

TESTIMONY OF DANA BOLGER

**BEFORE THE SENATE COMMITTEE ON
HEALTH, EDUCATION, LABOR AND PENSIONS**

**HEARING ON REAUTHORIZING THE HIGHER EDUCATION ACT:
COMBATING CAMPUS SEXUAL ASSAULT**

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Introduction

My name is Dana Bolger and I am one of the founding co-directors of Know Your IX, a national student campaign against campus gender violence. I am grateful for the opportunity to testify at this Committee's hearing on Reauthorizing the Higher Education Act: Combating Campus Sexual Assault.

I co-founded Know Your IX in 2013 to ensure that Title IX's core commitment – that students be able to learn free from violence – was a right not only on paper but in reality. What began as just a few students at their computers working to spread the word about Title IX to our classmates has grown into an organization supporting a national network of students working to build safer schools.

During my time at Amherst College, from which I graduated in 2014, I was a beneficiary of decades of mobilizing for gender equality and safety on campus. Title IX is a powerful law, and my generation has so many activists and policymakers to thank for its protections. But as a student I was also the inheritor of a history of administrative under-enforcement, in the shadow of which schools mistreated young survivors with impunity and few students knew Title IX was about anything more than women's sports. On my campus alone, students who experienced sexual or dating violence were discouraged from reporting, denied counseling and academic accommodations, and pressured to take time off. When I reported abuse to my school, I was told I should drop out, go home and take care of myself, and return when my rapist graduated. All of us were denied our right to learn free from gender violence.

We as Amherst students were not alone. Know Your IX grew out of conversations with survivors across the country, from California to Maine, who had experienced similar gender violence and institutional mistreatment – all in violation of Title IX. Research shows that one in five women will experience either sexual assault or attempted sexual assault during her time in college, as

will many men and gender nonconforming students.¹ We also know that LGBT students and students of color are particularly vulnerable to violence.² Yet so many students – and particularly the most marginalized – have been dismissed by the schools to which they have turned for support. Many colleges and universities have denied students the protections they need, like Amherst did to me. And many have placed uniquely onerous challenges, like higher evidentiary burdens, in the way of rape victims who pursue disciplinary charges against their assailants, to which victims of other student conduct code violations – like theft and non-sexual physical assault – are not subject.³

For many students, these inadequate school responses have not only frustrated their efforts to learn and graduate but have also come with staggering financial burdens. The costs of violence are very real, between the expense of health services that colleges have refused to provide and tuition lost when victims feel they cannot safely remain on campus with their assailant without administrative support.⁴ Those costs impact survivors' educational opportunities while in school, and continue long after graduation: many survivors' grades plummet when they are forced to study in libraries with their abusers or when they suffer from depression and PTSD without administrative support – often leading to diminished wages down the road.⁵

This intolerable status quo – in which survivors of gender-based violence are *still* unable to access their right to education – demands a strong federal response.

The Vital Importance of Title IX and the Campus SaVE Act

Schools are finally beginning to take seriously their responsibilities to survivors thanks to the efforts of students and the important work of the Department of Education's Office for Civil Rights (OCR).

OCR's recent clarifications of colleges and universities' responsibilities for supporting survivors have elucidated schools' obligations to provide accommodations, such as housing changes and mental health services. These accommodations may seem trivial to an outside observer but, to a survivor, they can make the difference between staying in school and dropping out. Other accommodations like an extension on a paper due the week after a student's rape, or tutoring to

¹ The White House Council on Women and Girls. (2014). "Rape and Sexual Assault: A Renewed Call to Action." Accessed July 25, 2015. https://www.whitehouse.gov/sites/default/files/docs/sexual_assault_report_1-21-14.pdf.

² Ibid.

³ Anderson, Michelle J. (2004). "The Legacy of the Prompt Complaint Requirement, Corroboration Requirement, and Cautionary Instructions on Campus Sexual Assault." 84 B.U. L. Rev. 945.

⁴ Brodsky, Alexandra. (2014). "How Much Does Sexual Assault Cost College Students Every Year?" *The Washington Post*. Accessed July 25, 2015. <https://www.washingtonpost.com/posteverything/wp/2014/11/18/how-much-does-sexual-assault-cost-college-students-every-year/>.

⁵ Simon, Cari. (2014). "On Top of Everything Else, Sexual Assault Hurts the Survivors' Grades." *The Washington Post*. Accessed July 25, 2015. <https://www.washingtonpost.com/posteverything/wp/2014/08/06/after-a-sexual-assault-survivors-gpas-plummet-this-is-a-bigger-problem-than-you-think/>.

help a survivor catch up on classes missed to avoid sitting in class with an abusive partner, can ensure a young person is able to learn. The Title IX framework is uniquely able to deliver these valuable services given its focus on access to education as a matter of equality.

Campus SaVE, which was passed as part of the 2013 reauthorization of the Violence Against Women Act, represents an invaluable federal effort to provide protections for survivors. It increases transparency for students and their families by broadening the Clery Act reporting requirements to include incidents of domestic violence, dating violence, and stalking. And it works to prevent future instances of violence by requiring colleges to provide primary prevention and awareness programs to new students and employees, as well as ongoing prevention and awareness campaigns.

In addition, Campus SaVE, as well as Title IX, requires schools to investigate reports of gender violence in a manner that is fair to both parties, requiring prompt and equitable procedures and an equal commitment to both students. Campus SaVE provides explicit protections to complaining and accused parties to ensure that officials conducting disciplinary proceedings are well trained; that each party can have an advisor of their choice; and that both parties receive the results of the disciplinary proceeding in writing and have the right to appeal the decision. Know Your IX strongly supports these requirements, which ensure proceedings are prompt and equitable for both parties.

Next Steps to Promote Access to Education Free From Violence

Even at this time of national scrutiny and campus reform, many survivors are still denied the right to learn free from violence and discrimination. In reauthorizing the Higher Education Act, Congress should build on existing federal protections for survivors of gender-based violence. Congress can help end gender violence in higher education by addressing several key remaining obstacles: lengthy federal investigations that conclude with little more than a slap on the wrist; widespread opacity; and campus policies that discourage student survivors from reporting.

1. Increasing Funding for the Office for Civil Rights

Unfortunately, the Office for Civil Rights, which is primarily responsible for ensuring that schools are compliant with Title IX and other civil rights laws, is grossly underfunded and understaffed.⁶ Thanks to students' efforts, sustained media attention, and increased federal enforcement, the number of complaints filed with OCR has increased exponentially in recent years. As of July 22, 2015, OCR is investigating 124 institutions, a number which has more than

⁶ Kingkade, Tyler. (2014). "Senators Push for More Staff at Agency to Investigate Sexual Abuse at Colleges." *The Huffington Post*. Accessed July 25, 2015. http://www.huffingtonpost.com/2014/04/04/agency-sexual-assault-investigations-mccaskill-gillibrand_n_5092748.html.

doubled since May 2014.⁷ OCR's caseload is now more than triple what it received in 1980, but its current staff is only half the size.⁸ As a result of the office's workload and the complexity of these cases, complainants face long delays: the average length of an investigation increased from 379 to 1,469 days between 2009 and 2014.⁹ At the postsecondary level, five investigations (the University of Massachusetts-Amherst, University of Virginia, Michigan State University, Wittenberg University, and Arizona State University) have stretched on for longer than three years – nearly the length of a student survivor's time in college.¹⁰

Increased funding would allow OCR to provide additional technical assistance to schools on how to enter into compliance with Title IX; better disseminate information to students about their rights and how to access them; and improve campuses safety by ensuring timely investigations, as well as continued monitoring, guidance, and support to schools in the months and years following the conclusions of their investigations.

2. Empowering the Department of Education to Issue Fines for Civil Rights Violations

The Department of Education's Office for Civil Rights believes it lacks the authority to levy fines against colleges and universities that violate civil rights laws like Title IX. As a result, OCR relies upon the empty threat of revoking all financial support from a college or university (a "nuclear option" too disastrous to be implemented) to motivate schools to comply with the law. OCR has never once applied this punishment in a higher education sexual assault case, despite finding clear and serious violations of Title IX on many campuses. Providing OCR with the explicit authority to levy fines would give the agency the increased leverage necessary to hold schools accountable, without devastating programming and aid for students in the process. Crucially, this authority must be available for the Department to enforce *all* relevant civil rights laws to ensure that students are free from all forms of discrimination, including those based on race and disability as well as sex.¹¹

⁷ Ibid.

⁸ New, Jake. (2015). "Justice Delayed." *Inside Higher Ed*. Accessed July 24, 2015. <https://www.insidehighered.com/news/2015/05/06/ocr-letter-says-completed-title-ix-investigations-2014-lasted-more-4-years>.

⁹ United States Department of Education. (2015). Letter to Senator Barbara Boxer. Accessed July 24, 2015. <http://www.boxer.senate.gov/press/related/150428EducationDepartmentReponsetoLetter.pdf>.

¹⁰ Rocheleau, Matt. (2015). "Most Federal Sexual Cases Against Colleges Dropped." *The Boston Globe*. Accessed July 25, 2015. <https://www.bostonglobe.com/metro/2015/04/08/most-federal-sexual-violence-complaints-against-colleges-dismissed-without-penalties-reform/tl31LxcXORr2Riauxh8iTO/story.html>.

¹¹ See, e.g., 42 U.S.C. § 2000d *et seq.* (prohibiting discrimination in educational institutions on the basis of race); 20 U.S.C. § 1681 *et seq.* (prohibiting discrimination in educational institutions on the basis of disability); 29 U.S.C. § 794 (same).

3. Increasing Campus Transparency

There are strong perverse incentives for schools to sweep violence under the rug. For example, a school that provides clear pathways to reporting and protections for survivors will see an increase in the number of people disclosing assaults, and hence a spike in its assault numbers under the Clery Act. To untrained observers, such schools tend to look more “unsafe” than others that actively deter individuals from disclosing and have low numbers of reports as a result. This means that schools that are more proactively addressing violence may suffer negative reputational costs as a result of following the law.

To counteract the potential negative reputational consequences of encouraging survivors to report, Congress should mandate that schools conduct campus climate surveys and publish their results publicly. This step would provide invaluable information to students and their families – including prospective students – and would increase incentives for schools to appropriately address violence. Schools should also be required to publish aggregate statistics on how investigations are being handled, which would provide greater insight into whether or not disciplinary proceedings are being handled promptly and equitably. This will help ensure that students, parents, and policymakers can evaluate and compare how each school responds to complaints of gender violence in practice, not just on paper.

4. Preserving Campus Options

I have much hope for the future of Title IX and our ability to foster safe and equitable educational communities. Nonetheless, I do see one troubling pattern worth discussion here: Many state and federal lawmakers, surely with the best of intentions, have suggested that schools should hand over all sexual assault cases to the police – even when the survivor has asked that they not do so. While intuitively appealing to many, these “mandatory referral” laws, as they are known, would actually decrease reporting rates and deprive survivors of the on-campus support they so desperately need.

In a survey that Know Your IX conducted with the National Alliance to End Sexual Violence, 88% of victims said they believed mandatory referral laws would lead to fewer survivors reporting to either schools or the police.¹² Some respondents explained that they sought accommodations and support from their schools but did not want to go through an arduous trial or did not yet feel prepared to speak to the police. Others stressed the importance of respecting victims’ agency at a time when many feel powerless. One survivor wrote:

¹² Know Your IX. (2015). “Survey Results: Ask Survivors.” Accessed July 24, 2015. <http://knowyourix.org/ask-survivors/>.

When I reported to campus officials, I was not ready to press charges and if I had been forced to report to the police I wouldn't have been able to do it. I wouldn't have told anyone because I would have felt like I had even less control of myself. Having the decision be my own and on my own time make it a lot safer and healthier.

If fewer survivors report to their schools, fewer will receive access to the accommodations and protections Title IX so crucially provides. And schools will have fewer opportunities to hold perpetrators of violence responsible, leading to less – not more – accountability for assailants.

Ending sexual violence is a complicated task, and often the most intuitively appealing “solutions” are not really solutions at all. We must take the lead from survivors – nine out of ten of whom tell us that mandatory referral laws will only promote silence and discourage victims from seeking the school support they need.¹³

5. Promoting Survivor Reporting through Smart Campus Policies

Every campus reporting process will be slightly different, reflecting the unique culture and structure of the school. But Congress has an important role to play in ensuring that every college and university adopts key policies essential to ensuring survivors can turn to their school when in need of help.

A. Disciplinary Amnesty

Victims and bystanders are often under the influence of alcohol and other drugs at the time of an assault. Schools receiving federal funding should be required to establish a campus policy that grants amnesty for any student who in good faith reports sexual violence witnessed or experienced while under the influence of alcohol or other drugs.

B. Protections for Queer and Transgender Student Survivors

Queer and transgender students are disproportionately vulnerable to sexual and gender-based violence.¹⁴ Yet many schools fail to recognize these students as victims or provide necessary support. Know Your IX has heard too many stories from students whose schools did not

¹³ See also Ehrenfreund, Max. (2014). “Virginia Wants to Force Universities to Report Every Rape to the Police. That Won't Address U-Va.'s Real Problem.” *The Washington Post*. Accessed July 25, 2015. <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/12/03/virginia-wants-to-force-universities-to-report-every-rape-to-the-police-that-wont-address-uvas-real-problem>. Brodsky, Alexandra and Elizabeth Deutsch. (2014). “No, We Can't Just Leave College Sexual Assault to the Police.” *Politico*. Accessed July 25, 2015. <http://www.politico.com/magazine/story/2014/12/uva-sexual-assault-campus-113294.html>.

¹⁴ Kingkade, Tyler. (2015). “LGBT Students Face More Sexual Harassment and Assault and More Trouble Reporting It.” *The Huffington Post*. Accessed July 25, 2015. http://www.huffingtonpost.com/entry/lgbt-students-sexual-assault_55a332dfe4b0ecec71bc5e6a.

understand how a man could be raped or how a queer woman could abuse her girlfriend. We have heard too many stories from trans survivors whose administrations lacked the training and sensitivity to respond appropriately to their reports of violence. It is unsurprising, then, that many LGBT students decide not to report to their schools at all.¹⁵

We cannot abandon these students. Title IX's protections, which cover all students, mean nothing if they are only available *in practice* for cis, straight women. Congress and the Administration must ensure that schools' policies and practices explicitly apply to queer and transgender students and prohibit a full range of forms of sexual and gender-based violence, and that administrators tasked with supporting students have been adequately trained to assist all students, regardless of sexual orientation and gender identity.

Conclusion

Over the last five years, we have seen a remarkable transformation. Conversations about campus gender violence once were confined to whispers in corners of campus; today survivors and advocates like me have the opportunity to discuss these urgent issues before this Committee. We must continue to meet these serious conversations with serious action. Thank you for your time and your commitment to building a future where students can learn and thrive free from violence.

¹⁵ Ibid.