

**Written Testimony**  
**Presented to the United States Senate**  
**Committee on Health, Education, Labor, and Pensions**  
**For a hearing on “Sexual Assault on Campus: Working to Ensure**  
**Student Safety”**

John Kelly  
Special Projects Organizer  
Know Your IX  
[johnkelly843@gmail.com](mailto:johnkelly843@gmail.com)

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## **Fining Authority for the Office for Civil Rights<sup>1</sup>**

*Congress should propose legislation that gives the Department of Education's Office for Civil Rights the ability to levy fines against universities found out of compliance with Title IX.*

Currently the Department of Education, through the Federal Student Aid Clery Compliance Office, has the ability to levy fines against schools found out of compliance with the Clery Act, but lacks the authority to do so through its Office for Civil Rights (OCR) for violations of Title IX. Currently, the only sanction explicitly available to the OCR against schools in violation of Title IX is the full removal of federal funding. Such a sanction would devastate the very population Title IX aims to help—students, particularly those dependent on federal financial aid—and is an action the OCR has never taken, and never should take.

Congress has the ability to change this course, through legislation that grants the Department of Education the ability to levy fines against schools found out of compliance. Such an action would send a clear message to students, prospective students, alumni, and the public that a university is in violation of federal civil rights law—and that such noncompliance will not be tolerated.

Fines should be levied based on a sliding scale model. A single set fine amount would unduly burden smaller schools while leaving larger, wealthier institutions virtually untouched. Proportionality could be accomplished by tying the size of fine to a school's yearly operating budget.

## **Continued Release of Schools Under Investigation**

*It is imperative that the Department of Education publish on an ongoing basis an updated list of schools currently under Title IX investigation.*

On May 1, 2014, the Department of Education released a list of 55 schools under sexual violence-related Title IX investigations.<sup>2</sup> This was an unprecedented move, one that gave students, prospective students, and alumni more information than ever previously available about their respective universities' track records on sexual violence. However, this vital transparency is not long-lasting: the Department has billed the list as a one-time release, available in the future upon private request but not released publicly in a manner that is transparent and easily accessible to all. I believe students have the right to know whether or not their institution is under investigation for violations

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<sup>1</sup> Special thanks to Know Your IX's ED ACT NOW organizers, S. Daniel Carter, and Nancy Cantalupo for their guidance and assistance with this testimony.

<sup>2</sup> U.S. Department of Education. "U.S. Department of Education Releases List of Higher Education Institutions with Open Title IX Sexual Violence Investigations." <http://www.ed.gov/news/press-releases/us-department-education-releases-list-higher-education-institutions-open-title-i>

of federal civil rights law, as do all prospective college students and alumni prepared to donate to their alma mater. Know Your IX, as well as other student activists and victims' rights advocates, has long called for clarity and transparency in regard to Title IX investigations.

Such openness serves a dual purpose. First, it holds schools accountable for their (mis)treatment of survivors, ensuring that the public eye is turned to schools that fail to provide their students with a safe learning environment, and allowing additional student survivors to provide further evidence of wrongdoing to the Office for Civil Rights during an investigation. Second, it serves as a check on the Department of Education, holding the agency accountable for the timely resolution of outstanding complaints. We have heard horror stories of complaints that have been lost, dragged on for over five years, or were subsumed by other complaints without notice to the complainant, and ongoing transparency will prevent that from remaining possible.

### **Expansion of Dating and Domestic Violence Definitions**

*Congress should legislate the explicit inclusion of emotional, economic, and psychological abuse within definitions of dating and domestic violence, for the purpose of investigation and enforcement on college campuses.*

In recent rulemaking sessions on the Violence Against Women Act Reauthorization, dating violence and domestic violence definitions have been defined to state that each “includes, but is not limited to sexual or physical abuse or the threat of such abuse.”<sup>3</sup> The committee felt it lacked the power to expand the definition beyond what was specified by law, and also that such a definition would be hard to enforce. However, the Department of Justice Office on Violence Against Women includes emotional abuse, psychological abuse, and economic abuse within its definition of domestic violence, as do numerous other federal agencies.<sup>45</sup> The rates at which these forms of abuse occur are staggering. Nearly half of all women and men experience psychological aggression by an intimate partner in their lifetime.<sup>6</sup> Ninety-nine percent of domestic violence victims experience economic abuse.<sup>7</sup> In addition, emotional, economic, and psychological abuse often serve as stepping stones

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<sup>3</sup> Federal Register. "Violence Against Women Act: A Proposed Rule by the Education Department." <https://www.federalregister.gov/articles/2014/06/20/2014-14384/violence-against-women-act>.

<sup>4</sup> "Domestic Violence." USDOJ: Office on Violence Against Women: Crimes of Focus: Domestic Violence. <http://www.ovw.usdoj.gov/domviolence.htm>.

<sup>5</sup> These agencies include the Centers for Disease Control and Prevention, the Department of Health and Human Services Office on Women's Health, and the Department of Justice Office on Violence Against Women

<sup>6</sup> Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J., & Stevens, M.R. (2011). The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. [http://www.cdc.gov/violenceprevention/pdf/nisvs\\_executive\\_summary-a.pdf](http://www.cdc.gov/violenceprevention/pdf/nisvs_executive_summary-a.pdf).

<sup>7</sup> Adrienne E. Adams and others, "Development of the Scale of Economic Abuse," Violence Against Women 14 (5) (2008)

before behavior becomes physically or sexually violent.<sup>8</sup> It is imperative that students be able to report abuse as soon as it becomes realized and not wait for it to escalate. As the law and regulations currently stand, they incentivize waiting for behavior to become physically manifested. Bruises and broken bones are rarely the first form dating and domestic violence take, and students must be guaranteed safety on their campuses at the first sign of such violence.

The necessity of this legislative change cannot be overstated. Intimate partner homicide makes up around half of all female homicides in the United States, and in 70-80% of cases the homicide is preceded by physical abuse.<sup>9</sup> In addition, research clearly shows that psychological abuse often times precedes physical abuse, and can be just as serious in its effects as physical manifestations of abuse.<sup>10</sup> Therefore, in order to prevent domestic and dating violence from escalating, psychological and emotional abuse must be considered part and parcel of their definitions, so students who report abuse in its earlier stages are protected.

The Department of Justice Office on Violence Against Women already utilizes a definition of domestic violence that includes the following: physical abuse, sexual abuse, emotional abuse, economic abuse, psychological abuse, and emotional abuse. We recommend that these added aspects become part of the standardized definitions of dating violence and domestic violence.

### **Standardization of Definitions to Include Same-Sex Sexual Violence**

*Congress should expand existing definitions of rape and sexual assault to be inclusive of the experiences of male survivors and the LGBTQ community.*

State law definitions of sexual assault and rape vary widely and only some sufficiently recognize male survivors and victims of same-sex violence. Some definitions still maintain that only women can be raped, while others fail to recognize that assaults can and do happen between individuals of the same sex. The federal government's definitions also vary. The National Incident-Based Reporting System (NIBRS) and Uniform Crime Reporting (UCR) each offer a different definition,<sup>11</sup> and NIBRS does not include male survivors within its definition of rape. Instead, NIBRS divides forcible sex offenses into rape, sodomy, and sexual assault with an object. Separating rape into these distinct categories disenfranchises queer and male survivors of sexual violence, and these variations lead to a chronic

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<sup>8</sup> O'Leary, K. Daniel. "Psychological Abuse: A Variable Deserving Critical Attention in Domestic Violence." *Violence and Victims* 14.1 (1999): 3-23.

<sup>9</sup> Campbell JC, Webster D, Koziol-McLain J, Block CR, Campbell DW, Curry MA, Gary F, McFarlane JM, Sachs C, Sharps P, Ulrich Y, Wilt SA. Assessing Risk Factors for Intimate Partner Homicide. *National Institute of Justice journal* 2003; (250): 14-19. <https://www.ncjrs.gov/pdffiles1/jr000250e.pdf>

<sup>10</sup> O'Leary, 3-23.

<sup>11</sup> FBI. "Frequently Asked Questions about the Change in the UCR Definition of Rape." <http://www.fbi.gov/about-us/cjis/ucr/recent-program-updates/new-rape-definition-frequently-asked-questions>.

misrepresentation of rape outside of the male perpetrator, female victim context.<sup>12</sup> Within the Uniform Crime Reporting (UCR) Program, each of these is included in the definition of rape.

Members of the LGBTQ community are disproportionately victimized. In a survey of academic studies of sexual violence within the LGBTQ community, the median estimate of lifetime sexual assault for gay or bisexual men was 30%, and for lesbian or bisexual women the median rate was 43%.<sup>13</sup> A 2008 study found that 25-33% of all surveyed same-sex relationships involved domestic violence.<sup>14</sup>

The Department of Education's Q&A document<sup>15</sup> importantly addresses LGBTQ and male survivors. We ask that Congress follow the Department's example and author legislation that standardize the definitions of sexual violence under Title IX. In addition, we ask that this legislation specifically require that schools follow these definitions in order to continue to receive federal funding. This can be bolstered through requiring that colleges and universities must explicitly state that their policies apply equally to all students, regardless of sex, gender, or gender identity. We support and very much encourage an expansion of this right to all survivors in the next Violence Against Women Act reauthorization.

### **Criminal Justice System and Campus Judicial Processes**

*The campus and criminal justice systems must remain separate, in order to protect students' civil right to education.*

I reaffirm students' right to report to local law enforcement, a campus official, both, or neither. The White House Task Force to Protect Students from Sexual Assault's extensive research concluded that giving survivors multiple reporting options and control over to whom and how they report is the best way to promote reporting of this vastly underreported crime. In addition, rape crisis counseling best practices continuously point to the importance of returning as much agency and control to the hands of survivors in the aftermath of an assault.<sup>16</sup> Trauma-sensitive policies are a

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<sup>12</sup> Federal Register. "Violence Against Women Act: A Proposed Rule by the Education Department." <https://www.federalregister.gov/articles/2014/06/20/2014-14384/violence-against-women-act#p-227>

<sup>13</sup> Rothman, E. F., D. Exner, and A. L. Baughman. "The Prevalence of Sexual Assault Against People Who Identify as Gay, Lesbian, or Bisexual in the United States: A Systematic Review." *Trauma, Violence, & Abuse* 12.2 (2011): 55-66.

<sup>14</sup> Mallon, Gerald P. *Social Work Practice with Lesbian, Gay, Bisexual, and Transgender People*. 2nd ed. New York: Haworth, 2008.

<sup>15</sup> U.S. Department of Education Office for Civil Rights. "Questions and Answers on Title IX and Sexual Violence." <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

<sup>16</sup> Herman, Judith Lewis. *Trauma and Recovery*. New York, NY: Basic, 1992. See also: Yassen, Janet, and Mary R. Harvey. "Crisis Assessment and Interventions with Victims of Violence." *Emergencies in Mental Health Practice: Evaluation and Management*. Ed. Phillip M. Kleespies. New York: Guilford, 1998. 117-44.

must, and allowing students to choose the path that makes the most sense for them is a major part of restoring agency to student survivors.

Additionally, campus judicial processes provide resources and remedies to survivors that the criminal justice system simply cannot, including academic accommodations, housing changes, and counseling and support services on campus. These responses are available to students without them needing to file a police report or press charges, ensuring access to education whether or not they choose to file a criminal report.