December 17, 2015

Dear Senator Baldwin:

We are writing to express our appreciation for your taking the time on December 4th to visit with the University of Wisconsin System Task Force on Sexual Violence & Harassment. For over a year, the Task Force has engaged in efforts to advance institutional awareness of, to respond to, and to prevent sexual violence and harassment at our UW System campuses. We are gratified that you take these important issues as seriously as we do.

As we indicated during that meeting, we are providing you a summary of the areas we addressed.

1. Challenges associated with interpretations and enforcement of Title IX process

Members of the Task Force expressed concerns about the way in which the U.S. Department of Education ("DoED") has arrived at its interpretations of Title IX. Instead of going through the rule-making process, DoED has issued sub-regulatory guidance (it refers to it as "significant guidance") in the forms of Dear Colleague Letters and Questions and Answers. This is problematic on several fronts, not the least of which is that the guidance was never subject to scrutiny by interested stakeholder groups, nor was there an opportunity for DoED to benefit from the input of those groups, including professionals who practice in this area. Moreover, these interpretations do not have the status as law, yet they are being enforced by the Office for Civil Rights ("OCR") as if they are law during OCR's investigations and enforcement actions. This failure by DoED to work through the proper rulemaking process has left higher education administrators, attorneys, victims, and accused persons with a great deal of uncertainty and confusion about what is legally required and what is recommended as good practice.

DoED should adopt regulations to enforce Title IX as it applies to sexual violence at schools and on campuses. Such regulations should go through a robust development process that includes, as required, the normal agency rule-making procedures which will allow stakeholder groups valuable opportunities to comment.
2. **Expectations concerning law enforcement**

Related to the first point, Task Force members discussed the concern that DoED has issued confusing and conflicting guidance on its expectations for institutions of higher education regarding law enforcement. First, it was suggested that DoED has promoted a model where institutional processes are more aligned with a criminal justice model regarding both the hearing process and the expectations for training investigators and hearing panels or examiners. While some aspects of this are sound, critical differences between education and law enforcement—in mission, goals, resources, and otherwise—argue for separate and distinct approaches. Second, DoED interpretation and the proposed Campus Safety and Accountability Act ("CASA") have advanced the concept that institutions should have Memorandums of Understanding (MOUs) with local law enforcement concerning investigating, information-sharing, and other areas related to Title IX. While this is a worthy objective we understand, particularly from the law enforcement community that there are many challenges surrounding this expectation that have not been fully vetted with stakeholder groups.

In addition, there is a concern that compliance with the reporting requirements of laws such as Clery, Violence Against Women's Act, and the DoED's interpretation of Title IX, has resulted in the diversion of limited resources from areas traditionally within the responsibility of colleges and universities—including education about safety and prevention of sexual violence and the provision of resources for survivors—into creation of reports for which there is little evidence that these reports achieve their desired result.

Stakeholder groups should be invited to share information with legislators and DoED to describe the contours of both the educational and law enforcement processes to better define proposals for cooperation between agencies. Research should be supported to help understand whether reports produced under Clery and related laws contribute to campus safety. Educational priorities and limited resources should be taken into account when new compliance expectation are proposed.

3. **Engaging the broader community**

Task Force members suggested that while recognizing that institutions of higher education have a critical role to play in raising awareness about sexual violence and preventing and responding to such incidents, this role occurs in the broader societal context. The White House Task Force’s slogan of “It’s on us” cannot be a call only to those in the higher education community but also to schools, community organizations, faith organizations, and others to work together to address this broad societal problem. In particular, we believe that attitudes about sexual violence and harassment are shaped long before students join the higher education community, and much of our effort is then directed toward changing those attitudes. Efforts in creating and maintaining an anti-violence culture will only be effective in the long run through cooperation.

We applaud the attention that issues of sexual violence and harassment have been receiving at the federal level and all the work you and your staff have done to advance this
agenda. We look forward to continuing to work with you in furtherance of supporting survivors of sexual violence and harassment and to improving prevention and response efforts on college and university campuses.

Sincerely,

[Signature]

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cc: Ray Cross, President
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Members of the UW System Task Force on Sexual Violence and Harassment