

August 19, 2019

The Honorable Bobby Scott
Chairman
Education & Labor Committee
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515

The Honorable Virginia Foxx
Ranking Member
Education & Labor Committee
U.S. House of Representatives
2101 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Scott and Ranking Member Foxx:

As the Education and Labor Committee considers reauthorization of the Higher Education Act (HEA), we are writing to urge you to include in it the Hold Accountable and Lend Transparency on Campus Sexual Violence Act (The “HALT Act” – H.R. 3381) and other aspects addressing campus sexual assault prevention and response. We are a group of organizations that advocate for safe campuses and for the rights of students who have experienced sexual violence. Many of our organizations have endorsed the HALT Act because we recognize that it is a crucial step towards creating safer campuses, and we also believe that a strong legislative response to address campus sexual assault is particularly critical now in light of ongoing attacks to the civil rights of student survivors.

Sexual assault poses a serious threat to the safety of students in higher education and interferes with their ability to learn. During college more than one in five women and nearly one in 18 men are sexually assaulted.¹ Nearly one in four transgender and gender nonbinary students² and one in three disabled women are sexually assaulted in college.³ When schools fail to provide effective responses to sexual violence and other types of gender-based violence, the impact of can be even more devastating. Too many students who experience sexual violence end up dropping out of school because they do not feel safe on campus⁴; some are even expelled for lower grades in the wake of their trauma.⁵ Given these circumstances, it is unsurprising that more than 40% of

¹ E.g., David Cantor et al., *Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct* 38-39, 115-16 (Sept. 2015) [hereinafter AAU Survey], available at <https://www.aau.edu/key-issues/aau-climate-survey-sexual-assault-and-sexual-misconduct-2015>.

² *Id.* at 13-14.

³ National Council on Disability, *Not on the Radar: Sexual Assault of College Students with Disabilities* (2018), available at <https://www.ncd.gov/publications/2018/not-radar-sexual-assault-college-students-disabilities>.

⁴ E.g., Audrey Chu, *I Dropped Out of College Because I Couldn't Bear to See My Rapist on Campus*, VICE (Sept. 26, 2017), available at https://broadly.vice.com/en_us/article/qvzjpd/i-dropped-out-of-college-because-i-couldnt-bear-to-see-my-rapist-on-campus.

⁵ E.g., Alexandra Brodsky, *How much does sexual assault cost college students every year?*, WASH. POST (Nov. 18, 2014), available at <https://www.washingtonpost.com/posteverything/wp/2014/11/18/how-much-does-sexual-assault-cost-students-every-year>; see also Cecilia Mengo & Beverly M. Black, *Violence Victimization on a College Campus: Impact on GPA and School Dropout*, 18(2) J.C. STUDENT RETENTION: RES., THEORY & PRAC. 234, 244 (2015), available at <https://doi.org/10.1177/1521025115584750> (34 percent of college student survivors of sexual assault drop out of college).

college students do not believe campus officials would adequately protect their safety if they reported a sexual assault,⁶ and that nearly 90% of survivors do not report their assaults at all.⁷

HALT Act would strengthen prevention efforts by our federal government and colleges and universities nationwide to eradicate and respond appropriately to sexual violence and other forms of discriminatory harassment and gender-based violence. For example, under HALT Act, the U.S. Department of Education (ED) would be able to hold schools accountable by levying fines for civil rights violations, which can be a powerful deterrent to future civil rights violations. The HALT Act would also mandate comprehensive campus climate surveys so that institutions could adequately address, prevent, and understand harassment and discrimination within the school community, could determine the effectiveness of existing policies, and could understand what is needed to develop new policies that are effective and responsive to the needs of the campus community.

In addition, any reauthorization of HEA should protect current civil rights protections given ED's attempts to weaken protections under Title IX of the Education Amendments of 1972 (Title IX) for student survivors of sexual violence.⁸ We thus encourage the Committee to ensure that HEA protects provisions that require schools to address both on and off-campus harassment that contributes to a hostile environment and require equitable grievance procedures – including applying the evidentiary standard used in litigation involving civil rights violations (preponderance of the evidence) and guaranteeing both complainants and respondents equal rights to appeal. Schools should be prohibited from having practices and policies that would deter survivors from reporting sexual violence and obtain needed accommodations, including punishing survivors for drug or alcohol use or consensual sex acts prior to their assault⁹, mediating sexual assault cases, using sexual history evidence in investigations and hearings, mandating police referrals¹⁰, and allowing direct cross-examination. An HEA reauthorization

⁶ AAU Survey, *supra* note 1, at 38-39, 115-16 (in a survey of more than 150,000 students at 27 postsecondary institutions, finding that 43.5% of students believe it “not at all,” “a little,” or only “somewhat” likely that campus officials would protect the safety of the person making the report).

⁷ *Poll: One in 5 Women Say They Have Been Sexually Assaulted in College*, WASH. POST (June 12, 2015), [hereinafter Washington Post-Kaiser Family Foundation Survey], available at <https://www.washingtonpost.com/graphics/local/sexual-assault-poll> (finding that 88% of college respondents did not report their sexual assault to the police or college authorities).

⁸ U.S. Department of Education, Docket No. ED-2018-OCR-0064, RIN 1870-AA14, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

⁹ This would recognize that many survivors are assaulted while incapacitated by drugs or alcohol and that “sex codes” against premarital sex unfairly punish survivors who are unable to prove they did not give consent. *See* Washington Post-Kaiser Family Foundation Survey, *supra* note 7 (finding that 14% of college women and 4% of college men report being sexually assaulted while incapacitated, and that an additional 8% and 3%, respectively, suspect they have been sexually assaulted while incapacitated).

¹⁰ Any policy that requires survivors to report their assault to law enforcement in order to proceed with their Title IX complaint will deter survivors from coming forward, deprive survivors of critical accommodations, make it harder for authorities to identify perpetrators, and make campuses less safe. *See* National Women’s Law Center, *Forcing Students to Report Sexual Assault to the Police Makes Them Less Safe: What You Should Know About Mandatory Police Referral Bills* (Apr. 24, 2017), available at <https://nwlc.org/resources/forcing-students-to-report-sexual-assault-to-the-police-makes-them-less-safe-what-you-should-know-about-mandatory-police-referral-bills>.

should also require schools to provide resources to survivors at no cost to them¹¹, and reimburse survivors for lost tuition and student loan interest.¹²

We hope Congress will act swiftly to address campus sexual assault against students as part of the HEA reauthorization. We look forward to working with you to ensure that in the future all students have an opportunity to learn in safe and healthy school environments. Thank you again for your leadership on this critical issue. For any questions about this letter, please contact Shiwali Patel, Director of Justice for Student Survivors & Senior Counsel at the National Women's Law Center at 202-319-3030 or spatel@nwlc.org.

Sincerely,

American Association of University Women
End Rape on Campus
Girls Inc.
Know Your IX
National Alliance to End Sexual Violence
National Women's Law Center
Public Justice

¹¹ This would recognize that the cost of interim measures and other resources can be a significant barrier to accessing them, and that compelling survivors to pay for any necessary interim measure would violate their Title IX right to equal access to education.

¹² This would prevent survivors who must withdraw from or retake a course from incurring significant financial penalties because of their assaults.