

July 7, 2021

VIA EMAIL

The Honorable Patty Murray
Chair
Senate Committee on Health, Education, Labor,
and Pensions
428 Senate Dirksen Office Building
Washington, DC 20510

The Honorable Richard Burr
Ranking Member
Senate Committee on Health, Education, Labor,
and Pensions
428 Senate Dirksen Office Building
Washington, DC 20510

Re: *Gender Justice, Anti-Violence, and Women's Rights Organizations' Sign-on Letter in Support of Catherine Lhamon to be Assistant Secretary for Civil Rights (OCR) at the U.S. Department of Education*

Dear Chairwoman Murray and Ranking Member Burr:

We write on behalf of 48 gender justice, anti-violence, and women's rights organizations unified in strong support of the confirmation of Catherine Lhamon as Assistant Secretary for Civil Rights at the United States Department of Education (ED). The Assistant Secretary for Civil Rights serves as the agency's chief legal advisor on civil rights matters and is responsible for leading the work of its Office for Civil Rights (OCR) in ensuring equal access to education by enforcing core nondiscrimination laws in schools, including Title IX of the Education Amendments of 1972 (Title IX), which prohibits sex discrimination in educational programs or activities receiving federal funds. Not only was Ms. Lhamon previously *unanimously confirmed* by the U.S. Senate for this exact role on August 1, 2013, and has served successfully in this role from her confirmation until January 2017, but she has also dedicated her entire legal career to advocating for the civil rights of all people, including students of color, women and girls, disabled students, and LGBTQ students. It is indisputable that Ms. Lhamon is extremely qualified to lead OCR. Given the educational inequities exposed during the COVID-19 pandemic and that schools are in the process of re-opening, her leadership is especially critical now as OCR works to ensure all students can learn in safe and welcoming environments.

A seasoned and celebrated¹ civil rights attorney, Catherine Lhamon has decades of experience advancing justice in key positions at national civil rights organizations and state and federal civil rights agencies. Ms. Lhamon practiced for a decade at the ACLU of Southern California, eventually serving as the Assistant Legal Director where she spearheaded key litigation efforts on behalf of school children,² teachers,³ and many others. She worked at the National Center for Youth Law and became Public Counsel's first Director of Impact Litigation. Until January 2021, she chaired the U.S. Commission on Civil Rights, and served as Legal Affairs Secretary to California Governor Gavin Newsom. She is currently the

¹ In 2016, Politico Magazine named Ms. Lhamon one of the Politico 50 Thinkers Transforming Politics and she was honored with the Action & Authority Award by the National Action Network. In 2015, Yale Law School named Ms. Lhamon their Gruber Distinguished Lecturer and the Association of University Centers on Disabilities awarded Lhamon their Special Recognition Award. In 2014, she was added to the Chronicle of Higher Education's Influence List as the Enforcer. The Daily Journal listed her as one of California's Top Women Litigators in both 2007 and 2010, and she was named as one of the Top 20 California Lawyers Under 40 in 2007. In 2004, California Lawyer magazine named Ms. Lhamon Attorney of the Year for Civil Rights.

² *Williams v. State of California*, No. 312236 (Cal. Super. Ct., S.F. County, filed May 17, 2000).

³ *Reed v. State of California*, No. BC432420, (Cal. Super. Ct., L.A. County, filed Feb. 23, 2010).

Deputy Assistant to the President and Deputy Director of the Domestic Policy Council for Racial Justice and Equity, where she manages the President's equity policy portfolio. In these roles, Ms. Lhamon has collaborated with diverse education stakeholders including teachers, administrators, students, parents, and community members to promote equal education for all.

Of course, Ms. Lhamon's most pertinent experience for this position came in 2013, when she became Assistant Secretary for Civil Rights at ED. Under Ms. Lhamon's leadership, which has been praised by advocates for respondents⁴ and complainants, OCR had a profound and positive impact on federal recipients' responses to sex-based harassment in schools and other forms of discrimination. OCR issued crucial guidance in 2014⁵ that unequivocally set out federal recipients' responsibilities to respond to sexual violence, to prevent its recurrence, and to address its effects. This comprehensive guidance required fair grievance procedures for complainants and respondents⁶ and is a perfect example of her ability to ensure OCR fulfills its mission to vigorously enforce civil rights laws. While sexual harassment can have profound effects on students' mental well-being and ability to succeed in school, only a small percentage of students who experience such harassment ever make a formal report,⁷ in significant part because they believe that reporting will not improve the situation.⁸ The Title IX guidance encouraged student survivors and advocates to bring sexual harassment complaints to OCR, leading to an increase of OCR complaint filings at unprecedented rates.⁹ It sent a clear message that federal recipients must invest resources to effectively respond to sex discrimination in education. As the Campus Advocacy & Prevention Professionals Association (CAPPA) pointed out, these Title IX guidance documents "drew from best practices in harassment, violence, and injury prevention and campus sexual assault prevention" and were "the product of research over the last two decades that has been funded directly and indirectly by the Centers for Disease Control and Prevention, Department of Justice ... and the National Institutes of Health."¹⁰

⁴ Robin Wilson, *2014 Influence List: Enforcer*, THE CHRONICLE OF HIGHER EDUCATION (Dec. 15, 2014)

<https://www.chronicle.com/article/2014-influence-list-enforcer> ("She's come into a real firefight, and she's the right person for what needs to be done," says Andrew T. Miltenberg, a lawyer who handles sex-assault cases. "There's nothing to indicate she's favoring or not favoring anyone."").

⁵ U.S. Dep't of Educ. Office for Civil Rights, *Questions and Answers on Title IX and Sexual Violence* (Apr. 29, 2014), <https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

⁶ In 2016, OCR resolved a complaint in favor of a respondent against his university, finding that the university violated his Title IX rights by failing to provide him with equitable protections, including an opportunity to share his version of the events during an investigation, to challenge the evidence used by the college to impose an interim suspension, to review written statements and reports, and have adequate time to prepare a defense for the hearing. Wesley College, No. 03-15-2329, U.S. Dep't of Educ. Office for Civil Rights Letter of Findings (Oct. 12, 2016), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/03152329-a.pdf>; see also, Compl. at 11, *Doe v. Western New England Univ.*, (D. Ma. Nov. 2, 2015) (No. 3-15-cv- 30192) (Disciplined student filed a lawsuit against his school and cited the 2014 OCR guidance in his complaint acknowledging that it increased protections for respondents and required schools to comply with due process protections), available at <http://boysmeneducation.com/wp-content/uploads/2016/04/Western-New-England-University-Complaint-2015-11-2.pdf>.

⁷ Assoc. of American Univ., *Report on the AAU Campus Climate Survey on Sexual Assault and Misconduct*, A7-27 (Oct. 15, 2019), <https://www.aau.edu/key-issues/campus-climate-and-safety/aau-campus-climate-survey-2019>

⁸ RAINN, *Campus Sexual Violence: Statistics*, <https://www.rainn.org/statistics/campus-sexual-violence>.

⁹ U.S. Dep't of Educ. Office for Civil Rights, *Delivering Justice: Report to the President and Secretary of Education* (Mar. 2016) <https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2015.pdf>

¹⁰ Campus Advocacy and Prevention Professionals Association, *Cappa Letter to the Department of Education Regarding the November 29, 2018 Notice of Proposed Rulemaking Amending Regulations Implementing Title IX of the Education Amendments of 1972*, at 2 (Jan. 30, 2019), <http://www.nationalcappa.org/cappa-letter-to-department-of-education-january-28-2019>.

The Assistant Secretary for Civil Rights is also tasked with leading OCR's efforts to investigate systemic discrimination. To that end, under Ms. Lhamon's leadership, OCR initiated investigations into systemic discrimination in schools' responses to sexual harassment and racially discriminatory discipline practices. In 2014, OCR issued guidance¹¹ jointly with DOJ addressing racially discriminatory school discipline practices, highlighting how fair and equitable discipline practices are important for creating safe and welcoming environments for all students. This was critical for protecting girls of color, particularly Black girls, from discriminatory discipline because they are over-disciplined compared to white girls.¹² Likewise, OCR's 2015 guidance addressing Title IX coordinators¹³ was critical in describing the roles and responsibilities of Title IX coordinators in preventing and responding to sex discrimination in schools. In overseeing the issuance of the Title IX Resource Guide, which also critically covered athletics given the ongoing lack of compliance by many schools regarding gender equity in sports programming, Ms. Lhamon demonstrated her leadership and abilities to ensure Title IX enforcement across any and all Title IX issue areas.¹⁴ Ms. Lhamon also supported OCR's efforts to ensure schools did not discriminate based on pregnancy and related medical conditions and that pregnant students had access to accommodations. Her advocacy did not stop there. In line with federal court decisions, and most recently, the U.S. Supreme Court's decision in *Bostock v. Clayton County*,¹⁵ Ms. Lhamon strengthened OCR's enforcement efforts addressing discrimination against transgender students, who are particularly vulnerable to experiencing discrimination and harassment in schools. In response to an increase in reports of discrimination against transgender students, in 2016, OCR issued a guidance jointly with the Department of Justice (DOJ) clarifying that Title IX's prohibition on sex discrimination includes discrimination on the basis of gender identity.¹⁶ Soon after, in collaboration with the Department's Office of Career, Technical and Adult Education, OCR issued guidance encouraging recipients to eliminate discriminatory practices and take proactive steps to expand participation of students in career and technical educational programs.¹⁷

Ms. Lhamon has built her career on championing civil rights for all people, including women and girls, and her nomination could not have come at a more critical time. Over the past four years, the Department of Education has failed to vigorously enforce non-discrimination laws in schools, leading to gaps in civil rights protections that were only exacerbated by the COVID-19 pandemic. Right now, OCR needs an experienced champion for civil rights to realign its priorities and Catherine Lhamon is well-

¹¹ U.S. Dep't of Educ. Office for Civil Rights and U.S. Dep't of Justice Civil Rights Division, *Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline* (Jan. 8, 2014), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>.

¹² Georgetown Law Center on Poverty, Inequality's Initiative on Gender Justice & Opportunity, & RISE Research team at New York University, *Data Snapshot: 2017-2018 National Data on School Discipline by Race and Gender*, available at <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2021/04/National-Data-on-School-Discipline-by-Race-and-Gender.pdf>.

¹³ U.S. Dep't of Educ. Office for Civil Rights, *Dear Colleague Letter on Title IX Coordinators* (Apr. 24, 2015), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>

¹⁴ U.S. Dep't of Education Office for Civil Rights, *Title IX Resource Guide* (Apr. 2015), <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>.

¹⁵ 140 S. Ct. 1731, 1747 (2020).

¹⁶ U.S. Dep't of Education Office for Civil Rights & U.S. Dep't of Justice Civil Rights Division, *Dear Colleague Letter on Transgender Students* (May 13, 2016), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>

¹⁷ U.S. Dep't of Educ. Office for Civil Rights & Office of Career, Technical, and Adult Education, *Dear Colleague Letter on Gender Equity in Career and Technical Education* (June 15, 2016), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201606-title-ix-gender-equity-cte.pdf>.

suited to meet the moment and steer OCR back on track. We enthusiastically support her nomination as she undoubtedly will continue to advocate for and strengthen gender justice in education. If you have questions about this letter, please contact Shiwali Patel of the National Women's Law Center at spatel@nwlc.org.

Sincerely,

American Association of University Women (AAUW)
Atlanta Women for Equality
Augustus F. Hawkins Foundation
BHS Stop Harassing
Champion Women
Chicago Alliance Against Sexual Exploitation (CAASE)
Clearinghouse on Women's Issues
Colorado Coalition Against Sexual Assault
End Rape On Campus
Enough is Enough Voter Project
Equal Rights Advocates
The Every Voice Coalition
Feminist Majority Foundation
Futures Without Violence
The Georgia Coalition Against Domestic Violence
Harvard Law School's Gender Violence Program
Hispanic Federation
Illinois Coalition Against Sexual Assault
It's On Us
Jewish Women International
Justice for Migrant Women
Know Your IX
Legal Aid at Work
MANA, A National Latina Organization
Maryland Coalition Against Sexual Assault
National Alliance for Partnerships in Equity (NAPE)
National Alliance to End Sexual Violence
National Asian Pacific American Women's Forum (NAPAWF)

National Center for Lesbian Rights
National Council of Jewish Women
National Organization for Women
National Partnership for Women & Families
National Resource Center on Domestic Violence
National Women's Law Center
National Women's Political Caucus
North Carolina Coalition Against Domestic Violence
Public Justice
Southwest Women's Law Center
Stop Sexual Assault in Schools (SSAIS)
TIME'S UP Now
Title IX Group at Hutchinson, Black, and Cook
UltraViolet
United State of Women
Victim Rights Law Center
Vote Run Lead
Women's Law Project
Women's Sports Foundation
YWCA USA