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OFFICE FOR CIVIL RIGHTS
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RE: APPEAL OF OCR'S DETERMINATIONS FOR OCR Docket # 05-17-2157

Cortney Marks respectfully asks that the Chicago Office for Civil Rights ("OCR") reopen the retaliation complaint (OCR Docket #05-17-2157) she filed against Loyola University Chicago ("Loyola"). Faculty and administrators in Loyola's Master of Social Work program took adverse and retaliatory actions against Ms. Marks after she filed a pregnancy discrimination complaint with Loyola's Title IX coordinator, in violation of Title IX of the Education Amendments of 1972 ("Title IX") and the regulations and policies promulgated thereunder. 20 U.S.C. § 1681 et seq. See 34 C.F.R. § 106 et seq. Specifically, Academic Advisor E and Internship Coordinator P took adverse actions against Ms. Marks in retaliation for her filing the pregnancy discrimination complaint.

Ms. Marks filed a retaliation complaint with OCR on February 14, 2017, and OCR opened an investigation on March 10, 2017. Though OCR found that Ms. Marks had engaged in protected activity by filing a Title IX complaint, it closed the investigation on August 9, 2017 with no findings of retaliation. However, the decision is incorrect because OCR was missing additional key information. Specifically, OCR did not have the information to compare how Ms. Marks was treated before she filed the pregnancy discrimination complaint to how she was treated after. Thus, OCR did not have the full context in which the retaliation occurred nor the information necessary to find the causal link between the protected activity and the adverse actions taken by Ms. E and Ms. P.

Before Ms. Marks filed the pregnancy discrimination complaint, Ms. Marks had an excellent relationship with both Ms. E and Ms. P. However, both relationships changed dramatically after Ms. Marks filed the complaint, interfering with Ms. Marks' educational opportunities. Ms. E's and Ms. P's hostile and abusive behavior, as well as their refusal to adequately carry out their administrative and teaching duties as they pertained to Ms. Marks caused Ms. Marks to miss out on valuable educational experiences and kept her from fully participating in the final year of the MSW program. Although Ms. Marks ultimately persevered and graduated, the retaliation caused her significant emotional harm, lead to lost opportunities, and added substantially to her workload for the year.

I. Ms. E Retaliated Against Ms. Marks for Filing the Pregnancy Discrimination Complaint

Prior to the complaint, Ms. Marks worked intimately with Ms. E as a graduate assistant. Ms. E regularly praised Ms. Marks, saying that she would do “anything” for her. See emails exchanged between Ms. Marks and Ms. E, attached as Exhibit A. Indeed, Ms. E praised and trusted Ms. Marks. For example, Ms. E had told Ms. Marks she was such a dedicated student that MSW administrators were considering Ms. Marks for the cohort’s Achievement Award. Ms. E treated Ms. Marks as an invaluable assistant, entrusting her with duties she had previously not allowed other student assistants to do, including awarding credit for transfer students and inputting student grades and transcripts. Ms. E’s regard for Ms. Marks was clear when she recommended Ms. Marks to her private practice partner, Ms. G.

Ms. E’s behavior and attitude towards Ms. Marks changed dramatically after Ms. Marks filed the complaint. When Ms. Marks returned to volunteer as a graduate assistant in the administrative office, Ms. E was dismissive, rude and hostile in both large and small ways. During meetings, Ms. E refused to look at Ms. Marks and rolled her eyes when Ms. Marks spoke. She even told Ms. Marks that she wanted to drop a heavy frame on her head, although she acknowledged that she would not actually do so. MSW Administrative assistant, J, witnessed that comment.

Around that time and after Ms. Marks had filed the pregnancy discrimination complaint, Ms. G, who was Ms. E’s practice partner, suddenly became unresponsive to Ms. Marks’ requests to confirm her internship start date. *See* emails regarding the internship start, attached as Exhibit B. Ms. Marks became particularly concerned about Ms. G’s lack of response after Priscila Freire, the professor who originally told Ms. Marks’ to drop her class in violation of Title IX, complained to Ms. Marks that Ms. Marks’ action in filing a complaint had hurt her and Ms. E’s careers. *See* L’s statement, attached as Exhibit C. Notably, Ms. E, herself, had made clear to her students the she “controlled their destinies.” *See* Exhibit C. In fact, adjunct Professor Al Ross who ultimately offered Ms. Marks an internship placement stated that what was “happening” to Ms. Marks’ was “bullshit” and he knew that Ms. Marks had “paid with blood” for reporting her discrimination.

Ms. E also took adverse actions against Ms. Marks in class. When Ms. Marks and some of her other classmates were late getting to class after a celebratory lunch took longer than expected, Ms. E screamed in a “rage” and locked them out of the classroom. *See* Exhibit C and Ms. Marks’ retaliation complaint, attached as Exhibit D. Ms. E then told the students that were in the classroom that Ms. Marks and her friend Ms. L, who had supported Ms. Marks when she filed the pregnancy discrimination complaint, were deliberately late because they were targeting Ms. E. *See* Exhibit C. Eventually, the Assistant Director of the MSW program, P, interceded on the students’ behalf, forcing Ms. E to unlock the door. He cancelled the class and assured the students that the presentations that were scheduled for that day, including Ms. Marks’ presentation, would be rescheduled. The presentation was worth forty percent of Ms. Marks’ grade. *See* Seminar syllabus, attached as Exhibit E. However, Ms. E refused to allow Ms. Marks to give her presentation when she volunteered. On the allotted day, Ms. E only allowed three

people to present, even though she had asked for four volunteers. See Seminar emails, attached as Exhibit F. Although Ms. E claimed to OCR this was because she needed the time to discuss licensing requirements, that was untrue. That discussion was scheduled for the next class meeting. See Ms. E's scheduled licensing/graduation meeting, attached as Exhibit G. Ultimately, Ms. Marks was forced to complete her class requirements with another professor, taking a significant toll on Ms. Marks and depriving her of the opportunity to learn with the rest of her cohort. See emails regarding new professor, attached as Exhibit H.

Ms. E also refused to recognize Ms. Marks when she completed her program requirements even though she recognized the only other two other students who completed the requirements on the same day. See Exhibit C. Ms. E's behavior and statements singling Ms. Marks out for disapproval show a clear pattern of retaliation that significantly harmed Ms. Marks. Ms. Marks missed out on valuable learning opportunities and was forced to expend significant energy and time finding alternative ways to meet her program requirements.

II. Ms. P Retaliated Against Ms. Marks for Filing the Pregnancy Discrimination Complaint and for Complaining About Ms. E's Retaliation

Ms. Marks also had a good relationship with Ms. P before the complaint and received frequent praise from Ms. P. See Ms. P's email about Ms. Marks' first internship evaluation, attached as Exhibit J. Ms. P is charged with helping students find potential internship placements, approving those placements, and coordinating students' interviews. See Exhibit C. Ms. P performed these duties for Ms. Marks before the complaint. She played an active and diligent role in helping Ms. Marks acquire the internship with Ms. G. She helped Ms. Marks thoroughly plan her internship schedule to graduate on time. As required by her job as internship coordinator, Ms. P reached out to Ms. G to arrange Ms. Marks' internship, engaged in an ongoing conversation with Ms. G about Ms. Marks, arranged Ms. Marks' interview with Ms. G, gave Ms. Marks multiple pointers on how to present herself as a good candidate, and checked in with Ms. Marks about progress. Ms. P even encouraged Ms. G to interview Ms. Marks earlier than was typical. See emails regarding 2017 placement, attached as Exhibit K. Ms. P regularly checked in with Ms. Marks to confirm that she was making progress in securing the internship: "did you find out things are for sure with Mary at St. Luke's? It's still on my radar till I hear from you that it's secured. So, let me know." See Exhibit K.

However, after Ms. Marks filed the complaint, not only did Ms. P not help Ms. Marks, she made it harder for Ms. Marks to obtain an internship. On November 15, Ms. Marks sought Ms. P's advice regarding her internship with Ms. G and the retaliation she was experiencing from Ms. E. At that time, Ms. P encouraged Ms. Marks to find a new internship placement because Ms. P thought it would be best if Ms. Marks did not work with Ms. G, who was Ms. E's practice partner. It is untrue that, as Ms. P told OCR, Ms. Marks withdrew from the internship because she wanted to go in a "different direction." Indeed, Ms. P's own rules would not have allowed that. Further, Ms. Marks did not have the luxury of time to make any changes to her program plan voluntarily – her priority was to graduate at the end of the next semester. To risk withdrawing from an internship this late would have jeopardized that goal. Ms. P also failed to recommend that Ms. Marks speak with the Title IX coordinator about the retaliation. See Exhibit C.

Ms. P then did not assist Ms. Marks in finding a new placement, in stark contrast to how she had previously assisted Ms. Marks. As the internship coordinator, Ms. P was charged with finding internship placements for students and completing internship paperwork. Instead, the burden of finding a new placement fell entirely to Ms. Marks, even though Ms. P's job duties included assisting students in obtaining placements. See Exhibit C. Although Ms. P did respond to Ms. Marks' e-mails, she refused to make even minimal suggestions that would have helped Ms. Marks. Instead, Ms. Marks was forced to approach Ms. P with all the ideas for placement opportunities, something other students did not have to do. See emails regarding new placement, attached as Exhibit N.

In fact, when Professor Ross ultimately stepped in to supervise Ms. Marks' internship, he had to "twist Ms. P's arm" to get her to complete the necessary paperwork and ultimately had to bypass her and go to Mr. Perri for approval of his practice as a placement. The stress and uncertainty caused by being unable to find a new placement and to get even minimal assistance from Ms. P was extremely upsetting to Ms. Marks. Further, an excellent and well-respected student before filing the complaint, Ms. Marks found herself ostracized by the administrative staff. That was clear to Professor Ross, who had not had an intern before, but who felt compelled to step in and find space for Ms. Marks at his practice. Although Ms. Marks respected and greatly appreciated Professor Ross's assistance and supervision, this nevertheless meant that she had to complete her internship with someone who did not have any previous experience as an intern supervisor. Ms. P's lack of assistance, after encouraging Ms. Marks to find a new internship supervisor, added significantly to the work Ms. Marks had to do in her final semester, detracted from Ms. Marks' ability to participate fully in the MSW program, and caused Ms. Marks significant emotional distress.

Ms. P also obstructed Ms. Marks' independent study, which she had originally agreed to supervise. Before the complaint Ms. P enthusiastically approved Ms. Marks' proposal for an independent study. See independent study pitch emails, attached as Exhibit L. From the outset, Ms. P knew the type of study Ms. Marks wished to conduct and that Ms. Marks wanted to publish it in a journal. Ms. P agreed to supervise the study knowing that Christopher David, who is a highly regarded practitioner in the area, would work closely with Ms. Marks on the substance of the study. Ms. Marks completed significant work on a draft with Mr. David's help by the fall. See Ms. Marks' draft, attached as Exhibit M.

In late October, after Ms. Marks had filed the original pregnancy discrimination complaint, Mr. Perri approached Ms. Marks and asked if he could supervise her independent study instead of Ms. P. Ms. Marks accepted this as an opportunity and agreed. Unfortunately, Mr. Perri soon became ill. Neither Mr. Perri nor Ms. P notified Ms. Marks. Finally, in November, after Ms. Marks made several failed attempts to reach Mr. Perri, Ms. J warned Ms. Marks that Mr. Perri was on medical leave. See email to Mr. Perri about the study, attached as Exhibit P. Although Mr. Perri was on medical leave, Ms. P refused to supervise Ms. Marks even though she had been happy and excited to supervise Ms. Marks before Ms. Marks filed the complaint. See emails about Mr. Perri's supervision, attached as Exhibit Q. Instead of providing Ms. Marks with accurate information and advice, Ms. P encouraged Ms. Marks to remain with Mr. Perri as her

supervisor even though Ms. P knew he was on medical leave. It was not until or about January 4, that Mr. Perri finally told Ms. Marks he was unable to supervise her.

Importantly, independent studies are almost always approved and supervised by administrative staff and not faculty. Cortney, like most students, did not know she could ask faculty for supervision. Since Ms. P refused to supervise the independent study, and did not tell Cortney she could ask another faculty member, this left Ms. Marks with no way to complete it. See, Email about available administrators, attached as Exhibit R. Nothing prevented Ms. P from supervising the independent study. The only thing that had changed from the time that Ms. P agreed to supervise the study to the time when Ms. P refused was that Ms. Marks had filed the pregnancy discrimination complaint.

Because Ms. Marks was unable to secure an administrative supervisor for her independent study, she was forced to take a class in Loyola's downtown Chicago campus, three hours away. The six-hour round-trip commute to class was extremely burdensome, taking up significant time and costing her additional money for parking and gas. This also deprived her of the opportunity to complete and publish her research, which would have enhanced her career opportunities.

III. OCR Should Re-open this Case and Find that Loyola Faculty and Staff Retaliated Against Ms. Marks for Filing a Pregnancy Discrimination Complaint

After Ms. Marks filed her pregnancy discrimination complaint with Loyola's Title IX office, Ms. E's and Ms. P's behavior towards Ms. Marks changed dramatically. Ms. E was openly hostile and both Ms. E and Ms. P interfered with Ms. Marks' educational experiences. Their adverse actions deprived Ms. Marks of educational and career enhancing opportunities and caused Ms. Marks significant stress, uncertainty, additional work, emotional harm, and cost to attend school. Adding to her stress, Loyola did not communicate with her about the grievance process, investigation, or how the final determination was made. Although Ms. Marks ultimately graduated and secured a job in her chosen field, she did so despite Ms. E's and Ms. P's actions and the obstacles she faced.

Given now the additional facts OCR lacked when it made the initial determination it is clear that Loyola violated Title IX. Thus, Ms. Marks respectfully requests that OCR:

1. Secure an assurance of compliance with Title IX from Loyola if any violations are found, as well as full remedies for the violations found. See U.S. Department of Education, Office for Civil Rights, OCR Case Processing Manual § 304 (Feb. 2015) (setting forth guidelines for resolution agreements).
2. Take all necessary steps to remedy unlawful conduct by Loyola as identified in its investigation or otherwise, as required by Title IX and its implementing regulations. 34 C.F.R. § 106.3(a).
3. Require that Loyola compensate Ms. Marks for the costs she has had to bear because of Loyola's retaliation. Such costs include, but are not limited to, Ms. Marks' gas and parking expenses for the trips to and from the Chicago campus after she lost the opportunity to complete her independent study.

4. Require Loyola to reimburse Ms. Marks' counsel for the legal fees incurred while working on this matter. The National Women's Law Center (NWLC) is a non-profit organization that is representing Ms. Marks pro bono and has spent a significant amount of time working on the matter. NWLC has complete documentation of its time spent and expenses, and will make them available to OCR upon request.
5. Require that Loyola publish on its website that Title IX's prohibition against sex discrimination includes pregnant and parenting students.
6. Require Loyola to disseminate to all faculty, staff, and students the school's policy regarding its obligations to not retaliate against students that complain informally or formally of federal civil rights violations and to train teachers, faculty, and administrators on Loyola's obligations under such policy and Title IX.
7. Require that Loyola make their grievance procedure easily accessible so that students know what to expect from Loyola's investigation and decision after reporting discrimination or retaliation.
8. Monitor any resulting agreements with Loyola to ensure that compliance with Title IX is achieved.

Respectfully submitted,

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