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## Gender Violence Costs: Schools' Financial Obligations Under Title IX

**ABSTRACT.** The last two years have witnessed a surge in attention to the issue of sexual assault in higher education. Campus rape has become the subject of new legislation, inspired a White House task force, and dominated news headlines. Yet largely neglected in this growing national conversation is one critical reality: gender-based violence has costs, and these costs constitute a gender-based barrier to student victims' educational access, one that implicates the equality mandate at the heart of Title IX.

This Feature documents the centrality of these financial harms to the educational barriers women and other student survivors face, arguing that if one hopes to guarantee gender equity in education, Title IX must be understood to allow for recovery of costs attributable to this discrimination. Yet while the administrative agency tasked with enforcing Title IX has long recognized schools' obligations to do just that, the agency has struggled in practice to enforce them. This Feature identifies these enforcement gaps before concluding with several administrative and congressional proposals for reform.

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**INTRODUCTION**

In August 2014, Wagatwe Wanjuki finally graduated from college.<sup>1</sup>

She had begun university some ten years earlier, at Tufts, where she was supposed to have graduated in 2008.<sup>2</sup> But after she was raped and abused by her then-boyfriend, a fellow Tufts undergraduate, her educational path was thrown off course.<sup>3</sup>

After reporting her abuser to the Tufts administration, Wanjuki says the university told her it had no obligation to act.<sup>4</sup> Without institutional support, she paid out of pocket for transportation to the local rape crisis center, hospital, and courthouse.<sup>5</sup> She moved far from campus because she did not want to be nearby and paid extra for the longer commute.<sup>6</sup> She took time off “to heal.”<sup>7</sup> Her medical and therapy copayments added up to hundreds of dollars.<sup>8</sup> Wanjuki ultimately stopped therapy because she was unable to afford it.<sup>9</sup> “I feel like I still need to go now. Unfortunately, the situation made it really hard to see someone consistently. The ramifications of the institutional apathy still follow me.”<sup>10</sup>

Wanjuki’s grades fell as a result of her sexual abuse and the lack of support from the university.<sup>11</sup> In response, in 2009, Tufts expelled her.<sup>12</sup> She lost the money she had already paid for the semester’s lease.<sup>13</sup> Wanjuki was just one year shy of earning her degree.<sup>14</sup>

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1. Telephone Interview with Wagatwe Wanjuki (June 28, 2015).
  2. See Tyler Kingkade, *The Woman Behind #SurvivorPrivilege Was Kicked Out of School After Being Raped*, HUFFINGTON POST (June 12, 2014, 5:39 PM), [http://www.huffingtonpost.com/2014/06/12/survivor-privilege-wagatwe-wanjuki\\_n\\_5489170.html](http://www.huffingtonpost.com/2014/06/12/survivor-privilege-wagatwe-wanjuki_n_5489170.html) [http://perma.cc/K3L9-ARF7].
  3. *Id.*
  4. *Id.* (noting that “when she tried in 2008 to report [the accused] for a campus adjudication, the university told her their legal counsel said they didn’t have to take action”).
  5. Telephone Interview with Wagatwe Wanjuki, *supra* note 1.
  6. *Id.*
  7. *Id.*
  8. *Id.*
  9. *Id.*
  10. *Id.*
  11. See Kingkade, *supra* note 2.
  12. *Id.*
  13. Telephone Interview with Wagatwe Wanjuki, *supra* note 1.
  14. *Id.*

Expelled at the height of the recession, Wanjuki was unable to find employment.<sup>15</sup> She nearly secured a position with a starting salary of sixty-five thousand dollars, until the employer learned she had not completed her college degree.<sup>16</sup> As she recalls, “[T]aking so long to get a degree because I was kicked out made me miss out on a lot of opportunities.”<sup>17</sup>

Eventually Wanjuki returned to college, this time at Rutgers University.<sup>18</sup> She resorted to fundraising to pay for her remaining credits.<sup>19</sup> As she explains, “if I didn’t have an expulsion on my record, I might have been able to go to a school that had . . . more scholarship funds.”<sup>20</sup>

Wanjuki is not alone. One in five women suffer sexual assault or attempted sexual assault in college.<sup>21</sup> This violence can limit or preclude a student’s ability to learn.<sup>22</sup> Many victims, like Wanjuki, understandably go to great lengths to avoid their perpetrators on campus: some skip shared classes,<sup>23</sup> avoid shared spaces like the dining hall or library, hide in their dorm room, transfer, or drop

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15. *Id.*

16. *Id.*

17. *Id.*

18. See Kingkade, *supra* note 2.

19. *Id.*

20. Telephone Interview with Wagatwe Wanjuki, *supra* note 1.

21. See Christopher P. Krebs et al., *The Campus Sexual Assault (CSA) Study*, NAT’L INST. JUST. 5-3 (2007), <https://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf> [<https://perma.cc/W6MP-X7VE>].

22. See Office for Civil Rights, *Dear Colleague Letter from Assistant Secretary for Civil Rights Russlyn Ali*, U.S. DEP’T EDUC. 1-3 (Apr. 4, 2011), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf> [<http://perma.cc/XS7B-2ZX9>] [hereinafter *Dear Colleague Letter*] (explaining that “when a student sexually harasses another student, the harassing conduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student’s ability to participate in or benefit from the school’s program”).

23. See Rebecca Marie Loya, *Economic Consequences of Sexual Violence for Survivors: Implications for Social Policy and Social Change* 96 (June 2012) (unpublished Ph.D. dissertation, Brandeis University) (on file with author) (“Probably like 95% of the time, students will skip class for one reason or another. And, I mean, the reasons are because the perp’s in the class, because the perp’s friends are in the class, because, sometimes schoolwork just gets to be too much, again in the aftermath of the assault. Sometimes, they’ve come out to the professor as a survivor, and the professor hasn’t . . . been particularly supportive, so they won’t go back to the class. Sometimes it’s because they know that on their way to the class, they’ll see the perp because of their schedules or whatever. Sometimes they might be in different majors with different course studies, but they’ll have like a 101 class together, so that something will intersect, so they’ll stop going to the 101 class. So they won’t stop their studies on their own plane, but they’ll stop the ones that intersect with the perp.” (quoting a legal services provider)).

out of college altogether.<sup>24</sup> Others struggle with depression, posttraumatic stress disorder (PTSD), eating disorders, anxiety attacks, flashbacks, and nightmares.<sup>25</sup> Some attempt suicide or engage in self-harm.<sup>26</sup> Typically academically successful students see their grades plunge as they struggle to concentrate on, participate in, or even attend their classes.<sup>27</sup>

The courts have long recognized that peer-on-peer sexual violence limits or outright denies students' ability to access education, that schools have obligations under Title IX to address this violence, and that the Department of Education's Office for Civil Rights (OCR) is responsible for "promulgat[ing] and enforc[ing] requirements that effectuate [Title IX's] nondiscrimination mandate."<sup>28</sup> And, thanks to student activists' efforts to raise awareness about Title IX, universities and students alike are increasingly recognizing schools' obligations as well.<sup>29</sup>

But often neglected in the growing national conversation around campus gender violence is one critical reality: gender-based violence has *costs*, and these costs constitute a discriminatory, gender-based barrier to educational access. Part I of this Feature reviews judicial and administrative understandings of campus sexual violence as discrimination, noting in particular that Title IX's equality mandate requires schools to remove or remedy financial costs attributable to discrimination. Part II highlights the various economic costs that stem from campus gender violence and demonstrates that these gender-based costs create and exacerbate barriers to student survivors' educations. Part

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24. See *id.* at 99 ("While many survivors miss classes or take temporary leave, others drop out or take years off.").

25. *Id.* at 25-28.

26. See NAT'L CTR. FOR INJURY PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 1 (2011), [http://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf) [<http://perma.cc/FM4N-UPZW>]; Loya, *supra* note 23, at 25-28.

27. See Loya, *supra* note 23, at 94; Cari Simon, *On Top of Everything Else, Sexual Assault Hurts the Survivors' Grades*, WASH. POST (Aug. 6, 2014), <https://www.washingtonpost.com/posteverything/wp/2014/08/06/after-a-sexual-assault-survivors-gpas-plummet-this-is-a-bigger-problem-than-you-think> [<https://perma.cc/2VXN-BE75>].

28. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 292 (1998) (tasking the Department of Education with "administering and enforcing Title IX").

29. See, e.g., Tyler Kingkade, *Ending Campus Rape Won't Be Easy, But These Activists Aren't Going Anywhere*, HUFFINGTON POST (May 6, 2014, 5:16 PM), [http://www.huffingtonpost.com/2015/05/06/campus-rape-activists\\_n\\_7165478.html](http://www.huffingtonpost.com/2015/05/06/campus-rape-activists_n_7165478.html) [<http://perma.cc/B9AG-8H8L>]; see also Erin Matson, *12 Ways Young People Organized for Human Rights in 2014*, RH REALITY CHECK (Dec. 19, 2014, 10:19 AM), <http://rhrealitycheck.org/article/2014/12/19/12-ways-young-people-organized-human-rights-2014> [<http://perma.cc/M65A-89BE>] (describing activists' efforts to raise awareness about campus sexual assault).

III examines the lackluster administrative enforcement of colleges' Title IX obligations to remedy such costs, and Part IV offers several policy proposals through which OCR and Congress may more fully realize Title IX's promises and protections.

#### **I. CAMPUS GENDER VIOLENCE AND ITS COSTS: AN EQUALITY ISSUE**

Courts have long understood that gender-based violence hinders student victims' ability to access their right to education under Title IX of the 1972 Education Amendments. Title IX provides: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."<sup>30</sup> In 1977, *Alexander v. Yale University* became the first case<sup>31</sup> to use Title IX to establish that sexual harassment of women students constitutes sex discrimination in education.<sup>32</sup> Subsequent court decisions clarified schools' obligations under Title IX to address and remedy peer-on-peer sexual violence.<sup>33</sup> OCR has further defined these obligations using its authority to make policy and enforce school compliance.<sup>34</sup>

OCR releases periodic administrative guidance clarifying schools' responsibilities. OCR's 1997 and 2001 guidance explain that a school is liable under Title IX if the school fails to take "immediate and appropriate corrective action" for sexually harassing conduct about which it knows or should have known and which is "sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or benefit from an education program or activity."<sup>35</sup> A school must take steps to end harassment, eliminate any hostile

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30. Title IX of the Education Amendments of 1972, Pub. L. No. 92-318, § 901(a), 86 Stat. 235, 373 (codified at 20 U.S.C. § 1681(a) (2012)).

31. See Alexandra Brodsky & Elizabeth Deutsch, *No, We Can't Just Leave College Sexual Assault to the Police*, POLITICO MAG. (Dec. 3, 2014), <http://www.politico.com/magazine/story/2014/12/uva-sexual-assault-campus-113294> [<http://perma.cc/KT2D-Z6K4>] ("While the case was ultimately dismissed on technical grounds, the court accepted [its] novel legal claim: Schools were legally required to respond to sexual harassment and violence because they constituted forms of gender-based discrimination prohibited by federal law.").

32. See *Alexander v. Yale Univ.*, 459 F. Supp. 1, 3 (D. Conn. 1977).

33. See *Davis v. Monroe Cty. Bd. of Educ.* 526 U.S. 629, 648 (1999).

34. See *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 291-92 (1998).

35. Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, 62 Fed. Reg. 12034, 12038-39 (Mar. 13, 1997).

environment, prevent its recurrence, and remedy its effects.<sup>36</sup> On the last point, OCR suggests several remedies in its 1997 and 2001 guidance: place the accused student and victim in separate classes, change housing arrangements, issue a no-contact directive, provide tutoring, offer reimbursement for counseling, or make tuition adjustments.<sup>37</sup>

In later guidance, OCR further clarifies the kinds of accommodations that may be necessary to eliminate a hostile environment. Its 2011 Dear Colleague Letter suggests that reasonable remedies might include: providing the victim with counseling and medical services, academic support services, or an escort to and from class.<sup>38</sup> In its 2014 “Questions and Answers,” OCR explains that victims should also, as appropriate, be allowed to change transportation, dining, and work situations, as well as receive extensions on assignments, extra time on tests, and the opportunity to re-take or withdraw from a class without penalty.<sup>39</sup>

OCR recognizes schools’ obligations to provide these accommodations at no cost to survivors. In the 2014 “Questions and Answers,” OCR explicitly states that a school must cover survivors’ counseling costs, should it determine that a survivor requires access to such services.<sup>40</sup> Similarly, in a subsequent letter to two student advocacy organizations, OCR explains that survivors cannot be required to pay for any remedies necessary to ensure equal access to education programs and notes that, in the event of a school’s failure to promptly remedy a hostile environment, it must reimburse survivors for the expenses its inaction creates.<sup>41</sup> In its enforcement decisions, OCR has, at times,

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36. *Id.* at 12042.

37. *Id.* at 12043.

38. *Dear Colleague Letter*, *supra* note 22, at 16.

39. Office for Civil Rights, *Questions and Answers on Title IX and Sexual Violence*, U.S. DEP’T EDUC. 34-35 (Apr. 29, 2014), <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> [<http://perma.cc/H5GJ-393Z>] [hereinafter *Questions and Answers*].

40. *Id.* at 33 (“If a school determines that it needs to offer counseling to the complainant as part of its Title IX obligation to take steps to protect the complainant while the investigation is ongoing, it must not require the complainant to pay for this service.”).

41. Letter from Catherine E. Lhamon, Assistant Sec’y, Office for Civil Rights, U.S. Dep’t of Educ., to Know Your IX & the U.S. Student Ass’n (Nov. 17, 2014), <http://knowyourix.org/letter-from-department-of-education-11-17-2014> [<http://perma.cc/R39N-7V7D>] (“If remedies are necessary to ensure equal access to education programs, a school cannot require a student to pay for receipt of those remedies . . . [I]f a school delays responding to allegations of sexual violence or responds inappropriately, the school’s own inaction may subject the student to a hostile environment. If it does, the school will also be required to remedy the effects of the sexual violence that could reasonably have been prevented had the school responded promptly and appropriately.”); *see also* E-mail from Helen Boyer to Know Your IX (Dec. 3, 2014, 5:08 PM EST) (on file with author) (“The scope of a school’s

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## GENDER VIOLENCE COSTS

required institutions to reimburse students for a variety of expenses, including unused meal plans, counseling treatment,<sup>42</sup> and “[u]niversity-related expenses (tuition, fees, housing, food, and books).”<sup>43</sup>

OCR’s recognition that Title IX’s equality mandate requires schools to compensate victims for the economic costs of discrimination is consistent with antidiscrimination law more broadly.<sup>44</sup> For instance, the Equal Employment Opportunity Commission (EEOC)—which, roughly analogously to OCR,<sup>45</sup> handles complaints of discrimination in the employment context—states:

When an employer receives a complaint or otherwise learns of alleged sexual harassment in the workplace, the employer should investigate promptly and thoroughly . . . [and] should take immediate and appropriate corrective action by doing whatever is necessary to end the harassment, *make the victim whole by restoring lost employment benefits or opportunities*, and prevent the misconduct from recurring.<sup>46</sup>

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responsibility is tied to the scope of a school’s culpability. Thus, when a school’s actions or inactions (after it knows or should have known of the hostile environment created by sexual violence) augment the survivor’s injury, more can be expected of the school by OCR.”)

42. *Voluntary Resolution Agreement, No. 02-11-2025*, PRINCETON U. 12-13 (Oct. 12, 2014), <http://www2.ed.gov/documents/press-releases/princeton-agreement.pdf> [<http://perma.cc/TN26-7YDK>][hereinafter *Princeton Resolution Agreement*]; see also *Voluntary Resolution Agreement, No. 03-12-2062*, KY. WESLEYAN C., 7 (Aug. 13, 2013), <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/03122062-b.pdf> [<http://perma.cc/K42D-WD47>]; *Voluntary Resolution Agreement, No. 15-12-2048*, XAVIER U. 6-7 (July 23, 2012), <https://atixa.org/documents/Xavier%20Resolution%20Agreement.pdf> [<https://perma.cc/D7JH-HWJH>].
43. *Voluntary Resolution Agreement, Nos. 06112126, 06132081, 06132088*, SMU 15 (Nov. 16, 2014), <http://www2.ed.gov/documents/press-releases/southern-methodist-university-agreement.pdf> [<http://perma.cc/S63G-8ZEW>].
44. Consider, for example, Title VII, 42 U.S.C. § 2000e (2012); and the Fair Housing Act, *id.* § 3601.
45. The Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071, provided the EEOC the authority to award pecuniary and nonpecuniary damages to victims of discrimination. See also *West v. Gibson*, 527 U.S. 212, 223 (1999) (concluding “that the EEOC possesses the legal authority to enforce § 717 through an award of compensatory damages”). The Department of Education, meanwhile, does not award damages; instead, because the Department is charged with enforcing Title IX, per 20 U.S.C. § 1682 (2012), it negotiates with noncompliant institutions to remove gender-based barriers to education—which can include the financial costs of discrimination—through measures including reimbursement.
46. U.S. EQUAL EMP’T OPPORTUNITY COMM’N, N-915-050, POLICY GUIDANCE ON CURRENT ISSUES OF SEXUAL HARASSMENT (1990) (emphasis added), <http://www.eeoc.gov/policy/docs/currentissues.html> [<https://perma.cc/D8Q5-PCCF>]; see also U.S. EQUAL EMP’T OPPORTUNITY COMM’N, ENFORCEMENT GUIDANCE: COMPENSATORY AND PUNITIVE DAMAGES AVAILABLE UNDER § 102 OF THE CIVIL RIGHTS ACT OF 1991 (1992), <http://www.eeoc.gov>

The EEOC has routinely found that victims are entitled to reimbursement for the cost of medical services and other expenses attributable to discrimination, in addition to nonpecuniary compensatory damages.<sup>47</sup> The nondiscrimination provisions of the Fair Housing Act have similarly protected gender violence victims from paying the costs of eviction, early termination penalties, and property damage<sup>48</sup>—all financial costs of violence understood to be discriminatory based on sex. In short, agencies enforcing antidiscrimination law have recognized that the financial costs of discrimination can pose

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/policy/docs/damages.html [https://perma.cc/SH58-B4CS] [hereinafter ENFORCEMENT GUIDANCE] (enumerating the pecuniary losses for which employees are eligible for reimbursement, including, for example, “moving expenses, job search expenses, medical expenses, psychiatric expenses, physical therapy expenses, and other quantifiable out-of-pocket expenses”).

47. *See, e.g., Levy v. Principi*, Appeal No. 01A01561, 2003 WL 21145434, at \*2 (E.E.O.C. May 12, 2003) (noting, in addition to awarding the complainant \$60,000 in nonpecuniary compensatory damages, that she was entitled to reimbursement for the cost of medical services resulting from the discrimination); *see also Rafalski v. Donahoe*, Appeal No. 0120093891, 2012 WL 983255, at \*3 (E.E.O.C. Mar. 15, 2012) (finding that the denial of a doctor-prescribed accommodation aggravated the complainant’s existing condition and that the complainant was therefore entitled to \$61 in reimbursement for prescription copayments); *Bostick v. McHugh*, Appeal No. 0120093611, 2010 WL 927091, at \*5-8 (E.E.O.C. Mar. 5 2010) (finding that the complainant was entitled to \$2,250 in reimbursement for proven out-of-pocket treatment expenses traceable to the discriminatory conduct); *Gray v. Salazar*, Appeal No. 0120072136, 2009 WL 2422902, at \*6 (E.E.O.C. July 24, 2009) (finding that the complainant was entitled to \$49,459.75 for reimbursement of medical treatment costs incurred after suffering sexual harassment); *Terban v. Bodman*, Appeal No. 0720040117, 2008 WL 1847616, at \*3, \*6 (E.E.O.C. Apr. 3, 2008) (finding that the complainant was entitled to \$6,329.25 in reimbursement for out-of-pocket expenses related to the complainant’s hospitalization in the wake of discrimination); *Buckner v. Peake*, Appeal No. 0720070052, 2008 WL 281063, at \*1, \*4 (E.E.O.C. Jan. 3, 2008) (finding that the complainant was entitled to \$4,918.75 in reimbursement for medical treatment sought in the wake of sex, race, and disability discrimination); *Timmer v. Potter*, Appeal No. 01A53175, 2006 WL 228776, at \*\*3-4 (E.E.O.C. Jan. 23, 2006) (finding that the complainant was entitled to reimbursement for mileage incurred commuting to an alternate facility after transferring to escape a hostile work environment); *Steenon v. Veneman*, Appeal No. 01A13535, 2003 WL 22118743, at \*5, \*8 (E.E.O.C. Sept. 4, 2003) (finding, in addition to awarding the complainant \$12,000 in nonpecuniary damages, that the complainant was entitled to compensation for \$900 in storage fees suffered during a housing change necessitated by the discrimination).
48. *See, e.g., U.S. DEP’T OF HOUS. & URBAN DEV., MEMORANDUM ON ASSESSING CLAIMS OF HOUSING DISCRIMINATION AGAINST VICTIMS OF DOMESTIC VIOLENCE UNDER THE FAIR HOUSING ACT (FHA) AND THE VIOLENCE AGAINST WOMEN ACT (VAWA) 7 (2011)* (referencing a case in which a victim was charged for property damage caused by her ex-boyfriend, against whom she had obtained a restraining order, and the U.S. Department of Housing and Urban Development required the housing authority to relocate the victim to another apartment and compensate her for the money she paid for the property damage).

continued obstacles to equality and have consequently required compensation for victims.

## II. CAMPUS GENDER VIOLENCE'S FINANCIAL COSTS AS GENDER-BASED BARRIERS TO EDUCATION

Sexual violence has costs. A 2008 study placed the total per-offense societal cost of rape and sexual assault at \$240,776 in 2008 dollars,<sup>49</sup> or \$265,400 in 2015 dollars.<sup>50</sup> A 1996 study found that, when lost productivity, medical and mental health care, property loss, and lost quality of life were tallied, each rape or sexual assault cost the survivor on average \$87,000.<sup>51</sup> This “rape tax”<sup>52</sup> is \$143,678, in 2015 dollars.<sup>53</sup>

There is little research on the extent and impacts of the financial expenses that *student* survivors in particular suffer. One study found that campus survivors experience a range of education-related consequences, including academic performance decline<sup>54</sup> that jeopardized financial aid and scholarships, resulting in students taking time off, transferring schools, or dropping out.<sup>55</sup>

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49. KATHRYN E. MCCOLLISTER ET AL., THE COST OF CRIME TO SOCIETY: NEW CRIME-SPECIFIC ESTIMATES FOR POLICY AND PROGRAM EVALUATION, DRUG ALCOHOL DEPENDENCE 108 (2010), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2835847> [perma.cc/8QKB-GLUQ].

50. Figure calculated using *CPI Inflation Calculator*, U.S. BUREAU LAB. STAT., [http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm) [<http://perma.cc/8EJT-VTU6>].

51. Ted R. Miller et al., *Victim Costs and Consequences: A New Look*, U.S. DEP'T JUST. 16 (1996), <https://www.ncjrs.gov/pdffiles/victcost.pdf> [[http://perma.cc/ZT2\]-3F55](http://perma.cc/ZT2]-3F55)].

52. See generally Lori A. Post et al., *The Rape Tax: Tangible and Intangible Costs of Sexual Violence*, 17 J. INTERPERSONAL VIOLENCE 773 (2002) (coining “rape tax” to describe the financial penalties sexual violence victims suffer).

53. Figure calculated using U.S. BUREAU LABOR STAT., *supra* note 50.

54. See Loya, *supra* note 23, at 94-98. For instance, Rebecca Loya quotes a legal service provider she interviewed:

I work with teens a lot, and I've definitely done my share of college cases as well. I have not had a client yet whose grades did not, not just slightly diminish, but markedly diminish. Going from A's and B's to D's and F's. No doubt. It happens every time. I've had clients who want to get to school. They're anxious to be at school, only realize when they get there that they're having a difficult time concentrating, focusing. They're triggering all day long, especially if the assault occurred on campus or the perpetrator remains in school . . . . It's such an overwhelming experience.

*Id.* at 94.

55. See *id.* at 93, 96-100.

The study found that student survivors took varying amounts of time off, ranging from three weeks, to a semester, to an entire year or more.<sup>56</sup>

Other studies confirm that students' grades suffer significantly after violence. One study found that women who were raped during their first semester of college saw their GPAs subsequently drop, both at the end of that semester and the following semester.<sup>57</sup> Fifteen percent of women who experienced rape in their first semester ended the semester with a GPA below 2.5, compared to six percent of those who were not raped.<sup>58</sup> The impacts of rape were long-lasting: eight percent of those who were raped in high school reported that their first-semester college GPA fell below 2.5 (compared to only three percent of those who did not report a high school rape).<sup>59</sup> These significant trauma-related GPA declines can contribute to scholarship loss; academic penalties such as probation, suspension, or expulsion; and long-term impacts on employment and graduate school prospects, with significant accompanying financial consequences.<sup>60</sup>

I surveyed nearly two hundred student survivors to better understand the variety of gender-violence-related expenses that survivors bear, and the ways in which these costs imperil their educations.<sup>61</sup> The survivors report costs ranging from mental health services to medical treatment, lost tuition to lost income, transportation costs to housing expenses. These costs are diverse, significant, and have frustrated student survivors' ability to access their right to education.

As one undergraduate explains:

I no longer felt safe at [my university] after my case was grossly mishandled. I took 3 years off from school. I filed a complaint with the [D]epartment of [E]ducation [in] May 2014 and started school at

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56. See *id.* at 97.

57. Carol E. Jordan et al., *An Exploration of Sexual Victimization and Academic Performance Among College Women*, 15 *TRAUMA, VIOLENCE & ABUSE* 191, 196 (2014).

58. *Id.*

59. *Id.*

60. See Loya, *supra* note 23, at 93-104; see also Telephone Interview with Cari Simon, Att'y, Bode & Fierberg, LLP (May 7, 2015); Simon, *supra* note 27.

61. The survey was publicly distributed through social media, online survivor support groups, and popular blogs, from May 15, 2015 through June 30, 2015. Survey participants were asked if they identified as survivors of gender-based violence (rape, sexual assault, domestic violence, dating violence, and stalking); those who did not exited the survey. Dana Bolger, *Survivor Survey (2015)* (on file with author). Of the remaining participants, forty percent reported experiencing violence while in grade school (K-12), eighty-six percent in college, and ten percent in graduate school. Unless otherwise specified, the quotations I draw upon in this Feature are by participants who identified as having suffered gender violence while in college. *Id.*

[another school] this January . . . . I lost around 10k in lost tuition. Then having to transfer lost a semesters [sic] worth of credits, another 20k. The cost of . . . living off campus was 2k. I don't have an exact figure on consoling [sic] but I wouldn't [sic] estimate 7k over 3 years.<sup>62</sup>

She adds that her Department of Education complaint has yet to be resolved: “The complaint was filed a year ago, I haven't heard anything since December. I was told it would take another year.”<sup>63</sup> Her case underscores the need for speedier OCR investigations, as well as the importance of OCR securing interim remedies for Title IX complainants to support them in continuing their educations while the agency investigates their schools' violations.<sup>64</sup>

Another survivor reports:

I took a year off from classes following the assault and the Title IX investigation at the school . . . . I was not reimbursed for any costs, although we did request partial reimbursement for tuition and housing costs . . . . I lost a scholarship when I transferred schools, and had to take an entire extra semester of courses at my new institution. I also had to leave the co-ops due to my mental health keeping me from being able to keep up with my work there, which resulted in higher food costs. It has easily cost me and my family an additional \$100,000 at least.<sup>65</sup>

These survivors—whose families appear to have had the resources to support them in transferring schools, fronting additional tuition expenses, and obtaining counseling—are (relatively) lucky. For other survivors, prohibitively costly mental health services have precluded them from obtaining necessary treatment for trauma-related disorders, such as PTSD, depression, and anxiety—and, in many cases, have forced them to withdraw from classes, or school, as a result.<sup>66</sup> Still other survivors, unable to afford fronting additional

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62. Respondent A, Survivor Survey (2015) (on file with author).

63. *Id.*

64. For more on these necessary OCR reforms, see Alyssa Peterson & Olivia Ortiz, *A Better Balance: Providing Survivors of Sexual Violence with “Effective Protection” Against Sex Discrimination Through Title IX Complaints*, 125 YALE L.J. 2132 (2016).

65. Respondent B, Survivor Survey (2015) (on file with author).

66. For example, one survivor surveyed explains:

I was assaulted Jan 2011 on [my college] campus—for the rest of the school year I had medical insurance cover . . . a rape kit, and going to therapy once a week . . . . Any other potential expenses (i.e., hiring a lawyer) I avoided by deciding not to take the case to court (to save money) and instead going through Judicial Affairs. For the next school year, therapy was no longer paid for, so I stopped going.

tuition costs, paying course change fees, or losing scholarships, have remained in school, earning poorer grades.<sup>67</sup> Some of these survivors, like Wanjuki, report landing on academic probation, or being suspended or expelled.<sup>68</sup> For still others, housing and other university-related expenses have added up.<sup>69</sup>

Violence—and institutional indifference in its wake—changes the courses of survivors' lives, with educational and employment consequences following them far into the future.<sup>70</sup> For example, students who were sexually assaulted in high school report effects that were delayed and long-lasting, impacting

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Respondent C, Survivor Survey (2015) (on file with author).

The student reports that she withdrew from the university for a period of time: "I didn't feel safe on campus. I was assaulted on the Main Quad and all my classes were there—so going to classes were [sic] triggering. I was nervous anytime I left my dorm." *Id.*; see also Loya, *supra* note 23, at 96-100; Alexandra Brodsky, Opinion, *How Much Does Sexual Assault Cost College Students Every Year?*, WASH. POST (Nov. 18, 2014), <http://www.washingtonpost.com/posteverything/wp/2014/11/18/how-much-does-sexual-assault-cost-college-students-every-year> [<http://perma.cc/TJJ2-RUNC>] (noting that "[t]housands of dollars can disappear into rent for a new apartment off campus, away from an abusive ex, or into bills for hours of much-needed counseling. When a school denies survivors the services and support they need to recover, students may be forced to take out additional loans—or even to leave school, a semester's tuition down the drain. . . . For a student who lacks the means to swallow these costs, sexual violence might mean the end of her education.").

67. See Simon, *supra* note 27; see also Loya, *supra* note 23, at 98.

68. For instance, one survivor surveyed reports,

Even though I passed all but one class, I barely passed a lot of classes due to all the trauma. Even though they were normal expenses, I lost the chance of learning and enjoying my classes. On top of it, I was on academic probation and my grades were impacted several times because of trauma and stress put on me by the school and my attacker . . . I was asked to take a 'medical leave' but I knew enough to know that if I took it I would have had to fight to prove I was 'well enough mentally' to go back, I refused medical leave on more than one occasion.

Respondent D, Survivor Survey (2015) (on file with author).

69. For example, one victim I surveyed reports,

Counseling: probably \$5k[.] Housing: about \$4000, had to move out of an apartment I paid for up front [sic] that I shared with an abuser. He never paid me back the money I paid for the rest of the lease. I also had to pay to move. Tuition: failed a few classes, had to take more to make up for it. Can't put a price tag on it since my college doesn't charge per credit[.]

Respondent E, Survivor Survey (2015) (on file with author); see also Loya, *supra* note 23, at 75.

70. See Loya, *supra* note 23, at 100-104.

their college educations.<sup>71</sup> Other survivors report withdrawing from college permanently, suffering long-term penalties to their earning potential.<sup>72</sup>

### III. OCR'S FAILURES TO ENFORCE SCHOOLS' OBLIGATIONS TO ADDRESS GENDER-BASED FINANCIAL COSTS

Despite OCR's recognition of schools' responsibilities to remedy particular costs of violence,<sup>73</sup> the agency has, perhaps due to underfunding,<sup>74</sup> not instituted the necessary policies or consistently and proactively enforced schools' obligations. Specifically, OCR has not required individual remedies in the form of free accommodations or compensation to survivors; has neglected to secure remedies for affected non-complainants; and has allowed schools

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71. The educational impacts of violence in grade school do not end at high school graduation and suggest the importance of schools providing reasonable accommodations, such as free counseling, to all student survivors, including those who were assaulted elsewhere or before entering college. For instance, one survivor surveyed reported:

I was dealing with the effects of unaddressed sexual trauma from my childhood when I got to college. My schools were ill equipped to treat someone like me and I ended up dropping out for the better part of a year. I transferred schools and returned to graduate a year later than expected. I struggled with mental illness and was unable to find quality trauma-centered care that I desperately needed.

Respondent G, Survivor Survey (2015) (on file with author); *see also* Jordan, *supra* note 57, at 196.

72. For instance, one survivor with whom I spoke reports that they dropped out of college and, nearly three years later, has yet to return. They describe the impact: "I lost two years of income that I would've been in the job market. I was planning to work in politics, earning \$30-40,000 per year before going to get my PhD . . . I have been chronically homeless and housing unstable for two years now." Respondent F, Survivor Survey (2015) (on file with author); *see also* Loya, *supra* note 23, at 99 ("While many survivors miss classes or take temporary leave, others drop out or take years off . . . Respondents explained that dropping out of high school creates barriers to college, while dropping out of college creates barriers to employment.").
73. *See, e.g., Dear Colleague Letter, supra* note 22, at 16 ("[R]emedies for the complainant might include, but are not limited to: providing an escort . . . ; providing counseling services; providing medical services; [and] providing academic support services, such as tutoring . . ."); *see also* Letter from Catherine E. Lhamon to Know Your IX & the U.S. Student Ass'n, *supra* note 41 ("If remedies are necessary to ensure equal access to education programs, a school cannot require a student to pay for receipt of those remedies."); *Questions and Answers, supra* note 39, at 33 ("If a school determines that it needs to offer counseling to the complainant as part of its Title IX obligation to take steps to protect the complainant while the investigation is ongoing, it must not require the complainant to pay for this service.").
74. OCR's lackluster administrative enforcement is certainly due to its severe lack of resources. *See* Peterson & Ortiz, *supra* note 64, at 2140 n.35 ("By all accounts, the agency is under-resourced").

significant discretion in “remedying” their violations even after OCR has found that the school had a hostile environment.

The key guidance upon which schools rely—the 2011 Dear Colleague Letter and the 2014 Questions and Answers document—explain that a school must provide reasonable accommodations, including paying for counseling it deems necessary,<sup>75</sup> but do not *explicitly* outline the other costs an institution should cover.<sup>76</sup> As a result, schools at every educational level—elementary, secondary, postsecondary, and graduate—remain undirected as to their obligations to provide free services and accommodations on the one hand and to compensate survivors for a variety of costs on the other.<sup>77</sup> As one victims’ rights attorney explained, “The Department of Education should be stepping in when it comes to this [securing free accommodations] because victims don’t have lawyers and schools aren’t going to just offer it.”<sup>78</sup>

Furthermore, despite its recognition of schools’ obligations, OCR has required financial reimbursement in a surprisingly small number of its enforcement decisions<sup>79</sup>: indeed, more than two-thirds of OCR’s publicly available voluntary resolution agreements from the last seven years require no financial reimbursement at all.<sup>80</sup> In many of its resolution letters, OCR reports

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75. *Dear Colleague Letter*, *supra* note 22, at 16 (“[R]emedies for the complainant might include, but are not limited to: providing an escort . . . ; providing counseling services; providing medical services; [and] providing academic support services, such as tutoring”); *Questions and Answers*, *supra* note 39, at 33 (“If a school determines that it needs to offer counseling to the complainant as part of its Title IX obligation to take steps to protect the complainant while the investigation is ongoing, it must not require the complainant to pay for this service”).

76. *See Dear Colleague Letter*, *supra* note 22, at 16-17 (“Depending on the specific nature of the problem, remedies for the complainant might include, but are not limited to . . . arranging for the complainant to re-take a course or withdraw from a class without penalty.”); *see also Questions and Answers*, *supra* note 39, at 33 (“If a school determines that it needs to offer counseling to the complainant as part of its Title IX obligation to take steps to protect the complainant while the investigation is ongoing, it must not require the complainant to pay for this service.”).

77. Telephone Interview with Colby Bruno, Senior Legal Counsel, Victim Rights Law Ctr. (May 5, 2012).

78. Telephone Interview with Colby Bruno, *supra* note 77.

79. *Id.*

80. In June and August 2015, I submitted two requests under the Freedom of Information Act (FOIA) to the Department of Education for all voluntary resolution agreements for sexual violence-related Title IX complaints at the postsecondary level, from fiscal year 2008 through the present; as of January 10, 2016, I had received only an incomplete set of the documents responsive to my request and was still waiting to receive all of them. The sexual-violence related Title IX voluntary resolution agreements that I have been able to obtain online at the postsecondary education level from fiscal year 2008 through August 25, 2015—and on which I base the analysis in this Feature—were those with Merced College, Yale

findings of hostile environments—but then does not require remedies from the schools, or permits the same schools that violated the survivors’ rights to determine what remedies are appropriate.

For instance, while OCR’s investigation of the Virginia Military Institute (VMI) finds that the school has committed gross Title IX violations against several student survivors, OCR does not require any individual remedies from the school for any of them.<sup>81</sup> VMI’s violations range from a failure to offer appropriate remedies to a complainant who reported a sexual assault, to an investigation concluding a full eight months after the reported assault, to lack of notice to a victim of an investigation’s results.<sup>82</sup> OCR is clear that, as a result of these failures, the complainants have suffered unabated hostile environments, noting that one complainant resigned from VMI.<sup>83</sup> Despite these documented violations, OCR requires no direct remedies, such as reimbursement, for the individual complainants; instead, the agency directs VMI to submit to OCR documentation of all sexual harassment complaints filed during the following academic year for review.<sup>84</sup> In other words, OCR does not require VMI to remedy a single past violation against an individual complainant, despite the significant gender-based educational barriers that the institution’s (in)action has created—including, for one survivor, withdrawal from the institution entirely.

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University, George Washington University, Kentucky Wesleyan College, Harvard Law School, Tufts University, Princeton University, Xavier University, Southern Methodist University, Virginia Commonwealth University, Virginia Military Institute, Glendale State College, University of Missouri-Kansas City, University of Notre Dame, Eastern Michigan University, University of Montana-Missoula, State University of New York system, Notre Dame College, and Ohio State University; the former thirteen agreements resulted from complaint investigations, while the latter six resulted from compliance reviews.

81. Letter of Findings from Office for Civil Rights, U.S. Dep’t of Educ., to Va. Military Inst. 23-24 (May 9, 2014), [www2.ed.gov/documents/press-releases/vmi-letter.doc](http://www2.ed.gov/documents/press-releases/vmi-letter.doc) [<http://perma.cc/2MGA-KTST>] (“OCR determined that VMI is in violation of Title IX. VMI did not consistently provide a prompt and equitable response to complaints of sexual harassment or sexual assault that created a sexually hostile environment that was sufficiently serious to deny or limit cadets’ ability to participate in or benefit from VMI’s program. VMI failed to take immediate action to eliminate the harassment, prevent its recurrence and address its effects.”). Although OCR required VMI to revise its Title IX grievance policies and procedures, provide training to community members, conduct an annual climate check, and submit to OCR documentation of all sexual harassment complaints for the following academic year, the agency’s letter of findings does not suggest it required VMI to provide a single direct remedy (such as reimbursement) to the individual complainants themselves.

82. *Id.* at 16-20.

83. *Id.*

84. *Id.* at 24.

In addition, in these publicly available agreements, OCR does not secure financial reimbursement for noncomplainants, except when attorneys, parents, or other students have named them specifically in the complaint. For instance, OCR's resolution letter to Princeton University makes clear that the individuals who filed the complaint to OCR cited violations committed by Princeton against three specific student survivors;<sup>85</sup> accordingly, though these three students were not the complainants, OCR *does* require reimbursement for them.<sup>86</sup> But OCR neglects to require remedies for other student survivors, unnamed in the original complaint, despite finding violations of their rights. The resolution letter provides:

OCR also determined that the University failed to provide prompt and equitable response(s) to complaints of sexual assault/violence of which it had notice (including complaints made by Students 1, 2 and 3, and *other* students' complaints/reports) . . . . Thus, OCR concluded that the University did not comply with the applicable Title IX regulations . . . .<sup>87</sup>

Similarly, in its investigation of Southern Methodist University (SMU), OCR finds that "[m]any [case] files did not show that complainants were offered interim remedies."<sup>88</sup> OCR notes further:

[I]n reviewing SMU's handling of other complaints filed under the former grievance procedure . . . . OCR observed that the file documentation did not support that the University provided prompt and equitable responses to the harassment complaints and reports . . . . Based on the above, OCR concluded that that [sic] SMU did not provide prompt and equitable responses to gender-based harassment and sexual harassment/sexual violence complaints, reports and/or other incidents of which it had notice, and thereby SMU failed to comply with the Title IX regulation . . . .<sup>89</sup>

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85. Letter of Findings from Office for Civil Rights, U.S. Dep't of Educ., to Princeton Univ. 1 (Nov. 5, 2014), <http://www2.ed.gov/documents/press-releases/princeton-letter.pdf> [<http://perma.cc/A3R5-KXFN>].

86. *Id.* at 21; see also *Princeton Resolution Agreement*, *supra* note 42, at 12-13.

87. Letter of Findings from Office for Civil Rights to Princeton Univ., *supra* note 85, at 19 (emphasis added).

88. Letter of Findings from Office for Civil Rights, U.S. Dep't of Educ., to S. Methodist Univ. 15 (Dec. 11, 2014), <http://www2.ed.gov/documents/press-releases/southern-methodist-university-letter.pdf> [<http://perma.cc/3Z5G-RW3F>].

89. *Id.* at 20-21.

In spite of the violations against SMU survivors who had not filed a complaint with OCR, the agency does not secure specific remedies, such as reimbursement, for these students.

OCR's failure to require reimbursement and other remedies for individual survivors – complainants and noncomplainants alike – appears to be a pattern. None of the nearly two hundred student survivors surveyed for this Feature report receiving financial reimbursement from their school as the result of an OCR investigation, although the vast majority of these survivors report suffering financial costs that, according to OCR, should be covered or reimbursed by the schools.<sup>90</sup>

Finally, while OCR holds the informational access and authority to explicitly require protections on behalf of student survivors, the agency instead chooses in many of its agreements to defer to noncompliant institutions' own review processes. For instance, in its agreement with Tufts University, which concludes a nearly four-year investigation and finds Tufts in violation of Title IX, OCR requires the university to conduct “complaint reviews” from the years 2011 to 2014 and to take action as appropriate, “including providing appropriate remedies that may still be available for the parties in these cases, such as referrals to counseling or academic adjustments.”<sup>91</sup> In short, despite having the authority to explicitly require protections for the survivors failed by Tufts, OCR instead leaves the rights of victims to the discretion of the same institution that violated those rights in the first place.

#### IV. PROPOSALS FOR REFORM

In order to address the concerns outlined in Part III, the federal government must take action. Because of the Supreme Court's failure to grasp the connections between antidiscrimination principles (as articulated in Part I) and the economic costs of gender violence (as documented in Part II),<sup>92</sup> it must

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90. Survivor Survey, *supra* note 62; *see also Dear Colleague Letter*, *supra* note 22, at 16 (“[R]emedies for the complainant might include, but are not limited to: providing an escort . . . ; providing counseling services; providing medical services; and providing academic support services, such as tutoring.”); *Questions and Answers*, *supra* note 39, at 33 (“If a school determines that it needs to offer counseling to the complainant as part of its Title IX obligation to take steps to protect the complainant while the investigation is ongoing, it must not require the complainant to pay for this service.”).

91. *Voluntary Resolution Agreement*, No. 01-10-2089, Tufts U. 15-16 (Apr. 17, 2014), <http://www2.ed.gov/documents/press-releases/tufts-university-agreement.pdf> [<http://perma.cc/3AWE-ULLZ>].

92. *See United States v. Morrison*, 529 U.S. 598, 613, 627 (2000) (invalidating the section of the Violence Against Women Act of 1994 that afforded survivors of gender violence the right to

fall to the other two branches of government—the Executive (through OCR) and Congress—to level the playing field for students of all genders and ensure that Title IX’s equality mandate is achieved.

*A. Update OCR Case Processing Manual*

Central to the operationalization of OCR’s mission is its Case Processing Manual (CPM). The CPM informs OCR staff on how to conduct investigations and resolve complaints to ensure schools’ compliance with Title IX.<sup>93</sup>

Currently, victims’ rights attorneys report inconsistencies among OCR investigators and regional offices in terms of the quality of investigations and the extent of remedies, including reimbursement, secured in voluntary resolution agreements.<sup>94</sup> These inconsistencies may be explained, in part, by the absence in OCR’s CPM of any specific guidance for OCR staff on securing reimbursement for counseling and other university-related expenses in resolution agreements.<sup>95</sup> OCR should train its investigators to recognize the various costs that complainants suffer and should update the CPM to ensure responsiveness to these realities. Specifically, OCR should provide explicit direction in the CPM on the kinds of remedies OCR staff should secure, as appropriate, from institutions, including reimbursement for university-related expenses such as counseling, medical treatment, tuition, academic course withdrawal fees, books, housing, transportation, meals, student debt accrued during time off, and scholarships lost because of poor grades due to trauma and lack of accommodations.<sup>96</sup>

OCR’s frequent practice of instructing a noncompliant university to conduct a review of past complaints—rather than explicitly requiring the university to provide specific remedies in individual cases—inappropriately

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sue their perpetrators in federal court, arguing that “[g]ender-motivated crimes of violence are not, in any sense of the phrase, economic activity”).

93. OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF EDUC., CASE PROCESSING MANUAL 2 (2015), <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf> [<http://perma.cc/N5ET-GP58>] [hereinafter CASE PROCESSING MANUAL].

94. Telephone Interview with Colby Bruno, *supra* note 77; Telephone Interview with Fatima Goss Graves, Senior Vice-President, Nat’l Women’s Law Ctr. (May 12, 2015).

95. CASE PROCESSING MANUAL, *supra* note 93, at 18–24.

96. OCR may wish to draw upon and expand the kinds of financial costs of discrimination that the EEOC enumerates for victims in the workplace. See ENFORCEMENT GUIDANCE, *supra* note 46 (listing pecuniary losses including, for example, “moving expenses, job search expenses, medical expenses, psychiatric expenses, physical therapy expenses, and other quantifiable out-of-pocket expenses”).

leaves determination of remedies to the discretion of the very institution that violated survivors' rights in the first place. OCR should thus add to its CPM a recommendation that its staff review past complaints during an investigation and articulate specific remedies—including reimbursement—the university must provide to individual survivors in order to come into compliance with Title IX.

During its investigations, OCR reviews documentation of a school's past sexual harassment complaints, conducts onsite campus visits,<sup>97</sup> holds open office hours for students to discuss their experiences,<sup>98</sup> and conducts one-on-one interviews with students.<sup>99</sup> As a result of these efforts, OCR finds violations against individual students beyond those survivors specifically cited in the complaint.<sup>100</sup> However, OCR has failed to explicitly require specific remedies, including reimbursement, for these students to address and remedy the hostile environment they endure.<sup>101</sup>

In order to fulfill its mission to remedy both individual discrimination as well as systemic discrimination,<sup>102</sup> OCR should require remedies, including reimbursement, where appropriate, to survivors not cited in the complaint. OCR should be proactive in identifying survivors who may require remedies, including reimbursement, by expanding its student outreach activities. For

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97. CASE PROCESSING MANUAL, *supra* note 93, at 18 (“All investigative planning activities will address . . . [e]fficient resource use, including investigation methods used by recipients to track and evaluate their compliance with their legal responsibilities (e.g., climate surveys and other self-assessment tools), individual interviews, onsite visits, use of surveys, where appropriate, to obtain information from a large number of witnesses (e.g., teachers, administrators, students).”).

98. *See, e.g.*, Sekar Krisnauli, *Open Office Hours for Title IX Investigation Begin*, DAILY FREE PRESS (Apr. 23, 2015), <http://dailyfreepress.com/2015/04/23/open-office-hours-for-title-ix-investigation-begin> [perma.cc/4NCV-MCK8]; *see also* Rick Fitzgerald, *Office for Civil Rights To Host Sessions on Sexual Misconduct*, U. REC. (Apr. 4, 2014), <https://record.umich.edu/articles/office-civil-rights-host-sessions-sexual-misconduct> [http://perma.cc/VE8W-KJUY].

99. CASE PROCESSING MANUAL, *supra* note 93, at 18.

100. *See, e.g.*, Letter of Findings from Office for Civil Rights to Princeton Univ., *supra* note 85, at 19; Letter of Findings from Office for Civil Rights to S. Methodist Univ., *supra* note 88, at 21.

101. Again, due to an only partially answered FOIA request, *see supra* note 80 and accompanying text, I have only reviewed the *publicly* available voluntary resolution agreements (those from fiscal year 2008 through August 25, 2015).

102. CASE PROCESSING MANUAL, *supra* note 93, at 21; *see also* Cannon v. Univ. of Chi., 441 U.S. 677, 704 (1979) (noting that the statutory purposes of Title IX, which is patterned after Title VI, are to “avoid the use of federal resources to support discriminatory practices” in education programs, and “to provide individual citizens effective protection against those practices.”).

instance, it should conduct multiple, well-publicized site visits at least once per semester<sup>103</sup> throughout the investigation period and at six-month intervals during any postagreement monitoring period.<sup>104</sup> Similarly, it should conduct individual, private interviews with any survivors identified through these site visits and through OCR's case file reviews to learn about the counseling and other university-related expenses that they have incurred. OCR should also conduct regular two-month check-ins during the investigation to identify any additional or ongoing expenses the survivors incurred.

OCR's CPM states that OCR investigators must determine whether it is appropriate to obtain interim relief for the complainant(s) during the course of the investigation, and, if so, requires that OCR contact the university as early as possible to secure such relief (including while the OCR investigation is ongoing).<sup>105</sup> OCR should similarly require its investigators to seek to secure interim remedies, including reimbursement for emergency services, during the investigation for any noncomplainant survivors identified through the investigation process. For instance, OCR might require a high school to secure transportation to a new school district for a student survivor as an interim remedy, or it might require a university to provide a college victim emergency short-term off-campus housing for the victim's safety.

A clearer, more specific CPM and additional training for OCR staff would help ensure that the agency consistently and comprehensively implements its policy and, accordingly, that student survivors receive the support and protections to which they are legally entitled.

#### *B. Conduct Outreach and Educational Efforts*

In order to fulfill its mission of protecting equality in education, OCR is responsible for disseminating guidance to schools about their Title IX

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103. This timetable would help ensure that the agency hears from as many student survivors as possible (including those who withdraw for a semester, study abroad, or simply require time to process their experience before coming forward to federal investigators), while not unreasonably burdening severely limited OCR staff capacity.

104. Given the standard nine-month length of a college year, postagreement monitoring site visits on a six-month interval would guarantee that students are invited to interact with OCR officials at least once per school year. This timetable would help ensure that OCR officials gain an accurate understanding both of progress and continuing violations from students on the ground, without unreasonably burdening severely limited OCR staff capacity.

105. CASE PROCESSING MANUAL, *supra* note 93, at 18.

obligations<sup>106</sup> and providing technical assistance to ensure the successful realization of those obligations.<sup>107</sup> But the key existing guidance upon which schools rely does not clearly discuss the remedies, aside from counseling, that schools should provide for free. Moreover, recent student activism has made clear that many schools do not provide students the remedies and protections to which they are entitled under Title IX.<sup>108</sup> Further, when students are unaware of their rights, they are unable to insist on the vindication of those rights.<sup>109</sup>

OCR should circulate additional guidance to Title IX coordinators to explicitly clarify schools' financial obligations and should provide proactive technical assistance to schools, including on-site and telephone consultations, training classes, and conference sponsorship and participation, to ensure they know how to comply. In addition, OCR should proactively educate students about their rights to receive services and accommodations, at no personal cost, in the aftermath of violence through a rights-based awareness campaign for students and parents at the elementary, secondary, and postsecondary levels. OCR should utilize existing channels, such as social networking sites, the

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106. OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., FREQUENTLY ASKED QUESTIONS ABOUT SEXUAL HARASSMENT, INCLUDING SEXUAL VIOLENCE (2015), <http://www2.ed.gov/about/offices/list/ocr/qa-sexharass.html> [<https://perma.cc/CRY5-YV6P>] (“In addition to resolving complaints by students and their parents, OCR takes steps to inform schools of their obligation to provide a nondiscriminatory environment. On January 19, 2001, OCR issued policy guidance that explained the legal principles requiring educational institutions that receive federal funds to take steps reasonably calculated to stop harassment when it occurs and prevent recurrence. On January 25, 2006, OCR also issued a ‘Dear Colleague’ letter reminding recipients of the standards applicable to OCR’s enforcement of compliance in cases raising sexual harassment issues. On April 4, 2011, OCR issued a ‘Dear Colleague’ letter on schools’ obligations to protect students from sexual harassment and sexual violence.”).

107. *Id.* (“OCR’s field offices also engage in a variety of technical assistance activities in collaboration with state and local education and law enforcement agencies to encourage educational institutions to improve their anti-harassment policies and procedures and to assist students and their parents to work with schools to enhance the schools’ anti-harassment capability.”).

108. See Dana Bolger & Alexandra Brodsky, *Sexual Assault Survivor Activists Launch ‘Know Your IX’ Campaign*, HUFFINGTON POST (Apr. 18, 2013, 5:10 PM), [http://www.huffingtonpost.com/dana-bolger/sexual-assault-survivor-a\\_b\\_3104714.html](http://www.huffingtonpost.com/dana-bolger/sexual-assault-survivor-a_b_3104714.html) [<http://perma.cc/6NWY-DXGE>]; see also Richard Pérez-Peña, *College Groups Connect To Fight Sexual Assault*, N.Y. TIMES (Mar. 19, 2013), <http://www.nytimes.com/2013/03/20/education/activists-at-colleges-network-to-fight-sexual-assault.html>, [<https://perma.cc/TA3S-Fs36>].

109. Bolger & Brodsky, *supra* note 108.

White House's "It's On Us" campaign,<sup>110</sup> and NotAlone.gov,<sup>111</sup> to distribute this information to students and their families.

*C. Encourage Granting of Discretionary Forbearance to Victims of Gender Violence<sup>112</sup>*

When students are enrolled at university, they receive an in-school deferment for all federal direct student loans; however, when a student withdraws from school for more than six months—as many survivors do—this grace period typically ends and the student is obligated to begin repaying loans. Pursuant to agency regulations, the Secretary of Education encourages lenders to grant a forbearance if the borrower intends to repay the loan but “due to poor health or other acceptable reasons” is currently unable.<sup>113</sup> Because sexual violence is linked to a number of negative health impacts, including depression, anxiety, drug and alcohol abuse, and PTSD, the Department of Education should clarify that gender violence qualifies a borrower under the “poor health” justification, thereby encouraging lenders to grant forbearance to student survivors.

*D. Additional Avenues for Reform*

OCR is not the only actor that can improve student survivors' ability to bear the costs associated with abuse. In the wake of the Supreme Court's decision not to recognize gender-based financial harms as discrimination,<sup>114</sup> the task of protecting equality in education also falls to Congress.

First, Congress should increase the repayment grace period for survivors with federal student loans. Specifically, Congress should modify the Higher Education Act to grant an automatic deferment to students involved in pending

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110. IT'S ON US, <http://itsonus.org> [<https://perma.cc/9KJ5-FJLD>] (promoting the White House's sexual assault awareness campaign).

111. NOT ALONE, <https://www.notalone.gov> [<https://perma.cc/D2BQ-K7MK>] (providing, in partnership with the White House, information to students and schools on how to prevent and respond to sexual assault in schools).

112. See Memorandum from Alyssa Peterson (Jan. 2016) (on file with author).

113. 34 C.F.R. § 682.211(a)(1) (2016).

114. See *United States v. Morrison*, 529 U.S. 598, 613 (2000) (invalidating the section of the Violence Against Women Act of 1994 that afforded survivors of gender violence the right to sue their perpetrators in federal court, arguing that “[g]ender-motivated crimes of violence are not, in any sense of the phrase, economic activity”).

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## GENDER VIOLENCE COSTS

OCR investigations,<sup>115</sup> in order to avoid financially penalizing students for suffering violence and needing to take time off from their educations as a result.

Second, Congress should mandate that institutions of higher education conduct and publish the results of annual climate surveys that measure the financial and academic impacts of gender violence on survivors. On a national level, data gleaned from campus climate surveys would bolster the limited existing data on the academic and financial impacts of gender violence on students' educational experiences. Campus-specific information would assist individual colleges and universities in recognizing gaps and deficiencies in survivor support services long before an OCR investigation.

## CONCLUSION

More than four decades since its passage, Title IX's promise of educational equity remains unfulfilled for too many survivors of gender violence. Accounts of victims who move off campus, transfer schools, delay their educations, or drop out of university entirely, serve as powerful reminders that—so long as unaddressed gender violence remains a fact of life for women in school—equality in education cannot exist.

Financial harms of gender violence are central to the enduring educational barriers women and other students face. These harms are both a product of campus sex discrimination and, when left unremedied, a form of discrimination themselves. Unabated, these economic costs represent discriminatory, gender-based financial penalties to (primarily) women students. These costs can be directly financial or may lead to diminished employment opportunities in the future. Notably, these kinds of harms are analogous to those recognized and remedied under Title VII in the employment context—and alleviating them is at the very heart of antidiscrimination principles: if we hope to guarantee gender equity in employment or in education, our laws must be understood to allow for recovery of costs attributable to discrimination.

If schools consistently provided victims like Wanjuki with the reasonable remedies and accommodations (or compensation for such) to which they are legally entitled under Title IX, we would no doubt see fewer survivors drop out of school, forego critical mental healthcare, or land hundreds of thousands of dollars in debt. Victims would write senior theses and graduate with honors,

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<sup>115</sup>. Note that, should OCR ultimately find that no discrimination has occurred, the student should then be obligated to repay the deferred interest.

rather than hide in their dorm rooms or withdraw from school. Gender violence would no longer cost students their educations or their futures.