate Committee on Health, Education, Labor and Pensions  
428 Senate Dirksen Office Building  
Washington, DC

The Honorable Richard Burr  
Ranking Member  
Senate Committee on Health, Education, Labor and Pensions  
428 Senate Dirksen Office Building  
Washington, DC

Dear Chair Murray and Ranking Member Burr:

I write to express my strong support for Catherine Lhamon's nomination as the next Assistant Secretary for Civil Rights at the Department of Education. As a mother and someone who cares deeply about protecting students from discrimination, I believe that this critically important position should be filled by someone with a proven track record for carrying out the mission of the Department of Education. Ms. Lhamon is incredibly qualified for this role and I hope you and the Committee on Health, Education, Labor and Pensions will support her and that the full Senate will quickly confirm her nomination.

The health and future of our nation requires ensuring equal access to education and promoting educational excellence. Further, the vigorous enforcement of civil rights in public education should be a wholly bipartisan effort. Ms. Lhamon is an excellent nominee for this role. Her demonstrated commitment to the work and experience of educators and students; her impressive record as a civil rights attorney with such esteemed offices as the National Center for Youth Law, Public Counsel Law Center, and the ACLU Foundation of Southern California; and her experience of working in both federal and state government makes her the right candidate for this role.

Thank you for your consideration.

Sincerely,  
Lareena Phillips

**From:** [Laura Faer](#)  
**To:** [Carter, Greg \(HELP Committee\)](#)  
**Subject:** In Strong Support of Catherine E. Lhamon, nominee for Assistant Secretary of the Office for Civil Rights, U.S. Department of Education  
**Date:** Thursday, June 24, 2021 9:54:29 AM

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Dear Mr. Carter: I am writing in strong support of Catherine E. Lhamon's nomination for Assistant Secretary of the Office for Civil Rights (OCR) at the Department of Education. Ms. Lhamon's personal character, extensive leadership and management experience, and history of professional achievement in the legal field make her extremely well-suited for the role in which the President has asked her to serve. In my roles first as Chief Attorney and then as Director of the San Francisco Regional Office, I saw firsthand how Ms. Lhamon strengthened OCR's investigation and policy work while also bringing her deep commitment to fairness, impartiality, and accountability to every aspect of OCR's practice. Ms. Lhamon possesses an extraordinary depth and breadth of civil rights experience. She deeply understands the nuances of each of the federal civil rights laws that the Office for Civil Rights enforces. She works tirelessly to ensure full enforcement of those laws and that the investigations into allegations of potential civil rights violations are fair, unbiased, and thorough.

Ms. Lhamon will bring an exceptional combination of skill and experience to the role of Assistant Secretary. She is a well-respected and nationally-recognized litigator, an adept and thoughtful manager, a skilled policymaker, and a strong mentor for those in the legal field. She has proven that she has the leadership and management skills to effectively lead a large agency with many different duties, responsibilities, and highly sensitive issues to address. Even while leading work that requires around-the-clock attention, she also takes considerable time to build relationships with staff, listen to their concerns, and develop strategies to both support them and hold them accountable to a standard of excellence. Ms. Lhamon has respect for diverse viewpoints in and out of the office. She makes a point of ensuring sufficient time and space for staff to share their concerns and provide feedback. Ms. Lhamon is fair, thoughtful, and constantly looking for ways to improve both the work of the office and her own leadership and management skills. She is an extraordinarily well-qualified nominee with the right combination of talent, experience, and strong moral character to ensure that OCR is led with impartiality, excellence, and integrity.

Thank you for your consideration. Please do not hesitate to contact me if you have any questions.

Warmest regards,

Laura L. Faer



1500 K Street, NW  
Suite 900  
Washington, DC [REDACTED]



July 9, 2021

The Honorable Patty Murray  
Chair, Committee on Health, Education,  
Labor, and Pensions  
428 Senate Dirksen Office Building  
Washington, DC

The Honorable Richard Burr  
Ranking Member, Committee on Health,  
Education, Labor, and Pensions  
428 Senate Dirksen Office Building  
Washington, DC

**RE: Support for the Nomination of Catherine Lhamon to the Assistant Secretary for Civil Rights at the United States Department of Education**

Dear Chair Murray and Ranking Member Burr:

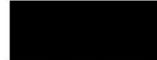
On behalf of the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"), I strongly urge you to support the nomination of Catherine Lhamon to once again serve as Assistant Secretary for Civil Rights at the U.S. Department of Education. The Lawyers' Committee is a nonprofit civil rights organization founded in 1963 by the leaders of the American bar, at the request of President John F. Kennedy, to help defend the civil rights of Black Americans and other people of color. For nearly sixty years, the Lawyers' Committee has been at the forefront of many of the most significant cases involving race and national origin discrimination to secure equal justice for all. Our civil rights mission and our historical work of ensuring equal educational opportunity in schools and colleges for all students make us uniquely qualified to support her nomination.

The mission of the U.S. Department of Education's Office for Civil Rights ("OCR") is to ensure equal access to education and to promote educational excellence through vigorous enforcement of civil rights in our nation's schools. OCR must carry out this difficult but necessary work by addressing inequities and discrimination in schooling, including but not limited to: disparate discipline of students of color, including those with disabilities; inequitable distribution of resources and opportunities-to-learn to high-minority enrollment schools; unequal access to selective high schools and universities; and a growing chorus of anti-diversity and inclusion parents and school boards seeking to repel anti-racism and anti-sexism efforts in schools. These civil rights issues, among several others, have been magnified in light of the pandemic's effect, particularly for communities of color, on educational opportunity as well as the national reckoning on racial injustice and systemic racial discrimination.

The importance of OCR cannot be understated, and OCR requires a leader who is competent, skilled, and determined to meet the growing challenges confronting students of color and those with historically marginalized intersectional identities. As a former Assistant Secretary for Civil Rights and former Chairperson of the U.S. Commission of Civil Rights, Ms. Lhamon is exceptionally qualified to help protect and enforce the civil rights of our most underserved students and communities. Additionally, Ms. Lhamon's prior seminal work as a civil rights



1500 K Street, NW  
Suite 900  
Washington, DC



attorney for several nonprofit legal organizations earlier in her career further substantiates her impressive and impeccable qualifications to lead the Office for Civil Rights and to take head on the evolving challenges confronting underserved students today.

During Ms. Lhamon's previous tenure as Assistant Secretary for Civil Rights, she spearheaded the development of critical tools and guidance for students, parents, advocates and schools. For example, in the area of school discipline, Black boys and girls were far more likely to be disciplined for similar offenses and suspended from school compared to their white peers. Then-Assistant Secretary Lhamon issued a Dear Colleague Letter, along with the Department of Justice's Civil Rights Division, providing guidance for schools on how to identify, avoid, and remedy discriminatory discipline, thereby helping schools to provide all students with equal educational opportunities.<sup>1</sup>

Inequitable opportunities to learn (i.e., access to advanced coursework, funding, teacher quality) in schools enrolling a high number of students of color also remains a rampant civil rights concern. In response, Ms. Lhamon issued a Dear Colleague letter on resource equity and comparability highlighting civil rights obligations of schools and school districts to ensure all students have access to equitable access to educational opportunity.<sup>2</sup>

Then-Assistant Secretary Lhamon also issued critical guidance, questions and answers, and fact sheets to protect and enforce the educational civil rights of women and girls related to Title IX and sexual harassment and sexual violence;<sup>3</sup> the rights of English learners to access high quality education;<sup>4</sup> the rights of immigrant students to enroll in and attend schools;<sup>5</sup> the prevention of bullying of students with disabilities;<sup>6</sup> and the fair treatment of transgender students.<sup>7</sup>

<sup>1</sup> Catherine E. Lhamon, Assistant Sec'y for Civil Rights, Jocelyn Samuels, Acting Assistant Attorney General, "Dear Colleague Letter: Student Discipline," U.S. Department of Justice, Civil Rights Division and U.S. Department of Education, Office for Civil Rights (Jan. 8, 2014).

<sup>2</sup> Catherine E. Lhamon, Assistant Sec'y for Civil Rights, "Dear Colleague Letter: Guidance to Ensure All Students Have Equal Access to Educational Resources," U.S. Department of Education, Office for Civil Rights (Oct. 1, 2014).

<sup>3</sup> See, e.g., Catherine E. Lhamon, Assistant Sec'y for Civil Rights, Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities, U.S. Department of Education, Office for Civil Rights (Dec. 1, 2014); Catherine E. Lhamon, Assistant Sec'y for Civil Rights, Questions and Answers on Title IX and Sexual Violence, U.S. Department of Education, Office for Civil Rights (Apr. 29, 2014).

<sup>4</sup> U.S. Department of Justice, Civil Rights Division and U.S. Department of Education, Office for Civil Rights, "Dear Colleague Letter: Guidance to Ensure English Learner Students Have Equal Access to a High-Quality Education" (Jan. 7, 2015).

<sup>5</sup> Catherine E. Lhamon, Phillip H. Rosenfelt, Jocelyn Samuels, "Dear Colleague Letter, School Enrollment Procedures," U.S. Department of Justice, Civil Rights Division & Office of General Counsel, and U.S. Department of Justice, Civil Rights Division (2014).

<sup>6</sup> Catherine E. Lhamon, Assistant Sec'y for Civil Rights, "Dear Colleague Letter: Guidance on Bullying of Students with Disabilities," U.S. Department of Education, Office for Civil Rights (Oct. 21, 2014).



LAWYERS' COMMITTEE FOR  
**CIVIL RIGHTS**  
UNDER LAW

1500 K Street, NW  
Suite 900  
Washington, DC [REDACTED]



Ms. Lhamon's critical work to support the civil rights of underserved communities did not end there. As Chairperson of the U.S. Commission on Civil Rights, the Commission issued a report in 2018, *Public Education Funding Inequity in an Era of Increasing Concentration of Poverty and Resegregation*. Under Chair Lhamon's leadership, the Commission also issued a briefing report in 2019, examining federal civil rights enforcement efforts from Fiscal Year 2016 to Fiscal Year 2018 for thirteen federal agencies, including the U.S. Department of Education.<sup>8</sup>

The Senate plays a pivotal constitutionally-mandated role of ensuring that its members properly and critically vet executive appointees to ensure they are well-qualified and well-suited to carry out their duties. Ms. Lhamon's professional life experiences, including her litigation and advocacy on social and racial justice issues, as well as her prior roles as Assistant Secretary for Civil Rights and Chair of the U.S. Commission on Civil Rights, demonstrate that she is an ideal candidate to lead the U.S. Department of Education's civil rights enforcement office. The Senate has acknowledged her outstanding qualifications for this role before as it unanimously confirmed her as Assistant Secretary in 2013. The case for confirmation has only grown stronger since then.

Thank you for your consideration of our support of the nomination of Ms. Lhamon to serve as the next Assistant Secretary for Civil Rights at the U.S. Department of Education. We welcome the opportunity to discuss her nomination with your office further. If you have any questions or concerns, please contact my colleagues David Hinojosa, Director of the Educational Opportunities, at [dhinojosa@lawyerscommittee.org](mailto:dhinojosa@lawyerscommittee.org), Demelza Baer, Director of Public Policy, at [dbaer@lawyerscommittee.org](mailto:dbaer@lawyerscommittee.org), or Erinn D. Martin, Policy Counsel, at [emartin@lawyerscommittee.org](mailto:emartin@lawyerscommittee.org).

Sincerely,

Damon T. Hewitt  
President & Executive Director  
Lawyers' Committee for Civil Rights Under Law  
Washington, D.C.

<sup>7</sup> U.S. Department of Justice, Civil Rights Division and U.S. Department of Education, Office for Civil Rights, Joint Dear Colleague Letter on Transgender Students (May 13, 2016).

<sup>8</sup> Are Rights a Reality? Evaluating Federal Civil Rights Enforcement, 2019 Statutory Enforcement Report.

Neil Romano  
1039 Maiden Terrace  
Celebration, Florida [REDACTED]

June 11, 2021

The Honorable Patty Murray  
Chair  
US Senate HELP Committee  
Washington, DC [REDACTED]

The Honorable Richard Burr  
Ranking Member  
US Senate HELP Committee  
Washington, DC [REDACTED]

Dear Chair Murray and Ranking Member Burr:

I write today to express my support for Catherine Lhamon's nomination to be Assistant Secretary of the Office for Civil Rights at the U.S. Department of Education.

As Chairman of the National Council on Disability, appointed by former President Trump, I had the pleasure of working with Ms. Lhamon when she served as the Chair of the U.S. Commission on Civil Rights. I found her to be not only committed to the rights of people with disabilities but also committed to finding bipartisan solutions to difficult national issues.

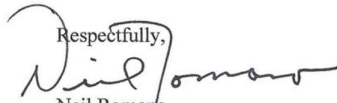
During my tenure as Chairman of the National Council on Disability, Ms. Lhamon's Commission took on the thorny issue of determining if the civil rights of people with disabilities were being denied by allowing employers to pay them less than minimum wages as prescribed by Section 14C of the Fair Labor Standards Act.

This issue has been contentious for the better part of a century during which time it has received both the support and disapproval of Democrats and Republicans alike. When Ms. Lhamon and the Civil Rights Commission took on this issue, I did not sense from her a desire to serve either the wishes of Democrats or Republicans, liberals or conservatives, the left or the right. I sensed in her someone who was working toward truth and correcting an injustice that interfered with the rights of the American people.

As the Communications Director of the White House Office of Drug Abuse Policy in the Reagan Administration and again as the Assistant Secretary of Labor for the Office of Disability Employment Policy in the administration of George W. Bush, I came to understand that I may not agree with everything someone believes, but if they have a core belief in something larger than themselves, then it can be counted upon to help inform their future actions.

As someone who has dedicated the better part of his adult life working for the full employment of people with disabilities, I believe we must be sure that our young people with disabilities are given every opportunity to get the fair and equal education they are promised, under law, so they can enjoy the blessings of liberty they have been given by our Creator. I believe Ms. Lhamon will fight for those rights.

Thank you for allowing me the opportunity to help inform this important decision and for your service on behalf of the American people.

Respectfully,  
  
Neil Romano  
President  
The Romano Group LLC.

**From:** [Rachel Glickman](#)  
**To:** [Carter, Greg \(HELP Committee\)](#)  
**Subject:** Lhamon Nomination  
**Date:** Sunday, June 20, 2021 10:47:59 PM

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Mr. Carter,

Hi, my name is Rachel Glickman and I previously worked as a career staff attorney and team leader in the U.S. Department of Education's (ED) Office for Civil Rights (OCR), including serving under Catherine Lhamon during my eight years at ED. I am writing to share a bit about my experience working with her in support of her nomination for Assistant Secretary of OCR.

Catherine is an intelligent, conscientious, and dedicated public servant. With countless demands on her time, she was always available to discuss our most complex cases. In these consultations, she was well prepared about the facts, thoroughly versed on the law, and made sure that we focused on the needs of those who have been historically marginalized. As a line attorney, I was appreciative of her efforts to highlight the positive results of our work. She would regularly send "thank you" emails to the nationwide OCR team recognizing particularly impactful case outcomes and the hard work of the attorneys and investigators who secured those results.

Thank you in advance for taking the time to review my feedback. I'm happy to answer any additional questions you or the committee may have.

Best,  
Rachel Glickman

July 5, 2021

Senator Patty Murray  
Chair  
Senate Health, Education, Labor and Pensions Committee  
428 Senate Dirksen Office Building  
Washington, DC

Senator Richard Burr  
Ranking Member  
Senate Health, Education, Labor and Pensions Committee  
428 Senate Dirksen Office Building  
Washington, DC

Dear Chair Murray and Ranking Member Burr:

I write with enthusiastic support for Catherine Lhamon's nomination to be the Assistant Secretary for Civil Rights at the United States Department of Education.

Although I write today in my personal capacity, I am the President of Brooklyn College, a position I have held for the past five years. Previously, I served as the Dean at CUNY School of Law for a decade and, before that, a Professor of Law at Villanova University School of Law.

Having been a faculty member and higher education administrator for most of my career, I am aware of the debates concerning the interpretation and implementation of Title IX of the Educational Amendments Act of 1972 on college campuses. I have written about Title IX in my own scholarly work. The issues are legally complicated and emotionally fraught, and they have real world consequences for the students involved. In this environment, it is crucial that attorneys in the Office of Civil Rights (OCR) have both deep expertise in the law and profound support for student learning.

I met Catherine when we were both in law school, and our paths have converged numerous times over the past 25 years. Catherine's reputation in law school was the same as it is today. She was known for her commitments to civil rights, due process, and educational equality. She couples intellectual brilliance with the desire to listen to others, particularly those with whom she may disagree. Her mindset is open, and she is eager to assimilate new perspectives and ideas.

When she previously served as the Assistant Secretary for Civil Rights, in 2015, I attended a lecture Catherine delivered at Yale Law School. I was struck then by her thoughtful response to a question posed after her talk. Catherine was asked about how she felt about the fact that the work at OCR, at times, can receive criticism from across the political spectrum. She replied:

I think that means people care, and they're talking about the issues that we're working on, that they matter to them, and so that's important. And, in every criticism, there is the potential for something that we should be doing differently, and something that we can own in the self-reflection process that we have to think about—whether we're doing enough, whether we went too far, whether something was harmful, whether we didn't balance competing values appropriately. And that's important to think about every time.

She continued, explaining that, when OCR's work negatively affects an individual student, she always considers carefully whether OCR did the right thing:

Because that's somebody's kid, who's in school, who's trying to learn—which is a core value—and [staying in school] is the difference between economic security, it's the difference between civic engagement and not, it is the difference between growing up, sometimes, and not. So I think we really have to think about how to do that right.

Based on my experiences with her, I believe Catherine Lhamon would bring a searching commitment to fairness and impartiality to the work at OCR, which is critical for both students and the institutions that serve them. I urge her swift confirmation.

Thank you for giving me the opportunity to share my views.

Yours,



Michelle J. Anderson

**From:** [Brian Dimmick](#)  
**To:** [Carter, Greg \(HELP Committee\)](#)  
**Subject:** nomination of Catherine Lhamon at ED OCR  
**Date:** Tuesday, June 22, 2021 7:17:29 AM

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Dear Mr. Cater:

I have recently heard that Catherine Lhamon has been nominated to serve as Assistant Secretary for Civil Rights at the U. S. Department of Education. As a former OCR attorney who worked in the Program Legal Group on policy issues during Ms. Lhamon's previous tenure as Assistant Secretary, I interacted with Ms. Lhamon regularly and am familiar with her management of the office and its work. While I found her to be a demanding leader who expected a lot from everyone at OCR, I found her to be committed to OCR's work, fair and even in her management of the office, and effective in advancing her priorities. I believe she would be a strong leader for OCR and I hope you will consider her nomination.

Thank you,

Brian Dimmick

**From:** [Mary Hanna-Weir](#)  
**To:** [Carter, Greg \(HELP Committee\)](#)  
**Subject:** Nomination of Catherine Lhamon  
**Date:** Saturday, June 19, 2021 4:32:02 PM

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Mr. Carter,

I am writing to share with the Senate HELP Committee my strong support for the nomination of Catherine Lhamon to be Assistant Secretary for Civil Rights for the U.S. Department of Education. Catherine is a true champion of civil rights for students at all levels. In addition to her legal expertise and passion, I also found her to be a leader that I respect and who was willing to listen to her employees.

Prior to my current employment, I was an attorney in the Program Legal Group for the Office for Civil Rights (OCR) for eight years from 2010 to 2018. During her previous service as Assistant Secretary, I had the pleasure and honor of working directly with Catherine on numerous policy matters and in directly advising her regarding her statutory role in the Magnet Schools Assistance Program. For example, I was the lead attorney drafting the 2014 Dear Colleague Letter on [Resource Comparability](#), and so I worked closely with Catherine to ensure that letter was legally sound, supported by clear research, and vetted thoroughly by the Department and the Administration. Catherine's skills as a civil rights lawyer and policy visionary were truly unparalleled in my time at the Department - she was always prepared and confident in her policy point of view and legal analysis but also willing to learn from experts, including career staff in OCR.

As OCR's coordinator for the [Magnet Schools Assistance Program](#), I managed the work of OCR in vetting potential and current grantee school districts for civil rights compliance to advise Catherine directly on whether she could personally certify that those grantees would meet their civil rights assurances. There were several situations where we worked closely together to address non-compliance in school districts by collaborating with the district, OCR field offices, and headquarters staff (career and political) to find workable and enforceable solutions that would ensure students' civil rights were protected. Catherine was deeply engaged in that work, but she also trusted career staff such as myself to lead negotiations and shepherd the process.

Throughout my time working with Catherine, I found her to be an empathetic leader who listened to staff at all levels of the organization when making tough decisions. She respected the expertise of career staff such as myself and engaged us directly in shaping the policy and major decisions of the agency. While she had extremely high expectations of all staff in OCR, she was also willing to listen to the concerns of career staff regarding workload and resource constraints. Even when she implemented policies or practices that career staff did not support, she was willing to listen to those concerns and in some instances change her stance. Catherine regularly engaged with two internal workplace climate committees made up of career staff of different levels and job classifications from the field offices and headquarters - the Employee Engagement Advisory Committee and the Diversity and Inclusion Council - listening to their concerns and to the policies and practices that they recommended continue or change.

Most importantly, Catherine is a force of nature when it comes to protecting the civil rights of our Nation's students because she genuinely cares about each and every student. She carefully reviewed investigations from the field offices and demonstrated deep compassion and

empathy for the students whose rights had been infringed. Catherine regularly shared stories from the field, and when she did so it was obvious to every listener that she deeply cares about the students and ensuring that schools, colleges, and universities are safe, healthy, equitable environments for all. Confirming her as the next Assistant Secretary for Civil Rights would mean the country has the benefit of her passionate expertise to guide the agency in ensuring that civil rights are at the forefront of educational policy as students return to school after the pandemic.

Thank you for your attention to my letter.

Sincerely,

Mary Elizabeth Hanna-Weir  
Former OCR Senior Attorney and MSAP Coordinator, 2010-2018

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2314 Park Ave Santa  
Clara, CA

**From:** [Emily Babb](#)  
**To:** [Carter, Greg \(HELP Committee\)](#)  
**Subject:** Nomination of Catherine Lhamon  
**Date:** Sunday, June 20, 2021 11:01:02 AM

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Dear Greg,

I saw that Catherine Lhamon has been nominated to be the Assistant Secretary for Civil Rights at the Department of Education. From 2005 to 2017, I worked for the U.S. Department of Education Office for Civil Rights (OCR), serving under three administrations and multiple Assistant Secretaries, including Ms. Lhamon. I began my career at OCR as a staff attorney in the Dallas Regional office and was subsequently promoted to Senior Attorney and Special Assistant to the Chief Attorney before ultimately transferring offices and being promoted to Program Manager in the Cleveland regional office where I also served as Acting Regional Director. Since leaving federal service I have served as the Assistant Vice President for Title IX Compliance/Title IX Coordinator at the University of Virginia and am now the Associate Vice Chancellor for Equal Opportunity and Title IX/Title IX Coordinator at the University of Denver.

I write today to share with you my experience working with Ms. Lhamon. While I am confident you will hear about her commitment to civil rights and ensuring equity in schools and colleges, I want to share a personal account of how she has supported career staff, including myself. I became acquainted with Ms. Lhamon when I was a Senior Attorney in the Dallas office and responsible for two high profile complaint investigations - a sexual violence investigation against Southern Methodist University and a race discrimination discipline investigation against Tupelo Public School District. Both of these matters involved significant Headquarters involvement, including Ms. Lhamon's direct review, as well as significant media attention. She has high expectations for OCR staff, and I appreciated the push to produce a high quality work product. Following the conclusion of these investigations, Ms. Lhamon visited the Dallas office and offered open office hours to any staff who wished to meet one-on-one with her. I took this opportunity to meet with her and share feedback about challenges in the investigation and perspective from the field. Not only did I feel heard by Ms. Lhamon as I discussed the challenges of staffing large scale investigations, but she also offered support and career guidance. She spoke candidly with me and encouraged me to seek promotional opportunities beyond my local regional office. I felt truly supported by a political appointee, which was a marked change from others who had served in that role. With her encouragement I applied for and received the position of Program Manager in the Cleveland office.

While in Cleveland, Ms. Lhamon continued to provide support to me as a career employee but also supported the Cleveland office broadly. When staff in Cleveland raised issues with access to technology and connectivity, she assisted in connecting the Cleveland leadership team with the right resources to solve the problem. Under her

leadership, field offices were informed of guidance documents before their issuance and provided an opportunity to give input. When she traveled to Cleveland she regularly held full staff meetings to respond to questions (often difficult ones) from the field and even brought cookies that she and her daughter had baked when she learned the office had pulled together a potluck lunch for her visit.

After I left OCR, I attended a conference where Ms. Lhamon was a speaker. During her speech she saw me in the audience and recognized the work that I had done on those high profile cases, acknowledging the hard work and dedication of career staff during her presentation. Career staff are the heart of OCR and they often last long past political appointees. I believe that Ms. Lhamon understands this, knows how to manage a large staff of career employees, and is respectful and supportive of the OCR regional employees. I believe that Ms. Lhamon will again provide thoughtful leadership to OCR as the Assistant Secretary.

Please do not hesitate to contact me if I can provide additional information that is helpful in evaluating Ms. Lhamon's nomination for Assistant Secretary. Thank you for your time.

Best regards,  
Emily Babb

**From:** [Suzanne Taylor](#)  
**To:** [Carter, Greg \(HELP Committee\)](#)  
**Subject:** Support for Catherine Lahmon  
**Date:** Monday, June 21, 2021 10:55:00 AM

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Dear Mr. Carter,  
I write in strong support of Catherine Lahmon's nomination to be Assistant Secretary for Civil Rights in the Department of Education. I worked as an attorney in the San Francisco region of the Office for Civil Rights (OCR) for over a decade. My time overlapped with Catherine's previous tenure as Assistant Secretary.

Catherine brought deep expertise and commitment to her work. She had high expectations of OCR employees—appropriately so, given the important work they do. She was also appreciative of the contributions of individual staff members, attentive to their concerns, engaged in issues affecting their professional development, and committed to diversity. She understood that longevity of career staff is critical to OCR's work, and led accordingly.

Although I no longer work at OCR, I still care deeply about its mission. I am certain OCR will benefit once again from Catherine's experience, expertise, and strong leadership. Please let me know if I can answer any questions. Thank you for your work.

Suzanne Taylor  
Oakland, California

**From:** [Catherine Spear](#)  
**To:** [Carter, Greg \(HELP Committee\)](#)  
**Subject:** Support for Catherine Lhamon Nomination  
**Date:** Tuesday, June 22, 2021 11:56:02 AM

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Dear Greg,

I currently am the Vice President for the Office for Equity, Equal Opportunity, and Title IX and the Title IX Coordinator at the University of Southern California. I also served in a similar role for the University of Virginia for five years and as Stanford University's first full-time Title IX Coordinator. Prior to Stanford, I worked at the Office for Civil Rights (OCR) of the U.S. Department of Education in Cleveland Ohio from 1995-2014, the last five years as its director.

I write to share my support for Ms. Lhamon's nomination to again serve as Assistant Secretary for OCR. I believe her prior service establishes her as a strong nominee who will hit the ground running. I witnessed firsthand not only her substantive expertise but her ability to effectively lead a career staff of over 600 employees with care and intentionality. She routinely personally visited all field offices and engaged with the directors of those offices, taking into account their feedback and suggestions.

Further, as the parent of a queer-identifying daughter, I have the utmost confidence that Ms. Lhamon will ensure equity in education to all individuals regardless of their gender identity or expression or sexual orientation, as required by Title IX.

Thank you for considering my support for Ms. Lhamon's nomination. I am happy to answer any questions.

Best regards,

Catherine Criswell Spear

July 7, 2021

VIA EMAIL

The Honorable Patty Murray  
Chair  
Senate Committee on Health, Education, Labor,  
and Pensions  
428 Senate Dirksen Office Building  
Washington, DC

The Honorable Richard Burr  
Ranking Member  
Senate Committee on Health, Education, Labor,  
and Pensions  
428 Senate Dirksen Office Building  
Washington, DC

Re: *Gender Justice, Anti-Violence, and Women's Rights Organizations' Sign-on Letter in Support of Catherine Lhamon to be Assistant Secretary for Civil Rights (OCR) at the U.S. Department of Education*

Dear Chairwoman Murray and Ranking Member Burr:

We write on behalf of 48 gender justice, anti-violence, and women's rights organizations unified in strong support of the confirmation of Catherine Lhamon as Assistant Secretary for Civil Rights at the United States Department of Education (ED). The Assistant Secretary for Civil Rights serves as the agency's chief legal advisor on civil rights matters and is responsible for leading the work of its Office for Civil Rights (OCR) in ensuring equal access to education by enforcing core nondiscrimination laws in schools, including Title IX of the Education Amendments of 1972 (Title IX), which prohibits sex discrimination in educational programs or activities receiving federal funds. Not only was Ms. Lhamon previously *unanimously confirmed* by the U.S. Senate for this exact role on August 1, 2013, and has served successfully in this role from her confirmation until January 2017, but she has also dedicated her entire legal career to advocating for the civil rights of all people, including students of color, women and girls, disabled students, and LGBTQ students. It is indisputable that Ms. Lhamon is extremely qualified to lead OCR. Given the educational inequities exposed during the COVID-19 pandemic and that schools are in the process of re-opening, her leadership is especially critical now as OCR works to ensure all students can learn in safe and welcoming environments.

A seasoned and celebrated<sup>1</sup> civil rights attorney, Catherine Lhamon has decades of experience advancing justice in key positions at national civil rights organizations and state and federal civil rights agencies. Ms. Lhamon practiced for a decade at the ACLU of Southern California, eventually serving as the Assistant Legal Director where she spearheaded key litigation efforts on behalf of school children,<sup>2</sup> teachers,<sup>3</sup> and many others. She worked at the National Center for Youth Law and became Public Counsel's first Director of Impact Litigation. Until January 2021, she chaired the U.S. Commission on Civil Rights, and served as Legal Affairs Secretary to California Governor Gavin Newsom. She is currently the

<sup>1</sup> In 2016, Politico Magazine named Ms. Lhamon one of the Politico 50 Thinkers Transforming Politics and she was honored with the Action & Authority Award by the National Action Network. In 2015, Yale Law School named Ms. Lhamon their Gruber Distinguished Lecturer and the Association of University Centers on Disabilities awarded Lhamon their Special Recognition Award. In 2014, she was added to the Chronicle of Higher Education's Influence List as the Enforcer. The Daily Journal listed her as one of California's Top Women Litigators in both 2007 and 2010, and she was named as one of the Top 20 California Lawyers Under 40 in 2007. In 2004, California Lawyer magazine named Ms. Lhamon Attorney of the Year for Civil Rights.

<sup>2</sup> *Williams v. State of California*, No. 312236 (Cal. Super. Ct., S.F. County, filed May 17, 2000).

<sup>3</sup> *Reed v. State of California*, No. BC432420, (Cal. Super. Ct., L.A. County, filed Feb. 23, 2010).

Deputy Assistant to the President and Deputy Director of the Domestic Policy Council for Racial Justice and Equity, where she manages the President's equity policy portfolio. In these roles, Ms. Lhamon has collaborated with diverse education stakeholders including teachers, administrators, students, parents, and community members to promote equal education for all.

Of course, Ms. Lhamon's most pertinent experience for this position came in 2013, when she became Assistant Secretary for Civil Rights at ED. Under Ms. Lhamon's leadership, which has been praised by advocates for respondents<sup>4</sup> and complainants, OCR had a profound and positive impact on federal recipients' responses to sex-based harassment in schools and other forms of discrimination. OCR issued crucial guidance in 2014<sup>5</sup> that unequivocally set out federal recipients' responsibilities to respond to sexual violence, to prevent its recurrence, and to address its effects. This comprehensive guidance required fair grievance procedures for complainants and respondents<sup>6</sup> and is a perfect example of her ability to ensure OCR fulfills its mission to vigorously enforce civil rights laws. While sexual harassment can have profound effects on students' mental well-being and ability to succeed in school, only a small percentage of students who experience such harassment ever make a formal report,<sup>7</sup> in significant part because they believe that reporting will not improve the situation.<sup>8</sup> The Title IX guidance encouraged student survivors and advocates to bring sexual harassment complaints to OCR, leading to an increase of OCR complaint filings at unprecedented rates.<sup>9</sup> It sent a clear message that federal recipients must invest resources to effectively respond to sex discrimination in education. As the Campus Advocacy & Prevention Professionals Association (CAPPA) pointed out, these Title IX guidance documents "drew from best practices in harassment, violence, and injury prevention and campus sexual assault prevention" and were "the product of research over the last two decades that has been funded directly and indirectly by the Centers for Disease Control and Prevention, Department of Justice ... and the National Institutes of Health."<sup>10</sup>

<sup>4</sup> Robin Wilson, *2014 Influence List: Enforcer*, THE CHRONICLE OF HIGHER EDUCATION (Dec. 15, 2014)

<https://www.chronicle.com/article/2014-influence-list-enforcer> ("She's come into a real firefight, and she's the right person for what needs to be done," says Andrew T. Miltenberg, a lawyer who handles sex-assault cases. "There's nothing to indicate she's favoring or not favoring anyone.").

<sup>5</sup> U.S. Dep't of Educ. Office for Civil Rights, *Questions and Answers on Title IX and Sexual Violence* (Apr. 29, 2014), <https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

<sup>6</sup> In 2016, OCR resolved a complaint in favor of a respondent against his university, finding that the university violated his Title IX rights by failing to provide him with equitable protections, including an opportunity to share his version of the events during an investigation, to challenge the evidence used by the college to impose an interim suspension, to review written statements and reports, and have adequate time to prepare a defense for the hearing. Wesley College, No. 03-15-2329, U.S. Dep't of Educ. Office for Civil Rights Letter of Findings (Oct. 12, 2016), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/03152329-a.pdf>; see also, Compl. at 11, *Doe v. Western New England Univ.*, (D. Ma. Nov. 2, 2015) (No. 3-15-cv-30192) (Disciplined student filed a lawsuit against his school and cited the 2014 OCR guidance in his complaint acknowledging that it increased protections for respondents and required schools to comply with due process protections), available at <http://boysmeneducation.com/wp-content/uploads/2016/04/Western-New-England-University-Complaint-2015-11-2.pdf>.

<sup>7</sup> Assoc. of American Univ., *Report on the AAU Campus Climate Survey on Sexual Assault and Misconduct*, A7-27 (Oct. 15, 2019), <https://www.aau.edu/key-issues/campus-climate-and-safety/aau-campus-climate-survey-2019>

<sup>8</sup> RAINN, Campus Sexual Violence: Statistics, <https://www.rainn.org/statistics/campus-sexual-violence>.

<sup>9</sup> U.S. Dep't of Educ. Office for Civil Rights, *Delivering Justice: Report to the President and Secretary of Education* (Mar. 2016) <https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2015.pdf>

<sup>10</sup> Campus Advocacy and Prevention Professionals Association, *Cappa Letter to the Department of Education Regarding the November 29, 2018 Notice of Proposed Rulemaking Amending Regulations Implementing Title IX of the Education Amendments of 1972*, at 2 (Jan. 30, 2019), <http://www.nationalcappa.org/cappa-letter-to-department-of-education-january-28-2019>.

The Assistant Secretary for Civil Rights is also tasked with leading OCR's efforts to investigate systemic discrimination. To that end, under Ms. Lhamon's leadership, OCR initiated investigations into systemic discrimination in schools' responses to sexual harassment and racially discriminatory discipline practices. In 2014, OCR issued guidance<sup>11</sup> jointly with DOJ addressing racially discriminatory school discipline practices, highlighting how fair and equitable discipline practices are important for creating safe and welcoming environments for all students. This was critical for protecting girls of color, particularly Black girls, from discriminatory discipline because they are over-disciplined compared to white girls.<sup>12</sup> Likewise, OCR's 2015 guidance addressing Title IX coordinators<sup>13</sup> was critical in describing the roles and responsibilities of Title IX coordinators in preventing and responding to sex discrimination in schools. In overseeing the issuance of the Title IX Resource Guide, which also critically covered athletics given the ongoing lack of compliance by many schools regarding gender equity in sports programming, Ms. Lhamon demonstrated her leadership and abilities to ensure Title IX enforcement across any and all Title IX issue areas.<sup>14</sup> Ms. Lhamon also supported OCR's efforts to ensure schools did not discriminate based on pregnancy and related medical conditions and that pregnant students had access to accommodations. Her advocacy did not stop there. In line with federal court decisions, and most recently, the U.S. Supreme Court's decision in *Bostock v. Clayton County*,<sup>15</sup> Ms. Lhamon strengthened OCR's enforcement efforts addressing discrimination against transgender students, who are particularly vulnerable to experiencing discrimination and harassment in schools. In response to an increase in reports of discrimination against transgender students, in 2016, OCR issued a guidance jointly with the Department of Justice (DOJ) clarifying that Title IX's prohibition on sex discrimination includes discrimination on the basis of gender identity.<sup>16</sup> Soon after, in collaboration with the Department's Office of Career, Technical and Adult Education, OCR issued guidance encouraging recipients to eliminate discriminatory practices and take proactive steps to expand participation of students in career and technical educational programs.<sup>17</sup>

Ms. Lhamon has built her career on championing civil rights for all people, including women and girls, and her nomination could not have come at a more critical time. Over the past four years, the Department of Education has failed to vigorously enforce non-discrimination laws in schools, leading to gaps in civil rights protections that were only exacerbated by the COVID-19 pandemic. Right now, OCR needs an experienced champion for civil rights to realign its priorities and Catherine Lhamon is well-

<sup>11</sup> U.S. Dep't of Educ. Office for Civil Rights and U.S. Dep't of Justice Civil Rights Division, *Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline* (Jan. 8, 2014), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>.

<sup>12</sup> Georgetown Law Center on Poverty, Inequality's Initiative on Gender Justice & Opportunity, & RISE Research team at New York University, *Data Snapshot: 2017-2018 National Data on School Discipline by Race and Gender*, available at <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2021/04/National-Data-on-School-Discipline-by-Race-and-Gender.pdf>.

<sup>13</sup> U.S. Dep't of Educ. Office for Civil Rights, *Dear Colleague Letter on Title IX Coordinators* (Apr. 24, 2015), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>.

<sup>14</sup> U.S. Dep't of Education Office for Civil Rights, *Title IX Resource Guide* (Apr. 2015), <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>.

<sup>15</sup> 140 S. Ct. 1731, 1747 (2020).

<sup>16</sup> U.S. Dep't of Education Office for Civil Rights & U.S. Dep't of Justice Civil Rights Division, *Dear Colleague Letter on Transgender Students* (May 13, 2016), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

<sup>17</sup> U.S. Dep't of Educ. Office for Civil Rights & Office of Career, Technical, and Adult Education, *Dear Colleague Letter on Gender Equity in Career and Technical Education* (June 15, 2016), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201606-title-ix-gender-equity-cte.pdf>.

suited to meet the moment and steer OCR back on track. We enthusiastically support her nomination as she undoubtedly will continue to advocate for and strengthen gender justice in education. If you have questions about this letter, please contact Shiwali Patel of the National Women's Law Center at [spatel@nwl.org](mailto:spatel@nwl.org).

Sincerely,

American Association of University Women (AAUW)

Atlanta Women for Equality

Augustus F. Hawkins Foundation

BHS Stop Harassing

Champion Women

Chicago Alliance Against Sexual Exploitation (CAASE)

Clearinghouse on Women's Issues

Colorado Coalition Against Sexual Assault

End Rape On Campus

Enough is Enough Voter Project

Equal Rights Advocates

The Every Voice Coalition

Feminist Majority Foundation

Futures Without Violence

The Georgia Coalition Against Domestic Violence

Harvard Law School's Gender Violence Program

Hispanic Federation

Illinois Coalition Against Sexual Assault

It's On Us

Jewish Women International

Justice for Migrant Women

Know Your IX

Legal Aid at Work

MANA, A National Latina Organization

Maryland Coalition Against Sexual Assault

National Alliance for Partnerships in Equity (NAPE)

National Alliance to End Sexual Violence

National Asian Pacific American Women's Forum (NAPAWF)

National Center for Lesbian Rights  
National Council of Jewish Women  
National Organization for Women  
National Partnership for Women & Families  
National Resource Center on Domestic Violence  
National Women's Law Center  
National Women's Political Caucus  
North Carolina Coalition Against Domestic Violence  
Public Justice  
Southwest Women's Law Center  
Stop Sexual Assault in Schools (SSAIS)  
TIME'S UP Now  
Title IX Group at Hutchinson, Black, and Cook  
UltraViolet  
United State of Women  
Victim Rights Law Center  
Vote Run Lead  
Women's Law Project  
Women's Sports Foundation  
YWCA USA



## UNITED FARM WORKER

29700 Woodford-Tehachapi Rd. • P.O. Box 62 • Keene, CA

June 2, 2021

Senator Patty Murray  
Chair  
Senate Health, Education, Labor,  
and Pensions Committee  
428 Dirksen Senate Office Building  
Washington, DC

Senator Richard Burr  
Ranking Member  
Senate Health, Education, Labor, and  
Pensions Committee  
428 Dirksen Senate Office Building  
Washington, DC

Dear Chair Murray and Ranking Member Burr:

On behalf of the United Farm Workers, I write in strong support of President Biden's nomination of Catherine Lhamon to serve as Assistant Secretary for Civil Rights at the U.S. Department of Education. Catherine Lhamon has a strong record of making federal civil rights law real for students in schools across the country, a commitment she demonstrated during her time as a Senate confirmed appointee to the same role during the Obama Administration, when she worked on behalf of students (sometimes in collaboration with the UFW) as a nonprofit lawyer in California, and during her tenure as Chair of the U.S. Commission on Civil Rights. No one could be more qualified to assume this role now, and no one would work harder on behalf of children and young people from rural communities and farmworker families.

Lhamon's work as the Assistant Secretary for Civil Rights in the Department of Education from the fall of 2013 until early 2017 was extraordinary. She inspired us with her commitment and results in fairly and vigorously Administering the provisions of federal civil rights legislation and U.S. Department of Education policy prohibiting discrimination on the basis of race, color, national origin, sex, handicap, or age.

Prior to her work as Assistant Secretary for Civil Rights, Lhamon worked as a civil rights attorney and asked the United Farm Workers to help identify additional plaintiffs for the widely publicized *Williams v. California*, an education lawsuit spearheaded by Lhamon. While many civil rights attorneys focus exclusively on the conditions in urban areas, Lhamon wanted to make sure to include problems specific to rural communities in the statewide lawsuit. Lhamon used her extraordinary skills to get to a groundbreaking settlement with a Republican Governor and Democrat-controlled state legislature. The ultimate settlement in the *Williams* case resulted in guaranteeing basic minimum standards for California schools not only in urban areas, but in farm worker communities that so often are left out of major policy changes.

Lhamon also represented the United Farm Workers and individual farm worker plaintiffs in a lawsuit against the State of California and Cal/OSHA for their failure to enforce the heat illness prevention standard. Perhaps nowhere is the cost of people living in the shadows of society more troubling than in the hot fields harvesting fruits and vegetables for the nation, where farm workers literally are dying for lack of water and shade. Lhamon came up with a simple yet novel legal theory to support farm workers in our struggle against heat illness. She brought not only her own expertise, but she also organized significant legal resources to represent California's

*¡Si Se Puede!*®  
Founded by César E. Chávez  
(1927-1993)

farm workers on a *pro bono* basis. Remarkably, the settlement we achieved from the lawsuit to protect farm workers from heat illness saved lives without costing the state any additional resources. Additionally, we remain hopeful that the basic safeguards that we fought for in California will serve as a model to protect workers across the country from heat-related illness and death.

Beyond the work Lhamon has done directly with the United Farm Workers as a civil rights attorney, we have particular admiration for Lhamon's work supporting immigrant students and their parents when she served as Assistant Secretary for Civil Rights. Among the first guidance documents Lhamon issued when she held the Assistant Secretary for Civil Rights position in the Obama Administration addressed nondiscrimination in student enrollment in public schools based on national origin, citizenship, or immigration status, consistent with the Supreme Court's decision in *Plyler v. Doe*. That same year (2014) Lhamon also issued guidance on resource equity in schools, focusing on how to ensure equal access to educational resources without regard to race or national origin. The following year Lhamon issued guidance on ensuring equity for English Learner students and Limited English Proficient (LEP) parents. All of these documents offered crucial information about how school communities could fulfill Congress' equality promise to students.

The Office of Civil Rights resolved several important civil rights investigations in these areas when Lhamon led it. One that stands out for us because of its impact for farm workers occurred in 2016. The Office of Civil Rights together with the United States Department of Justice resolved statewide investigations of the Arizona Department of Education to ensure correct identification of English Learner students and language support services for students who had been incorrectly identified as not needing such services or who had been prematurely exited from English Learner programs. We understand that this was one of many such positive resolutions that took place across the country including resolving major investigations in Cleveland, Ohio and Jersey City, New Jersey.

When confirmed, I know Catherine Lhamon would bring expertise, experience, and passion to the work of the Office for Civil Rights. Farmworker communities will benefit from having her in that role and we are pleased to support her nomination without reservation.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Romero', with a stylized flourish at the end.

Teresa Romero  
President



1201 16th Street, NW | Washington, DC

Rebecca S. Pringle  
*President*

Princess R. Moss  
*Vice President*

Noel Candelaria  
*Secretary-Treasurer*

Kim A. Anderson  
*Executive Director*

July 12, 2021

Health, Education, Labor, and Pensions Committee  
U.S. Senate  
Washington, DC

Dear Senator:

On behalf of our 3 million members and the 50 million students they serve, we urge you to support Catherine Lhamon's nomination for Assistant Secretary for Civil Rights and Roberto Rodríguez's nomination for Assistant Secretary for Planning, Evaluation and Policy Development, both at the U.S. Department of Education.

In her current capacity as Deputy Assistant to the President and Deputy Director of the Domestic Policy Council for Racial Justice and Equity, Ms. Lhamon manages President Biden's equity policy portfolio. In 2016, she was appointed and unanimously confirmed as chair of the U.S. Commission on Civil Rights, where she fought for equal rights by clarifying the U.S. government's authority and responsibility to ensure equal protection and access. Before then, she was Assistant Secretary for Civil Rights at the U.S. Department of Education, a position for which she was also unanimously confirmed, and litigated civil rights cases at the National Center for Youth Law, Public Counsel Law Center, and ACLU Foundation of Southern California. Earlier in her career, she taught federal civil rights appeals at Georgetown University Law Center in the Appellate Litigation Program and clerked for the Honorable William A. Norris on the U.S. Court of Appeals for the Ninth Circuit.

Currently President and CEO of Teach Plus, a nationwide network of more than 15,000 solutions-oriented teacher leaders, Mr. Rodríguez has a lifelong commitment to advancing educational equity and opportunity. His distinguished career in public service includes senior government roles on the White House Domestic Policy Council and in the U.S. Senate for the late Senator Edward Kennedy of Massachusetts. Over the past two decades, he has played a key role in virtually every major education policy effort and legislative reform at the national level including the expansion of early education, adoption of college and career-ready standards in schools, and making college more accessible and affordable. In 2015, his work with bipartisan congressional leaders helped enact the Every Student Succeeds Act (ESSA).

NEA strongly supports the nominations of Catherine Lhamon and Roberto Rodríguez, and stands ready to help advance their confirmation.

Sincerely,

Marc Egan  
Director of Government Relations  
National Education Association



June 30, 2021

The Honorable Patty Murray  
Chair Senate Committee on Health,  
Education, Labor and Pensions  
U.S. Senate  
Washington, DC

The Honorable Richard Burr  
Ranking Member  
Senate Committee on Health, Education,  
Labor and Pensions  
U.S. Senate  
Washington, DC

Dear Chair Murray and Ranking Member Burr:

As President & CEO, and Immediate Past Chair of the NACUA Board, we write with great enthusiasm to support President Biden's nomination of Lisa Brown as General Counsel at the Department of Education. While NACUA does not take policy positions as an organization, we believe it appropriate and important to offer our strong support for Lisa to fill this critical position.

NACUA is an organization of more than 1600 campuses, including more than 5000 higher education attorneys from across the country. We are the primary membership organization for all campus counsel, providing programming, networking, and essential information for those in the practice of higher education law. Lisa has been an important member, leader, and contributor to NACUA and to the practice.

We have had the opportunity to work with a significant number of leaders who care deeply about the best interests of the nation's students, and with attorneys who have substantial expertise with major law and policy matters. Lisa stands out among them as an exceptional leader and attorney. We are certain she would bring the intellectual prowess, political savvy, and unwavering commitment to the public good necessary to serve as General Counsel at the Department of Education.

Before Lisa even joined NACUA as General Counsel of Georgetown University in March of 2013, she asked to participate in our January 2013 General Counsel Institute to connect with NACUA. Over the past eight years, she quickly became a trusted colleague, advisor, and resource to so many members who are Lisa's peers from around the country. In 2015, she moderated a General Counsel Institute session featuring then-President of the University of California President Janet Napolitano. The topic was Leadership in a New Era, and it was one of NACUA's most highly rated sessions ever. She subsequently served as a key member of two NACUA leadership groups – the General Counsel Institute planning group and the Advisory Group on the Business of Higher Education.

Lisa's vast experience in senior positions in government at the Department of Justice, the White House (twice), and the Office of Management and Budget; litigation experience as a partner in a major law firm; leadership as CEO of a national organization focused on law and policy; and service as General Counsel of a major research university; combine to make her a highly qualified candidate for the essential role of General Counsel.

The role of the federal government in education could not be more important than it is today. Lisa's professional and personal skills, her formidable communications skills, and her ability to work cooperatively with numerous constituents as she has over the course of her career, would make her a successful General Counsel at the Department of Education. We wholeheartedly support Lisa's nomination. Thank you for your consideration.

Sincerely,

*Kathleen C. Santora*

Kathleen C. Santora  
President & CEO, NACUA

*Stephen D. Sencer*

Stephen D. Sencer  
Senior Vice President and General  
Counsel, Emory University  
Immediate Past Chair of the Board,  
NACUA



July 12, 2021

The Honorable Patty Murray  
Chair  
Committee on Health, Education  
Labor and Pensions  
428 Senate Dirksen Office Building  
United States Senate Washington,  
DC

The Honorable Richard Burr  
Ranking Member  
Committee on Health, Education,  
Labor and Pensions  
428 Senate Dirksen Office Building  
United States Senate Washington,  
DC

Re: Nomination of Lisa Brown to serve as General Counsel for the Office of  
General Counsel at the U.S. Department of Education

Dear Chair Murray and Ranking Member Burr,

On behalf of the undersigned higher education associations, I write to express our enthusiastic support for Lisa Brown, who has been nominated to serve as General Counsel in the U.S. Department of Education (the "Department"). Ms. Brown's intellect, judgment, breadth of experience, and professionalism are extraordinary. Her extensive public service and her intensive engagement in a broad array of educational issues as Georgetown University's Vice President and General Counsel ideally position her to bring unique perspective and deep expertise to the critical role of the Department's chief legal advisor.

Ms. Brown is, at her core, a public servant. She began her career as a law clerk to a federal judge in a courthouse in Montgomery, Alabama, and she has served as White House Staff Secretary for President Obama. With additional high level assignments in the Department of Justice, the Office of Management and Budget, and Vice President Gore's office, Ms. Brown has time and again distinguished herself in attending to the needs of the moment and the issues of the era.

Ms. Brown's commitment to justice and her compassionate concern for civil rights were reflected in her early career *pro bono* work while in private practice. They have been on full display during the last eight years as a senior leader and chief legal counsel for the nation's oldest Catholic and Jesuit University. In addition, Ms. Brown's service to Georgetown has immersed her in the varied and ever-evolving issues confronting American higher education in a complex, global context.

We are cautiously optimistic about our nation's emergence from the unprecedented experience of COVID-19. During the next few years, K-12 schools and higher education institutions will be more important than ever to our youth, our post-secondary learners, and the research and innovation pipeline that has fueled and often defined American economic vitality. There is no doubt that the Department needs individuals who have demonstrated the highest levels of competence and commitment in its senior leadership positions.

As someone of impeccable judgment and vast experience, who understands the collaborative nature of engagement and decision-making in government and on campuses, Ms. Brown is ideally suited to advise the Department. We support her nomination without qualification, and urge swift confirmation so that she may begin this important work on behalf of the Department and its vital mission. Thank you for your consideration.

Sincerely,



Ted Mitchell  
President

On behalf of:

American Association of Community Colleges  
American Association of State Colleges and Universities  
American Council on Education  
Association of American Universities  
Association of Catholic Colleges and Universities  
Association of Jesuit Colleges and Universities  
Association of Public and Land-grant Universities  
National Association of Independent Colleges and Universities



*Dedicated to furthering the expansion of  
college opportunities for low-income, first-generation  
students, and students with disabilities.*

July 13, 2021

The Honorable Patty Murray, Chairman  
Committee on Health, Education, Labor,  
and Pensions  
United States Senate  
154 Russell Senate Office Building  
Washington, DC

The Honorable Richard Burr, Ranking Member  
Committee on Health, Education, Labor,  
and Pensions  
United States Senate  
217 Russell Senate Office Building  
Washington, DC

Dear Chair Murray and Ranking Member Burr,

As President of the Council for Opportunity in Education (COE), which represents nearly 1,000 institutions of higher education and community-based agencies committed to expanding college opportunity through college access and success programs for low-income and first-generation students, I write in strong support of the confirmation of Roberto J. Rodríguez, who has been nominated to serve as Assistant Secretary for Planning, Evaluation, and Policy Development at the U.S. Department of Education. Throughout his career, Mr. Rodríguez has been a fierce advocate for educational equity and has elevated the voices of low-income and first-generation students and families across the nation.

Mr. Rodríguez has devoted his career in public service to investing in solutions that work for all students. He has been deliberate in listening to all stakeholders and building consensus on policy and legislation. Having served as both the Special Assistant to the President for Education in the White House Domestic Policy Council as well as Chief Education Counsel to Senator Ted Kennedy when he chaired this Committee, Mr. Rodríguez brings extensive knowledge of both the administrative and legislative policy arenas. In each of his roles, he has led policy development and strategy to address educational needs for students at all levels. He has been closely involved in various pieces of federal legislation, including the reauthorization of the Higher Education Act, which has strengthened the educational resources of colleges and universities through student services programs like TRIO.

Mr. Rodríguez is a thoughtful leader who listens to a wide range of opinions and maintains a strong track record of shaping bipartisan policy solutions. His commitment to the goals of the Department of Education is unquestionable. On behalf of our membership and the thousands of educators working in TRIO programs, COE endorses Mr. Rodríguez's nomination and urges your Members to support it. We are confident that his stewardship as Assistant Secretary for Planning, Evaluation, and Policy Development will benefit millions of low-income and first-generation families and students who count on higher education as a means to realizing their educational aspirations.

Sincerely,

Maureen Hoyler  
President



July 21, 2021

Senator Patty Murray  
Chair, Senate Committee on Health, Education, Labor, and Pensions  
154 Russell Senate Office Building  
Washington, DC

Senator Richard Burr  
Ranking Member, Senate Committee on Health, Education, Labor, and Pensions  
217 Russell Senate Office Building  
Washington, DC

On behalf of New Leaders, I am writing to express our strong support for the quick and bipartisan confirmation of Roberto Rodriguez to be Assistant Secretary for the Office of Planning Evaluation and Policy Development at the U.S. Department of Education. As a devoted public servant, we are confident that Mr. Rodriguez will be a champion for our nation's students, teachers, and school leaders.

New Leaders is an educational leadership organization whose mission is driven by racial equity and social justice, and by an unwavering belief in the potential of every student. Building schools and systems that lift up students of color and children from low-income communities is at our core. We forge deep partnerships to prepare and equip school leaders at all levels to be powerful and positive forces for change, especially in low-income communities. We provide effective leadership training that ensures schools are set up to provide all students with challenging, engaging learning experiences in every classroom. While only 20% of the national school leadership population are people of color, 60% of New Leaders alumni identify as such. To support even more children and communities, we champion evidence-based policies that reflect the transformative power of exceptional school leadership and that break down structural and institutional barriers to student achievement and educational equity.

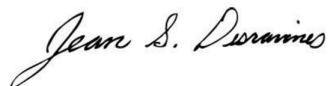
Mr. Rodriguez has extensive experience having worked in education at the U.S. Senate Health, Education, Labor and Pensions committee and in senior roles at the White House under President Obama. He has led efforts to update and implement new policies that are responsive to the needs of America's students including the Elementary and Secondary Education Act, the Higher Education Act and the Head Start Act. Throughout his career, Mr. Rodriguez has proven he can work collaboratively with a wide variety of stakeholders to ensure policies are responsive to the communities they are intended to serve.

In the coming months, the U.S. Department of Education will be faced with executing critical education policies to reopen schools and implement the American Rescue Plan. We believe that Mr. Rodriguez's extensive experience as a public servant will enable

him to lead both existing and new policy efforts. In his confirmation hearing Mr. Rodriguez emphasized the importance of reinvigorating strong partnerships between the Department, state and local leaders to effectively help students recover from the pandemic. We are also encouraged to hear about Mr. Rodriguez's work to strengthen and diversify the teacher pipeline in his role at Teach Plus and his commitment to continue this effort at the Department. We look forward to collaborating with Mr. Rodriguez to ensure that school leaders reflect the diversity of the communities they serve and ensure that principals are prepared to serve all students.

We are confident that Mr. Rodriguez has the experience and leadership qualities to lead the Office of Planning Evaluation and Policy Development in a manner that puts schools, teachers, and students first. Thank you for the actions you will take to ensure his quick and bipartisan conformation.

Sincerely,

A handwritten signature in cursive script that reads "Jean S. Desravines".

Jean Desravines

CEO

New Leaders

*Law Office of Diane A. Kfiel*  
P.O. Box 105  
Orono, ME

June 25, 2021

Senator Susan Collins  
202 Harlow Street, Room 20100  
Bangor, ME

**RE: President Biden's Nomination of Catherine Lhamon for  
Assistant Secretary for Civil Rights at the U.S. Department of Education**

Dear Senator Collins:

I am an Orono resident and have served in a volunteer capacity as a member of the Maine Advisory Committee to the U.S. Commission on Civil Rights (USCCR) since 2012 and as chair of the committee since 2016. In this capacity, I have admired and respected the work of Catherine Lhamon, President Biden's nominee for Assistant Secretary for Civil Rights at the U.S. Department of Education and former chair of the USCCR. I am writing to urge you to support Ms. Lhamon's nomination.

As chair, I worked with the USCCR prior to Catherine Lhamon's tenure and coincidentally, complained to our Maine congressional delegation in late 2015 about the inadequate resources available to complete our projects in terms of agency staff and administrative support. I worked with congressional staff from the four offices, including Carlene Tremblay from your office, on suggesting improvements to the operation of the USCCR agency headquarters. We committee members felt that we had been heard.

In 2016, Catherine Lhamon was named the Chair of the USCCR, and there was a stark contrast in agency operations after she took over, a palpable improvement, in my view. From our experience, there were more resources available to complete our projects as well as more attention from the USCCR to state projects. On June 14, 2017, we were surprised and honored to have Chairperson Lhamon attend our briefing in person on the Criminalization of Persons with Mental Illnesses in Maine at Lewiston City Hall and impressed with her active input at the briefing. I saw firsthand that she is willing to listen to all voices and react in a bipartisan and diplomatic manner, then and in general in her management of the USCCR.

Nomination of Catherine Lhamon  
June 25, 2021

Chairperson Lhamon also began the practice of sending state committee reports directly to state stakeholders for consideration of our findings and recommendations, giving them the weight and urgency that they deserved. Notably, our reports on voting rights, the criminalization of persons with mental illnesses, racial disparities in sentencing and hate crimes have been used as resources at the Maine Legislature.

It is my understanding that a hearing on Ms. Lhamon's nomination will be held in the Senate soon. I hope that you will vote in favor of her nomination, as she is truly a champion of civil rights. The Department of Education would greatly benefit from her guidance.

Sincerely,

*Diane A. Khief*

Diane A. Khief

cc: Senate HELP Committee

**To: Senate HELP Committee Members and Staff:**

As the mother of two recent college graduates (one female, one male), **I urge you to OPPOSE the appointment of Catherine Lhamon** as Assistant Secretary for Civil Rights at the Department of Education's Office for Civil Rights. Ms. Lhamon's actions when she previously held the position under the Obama Administration show her unable to separate her own feminist activism and her duty to uphold the civil rights of students, especially those accused of sexual misconduct on college campuses.

She led the threat to withhold federal funding to colleges if they did not comply with the 2011 Dear Colleague Letter on campus sexual violence. Rather than go through the laborious task of promulgating a new regulation, the DOE/OCR simply issued a guidance letter, circumventing the Administrative Procedure Act, and enforced it as if it were law. Schools felt the pressure and quickly fell in line, fearful to be investigated by OCR for "mishandling sexual assault investigations" and most importantly, potentially be withheld federal funds. The result was that thousands of young men (and some women), accused of campus sexual misconduct cases were suspended or expelled after wrongful campus determinations (aka Kangaroo Courts) sabotaged their civil rights and ruined their lives.

Evidence of her overreach via the 2011 DCL 2011 includes 700+ Title IX/due process lawsuits, many resulting in costly legal fees for both sides; many result in settlements (however the emotional trauma inflicted can never be settled.) In addition, Federal and state appellate courts have rendered 23 decisions, mostly favorable to the accused student, ruling school Title IX procedures severely lack basic fairness. Fairness should be a basic tenant of our society, don't you agree?

The appointment of Ms. Lhamon would be an injustice to students. In her social justice crusade against campus sexual assault, she has trampled the rights of students faced with an accusation, majority being black, and diluted the seriousness of "real" victims of campus sexual assault. She has weaponized Title IX.

Thank you,

Sincerely,

Ms. York  
Concerned US Citizen and Taxpayer

To whom it may concern:

As the parent of a college-aged young man I urge you to **OPPOSE** the appointment of Catherine Lhamon as Assistant Secretary for Civil Rights at the Department of Education's Office for Civil Rights. Ms. Lhamon's actions when she previously held the position from 2013-2017 show her unable to separate her own activism against the supposed sexual victimization of college women and her duty to uphold the civil rights of all students accused of sexual misconduct on college campuses, including those of young men.

As assistant secretary for civil rights during the Obama Administration, Ms. Lhamon lead the threat to withhold federal funding to colleges if they did not comply with the 2011 Dear Colleague Letter on campus sexual violence. Rather than go through the laborious task of promulgating a new regulation, the department simply issued a guidance letter, circumventing the Administrative Procedural Act, and enforced it as if it were law.

As Ms. Lhamon's pressure on schools mounted, colleges quickly fell in line, fearful to be investigated by OCR for "mishandling sexual assault investigations" and revealed as "out of compliance." Thousands of young men, the predominant gender of accused/respondent in campus sexual misconduct cases, were suspended or expelled after wrongful campus determinations sabotaged their civil rights.

Ms. Lhamon's overreach from the Office of Civil Rights had a profound affect:

- Following release of its new campus policy, the number of Title IX complaints to OCR alleging discrimination based on sex increased more than five-fold, from 391 complaints in 2010 to 2,242 in 2013
- A milestone 700+ Title IX/due process lawsuits have been filed by accused students, predominantly males, with the majority of opinions in favor of the plaintiff
- 15% of these lawsuits claim a bias against male students, a violation of Title IX which prohibits discrimination based on sex
- Federal and state appellate courts have rendered 23 decisions, mostly favorable to the accused student, ruling school Title IX procedures severely lack basic fairness
- In response to the fallout from Ms. Lhamon's actions, the Trump Administration issued a new Title IX regulation in accordance with the Administrative Procedural Act

The appointment of Ms. Lhamon would be an injustice to college-aged young men. In her social justice crusade against campus sexual assault, she has trampled the rights of any student faced with an accusation. The overwhelming majority of students accused of sexual misconduct on college campuses are male, with black men being disproportionately affected. **Ms. Lhamon's inability to separate her activism from her duty as assistant secretary for civil rights directly resulted in the ruining of thousands of young men's lives.**

**I urge you to OPPOSE the appointment of Catherine Lhamon.**

Respectfully,

Daniel Lawson

July 13, 2021

**Statement of Families Advocating for Campus Equality Families, Students, and Friends in Opposition to the Confirmation of Catherine Lhamon as Assistant Secretary for Civil Rights at the Department of Education**

Dear Senate Health, Education, Labor and Pensions Senate Committee Member,

The undersigned, write to oppose Catherine Lhamon's confirmation as Assistant Secretary for Civil Rights at the U.S. Department of Education Office for Civil Rights (OCR). We are attorneys, parents, students, professors, and others who have suffered greatly as a result of Catherine Lhamon's former coercive and aggressive Title IX enforcement methods during her previous term as Assistant Secretary.<sup>1</sup>

Lhamon's confirmation would require you to ignore her past performance in the very same position, disregard countless Title IX experts, ignore the thousands of students and professors harmed by Lhamon's policies, and place OCR on a collision course with the many federal courts who've expressed serious concerns with the effects of Lhamon's former policies.

As Assistant Secretary from 2013-16, Lhamon was instrumental in forcing schools to prioritize complainant rights over the minimal due process owed respondents.<sup>2</sup> Though change may have been "noble and necessary" to ensure schools responded appropriately to sexual misconduct on their campuses, Lhamon's policies "ultimately undermine[d] the legitimacy of the fight against sexual violence,"<sup>3</sup> and ignored a heightened "risk for wrongful findings in sexual assault adjudications."<sup>4</sup>

Lhamon also exceeded her executive authority as Assistant Secretary. In a memorable 2014 exchange with then-Senator Lamar Alexander regarding Lhamon's authority to withdraw federal funding based on non-regulatory guidance, Lhamon insisted the Senate had given her such authority simply by confirming her.<sup>5</sup> Another OCR official later confirmed Lhamon did not have the authority to withdraw funding based on guidance.<sup>6</sup>

<sup>1</sup> See Appendix I and Appendix II, at pp. 12 and 46 of this PDF, which together provide sixteen out of over two thousand, FACE student and professor experiences. Appendix I was originally submitted as Exhibit 1 to a FACE amicus brief in *Victim Rights Law Center v. Elizabeth De'os*, Mass. Dist. Court, No. 1:20-cv-11104, August 27, 2020, <https://static1.squarespace.com/static/5941656f2e69cfcdb5210aa/t/5f601123dc9f13698fbf34f3/1600131364445/FACE+NY+A+MICUS.pdf>.

<sup>2</sup> U.S. Dept. of Edu., Office for Civil Rights, *2011 Dear Colleague Letter (Rescinded)* (Apr. 4, 2011) ("schools should ensure that steps taken to accord due process rights to the alleged perpetrator do not restrict or unnecessarily delay the Title IX protections for the complainant.") <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>.

<sup>3</sup> Emily Yoffe, *The Uncomfortable Truth About Campus Rape Policy*, The Atlantic (Sept. 6, 2017) ("At many schools, the rules intended to protect victims of sexual assault mean students have lost their right to due process—and an accusation of wrongdoing can derail a person's entire college education.") <https://www.theatlantic.com/education/archive/2017/09/the-uncomfortable-truth-about-campus-rape-policy/538974/>.

<sup>4</sup> Samantha Harris & KC Johnson, *Campus Courts In Court: The Rise in Judicial Involvement in Campus Sexual Misconduct Adjudications*, 22 N.Y.U. J. LEGIS. & PUB. POL'Y 49, 111, pp. 62-63 (2019) (schools "too often lack the tools to gather the evidence necessary to reach the truth," and that "university self-interest can distort fairness in campus proceedings") <https://nyujlpp.org/wp-content/uploads/2019/12/Harris-Johnson-Campus-Courts-in-Court-22-nyujlpp-49.pdf>.

<sup>5</sup> Lhamon insisted this was true, even though OCR had not sought comments about its 2011 DCL, nor had it conducted a notice-and-comment process required by the Administrative Procedure Act. *Senate HELP Comm. hearing testimony of Catherine Lhamon @00:27:00, Sexual Assault on Campus: Working to Ensure Student Safety* (June 26, 2014), <https://www.help.senate.gov/hearings/sexual-assault-on-campus-working-to-ensure-student-safety>.

<sup>6</sup> In a subsequent Senate hearing, OCR's Deputy Asst. Sec'y of Ed. Amy McIntosh confirmed Lhamon did not have the authority to enforce compliance with the 2011 DCL by withdrawing funding or otherwise. Senate Homeland Security and Gov't Affairs Comm., *Examining the Use of Agency Regulatory Guidance* (Sept. 23, 2015) <https://www.youtube.com/watch?v=dfiXuv-Oirw>.

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Lhamon's pressure on schools produced an unprecedented<sup>7</sup> wave of court decisions in lawsuits filed by wrongly accused students and professors who were victimized by the policies she promoted. The Second,<sup>8</sup> Third,<sup>9</sup> Sixth,<sup>10</sup> Seventh,<sup>11</sup> Eighth,<sup>12</sup> Ninth,<sup>13</sup> and Tenth<sup>14</sup> Federal Circuit Courts of Appeals all have issued rulings favorable to accused students, with each discussing how federal pressure might have *caused*, rather than eradicated, gender bias in campus adjudications. In 2019, now-Supreme Court Justice Amy Coney Barrett summarized this sentiment when she observed that OCR pressure gave to the accused student “a story about why [the university] might have been motivated to discriminate against males accused of sexual assault.”<sup>15</sup>

***FACE: Who We Are***

Families Advocating for Campus Equality (FACE) is a 501(c)(3) nonprofit advocating for equitable treatment of those affected by Title IX and other campus sexual misconduct disciplinary proceedings. FACE, the only nonpartisan and gender-neutral organization of its type,<sup>16</sup> supports equal Title IX fairness, and due process rights and protections for *all* parties in sexual misconduct disputes, notwithstanding its 2013 formation by mothers whose sons had been wrongly accused of sexual misconduct,<sup>17</sup> and despite the fact that 98% of accused students are male.<sup>18</sup>

In support of its mission to balance the interests of complainants and respondents alike, FACE Co-President, and California attorney Cynthia P. Garrett has served on an American Bar Association Task Force, and as a liaison on an American Law Institute sexual misconduct project, both focused on developing equitable Title IX disciplinary procedures,<sup>19</sup> and both similarly comprised of attorneys with diverse perspectives (including victims' advocates, campus administrators, and attorneys for both Title IX complainants and respondents).

FACE leadership and the accused students and professors it represents have met with and participated in meetings with hundreds of state and federal legislators as well as Departments of Justice and Education

<sup>7</sup> In 2016, Gary Pavela, a fellow for the National Association of College and University Attorneys (NACUA), observed, “In over 20 years of reviewing higher education law cases, I’ve never seen such a string of legal setbacks for universities, both public and private, in student conduct cases. Something is going seriously wrong. These precedents are unprecedented.” Jake New, *Out of Balance, Inside Higher Ed* (Apr. 14, 2016), <https://www.insidehighered.com/news/2016/04/14/several-students-win-recent-lawsuits-against-colleges-punished-them-sexual-assault>.

<sup>8</sup> *Doe v. Columbia Univ.*, 831 F.3d 46, 48 (2d Cir. July 29, 2016).

<sup>9</sup> *Doe v. Univ. of the Sciences*, 961 F.3d 203, 205 (3d Cir. May 29, 2020).

<sup>10</sup> *Doe v. Baum*, 903 F.3d 575, 578 (6th Cir. September 7, 2018); *Doe v. Oberlin Coll.*, 963 F.3d 580, 581 (6th Cir. June 29, 2020).

<sup>11</sup> *Doe v. Purdue Univ.*, 928 F.3d 652, 656 (7th Cir. June 28, 2019).

<sup>12</sup> *Doe v. Univ. of Ark.-Fayetteville*, 974 F.3d 858, 860 (8th Cir. September 4, 2020); *Doe v. Regents of the Univ. of Minn.*, 2021 U.S. App. LEXIS 16243 (8th Cir. June 1, 2021).

<sup>13</sup> *Schwake v. Ariz. Bd. of Regents*, 967 F.3d 940, 943 (9th Cir. Ariz. July 29, 2020).

<sup>14</sup> *Doe v. Univ. of Denver*, 2021 U.S. App. LEXIS 17763 (10th Cir. June 15, 2021).

<sup>15</sup> *Purdue Univ.*, *supra*, note 11, at 669.

<sup>16</sup> Though men make up the vast majority of respondents, FACE also welcomes and has provided support to accused women and LGBTQ+ students.

<sup>17</sup> FACE website: <https://www.facecampusequality.org>

<sup>18</sup> See Appendix IV at p. 64 of the PDF; Source: *Plaintiff Demographics in Accused Student Lawsuits Chart*, <https://www.titleixforall.com/wp-content/uploads/2020/07/Plaintiff-Demographics-by-Race-and-Sex-Title-IX-Lawsuits-2020-7-6.pdf>, accessed July 12, 2021, at Title IX for All Database, *Black students four times as likely to allege rights violations in Title IX proceedings*, (subscription only) <https://www.titleixforall.com/category/databases/>.

<sup>19</sup> American Law Institute, *Principles of the Law, Student Sexual Misconduct: Procedural Frameworks for Colleges and Universities*, <https://www.ali.org/projects/show/project-sexual-and-gender-based-misconduct-campus-procedural-frameworks-and-analysis/>; American Bar Association, Criminal Justice Section (ABA), *Task Force on College Due Process Rights and Victim Protections*, June 26, 2017, [https://www.americanbar.org/groups/criminal\\_justice/committees/campus/](https://www.americanbar.org/groups/criminal_justice/committees/campus/).

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officials.<sup>20</sup> In January 2019 FACE submitted a detailed comment on the Proposed Title IX Rulemaking.<sup>21</sup>

Since its inception FACE has been contacted by nearly 2000 students and an increasing number of faculty members who have experienced result-driven disciplinary processes. These individuals have experienced schools:

- refusing to disclose details of the conduct of which they've been accused;
- denying them access to very evidence relied on to find them responsible;
- refusing them the opportunity to question their accusers and witnesses;<sup>22</sup>
- relying on evidence inadmissible in any other adjudicatory arena;
- ignoring their lack of harmful intent or good-faith beliefs; and
- dispensing with any presumption they may be innocent as "inequitable."<sup>23</sup>

*The Silent Title IX 'Survivors'*

FACE members have been praying and advocating for change for years in the hope no more students or faculty are forced to endure the soul-destroying Title IX processes to which they were subjected.

Fortunately for members of the Senate HELP Committee, FACE is uniquely positioned to give a voice to wrongfully accused students and professors, most of whom are speechless and almost always nameless. Title IX complainants understandably have dominated the public narrative concerning campus sexual assault, whether through accuser-focused movies like *The Hunting Ground*, national press coverage, or narratives on social media.

Today, there are unequivocal incentives for complainants to publicize their allegations. If complainants "win" their Title IX case, they are honored for their bravery in speaking out. If they lose, complainants still can claim victimhood and accuse their school of ignoring their trauma, often on a social media platform. Their narrative, and not those of the wrongfully accused, tend to dominate the media because there remain very few disincentives for complainants to publicize their experiences.

In an effort to counterbalance the disparity in awareness of their plight, we offer a unique opportunity for you to hear some of our otherwise silent accused voices. To this end, thirteen FACE student experiences are reproduced in full in Appendix I,<sup>24</sup> and another three, including a professor, in Appendix II.<sup>25</sup> These accounts illustrate how, under Lhamon's policies and enforcement practices, accused students were silenced by

<sup>20</sup> Some of these meetings have included female and LGBTQ+ FACE students.

<sup>21</sup> *FACE Comment on Proposed Title IX Rulemaking*, Docket No. ED-2018-OCR-0064, RIN 1870-AA14, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, Federal Register Vol. 83, No. 230 p. 61462, November 29, 2018, submitted January 30, 2019, <https://static1.squarespace.com/static/5941656f2e69cfcfdb5210aa/v/5c6bd44ff4e1fcdaca50141f/1556862039627/FACE+NPRM+TITLE+IX+COMMENT+Docket+No.+ED-2018-OCR-0064+ed.+copy.pdf>

<sup>22</sup> If written questions are permitted to be submitted to a panel member or investigator in advance of the hearing, our experience has been that many, if not most, of the questions are rejected, ignored, or re-worded ineffectively, and follow-up questions not asked. This is understandable because the school official owes a duty of care to both parties, and many calculate the possible repercussions to demand a decision in the complainant's favor.

<sup>23</sup> Victim advocate members of the ABA Task Force cited in note 19, *supra*, expressed this sentiment; they believe Title IX matters should be treated like a civil action, where neither party is presumed truthful. However, in civil actions the plaintiff still has the burden of proof, and thus even in those cases the parties begin on unequal footing. In addition, being accused of what is reprehensible quasi-criminal conduct carries much reputational and emotional harm, unlike the loss of money.

<sup>24</sup> See Appendix I, *infra*, at p. 12 of this PDF. The vast majority of FACE students and families, even when students were found not responsible, are too frightened to provide an account of their experiences, even anonymously, for fear they will be identified and tormented. For additional FACE family and other accounts Title IX experiences, please see Appendix II at p. 46 of this PDF, *infra*, and "Our Stories: Stories From the Trenches," on the FACE website at <https://www.facecampusequality.org/our-stories>.

<sup>25</sup> See, *infra*, at p. 46 of this PDF.

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humiliation, vilification, and trauma, often based merely on an *accusation* they'd engaged in sexual misconduct. Once found responsible, there is no benefit for these students to insist they were wrongly accused - the accusation alone is accepted as sufficient proof of their guilt. Even if they were to flag a 'not responsible' finding as evidence of their innocence, it will be said: "they got off." Because there is nothing to gain by telling anyone beyond family and close friends that one's been falsely accused of such a heinous crime, the resulting isolation compounds the trauma of having been wrongly labeled a sexual predator.

We cannot, of course, begin to remedy the asymmetry in the public narrative, but we can make you aware there is a lesser heard version of the campus sexual misconduct equation. In submitting this Opposition, we hope to illustrate how fair and equitable procedures, such as the majority of those promulgated by OCR in its final Title IX regulations ("Final Rules"),<sup>26</sup> are critically necessary to increase decision-making accuracy and restore basic fairness to campus proceedings for all.

***What We Do***

FACE receives 4 to 5, and sometimes as many as 20, desperate calls and emails from accused students, faculty, and their families every week.<sup>27</sup> Disturbingly, it is not only college students whose lives have been devastated by arbitrary and sex-discriminatory campus sexual misconduct practices fostered by Lhamon; since 2016, FACE has received distraught calls from over 100 families of K-12 students, some as young as 6, in which the conduct of children engaged in "typical playground games" has "been recast as disturbing accusations of sexual misconduct."<sup>28</sup> The damage to these children's education and emotional stability is heartbreaking. FACE also receives many calls from parents of disabled students accused of harassment, stalking, unwanted touching, or simply being "creepy."<sup>29</sup> Under current school policies, disabled students have been "subjected to processes they could not navigate" without assistance from trained advocates.<sup>30</sup>

The reality is that, at every level of education, the disabled, students of color,<sup>31</sup> first-generation college students, and those without resources to retain legal assistance are all more likely to be disadvantaged by the impact of the unfair and inequitable campus sexual misconduct policies orchestrated by Catherine Lhamon.

Fair procedures, such as the majority of those detailed and carefully considered requirements in the Final Rules, are crucial to increasing decision-making accuracy for kindergarteners as well as graduate students and professors. In drafting the Final Rules, OCR took into account over 124,000 public comments, the over 600 post-2011 accused-student lawsuits filed over schools' flawed Title IX and other campus sexual

<sup>26</sup> *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance* (Final Rules), 85 FR 30026-30579 (May 19, 2020 (to be codified at 34 C.F.R. pt. 106)).

<sup>27</sup> See Appendix 1, beginning at page 12 of this PDF, for the statement of parent and FACE Vice President Shelley Dempsey, who is responsible for and reports on incoming calls from families of accused students and professors.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> See Appendix IV, *infra*, at p. 64 of this PDF, which illustrates the disproportionate effect of Lhamon's former policies on minority students. See also, Emily Yoffe, *The Question of Race in Campus Sexual-Assault Cases*, The Atlantic (Sept. 11, 2017) <https://www.theatlantic.com/education/archive/2017/09/the-question-of-race-in-campus-sexual-assault-cases/539361/>; Erika Sanzi, *Black Men, Title IX, and the Disparate Impact of Discipline Policies*, Real Clear Education (Jan. 21, 2019) [https://www.realcleareducation.com/articles/2019/01/21/black\\_men\\_title\\_nine\\_and\\_the\\_disparate\\_impact\\_of\\_discipline\\_policies\\_110308.html](https://www.realcleareducation.com/articles/2019/01/21/black_men_title_nine_and_the_disparate_impact_of_discipline_policies_110308.html); and Jeannie Suk Gersen, *Shutting Down Conversations of Rape at Harvard*, The New Yorker (Dec. 11, 2015) ("The dynamics of racially disproportionate impact affect minority men in the pattern of campus sexual-misconduct accusations") <https://www.newyorker.com/news/news-desk/argument-sexual-assault-race-harvard-law-school>.

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misconduct procedures, as well as the almost 200 court rulings in favor of respondents.<sup>32</sup>

As OCR explained in the Preamble to its Final Rules, the grievance process set forth there “effectuates Title IX’s non-discrimination mandate both by reducing the opportunity for sex discrimination to impact investigation and adjudication procedures” and “by promoting a reliable fact-finding process so that recipients are held liable for providing remedies to victims of sex discrimination.”<sup>33</sup>

As you must know, decision-making reliability and credibility are crucial to trust in any adjudicatory process.

***Frustrated and Bullied Title IX Professionals***

While Lhamon-era OCR officials assured each other that their methods would achieve their goal to change campus social norms on sexuality,<sup>34</sup> colleges and universities complied by conducting *To Kill a Mockingbird*-style proceedings<sup>35</sup> that often most severely impacted minority students.<sup>36</sup> U.S. District Court Judge F. Dennis Saylor identified the key problem in the new campus environment: universities, he wrote in a 2016 opinion, appeared to

have substantially impaired, if not eliminated, an accused student’s right to a fair and impartial process. And it is not enough simply to say that such changes are appropriate because victims of sexual assault have not always achieved justice in the past. Whether someone is a ‘victim’ is a conclusion to be reached at the end of a fair process, not an assumption to be made at the beginning.<sup>37</sup>

The procedures used in the *Brandeis* case before him, Judge Saylor concluded, were “closer to Salem, 1692 than Boston, 2015.”<sup>38</sup>

Nor were Title IX school officials pleased with Lhamon’s policies. In 2015, former Wheaton College Vice President of Student Affairs and Dean of Students Lee Burdette Williams courageously published an article in which she voiced her frustration at OCR’s failure to consult Title IX professionals before issuing the 2011 Dear Colleague letter.<sup>39</sup> In another June 2021 article aptly entitled “*How Much Damage Have My Colleagues and I Done?*” Williams described a subsequent Title IX conference at which hundreds of student affairs professionals from schools across the country stood and applauded her for having written her earlier 2015 article.<sup>40</sup>

<sup>32</sup> KC Johnson Title IX lawsuit database, [https://docs.google.com/spreadsheets/d/1CsFhy86oxh26SgTKtq9GV\\_BBv5NAA5z9cv178Fjk3o/edit#gid=0](https://docs.google.com/spreadsheets/d/1CsFhy86oxh26SgTKtq9GV_BBv5NAA5z9cv178Fjk3o/edit#gid=0)

<sup>33</sup> Final Rules Preamble, *supra*, note 26, at p. 30101.

<sup>34</sup> Janet Halley, *The Move to Affirmative Consent*, Signs: Journalism of Women in Cultural Society (2015), at p. 8 of the article’s PDF (“They are seeking social control through punitive and repressive deployments of state power.”) <https://www.journals.uchicago.edu/doi/pdf/10.1086/686904>.

<sup>35</sup> The palette of injudicious practices in these *Kafkaesque* proceedings that severely constrained a respondent’s ability to defend him or herself Included: 1) interrogating respondents without informing them of the details (or even the existence) of the complaint against them; 2) denying them access to and/or silencing their counsel; 3) restricting or eliminating their ability to pose questions to their accusers and other witnesses; and 4) refusing them access to the very evidence used to find them guilty.

<sup>36</sup> See sources listed at note 31, *supra*.

<sup>37</sup> *Doe v. Brandeis Univ.*, 177 F. Supp. 3d 561, 573 (D. Mass. March 31, 2016).

<sup>38</sup> *Doe v. Brandeis Univ.*, Case 1:15-cv-11557, Transcript, Oct. 20, 2015, Document 47, at 9.

<sup>39</sup> Lee Burdette Williams, *The Dean of Sexual Assault*, Inside Higher Ed (August 7, 2015) (“Williams explains why the well-intended but misguided push to compel campuses to better protect victims of sexual assault helped drive her from her job.”) (emphasis added) <https://www.insidehighered.com/views/2015/08/07/how-sexual-assault-campaign-drove-one-student-affairs-administrator-her-job-essay>.

<sup>40</sup> Lee Burdette Williams, *How Much Damage Have My Colleagues and I Done?*, A former dean of students loses faith in how colleges handle sexual assault. Chronicle of Higher Education (June 10, 2021)(the former 2015 article described the

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In her recent June 2021 article, “*How Much Damage Have My Colleagues and I Done?*”<sup>41</sup> Williams related how it was her experience meeting FACE families and students from across the country at a Phoenix FACE meeting that drastically altered her perspective on the accused student’s treatment in campus sexual misconduct proceedings:

When I wrote “The Dean of Sexual Assault,” in 2015, I believed that higher-ed professionals occupied a moral high ground in the war against sexual assault. My weekend in Phoenix challenged all of that. I now find myself wondering: How much damage have my colleagues and I done?<sup>41</sup>

Similarly, Terry W. Hartle, Senior Vice President for Government and Public Affairs at the American Council on Education reported, “Many universities that have found themselves in a conflict with OCR *believe that this agency does not act in good faith and that it’s little more than a bully with enforcement powers.*”<sup>42</sup>

OCR’s ‘bullying’ style of enforcement caused Title IX professionals to police their students’ sex lives in order to avoid the loss of federal funding.<sup>43</sup> As a result, school officials felt they had no choice but to do what OCR demanded, even if it were “technically a suggestion and not a command.”<sup>44</sup>

This pressure from Lhamon’s OCR created a Catch-22 for Title IX professionals, causing some to err on the side of finding accused students guilty regardless of the evidence.<sup>45</sup> That was especially so in cases involving intoxication, which form the vast majority of campus allegations.<sup>46</sup> Responding to decisions finding only the male guilty when both were intoxicated, Brett Sokolow of the Association of Title IX Administrators warned schools: “Surely, every drunken sexual hook-up is not a punishable offense,” since “there has to be something more than an intent to have sex to make this an offense.”<sup>47</sup>

That outcome was hardly surprising, because Lhamon’s OCR also demanded schools employ other procedures that increased the likelihood of guilty decisions, such as the lowest – preponderance – standard of evidence,<sup>48</sup> and promoted schools’ use of an investigatory method in which one official both

considerable difficulties encountered in, and the tragic consequences of implementing the 2011 DCL and related guidance) <https://www.chronicle.com/article/how-much-damage-have-my-colleagues-and-i-done>.

<sup>41</sup> *Id.*

<sup>42</sup> Michael Stratford, *Standoff on Sexual Assaults; As Obama administration unveils new guidance for combating sexual assault on campus, dispute between Tufts and federal officials underscores tensions*, *Inside Higher Ed* (Apr. 29, 2014) (emphasis added), <https://www.insidehighered.com/news/2014/04/29/us-finds-tufts-violating-rules-sexual-assault-amid-larger-crackdown>.

<sup>43</sup> Jacob Gersen & Jeannie Suk (Gersen), *The Sex Bureaucracy*, 104 Calif. Law Rev., Vol. 104, No. 4 (Aug. 2016), pp. 908-909, <https://29qish1lqx5q2k5d7b491joo-wpengine.netdna-ssl.com/wp-content/uploads/2016/09/Gersen-and-Suk-37-FINAL.pdf>.

<sup>44</sup> Emma Brown, *Senator: Education Dept. overstepped authority on sexual assault complaints*, *Washington Post* (Jan. 7, 2016) <https://www.washingtonpost.com/news/education/wp/2016/01/07/u-s-senator-education-department-overstepped-authority-on-sexual-assault-complaints/> <https://www.washingtonpost.com/news/education/wp/2016/01/07/u-s-senator-education-department-overstepped-authority-on-sexual-assault-complaints/>; see also, Sen. James Lankford, *Letter to Acting Secretary of the Dept. of Edu. John B. King* (Jan. 7, 2016) <https://www.lankford.senate.gov/imo/media/doc/Sen.%20Lankford%20letter%20to%20Dept.%20of%20Education%201.7.16.pdf>.

<sup>45</sup> Harris & Johnson, *Campus Courts In Court*, *supra*, note 4, at pp. 62-63 (“If you find against [a complainant], you will see yourself on 60 Minutes or in an OCR investigation where your funding is at risk. If you find for her, no one is likely to complain,” quoting, Nancy Gertner, *Sex, Lies, and Justice*, *AM. PROSPECT* (Jan. 12, 2015), <https://prospect.org/article/sex-lies-and-justice>.

<sup>46</sup> *Confronting Campus Sexual Assault*, p. 6, *EduRiskSolutions.org* (2015) [http://www.ncdsv.org/ERS\\_Confronting-Campus-Sexual-Assault\\_2015.pdf](http://www.ncdsv.org/ERS_Confronting-Campus-Sexual-Assault_2015.pdf).

<sup>47</sup> Brett A. Sokolow, J.D., ATIXA Executive Director, *ATIXA Tip of the Week Newsletter SEX AND BOOZE* (Apr. 24, 2014) deleted from the original source but available here: <https://www.dropbox.com/s/ie1b0dg0bh0kvff/ATIXA%202014-Tip-of-the-Week-%20Sex%20and%20Booze.pdf?dl=0>.

<sup>48</sup> John Villasenor, *A probabilistic framework for modeling false Title IX ‘convictions’ under the preponderance of the evidence*

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investigated and decided a respondent's fate,<sup>49</sup> risking confirmation bias.<sup>50</sup> When combined with policies rooted in a believe-the-victim mantra<sup>51</sup> and trauma-informed theories that evoke a presumption of the respondent's guilt,<sup>52</sup> these procedures caused innocent students and professors, like the sixteen reported in Appendices I and II, to be blindsided by findings that they had, though unintentionally, committed sexual assault.

*Across-the-Board Criticism*

The list of well-respected figures and organizations--from across the political and professional spectrum--that have criticized Title IX enforcement under Lhamon includes: the Foundation for Individual Rights in Education (FIRE),<sup>53</sup> twenty-eight Harvard Law<sup>54</sup> and sixteen University of Pennsylvania Law<sup>55</sup> professors, the American Association of University Professors (AAUP),<sup>56</sup> the American Council on Education (ACE),<sup>57</sup> the American Bar Association's Criminal Justice Section,<sup>58</sup> and the American College of Trial Lawyers (ACTL).<sup>59</sup> Even Brett Sokolow criticized schools' resulting micromanagement of students' sex

standard, Law, Probability and Risk, Volume 15, Issue 4, pp. 223–237 (Oct. 14, 2016) (estimated to have a 30% likelihood of error.) <https://academic.oup.com/lpr/article/15/4/223/2549058>.

<sup>49</sup> Harris & Johnson, *Campus Courts In Court*, *supra*, note 4, at p. 60, footnote 60 ("A 2014 Obama administration report hailed the 'very positive results' of this model.").

<sup>50</sup> Linda and Charlie Bloom, *Beware of the Perils of Confirmation Bias*, Psychology Today (July 9, 2018) <https://www.psychologytoday.com/us/blog/stronger-the-broken-places/201807/beware-the-perils-confirmation-bias>; See, for example, *Brandets Univ.*, *supra* note 37, at 606 ("The dangers of combining in a single individual the power to investigate, prosecute, and convict, with little effective power of review, are obvious. No matter how well-intentioned, such a person may have preconceptions and biases, may make mistakes, and may reach premature conclusions."); *Doe v. Miami Univ.*, 882 F.3d 579, 605 (6th Cir. 2018) ("although an individual's dual roles do not per se disqualify him or her from being an impartial arbiter, here John has alleged sufficient facts plausibly indicating that Vaughn's ability to be impartial 'had been manifestly compromised.'"); *Doe v. The Penn State Univ.* (III), 336 F. Supp. 3d 441, 450-51 (M.D. Pa. Aug. 21, 2018) ("the Investigative Model's virtual embargo on the panel's ability to assess that credibility raises constitutional concerns.").

<sup>51</sup> Of this mantra, former campus administrator Lee Burdette Williams said "The problem with 'believe the woman' . . . is that it places all women into one utterly credible bucket of complainants, and their respondents into another absolutely despicable bucket of violators." Lee Burdette Williams, *How Much Damage Have My Colleagues and I Done?*, *supra*, note 40.

<sup>52</sup> CP Garrett, *Trauma-Informed Theories Disguised as Evidence*, pp. 5-6, 8-9 (May 2, 2019) <https://static1.squarespace.com/static/5941656f2e69cfcdb5210aa/t/5c6bd3c153450a492767c70d/1556861890771/Trauma-Informed+Theories+Disguised+as+Evidence+5-2.pdf>, citing and quoting, Lee H. Roh S, Kim DJ., *Alcohol-Induced Blackout*, *International Journal of Environmental Research and Public Health*. 2009; 6(11): 2783-2792, 2785, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2800062/>; and White, Aaron M. Ph.D., *What Happened? Alcohol, Memory Blackouts, and the Brain*, Published by NIH; National Inst. on Alcohol Abuse and Alcoholism (2003) <https://pubs.niaaa.nih.gov/publications/ari27-2/186-196.htm>.

<sup>53</sup> FIRE Letter to Office for Civil Rights Asst. Sec'y for Civil Rights Russlynn Ali (May 5, 2011) <https://www.thefire.org/fire-letter-to-office-for-civil-rights-assistant-secretary-for-civil-rights-russlynn-ali-may-5-2011> <https://www.thefire.org/fire-letter-to-office-for-civil-rights-assistant-secretary-for-civil-rights-russlynn-ali-may-5-2011/>.

<sup>54</sup> 28 Harvard Law Professors' Opinion; Rethink Harvard's sexual harassment policy, Boston Globe (Oct. 14, 2014) <https://www.bostonglobe.com/opinion/2014/10/14/rethink-harvard-sexual-harassment-policy/HFDiZn7nU2UwUqWfMnqbM/story.html>.

<sup>55</sup> See Jacob Gershman, *Penn Law Professors Blast University's Sexual-Misconduct Policy*, Wall St. J. Lawblog (Feb. 18, 2015) <https://www.wsj.com/articles/B1-LB-50632>; *Open Letter From Members Of The Penn Law School Faculty: Sexual Assault Complaints: Protecting Complainants and the Accused Students at Universities*, Wall Street Journal (Feb. 18, 2015) [http://online.wsj.com/public/resources/documents/2015\\_0218\\_upenn.pdf](http://online.wsj.com/public/resources/documents/2015_0218_upenn.pdf).

<sup>56</sup> Comm. on Women in the Acad. Profession, Am. Ass'n Univ. Professors, *Campus Sexual Assault: Suggested Policies and Procedures*, Reports & Publications, p. 371 (2012) ("The AAUP advocates the continued use of 'clear and convincing evidence' in . . . discipline cases as a necessary safeguard of due process and shared governance.") <https://www.aaup.org/report/campus-sexual-assault-suggested-policies-and-procedures>.

<sup>57</sup> Stratford, *Standoff on Sexual Assaults*, *supra*, note 42, and accompanying text.

<sup>58</sup> ABA Task Force on College Due Process Rights and Victim Protections, *supra*, note 19. The ABA panel was a diverse group that also included victim advocates and campus administrators, all of whom were able to agree on necessary disciplinary procedures.

<sup>59</sup> American Coll. of Trial Lawyers, *Position Statement Regarding Campus Sexual Assault Investigations* (Mar. 2017) <https://www.actl.com/docs/default-source/default-document-library/position-statements-and-white->

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lives, noting “[s]ome pockets in higher education have twisted the [2011 DCL] and Title IX into a license to subvert due process and to become the sex police.”<sup>60</sup> Appendix III to this statement includes a further list of commentators critical of Lhamon’s selection to lead OCR.<sup>61</sup>

*No Justice for the Innocent*

When addressing the appropriateness of confirming Catherine Lhamon’s nomination, we respectfully ask you to keep in mind that the implications of your decision will be significant and widespread.

University of Chicago Law School Professor Geoffrey Stone has correctly observed that wrongful expulsion for sexual misconduct “is a matter of grave consequence both for the institution and for the student. Such an expulsion will haunt the student for the rest of his days, especially in the world of the Internet. Indeed, it may well destroy his chosen career prospects.”<sup>62</sup>

Furthermore, although up to 30% of campus Title IX decisions are very likely to be wrong,<sup>63</sup> the transcripts of those students found “responsible” are forever imprinted with a disciplinary notation; for them, there is no “*ban the box*,” even though they’ve been found “responsible” (not “guilty”) for conduct that, if it occurred, most often is not criminal, in a decision unaccompanied by rules and procedures normally used with such a low evidence standard, and pursuant to a disciplinary “process” conducted by administrators and professors who euphemistically call the experience “educational.”

These innocent students could be your sons, daughters, brothers, or sisters – because, *as you must know*, “doing the right thing” no longer protects you in this ‘accusation = guilt’ world. These are men and even some women, teenagers and young adults, who’ve lost faith in our justice system, entire families who are emotionally and sometimes financially destroyed,<sup>64</sup> all lives permanently and irrevocably changed because of a process with a 30% likelihood of error.

*Lhamon Is Exactly the Wrong Choice*

Though Ms. Lhamon subsequently claimed to have supported the due process rights of respondents as well as complainants in Title IX complaints, in only two OCR cases were there *any* concerns expressed about respondents’ rights. In one — against Minot State University<sup>65</sup> — the concern expressed had nothing to do with the end result. In the second case against Wesley College, the facts were so egregious that even Lhamon could not ignore them.<sup>66</sup> Lhamon has failed to identify any other decisions or statements in favor

[papers/task force allegations of sexual violence white paper final.pdf?sfvrsn=22](#).

<sup>60</sup> Assoc. of Title IX Administrators (ATIXA), *2017 Whitepaper: Due Process and the Sex Police* (2017) (the statement continues, “The ATIXA Playbook and this Whitepaper push back strongly against both of those trends in terms of best practices.”) <https://www.nchem.org/wp-content/uploads/2017/04/TNG-Whitepaper-Final-Electronic-Version.pdf>.

<sup>61</sup> See Appendix III beginning at p. 61 of the pdf.

<sup>62</sup> Yoffe, *The Uncomfortable Truth*, *supra*, note 3.

<sup>63</sup> John Villaseñor, *supra*, note 48, at pp. 223–237, <https://doi.org/10.1093/jpr/mgw006>

<sup>64</sup> For additional FACE family and other accounts Title IX experiences, please see “Our Stories; Stories From the Trenches,” on the FACE website at <https://www.facecampusequality.org/our-stories>.

<sup>65</sup> Out of over 17,000 words, the Minot State decision used fewer than 100 discussing respondent rights, none of which were relevant to OCR’s final decision. *U.S. Education Department Settles Sexual Assault Case with Minot State University, N.D. (Archived)*, U.S. Department of Education’s Office for Civil Rights (July 7, 2016) <https://www.ed.gov/news/press-releases/us-education-department-settles-sexual-assault-case-minot-state-university-nd>.

<sup>66</sup> U.S. Department of Education’s OCR, *U.S. Education Department Settles Sexual Assault Case with Wesley College*, pp. 2, 20–22 (Oct. 12, 2016) (numerous issues, including denying the accused “procedural protections to which he was entitled under Title IX” and the school’s “written procedures”; expelling him even though the complainant said he was not involved; failure to provide him with the correct policy; not informing him of witness names or given investigation report before the hearing; and no opportunity to explain his side of the events or respond to testimony against him.) <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/03152329-a.pdf>.

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of the rights of accused students during her tenure.

Recently, Laura Dunn, a victim rights attorney and nationally recognized Title IX expert, criticized President Biden's decision to nominate Lhamon, saying she "did not want to go back to the Obama-era guidance."<sup>67</sup> Dunn added,

I really hoped the administration would try to find someone that can please both sides of the aisle and try to settle the issue, so that we don't have a political football being thrown about every couple years.<sup>68</sup>

Now that the number of lawsuits from accused students has exceeded 600,<sup>69</sup> and both lower and appellate courts throughout the country have found school Title IX disciplinary procedures severely lacking in basic fairness, it is disheartening to those of us who've seen the devastation suffered by wrongfully accused students and professors, that Lhamon would be confirmed to again lead OCR.

As HELP Committee members you should heed the warning of Title IX expert KC Johnson:

Perhaps no public figure in the past decade has done more to decimate the rights of accused students than Lhamon. No wonder that FIRE, the scrupulously non-partisan campus-civil-liberties organization, denounced her nomination and urged senators to reject it unless she committed, under oath, to upholding specific due-process provisions in Title IX tribunals. Given her record, it seems extremely unlikely that she would ever do so.<sup>70</sup>

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<sup>67</sup> Jeremy Bauer-Wolf, *Biden's pick of Catherine Lhamon as civil rights head could mean a return to Obama-era policies*, Higher Ed Dive (May 13, 2021) <https://www.highereddive.com/news/bidens-pick-of-catherine-lhamon-as-civil-rights-head-could-mean-a-return-to/600159/>.

<sup>68</sup> *Id.*

<sup>69</sup> "Sexual Misconduct, Accused Student Lawsuits Filed (post-2011 Dear Colleague letter)," [https://docs.google.com/spreadsheets/d/1ldNBm\\_vnP3P4Dp3S5Qg2JXFk7OmI\\_MPwNPmNuPm\\_Kn0/edit#gid=0](https://docs.google.com/spreadsheets/d/1ldNBm_vnP3P4Dp3S5Qg2JXFk7OmI_MPwNPmNuPm_Kn0/edit#gid=0).

<sup>70</sup> KC Johnson, *The Biggest Enemy of Campus Due Process from the Obama Years Is Back*, National Review (June 1, 2021) <https://www.nationalreview.com/2021/06/the-biggest-enemy-of-campus-due-process-from-the-obama-years-is-back/>.

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70's Feminist  
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Veronica Werbalowsky Atlanta, Georgia	Keith Fineberg JD, MArch Milan, MI
Wally and Reni Bumpas Ridgeland, MS	Nicholas H. Wolfinger, Ph.D. Professor, University of Utah Salt Lake City, UT
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70's Feminist St. Louis, Missouri	Anonymous Mom and Dad Edmonds, WA
Alice Farmer	T. F. Colorado Springs, CO
	Catherine Talarico
	Anonymous Student Edmonds, WA.

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**APPENDIX I**

**Student 1****July 2020**

I am a parent of four children, three boys and one girl between the ages of 19 and 26, all of whom have attended college or are still enrolled. Our oldest, a son, was wrongly accused of sexual assault in 2015 and expelled from school. It was a traumatic experience for our son and entire family in which the university ignored significant exculpatory evidence in their quest to believe “victims”. In the wake of this experience my husband and I felt more comfortable sending our daughter to college than our younger sons. We were pleased to hear that first steps have finally been taken to begin bringing due process to campus sexual assault cases. I believe that some of the new regulations, had they been in place in 2015, would have made a difference in the outcome of our son’s case.

One of the new regulations is the requirement of a “presumption of innocence” letter that will be sent to the accused. This letter lays the groundwork for investigations where presumption of innocence has been completely missing when it comes to disciplinary hearings involving sexual assault on college campuses. Title IX offices have been staffed with people and have educated people to presume guilt. Our son’s hearing panel included two young female employees of the university who had been trained with presumption of guilt. They chose not to look at evidence they had access to that was exculpatory for our son. By starting with a presumption of innocence, it at least reminds people hearing these difficult “he said she said” cases that we must presume a person is innocent. Without this, our entire American approach to determining someone’s guilt or innocence is up-ended.

Another change that I believe would have affected the outcome of our son’s hearing is allowing for cross examination. His accuser did not have to answer any questions about her story and her words were taken as fact. I understand it is traumatic for a true rape victim to relive the details of a rape, but unfortunately this is a necessary evil that upholds presumption of innocence. Furthermore, allowing each party to have an advisor be an active part of the hearing would have been extremely helpful to our son. While his accuser took part in the hearing via phone with her advisor by her side (most likely speaking and giving advice) our son was only allowed to have an attorney there for support – she was not allowed to speak to him, witnesses, the accuser, or the hearing panel. Our 21 year old son had to navigate this highly stressful and critical proceeding on his own. There were several areas of dispute that his attorney would have known how to address given the opportunity, but our son didn’t have the knowledge or experience to do so.

These new regulations are a good start to change the adjudication process on college campuses, but there is still more work to be done. We need to ensure that our Title IX offices are a place of fairness for all students. I am asking for your support in ensuring these new regulations go into effect in August.

**Student 2****July 2020**

The path and outcomes our son experienced under the Obama-era “guilty upon accusation standard” is extraordinarily, and tragically, different when compared to what would have occurred under the current new rule of how colleges investigate and respond to allegations of sexual harassment and assault.

The single investigator model included a one-on-one interview with our son (about 45 minutes) and an interview with the complainant. Interviews were conducted with “witnesses” but NO witnesses were witnesses to the alleged event – only to hearsay conversations. In addition, none of the hearsay witnesses heard the complainant allege any assault immediately after or within the first 48 hours. The single investigator did not pursue available physical evidence that would have corroborated our son’s testimony. Nor did the Investigator follow-up or pursue numerous inconsistencies in the complainant’s testimony and version of events.

From the investigation, thirty-six undisputed facts and one “disputed” fact were generated. The disputed fact was “whether complainant affirmatively consented to perform oral sex on respondent.” Non-disputed facts include the following:

- Respondent asked complainant to engage in sex.
- Complainant said “no.”
- Respondent asked complainant to perform oral sex on him.
- Complainant performed oral sex on respondent.
- Complainant stopped performing oral sex after about 5- 10 seconds.
- Complainant and respondent resume kissing and holding for several minutes.
- Respondent’s phone rang and after answering and a brief telephone conversation, respondent left.

Through the investigative process, the single investigator proclaimed both complainant and respondent were deemed “credible, responsive and non-evasive.”

The single investigator was given the authority to adjudicate and found in favor of the complainant based on two apparent items:

- 1) Our son spoke to fewer people immediately following the encounter (he spoke to only one person after he had left the encounter because a friend has become very ill at a party and he was asked to assist in care). The investigator found that while the complainant never alleged assault to the “witnesses” and none of the witnesses could recount any wrongdoing by the respondent, the complainant’s allegations were more credible because, in the end, more people were spoken to.
- 2) While the complainant was able to say “no” to sex and stopped performing oral

sex after 5-10 was never found or proven that our son exerted pressure – only that the complainant could claim after the fact that pressure was felt..

The process adhered to – which Betsy De Vos called a “kangaroo court” which follows arbitrary rules and offers inadequate protections to the involved – combined with the “guilty upon accusation” culture on our son’s college campus, resulted in an experience that can only be described as “un-American.” During the harrowing experience we consistently wondered out loud *“how could this happen in America?”*

Our son’s case would have followed a completely different trajectory and outcome if the new rules had been in place at that time because the new rules would have provided for the following:

- The accused (and accuser) are allowed to submit evidence. The investigator in our son’s case was not required to and was completely not interested in collecting any evidence. Evidence which was available and never sought/accepted included telephone and text messages (and corresponding time stamps) and key card time stamps to the dorm room.
- Participation in live cross examinations. The complainant never elucidated how she was “pressured” into performing oral sex on our son and the investigative report could not provide any description of our son’s actions leading to “pressure.” A cross-examination process would have quickly revealed that there had been no malfeasance in our son’s actions. It also would have made clear that consent was given in the form of acquiescing to our son’s request for oral sex to be performed on him.

The above notwithstanding, absolutely and without a doubt, the single biggest hindrance to a fair process was the lack of transparency. The process was hidden as the single investigator performed a superficial and flawed investigation and allowed to adjudicate and determine guilt or innocence based on an extremely cursory and indefensible assessment of “evidence.” To be in a process in which the accused cannot speak for himself beyond what the investigator allowed during a short interview performed at the onset of the process and not be allowed to present evidence that would refute the claims of the complainant is abjectly un-American. The process unfolded hidden and essentially drew its power from the phenomenon – if Americans, legislators, governors, councilpersons and even college professors had an inkling of how these investigations really proceed, it would be a stunning revelation.

**Student 3****July 2020**

I was an accused male student at a private university. I was falsely accused, and was dragged through a university disciplinary process that shocked me to my core. I was not permitted to present my own evidence or witnesses without arbitrary administration approval (the administration had no criteria and they provided no explanation), I was not allowed to question my accuser or any of her witnesses personally or through an advisor, I was not allowed to *even question* parts of my accuser's story, and the university refused to provide any details of the accusation until after the investigation had concluded. Furthermore, the university violated its own policies by denying all but one of my fact witnesses late on the night before the hearing, while allowing her character witnesses (prohibited by the policy) to testify. The university also declined to ask any of my hundreds of pre-written questions.

I am innocent, and I could have proven my innocence in the campus proceeding had the Regulations been in effect at the time. I could have cross examined my accuser (through my advisor) and her witnesses and called attention to clear inconsistencies and outright lies that permeated her allegations. I could have presented my own witnesses that would have contradicted by eyewitness testimony key portions of her allegations. I would have received notice of the details of the allegation when I was interviewed, so I could more effectively rebut her false claims. But I was not able to do any of these things, and I was erroneously suspended for two and a half years, a punishment that permanently altered my life and career trajectories.

It took thousands of dollars and the intervention of a court to vindicate the rights I should have received from my school.

**Student 4****July 2020**

A young woman (Jane) walks into campus security at 10:45pm on a Sunday night and makes an accusation that she was sexually assaulted six days prior. She was offered medical attention, to talk with the police and refused both. She was allowed to have her previous boyfriend and friend(s) with her for support. The counselor on call was contacted and spoke with the young woman. Various people she interacted with offered her more help/counseling on multiple occasions through that night and the next day, which she refused.

This was a he said she said case, no drugs, no alcohol, no sexual intercourse. A no contact order was delivered to John Doe in the middle of the night. The next morning the young man met with Associate Dean of Students/ Senior Deputy TIX director's in his office. The dean said, "you are being charged with sexual misconduct" and you can make a statement at a later date. We know this to be true because this call was legally recorded four days later when the Dean reiterated what he previously had said. He then explained to John there was "inappropriate touching" and he "did not get affirmative consent."

Shortly after this meeting John was abruptly pulled out of his lab class and told he was suspended. He was escorted to his room by three security men to gather his belongings, while signs are being hung on all the buildings that there was a campus sexual assault. A mass email warning was sent to everyone on campus, asking them to report information.

That night the assault was on the news and in the newspaper. John was treated as guilty the moment he was accused! This was not the fair and equal process the college promised. Imagine how you would feel, your friends watching you be escorted away like a criminal. You don't even know why this is happening, you only know an accusation was made and no one wants to hear your side of the story.

Jane's roommate's statement talked about the night of the supposed incident. Her roommate reported Jane "was mostly annoyed" "upset and frazzled ... The roommate states the next day Jane "told me that she had been thinking about the night before and she told me the more she had been thinking about it the more it bothered her...She was not thinking about reporting it at that point and I brought up the counseling center. She wasn't opposed to it but she didn't think she would need the counseling center.

The next day everyone was home on break and Jane texted her roommate:

- Jane; "I tried to talk to my mom today about the John thing. That conversation did not go how I thought it would."

- Roommate; "what happened?"
- Jane; "She told me I need to be more careful with guys."
- Roommate; "I'm sorry she didn't react well sometimes parents need time to process before they come to terms and react the way you want."
- Jane; "I thought she would get upset or mad or something like that but instead she made it seem like it was my fault. You know it wasn't right?"
- Roommate; "I am sorry she did not react well..."
- Jane; "I was teasing him earlier that day and I did kiss him and stuff..." "Does this count as sexual assault?"
- Roommate; "According to Department of Justice: Sexual assault is any type of sexual contact or behavior that occurs without the explicit consent of the recipient. Falling under the definition of sexual assault."
- Jane; "So Yes?"
- Roommate; "Honestly, yes I would think it would count."

The incident report states Jane "tried to tell her mother that she had been sexually assaulted." And she reported her mother told her "that because it was not rape, Jane just needed to be more careful with boys."

John and his father were allowed to return to the campus pick up more belongings two days after the accusation. They spoke with the Title IX director about the unfair treatment, being labeled guilty without any presumption of innocence, and the fact that no one wanted to hear his side of the story. They asked how was it that he was just suspended and they simply believed her? How is it that she alleged something happened and was immediately given the title "victim/survivor" What process had already determined she had "survived" something? **The Title IX director stated, "There was a lot of pressure from the Federal Government and that this is just how things work."**

John and his father started to drive home with most of his belongings when the Title IX director called less than thirty minutes after they left. She said John could return now to the college to attend classes but he could not return to his townhouse. This one interaction, John and his father talking reasonably with the Title IX director seemed to make a difference in how John was perceived. Maybe he was not the "serial rapist" they were treating him as. This was the only glimmer that John might be heard. It did not last long.

The school said there would be an investigation. Shouldn't an investigation occur before someone is charged? In this case the college had it covered, when deciding if they would be moving forward with a case they only accepted "evidence in support of the complaint." It definitely seemed like John's guilt was predetermined.

John was told on a Thursday afternoon at 4:30pm he had to submit a statement no later than Monday

knowing only the accusers name, date, place and that he was "charged" with "rape" and "inappropriate touching." While this was "only an educational process" per the college you still have to consider anything you say can be used against you in a court of law. It was clear the college itself had not treated John fairly and there was no presumption of innocence.

**Try to find a lawyer in one day.**

A few other key facts learned along the way;

- Jane's story changed and the story grew worse with each person she spoke. When she finally reported she would only do it with the ex-boyfriend at her side ...
- The Title IX director's summary of events falsely stated that the "complainant indicated that she was very angry and when respondent texted her and said "I had fun tonight" that Jane's responding text was, "you can't do that stuff. You can't hold me down and force yourself on me." The only text messages that were supplied at all for evidence were from John and the actual text on the night in question after he walked her back to her dorm was, "I really enjoyed spending time with u (smiley face emoji) and Jane's response to that was "Thanks"

The Dean/Deputy "Selects, trains and advises the student Conduct Review Board" but it was the Dean/Deputy who had decided John was guilty by accusation ... The Dean/Deputy was trained to "believe the victim," a trauma informed approach that is "based on flawed science," "loosely constructed," and "makes unfounded claims about its effectiveness, and has never once been tested, studied, researched or validated."<sup>1</sup>

- The investigating officer's daughter was a friend with the complainant. This officer also wrote a chapter in the Previous Title IX directors book who showcased John's college campus as a premier example of how a college can "eradicate" sexual violence." <sup>2</sup>
- 10 days after the accusation John's roommate received notice that he would be getting a new roommate. Its sure feels like the school predetermined John's guilt.

John submitted his statement and waited. After some time he was allowed to view what we think was most of the "investigative" materials. The investigation only consisted of statements against John by Jane and her friends. John was then allowed to write one more statement in response to what he had viewed.

**John had NO hearing to attend, NO cross-examination in person or written, John was not allowed to know who was on his hearing panel judging him. There was no verbal questioning of John by the college or the investigator at any time. How does a hearing panel make a life**

altering decision without ever meeting, talking, or interacting with the accused? They made a judgment based solely on information that the college required be supportive of the complainant.

Even within a system that states it is "educational," it seems when you are labeling someone as a "sex offender" or "rapist" it would be important to hear him or her speak  
... how do you come to a conclusion without ever meeting or interacting with one side?

**I do believe cross-examination would have made a difference in the outcome of this case,** as it is the best tool for determining credibility! Written questions are never an effective substitute for live cross-examination. I think this case is a prime example of why cross-examination is a needed requirement in the new Title IX regulations.

John was found responsible by the college. The effects and impact of being wrongly accused are real. The stigma and vilification of being labeled a "sex offender" cannot be underestimated. The inability to fully clear one's name can cause extreme pain and embarrassment. Being accused changes your ability to return trust and it is difficult to return to being the valued person you were before the accusations. There are definably changes in personality and social behavior due to the loss of a previously untainted reputation, a loss that cannot be repaired in the absence of clear exculpatory evidence of innocence. Self-blame, suicidal thoughts, paranoia, anxiety, mistrust, social withdrawal and isolation are all commonly seen in many who have gone through similar "educational processes." "It is not only the person accused that suffers this is a life altering event for the whole family and even friends.

Please ask yourselves What is the difference between being labeled "guilty" in a civil or criminal proceeding or being found "responsible" on your college campus of "rape?" Because the consequences of being suspended or expelled, having marks on your records, being judged and labeled by your college campuses has caused irrevocable harm to many students!

Betsy DeVos has taken the time and done her homework on this! It is clear the previous system was broken. Please be supportive of the new regulations and give them the opportunity they deserve!

Sincerely,

Anonymous and forever changed

1. <http://www.prosecutorintegrity.org/sa/trauma-informed/>

2. Sexual Harassment in Education and Work Settings Current Research and Best Practices for Prevention by Michele A. Paludi, Jennifer L. Martin, James E. Gruber and Susan Fineran and Bullies in the Workplace by Michele A. Paludi) Praeger (August 26, 2015)

**Student 5****July 2020**

My name is John Doe. I am 28-years-old. I was falsely accused of sexual assault during my senior year of college. I will never forget when I first received the email notifying me of the allegation against me.

Although receiving this news was predictably jarring, I was actually not overly concerned or worried about entering the investigative process. I obviously understood that any allegation of sexual misconduct is extremely serious, but I (naively) believed that my innocence would protect me from harm. I assumed that “the truth would set me free.” I assumed that I was entering an adjudication process that was neutral, fair, and balanced. I assumed that the investigation would reveal that the allegation against me lacked merit, and that the case against me would eventually be dismissed. I even attended my first meeting with the school’s investigator without a lawyer! However, despite overwhelming evidence supporting my innocence, I was eventually found “Responsible” for sexual assault and suspended from school for the rest of the year.

While I was eventually able to prove my innocence in a court of law after spending thousands of dollars, the impact of this ordeal on my life and my psyche cannot be overstated. After I was found Responsible and removed from campus, I quickly descended into what my good friend Joseph Roberts described in his recent article in *USA Today* as the “all-too-familiar pattern for the falsely accused: isolation from friends and family, loss of reputation, depression, substance abuse, [and a] suicide attempt.” It took me five long years to clear my name. That’s half a decade of total professional stagnation and unrelenting psychological turmoil. And even after winning my lawsuit against my university, much of the damage to my reputation and spirit remained. One spurious allegation and a small handful of complicit university administrators was all that it took to irreparably alter my life trajectory.

Education is a civil right, and thus no one should be denied access to education without meaningful due process. The updated Title IX regulations are a historic step in the right direction to ensuring due process for all students. Had this new guidance been in place when I went through the adjudication process, it is possible that I would have been spared this injustice. I have outlined five specific provisions of the new regulations that might have protected me from the false accusation.

**1. MORE DISCRETION IN WHICH CASES THE SCHOOL INVESTIGATES**

Under the previous guidance, schools were required to investigate virtually every allegation of sexual misconduct – regardless of where the conduct occurred, whether the individuals involved were students at the school, or even if those allegations were received second-hand. For example, the

allegation against me was made in relation to a sexual encounter that occurred hundreds of miles from campus, over summer break, with a girl who was not even a student at my university. Considering that Title IX is ostensibly about protecting access to education, it is very difficult to understand how this kind of conduct was investigated and adjudicated under the auspices of Title IX. The new guidance is a step in the right direction because it allows schools to focus on incidents that actually pose a threat of interfering with the campus environment and students' access to education.

## 2. STUDENTS ARE ENTITLED TO REVIEW ALL EVIDENCE

The ability to review the adverse evidence/testimony is absolutely essential to crafting an effective defense. In my case, my accuser submitted fabricated evidence to the hearing panel in order to bolster her false claims. Unfortunately, that fabricated evidence was withheld from me until the very last minute, so I didn't even get to review it until I showed up for my hearing, and thus I had no way to defend myself. So there I was, a 22-year-old kid, sitting in front of a panel of university administrators, clumsily attempting to prove that the evidence was fake, but with no real way of doing so. Had I been presented that false evidence prior to the hearing I would have had an opportunity to develop a strategy for demonstrating that it was fraudulent.

## 3. STUDENTS ARE ENTITLED TO REPRESENTATION AT THE HEARING

When I went through this, the norm on college campuses was that students were required to represent themselves during the adjudication process. This rule did not only apply to accused students like me, but also to accusing students. First of all, the idea that a complaining student who has come forward with an allegation of *rape* would have to represent himself or herself in an adversarial process is self-evidently absurd. Furthermore, the idea that accused individuals should have to represent themselves is equally inappropriate. A student accused of a Title IX violation has his entire educational and professional future hanging in the balance. Expecting him to defend himself under such circumstances is not only cruel, but incongruous with the stated goal of a fair and effective process.

I remember during my hearing I was very concerned with coming off as polite and amicable to the hearing board. I did not want to come off as insensitive or aggressive. However, I believe that this prevented me from vigorously defending myself. I would have been much better off with a trained representative advocating on my behalf. A system in which both accusing students and accused students have representation allows for a fairer process for everyone involved.

#### 4. LIVE HEARING WITH CROSS-EXAMINATION

The new regulations require that there be a hearing that includes an opportunity for some form of “live cross examination.” This is one of the more controversial provisions of the new regulations, but it is absolutely necessary. It is not a coincidence that the appellate courts are increasingly requiring schools to allow some kind of live cross-examination in cases where credibility is at issue – it is because, as described by the Supreme Court, cross-examination is “beyond any doubt the greatest legal engine ever invented for the discovery of truth.” In my case, my accuser had a very well documented history of pathological dishonesty.

However, because there was no opportunity for live cross-examination, I was severely limited in my ability to raise this issue during the hearing. Had I been able to explore this line of questioning, it is very possible that I would not have been found Responsible.

#### 5. PRESUMPTION OF INNOCENCE

The presumption of innocence is the bedrock of our justice system. However, for the last several years, university students accused of sexual misconduct have regularly been denied this right. Misguided (albeit well-intentioned) policies such as “affirmative consent” and “trauma-informed investigations” have resulted in the reversal of the presumption of innocence and created an environment where accused individuals are presumed to be guilty and then expected to prove their innocence. The new regulations ensure that all accused individuals are presumed to be not guilty until the evidence demonstrates otherwise.

In my case, the evidence overwhelmingly supported my innocence. My accuser claimed that she was unable to consent due to incapacitation. However, throughout the entire disciplinary process, there was not a single piece of evidence presented to corroborate this claim. There were roughly a dozen witnesses who interacted with my accuser in the moments leading up to our encounter, including two of her best friends who were literally in the room with us during the encounter, and every single one testified that nothing in my accuser’s behavior/demeanor indicated that she was blacked out, incapacitated, or otherwise unable to consent. However, despite this total dearth of corroborating evidence, I was still found “Responsible” on nothing more than my accuser’s word. The codification of the presumption of innocence would have ensured that students like me were not denied access to our education until the evidence firmly demonstrated that he was guilty of misconduct.

**Student 6****July 2020**

In April 2017, 2 weeks before his last final exam, my college age son was summoned by the Title IX office and informed that he was “charged” with sexual assault contact and sexual assault intercourse. The charge stemmed from a consensual encounter that occurred 6 months prior and was determined by the person who was to investigate and make the ultimate decision of responsibility. In this single person, the university Title IX officer, lay my son’s academic and professional future, as well as much of his emotional and psychological stability.

Under the regulations promulgated by the current Department of Education, this would have never been acceptable. The presumption of innocence, a basic right for all people, would have precluded a situation where a person was charged, thus presumptively responsible in the charging body’s eyes, for an offense, before an investigative process even commenced. A presumption of innocence throughout the process, with the burden of proof on the school, requires that there be evidence upon which a decision is based, and that the accused be given the opportunity to know and challenge the evidence in his or her own defense.

In my son’s case there was no reliable independent evidence upon which to base a decision. There was no physical evidence indicating assault; on the contrary, all available physical evidence, including photographs, show a smiling young lady immediately after her encounter with my son and before her personally recounted 2 other sexual encounters that same night.

The only ‘evidence’ held against my son were the statements of the accuser and her friends, which contained many contradictions and indications of unreliability. Nonetheless a decision of responsibility was made on the sole basis of ‘credibility.’ The decision was made through a single-investigator model in which the investigator makes a decision regarding responsibility in lieu of a hearing before a neutral panel of decision makers. This injustice was compounded because the investigator was accountable to no one but herself as she was also the Title IX director and coordinator. Having made public Facebook posts deriding neutrality and promoting a video likening college campus to hunting grounds for sexual predators, there was little chance she would conduct a fair process.

My son was charged, investigated, and questioned without ever having been informed of the allegations made against him and given the opportunity to respond. The new regulations would have ensured his right to defend himself against allegations by requiring he be informed with sufficient precision of what he was accused of. Without a hearing and the ability to cross examine adverse

witnesses and testimony in real time, he had no means to defend himself against false accusations.

The regulations requiring equal opportunity for parties and their advisors to review the evidence would have protected my son's rights in the same measure as those of the accuser. While his statement was included verbatim in the evidentiary file, only the investigator's summarized narrative of her impressions of witness testimony was presented for my son's review. He had no opportunity to hear or even read the actual testimonies of the parties to challenge them and assert his credibility in contrast to theirs. It was obvious from the reported summarized statements that either the accuser was given access to my son's statement before she "finalized" her statement (after the investigation concluded) or that the investigator, in her summaries and reports, manipulated the accusers statement to address my son's statement regarding the encounter. With a live hearing this could not have happened.

In the whole process, my son was interviewed once, and was the last person to be interviewed. How would an investigator be able to examine claims of the accuser against those of the respondent if without questioning her considering the respondent's statement? My son was branded a sexual predator, with no live hearing or impartial decision making panel, on the mere whim of a biased and incompetent employee who, despite her law degree indicative of knowledge of basic rules of evidence and procedural fairness, violated the governing guidance issued by the OCR in September of 2017, as well as institutional procedures and promises of fairness, timeliness and adherence to obligations to Title IX and the Cleary Act. There was no semblance of investigative thoroughness, neutrality, opportunity to prepare a defense, procedural due process guaranteed to both parties.

My son was subject to retaliation in the form of another accusation by one of the accuser's friends for having presented an appeal that raised procedural irregularities and was subject to another equally flawed and procedurally corrupt process. The realization of what was happening to him provoked a suicide attempt. He was Baker Acted and hospitalized for 3 days.

Unlike the female complaint who had the free support and advisory services of Project Safe, under the direction of a self-proclaimed feminist activist juris doctor, our single income family had to spend \$25k to defend our son from an overzealous and unfair process that threatened not only my son's educational and professional future, but also his very life.

**Student 7****July 2020**

My son went through the TIX process while he was a college student and the experience has forever changed our entire family. Compared to other accused students we have come to know, he was one of the fortunate ones. It was the *process* that was the most devastating and life altering. I will try to be brief in giving you key details and how the Department of Education's new regulations would have provided for a fair process for both my son and his accuser. I have included in red text parts of the new regs that would have had a positive impact on how the process played out.

My son was on the track and cross country teams. In September 2016, he received an email from the TIX coordinator stating that she had gotten notice that he *may* have been involved in a sexual assault involving another male student (a person my son has never met and my son is not gay). He had no idea what this was about and thought it must be a mistake, so his reply was "I don't understand. Have I done something wrong?" At this point, he was not overly concerned. The response to him said that his name was given as the perpetrator and the incident took place in 2014- OVER TWO YEARS FROM THE TIME HE GOT THIS NOTICE. My son was told he needed to meet with the TIX coordinator and the school would provide an advocate for him.

The coordinator was an employee of the school's women's center and a victim's advocate. The new Title IX regulations would have required that the coordinator, investigator or any person designated to facilitate an informal resolution process to be free from conflicts of interest or bias for or against complainants or respondents.

My son received the investigative report, which he sent to me. We were confident that this could not move forward. I will highlight some of the reasons why:

- The report said the alleged sexual assault took place between March and April of 2014. Due to the broad range of dates and two years that had passed, this made it impossible for my son to have any witnesses or an alibi. How can this even make sense? A person has a traumatic experience and they can only narrow it down to a TWO MONTH time period?
- No investigator could pursue this as a legitimate claim, so we thought. However, we did not realize the money the school could lose by dismissing this claim.

The accuser offered 3 witnesses, 2 of whom stopped responding to the TIX investigator. The 3<sup>rd</sup> "witness" was a past friend and stated in the interview that the accuser DID NOT CALL THE ENCOUNTER A SEXUAL ASSAULT. The interviewer asked what the perpetrator's name was and his reply was that he did not remember. THE INVESTIGATOR THEN ASKED THIS WITNESS IF THE NAME WAS "JOHN DOE". THE WITNESS SAID-YES THAT SOUNDS RIGHT. This is leading the witness to get a desired response. The new regs require training on how to conduct an investigation, how to serve impartiality, including how to avoid prejudgment of the facts, conflicts of interest and

bias. There must be a presumption of not responsible.

This is just a small portion of what we went through. Can you imagine a 20 year old having to read a report to his mother about a completely fabricated event that contained details of a sexual encounter with another male? My son is not gay; this was humiliating.

However, we live in the United States where there is supposed to be due process. We did not see any way this could move forward. How can anyone be expected to defend themselves from an incident that allegedly occurred almost 2-1/2 years prior in a two month time period?

I called a local attorney to reassure myself that we indeed did not need legal counsel. My heart dropped when he told me that schools care about losing hundreds of thousands of federal dollars more than they do about the students & that he would not be able to speak at the hearing, so we would be wasting our money to hire an attorney. It's a hopeless feeling knowing that the truth is not a priority. The new regs require that the decision maker must permit each party's advisor to ask the other party and witnesses all relevant questions & follow up questions, including those challenging credibility. Parties can be in separate rooms and only relevant questions may be asked.

We were extremely fortunate that the accuser did not show up at the hearing and we learned that he was not even a student at the college at the time. My son was found not responsible, but the effects of the process have been life altering for our entire family. He could not have the option for dismissal or mediation of his complaint. The new regulations provide for dismissal of a formal complaint, at the school's discretion, if the complainant informs the TIX coordinator in writing that he/she desires to withdraw the formal complaint or allegation. The new regs also have the option of mediation.

I appreciate your time and would be more than willing to speak with you or provide additional information. I am hopeful that because of the changes made by the department, all parties will feel that they had a fair process.

Because my son's investigator was a victims' advocate for the Women's Center, there was bias from the beginning. Had the new regulations been in place, my son would have at the least been on an equal playing field. The new regulations require that the coordinator, investigator or any person delegated to facilitate an informal resolution process must be free of conflicts of interest or bias for or against complainants or respondents. This protects all students.

My son has given his consent to tell this story anonymously.

Sincerely,

A Mom

**Student 8****July 2020**

I am writing on behalf of my family to express our deep concern for the process by which the Title IX violations are handled. I say on behalf of my family because it didn't just affect my son but included siblings, aunts, uncles, cousins and grandparents. It also included his friends, teammates both past and present and all of the parents who have been following him for years. This is a big deal and not just for our son.

As with most of the other families in this situation, it began with an early morning phone call with our son in tears. His coach text him to say he was suspended from this team for a sexual harassment complaint and that he could not tell him any more information. Needless to say, he was blown away.

Thank god my daughter works for another university and was privy to a flier on the subject of sexual harassment that included a link to the FACE website. I called to find out if I needed to talk to a lawyer before or after the school rendered a decision. They strongly advised I find someone immediately.

Again, thank god we did because our lawyer was a lifesaver for us and our son.

My son was able to prove almost immediately that he did not initiate the email chain where the girl said she was harassed. In fact, he was able to prove that SHE started it but, as we came to find out, with the kangaroo court that handles these complaints at the university level, there is no common sense allowed in the process.

The people at the university that handled the situation were all 'interim' ; we never knew what was going on, when he met with the 'investigator' for the first time the advocate assigned on his behalf told him he was 'screwed'. Once we hired an attorney the proceedings were amazingly elevated to a school lawyer showing up at the 'hearings' but only to protect the university and still not a process you would find in a real court of law. As it turned out, when it came down to the final 'hearing' the people on the panel had not even read the investigator's report!

It is a broken system. I do not expect that sexual harassment and other sexual violations were what was expected when Title IX was implemented. We never expected to pay thousands of dollars to exonerate our son from something that would have taken 30 minutes in a real investigation with people who are trained in this sort of thing to figure out. The havoc it wreaked and the emotional toll it took on our family and community was mind blowing to all that hear about it.

There has to be a better way.

**Student 9****July 2020**

We are writing to you about the violation of both civil and constitutional rights occurring to many of our outstanding male students on college campuses nationwide due to the Obama administration's Department of Education's (DoE) Dear Colleague Letter (April 4, 2011), which lowered Title IX standards for colleges to receive federal funding. In order to receive federal funding, this DoE guidance (in reality a directive) forces colleges to aggressively pursue sexual misconduct allegations, strips the accused of both their civil and constitutional rights, and lowers the standard of responsibility from beyond a reasonable doubt to only "a preponderance of the evidence/information"; however, how the standard is being applied, with a lack of due process, it is even lower than preponderance of the evidence/information, i.e., you are assumed guilty or responsible until you prove your innocence.

In February of this year, our son was falsely accused of serious sexual misconduct allegations by a disturbed and delusional lesbian girl who has been documented as having intrusive thoughts and memories and has claimed the same sexual misconduct allegations concerning five other men. These false allegations against our son were claimed to have occurred off-campus; however, the University's Dean's office (a.k.a., Title IX Office) informed our son that he was being investigated for potentially violating their Code of Student Conduct prior to having official approval to investigate by the University's Vice President of Student Affairs.

University "investigators" summoned our son to appear before them for questioning. An advisor of his choice could be present during the questioning, but could not speak during the process. The cost of legal representation for this ranged from \$5,000 to \$25,000 just for the attorney to be present during the "investigation" or, as the attorneys kept calling it, a "kangaroo court." Being a middle class family, we could not afford legal representation; therefore, our son's father, had to take off work, travel to the school, get a hotel, and assist him in preparing for and advising him during the investigation.

Despite our son having receipts, character statements, information from his fiancée, and other items to prove his innocence, and the fact that his accuser, the complainant changed her story drastically three times during the investigation process (which we learned through the investigator's report), the university charged our son with serious sexual misconduct allegations (sexual contact, sexual harassment, and physical abuse, which was later changed to dating violence) just to, as the Title IX officer said, "be fair to her." Additionally,

our son's bishop (we are members of the Church of Jesus Christ of Latter-Day Saints) knew the story and the truth about the complainant (as she went to our son's bishop with the intent to create issues between our son and his fiancée) and the bishop requested to be contacted by the investigators. The investigators stated in their report that they saw no need to contact the bishop. As our son's accuser said, as we discovered during this time, her "words are proof enough" as to what she was falsely accusing our son of doing.

Despite the fact that the complainant drastically changed her story and the fact that our son presented hard evidence to prove the accusations were false, our son was summoned to appear before a Disciplinary Panel. Between the time of the investigation and the Disciplinary Panel, the complainant harassed, stalked, and attempted to publicly humiliate our son and his fiancée, while the university was unwilling to address this conduct with her because "that is her right"; however, our son was not allowed to address her behavior because "that would be intimidating to her."

With the Disciplinary Panel, again, an advisor of our son's choice could be present during the conduct panel, but could not speak during the process. And, again, the cost of legal representation for this ranged from \$5,000 to \$25,000 just for the attorney to be present during the conduct panel, or as the attorneys (including the local County attorney's office that we later visited who called the process an embarrassment) again kept calling it a "kangaroo court."

Before the panel hearing we, the mother and father, had to take off work for several days a week for several weeks, travel to the school, get a hotel, and assist our son in preparing for the conference panel and provide our son with much-needed emotional support (as well as his fiancée providing emotional support) during this entire ordeal. Due to our son facing suspension or expulsion, our son's, his fiancée's, and our health suffered (lack of sleep, the loss of appetite, as well as, the emotional and physiological stress at home, work, and school). We collected an enormous amount of evidence that would have beyond a reasonable doubt shown that our son was not responsible for any of the false charges brought against him by the complainant. All of the evidence (including character statements) that we had collected for my son to present had to be submitted to the Title IX office prior to the conduct hearing for their review.

On the day of the conduct hearing our son's father had to serve as our son's advisor; however, he was not allowed to speak during the conduct hearing. Our son, who is 19 years

old, had to represent himself while his accuser, who our son was not even allowed to face or cross-examine for “her protection” and for the “emotional stress” that would be inflicted on her, was represented by the Title IX Officer and the Title IX Attorney Coordinator, both seasoned professionals.

Three university panel members were chosen to hear and determine our son's case. When our son was provided back the evidence (including character statements which were not allowed in the conduct panel hearing) that he had to submit to the Title IX office for review, to our surprise, a great deal of it was redacted, according the Title IX Attorney Coordinator, to provide his accuser (actually the Title IX Officer/Attorney Coordinator that represented the accuser), a “fair chance” and not have her “past reviled” (which according to the Title IX Attorney Coordinator her troubled past is irrelevant) and to “maintain her reputation” and not “assassinate her character.” Our son's accuser, on the other hand, was given the option to present anything she desired or have the Title IX personnel to present, if she chose to. With the amount of evidence that was redacted and with what our son was not allowed to say, what should have been a very short panel hearing turned into an over 11-hour very emotional and stressful ordeal (8:00 am to approximately 7:30 pm) to convey the complainant's lies and mental instability. It is by God's grace alone that our son did not give up in his attempt to show he was “not responsible” for what he was being accused of and charged with.

In the end, our son was one of the few lucky individuals to be found not responsible; however, even to this day, it has taken an emotional, physical, and monetary toll on our son, his fiancée, and us as a family. The university's lack of concern for due process resulted in my son's civil rights being violated and his rights guaranteed by the Constitution being violated. Unfortunately, our family is not in the position monetarily to take legal action against his accuser or the university. As our son's mother says, what our son went and continues to go through is similar to the emotional trauma that a rape victim experiences. Our son is the actual victim of Title IX and the April 4, 2011 Dear Colleague Letter.

Thank you for taking the time to read to our concerns and hopefully stopping this unjust epidemic happening to our outstanding male students on college campuses nationwide.

Parents of a wrongfully accused student.

**Student 10****July 2020**

This is a hard letter to write. The accusation against my son happened on Oct 2015 and lasted till December 2017. My son was simultaneously dealing with the TIX and criminal justice processes. It is difficult to separate the two and at times may seem confusing. Imagine being a college student and parents that are not lawyers trying to navigate. A brief synopsis for context purposes; there was no alcohol, no drugs, fully clothed, and no sex, kissing, fondling. There was an unfounded accusation taken at face value. My son was found Not Guilty of a criminal charge and Not Responsible for the TIX accusation.

Flaws in the process began with the first letter. It stated someone would contact him in a few days to talk about an alleged violation. He was instructed not to contact the complainant. A few days later he was contacted by the Campus Detective. The Detective did not tell my son he was a police officer investigating a criminal complaint. My son met with the Detective a few days later with one purpose, figure out what he was being accused of. The Detective told my son that the TIX process was separate from what he was investigating. In early November the school TIX investigator finally sent the second letter to my son to schedule a meeting. This meeting was to discuss "the basis for the belief that you engaged in misconduct and afford you the opportunity to respond". The decision of guilt was made before any attempt to get my son's side of the story. It was 33 days, not a few days as the original letter suggested, that he was finally contacted by the TIX investigator about the policy violation in question, still nothing about the accusation itself.

The TIX process at his University included the single investigator model. The investigator's initial finding was one of Responsibility based on her one sided "belief". In the code of conduct, since the sanction recommended suspension, the process required a hearing. The panel would be constructed of 3 faculty and 2 students. The hearing was originally scheduled for the week of finals in December. The code of conduct stated the hearing had to be conducted within 45 days after receiving the initial Responsibility finding. The hearing was rescheduled to mid-January. In a strange move, the University scheduled a pre-hearing meeting with my son, his attorney, the Dean of Students, and the University Lawyer to review how the TIX hearing was to be conducted.

Prior to the school hearing the TIX investigator did not notify or provide all witness materials, which were to be provided 5 days before. Notes written by the school investigator were shared after the hearing. At the hearing the school administrators did not follow their

own established rules. The hearing itself was a farce. My son and his lawyers were informed that it was scheduled for 2 hours, with the school taking up much of the time either explaining the process or presenting the accusers claim. The school held firm to their time commitment, leaving very little time for my son's attorney to do just about anything. As the time came to an end, the panel still had questions, but were told they were out of time. My son's accuser was in the same room with him along with her mother, her sister in law, and her school advocate. My son had his two lawyers.

It was communicated to them the Assistant District Attorney was not permitting the school to use the results from the DNA test for the TIX complaint. Due to the criminal investigation, the DNA results that led to the Felony 2 charge came back negative, exculpatory. At one point the TIX investigator used one of my son's friend's statement to represent his statement, since he had invoked the 5th and 14th amendments. When is it acceptable to use hearsay, as a statement for the respondent?

Not surprising he was again found Responsible. The school did provide a recording and we paid to have the recording transcribed. My son now needed to appeal to the University his rejection of the appeal went as far as to say: "I accept the investigating officers' argument that In 2016 my son's school's TIX process had one more appeal to the Board of Regents, it was not time bound. We waited until after his Not Guilty finding in January 2017 to work on this final appeal. It took till October 2017 to file this last appeal to clear his name. It was 16 pages long with 198 pages of exhibits. Every element of her salacious accusation was disputed with evidence. DNA was on our side. The inconsistencies, the omissions of attempts to destroy evidence, the lies or misrepresentations to police officers and SANE nurse was included. All the evidence overlooked and disregarded by the school administrations.

On Oct 12th, 2017 the Chancellor was contacted by the Board of Regents "I am remanding this matter to Chancellor for reconsideration. I am requesting Chancellor to carefully review all of the new evidence presented and determine whether the discipline met the standards required by [university] chapter\_. The Chancellor should expunge the disciplinary record if the discipline is not sustainable. Regardless of outcome, Chancellor must provide a full explanation of his decision. [My son] may seek the Board's discretionary review of Chancellor Schmidt's reconsidered final decision." – signed by Regent.

In December 2017 – the Chancellor's final decision: "In addition, the DNA evidence,

which was unavailable at the time of my 2015 decision, raises new questions, and does not lend additional credibility to the complainant's account. Upon reconsideration, I am unable to find by a preponderance of the evidence that [my son] sexually assaulted the complainant. Similarly, I am unable to find, by clear and convincing evidence that [my son] engaged in dangerous conduct."

My son struggles dealing with the false accusation. The arrest record does not go away, nor can the stain on his character be erased. What my son went through, no one should have to go through, the depression caused by the process is heart wrenching. On Christmas Eve 2016 I held my son why he cried non-stop for 2 hours after he left work due to his anxiety, he lost his job a week later. He lived in fear while being on bond for 15 months. Fear of people finding out. He lost all his friends and his educational opportunities. It was the rush to believe by the college TIX administrators, Dean of Students office, and the Campus Police that caused my son and my family to live the surreal experience of facing a criminal trial while concurrently dealing with a TIX kangaroo court.

It was the willingness to disregard hard evidence and deceitful behavior of the accuser that led to \$150,000 in direct costs to my family. My son was firm in his innocence from the beginning. At every step, there was another person not following their own rules. On one of the challenging days, he asked why was he the only one following the rules.

This process has cost us in so many ways; our health, welfare, trust, happiness, and a significant financial set back.

With humble regards,  
A Mother

**Student 11****July 2020**

He was a junior when subjected a Title IX investigation for violation of the Student Code for Sexual Misconduct. The initial charge was digital penetration without consent alleged to have happened in her dorm room on campus. They were in a consensual and on-going sexual relationship for approximately seven months. It was when the relationship was ended that the upset young lady filed the complaint. The incident in question occurred a month in to that seven month relationship.

Our son when contacted by the Title IX Office responded immediately and was interviewed by an investigator the next morning. He was certain that it was a misunderstanding and therefore felt no danger in being interviewed. Bad decision.

The process at the school is the single investigator model with investigators using informed trauma methods. The accuser and her story were never vetted. She was assumed to be telling the truth the entire time. Further, we believe she had undiagnosed/untreated PTSD as her parents died as a result of a violent murder/suicide.

He was not once assumed to be innocent of the allegations. His interview, conducted by a professionally trained former prosecutor (a licensed attorney,) was recorded for the record and was not permitted to be amended, whereas the accuser's story and key facts changed multiple times during the course of the investigation. Witness interviews in support of him were entered as "interpretations " by the investigator rather than actual transcripts. Some key witness testimony was left out until we found out and complained.

The "advocate" assigned to the accuser helped craft a story to meet her often changing memory of events. In fact, when the accuser found out that we retained legal counsel she added a second charge of rape she was alleged to have occurred at my son's off-campus apartment. The accuser's language went from initially suggesting that she wanted no discipline for our son to "he is a monster and needs to be expelled".

These scurrilous allegations and resulting investigation have wreaked havoc on my son and family's life. The investigation, according to the university's handbook, was to be adjudicated in 60 days, however it took just over 8 months and tens of thousands of dollars in attorneys' fees.

He was ultimately found responsible for the initial charge. In the second charge the accuser was not deemed credible. We appealed the decision and lost.

He was given a one semester suspension, in the middle of Spring semester. The result of which meant the 18 credits he was currently taking were to be lost and he was not welcome back to campus until 01/01/2020, essentially a 3 semester suspension if you include the summer courses/lab job he had lined up for that summer.

We appealed the sanction and sort of won. He was given a deferred suspension where he could have full access to the campus and follow a program instituted by the Title IX office. He successfully completed the program and graduated a semester early in December of 2019.

The whole process resulted very significant costs, in addition to the money we put out travel, hotel and legal fees. He has been suicidal, withdrawn, angry, sad, embarrassed, isolated, and shocked that a relationship turned sour could potentially ruin his life. We are absolutely shocked and outraged with this entire process.

**Student 12****July 2020**

A year ago I was preparing to go back to college. I was recruited to a D-III athletic team, fulfilling a long time personal goal of playing sports on a collegiate team. I was going to be a Resident Assistant, and was thinking about long term aspirations such as a masters' program, a potential Juris Doctorate, and thoughts as to what I may want to do after college. I (admittedly) lacked clarity as to what I wanted to do, knowing only that I wanted to help people. I was outgoing, a strong public speaker, and, if I'm allowed to be a touch self-aggrandizing, an intelligent political science student, who had had professors base multiple classes off of research papers I had written. I had worked hard for everything I accomplished, and prided myself upon that.

These aspirations came to a shocking halt mere weeks after my return to school. I heard I was going to be involved in a Title IX investigation not from the school itself, nor from the other party involved, but instead through my friends. Indeed, it appeared that I was one of the last people on campus to be notified ...

What followed were two weeks of personal hell. I was threatened, assaulted, cut off, and ostracized. My friends were stopped by people I hardly knew in the cafeteria, and still other friends refused to hang out with me in public, specifically citing fear of social retribution. I left the school, and returned home, not out of guilt but out of a fear I have not experienced before or since. I have spent the past 10 months trying to bring my life back together. Despite the promise from the school that the process would only take 45 days max, it took eight months. Eight months of waiting, interviews, written statements, and a deep, lasting trauma. Trauma that drove me towards substance abuse, suicide, and an ingrained fear in my psyche. I am no longer a fearless public speaker, nor is a masters' program likely on the table. Instead, everything I worked so hard for was destroyed the moment I left the school.

I was found responsible at the start of quarantine. I stand by my innocence, and will do so for the rest of my life, but I am not going to argue the specifics of my case. Every time I talk about the case I am in a state of perpetual anxiety for days, and the more specific I get the worse it is.

I am shaking writing just this.

I became a political science major for one reason: I knew where my skills lie, and I want to help people. I saw political science as the best track to line those two facts towards a successful career of doing good. In class, we learned about justice being blind, about the unerring neutrality of the American justice system. After all, isn't that fundamental to American ideals? That no matter how

distasteful the statement, the act, the alleged crime, you will be guaranteed a fair hearing. The Title IX process shatters that illusion.

The head of Title IX was actively unhelpful, to a degree which would shock even those who wish to revoke the new Title IX changes. He broke policy on multiple occasions to allow my accuser to write a character assassination against me, in which she attempted to deeply analyze my supposed character flaws, theorizing how these led to me committing the supposed act. That is not justice, it is not even a poor facsimile of the word. It is instead a pipeline, a system which funnels in young men, disregards any and all legitimate claims to innocence, and equates a homogenous end result of expulsion or severe punishment with a fair process.

Title IX is one of the most important pieces of American legislation for equity in colleges ever introduced. It has allowed women who have experienced the horrors of assault to speak their truths in a comfortable, safe environment. As a survivor of rape and a victim of sexual assault as a 12 year old I see the importance of Title IX, and had either of these situations occurred between myself and a college classmate, I promise you I would have used Title IX. But it is unacceptable to allow Title IX to continue the way it has.

Had [the Final Rules] been introduced when I was going through this process, I would have been able to defend myself, I would have been able to speak my truth, and I would have been presumed innocent, something which is a cornerstone of any developed nation's justice system. I don't deal with what ifs, so I will not say that the final outcome would have been different, because I simply do not know, and doubt I ever will. However, what I can say is that I would have been able to stand on my own two feet, speak my truth, and defend myself the way every person deserves a right to do.

Justice is not Title IX, but it can be and should be, for those accused, but more importantly for those who have been raped and assaulted on campuses, because it will allow them to speak their truths without existing in a phony court, so that they can leave a Title IX hearing with the full confidence that, no matter what, the decision made was just.

**Student 13 - Elliott Pitts****July 2020**

TITLE IX INJUSTICE ON CAMPUS  
Andrea Pitts (Mother), Elliott Pitts (Falsely Accused) Dublin, CA

The details I've chosen to bring to your attention regarding my son's situation are important. It will make this letter longer than others you may receive, but it's important for you to read about the event in question, the pursuit of my son by the accuser during this event, and the resulting action taken by a biased and over-reaching Title IX Administrator. Individual circumstances matter greatly, and I appreciate your time and attention to the last 18+ months of our family's life. If it wasn't so personal, it might make for a great novel. Unfortunately, it's non-fiction.

Elliott was in his 3<sup>rd</sup> year as a 4-year Scholarship Athlete (Basketball) at the University of Arizona. It was his dream school and one that would prepare him for a professional career in basketball and eventually coaching. During the pre-season of his Junior year, in the early morning of December 6<sup>th</sup>, 2015, the team arrived back from Spokane, WA, after a huge win against Gonzaga. Elliott's roommates were throwing a party in their off-campus apartment. Most of the basketball team arrived at the party. There were also members of the female Volleyball team in attendance. One of these volleyball players was the sister (call her 'Jane') of Elliott's roommate. These siblings were also part of a family we had become very good friends with. Everyone was drinking, having a good time – typical college party. Elliott was sitting on the couch playing video games with one of his teammates. The sister and her teammates were socializing around the apartment, joking with the guys, again, typical college party.

Witnesses told investigators that Jane had been pre-drinking prior to arrival of the party, and Jane admits to having multiple drinks (4-5) prior to the party, and said she normally drank more. Witnesses also claim Jane was very flirtatious with some of the players, eventually flirting with Elliott, who took the bait. They had been flirting over the past many months; however, for various reasons, had decided to not 'hook up'. At this party, however, Jane proceeded to sit down next to Elliott on the couch (where he was playing video games with his buddy), and put her hand on his crotch. They started kissing, and he suggested they take this to his room, which she agreed to. She then asked him to get a condom, which he did, and he put the condom on. She then proceeded to get on top. They had sex, which during the act, Elliott claims she was an active and verbal participant. Once the act was complete, Elliott left the bedroom where Jane proceeded to fall asleep and he fell asleep on the front room couch.

The brother, partying at another bar, found out Elliott and Jane were hooking up. He came back to their apartment in a rage, found Jane naked in Elliott's bed, and proceeded to take her to her dorm room where he left her in her bed. He called his mom to let her know what was happening and the mother told him to go back and sit with his sister until she could get there. The brother tried to get back in the dorm, but the Resident Assistant wouldn't let him – dorm rules - if Jane wasn't available to let him in herself. That is when this brother said the words, "I have to see my sister, Elliott Pitts just raped her".

As you might imagine, this started a ball rolling that we couldn't have ever imagined would happen. What then proceeded, I will sum up, until we get to the point that the Title IX Administrator gets involved. The R.A. reported this to the University police as well as the Tucson police. Elliott could stay on the team but not play while the criminal investigation was taking place, which would eventually lead to Elliott leaving the team because of the emotional and mental anguish and anxiety he would suffer. Elliott was criminally investigated and after 20+ interviews, review of the U of A camera interview of Jane where she said 'it was consensual....', a rape kit being done with no findings of rape, and eventually Jane telling police she didn't remember what happened, Elliott was not charged. This was a huge load off our minds; however, little did we know, the worst was yet to come with the Title IX process.

The criminal finding of not-responsible came early January. During this time, we met with the Title IX Administrator, Susan Wilson, 2 different times to try and understand the process she would be following because it did not match the U of A Disciplinary Procedures we found on-line. The most notable items to highlight during these meetings were: 1) We questioned the actual Charge Letter sent to Elliott with a link to the U of A Disciplinary Procedures (Policy 5- 403). There were clear time-lines to be followed regarding giving Elliott the actual charges and allowing him to respond. These dates had come and gone. When we asked Ms. Wilson about this, she said that because ... *"she was representing Title IX, she didn't have to follow these dates/timelines and would proceed without these limitations in her investigation process."*

I shared with her our frustration in this because it's not what the Charge Letter stated. *Her response was (verbatim): "I know, it is a bit confusing"*.

At our 2<sup>nd</sup> meeting with her, I brought out a copy of the Charge letter and told her we had some questions on the charges – *specifically Codes of Conducts 2, 17, and 20 (regarding stalking, etc.). I asked her if in fact, Mia stated Elliott had done these things or that she had in fact through her interviews with others, if they had seen Elliott do any of these.*

*She specifically said "no". She told us that in cases like this, where there was possible Sexual Misconduct or assault, quite often, these other actions do come out in her investigation process, so she will (verbatim) "add these to broaden the scope of her investigation".*

During this very emotional time – even after the Toxicology report came back – we asked our lawyer... *"How was Elliott to know she was that drunk? SHE approached him.... SHE was chatty and social in the party.... SHE asked him to get a condom... SHE mounted him..... How was he to know?"*. Our lawyer's answer was something like: "She could have been doing perfect cartwheels and somersaults throughout the apartment, but it would not have mattered...". The fact is, they should both be held accountable for their actions, but drunk sex does not equal sexual misconduct / assault.

As the deadline for the appeal Hearing approached, and after finally seeing Ms. Wilson's personal notes from the interviews, and her corresponding biased opinions, as well as other actions (i.e. denial

of our objections of the 2 student's on the panels due to extreme bias; Susan Wilson's continued inclusion of 3 of the 4 un-proven charges in the final violation charge as well as the other egregious examples of Elliott's rights being non-existent), we felt Elliott had no choice but to accept a 'plea' opportunity he was given by the accusers family and U of A, to finish out the semester, agree to the 1 year suspension, and not lose his NCAA eligibility to play elsewhere and move on with his life. As part of the Plea deal, these charges would not appear on his transcripts and only would be available if Elliott gave permission. Little did we know, that although 18 Division I colleges were approached regarding Elliott being available for transfer and to play basketball, 100% of these colleges passed, due to the current climate. The college administrators didn't want any negative attention that might come with Elliott's transfer.

Since this time, the accuser's family has publicly 'outed' the agreement Elliott signed with the family and the school. They sent it to hundreds of U of A basketball alumni and parents, as well as reaching out to Tucson journalists and ESPN to tell their side of the story. The story has appeared in more 'local' papers as recent as last weekend, but ESPN declined to run the story once they heard Elliott's side of things. Still, at this time, it is the #1 search result when someone search's Elliott's name and the University of Arizona. Only recently has Elliott been comfortable to be more social and start hanging out with friends; although, he is very cautious about trusting girls and dating again.

**Other notable items looking back:**

- 1- We were never aware we could open an OCR claim against Susan Wilson, the Title IX Administrator. Once we had heard from other families about this, the time-frame was well past the 180-day limit.
- 2- Our lawyer is the lawyer brought in to meet with each in-coming male athletes for every team, to talk with them about behavior, sexual conduct and so on. He has represented previous male athletes caught up in the Title IX system, and felt based on Elliott's situation, in comparison to these others, Elliott would likely be found non-responsible, but might have to give up a summer session; thus, he was flabbergasted, as were we, when a 1-year suspension was the charge Elliott was given.

At this time, my son is finishing up Community College and had to watch his beloved team win the Pac 12 Championship in February 2017, without him. He would have been a Senior and starting #2 guard. Instead, he was doing his Community College homework on our couch at home. This has been devastating to our son, our finances (~178k spent so far), and our family. We hope and pray that you, and those around you that can change this madness, have the strength and resolve to do so.

Thank you again, Andrea Pitts

1 RELEASE OF THIS LETTER TO ANYONE PERSON(S) OUTSIDE OF THE OFFICE OF CIVIL RIGHTS OR FACE REQUIRES PRE-APPROVAL BY THE PITTS FAMILY - ANDREA & JAMES PITTS, DUBLIN CA.

**Shelley Dempsey, FACE Vice President****July 2020**

The Final Rule amending Title IX of the Education Amendments of 1972, 34 CFR Part 106, must go into effect, as promulgated, on August 14, 2020.

I write FACE Vice President and as a former federal regulatory attorney for the Federal Communications Commission and later as an attorney in private practice for a large DC firm with regulatory matters before the FCC, EPA, FERC, and EEOC.

Currently, I serve as Chair of the Intake/Outreach Chair for Families Advocating for Campus Equality (FACE) a 501 (c)(3) Non-Profit Organization that supports and advocates for equal treatment and due process for those affected by inequitable Title IX campus disciplinary processes. Consequently, I followed closely the Notice of Proposed Rulemaking, submitted personal Comments and eagerly awaited the Department of Education Office of Civil Rights' Final Rule.

Neither the 2011 Dear Colleague Letter (DCL) nor the 2014 Guidance under the prior Administration were subject to rigorous public debate through statutory notice and comment requirements under the Administrative Procedure Act (APA); they also lacked the force of law.

Prior guidance created a draconian punitive system holding students responsible for myriad minor infractions or other ill-defined offenses deemed sexual harassment or misconduct. The quasi-judicial "campus courts" became a dragnet that ensnared many innocents falsely or wrongfully accused students while never satisfying "survivors" nor actually tackling the root causes of sexual harassment and sexual misconduct on campus. Lives have been irreparably harmed with life altering consequences on both sides of this debate. While this Final Rule is not perfect it goes a long way toward correcting the confusing and unfair past guidance that dissatisfied complainants and respondents alike.

In my role as Vice President of FACE and especially as Chair of the Intake/Outreach Committee, I am privy to the stories of hundreds of families whose children have been through horrific experiences at the hands of biased campus administrators resulting in life altering consequences and debilitating ongoing critical emotional health issues. You doubtless will be reviewing many of these stories. The number of families reaching out to FACE has increased exponentially. Since September of 2014, we have been contacted by nearly 2000 families. All of these families have been caught in the DCL web of ridiculously vague definitions of sexual misconduct, lack of due process and low burden of proof and often investigated, judged and sanctioned by a single individual.

Educations have been lost, job offers and admissions to graduate schools rescinded and professional licenses unattainable even in cases where the accused student ultimately is found not responsible. Many of the FACE families are unable to afford legal counsel and, for those who can, the cost of defending against a false accusation in a Title IX disciplinary proceeding can prove financially devastating. Without counsel or a specially trained Title IX experienced advocate, the chances of a falsely accused student being found not responsible is frighteningly low. Frankly, it has been absolutely heartbreaking to hear these stories day after day.

While numerous groups supporting the rights of survivors abhor the new regulatory scheme and falsely assert that instances of false or wrongful accusations are “exceedingly rare”, FACE knows from documented experience that there is another equally compelling argument that false/wrongful accusations are actually quite common and hopefully will be better addressed under the Final Rule. The DCL and its vague definitions of sexual misconduct and harassment resulted in myriad Title IX complaints for conduct ranging from innocent hugs or kisses without prior permission even if well meaning, to regretted sexual encounters, to coverups for infidelity, to revenge for difficult relationship breakups, to foggy memories due to drug or alcohol use, to failure to ask for consent for each and every act according to unworkable affirmative consent rules, etcetera, often days, weeks, months, or years after they actually occurred.

#### **FACE Experience With Families of Students Subjected to False or Wrongful Accusations and Resulting Life Altering Consequences**

**FACE Intake Vetting Process:** FACE has a rigorous vetting process for families who call or email the organization for support requiring personal contact information and a statement of their situation before gaining access to its information and outreach. The stories almost always follow a pattern of accusations as described above and disciplinary processes that are utterly lacking in due process or fairness as well as sanctions that often clearly are entirely out of line with the behavior alleged by the complainant. While there have been a few instances where FACE has declined support, the vast majority of cases do have the hallmarks of false or wrongful accusations.

**FACE by the Numbers:** Face receives call or emails from accused student families at an average rate of 4-5 per week. Following new student orientation (Sept/Oct), Finals weeks (December/May), Take Back the Night activities and events (January), Sexual Assault Awareness Month activities (Late Mar/Apr) FACE can tally up to 20 new families per week. While the heightened awareness from these programs encourages reporting for all the right reasons, it also leads to reports that are misleading, false or wrongful. Since the release of new guidance and rescission of the DCL, hundreds of lawsuits have been filed against

Colleges and Universities and numerous courts have and are continually ruling in favor of accused students whose rights have been denied. In some cases, the complainants have been held civilly or criminally liable for false accusations. Since 2017, nearly 1000 new families have sought FACE support with over 100 since January 3, 2020.

**Title IX Accusations at the K-12 Level:** Before 2016, FACE was aware of perhaps a dozen cases of younger students accused, suspended or expelled for behavior that never should have risen to such procedures or sanctions. Since that time over 100 families of K-12 students have sought support from FACE. These stories, too, are heart wrenching, and currently average 4 or 5 contacts per month. These cases have involved students as young as 6 where typical playground games have been recast as disturbing accusations of sexual misconduct. “Tag” and “Hide and Go Seek” can suddenly become described as sexual assault and stalking and, as ridiculous as that sounds, these cases actually exist at FACE. At the high school level, the allegations are very similar to those in Higher Education and similarly the schools have provided little to no due process and generally are biased in favor of complainants. The #MeToo era and “Start By Believing” campaigns have led to unfair outcomes for this generation of students resulting in damage to reputation, education and emotional/mental stability. The Final Rule should lead to better and more equitable procedures and protection for both complainants and respondents at the K-12 level.

**Students with Disabilities:** Another disturbing trend in FACE intake cases involves students with various disabilities (ADD, ADHD, Autism Spectrum) who are accused of harassment, stalking, unwanted touching, or simply being “creepy”, thus leading to complainants making accusations of feeling uncomfortable or unsafe on campus. Under the prior guidance and school procedures, these students often were subjected to processes they could not navigate without coordination with advocates trained under the Americans With Disabilities Act (ADA) and in compliance with the Individuals with Disabilities Education Act (IDEA) requirements. FACE families have experienced extraordinarily difficult procedures that almost ensured that their student would face crushing sanctions and untold emotional distress. The new rules provide for compliance when there is an intersection of provisions of the Civil Rights Act of 1964, the ADA and the IDEA that should protect these students and ensure fair procedures.

**Diversity, Equity and Inclusion (DEI):** The prior Title IX regime and current arguments against the Final Rule actually fly in the face of DEI. Cases at FACE have taught us that students of color, first generation students for whom English is not their first language, international students who are accustomed to varying and unfamiliar cultural norms, as well as students in the LGBTQ+ community are more likely to be disadvantaged by not implementing the Final Rules. Without access to advocates who can actively participate and guide them through their often complex fact sets achieving a fair outcome is extremely difficult.

**Students enrolled in Graduate or Professional Schools:** False accusations or flawed procedures leading to wrongful sanctions under Title IX have disastrous consequences for students whose graduate educations have been earned over many years and are subject to licensing authorities for entry into their chosen fields. Title IX notations on their academic records are often an absolute barrier to entry into their careers. Therefore it is imperative that any accusations are subjected to rigorous investigation and ability to judge credibility before causing life altering and career ending consequences. FACE receives call and emails from numerous students each year whom are at the end of their educational paths and even days before graduation or taking professional exams are suddenly upended by unwarranted accusations under Title IX.

**Faculty, Employees, Administrators accused of Title IX and Title VII Violations:** At both K-12 and College/University institutions, faculty members, teaching assistants, coaches and administrators have been accused of Title IX misconduct and subjected to the same flawed procedures under prior guidance. While horrible stories of abuse have made headline news over the past few years by a few members of this cohort, there is also another side of this issue that has largely been ignored by media and social activists. Title IX ( often accompanied by Title VII issues) disciplinary proceedings involving this group of accused have been equally flawed and have resulted in life altering career ending consequences following biased, unfair procedures under the prior guidance. FACE has been contacted by dozens of these accused individuals and their numbers are now exploding in the #Metoo era and especially now among those who seek to "cancel" individuals with whom they disagree and claim that such disagreements create hostile educational or unsafe environments under Title IX. FACE expects to see a flood of new cases involving this group of accused individuals.

After 10 years of personal and professional experience with the adverse effects of flawed campus disciplinary proceedings, educational harm, reputational harm and potential lifelong effects on future employment, I am passionate about the need for final implementation of the Final Rules amending Title IX of the Education Amendments of 1972. It is clear that the DCL and guidance recommended under the Obama Administration served neither complainants nor respondents. Rules that require equitable procedures, rigorous investigations and the ability to test credibility of all parties according to the rule of law are urgently needed. Therefore, I urge removing any barriers to the August 14, 2020 effective date for implementation of the Final Rule.

Respectfully,

Shelley S. Dempsey

**APPENDIX II**

**Student 14**

Dear Senators:

We have been apprised that Catherine Lhamon has been nominated to again lead the Department of Education's Office of Civil Rights. We write this Letter as "Mr. and Mrs. Doe," parents of "John Doe," the plaintiff in *Doe v. Claremont McKenna Coll.* [25 Cal. App. 5th 1055, 236 Cal. Rptr. 3d 655 (Aug. 8, 2018), review denied, No. 5251318, 2018 Cal. LEXIS 9212 (Cal. Nov. 20, 2018).] to strongly oppose this confirmation.

We are choosing to keep our identities anonymous in order to protect our son, whose mental state is broken beyond repair as a direct result of the corrupted Title IX process to which he was subjected as a freshman at Claremont McKenna College ("CMC"), Located in Claremont, California.

After CMC unjustly found our then 19-year old son responsible for sexual assault in June 2015, our son was distraught. Our son had worked Long and hard to gain admission to CMC, a highly regarded private liberal arts college. Suddenly the life he knew and Loved had been shattered by a false allegation and a broken Title IX system.

Our son always believed that the truth would set him free and justice would ultimately be served, but that did not happen. To say he was shocked that he was found responsible for something horrible, that he did not do is an understatement. After the miscarriage of justice conducted by the college he so Loved, he felt Life was no Longer worth Living and attempted suicide. He survived his first attempt to kill himself in August 2015, only to attempt a second and a third time, as recently as August 2020.

Our son had to wait a very Long time for the truth to set him free and to see justice finally served, which required nearly 4 years of Litigation. It was traumatic enough to be falsely accused as a 19 year old freshman, but it was CMC's complete denial of fairness that triggered one of the worst illnesses conceivable--schizoaffective (schizophrenia plus bi-polar), which has Left our son not even a shadow of his former self, unable to care for himself, but not mentally competent to see that.

Here is the background: After CMC denied our son's appeal as the final step of the college's administrative proceedings, and our son was suspended for a year, we filed a Writ of Mandamus in the Los Angeles Superior Court in the fall of 2015. In November 2016, we Lost at the trial court Level, which further devastated our son's fragile mental state.

We chose to keep fighting for justice to prevail. Finally, on August 8, 2018, a panel composed of 3 female California Court of Appeal justices, ruled unanimously in our son's favor, as John Doe, in a published opinion. The California Court of Appeal found that John Doe was denied a fair process since the CMC finders of fact had no opportunity to evaluate the credibility of the accuser, who chose to not attend the hearing in person or through Skype, or other technology. The court made it clear that in a "he said/she said" case, it is essential that the review panel be able to directly assess the credibility of the accuser through direct questioning.

In September 2018, CMC chose to file a Petition for Review with the California Supreme Court seeking to overturn the decision of the California Court of Appeal. On November 20, 2018, the California Supreme Court denied CMC's Petition for Review. The Appellate Court thus instructed the trial court to grant John

Doe's Writ of Mandamus to vacate the findings and the sanctions (though at this point John had already served his one-year suspension).

We pursued litigation against CMC not just for our son (whose mental illnesses are so debilitating that he will never be able to ever return to college or to work as he has met the high bar set by the Social Security Administration for determination of permanent disability), but for all students falsely accused and/or denied a fair Title IX process at their respective colleges.

The false finding of responsibility issued by CMC against our son was a product of the federal guidelines set forth in the Dear Colleague letter issued by the federal Department of Education's Office of Civil Rights in 2011-that were defective, destructive and in need of fundamental overhaul. We were relieved that changes were made to the regulations in favor of fairness through the proper approval channels under the previous administration.

#### NOTICE AND INVESTIGATION

CMC refused to give notice to John of the accusations against him before taking his testimony. In fact during John's first interview, he asked the investigator, an outside attorney hired by CMC, whether he could see a copy of the complaint, the investigator told him, "There was nothing to see."

At no time during the investigative process was John notified of any specific charges being asserted against him by the complainant. He had no way of knowing whether the complainant was claiming she had consented to none of their sexual activity, claiming she was incapacitated and could not provide consent, claiming she had consented but at some point had withdrawn her consent, claiming she had been forcibly raped, or was perhaps claiming something else.

Nearly 2 months after the complainant filed the Title IX complaint, John received a copy of the Preliminary Investigative Report ("PIR") that advised him for the first time the specific charges being asserted against him by the complainant. By that time, he had already submitted to three separate interviews by the investigator. But at no time, during any of these interviews or outside of them, did the investigator inform John that the basis for the complainant's claim of sexual assault was she allegedly withdrew her consent during the last few minutes of a 2-hour session of otherwise fully consensual sexual relations.

Before the PIR was drafted and circulated by the investigator, all that John had been given was a letter notifying him that an unspecified and unexplained charge of generic "sexual assault" had been brought against him by the complainant and that an investigation of this unspecified and unexplained charge would ensue. CMC argued that this letter, coupled with a link to CMC's conduct policy (which had buried within it an operating definition of the term "sexual assault"), sufficed to give John full and adequate notice of the charges sufficient to permit him to make a meaningful response. Of course, this was complete nonsense.

By keeping John in the dark about the specifics of the charges leveled against him, CMC was able to exploit John's ignorance about what was important to recall concerning his sexual encounter with the complainant over 5 months earlier (the complainant waited 5 months to file her complaint.) The majority of the review panel found John's inability to immediately recall the complainant's words was highly probative of the complainant's claim that she had revoked her consent at the very end. It did not matter to the review panel that John later recalled her specific words, where she gave him consent for the last few

minutes. CMC's failure to provide notice of the specific allegation in the complainant's claim of sexual assault severely restricted John's ability to defend himself.

Cal. Rptr. 3d 655 (Aug. 8, 2018), review denied, No. S251318, 2018 Cal. LEXIS 9212 (Cal. Nov. 20, 2018), the California Court of Appeal issued a very narrow ruling in the case. It held:

- 1) In a "he said/she said" case where serious sanctions are at risk (i.e. expulsion or suspension), the credibility of the parties must be assessed through direct questioning (essentially cross-examination). CMC argued that John was allowed to submit questions to the investigator after he had received the PIR, satisfying the requirement of direct questioning. However, CMC refused to ask the complainant any of John's questions. The court acknowledged that the CMC review panel could not possibly have assessed the complainant's credibility because the complainant was never directly questioned at the hearing and none of John's questions were ever asked; and
- 2) All members of the review panel must assess the credibility of the parties. Only the investigator met the complainant; the two CMC professors on the review panel never met the complainant or questioned her. The court rejected CMC's argument that the investigator could tell the other two review panel members that the complainant was credible.

#### SINGLE INVESTIGATOR MODEL

CMC's "...Grievance Process is designed to provide a fair, neutral and equitable process for investigating and resolving complaints of alleged Civil Rights policy violations." However, CMC's grievance process was anything but fair, neutral and equitable.

CMC characterized its Investigation and Review Committee (the "review panel") as "a neutral, three-person panel." But while the review panel did consist of three persons, it was hardly "neutral." One of the three panel members was an attorney hired by CMC to act as the investigator. But she did far more than just investigate. Not only did she determine which witnesses would be interviewed, she conducted all witness interviews and prepared summaries (not transcripts) of those interviews. She advocated for and provided emotional support to the complainant, determined what evidence would be taken into consideration, prepared findings in support of the charges brought against John, and acted as the head of the After John was found responsible for sexual assault (required a vote of 2 of the 3 review panel members), he appealed the decision to CMC. He pointed out that he had been denied fundamental due process, by among other things, not being notified of the allegations against him until after the investigator had completed her investigation and circulated the PIR. Although CMC denied his appeal, CMC made no attempt to contradict the fact that it had withheld from John any specific notification of the charges brought against him until after the PIR was complete.

In denying the appeal, CMC maintained that John was subjected to intensive questioning during his interviews, but acknowledged that he was never informed of the allegations being asserted against him until the investigation was complete when he was given a copy of the PIR. CMC excused its failure to advise John of the allegations made against him any earlier by asserting that due to "the administrative nature of an academic proceeding...[t]here are no indictment charges."

In CMC's Opposition Brief, CMC cites various case authorities in support of the principal that: "Generally, courts are satisfied that students have adequate notice if they are apprised of the charges such that they can meaningfully respond." In light of this, one must ask: What kind of "meaningful" response can possibly be made if the charges are not disclosed until after three separate interviews of the accused have been

### LIVE HEARINGS and CROSS-EXAMINATION

John attended the meeting and delivered a closing statement to the review panel. The complainant chose to not attend, even when given the opportunity to attend via Skype.

Beyond this, the investigator also authored the "Investigation Review and Findings Meeting Report" that issued from the review panel. No person can be called "neutral" who conducts the investigation, advocates for the complainant, heads the fact-finding review panel, is given one of the three deciding votes, and in the end prepares the findings of fact. Justice cannot be achieved if the investigator acts as the police, complainant's advocate, the prosecutor, the jury foreman and the judge.

The January 4, 2019 ruling by the California Court of Appeal (Second Appellate District) in *Doe vs Allée*, 30 Cal. App. 5t 1036 (2019) skillfully obliterated the single investigator model favored by so many colleges and universities throughout the country. (Allée is the Title IX Investigator for University of Southern California.) This new ruling was made in reliance upon our case, *Doe v. Claremont McKenna Coll.*, 25 Cal. App. 5th 1055, 236 Cal. Rptr. 3d 655 (Aug. 8, 2018), review denied, No. S251318, 2018 Cal. LEXIS 9212 (Cal. Nov. 20, 2018).

CMC's refused to conduct nearly all of the additional investigation steps requested by John after he first learned of the allegations against him through the PIR. This underscores and affirms CMC's denial to John

of any meaningful opportunity to respond to the charges leveled against him. CMC's denial of John's right to present witnesses and evidence in his defense and CMC's overt bias in favor of the accuser throughout the process were all natural outcomes of the Dear Colleague Letter.

John received the PIR after CMC had substantially concluded its investigation. This was the first time he was apprised not only of what he was accused, but also the first time that he found out who were the witnesses providing testimony in support of the complainant's allegations -- who might know what the complainant said - or when she may have said anything -- how she acted after she was with John.

The CMC grievance procedures allowed John to then request additional investigation steps he would like CMC to take. He was to provide a list of all witnesses to be interviewed or re-interviewed with the questions to be asked and the reasons why such questions needed to be asked. He was also allowed to request additional documentation or evidence to be provided.

John requested 20 additional investigation steps. CMC agreed to just two of them. And one of those two requests was effectively denied as well, as the complainant refused to turn over the requested document.

There was one person who was the single most important third-party witness. Yet, John did not even know she existed until the PIR was released. The PIR identified her using the fictitious name of ff Jessica Baldwin." The PIR described the close relationship Jessica Baldwin had with the complainant (discernible from various other witnesses' testimony besides the complainant's), and the fact that she had been with the complainant immediately following the complainant leaving John's dorm room and for most of the following day. Remarkably, however, Jessica Baldwin, was not on the complainant's witness list and therefore was not interviewed by CMC. The fact that the complainant did not want Ms. Baldwin to be interviewed speaks volumes about the damage she feared Ms. Baldwin might cause to her claims. No witness interviewed by CMC could have the knowledge of Jessica Baldwin - the single most important third-party witness.

Even though the investigator was well aware of Ms. Baldwin, the investigator and the CMC Chief Civil Rights Officer/Title IX Coordinator chose to not interview her to avoid having her testimony in the PIR. When John requested Ms. Baldwin be interviewed, CMC flatly refused to do so. CMC's refusal to interview this key witness and include her testimony in the written report presented to the review panel is convincing evidence of the prejudicial bias by both the investigator and CMC's Chief Civil Rights Officer/Title IX Coordinator. It clearly shows CMC's desire to do nothing, which might have permitted the complainant's claims to be exposed as false. CMC's refusal to interview Jessica Baldwin was an atrocious denial of common law due process and fundamental fairness to the accused.

In stark contrast to how CMC treated John and in contravention of CMC's own Grievance Procedures, CMC allowed the complainant to submit 8 pages with her "corrections and clarifications" to the testimony previously provided by various third- party witnesses. In response to the PIR, the complainant stated, "I am not requesting any additional witnesses. listed below are the corrections and clarifications I wanted to make based on the report, including some additional information." She was allowed to freely and openly attack and explain the testimony of any and all of the witnesses. She had no need for additional follow-up questions since she spoon-fed her version of events/information she wanted the investigator and Title IX Coordinator to accept.

John, on the other hand, followed the rules. John submitted his Request for Additional Investigation Steps, outlining his request for new witnesses to be interviewed and why they should be interviewed, and his request for follow-up interviews of previous witnesses and why they should be further interviewed. He did not try to control the situation with commentary and/or judgment. CMC further revealed its bias in favor of the complainant by including in its Final Investigative Report ("FIR") all 8 pages submitted by the complainant.

Yet, John's legitimate requests for clarification of existing testimony and interviews of additional witnesses (all expressly permitted by CMC's Grievance Procedures) fell on deaf ears. Not surprisingly, the FIR was virtually identical to the PIR given CMC's refusal to conduct 95% of the additional investigation steps requested by John. This is just another example of CMC's extreme bias in favor of the complainant, which resulted in an unfair process against John.

In court, CMC misstated that it fulfilled two of the 20 requests made by John. CMC represented falsely that it agreed to clarify the testimony of one witness, when in fact, CMC denied this request to clarify the testimony of a previous witness. CMC agreed to interview only 1 new witness, period. And this new witness was not the most important witness, Jessica Baldwin. CMC's misstatement deceived the trial court judge who adopted it as true that CMC had interviewed one new witness and clarified the testimony of a previous witness in her ruling in favor of CMC.

Actual bias on the part of the CMC investigator is strongly shown by the summaries of her interviews of the complainant, which demonstrate that the investigator repeatedly revealed to the complainant the substance of the testimony given by John. This then gave the complainant the opportunity to modify her own testimony to better refute John's statements. The complainant's story was constantly changing, and it appeared that she was being coached by the investigator of how to change her story to make it more believable. Meanwhile, the investigator steadfastly refused to reveal to John throughout the investigative process any of the allegations that the complainant had brought against him. The investigator kept John completely in the dark.

The summaries of the 4 separate interviews of the complainant prepared by the investigator show that the investigator repeatedly advised the complainant of the testimony that John had given. In one instance (John's second interview), a mere 23 minutes later, the investigator was advising the complainant of John's testimony, essentially inviting her to change and tailor her testimony to counteract John's testimony.

Without going into fine details of each and every instance of where the investigator gave to the complainant's the specifics of John's testimony, suffice it to say that there was a drastic imbalance in the way John and the complainant were treated. There is plenty of evidence of bias and non-neutrality by CMC. But perhaps the most dramatic and significant evidence of CMC's bias against John is displayed by the single-page complainant's Response to Appeal in response to John's appeal to the findings. This document was submitted to the CMC Title IX office 2 days after the deadline for its submittal. It did not materialize until John asked CMC whether the complainant had filed a response to his appeal.

Despite missing the deadline by 2 days, CMC accepted the Response anyway. But it is no wonder that CMC accepted it. Upon inspection, it was obvious that CMC wrote it for the complainant!

Strikingly, the style, language and syntax used in this document bear no resemblance to that of any writings previously submitted by the complainant. A computer program, using the Fleish-Kincaid Index, which compares two documents, showed almost identical index numbers, indicating that both the Response to Appeal and the Appeal Decision were written by the same person at CMC. It further showed that the Response to Appeal was not written by the complainant when comparing the Response to Appeal to previous submissions made by the complainant.

Appalling as it seems, personnel from the CMC Title IX office chose to actively controvert John's position and to surreptitiously act as an advocate for the complainant by ghost-writing a counterfeit Response to Appeal on her behalf, perhaps without her knowledge or consent. We later learned that the complainant was traveling around Europe and blogging about her experiences at the time the Response was filed by CMC. This is the most blatant display of bias imaginable.

Actual bias is also shown by CMC's acceptance, without hesitation, of a sanctions statement written and submitted by the Title IX coordinator at Scripps College on the complainant's behalf. This statement was used by the CMC Dean of Students to help determine what sanctions John would face. This further demonstrated CMC's disturbing non-neutrality.

Needless to say, a sanctions statement written by an administrator at the complainant's college was not permitted under CMC's procedures. But the CMC Title IX office permitted this to bolster its efforts the imposition of sanctions against John beyond those warranted by the evidence.

## CONCLUSION

CMC's disciplinary action violated California statute that requires fairness in administrative hearings, such as the Title IX process. CMC violated the required fairness and provided no due process to our son, first and foremost, by concealing from John the factual basis of the charges against him until after all three of his interviews. John had specifically requested in his first interview an explanation of what he had allegedly done wrong but CMC refused to tell him. CMC can offer no justification for this concealment, especially when it forced John to guess what he had supposedly done wrong, and then held his incorrect guess against him.

Likewise, even though the case presented a paradigmatic "he said/she said" credibility contest-as CMC admitted-CMC failed to give the review panel any opportunity to gauge the complainant's credibility, another fatal flaw. Overwhelming evidence negated the complainant's claim of sexual assault based on an alleged withdrawal of consent. No reasonable trier of fact could have found in favor of the complainant based on the record as a whole. And had CMC not denied John a fair hearing and basic due process, the record would even more strongly have demonstrated the baselessness of the complainant's claims. Subsequent regret about engaging in sex is not the same thing as withdrawal of consent during sex.

Finally in an attempt to minimize John's need for relief from by the California Court of Appeal, CMC claimed in its brief that John had served his suspension and thus was eligible to receive a degree from CMC in Spring 2019. This assertion was not based on anything in the record. But more importantly, CMC knew it was false.

Although John did return to CMC after his one-year suspension, he was forced to take a medical leave of absence in March 2017 when he went into full psychosis-a leave of absence acknowledged and approved by CMC itself. John's mental health issues, which his treating doctors have attributed directly to the trauma he suffered as a result of CMC's patently unfair and biased grievance process, have prevented John from ever resuming his education.

The revised regulations, approved during the prior administration, righted a horrific wrong and provided guidelines where justice can finally prevail. We spoke out in favor of those revised regulations, including addressing the Department of Education in September 2017, to shed light on how the falsely accused were found responsible through corrupted proceedings in which fundamental fairness and due process had been routinely and callously ignored. We wanted the DOE to understand how those found responsible under kangaroo court-type proceedings suffer greatly and are victims in the truest sense of the word.

Due process should not be a partisan issue. It is an American issue. Due process protects all-the accused as well as the accuser. If applied properly, it should reveal the truth--the real truth and not the contrived truth. Ultimately justice is what is needed to support both the victims of sexual assault as well as those falsely accused/found responsible.

If the revised regulations put in place by the prior administration had been in effect in 2015 when our son was falsely accused of sexual assault as a freshman at CMC, his life may well have been spared. The due process protections outlined in the regulations currently in place help guard the mental health of falsely accused students. The revisions to the regulations came too late for our son. Let's not go backwards by compromising fairness provided for in the current regulations. The regulations must provide protections of fairness for both complainants and respondents, not just complainants.

With appreciation,

"Mr. and Mrs. Doe," parents of John Doe, the plaintiff in Doe vs Claremont McKenna College

**Student 15**

They say, "The road to hell is paved with good intention".

My respondent student is a "long-hauler" with 9 years in, navigating campus Title IX. He's lost nearly everything important to him. The continued journey we face promises to take most of the rest; it seeks to destroy.

Revered as a noble cause, the 2011 Dear Colleague Letter firmly reminded schools of their obligation under Title IX - to provide education and its benefits to all students, complainants and respondents alike, free from sex-based discrimination. Mob voice and politics intersected with good intention - confusion, pressure and fear grew - and Title IX's protection became the weapon.

Flawed processes barricaded institutions and administrators from government. Students were left to navigate Hell alone. Good intention was abandoned. Choices made and decisions reached guaranteed fair, equal treatment for no one.

For 1000s like my family, the Road's journey requires a "every human for oneself" strategy to survive an inhumane process.

A presumption of innocence, the constitutional concept taught in grade school did not, strikingly, apply at school.

My student's experience with campus Title IX revealed fundamentally unfair processes, including

Processes implemented that did not align with published school policy, both of which were often revised while kept from the students involved

- Multiple adjudications of the same allegation, one after the other under separate school policies; commonly known as double, even triple jeopardy
- The inability to defend oneself before unbiased hearing panelists, all pertinent evidence considered, and opportunity to question, indirectly, each student
- Processes based on political narrative rather than truth
- Falsification of student records by schools to protect school interest
- To remain unheard, dismissed, over provable concerns of unfair practices, harassment and stalking of a respondent with no action taken.
- To experience a finding of non responsibility, which, from that day forward, does not provide for an education free from discrimination and unencumbered from wrongful restraints

In that year, my child spent most days on the floor of his dorm bathroom, in the fetal position, shower running to muffle his cries. At 20, he attempted to take his life.

Once, my student described his life's view as "a cup filled to the brim." Today, he is left with permanent brain damage as a direct result of what The Road to Hell inflicted on him as an adolescent college freshman.

No human should be made to suffer this way again.

My son and a friend were talking recently, and the topic of campus Title IX came up. (It's been in the news a lot lately.) The friend, a Native American student who also attended a federally funded United States university, listened intently to my student's story from beginning to end. The friend's response was quick: "I don't understand. Why would you ever have lesser rights than me under Title IX? That's discrimination based on race, and is illegal. As a Native American, I am guaranteed due process protections in school discipline investigations but other races were not until DeVos ?The discriminators targeted you because you're a guy and a non Native American?"

Don't be fooled; my respondent student's experience is not an outlier; thousands have also journeyed The Road to Hell. Like my student, they suffer the effects of PTSD and ongoing psychological and emotional illness. Ignorance, lack of consideration, and unwillingness to understand are only feeble excuses by those who prefer their blindness to the truth.

Over two thousand students and families have contacted support organizations like Families Advocating for Campus Equality (FACE). A majority of Congressional staffers polled report a friend, roommate, teammate "who this happened to" while in college. Families learn that multiple classmates from their secondary school have left to go to college only to have "that happen to them". All are forever impacted by former unfair, biased practices.

Do your plans for reform acknowledge the wrongs against them with plans to ensure it will not happen again? Do your plans provide them security in knowing they can count on fair and equal treatment? Do your plans provide them a voice?

We MUST solidify Title IX reform with current Regulation guaranteeing fair and equal treatment of every student, required school compliance, without fueled political narrative and its resulting discrimination based on gender and race. THIS is the true crisis and there is no excuse for not correcting these imbalances. It's the right thing to do. It's the law.

July 13, 2021

**Professor Statement Opposing the Confirmation of Catherine Lhamon as Assistant Secretary for Civil Rights at the Department of Education**

I am writing in opposition to Catherine Lhamon's nomination for Assistant Secretary for Civil Rights in the Department of Education and am asking that HELP Senators vote against her confirmation when it comes up for a vote in the Senate HELP Committee. Although Ms. Lhamon held the same position from 2013 through 2017 during the Obama administration, her prior performance in that job is disqualifying for a second round.

Ms. Lhamon is most noted for her zealous enforcement of the 2011 Dear Colleague Letter<sup>1</sup> and her authorship of the 2014 Guidance document<sup>2</sup>, both thankfully rescinded, that trampled all over the constitutional and civil rights of thousands of students, as well as many faculty. Ms. Lhamon's Title IX compliance guidance engendered thousands of erroneous decisions in campus sexual harassment and sexual assault disputes, many of which devastated innocent respondents.

As a former Professor of Biochemistry and Molecular Biology at The Oregon Health & Science University in Portland, OR, I had the misfortune of experiencing Lhamon Title IX guidance up close after I was falsely accused of sexual harassment by the one first year female medical student who failed to pass the medical course I directed.

- 1) I was not allowed to know the allegations with which I was charged. I learned of the charges ten months after my case was closed, and they were fabrications.
- 2) I was not allowed to know the name of the complainant or her witnesses.
- 3) There were no formal or written charges.
- 4) I was not allowed to have witnesses on my behalf.
- 5) I was not allowed to present evidence.
- 6) All exculpatory evidence was withheld from me.
- 7) I was not allowed to defend myself in any way, something that would have proven difficult given the absence of charges.
- 8) There was no investigation, just a prosecution.

<sup>1</sup> 2011 Dear Colleague Letter (<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>)

<sup>2</sup> 2014 Questions and Answers on Title IX and Sexual Violence (<https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>)

- 9) I was gagged throughout the proceedings, i.e., I was not allowed to seek help, discuss with colleagues, etc....  
 10) Etc.....

Kim Jung-un would have been proud.

After I was found responsible for sexual misconduct, I appealed to Ms. Lhamon's OCR directly (OCR Reference No. 10152256) for relief. Not only did Lhamon's OCR bestow its stamp of approval for the procedures my university implemented in its investigation of me, but the OCR emphasized in its decision letter that it would have employed comparable measures if it had conducted the primary investigation. I also learned from Ms. Lhamon's OCR that innocence is no defense in a Title IX proceeding.

Despite the absence of wrongdoing – at least on my part – I was eventually terminated from my faculty position. If interested, you can read more about my ordeal here<sup>3</sup>.

As a note of analogy, if the allegations against President Biden had been adjudicated in a Title IX proceeding under Lhamon guidance, he would have been found responsible, lost his job, and never been our President. The irony of President Biden's pick of Ms. Lhamon as Assistant Secretary is not lost on her victims.

I have read both the Dear Colleague Letter and the subsequent guidance that Ms. Lhamon authored. Both are vague and undetailed, markedly biased against and unfair toward the accused, discriminatory, constitutionally unsound, and legally dubious. At least that's what our federal and state courts have found.

Among the many thousands of erroneous findings in Title IX proceedings under Lhamon guidance, there have been, as of today, 724 lawsuits<sup>4</sup> from wrongly reprimanded and innocent students, many of whom were suspended and expelled. The majority of the judicial decisions rendered have been favorable to the plaintiff, and ~100 have been favorably settled pre-trial. Noteworthy, these verdicts have been decreed by judges across the ideological continuum.

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<sup>3</sup> The Weaponization of Title IX at Oregon Health & Science University  
<https://www.saveservices.org/2020/03/the-weaponization-of-title-ix-at-oregon-health-and-science-university/>

<sup>4</sup> Title IX Legal Database (<https://titleixforall.com/title-ix-legal-database/>)

Presently, there have been at least 23 appellate court decisions<sup>5</sup> that have arisen from these cases that have rendered findings of due process violations using Lhamon guidance. These violations include: 1) insufficient hearing process; 2) insufficient notice; 3) inadequate credibility assessment; 4) improper use or exclusion of witness testimony; 5) potential sex bias; 6) inadequate investigation; 7) lack of cross-examination; 8) misuse of affirmative consent policy; 9) conflicting role of college officials; 10) single investigator model; 11) improper review of appeal; 11) withholding evidence from the accused; 12) inability to question witnesses; 13) refusal to allow respondent's attorney to attend disciplinary hearing; 14) inaccurate investigative report; 15) hearing panel did not read investigative report; 16) selective enforcement of sexual misconduct policy; 17) lack of live hearing; 18) inexplicable decision to discipline plaintiff, i.e., retaliation; 19) university's failure to follow own policy or meet its on deadlines; 20) refusal to allow appeal; 21) open hostility to accused; 22) appeals panel only credited female accuser testimony; 23) unexplained finding of female student's incapacitation; and 24) external pressure from OCR, state legislature, and student protests.

This is quite the record. Clearly, due process, free speech, and the United States Constitution are not among Ms. Lhamon's strong suits.

Lhamon has done more to obliterate the constitutional and civil rights of accused students and faculty than perhaps any other American, and I blame her, among others, for enabling my Title IX debacle. I am particularly reminded of her advocacy for the policy that "schools should ensure that steps taken to accord due process rights to the alleged perpetrator do not restrict or unnecessarily delay the Title IX protections for the complainant<sup>2</sup>." Nobody in public service should subordinate the United States Constitution, which grants Americans due process rights, to anything. The statement is appalling and prohibitive for the position for which she is being considered.

Lhamon, if confirmed, will be charged with the implementation of the current Title IX compliance rule, which she does not support. She has stated that the new rule takes "us back to the bad old days, that predate my birth, when it was permissible to rape and sexually harass students with impunity<sup>6</sup>." As ludicrous as her statement is, the Office for

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<sup>5</sup> Appellate Court Decisions for Allegations of Campus Due Process Violations, 2013-2020  
(<https://www.saveservices.org/wp-content/uploads/2021/04/Appellate-Court-Cases-2013-2020.pdf>)

<sup>2</sup> 2014 Questions and Answers on Title IX and Sexual Violence  
(<https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>)

<sup>6</sup> Catherine Lhamon's Twitter Feed – May 5<sup>th</sup>, 2020  
(<https://twitter.com/CatherineLhamon/status/1257834691366772737>)

Civil Rights needs a leader that has less reactionary views and who will implement current policy fairly and equitably and in good conscience.

Furthermore, we all know that the current Title IX rule, which is currently under review by the OCR under Acting Assistant Secretary Goldberg, was launched by the same person who rescinded Lhamon's Dear Colleague Letter and Guidance documents. This review should be supervised by someone with a fresh set of ideas to avoid any conflict-of-interest or perception of bias or retaliation. And reinstalling the Lhamon guidance debacle is unthinkable.

I do not intend to offer a defense of the current Title IX rule in this email, but I, a progressive Democrat, laud the new rule because it, unlike Lhamon guidance, is meticulous, thoughtful and supports all parties to gender discrimination, sexual harassment, and sexual assault disputes fairly and equitably.

I am requesting HELP Senators to vote against Catherine Lhamon's nomination for Assistant Secretary for Civil Rights in the Department of Education. The nominee has caused too much havoc and suffering for too many individuals and families to deserve this appointment. She is a poor, provocative and unwise selection for this leadership position, and there are many better choices.

Thank you.

Buddy Ullman, Ph.D.  
Retired Professor of Biochemistry and Molecular Biology  
The Oregon Health & Science University

**APPENDIX III**

### List of Articles Critical of Lhamon's Confirmation by Date Published

- R. Shep Melnick & Peter H. Schuck, *Biden's Troubling Nominee to Head the Office of Civil Rights*, Real Clear Politics (June 23, 2021) <https://www.realcleareducation.com/articles/2021/06/23/bidens-troubling-nominee-to-head-the-office-of-civil-rights-110598.html>
- Biden's nominee is a 'wolf at the door' when it comes to due process rights for accused students, attorney warns*, The College Fix (June 16, 2021) <https://www.thecollegefix.com/bulletin-board/bidens-nominee-is-a-wolf-at-the-door-when-it-comes-to-due-process-rights-for-accused-students-attorney-warns/>
- Washington Examiner Staff, *The truth about controversial Education nominee Catherine Lhamon*, Washington Examiner (June 15, 2021) <https://www.washingtonexaminer.com/videos/the-truth-about-controversial-education-nominee-catherine-lhamon>
- Justin Dillon and Stuart Taylor Jr., Opinion contributors, *Ending due process: Reinstating Catherine Lhamon at the Dept. of Education is a mistake; Lhamon's nomination is a threat to the new rules and culture of fairness. She will roll back due process protections in college sexual assault cases*. USA Today (June 14, 2021) <https://www.usatoday.com/story/opinion/2021/06/14/catherine-lhamons-history-dept-education-title-ix-rape-sexual-assault/7675799002/>
- Rick Moran, *Biden's Nominee for the DOE's Office for Civil Rights May Be His Most Radical Yet*, PJ Media (June 8, 2021) <https://pjmedia.com/news-and-politics/rick-moran/2021/06/08/is-catherine-lhamon-bidens-worst-nominee-to-date-n1452969>
- Grant Addison, Deputy Editor, *Biden's worst nominee*, Washington Examiner (June 03, 2021) <https://www.washingtonexaminer.com/politics/bidens-worst-nominee>
- KC Johnson, *The Biggest Enemy of Campus Due Process from the Obama Years Is Back*, National Review (June 1, 2021) <https://www.nationalreview.com/2021/06/the-biggest-enemy-of-campus-dueprocess-from-the-obama-years-is-back/>
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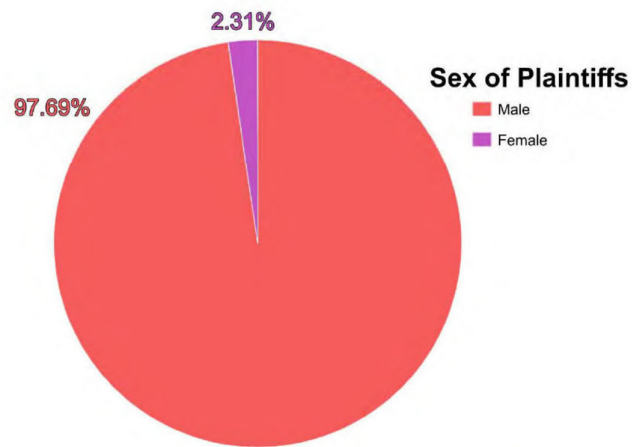
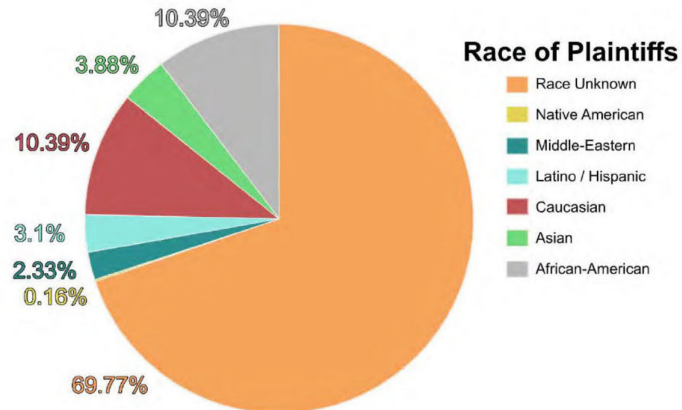
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**APPENDIX IV**

### ***Plaintiff Demographics in Accused Student Lawsuits***

*Based on an Analysis of 645 Lawsuits and produced by Title IX For All, 7/6/2020 Source Data at:*

<https://www.titleixforall.com/wp-content/uploads/2020/07/Plaintiff-Demographics-by-Race-and-Sex-Title-IX-Lawsuits-2020-7-6.pdf>





UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE , NW, WASHINGTON, DC

July 12, 2021

The Honorable Richard Burr  
 Ranking Member  
 Committee on Health, Education, Labor and Pensions  
 428 Senate Dirksen Office Building  
 Washington, D.C.

Dear Senator Burr:

I write as one member of the U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole, to apprise you of certain issues pertaining to Catherine Lhamon's nomination to serve as Assistant Secretary for Civil Rights at the Department of Education.

As you may know, Ms. Lhamon chaired the U.S. Commission on Civil Rights from December 2016 until January 2021. This letter does not primarily concern her tenure at the Commission, but rather her previous stint as Assistant Secretary for Civil Rights at the Department of Education, the position to which she seeks to return.

Ms. Lhamon pursued a number of policies during her tenure that are both bad policy and legally questionable. The subject of this letter is her adoption of a disparate impact approach to school discipline. That is, if a school has discipline rules that are facially neutral and are enforced in an even-handed manner, but minority students violate the rules at a higher rate than non-minority students, Ms. Lhamon considers the discipline policy to be discriminatory.

To fix this racial disparity in discipline, the Office for Civil Rights, under her leadership, pressured schools to engage in racial balancing of discipline. In practice, this meant meting out less discipline to misbehaving black students. In consequence, order and discipline broke down in schools.

I have included two letters which I sent to then-Secretary Arne Duncan and Ms. Lhamon during the Obama Administration that further explain the legal and policy problems with the course pursued by Ms. Lhamon. I have also included my statement dissenting from the Commission's 2019 report on discipline and suspensions (spearheaded by Ms. Lhamon), which includes information regarding outcomes in a number of school districts that have reduced the use of suspensions and adopted "restorative justice" policies.



UNITED STATES COMMISSION ON CIVIL RIGHTS

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1331 PENNSYLVANIA AVENUE , NW, WASHINGTON, DC

I hope this information will be helpful as you consider Ms. Lhamon's nomination.

Respectfully,

A handwritten signature in black ink, appearing to read 'P. Kirsanow'.

Peter Kirsanow  
Commissioner

cc: Senator Rand Paul

Dear HELP Committee Member,

I am writing to urge you to oppose the upcoming July 13, 2021, confirmation of Catherine Lhamon as Assistant Secretary for Civil Rights at the Department of Education's Office for Civil Rights. As the parent of a college student directly impacted by the destructive Title IX policies enforced during Catherine Lhamon's previous term in this very same role, I cannot believe that the Biden administration would risk appointing such a polarizing and irresponsible individual. There is no one more poorly suited to a role involving civil rights than Catherine Lhamon.

Under her leadership from 2013 to 2015, the 2011 Dear Colleague Letter, which was imposed on U.S. colleges and universities with absolutely zero vetting, was enforced as "law" with the heavy threat of lost federal funding for failure to comply. These institutions were forced to choose between even minimal due process protections for accused students and critical funding. This double bind resulted in processes and procedures geared toward a predetermined outcome. The result, whether intended or unintended, was the destruction of hundreds and hundreds of college students left literally unable to defend themselves against an accusation of sexual misconduct. Speaking from personal experience, the reference to kangaroo courts is not an exaggeration.

Senator, you know due process protections are necessary for individuals to protect themselves against the arbitrary use of power by institutions of higher education. You might not know over 700 lawsuits have been filed by both accusers and accused persons claiming abuse by their institution's response to the 2011 Dear Colleague Letter. A recent appellate court decision highlights the erosion of due process rights on our college campuses. June 15, 2021, the United States Court of Appeals for the Tenth Circuit handed down a major ruling in favor of a male student who claimed sexual discrimination in the handling of a sexual assault claim against him. (1) Ironically, the university admitted, "the University employees were biased against sexual-misconduct respondents." This is HER legacy. Why would the Biden Administration take a chance on Catherine Lhamon – again?

Institutions of higher education have an equal obligation to all individuals, both accusers and accused persons. The 2020 Title IX regulations were promulgated in response to the destructive kangaroo courts created under the 2011 Dear Colleague regime. There is essentially universal agreement the current regulation is working to restore due process protections for both accusers and accused persons. They were extensively vetted, at great taxpayer expense. They should be given adequate time before immediately calling for change.

The nomination of Catherine Lhamon is a clear signal the Biden Administration does not care about the civil rights of all constituents, but only those of the special interest groups who use bully tactics and a false narrative to promote policies that may, on the surface, appear to address what is an issue that needs to be taken seriously. I am not suggesting in any way that this is not the case. But there are unintended consequences to irresponsible use of power, even with the best intentions. Please consider how important due process protections are to the very fabric of our democracy. Catherine Lhamon is not interested in protecting the constitutional rights of all citizens and her quest for reappointment should be denied. Please oppose her confirmation.

Thank you.  
Ruth Bennett

July 13, 2021

**Coalition Statement in Opposition to the Confirmation of Catherine Lhamon as Assistant Secretary for Civil Rights at the Department of Education.**

Dear Senate Health, Education, Labor and Pensions Senate Committee Member,

The undersigned write to oppose Catherine Lhamon's confirmation as Assistant Secretary for Civil Rights at the U.S. Department of Education Office for Civil Rights (OCR). Confirmation would require ignoring Lhamon's past performance in the very same position, disregarding countless Title IX experts, and placing OCR on a collision course with the many federal courts who have expressed serious concerns with the effects of Lhamon's former policies.

As Assistant Secretary from 2013-16, Lhamon was instrumental in forcing schools to prioritize complainant rights over the minimal due process owed respondents.<sup>1</sup> Though change may have been "noble and necessary" to ensure schools responded appropriately to sexual misconduct on their campuses, they "ultimately undermine[d] the legitimacy of the fight against sexual violence,"<sup>2</sup> and ignored a heightened "risk for wrongful findings in sexual assault adjudications."<sup>3</sup>

Lhamon also exceeded her executive authority as Assistant Secretary. In a memorable 2014 exchange with then-Senator Lamar Alexander regarding Lhamon's authority to withdraw federal funding based on non-regulatory guidance, Lhamon insisted the Senate had given her such authority simply by confirming her.<sup>4</sup> Another OCR official later confirmed Lhamon did not have the authority to withdraw funding based on guidance.<sup>5</sup>

Lhamon's pressure on schools produced an unprecedented<sup>6</sup> wave of court decisions in lawsuits filed by

<sup>1</sup> U.S. Dept. of Edu., Office for Civil Rights, *2011 Dear Colleague Letter (Rescinded)* (Apr. 4, 2011) ("schools should ensure that steps taken to accord due process rights to the alleged perpetrator do not restrict or unnecessarily delay the Title IX protections for the complainant.") <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>.

<sup>2</sup> Emily Yoffe, *The Uncomfortable Truth About Campus Rape Policy*, *The Atlantic* (Sept. 6, 2017) ("At many schools, the rules intended to protect victims of sexual assault mean students have lost their right to due process—and an accusation of wrongdoing can derail a person's entire college education.") <https://www.theatlantic.com/education/archive/2017/09/the-uncomfortable-truth-about-campus-rape-policy/538974/>.

<sup>3</sup> Samantha Harris & KC Johnson, *Campus Courts In Court: The Rise in Judicial Involvement in Campus Sexual Misconduct Adjudications*, 22 N.Y.U. J. LEGIS. & PUB. POL. 49, 111, pp. 62-63 (2019) (schools "too often lack the tools to gather the evidence necessary to reach the truth," and that "university self-interest can distort fairness in campus proceedings") <https://nyujlpp.org/wp-content/uploads/2019/12/Harris-Johnson-Campus-Courts-in-Court-22-nyujlpp-49.pdf>.

<sup>4</sup> Lhamon insisted this was true, even though OCR had not sought comments about its 2011 DCL, nor had it conducted a notice-and-comment process required by the Administrative Procedure Act. *Senate HELP Comm. hearing testimony of Catherine Lhamon @00:27:00, Sexual Assault on Campus: Working to Ensure Student Safety* (June 26, 2014), <https://www.help.senate.gov/hearings/sexual-assault-on-campus-working-to-ensure-student-safety>.

<sup>5</sup> In a subsequent Senate hearing, OCR's Deputy Asst. Sec'y of Ed. Amy McIntosh confirmed Lhamon did not have the authority to enforce compliance with the 2011 DCL by withdrawing funding or otherwise. Senate Homeland Security and Gov't Affairs Comm., *Examining the Use of Agency Regulatory Guidance* (Sept. 23, 2015) <https://www.youtube.com/watch?v=dljXuv-Oirw>.

<sup>6</sup> In 2016, Gary Pavela, a fellow for the National Association of College and University Attorneys (NACUA), observed, "In over 20 years of reviewing higher education law cases, I've never seen such a string of legal setbacks for universities, both public and private, in student conduct cases. Something is going seriously wrong. These precedents are unprecedented." Jake New, *Out of Balance*, *Inside Higher Ed* (Apr. 14, 2016), <https://www.insidehighered.com/news/2016/04/14/several-students-win-recent-lawsuits-against-colleges-punished-them-sexual-assault>.

## COALITION STATEMENT OPPOSING CATHERINE LHAMON CONFIRMATION

wrongly accused students who were victimized by the policies she promoted.<sup>7</sup> The Second,<sup>8</sup> Third,<sup>9</sup> Sixth,<sup>10</sup> Seventh,<sup>11</sup> Eighth,<sup>12</sup> Ninth,<sup>13</sup> and Tenth<sup>14</sup> Federal Circuit Courts of Appeals all have issued rulings favorable to accused students, with each discussing how federal pressure might have *caused*, rather than eradicated, gender bias in campus adjudications. In 2019, now-Supreme Court Justice Amy Coney Barrett summarized this sentiment when she observed that OCR pressure gave to the accused student “a story about why [the university] might have been motivated to discriminate against males accused of sexual assault.”<sup>15</sup>

***Frustrated and Bullied Title IX Professionals***

While Lhamon-era OCR officials assured each other that their methods would achieve their goal to change campus social norms on sexuality,<sup>16</sup> colleges and universities complied by conducting *To Kill a Mockingbird*-style proceedings<sup>17</sup> that often most severely impacted minority students.<sup>18</sup> U.S. District Court Judge F. Dennis Saylor identified the key problem in the new campus environment: Universities, he wrote in a 2016 opinion, appeared to

have substantially impaired, if not eliminated, an accused student’s right to a fair and impartial process. And it is not enough simply to say that such changes are appropriate because victims of sexual assault have not always achieved justice in the past. Whether someone is a ‘victim’ is a conclusion to be reached at the end of a fair process, not an assumption to be made at the beginning.<sup>19</sup>

The procedures used in the *Brandeis* case before him, Judge Saylor concluded, were “closer to Salem, 1692 than Boston, 2015.”<sup>20</sup>

Nor were Title IX school officials pleased with Lhamon’s policies. In 2015, former Wheaton College Vice President of Student Affairs and Dean of Students Lee Burdette Williams courageously published an article

<sup>7</sup> Respondents also include women and LGBTQ+ students and professors, though males are the majority of wrongfully accused.

<sup>8</sup> *Doe v. Columbia Univ.*, 831 F.3d 46, 48 (2d Cir. July 29, 2016).

<sup>9</sup> *Doe v. Univ. of the Sciences*, 961 F.3d 203, 205 (3d Cir. May 29, 2020).

<sup>10</sup> *Doe v. Baum*, 903 F.3d 575, 578 (6th Cir. September 7, 2018); *Doe v. Oberlin Coll.*, 963 F.3d 580, 581 (6th Cir. June 29, 2020).

<sup>11</sup> *Doe v. Purdue Univ.*, 928 F.3d 652, 656 (7th Cir. June 28, 2019).

<sup>12</sup> *Doe v. Univ. of Ark.-Fayetteville*, 974 F.3d 858, 860 (8th Cir. September 4, 2020); *Doe v. Regents of the Univ. of Minn.*, 2021 U.S. App. LEXIS 16243 (8th Cir. June 1, 2021).

<sup>13</sup> *Schwake v. Ariz. Bd. of Regents*, 967 F.3d 940, 943 (9th Cir. Ariz. July 29, 2020).

<sup>14</sup> *Doe v. Univ. of Denver*, 2021 U.S. App. LEXIS 17763 (10th Cir. June 15, 2021).

<sup>15</sup> *Purdue Univ.*, *supra* note 11, at 669.

<sup>16</sup> Janet Halley, *The Move to Affirmative Consent*, Signs; Journalism of Women in Cultural Society (2015), at pdf p. 8 (“They are seeking social control through punitive and repressive deployments of state power.”) <https://www.journals.uchicago.edu/doi/pdf/10.1086/686904>.

<sup>17</sup> The palette of injudicious practices in these *Kafkaesque* proceedings that severely constrained a respondent’s ability to defend him or herself included: 1) interrogating respondents without informing them of the details (or even the existence) of the complaint against them; 2) denying them access to and/or silencing their counsel; 3) restricting or eliminating their ability to pose questions to their accusers and other witnesses; and 4) refusing them access to the very evidence used to find them guilty.

<sup>18</sup> Erika Sanzi, *Black Men, Title IX, and the Disparate Impact of Discipline Policies*, Real Clear Education (Jan. 21, 2019) <https://www.realcleareducation.com/articles/2019/01/21/black-men-title-ix-and-the-disparate-impact-of-discipline-policies-110308.html>; see also, Emily Yoffe, *The Question of Race in Campus Sexual-Assault Cases*, The Atlantic (Sept. 11, 2017) <https://www.theatlantic.com/education/archive/2017/09/the-question-of-race-in-campus-sexual-assault-cases/539261/>; Jeannie Suk

Gersen, *Shutting Down Conversations of Rape at Harvard*, The New Yorker (Dec. 11, 2015) (“The dynamics of racially disproportionate impact affect minority men in the pattern of campus sexual-misconduct accusations”) <https://www.newyorker.com/news/news-desk/argument-sexual-assault-race-harvard-law-school>.

<sup>19</sup> *Doe v. Brandeis Univ.*, 177 F. Supp. 3d 561, 573 (D. Mass. March 31, 2016).

<sup>20</sup> *Doe v. Brandeis Univ.*, Case 1:15-cv-11557, Transcript, Oct. 20, 2015, Document 47, at 9.

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in which she voiced her frustration at OCR's failure to consult Title IX professionals before issuing the 2011 Dear Colleague letter.<sup>21</sup> In a recent article aptly entitled "*How Much Damage Have My Colleagues and I Done?*"; *A former dean of students loses faith in how colleges handle sexual assault*," Williams described a subsequent Title IX conference at which hundreds of student affairs professionals from schools across the country stood and applauded her for having written her earlier article.<sup>22</sup>

Similarly, Terry W. Hartle, Senior Vice President for Government and Public Affairs at the American Council on Education reported, "Many universities that have found themselves in a conflict with OCR believe that this agency does not act in good faith and that it's little more than a bully with enforcement powers."<sup>23</sup>

OCR's 'bullying' style of enforcement caused Title IX professionals to police their students' sex lives in order to avoid the loss of federal funding.<sup>24</sup> As a result, school officials felt they had no choice but to do what OCR demanded, even if it were "technically a suggestion and not a command."<sup>25</sup> This situation created a Catch-22 for Title IX professionals' decision-making, causing some to err on the side of finding accused students guilty regardless of the evidence.<sup>26</sup> That was especially so in cases involving intoxication, which form the vast majority of campus allegations.<sup>27</sup> Responding to decisions finding only the male guilty when both were intoxicated, Brett Sokolow of the Association of Title IX Administrators warned schools: "Surely, every drunken sexual hook-up is not a punishable offense," since "there has to be something more than an intent to have sex to make this an offense."<sup>28</sup>

*Across-the-Board Criticism*

The list of well-respected figures and organizations--from across the political and professional spectrum--that have criticized Title IX enforcement under Lhamon includes the Foundation for Individual Rights in

<sup>21</sup> Lee Burdette Williams, *The Dean of Sexual Assault*, Inside Higher Ed (August 7, 2015) ("Williams explains why the well-intended but misguided push to compel campuses to better protect victims of sexual assault helped drive her from her job.") (emphasis added) <https://www.insidehighered.com/views/2015/08/07/how-sexual-assault-campaign-drove-one-student-affairs-administrator-her-job-essay>.

<sup>22</sup> Lee Burdette Williams, *How Much Damage Have My Colleagues and I Done?*; *A former dean of students loses faith in how colleges handle sexual assault*, Chronicle of Higher Education (June 10, 2021) (the article described the considerable difficulties encountered in, and the tragic consequences of implementing the 2011 DCL and related guidance) <https://www.chronicle.com/article/how-much-damage-have-my-colleagues-and-i-done>.

<sup>23</sup> Michael Stratford, *Standoff on Sexual Assaults; As Obama administration unveils new guidance for combating sexual assault on campus, dispute between Tufts and federal officials underscores tensions*, Inside Higher Ed (Apr. 29, 2014) (emphasis added), <https://www.insidehighered.com/news/2014/04/29/its-finds-tufts-violating-rules-sexual-assault-amid-larger-crackdown>.

<sup>24</sup> Jacob Gersen & Jeannie Suk (Gersen), *The Sex Bureaucracy*, 104 Calif. Law Rev., Vol. 104, No. 4 (Aug. 2016), pp. 908-909, <https://29qjsh1lqx5q2k5d7b491joo-wpengine.netdna-ssl.com/wp-content/uploads/2016/09/Gersen-and-Suk-37-FINAL.pdf>.

<sup>25</sup> Emma Brown, *Senator: Education Dept. overstepped authority on sexual assault complaints*, Washington Post (Jan. 7, 2016) <https://www.washingtonpost.com/news/education/wp/2016/01/07/u-s-senator-education-department-overstepped-authority-on-sexual-assault-complaints/>; <https://www.washingtonpost.com/news/education/wp/2016/01/07/u-s-senator-education-department-overstepped-authority-on-sexual-assault-complaints/>; see also, Sen. James Lankford, *Letter to Acting Secretary of the Dept. of Edu. John B. King* (Jan. 7, 2016) <https://www.lankford.senate.gov/imo/media/doc/Sen.%20Lankford%20letter%20to%20Dept.%20of%20Education%201.7.16.pdf>.

<sup>26</sup> Harris & Johnson, *Campus Courts In Court*, *supra*, note 3, at pp. 62-63 ("If you find against [a complainant], you will see yourself on 60 Minutes or in an OCR investigation where your funding is at risk. If you find for her, no one is likely to complain," quoting, Nancy Gertner, *Sex, Lies, and Justice*, AM. PROSPECT (Jan. 12, 2015), <https://prospect.org/article/sex-lies-and-justice>).

<sup>27</sup> *Confronting Campus Sexual Assault*, p. 6, EduRiskSolutions.org (2015) [http://www.ncdsv.org/ERS\\_Confronting-Campus-Sexual-Assault\\_2015.pdf](http://www.ncdsv.org/ERS_Confronting-Campus-Sexual-Assault_2015.pdf).

<sup>28</sup> Brett A. Sokolow, J.D., ATIXA Executive Director, *ATIXA Tip of the Week Newsletter SEX AND BOOZE* (Apr. 24, 2014) deleted from the original source but available here: <https://www.dropbox.com/s/ie1b0dg0bh0kyff/ATIXA%202014-Tip-of-the-Week-%20Sex%20and%20Booze.pdf?dl=0>.

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Education (FIRE),<sup>29</sup> twenty-eight Harvard Law<sup>30</sup> and sixteen University of Pennsylvania Law<sup>31</sup> professors, the American Association of University Professors (AAUP),<sup>32</sup> the American Council on Education (ACE),<sup>33</sup> the American Bar Association's Criminal Justice Section,<sup>34</sup> and the American College of Trial Lawyers (ACTL).<sup>35</sup> Even Brett Sokolow criticized schools' resulting micromanagement of students' sex lives, noting "[s]ome pockets in higher education have twisted the [2011 DCL] and Title IX into a license to subvert due process and to become the sex police."<sup>36</sup> The Appendix to this letter includes a further list of commentators critical of Lhamon's selection.

That outcome was hardly surprising, as Lhamon's OCR demanded schools employ other procedures that increased the likelihood of guilty decisions, such as the lowest – preponderance – standard of evidence,<sup>37</sup> and promoted schools' use of an investigatory method in which one official both investigated and decided a respondent's fate,<sup>38</sup> risking confirmation bias.<sup>39</sup> When combined with policies rooted in a believe-the-victim mantra<sup>40</sup> and trauma-informed theories that evoke a presumption of the respondent's guilt,<sup>41</sup> these

<sup>29</sup> FIRE Letter to Office for Civil Rights Asst. Sec'y for Civil Rights Russlynn Ali (May 5, 2011) <https://www.thefire.org/fire-letter-to-office-for-civil-rights-assistant-secretary-for-civil-rights-russlynn-ali-may-5-2011> <https://www.thefire.org/fire-letter-to-office-for-civil-rights-assistant-secretary-for-civil-rights-russlynn-ali-may-5-2011/>.

<sup>30</sup> 28 Harvard Law Professors' Opinion; Rethink Harvard's sexual harassment policy, Boston Globe (Oct. 14, 2014) <https://www.bostonglobe.com/opinion/2014/10/14/rethink-harvard-sexual-harassment-policy/HFDDiZ7N7nJ2UuUuUuWfngbM/story.html>.

<sup>31</sup> See Jacob Gershman, Penn Law Professors Blast University's Sexual-Misconduct Policy, Wall St. J. Lawblog (Feb. 18, 2015) <https://www.wsj.com/articles/BL-LB-50632>; Open Letter From Members Of The Penn Law School Faculty: Sexual Assault Complaints: Protecting Complainants and the Accused Students at Universities, Wall Street Journal (Feb. 18, 2015) [http://online.wsj.com/public/resources/documents/2015\\_0218\\_upenn.pdf](http://online.wsj.com/public/resources/documents/2015_0218_upenn.pdf).

<sup>32</sup> Comm. on Women in the Acad. Profession, Am. Ass'n Univ. Professors, *Campus Sexual Assault: Suggested Policies and Procedures*, Reports & Publications, p. 371 (2012) ("The AAUP advocates the continued use of 'clear and convincing evidence' in . . . discipline cases as a necessary safeguard of due process and shared governance.") <https://www.aaup.org/report/campus-sexual-assault-suggested-policies-and-procedures>.

<sup>33</sup> Stratford, *Standoff on Sexual Assaults*, *supra*, note 23 and accompanying text.

<sup>34</sup> American Bar Assn. Crim. Justice Sec. (ABA), *Task Force on College Due Process Rights and Victim Protections: Recommendations for Colleges and Universities in Resolving Allegations of Sexual Misconduct* (June 2017) (The ABA panel was a diverse group that also included victim advocates and campus administrators, all of whom were able to agree on necessary disciplinary procedures.) [https://www.americanbar.org/groups/criminal\\_justice/committees/campus/](https://www.americanbar.org/groups/criminal_justice/committees/campus/).

<sup>35</sup> American Coll. of Trial Lawyers, *Position Statement Regarding Campus Sexual Assault Investigations* (Mar. 2017) [https://www.actl.com/docs/default-source/default-document-library/position-statements-and-white-papers/task\\_force\\_allegations\\_of\\_sexual\\_violence\\_white\\_paper\\_final.pdf?sfvrsn=2a](https://www.actl.com/docs/default-source/default-document-library/position-statements-and-white-papers/task_force_allegations_of_sexual_violence_white_paper_final.pdf?sfvrsn=2a).

<sup>36</sup> Assoc. of Title IX Administrators (ATIXA), *2017 Whitepaper: Due Process and the Sex Police* (2017) (the statement continues, "The ATIXA Playbook and this Whitepaper push back strongly against both of those trends in terms of best practices.") <https://www.nchemr.org/wp-content/uploads/2017/04/TNG-Whitepaper-Final-Electronic-Version.pdf>.

<sup>37</sup> John Villaseñor, *A probabilistic framework for modeling false Title IX 'convictions' under the preponderance of the evidence standard*, Law, Probability and Risk, Volume 15, Issue 4, pp. 223–237 (Oct. 14, 2016) (estimated to have a 30% likelihood of error.) <https://academic.oup.com/lpr/article/15/4/223/2549058>.

<sup>38</sup> Harris & Johnson, *Campus Courts In Court*, *supra*, note 3, at p. 60, footnote 60 ("A 2014 Obama administration report hailed the 'very positive results' of this model.").

<sup>39</sup> Linda and Charlie Bloom, *Beware of the Perils of Confirmation Bias*, Psychology Today (July 9, 2018) <https://www.psychologytoday.com/us/blog/stronger-the-broken-places/201807/beware-the-perils-confirmation-bias>; See, for example, *Brandeis Univ.*, *supra* note 19, at 606 ("The dangers of combining in a single individual the power to investigate, prosecute, and convict, with little effective power of review, are obvious. No matter how well-intentioned, such a person may have preconceptions and biases, may make mistakes, and may reach premature conclusions."); *Doe v. Miami Univ.*, 882 F.3d 579, 605 (6th Cir. 2018) ("although an individual's dual roles do not per se disqualify him or her from being an impartial arbiter, here John has alleged sufficient facts plausibly indicating that Vaughn's ability to be impartial 'had been manifestly compromised.'"); *Doe v. The Penn State Univ.* (III), 336 F. Supp. 3d 441, 450–51 (M.D. Pa. Aug. 21, 2018) ("the Investigative Model's virtual embargo on the panel's ability to assess that credibility raises constitutional concerns.").

<sup>40</sup> Of this mantra, former campus administrator Lee Burdette Williams said recently "The problem with 'believe the woman' . . . is that it places all women into one utterly credible bucket of complainants, and their respondents into another absolutely despicable bucket of violators." Lee Burdette Williams, *How Much Damage Have My Colleagues and I Done?*, *supra*, note 21.

<sup>41</sup> CP Garrett, *Trauma-Informed Theories Disguised as Evidence*, pp. 5–6, 8–9 (May 2, 2019)

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procedures caused innocent students to be blindsided by findings that they had, though unintentionally, committed sexual assault.

*No Relief for the Innocent*

University of Chicago Law School Professor Geoffrey Stone has correctly observed that wrongful expulsion for sexual misconduct “is a matter of grave consequence both for the institution and for the student. Such an expulsion will haunt the student for the rest of his days, especially in the world of the Internet. Indeed, it may well destroy his chosen career prospects.”<sup>42</sup>

Though Lhamon subsequently claimed to have supported the due process rights of respondents as well as complainants in Title IX complaints, in only two OCR cases were there *any* concerns expressed about respondents’ rights. In one — against Minot State University<sup>43</sup> — the concern expressed had nothing to do with the end result. In the second case against Wesley College, the facts were so egregious that even Lhamon could not ignore them.<sup>44</sup> Lhamon has failed to identify any other decisions or statements in favor of the rights of accused students during her tenure.

*Lhamon Is Exactly the Wrong Choice*

Recently, Laura Dunn, a victim rights attorney and nationally recognized Title IX expert, criticized President Biden’s decision to nominate Lhamon, saying she “did not want to go back to the Obama-era guidance.”<sup>45</sup> Dunn added, “*I really hoped the administration would try to find someone that can please both sides of the aisle and try to settle the issue*, so that we don’t have a political football being thrown about every couple years.”<sup>46</sup>

Now that the number of lawsuits from accused students has exceeded 600,<sup>47</sup> and both lower and appellate courts throughout the country have found school Title IX disciplinary procedures severely lacking in basic fairness, it is disheartening to those of us who’ve seen the devastation suffered by wrongfully accused students and professors, that Lhamon would be confirmed to again lead OCR.

<https://static1.squarespace.com/static/5941656f2e69c9ffcd5210aa/t/5cebd3c153450a492767c70d/1556861890771/Trauma-Informed-Theories+Disguised+as+Evidence+5-2.pdf>, citing and quoting, Lee H. Roh S, Kim DJ., *Alcohol-Induced Blackout*, International Journal of Environmental Research and Public Health, 2009; 6(11): 2783-2792, 2785, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2800062/>; and White, Aaron M. Ph.D., *What Happened? Alcohol, Memory Blackouts, and the Brain*, Published by NIH: National Inst. on Alcohol Abuse and Alcoholism (2003) <https://pubs.niaaa.nih.gov/publications/arh27-2/186-196.htm>.

<sup>42</sup> Yoffe, *The Uncomfortable Truth*, *supra*, note 2.

<sup>43</sup> Out of over 17,000 words, the Minot State decision used fewer than 100 discussing respondent rights, none of which were relevant to OCR’s final decision. *U.S. Education Department Settles Sexual Assault Case with Minot State University*, N.D. (Archived), U.S. Department of Education’s Office for Civil Rights (July 7, 2016) <https://www.ed.gov/news/press-releases/us-education-department-settles-sexual-assault-case-minot-state-university-nd>.

<sup>44</sup> U.S. Department of Education’s OCR, *U.S. Education Department Settles Sexual Assault Case with Wesley College*, pp. 2, 20-22 (Oct. 12, 2016) (numerous issues, including denying the accused “procedural protections to which he was entitled under Title IX” and the school’s “written procedures”; expelling him even though the complainant said he was not involved; failure to provide him with the correct policy; not informing him of witness names or given investigation report before the hearing; and no opportunity to explain his side of the events or respond to testimony against him.) <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/03152329-a.pdf>.

<sup>45</sup> Jeremy Bauer-Wolf, *Biden’s pick of Catherine Lhamon as civil rights head could mean a return to Obama-era policies*, Higher Ed Dive (May 13, 2021) <https://www.highereddive.com/news/bidens-pick-of-catherine-lhamon-as-civil-rights-head-could-mean-a-return-to-600159/>.

<sup>46</sup> *Id.* (emphasis added).

<sup>47</sup> “Sexual Misconduct, Accused Student Lawsuits Filed (post-2011 Dear Colleague letter).”

[https://docs.google.com/spreadsheets/d/1ldNBm\\_ynP3P4Dp3S5Qg2JXfk7Oml\\_MPwNPmNuPm\\_Kn0/edit#gid=0](https://docs.google.com/spreadsheets/d/1ldNBm_ynP3P4Dp3S5Qg2JXfk7Oml_MPwNPmNuPm_Kn0/edit#gid=0).

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As HELP Committee members you should heed the warning of Title IX expert KC Johnson:

Perhaps no public figure in the past decade has done more to decimate the rights of accused students than Lhamon. No wonder that FIRE, the scrupulously non-partisan campus-civil-liberties organization, denounced her nomination and urged senators to reject it unless she committed, under oath, to upholding specific due-process provisions in Title IX tribunals. Given her record, it seems extremely unlikely that she would ever do so.<sup>48</sup>

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<sup>48</sup> KC Johnson, *The Biggest Enemy of Campus Due Process from the Obama Years Is Back*, National Review (June 1, 2021) <https://www.nationalreview.com/2021/06/the-biggest-enemy-of-campus-due-process-from-the-obama-years-is-back/>.

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## COALITION STATEMENT OPPOSING CATHERINE LHAMON CONFIRMATION

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## COALITION STATEMENT OPPOSING CATHERINE LHAMON CONFIRMATION

## APPENDIX

## List of Articles Critical of Lhamon's Confirmation by Publication Date

- R. Shep Melnick & Peter H. Schuck, *Biden's Troubling Nominee to Head the Office of Civil Rights*, Real Clear Politics (June 23, 2021) <https://www.realcleareducation.com/articles/2021/06/23/bidens-troubling-nominee-to-head-the-office-of-civil-rights-110598.html>
- Biden's nominee is a 'wolf at the door' when it comes to due process rights for accused students, attorney warns*, The College Fix (June 16, 2021) <https://www.thecollegefix.com/bulletin-board/bidens-nominee-is-a-wolf-at-the-door-when-it-comes-to-due-process-rights-for-accused-students-attorney-warns/>
- Washington Examiner Staff, *The truth about controversial Education nominee Catherine Lhamon*, Washington Examiner (June 15, 2021) <https://www.washingtonexaminer.com/videos/the-truth-about-controversial-education-nominee-catherine-lhamon>
- Justin Dillon and Stuart Taylor Jr., Opinion contributors, *Ending due process: Reinstating Catherine Lhamon at the Dept. of Education is a mistake; Lhamon's nomination is a threat to the new rules and culture of fairness. She will roll back due process protections in college sexual assault cases*, USA Today (June 14, 2021) <https://www.usatoday.com/story/opinion/2021/06/14/catherine-lhamons-history-dept-education-title-ix-rape-sexual-assault/7675799002/>
- Rick Moran, *Biden's Nominee for the DOE's Office for Civil Rights May Be His Most Radical Yet*, PJ Media (June 8, 2021) <https://pjmedia.com/news-and-politics/rick-moran/2021/06/08/is-catherine-lhamon-bidens-worst-nominee-to-date-n1452969>
- Grant Addison, Deputy Editor, *Biden's worst nominee*, Washington Examiner (June 03, 2021) <https://www.washingtonexaminer.com/politics/bidens-worst-nominee>
- KC Johnson, *The Biggest Enemy of Campus Due Process from the Obama Years Is Back*, National Review (June 1, 2021) <https://www.nationalreview.com/2021/06/the-biggest-enemy-of-campus-dueprocess-from-the-obama-years-is-back/>
- Paul du Quenoy, *Senate Should Reject Biden's Assistant Secretary of Education for Civil Rights, Dismantle Title IX*, Newsmax (June 1, 2021) <https://www.newsmax.com/paulduquenoy/civil-rights-catherine-lhamon-title-ix-white-house/2021/06/01/id/1023448/>
- Nic Valdespino, *Biden's War on Due Process*, Accuracy in Academia (May 26, 2021) <https://www.academia.org/bidens-war-on-due-process/>
- Tristan Justice, *Biden Aims To Rehire Obama Title IX Enforcer Opposed To Due Process*, The Federalist (May 20, 2021) <https://thefederalist.com/2021/05/20/biden-aims-to-rehire-obama-title-ix-enforcer-opposed-to-due-process/>
- Families Advocating for Campus Equality, *FACE Strongly Opposes Catherine Lhamon's Return to the Department of Education's Office For Civil Rights* (May 20, 2021) <https://static1.squarespace.com/static/5941656f2e69c9fdb5210aa/t/60a6d609a7a01358d9031da6/1621546505937/FACE+OPPOSITION+TO+LHAMON+5-20-21+FINAL.pdf>
- Richard V Reeves, *Don't Roll Back Due Process on Campus; Biden wants to expand Title IX. Current rules on sexual assault strike a better balance between the rights of victims and the accused*, Persuasion (May 19, 2021) <https://www.persuasion.community/p/dont-roll-back-due-process-on-campus>

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Robby Soave, *Catherine Lhamon, Obama's Title IX Enforcer, Just Got Her Old Job Back; Biden has tapped her to be assistant secretary for civil rights yet again*, Reason (May 19, 2021) <https://reason.com/2021/05/19/catherine-lhamon-title-ix-ocr-biden-education/>

Robert Shibley, *Brace for a Title IX train wreck: Biden is courting disaster as he reverts to bad old rules on campus sexual misconduct allegations*, New York Daily News (May 18, 2021) <https://www.nydailynews.com/opinion/ny-oped-brace-for-a-title-ix-train-wreck-20210518-crq56qwnq5cyvf26x2kbgupnd4-story.html>

SAVE, *The Nomination of Catherine Lhamon: An Oxymoronic Injustice*, (May 15, 2021). <https://www.saveservices.org/2021/05/the-nomination-of-catherine-lhamon-an-oxymoronic-injustice/>

National Association of Scholars, *Biden Nominee for the Office of Civil Rights Could Reverse Devos' Due Process Reforms; Catherine Lhamon's nomination to the Office of Civil Rights promises a return to the "bad old days" when Title IX due process violations were rampant* (May 14, 2021) [https://www.nas.org/blogs/press\\_release/biden-nominee-for-the-office-of-civil-rights-could-reverse-devos-due-process-reforms](https://www.nas.org/blogs/press_release/biden-nominee-for-the-office-of-civil-rights-could-reverse-devos-due-process-reforms)

Mike LaChance, *Biden Picks Catherine Lhamon, Enemy of Campus Due Process, To Head Civil Rights Office in Education Dept.*; "By putting forward Lhamon for this crucial role, President Biden has signaled that he would rather colleges go back to old, failed policies", Legal Insurrection (May 14, 2021) <https://legalinsurrection.com/2021/05/biden-picks-catherine-lhamon-enemy-of-campus-due-process-to-head-civil-rights-office-in-education-dept/>

Alexis Gravelly, *President Biden's nominee for assistant secretary for civil rights is no stranger to the Department of Education -- Catherine Lhamon held the same position during the Obama administration.*, Inside Higher Ed (May 14, 2021) <https://www.insidehighered.com/news/2021/05/14/lhamon-nominated-assistant-secretary-civil-rights>

Jeremy Bauer-Wolf, *Biden's pick of Catherine Lhamon as civil rights head could mean a return to Obama-era policies*, Higher Ed Dive (May 13, 2021) <https://www.highereddive.com/news/bidens-pick-of-catherine-lhamon-as-civil-rights-head-could-mean-a-return-t/600159/>

Joe Cohn, *Statement: Nomination of Catherine Lhamon a return to 'old, failed policies'*, FIRE (May 13, 2021) <https://www.thefire.org/statement-nomination-of-catherine-lhamon-a-return-to-old-failed-policies/>

[Whereupon, at 11:51 a.m., the hearing was adjourned.]

