



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY
FOIA Service Center

February 3, 2023

Mr. Austin R. Evers
Executive Director
American Oversight
1030 15th Street
Suite B255
Washington, DC 20002

RE: FOIA Request No. 20-00436-F

Dear Austin R. Evers:

This letter is a final response to your request for information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, dated November 25, 2019, and received in this office on November 26, 2019. Your request was forwarded to the following offices to search for documents that may be responsive to your request: Office of the General Counsel (OGC), Office of the Under Secretary (OUS), Office of the Secretary (OS) and Office for Civil Rights (OCR).

You requested:

1. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, G Chat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (a) the Education officials listed below and (b) anyone using a who.eop.gov email address relating to position papers or communications from Jerry Falwell Jr., his representatives, or other officers, employees, or representatives of Liberty University (including but not limited to anyone with an email address ending in liberty.edu).
 - a. Secretary Betsy DeVos
 - b. Chief of Staff Nate Bailey
 - c. Former Acting Under Secretary and Senior Advisor James Manning
 - d. Deputy Secretary Mitchell Zais
 - e. Principal Deputy Under Secretary Diane Auer Jones
 - f. Assistant Secretary, Office for Civil Rights, Kenneth Marcus
 - g. Deputy Assistant Secretary for Strategic Operations and Outreach, Office for Civil Rights, Candice Jackson
 - h. Former Deputy Assistant Secretary for Higher Education Adam Kissel
 - i. Executive Director, Center for Faith and Opportunity Initiatives, Andrea Ramirez
 - j. White House Liaison, or any individual serving in this capacity
 - k. Anyone communicating on behalf of any of the above officials, such as an administrative assistant or scheduler

2. All position papers, policy or regulatory analyses, or other recommendations received by Education prepared, sent, or distributed by Jerry Falwell Jr., his representatives, or other officers, employees, or representatives of Liberty University.

Please provide all responsive records from April 30, 2018, through the date the search is conducted.

An interim dated January 29, 2021, was sent to you containing 17 pages of documents responsive to your request. Available for Public Access Link (PAL) download are 40 pages of documents responsive to your request. The documents provided are:

➤ FY 20 – OS Responsive Records.

You can access your PAL account at this link: <https://foiaexpress.pal.ed.gov/app/PalLogin.aspx>

However, certain information has been withheld according to FOIA exemption (b)(6), specified below:

- Records or portions of records relating to personal information is exempt pursuant to 5 U.S.C. §552 (b)(6) of the FOIA. Disclosure of this information would constitute a clearly unwarranted invasion of personal privacy.

Provisions of the FOIA allow us to recover the costs pertaining to your request. The Department has concluded that you fall within the category of News Media. The Department has provided you with this information at no charge, as you were granted a fee waiver. The Department's release of this information at no cost does not infer or imply that you will be granted a fee waiver for future requests made under FOIA to the Department.

You have the right to seek assistance and/or dispute resolution services from the Department's FOIA Public Liaison or the Office of Government Information Services (OGIS). The FOIA Public Liaison is responsible, among other duties, for assisting in the resolution of FOIA disputes. OGIS, which is outside the Department of Education, offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to appeals or litigation. They can be contacted by:

Mail	FOIA Public Liaison Office of the Secretary U.S. Department of Education 400 Maryland Ave., SW, LBJ 7C132 Washington, DC 20202-4500	Office of Government Information Services National Archives and Records Administration 8601 Adelphi Road Room 2510 College Park, MD 20740-6001
E-mail	robert.wehausen@ed.gov	OGIS@nara.gov
Phone	202-205-0733	301-837-1996; toll free at 1-877-684-6448
Fax	202-401-0920	301-837-0348

You have the right to appeal this decision by writing to the address below, 90 calendar days from the date of this letter. Using the services described above does not affect your right or the deadline to file an appeal. Your appeal must be in writing and must include detailed statement of all legal and factual bases for the appeal; it should be accompanied by this letter, a copy of your initial letter of request, and any documentation that serves as evidence or supports the argument you wish the Department to consider in making an administrative determination on your appeal.

Appeals may be submitted using the on-line form available at
www.ed.gov/policy/gen/leg/foia/foia-appeal-form.pdf.

E-mail: EDFOIAappeals@ed.gov
Fax: 202-401-0920
Mail: Appeals Office
Office of the Secretary
U.S. Department of Education
400 Maryland Avenue, SW, LBJ 7W106A
Washington, DC 20202-4536

Sincerely,

DeShawn Middleton
DeShawn Middleton
Government Information Specialist
Office of the Secretary

Hurt, Robert (Center for Law & Government)

From: Hurt, Robert (Center for Law & Government)
Sent: Tuesday, July 3, 2018 2:48 PM
To: Newman, Jessica
Cc: Simmons, Lee (Dougie); Delahunty, Sarah
Subject: RE: Thank You Again

Got it. Thanks – will mark up for November. Robt.

From: Newman, Jessica <Jessica.Newman@ed.gov>
Sent: Tuesday, July 3, 2018 2:35 PM
To: Hurt, Robert (Center for Law & Government) <rhurt1@liberty.edu>
Cc: Simmons, Lee (Dougie) <LeeD.Simmons@ed.gov>; Delahunty, Sarah <Sarah.Delahunty@ed.gov>
Subject: RE: Thank You Again

Thanks Robert! It would be better if we waited until later this year to look at 2019 dates. Feel free to follow up with us in November!

Thanks,
Jessica

From: Hurt, Robert (Center for Law & Government) [<mailto:rhurt1@liberty.edu>]
Sent: Tuesday, July 03, 2018 11:31 AM
To: Newman, Jessica
Subject: FW: Thank You Again

Jessica – once again we are delighted that Secretary DeVos is willing to consider a visit to Liberty in the Spring. I communicated this to our Convocation team, and they were wondering if we could go ahead and look at dates from mid-January to mid-April on a Wednesday or Friday? I understand if you all would prefer to wait, but I just wanted to ask. Thanks again for your help. Robt. (b)(6)

From: Hurt, Robert (Center for Law & Government)
Sent: Thursday, June 21, 2018 5:17 PM
To: Simmons, Lee (Dougie) <LeeD.Simmons@ed.gov>
Cc: Newman, Jessica <Jessica.Newman@ed.gov>; DeVos, Betsy <Betsy.DeVos@ed.gov>; Manalo, Alvin <Alvin.Manalo@ed.gov>; Delahunty, Sarah <Sarah.Delahunty@ed.gov>
Subject: RE: Thank You Again

Jessica – I got your message this afternoon. Many thanks to Secretary DeVos and to you and your team for considering our request to visit Liberty in the fall. We totally understand the demands of the Secretary's schedule and we will follow up later in the year to discuss the possibility of having her visit in the spring. It would be honor to have her visit us. Thank you. Robt (b)(6)

From: Hurt, Robert (Center for Law & Government)
Sent: Tuesday, June 12, 2018 12:27 PM
To: Simmons, Lee (Dougie) <LeeD.Simmons@ed.gov>
Cc: Newman, Jessica <Jessica.Newman@ed.gov>; DeVos, Betsy <Betsy.DeVos@ed.gov>; Manalo, Alvin <Alvin.Manalo@ed.gov>; Delahunty, Sarah <Sarah.Delahunty@ed.gov>

Subject: RE: Thank You Again

Dougie and Jessica – Thank you so much for your quick response. Let us know if you have any questions. We would really love to make this work. Robt (b)(6)

From: Simmons, Lee (Dogie) <LeeD.Simmons@ed.gov>

Sent: Friday, June 8, 2018 6:00 PM

To: Hurt, Robert (Center for Law & Government) <rhurt1@liberty.edu>

Cc: Newman, Jessica <Jessica.Newman@ed.gov>; DeVos, Betsy <Betsy.DeVos@ed.gov>; Manalo, Alvin <Alvin.Manalo@ed.gov>; Delahunty, Sarah <Sarah.Delahunty@ed.gov>

Subject: RE: Thank You Again

Hi Robert! Good to hear from you.

We will put this into our scheduling process and circle back with you!

CCing Jessica Newman as well who is our Director of Scheduling.

Best –

Dogie

From: Hurt, Robert (Center for Law & Government) [<mailto:rhurt1@liberty.edu>]

Sent: Friday, June 08, 2018 2:26 PM

To: Simmons, Lee (Dogie)

Subject: Thank You Again

Dogie:

Robert Hurt here from Liberty University. I hope you are well. I want to thank you again for your tremendous assistance in getting Secretary DeVos to the Library of Congress in April to visit with us while we were in Washington. It was the highlight of our trip of course, and we are so thankful for all of the great work she and your team are doing in higher education. We are grateful for this new direction that benefits our students and our country.

At the tremendous risk of wearing out our welcome, we wanted to see if there might be a possibility of having the Secretary visit Liberty University here in Lynchburg. Specifically we would be interested in seeing whether she would be willing to be a part of our Convocation series – which is weekly meeting of all 12,000 Liberty students that is televised all over the world. We would be eager to accommodate her schedule and eager to entertain any format or program that would be the most appealing to her. Here is link that gives you an idea of the types of guests we have had in the past: <http://mediaarchive.liberty.edu/mediapage/0&page=0>. Just this past semester we had Chair Virginia Foxx, Senator James Lankford, Harris Faulkner, Secretary Ben Carson, and President Jimmy Carter.

Please let me know if this might work and we can talk about how to get it done. Best wishes and thank you very much for considering our request.

Robert Hurt

Center for Law & Government

Liberty University

(b)(6)

Hurt, Robert (Center for Law & Government)

From: Hurt, Robert (Center for Law & Government)
Sent: Tuesday, October 2, 2018 10:38 AM
To: Newman, Jessica; Paciorek, Sarah; Walker, Kathryn
Cc: Simmons, Lee (Dougie)
Subject: RE: Liberty University Breakfast - Library of Congress - Wed October 10

Jessica – Thank you so much for checking to see if there is some way for the Secretary to join us for a few minutes next week at the Library of Congress. It would be a great honor. I just wanted to circle back to see if this might be possible. I know that Frank Brogan will be joining us. Please let me know what we can do to accommodate her. Many thanks. Robt (b)(6)

From: Newman, Jessica <Jessica.Newman@ed.gov>
Sent: Friday, September 14, 2018 12:16 PM
To: Hurt, Robert (Center for Law & Government) <rhurt1@liberty.edu>; Paciorek, Sarah <Sarah.Paciorek@ed.gov>; Walker, Kathryn <Kathryn.Walker@ed.gov>
Cc: Simmons, Lee (Dougie) <LeeD.Simmons@ed.gov>
Subject: RE: Liberty University Breakfast - Library of Congress - Wed October 10

Thank you Robert! We will take a look at circle back later next week when we know more.

Thanks,
Jessica

From: Hurt, Robert (Center for Law & Government) [<mailto:rhurt1@liberty.edu>]
Sent: Friday, September 14, 2018 11:32 AM
To: Newman, Jessica; Paciorek, Sarah; Walker, Kathryn
Cc: Simmons, Lee (Dougie)
Subject: FW: Liberty University Breakfast - Library of Congress - Wed October 10

Jessica and Sarah and Kathryn: I am Robert Hurt with the Center for Law & Government at Liberty University and I wanted to make sure that Secretary DeVos received this invitation. We would love to have her and your staff join us. Thanks for your consideration, and we look forward to following up. Robert Hurt. (b)(6)

From: Hurt, Robert (Center for Law & Government)
Sent: Friday, September 14, 2018 11:19 AM
To: DeVos, Betsy <Betsy.DeVos@ed.gov>; DeVos@ed.gov
Cc: Simmons, Lee (Dougie) <LeeD.Simmons@ed.gov>; josh.venable@ed.gov
Subject: Liberty University Breakfast - Library of Congress - Wed October 10

Dear Secretary DeVos:

First let me say how much we appreciate the fact that you and other leaders from the Department of Education joined us for breakfast earlier in the spring to visit about higher education policy. We are grateful for the time that you all gave us and for your leadership at this critical juncture in the future of American education policy.

With that in mind, we are excited to be headed to Washington in the fall and would like to invite you and your

staff to join us for a breakfast reception that we are hosting to honor the Department of Education leadership along with the leadership on the Senate and House Education committees on **Wednesday, October 10, 2018 between 8:30 am and 10:00 in the Member's Room at the Library of Congress.**

The purpose of the breakfast is for Liberty University to show our appreciation for the service of the Department and Congressional education committee leadership. We do not plan on any formal program, but instead would like to offer the opportunity to meet key Liberty University leaders and to learn more about what Liberty University is doing in training the next generation of leaders through our various programs that include medicine, law, business, athletics, and humanitarian mission work. We also hope it will open the door to looking for more ways to work together on issues facing higher education in America.

As the date approaches, please let us know whether it appears that you all might be able to stop by for a few minutes and whether we might be able to welcome others from your office to join us. We know how valuable your time is and appreciate your consideration of our invitation.

Thank so much, and please feel free to reach me at (b)(6) with any questions.

Thank you for your service, and we hope you will be able to join us.

Robert Hurt
Center for Law & Government
Liberty University

(b)(6)

Hurt, Robert (Center for Law & Government)

From: Hurt, Robert (Center for Law & Government)
Sent: Thursday, March 14, 2019 3:01 PM
To: DeVos, Betsy; DeVos@ed.gov
Cc: Paciorek, Sarah; Newman, Jessica
Subject: Liberty University Breakfast - Tuesday April 2 - Library of Congress

Dear Secretary DeVos:

First let me say how much we appreciate the fact that you and other leaders from the Department of Education joined us for breakfast last year to visit about higher education policy. We are grateful for the time that you all gave us and for your leadership at this critical juncture in the future of American education policy.

With that in mind, we are excited to be headed to Washington again in the spring and would like to invite you and your staff to join us for a breakfast reception that we are hosting to honor the Department of Education leadership along with the leadership on the Senate and House Education committees on **Tuesday, April 2, 2019 between 8:30 am and 10:00 at the Library of Congress in the Member's Room.**

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As the date approaches, please let us know whether it appears that you all might be able to stop by for a few minutes and whether we might be able to welcome others from your office to join us. We know how valuable your time is and appreciate your consideration of our invitation.

Thank so much, and please feel free to reach me at (b)(6) with any questions.

Thank you for your service, and we hope you will be able to join us.

Robert Hurt
Center for Law & Government
Liberty University

(b)(6)

Hurt, Robert (Center for Law & Government)

From: Hurt, Robert (Center for Law & Government)
Sent: Friday, March 15, 2019 11:25 AM
To: Zais, Mitchell
Subject: Liberty University Breakfast - Tuesday April 2 - Library of Congress

Dear Dr. Zais:

First let me say how much we appreciate the fact that Secretary DeVos and other leaders from the Department of Education joined us for breakfast last year to visit about higher education policy. We are grateful for the time that you all gave us and for your leadership at this critical juncture in the future of American education policy.

With that in mind, we are excited to be headed to Washington again this spring and would like to invite you to join us for a breakfast reception that we are hosting to honor the Department of Education leadership along with the leadership on the Senate and House Education committees on **Tuesday, April 2, 2019 between 8:30 am and 10:00 at the Library of Congress in the Member's Room.**

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As the date approaches, please let us know whether it appears that you all might be able to stop by for a few minutes and whether we might be able to welcome others from your office to join us. We know how valuable your time is and appreciate your consideration of our invitation.

Thank so much, and please feel free to reach me at (b)(6) with any questions.

Thank you for your service, and we hope you will be able to join us.

Robert Hurt
Center for Law & Government
Liberty University

(b)(6)

Hurt, Robert (Center for Law & Government)

From: Hurt, Robert (Center for Law & Government)
Sent: Thursday, March 28, 2019 4:24 PM
To: Newman, Jessica
Cc: Paciorek, Sarah; DeVos, Betsy; Neumann, Kara
Subject: RE: Liberty University Breakfast - Tuesday April 2 - Library of Congress

Hello Jessica - I just wanted to circle back to see if there was any chance that the Secretary might be able to join us for breakfast for a few minutes next week. It would be a great honor to have her again. Many thanks for your consideration. Robert Hurt. (b)(6)

From: Hurt, Robert (Center for Law & Government)
Sent: Tuesday, March 19, 2019 12:27 PM
To: 'Newman, Jessica' <Jessica.Newman@ed.gov>
Cc: Paciorek, Sarah <Sarah.Paciorek@ed.gov>; DeVos, Betsy <Betsy.DeVos@ed.gov>; Neumann, Kara <Kara.Neumann@ed.gov>
Subject: RE: Liberty University Breakfast - Tuesday April 2 - Library of Congress

Jessica – Thanks so much. We look forward to connecting at your convenience. Robt. (b)(6)

From: Newman, Jessica <Jessica.Newman@ed.gov>
Sent: Tuesday, March 19, 2019 12:19 PM
To: Hurt, Robert (Center for Law & Government) <rhurt1@liberty.edu>
Cc: Paciorek, Sarah <Sarah.Paciorek@ed.gov>; DeVos, Betsy <Betsy.DeVos@ed.gov>; Neumann, Kara <Kara.Neumann@ed.gov>
Subject: RE: Liberty University Breakfast - Tuesday April 2 - Library of Congress

Hi Robert! We are still reviewing this invitation – hope to be back to you later this week or early next week!
Thanks,
Jessica

From: Hurt, Robert (Center for Law & Government) [mailto:rhurt1@liberty.edu]
Sent: Tuesday, March 19, 2019 12:17 PM
To: DeVos, Betsy
Cc: Paciorek, Sarah; Newman, Jessica
Subject: RE: Liberty University Breakfast - Tuesday April 2 - Library of Congress

Sarah and Jessica and Edgar – Just wanted to circle back and see if you thought this might be a possibility. Many thanks for your consideration. Robert Hurt. (b)(6)

From: Hurt, Robert (Center for Law & Government)
Sent: Thursday, March 14, 2019 3:01 PM
To: 'DeVos, Betsy' <Betsy.DeVos@ed.gov>; 'DeVos@ed.gov' <DeVos@ed.gov>
Cc: Paciorek, Sarah <Sarah.Paciorek@ed.gov>; 'Newman, Jessica' <Jessica.Newman@ed.gov>
Subject: Liberty University Breakfast - Tuesday April 2 - Library of Congress

Dear Secretary DeVos:

First let me say how much we appreciate the fact that you and other leaders from the Department of Education joined us for breakfast last year to visit about higher education policy. We are grateful for the time that you all gave us and for your leadership at this critical juncture in the future of American education policy.

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As the date approaches, please let us know whether it appears that you all might be able to stop by for a few minutes and whether we might be able to welcome others from your office to join us. We know how valuable your time is and appreciate your consideration of our invitation.

Thank so much, and please feel free to reach me at (b)(6) with any questions.

Thank you for your service, and we hope you will be able to join us.

Robert Hurt
Center for Law & Government
Liberty University

(b)(6)

Hurt, Robert (Center for Law & Government)

From: Hurt, Robert (Center for Law & Government)
Sent: Tuesday, April 2, 2019 11:25 AM
To: Letsch, Andrew; Zais, Mitchell
Subject: Re: Liberty University Breakfast - Tuesday April 2 - Library of Congress

Dr. Zais and Andrew - It was an honor to be with you this morning at the Library of Congress. Thank you so much for joining us and for your service to our country. We hope that you will be able to visit Liberty in the near future. If I may ever be of service to you please let me know. Best wishes. Robert Hurt. (b)(6)

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From: Hurt, Robert (Center for Law & Government) <rhurt1@liberty.edu>
Sent: Monday, March 18, 2019 3:29 PM
To: Letsch, Andrew
Subject: RE: Liberty University Breakfast - Tuesday April 2 - Library of Congress

Andrew – thank you for your reply. This is excellent news and we will look forward to seeing you and the Deputy Secretary on April 2. Because of everyone’s busy schedules, we have found that a rolling breakfast reception is the easiest for the most people. Therefore, we would invite you and the Deputy Secretary to join us at any time during that time period and to stay as long as your schedule permits. Of course, we would love to have you join us for the entire time of that is possible. Many thanks. And feel free to contact me on my cellphone if you have any questions. Robert Hurt (b)(6)

From: Letsch, Andrew <Andrew.Letsch@ed.gov>
Sent: Monday, March 18, 2019 2:50 PM
To: Hurt, Robert (Center for Law & Government) <rhurt1@liberty.edu>
Subject: RE: Liberty University Breakfast - Tuesday April 2 - Library of Congress

Robert –

Good afternoon! By way of introduction, I serve as the Deputy’s executive assistant. Thank you so much for your invitation to attend the Liberty University Breakfast. The Deputy Secretary is delighted to attend the event on Tuesday, April 2nd. He has asked that I join him as well.

If you have any more details on when we should arrive/depart, please share them at your earliest convenience. I noticed that the breakfast lasts for an hour and a half, but you have offered for us to drop by. I’m curious if other leaders will be there for the full event, or if they come and go in that timeframe.

Thank you in advance, and we look forward to meeting with you in the future.

Respectfully,
Andrew

Andrew Letsch

Office of the Deputy Secretary
United States Department of Education
400 Maryland Avenue, SW | Washington, DC 20202
O: 202-453-7414
E: andrew.letsch@ed.gov

From: Hurt, Robert (Center for Law & Government) [<mailto:rhurt1@liberty.edu>]
Sent: Friday, March 15, 2019 11:25 AM
To: Zais, Mitchell
Subject: Liberty University Breakfast - Tuesday April 2 - Library of Congress

Dear Dr. Zais:

First let me say how much we appreciate the fact that Secretary DeVos and other leaders from the Department of Education joined us for breakfast last year to visit about higher education policy. We are grateful for the time that you all gave us and for your leadership at this critical juncture in the future of American education policy.

With that in mind, we are excited to be headed to Washington again this spring and would like to invite you to join us for a breakfast reception that we are hosting to honor the Department of Education leadership along with the leadership on the Senate and House Education committees on **Tuesday, April 2, 2019 between 8:30 am and 10:00 at the Library of Congress in the Member's Room.**

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As the date approaches, please let us know whether it appears that you all might be able to stop by for a few minutes and whether we might be able to welcome others from your office to join us. We know how valuable

your time is and appreciate your consideration of our invitation.

Thank so much, and please feel free to reach me at (b)(6) with any questions.

Thank you for your service, and we hope you will be able to join us.

Robert Hurt

Center for Law & Government

Liberty University

(b)(6)

Hurt, Robert (Center for Law & Government)

From: Hurt, Robert (Center for Law & Government)
Sent: Friday, April 5, 2019 11:31 AM
To: Zais, Mitchell; Letsch, Andrew
Subject: FW: Washington Symposium

FYI – thanks again.

From: Bible, Mitzi O (Marketing Department, News Office) <mobible@liberty.edu>
Sent: Friday, April 5, 2019 10:46 AM
To: Hurt, Robert (Center for Law & Government) <rhurt1@liberty.edu>; Swann, Edie <emswann@liberty.edu>
Cc: Stevens, Len J (Marketing Department, News Office) <ljestevens@liberty.edu>
Subject: Washington Symposium

Link: [Students engage with policymakers at Washington Symposium](#)

Mitzi Bible
Senior Managing Editor
External Communications & Liberty Journal

(b)(6)

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Craig, Kenny

From: Craig, Kenny
Sent: Monday, April 8, 2019 10:06 AM
To: Zais, Mitchell
Subject: Thank you!

Deputy Secretary Zais,

Thank you so much for attending our breakfast on April 2nd. It was an honor to have you in attendance. I was so appreciate of how you made an effort to speak to many Liberty staff members. Many of them have shared this appreciation with me. We're thankful for the leadership you provide to the Department of Education and we look forward to working with you in the future on important issues!

Respectfully,

Kenny

Kenneth Craig
Director of Government Relations
Office of Government Relations

(b)(6)



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Reich, Ashley Ann (Student Financial Services)

From: Reich, Ashley Ann (Student Financial Services)
Sent: Monday, April 15, 2019 9:49 AM
To: Zais, Mitchell
Cc: Brown, Mark; Johnson, Wayne; Talbert, Kent; Minor, Robin
Subject: RE: Thank You | Liberty Legislative Breakfast

Dr. Zais:

Thank you for your reply. I am happy to discuss these particular details with your team as they are important to our institution and other institutions across the country.

Sincerely,

Ashley Ann Reich, M.A., Ed.S.
Vice President of Student Financial Services
VASFAA Secretary 2018-19
Student Financial Services

(b)(6)



Liberty University | Training Champions for Christ since 1971

From: Letsch, Andrew <Andrew.Letsch@ed.gov> **On Behalf Of** Zais, Mitchell
Sent: Friday, April 12, 2019 2:30 PM
To: Reich, Ashley Ann (Student Financial Services) <ahageman@liberty.edu>; Zais, Mitchell <Mitchell.Zais@ed.gov>
Cc: Brown, Mark <Mark.Brown@ed.gov>; Johnson, Wayne <Wayne.Johnson@ed.gov>; Talbert, Kent <Kent.Talbert@ed.gov>; Minor, Robin <Robin.Minor@ed.gov>
Subject: RE: Thank You | Liberty Legislative Breakfast

Ashley:

It was a pleasure talking to you at the Liberty University breakfast.

Thank you for the Issues Paper on student financial aid. I read it carefully. It contains many worthwhile points. Some of these issues we are working on.

For example, we are working with Congress to allow more effective transfer of data from the IRS to the Department of Education, to simplify FAFSA, to reduce the number of loan repayment options, etc.

I'm cc'ing the Chief Operations Officer so he might consider your perspectives and recommendations.

Mick

Andrew Letsch on behalf of Deputy Secretary Mick Zais

Office of the Deputy Secretary

United States Department of Education

400 Maryland Avenue, SW | Washington, DC 20202

From: Reich, Ashley Ann (Student Financial Services) [<mailto:ahageman@liberty.edu>]

Sent: Tuesday, April 09, 2019 3:19 PM

To: Zais, Mitchell

Subject: Thank You | Liberty Legislative Breakfast

Dr. Zais:

I wanted to formally thank you for taking time out of your busy schedule to attend the Legislative Breakfast that Liberty hosted last week at the Library of Congress. I enjoyed being able to speak with you on the policy positions that are important to our institution and our students. Your knowledge and expertise in the area of higher education was admired by many from Liberty and those in attendance that morning and I am grateful you could join us.

We would welcome any opportunity to be involved in either providing continual feedback on important issues as well as being a part of any implementation process where our expertise would be requested.

Thank you again. We will stay in touch.

Ashley Ann Reich, M.A., Ed.S.

Vice President of Student Financial Services

VASFSA Secretary 2018-19

Student Financial Services

UNIV 101 Adjunct Instructor

College of General Studies

(b)(6)



Liberty University | Training Champions for Christ since 1971

LIBERTY UNIVERSITY

STUDENT FINANCIAL SERVICES

Liberty University Detailed Issues Paper April 2019

Contact Information:

Mrs. Ashley Ann Reich
Vice President of Student Financial Services
Liberty University
Email | aareich@liberty.edu
Phone | (b)(6)

Mr. Kenneth Craig
Director of Government Relations
Liberty University
Email | kbcraig@liberty.edu
Phone | (b)(6)

FAFSA Skip Logic Process

The proposal to reduce the number of questions on the FAFSA is supported; however, we remain cautious as to ensure we remain good stewards of taxpayer resources. As you are most likely aware, the FAFSA utilizes a process called 'skip logic' to ensure efficiency and a more customized experience to the student or parent during the filing process. In the majority of cases, this significantly reduces the number of questions that a student/parent needs to answer and therefore, they would not have to answer all 100 + questions. For example, if the gender question is answered as 'female', skip logic will remove the question related to Selective Service. Additionally, if a student answers 'yes' to being a dependent, five questions are automatically skipped as marital status, children, and other similar questions do not apply in this case. This process has been enhanced over the years to speed up the time to complete and reduce unnecessary barriers for the student.

FAFSA Completion Time

The amount of time to complete the FAFSA has been reduced significantly and is reviewed annually to determine how to cut down on time to complete. Most students are able to complete the FAFSA in under 30 minutes, per the U.S. Department of Education. One of the greatest enhancements and contributors to the reduction of time in the FAFSA completion process was the addition of the IRS Data Retrieval Tool (DRT). Unfortunately, the tool has historically been unreliable, especially during critical processing periods, and does not allow for all situations or tax return types to

be transferred automatically to the FAFSA. From March 2017 through October 2017, the IRS DRT was disabled due to a security breach. As a result, the IRS tightened up the process and required that data be masked when transferred over to the FAFSA. This has created confusion for students as they were not able to see the data being transferred. The IRS DRT is a tool that, on the surface, is beneficial and we would strongly encourage additional support from the IRS to ensure it remains fully operational throughout the entire FAFSA filing cycle. When the IRS DRT is not available, the burden is further increased on families because they must provide tax return transcripts or signed copies of their filed tax return when selected for the Verification process. For our student population, we saw a noticeable decrease in the usage of the IRS DRT due to the multiple and prolonged downtimes that overlapped between the 2016-17 and 2017-18 award years. For 2016-17, 64% of our students utilized the DRT; however, in 2017-18, only 28% of our students utilized the DRT. For 2017-18, the IRS DRT was only available for five months and, once enabled, it was only available for students filing the 2018-19 FAFSA. With the FAFSA mobile app now being an option for students in most cases, it has been noted that the IRS and Federal Student Aid are confident there will be fewer security concerns; however, this still calls into question the longevity of the IRS and U.S. Department of Education partnership if there are additional security issues. The removal of this tool long-term would be detrimental to the FAFSA filing and Verification process.

IRS Data Retrieval Tool Filing Statuses

Currently, the IRS DRT does not allow for the filing statuses of Head of Household, Married Filing Separately, Single (Unmarried and Both Legal Parents Living Together), and Foreign Tax Returns. Liberty University would support an initiative between the IRS and Federal Student Aid that would allow for a process to combine two tax returns for those situations where a student or spouse/parent are filing separately or other filing combination for a variety of reasons. These filing statuses have proved to be problematic for students and parents in these situations because they have to provide additional documentation due to their ineligibility for the DRT. As a result, this prolongs the FAFSA filing process as well as the Verification process. If the DRT is able to be expanded to include the remaining tax filing types, this should result in fewer students being selected for Verification due to the accuracy of the data being directly transferred from the IRS and, in turn, reducing the administrative burden for institutions and frustration by students. With the many technological enhancements in the world today, it seems fitting for this type of project to be at the forefront of the Department to ensure unnecessary entry barriers into college are removed, institutions are able to devote additional resources to forward-facing student functions, and that Title IV funds are being used equitably.

Confirmation of Non-filing

Liberty University also believes further consideration should be given to alleviate the need for students undergoing verification to validate that they did not file a tax return for the year in question. This requirement was introduced in the 2017-18 award year and the Department of Education has yet to demonstrate that this requirement is saving tax payer funds by altering aid eligibility for applicants who incorrectly reported their filing status as “did or will not file.” The IRS already maintains a comprehensive database of the tax return filing status for most Americans and we would like to see this leveraged to reduce the burden on FAFSA applicants. A solution to allow filers to use the IRS DRT to verify non-filing was discussed during the 2016 FSA Conference and was later abandoned, but this seems like another area where technological advancements are possible. At Liberty University, we have seen firsthand the student impact and frustration that these types of requests create. The combination of the IRS DRT outage and news of the confirmation of non-filing requirement resulted in a full 10 day increase in the average time to completion between the 2016-17 and 2017-18 aid years for students selected for verification.

Income Based Repayment Plans

Liberty University supports the recommendations to reduce the number of repayment plans from nine to two. Currently, there are multiple options for repayment plans that can and do provide confusion on the part of the student borrower, thus making it difficult to choose and maintain the selected plan on an annual basis. Liberty University is supportive of the proposal to allow for the monthly loan payment to be taken directly out of the student’s paycheck. In our opinion, this would increase the repayment rates since it would be a deduction similar to healthcare costs that the student may pay at their place of employment. It provides for an “out of sight, out of mind” approach to repaying their student loans and, again, could provide for positive results by keeping a student out of delinquency and/or default status and would assist institutions with keeping a lower default rate over time. Additionally, we would recommend revisiting the required annual certification process to maintain the income-based loan repayment option. Currently, a student must provide documentation to assist their servicer(s) in determining their continued eligibility for income-based loan repayment. Liberty would recommend that this particular process be connected to the IRS database where income filing information could be transferred to the annual certification application as this data is already being used in other Title IV processes (e.g. the FAFSA). This simple change would increase efficiency on the part of the student verifying income and it would provide additional confidence on the part of the servicer(s) regarding the information transferred since it would be coming directly from the IRS. Increasing the connections between federal

student aid processes and IRS database information make sense, but also means the reliability of those connections will be even more critical in the future to be maintained.

Gainful Employment

Liberty University does not support the expansion of Gainful Employment (GE) regulations to all programs. Liberty has maintained the position to remove the gainful employment disclosure and reporting requirements altogether because the excessive and duplicative reporting is unnecessary. Both of these processes require an inordinate amount of administrative burden on behalf of the institution to report and maintain disclosures throughout the year. The current GE disclosures have yet to prove in making any quantifiable difference in the student program decision making process, which means it is yet another layer of unnecessary reporting. At the onset, the concept of the GE regulations provided students with the access to quality higher education. However, these regulations have been an administrative nightmare for schools and, even when implemented, provide only partial information that varies in scope by sector. On a personal note, I have been heavily involved in the task of ensuring our institution's GE disclosures are accurate and completed on time. The current disclosure template requires a program-by-program manual update and is overly burdensome for institutions. There are many technological enhancements being made at the Department level that could be explored to possibly provide a mass-upload option for these templates if GE requirements remain. This would at least create a timely and uniform process for institutions while still providing the students with the required disclosures. When the Department said it would provide a bulk upload tool to assist institutions (which was seen as a very positive and helpful step), the tool was provided almost two months later than published, had many technical issues and was, in short, not helpful. We do greatly appreciate the Department's delay on provisions which would have expanded the work on the GE disclosure process to require affirmative receipt from students, which would provide more administrative burden and more barriers to entry on students. We would like to see the Department use the tools currently at its disposal to keep "bad actor" schools in check instead of punishing good schools with good programs through more layers of reporting. Regardless, we strongly recommend a complete removal of these regulations going forward.

Risk Sharing

In President Trump's recent FY2020 budget proposal, he [proposed](#) cutting vital aid programs that go to the neediest of students that get at the ultimate goals of risk sharing that include completion, success, and loan repayment. President Trump proposed cutting the Federal Supplemental Educational Opportunity Grant (FSEOG)

program as well as reduce drastically the funding for the Federal Work Study (FWS) program. As an institution that takes part in both programs, we strongly advise against these programs being removed or drastically reduced and would not support the proposals for these programs in President Trump's budget. For the 2017-18 award year, Liberty University paid out over \$4.2 million to students eligible for the FWS program which equates to approximately 1,700 students. Liberty University paid out over \$4 million to over 5,800 students in FSEOG funding in the same award year. Liberty University saw a significant difference in student outcomes for those who took advantage of the FWS program. In data reviewed for the 2010 and 2011 cohorts¹, our institution saw that these students, on average, had .33 points higher on their overall GPA and graduation rates were 24% higher than non-FWS peers. If programs like FWS are significantly reduced, it is likely that we will see a decline in overall performance and completion rates of this population based on historical data. In addition, money that students are receiving from both FSEOG and FWS are able to be used in various ways to reduce their overall debt burden when they graduate. Lastly, FWS earnings are actually an additional advantage for students since FWS earnings do not increase the federal expected family contribution (EFC) on a subsequent FAFSA application. This better ensures that they remain need-based aid eligible, as opposed to other outside work options.

As noted in a recent NAICU report², 74% of all aid for students comes from a college's own resources at private, nonprofit colleges. Liberty University paid out over \$250 million in institutional aid for the 2017-18 award year. For the upcoming award year of 2019-20, Liberty University made a significant investment of \$17.8 million of their own funds to create a new need-based aid scholarship program, the Middle America Scholarship³, aimed at assisting middle class families that were primarily earning too much to receive significant federal government grant funding. Liberty University will be matching the difference between any Federal Pell Grant the student is eligible to receive and the Federal Pell Grant maximum, but is also expanding beyond the EFC maximum for Federal Pell Grant up to 18,000. This investment equates to approximately \$5,000 in additional need-based aid for eligible students. In addition, Liberty University has chosen to freeze tuition this year to assist in keeping costs low for students. This is the very definition of institutional skin-in-the-game.

Cohort Default Rate Measures

¹ Based on a 6-year cohort period

² NAICU. Federal Higher Education Issues *Where Independent, Private, Nonprofit Colleges and Universities Stand-February 2019*.

³ <https://www.liberty.edu/financeadmin/studentfinances/index.cfm?PID=40752>

The federal government needs to utilize already established metrics such as, cohort default rates (CDR), as leverage in holding institutions accountable for students not paying back their federal student loans. Liberty University has remained lower than the national average each year since the first time the official 3-year cohort default rate calculation was utilized in 2009. This particular measure provides a two-pronged accountability approach of the institution taking responsibility to review and challenge inaccurate data as well as understand the population of students that are entering repayment versus entering into a default status. The federal government also has a stake in this particular calculation as they are able to hold schools accountable for a sub-par default rate based on the established sanctions process that could ultimately strip an institution from Title IV eligibility.

In addition, there are other student outcome measures in place to assist with risk sharing such as, accreditation standards, gainful employment regulations, and simply the reputation of an institution, as affirmed by Mr. Robert Kelchen in his report, “Proposing a Federal-Risk Sharing Policy” (2015)⁴. Kelchen also noted a variety of State-based outcomes programs that had unintended consequences when risk-sharing policies were implemented, such as increasing shorter program enrollment for students through certificates to increase their completion metrics. While completing a program is certainly preferable, funneling students to shorter, less market and labor driven programs will not serve students or the various communities that they represent in the long run.

Additional Loan Counseling Flexibility

One solution that is able to be implemented quickly is the concept of allowing schools additional flexibility to require additional loan and/or financial literacy counseling, as needed. Since the federal student loan programs are considered entitlement programs, schools have been bound to requiring simply the minimum requirement of federal Entrance Counseling and the Master Promissory Note. Both of which many schools report that students do not read or simply comprehend and only complete as a checklist item to ensure they are able to receive federal loans. More specifically, “most counseling participants perceive the information as ‘theoretically important’ but ‘dispensable’ and ‘superfluous’” and worst yet, students have noted the information is “difficult to understand” and “only half found it easy to complete”⁵.

⁴ Kelchen, Robert. Lumina Foundation; “Proposing a Federal Risk-Sharing Policy”, 2015.
<https://www.luminafoundation.org/files/resources/proposing-a-federal-risk-sharing-policy.pdf>.

⁵ Schickel, Kyle. *Chalk Talks* – Financial Literacy Education: Simple Solutions to Mitigate a Major Crisis. *Journal of Law and Education*, Spring 2016l 45, 2.

Currently, schools who wish to require additional, better tailored loan counseling must apply the requirement to all students equally or risk losing access to Title IV aid. Liberty University implemented a free, self-paced, financial literacy course for students in 2013 and it has evolved utilizing various financial literacy materials since that time. We have seen success not only in our cohort default rate diminishing over time, but we have also seen our students become more educated about finances, budgeting, and how to become a proper citizen upon graduation. Since we serve a large adult population taking online courses, these students have been able to utilize the tools and resources from this course in their everyday lives since most are working, going to school, raising a family, purchasing houses, cars, and more. Allowing schools to require additional counseling prior to providing access to federal student loans would ensure that students are receiving the necessary education surrounding loan borrowing and loan repayment. We, as an institution, have an obligation to serve our students well and would appreciate the flexibility to do so.

Conclusion

In conclusion, Liberty University appreciates the continued opportunities to engage with key stakeholders on various crucial issues for our institution. We are hopeful for progress to be made on the Higher Education Act and look forward to any involvement that we are able to have in this process. The more requirements and additional layers of bureaucracy that are added to financial aid administrators, the more time this takes away from the educational component. Simplification is key in many areas of the financial aid process and the goal should be mutual in getting students to completion while saving time on the institutional end and being a good steward of taxpayer resources. We appreciate the ability to share our concerns and solutions and would welcome questions and feedback on any portion of this document.

<http://ezproxy.liberty.edu/login?url=https://search-proquest-com.ezproxy.liberty.edu/docview/1802195611?accountid=12085>.

Reich, Ashley Ann (Student Financial Services)

From: Reich, Ashley Ann (Student Financial Services)
Sent: Tuesday, May 21, 2019 7:45 AM
To: Zais, Mitchell; Letsch, Andrew; Mitchell, Noah
Subject: D.C. Visit | Liberty University

Andrew and Noah:

Good morning!

I wanted to reach out this morning to see if Dr. Zais and one (or both) of you would be available either Tuesday or Wednesday of next week for a quick chat about some of our policy positions at Liberty. We would specifically be interested in discussing the FAFSA simplification process, IRS enhancements, risk sharing, loan repayment options, and HEA reauthorization. We would welcome the opportunity to discuss these topics with you, if you have the availability. Right now, we would be available either after 3:30pm on Tuesday, May 28th or between 11:30am-3:30pm on Wednesday, May 29th. I have also reached out to Diane Jones to see what her availability might be for those dates as well.

I look forward to hearing from you.

Thank you,

Ashley Ann Reich, M.A., Ed.S.
Vice President of Student Financial Services
VASFAA Secretary 2018-19
Student Financial Services

(b)(6)



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Reich, Ashley Ann (Student Financial Services)

From: Reich, Ashley Ann (Student Financial Services)
Sent: Monday, July 8, 2019 8:37 AM
To: Mitchell, Noah
Cc: Zais, Mitchell
Subject: Liberty University Visit

Good morning, Noah!

I hope you had a wonderful 4th of July holiday. I wanted to touch base with you regarding Dr. Zais' schedule for this fall as he had requested to come to Liberty and speak in one of our convocation services. Would you be able to provide me with a few dates in September/October where he might be available to come for the day? We have convocation on Monday's, Wednesday's, and Friday's at 10:30am.

Additionally, we will want to have Dr. Zais stay for lunch so that we can have a few moments of his time to discuss more direct higher education policy issues/questions.

I look forward to hearing from you and feel free to reach out if there are additional questions.

Thank you,

Ashley Ann Reich, M.A., Ed.S.
Vice President
Student Financial Services

Direct

(b)(6)



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Hurt, Robert (Helms School of Government)

From: Hurt, Robert (Helms School of Government)
Sent: Wednesday, October 2, 2019 10:21 AM
To: DeVos, Betsy; DeVos@ed.gov
Cc: Newman, Jessica; Paciorek, Sarah; Neumann, Kara; McNabb, Theresa P
Subject: Liberty University Breakfast - Wed October 23 - Library of Congress

Dear Secretary DeVos:

Let me begin by saying how much we at Liberty University appreciate your strong leadership, as well as the fact that you and other leaders from the Department of Education have joined us in the past for our annual breakfast to discuss higher education policy at the Library of Congress.

Once again, we are delighted to be able to invite you and your staff to join us for a breakfast reception to honor the Department of Education leadership along with other Senate and House leaders on **Wednesday, October 23, 2019 between 8:30 am and 10:00 am in the Member's Room at the Library of Congress.**

As in the past, we do not plan on any sort of formal program, but instead would like to offer the opportunity to meet key Liberty University officials and to learn more about what we are doing to prepare the next generation of leaders. In addition to our senior leadership, we will also have the deans of our School of Law; School of Medicine; School of Business; School of Engineering; and School of Government on hand for the reception. We hope this breakfast will continue to open doors to finding more ways that we can support your efforts and work together on issues facing higher education in America.

As the date approaches, please let us know whether you and your team might be able to stop by for a few minutes for a visit. We know how valuable your time is and appreciate your consideration of our invitation.

Thank you again for your service to our nation, and please contact me if you have any questions. We hope you will be able to join us.

Robert Hurt
Center for Law & Government
Liberty University
(b)(6)

Hurt, Robert (Helms School of Government)

From: Hurt, Robert (Helms School of Government)
Sent: Wednesday, October 2, 2019 10:28 AM
To: Zais, Mitchell
Cc: Mitchell, Noah; McNabb, Theresa P
Subject: Liberty University Breakfast - Wed October 23 - Library of Congress

Dear Dr. Zais:

Let me begin by saying how much we at Liberty University are looking forward to your visit in November and thank you for your strong leadership during this critical time. In addition, we are grateful that you and other leaders from the Department of Education have joined us in the past for our annual breakfast to discuss higher education policy at the Library of Congress.

Once again, we are delighted to be able to invite you and your staff to join us for a breakfast reception to honor the Department of Education leadership along with other Senate and House leaders on **Wednesday, October 23, 2019 between 8:30 am and 10:00 am in the Member's Room at the Library of Congress.**

As in the past, we do not plan on any sort of formal program, but instead would like to offer the opportunity to meet key Liberty University officials and to learn more about what we are doing to prepare the next generation of leaders. In addition to our senior leadership, we will also have the deans of our School of Law; School of Medicine; School of Business; School of Engineering; and School of Government on hand for the reception. We hope this breakfast will continue to open doors to finding more ways that we can support your efforts and work together on issues facing higher education in America.

As the date approaches, please let us know whether you and your team might be able to stop by for a few minutes for a visit. We know how valuable your time is and appreciate your consideration of our invitation.

Thank you again for your service to our nation, and please contact me if you have any questions. We hope you will be able to join us.

Robert Hurt
Center for Law & Government
Liberty University

(b)(6)

Office of the President

From: Office of the President
Sent: Wednesday, October 9, 2019 3:24 PM
To: DeVos, Betsy
Cc: lauren.doney@mail.house.gov; ven.neralla@mail.house.gov
Subject: Liberty University Response to Claims of Congressmen Levin and Raskin
Attachments: Letter to Sec DeVos re Statement in Response to Claims of Congressmen on Free Speech at Liberty.pdf

Secretary DeVos,

Please see the attached letter from President Jerry Falwell.

Amanda Stanley
Executive Assistant
Office of the President

(b)(6)

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LIBERTY UNIVERSITY

OFFICE *of the* PRESIDENT

October 9, 2019

VIA EMAIL

Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202
betsy.devos@ed.gov

RE: Liberty University Response to Claims of Congressmen Levin and Raskin

Dear Secretary DeVos:

I have read the October 7, 2019, letter addressed to you and signed by Congressman Andy Levin and Jamie Raskin and write to note that it contains many false statements and erroneous conclusions. Specifically regarding Liberty University, it wrongly claims that Liberty University has acted in violation of the First Amendment, Title IX and Executive Order 13864. In doing so, its authors demonstrate a fundamental lack of understanding of the scope and purpose of all three.

First, as a private university, Liberty University simply cannot violate the First Amendment of its students because, as you know, the First Amendment is a limitation on the government's power to regulate private speech and association. So the behavioral limitations Liberty University places on students through its conduct code, such as prohibiting viewing pornography and sex outside of biblical marriage, are fully consistent with the proper role of a Christian institution of higher education in the US and are what both its students and their parents expect. The "censorship" wrongly claimed by the Congressmen was simply Liberty University exercising its editorial control over the Liberty Champion, the newspaper it owns, publishes and fully funds staff payroll. Even though most of that staff consist of student employees, it is not and has never been a "student newspaper." On one occasion prior to the 2016 election, Liberty limited its paper to one pro-Hillary Clinton piece in the October 25 issue, opting for the opinion page versus the sports page column. The sports editor's column that was passed over was set to run in the next issue but he quit instead. Indeed, it would be a violation of the First Amendment if the federal government were to act to force Liberty to print anything in its own newspaper or punish it for failing to print anything in its own newspaper. Sadly, that is just what the Congressmen invite you to attempt in their letter.

Second, to the extent Liberty University's code of conduct furthers its founding religious tenets, Congress wisely included a religious exemption in Title IX to protect the University's right to do so. As you are aware, this exemption is self-executing under the law, requiring no further action by Liberty University. So, again, the Congressmen are incorrect. Liberty's religiously-based rules do not violate Title IX.

Third, Liberty University has done nothing to violate the March 21, 2019, Executive Order regarding free speech on campus. The incidents cited by the Congressmen all predate the effective date of the Executive Order. Moreover, none of them would violate it had it been in effect. Liberty University has consistently complied with all its institutional policies regarding freedom of speech, including free inquiry.

Unlike most of its counterparts in the United States, Liberty University actually promotes free speech and free expression. Using its own resources, Liberty University invites conservatives and liberals, as well as Democrats, Republicans, Libertarians and Independents to its regular student Convocation forums and commencement ceremonies. Other institutions disinvite conservative commencement speakers when campus opposition forms, allow hecklers to prevent conservative voices from being heard, and force conservative student organizations to organize and fund any non-liberal speakers, sometimes forcing them to bear security costs, and then cite public safety as a reason to cancel those speaking events. While outside protesters are not generally permitted access to Liberty's campus to protest, students can and do readily obtain permission to protest. Faculty at Liberty have academic freedom, as well.

It is indeed a shame that two federal legislators can be so out of touch with the basic civics concerning the laws about which they wrote you. This is especially shameful with Congressman Raskin being the Vice Chair of the Judiciary Committee's Subcommittee on the Constitution, Civil Rights and Civil Liberties and Congressman Levin serving on the Education and the Workforce Committee. Even so, we understand if your Department must respond in some way to this openly politically motivated pressure and Liberty University will respond to any Department of Education inquiry concerning these matter to set the record straight.

Sincerely,



Jerry Falwell
President

cc: Rep. Jamie Raskin c/o Lauren Doney Deputy Chief of Staff - lauren.doney@mail.house.gov
Rep. Andy Levin c/o Ven Neralla, Chief of Staff - ven.neralla@mail.house.gov

Hurt, Robert (Helms School of Government)

From: Hurt, Robert (Helms School of Government)
Sent: Friday, October 18, 2019 10:14 AM
To: DeVos, Betsy; Newman, Jessica; Paciorek, Sarah; Neumann, Kara
Cc: McNabb, Theresa P
Subject: Liberty University Breakfast - Wed October 23 - Library of Congress

Jessica and Sarah and Kara and Tracy:

I just wanted to circle back with you all to see if there was any chance that the Secretary might be able to join us for our breakfast reception next week at the Library of Congress. It was an honor to have her join us last year and it would be an honor to be able to visit with her for a few minutes next week. Thank you for considering our request. Best wishes. Robert Hurt (b)(6)

From: Hurt, Robert (Helms School of Government)
Sent: Thursday, October 3, 2019 1:27 PM
To: DeVos, Betsy <Betsy.DeVos@ed.gov>
Cc: McNabb, Theresa P <tpmcnabb@liberty.edu>
Subject: RE: [External] RE: Liberty University Breakfast - Wed October 23 - Library of Congress

Tracy – Many thanks for your quick response and for considering our request. It would be a great honor to have the Secretary join us, and we look forward to being back in touch. Robt.

From: Catoe, Tracy <Tracy.Catoe@ed.gov> **On Behalf Of** DeVos, Betsy
Sent: Wednesday, October 2, 2019 11:42 AM
To: Hurt, Robert (Helms School of Government) <rhurt1@liberty.edu>
Subject: [External] RE: Liberty University Breakfast - Wed October 23 - Library of Congress

[EXTERNAL EMAIL: Do not click any links or open attachments unless you know the sender and trust the content.]

Dear Mr. Hurt:

Thank you for your e-mail to Secretary of Education Betsy DeVos. Your invitation has been forwarded to the Secretary's scheduling staff for review. The staff there will evaluate your request and be in touch if there are any questions.

If you have any questions regarding the status of your request, the scheduling staff can be reached at 202-401-3043.

Sincerely,

T. Tracy Catoe (Ms.)
Deputy Director of Correspondence
Office of the Secretary
Washington, DC 20202

From: Hurt, Robert (Helms School of Government) <rhurt1@liberty.edu>
Sent: Wednesday, October 2, 2019 10:21 AM
To: DeVos, Betsy <Betsy.DeVos@ed.gov>; DeVos@ed.gov
Cc: Newman, Jessica <Jessica.Newman@ed.gov>; Paciorek, Sarah <Sarah.Paciorek@ed.gov>; Neumann, Kara <Kara.Neumann@ed.gov>; McNabb, Theresa P <tpmcnabb@liberty.edu>
Subject: Liberty University Breakfast - Wed October 23 - Library of Congress

Dear Secretary DeVos:

Let me begin by saying how much we at Liberty University appreciate your strong leadership, as well as the fact that you and other leaders from the Department of Education have joined us in the past for our annual breakfast to discuss higher education policy at the Library of Congress.

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As the date approaches, please let us know whether you and your team might be able to stop by for a few minutes for a visit. We know how valuable your time is and appreciate your consideration of our invitation.

Thank you again for your service to our nation, and please contact me if you have any questions. We hope you will be able to join us.

Robert Hurt
Center for Law & Government
Liberty University

(b)(6)



LIBERTY UNIVERSITY

OFFICE *of the* PRESIDENT

January 24, 2019

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202

VIA ELECTRONIC SUBMISSION

RE: Docket ID ED-2018-OCR-0064; Public Comment on Proposed Title IX Regulations

Dear Secretary DeVos:

Liberty University welcomes the opportunity to comment on the Department of Education's proposed amendments to the regulations implementing Title IX of the Education Amendments of 1972. As promised in your September 2017 remarks, the Secretary's proposal demonstrates your commitment to hear from "those who walk side-by-side with students every day." We also share your perspective that colleges and universities currently lack clear legal obligations. Despite the requirements of the Administrative Procedure Act, prior administrations have deprived stakeholders the benefit of the rulemaking process by promulgating sweeping changes to Title IX through a series of guidance documents without modifying Title IX's implementing regulations. We applaud you and the Department for bringing an end to the "era of 'rule by letter,'" and believe the majority of the Department's proposal will improve Title IX for institutions and students.

However, § 106.45(b)(3)(vii) is an unprecedented expansion of campus due process rights that would undermine the entirety of the Department's proposal by turning university "classrooms into courtrooms"¹ and essentially federalize the process every institution must provide to students and employees without regard to the hundreds of different models for fact finding and disciplinary determinations that have been demonstrated to be both effective and nondiscriminatory. Congress enacted Title IX in order to "prevent recipients of federal financial assistance from using the funds in a discriminatory manner."² The majority of the Department's proposal is consistent with Congress's intent, comports with Supreme Court precedent, better reflects the realities of operating an institution of higher education, and provides important procedural safeguards for students and other participants. Mandating costly adversarial hearings in every sexual harassment proceeding

¹ *Murkowski v. Univ. of Del.*, 575 F. Supp. 2d 571, 585-86 (D. Del. 2008) ("[N]either a full-scale adversarial proceeding similar to those afforded criminal defendants, nor an investigation, which would withstand such a proceeding, is required to meet due process. A university's primary purpose is to educate students: '[a] school is an academic institution, not a courtroom or administrative hearing room.' A formalized hearing process would divert both resources and attention from a university's main calling, that is education. Although a university must treat students fairly, it is not required to convert its classrooms into courtrooms.").

² *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 292 (1998).

is a departure from these achievements and would likely dissuade complainants from coming forward, limiting the ability of campus administrators to foster a safe and inclusive learning environment. We strongly urge the Department to withdraw or substantively revise § 106.45(b)(3)(vii) prior to enacting its proposal.

1. General Comments

We support the Department's goal of enacting regulations that "protect all students from sex discrimination" through grievance procedures "that provide a predictable, consistent, impartial process."³ As others have observed, after the Department published its April 2011 guidance, many "colleges overcorrected their sexual assault policies by adopting policies that shirk the legally mandated due process rights of students accused of misconduct and effectively presume their guilt."⁴ The Department likewise recognizes that prior guidance "pressured schools and colleges to forgo robust due process protections," as well as obligating schools to police "too wide a range of misconduct," which included "consensual, noncriminal sexual activity."⁵

Any reform by the Department should also balance the competing interests of law enforcement and university officials.⁶ Colleges and universities have an obligation to their campus communities to respond to and resolve allegations of sexual assault. At the same time, justice for victims of sexual assault is the primary function and responsibility of the criminal justice system. Just as prior reforms resulted in overcorrection, the Department should not react to a lack of due process by setting a trajectory for Title IX that results in the creation of a competing quasi-judicial system on college campuses throughout the country. If enacted, the Department's regulations will effect approximately twenty-million college students.⁷ Institutions need not create and operate trial court systems in order to prevent sex discrimination from blocking student access to federally supported higher education programs. A smaller and less prescriptive approach is all that is required—one that recognizes that there is a criminal justice system with all its due process for those who seek to access an adversarial system for their day in court. We further encourage the Department to seek input from law enforcement officers and prosecutors on how its proposal will impact their ability to administer justice. The proposed regulations could be strengthened with the addition of clear statements about the distinct roles of public law enforcement, prosecutors and criminal courts versus the education institutions that are recipients of federal funds, how they do and do not intersect, as well as how and when they are permitted to work together.

³ 83 Fed. Reg. 61,465.

⁴ Blair Baker, *When Campus Sexual Misconduct Policies Violate Due Process Rights*, 26 CORNELL J. L. & PUB. POL'Y 533, 535 (2017).

⁵ 83 Fed. Reg. 61,464.

⁶ See, e.g., Jake New, *Making Title IX Work*, INSIDE HIGHER ED, (July 6, 2015), <https://www.insidehighered.com/news/2015/07/06/college-law-enforcement-administrators-hear-approach-make-title-ix-more-effective>; Jed Rubenfeld, Opinion, *Mishandling Rape*, N.Y. TIMES (Nov. 15, 2014), <https://www.nytimes.com/2014/11/16/opinion/sunday/mishandling-rape.html>; *ABA Criminal Justice Section Task Force on College Due Process Rights and Victim Protections: Recommendations for Colleges and Universities in Resolving Allegations of Campus Sexual Misconduct*, AM. BAR ASS'N 2 (June 2017), <https://www.americanbar.org/content/dam/aba/publications/criminaljustice/2017/ABA-Due-Process-Task-Force-Recommendations-and-Report.authcheckdam.pdf>.

⁷ *Fast Facts Back to School Statistics*, NATIONAL CENTER FOR EDUCATION AND STATISTICS, <https://nces.ed.gov/fastfacts/display.asp?id=372> (Last accessed Jan. 16, 2019).

In regards to directed question #4, Liberty University does not object to requiring recipients to ensure that the necessary administrators receive training on all aspects of its institution's response to sexual harassment. In regards to directed question #8, Liberty University does not object to the requirement that institutions retain such records for three years.

2. Grievance Procedures for Formal Complaints of Sexual Harassment

Courts have consistently refrained from imposing the formalities of the judicial system on educational institutions and the Department should not use its regulatory authority to do so now. Because of the Department's express desire to adhere to Supreme Court precedent, it should apply the guiding principles of *Goss v. Lopez*, "the only Supreme Court case to address (non-academic) discipline in the educational context."⁸ In *Goss*, the Supreme Court held that due process did not require "truncated trial-type procedures" in a school disciplinary process and reasoned that "formalizing the suspension process and escalating its formality and adversary nature may not only make it too costly as a regular disciplinary tool, but also destroy its effectiveness as part of the teaching process."⁹ Using the same rationale, federal appellate courts have almost unanimously reached the same conclusion: due process does not require educational institutions to employ the formalities of trial, or full-scale adversarial proceedings in disciplinary proceedings.¹⁰ Liberty University strongly urges the Department to revise § 106.45(b)(3)(vii) accordingly, granting colleges and universities the flexibility to craft disciplinary procedures that afford appropriate measures of due process, and reflect the scope and purpose of Title IX.

Unfortunately, Section 106.45(b)(3)(vii) does not grant universities "flexibility to employ age-appropriate methods, exercise common sense and good judgment, and take into account the needs of the parties involved" as the Department suggests in its proposal.¹¹ If enacted, colleges and universities must provide, in all circumstances, live hearings with the opportunity to cross-examine parties and witnesses, conducted by a trained advisor; if any of the parties do not have a trained

⁸ Naomi Mann, *Taming Title IX Tensions*, 20 U. PA. J. CONST. L. 631, 649 (2018).

⁹ *Goss v. Lopez*, 419 U.S. 565, 583 (1975).

¹⁰ See *Doe v. Univ. of Cincinnati*, 872 F.3d 393, 399-400 (6th Cir. 2017) ("Thus, UC is not required to 'transform its classrooms into courtrooms' in pursuit of a more reliable disciplinary outcome."); *Osei v. Temple Univ.*, 518 F. App'x 86, 89 (3d Cir. 2013) ("[T]he school did not have to abide by the same evidentiary standards as one would in a courtroom."); *Osteen v. Henley*, 13 F.3d 221, 225 (7th Cir. 1993) ("To recognize such a right would force student disciplinary proceedings into the mold of adversary litigation."); *Gorman v. University of Rhode Island*, 837 F.2d 7, 16 (1st Cir. 1988) ("Hence, on review, the courts ought not to extol form over substance, and impose on educational institutions all the procedural requirements of a common law criminal trial."); *Nash v. Auburn Univ.*, 812 F.2d 655, 664 (11th Cir. 1987) ("[R]ights in the academic disciplinary process are not co-extensive with the rights of litigants in a civil trial or with those of defendants in a criminal trial."); *Winnick v. Manning*, 460 F.2d 545, 549 (2d Cir. 1972); *Dixon v. Ala. State Bd. of Educ.*, 294 F.2d 150, 159 (5th Cir. 1961) ("This is not to imply that a full-dress judicial hearing, with the right to cross-examine witnesses, is required."); *Powell v. Mont. State Univ.*, No. CV 17-15-BU-SEH, 2018 U.S. Dist. LEXIS 215891, at *17 (D. Mont. Dec. 21, 2018) ("Although the Ninth Circuit has not yet adopted the Sixth Circuit's requirements, it has expressed its view that a charge resulting in a disciplinary suspension of a student 'may require more formal procedures' to satisfy components of our system of constitutional due process."); *Doe v. Rector & Visitors of George Mason Univ.*, 149 F. Supp. 3d 602, 615 (E.D. Va. 2016) ("Specifically, the Fourth Circuit has embraced the Fifth Circuit's decision in *Dixon* . . . observing that *Dixon*'s 'summary of minimum due process requirements for disciplinary hearings in an academic setting is still accurate today.'").

¹¹ 83 Fed. Reg. 61,468.

advisor, one must be provided for them; and, decision-makers may not rely on any statements from parties or witnesses who do not submit to cross-examination. Parties must also have the option to participate in the proceedings from separate rooms, with technology that facilitates simultaneous viewing and hearing of the proceedings. This would require the scheduling of one high-stakes hearing where all parties, trained advisors, witnesses, and decision makers must be able to participate simultaneously, ensuring a process that is more difficult to conclude in a reasonably timely fashion. It would also require institutions to pay for a pool of trained advisors, many of whom will be expensive trial lawyers that institutions will feel compelled to provide to be certain they are not second-guessed on the sufficiency of training required to participate in an adversarial proceeding.¹² Compounding the additional expense would be the added cost of procuring, maintaining and operating the audio-visual technology mandated by the proposed rule. Additionally, the rule would require victims to make the Hobson's choice of being re-victimized by a trial lawyer's cross examination or not be cross-examined and thereby rendered mute because the decision maker can no longer utilize the commonsense alternative of simply factoring in the victim's level of participation in the assessment of witness credibility—all the victim's statements must be completely disregarded. This proposed change regarding cross examination is problematic for all institutions, regardless of size and resources available.

If one due process factor should drive regulatory action in Title IX, it must be context. Due process “is flexible and calls for such procedural protections as the particular situation demands.”¹³ Regulatory reform by the Department must recognize that colleges and universities are “in the business of education, not judicial administration.”¹⁴ The “adjudication of student disputes” is not their primary function,¹⁵ and stringent due process requirements “might be detrimental to the college's educational atmosphere.”¹⁶ Due process requires that procedural safeguards be “tailored, in light of the decision to be made.”¹⁷

Relying on a recent Sixth Circuit decision, the Department states that “cross-examination is not just a wise policy, but is a Constitutional requirement of Due Process.”¹⁸ In its decision, the Sixth Circuit concluded that “if credibility is in dispute and material to the outcome, due process requires cross-examination.”¹⁹ The dissent in *Baum* correctly points out that “the majority cites no case that would support its expansion of Doe's cross-examination rights beyond” their prior holding that Constitutional due process only required a limited form of cross-examination.²⁰ More importantly, the majority in *Baum* did not apply “the *Eldridge* balancing factors.”²¹ The Dissent rightly observes that “this expansion, in the absence of a focused and caselaw-supported analysis, leaves many questions unanswered.”²²

¹² Some commentators on the proposed rule suggest that the Department should also require professional hearing officers to conduct these adversarial hearings. That would be unnecessary and further escalate the cost of compliance. Such suggestions should be rejected.

¹³ *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

¹⁴ *Flaim v. Med. Coll. of Ohio*, 418 F.3d 629, 640 (6th Cir. 2005).

¹⁵ *Doe v. Univ. of Cincinnati*, 872 F.3d 393, 400 (6th Cir. 2017).

¹⁶ *Dixon v. Ala. State Bd. of Educ.*, 294 F.2d 150, 159 (5th Cir. 1961).

¹⁷ *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976).

¹⁸ 83 Fed. Reg. 61,476.

¹⁹ *Doe v. Baum*, 903 F.3d 575, 584 (6th Cir. 2018).

²⁰ *Id.* at 589 (Gilman, J., dissenting).

²¹ *Id.*

²² *Id.*

The Department's reliance on *Baum* is misplaced, and overlooks basic tenets of Supreme Court precedent in both *Goss* and *Eldridge*. *Baum* is a novel opinion and a minority view amongst the federal appellate courts. Although cross-examination may be the "greatest legal engine ever invented for the discovery of truth," it is the least effective method for ensuring equal and safe access to education under Title IX. The Second Circuit in *Winnick v. Manning* held that "the right to cross-examine witnesses generally has not been considered an essential requirement of due process in school disciplinary proceedings."²³ In fact, prior to *Baum*, "no federal appellate court [] held that there is an affirmative right to adversarial cross-examination in the educational context."²⁴

Moreover, even if the Constitution did require cross examination for due process to be achieved, which it does not, it would only require it of government-operated public institutions. There is no Constitutional due process required of private institutions.²⁵ Only the contractual due process of faithfully following an institution's own policies could be required of private institutions. That further undermines the Department's reliance on *Baum* as authority for a single federal standard of adversarial cross examination for all institutions, both public and private.

Lastly, the proposed rule concludes that due process can only be achieved through an adversarial trial process. This is a terribly misinformed and narrow view, betraying a bias in favor of common law traditions. It ignores that many cultures historically and currently rely upon the due process of the inquisitorial system to achieve justice. Countries and states that rely upon the civil legal system employ this non-adversarial process to find facts and determine sanctions. Instead of pitting the parties against each other to offer competing versions of truth, the decision maker is vested with the duty of uncovering the facts, both incriminating and exculpatory facts, in an active and participatory way, including determining whether there is a basis to initiate an inquiry, conducting an investigation, asking the parties and witnesses questions, and allowing the parties to present evidence and make suggestions on how to conduct the investigation. Many institutions use variations of the inquisitorial system, often called "investigator" models, to fairly adjudicate Title IX disputes. These models have published procedures and rules to ensure notice and opportunities to be heard, object and present evidence, are fair and even-handed to all parties and witnesses, are not dependent upon one high-stakes hearing, are less traumatic to participants, do not require parties to be equipped with trained advisors to do battle with each other, do not necessarily include live cross-examination by the parties, are less expensive, and can be concluded more timely than the adversarial hearing processes. Most organizations use an investigative model to conclude internal investigations and, whether the single investigator or double investigator or investigative panel method is used, it can effectively incorporate benefits of cross examination (albeit less formally than the adversarial procedures proposed by the Department) without the intimidation of the complainant that is sure to deter victims from reporting.

²³ *Winnick v. Manning*, 460 F.2d 545, 549 (2d Cir. 1972).

²⁴ Mann, *supra* note 8, at 658.

²⁵ WILLIAM A. KAPLIN AND BARBARA A. LEE, *The Law of Higher Education* § 10.2.3 (5th ed. 2013) ("Private institutions, not being subject to federal constitutional constraints, have even more latitude than public institutions do in promulgating disciplinary rules.").

In the name of assuring due process, the Department should not force institutions to abandon all use of an inquisitorial model for deciding Title IX matters in favor of employing an adversarial system that is foreign to their ethos and, more importantly, their good experience using non-adversarial models that are consistent with the requirements for due process. Instead, the Department should simply require processes that are fair, impartial, thorough, and appropriate for the educational environment. There is room for prescribing certain hallmarks of due process, such as adequate notice and opportunity to be heard, without prescribing scores of procedural standards and steps for all institutions to follow, from large to small, from public to private, and from residential to commuter to online.²⁶

3. Assurance of Religious Exemption

Liberty University strongly supports the Department's proposed revision of § 106.12(b), which states unequivocally that religious institutions are not "required to seek assurance from the Assistant Secretary in order to assert" their religious exemption. This would clearly allow religious institutions to simply assert their exemption during the course of an investigation by the Department. The Department notes that this revision "brings the regulatory language into alignment with longstanding Department practice."²⁷ However, we encourage the Department to further revise § 106.12, in order to eliminate another longstanding Department practice, and any continuing conflict between the statute and the regulation.

The legislative history of the implementing regulations demonstrate that § 106.12(b) was meant to serve as a "self-certification" process for religious institutions, "without review or qualification by a government agency."²⁸ Nevertheless, the Department has "subtly but surely arrogated to itself power and authority to regulate religious exemption to Title IX, just as opponents of the regulatory procedure initially predicted."²⁹ A review of the Department's longstanding practice reveals that many "educational institutions have deferred to OCR's arrogation of authority. Educational institutions' use of inherent exemption language—verbs such as claim, notify, establish, assert, inform—in their communications with OCR decreased while their use of language that implied agency discretion—request, apply, seek—increased."³⁰

Further, religious institutions are currently held to a different standard in exercising their exemption rights. The Department routinely recognizes non-religious exemptions to Title IX, but there is no similar pre-approval process in the regulations for any non-religious exemption. "An

²⁶ If the Department nevertheless elects to impose an adversarial model upon all institutions, and further require cross examination, it should not require that the cross examination be permitted by trained advisors. The prospect of enduring cross examination by a trial attorney for a school conduct hearing is itself intimidating and will prove a sufficient deterrent for many victims to file a sexual assault complaint. There are fair and sound procedures for questioning parties and witnesses short of subjecting students to the abuse of cross examination by trial attorneys. For example, cross examination questions can be offered by the parties, whether spoken themselves or written down and passed on to a hearing officer or investigator. Advisors could also pose questions in writing to a hearing officer to be asked without an intimidating and hostile tone.

²⁷ 83 Fed. Reg. 61,482.

²⁸ Kif Augustine-Adams, *Religious Exemptions to Title IX*, 65 KAN. L. REV. 327, 333-37 (2016).

²⁹ *Id.* at 331.

³⁰ *Id.* at 406.

institution's exempt status is not dependent upon its submission of a written statement to OCR."³¹ We urge the Department to further revise § 106.12 to include language that confirms religious institutions' authority to properly assert and even self-certify their religious exemption, without prior review or qualification by the Department. Such a revision would result in equal treatment between secular and religious institutions in terms of asserting their Title IX exemptions, and ensure the Constitutional protections afforded religious institutions.

4. Recipient's Response to Sexual Harassment

Section 106.44 contains a number of welcomed reforms. Chief among them is the Department's decision to adopt Supreme Court standards for sexual harassment. We agree that this would result in a "uniform standard" and "a consistent body of law [that] will facilitate appropriate implementation."³² Prior guidance did not, creating a bifurcated framework with standards for "administrative enforcement" and separate standards for "private lawsuits for monetary damages."³³

We support the Department's adoption of the "objectively offensive" standard for sexual harassment in § 106.44(e)(1). The 2011 Dear Colleague Letter definition of sexual harassment had "no counterpart in federal civil rights case law."³⁴ This expanded the scope of campus sexual harassment investigations, forcing institutions to police a wide range of conduct not covered by the Supreme Court's own interpretation of Title IX. By redefining sexual harassment to only include conduct "that effectively denies a person equal access to the recipient's education program or activity," the Department successfully reestablishes the original purpose of Title IX, and clarifies the obligations of recipient institutions.

Liberty University appreciates the flexibility in the proposed rule that allows institutions to only adopt its procedures for sexual harassment complaints, including sexual assault, leaving schools free to apply different procedures to other sexual misconduct (e.g., sexual exploitation, stalking, etc.), if they so choose. We also appreciate the Department's recognition that every institution need not use a federally prescribed standard of proof for determining violations of conduct code provisions concerning sexual harassment and sexual assault. In light of inferences from prior guidance, the proposed regulations could be strengthened by making it clear that it is not necessarily discriminatory for an institution to have a burden of proof for sexual harassment and sexual assault that is different than that used for other Title IX violations, or other conduct code violations, or academic code violations. Institutions can have non-discriminatory reasons for, say, a higher burden of proof for offenses that can result in expulsion or suspension as compared to more minor offenses. Similarly, an employee disciplinary process might have a different burden of proof than a student disciplinary process without concluding such a difference is inherently discriminatory. Such a clarification should be part of the final rule.

³¹ *Exemptions from Title IX*, OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., <https://www2.ed.gov/about/offices/list/ocr/docs/t9-rel-exempt/index.html>.

³² 83 Fed. Reg. 61,466.

³³ Office for Civil Rights, U.S. Dep't of Educ., Dear Colleague Letter (2011), at 4 n.12.

³⁴ *Plummer v. Univ. of Hous.*, 860 F.3d 767, 779 (5th Cir. 2017) (Jones, J., dissenting).

Liberty also supports the Department's proposed standards for when institutions have "actual knowledge" and when they cannot be found to have acted in a "deliberately indifferent" manner, which provide welcome relief from unwarranted liability exposure. Specifically, we appreciate that "actual knowledge" of sexual harassment must be obtained by a school official with authority to institute corrective measures on behalf of the institution. This is both logical and practical. Also, we appreciate that institutions that follow their grievance procedures, consistent with the Department's proposal, in response to a "formal complaint," or that provide interim measures to a complainant when there has not been a formal complaint, cannot be found to have acted with deliberate indifference. This is clear guidance that ensures fairness to both institutions and those who access their Title IX grievance processes.

Lastly, Liberty University applauds the use of the rulemaking process for regulating in this area and encourages the abandonment of "regulation through guidance." Institutions that comply with regulations are afforded certain safe harbors from liability as a matter of law but institutions that complied with the Department's Title IX guidance were still subjected to litigation wherein plaintiffs' attorneys freely second-guessed the Department's Title IX guidance concerning practices that were and were not discriminatory. This "Catch 22" forced institutions to choose to follow the Department's guidance and thereby subject themselves to liability (or at least the prospect of a long and expensive defense) from participants who had their own theories about discriminatory practices at odds with the Department's guidance, or follow a non-discriminatory process different from the Department's guidance and thereby invite enforcement actions from the Department's Office of Civil Rights with the attendant risk of loss of federal funds. Institutions following the Department's 2011 and 2014 guidance documents were subjected to a spate of costly private litigation related to their campus sexual harassment and assault investigations.³⁵ The proposed regulations could be improved by clearly rescinding all the Department's prior guidance documents regarding this subject matter.

5. Conclusion

While Liberty University and many other schools will undoubtedly welcome Department reforms that curtail the scope of Title IX, the proposed procedural requirements will likely cost institutions

³⁵ See generally Kate Brumback & Kathleen Foody, *Students Accused in Campus Sex Assaults Target Federal Rules*, AP NEWS, May 18, 2016, <https://www.apnews.com/694e8cb7cd714afa8b833d927a264de2>; Craig Wood et al., *Between a Rock and a Hard Place: A Discussion of Issues That Frequently Arise in Sexual Misconduct-Related Litigation Against Colleges and Universities*, NACUA NOTES, May 18, 2016, <http://counsel.cua.edu/res/docs/titleixlitigation.pdf>; Jake New, *Out of Balance*, INSIDE HIGHER ED, April 14, 2016, <https://www.insidehighered.com/news/2016/04/14/several-students-win-recent-lawsuits-against-colleges-punished-them-sexual-assault>; *Review of Student-Victim Sexual Assault Claims With Losses*, Risk Research Bulletin by EduRisk (UE), November 2016; *Review of Student-Perpetrator Sexual Assault Claims With Losses*, Risk Research Bulletin by EduRisk (UE), April 2017. Since 2011, more than 185 lawsuits by alleged perpetrators have been filed in court—cases where the student who has been accused of misconduct is suing the university for violating Title IX, among other things. In the two decades prior to 2011, only 15 such cases were found. Title IX For All database, (accessed February 2, 2018), <https://titleixforall.knack.com/databases#due-process-lawsuits3/intro5/>; Elizabeth Llorente, *US Colleges Refuse to Ease Sex Assault Rules Despite Slew of Lawsuits Filed by Accused*, FOX NEWS, October 24, 2017, <http://www.foxnews.com/us/2017/10/24/us-colleges-refuse-to-ease-sex-assault-rules-despite-slew-lawsuits-filed-by-accused.html>.

more over time to implement than they currently pay in Title IX-related legal fees, settlements and damage awards. While foundationally, Liberty University objects to overly prescriptive regulatory requirements, the majority of the Department's proposal is a victory for the rule of law, protects institutions from unwarranted liability, and sets limits on Departmental fines for Title IX violations. It would indeed be unfortunate if, in the interest of easing the costly regulatory burden of prior guidance, the Department mandated the creation of a new bureaucracy on every college campus throughout the country that turned out to be more costly to implement than the increased liability institutions suffered under the uncertainty of the prior guidance the proposed rule replaced. By simply revising §106.45(b)(3)(vii), the Department's proposal would result in a net benefit for both institutions and students.

Thank you for inviting our public comment. We thank you and your staff for your good work on the proposed rules. And Liberty University looks forward to the Department's adoption of improved Title IX regulation.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Falwell".

Jerry Falwell
President