



National Coalition For Men Carolinas (NCFMC)

December 12, 2017

The Honorable Lamar Alexander
The Honorable Patty Murray
Committee on Health, Education, Labor & Pensions
428 Senate Dirksen Office Building
Washington, DC 20510

RE: Statement for the Record by the National Coalition For Men Carolinas (NCFMC) for U.S. Senate Health, Education, Labor and Pensions Committee Hearing, regarding "Kenneth L. Marcus Nominee for Assistant Secretary for Civil Rights"

Dear Senator Alexander and Senator Murray:

I am writing this letter in my capacity as president of the Carolinas chapter of the National Coalition For Men (NCFM) which is a non-partisan nonprofit civil rights organization that advocates on behalf of college students and their families, to express our support of Mr. Kenneth L. Marcus as nominee for Assistant Secretary for Civil Rights.

We believe that Mr. Marcus has the right combination of civil rights experience, personal commitment and deep subject matter expertise to make a valuable contribution to advancing the civil rights of our nation's students. This belief is based on Mr. Marcus' experience developed over a 25+ year career as a civil rights lawyer, university professor, think tank executive, former Education Department employee, and most recently as founder and president of The Louis D. Brandeis Center for Human Rights Under Law.

While our education system faces many challenges today, the issue of how to handle sexual misconduct on college campuses is firmly planted in the national spotlight. No one denies that sexual assault on college campuses is a serious matter yet the prescribed cure by the Department of Education under the previous Obama administration did great violence to our nation's civil liberties concept of the presumption of innocence, fair and equal treatment and due process for all citizens including those attending institutions of learning.

Have we so quickly forgotten the painful lessons learned at the expense of so many college men falsely accused of rape? If so, perhaps the following cases can serve as a reminder:

- Duke Lacrosse case – gang rape hoax; college men ultimately were declared innocent by the Attorney General but not until well after their young lives were irreparably destroyed
- Hofstra Five case – five young men arrested, their names and photos splashed across the media & days later released from jail after the accuser woman admitted to making a gang rape story up
- UVa case – the recent infamous Rolling Stone gang rape hoax story that resulted in vandalism and threats of violence made against fraternity members.

These cases represent just a small sampling of the approximately 200 lawsuits filed against universities in which plaintiffs allege being denied due process, subjected to what can only be described as a kangaroo court process and summarily expelled as a direct result of flawed directives issued and enforced by the Office of Civil Rights (OCR). Increasingly the courts are siding with student plaintiffs and schools (and taxpayers) are now paying the bill.



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Universities are not the proper institution to prosecute a rape case. In that regard, I would remind this institution of the testimony provided to this committee previously by Molly Corbett Broad, President of the American Council on Education, who stated:

*“Conducting education and providing information is an area where college officials have vast experience. We must redouble our education efforts on sexual assault, and as I noted earlier, institutions are moving aggressively to do this. But performing investigations and adjudicating cases is a far more difficult challenge. We lack the authority to subpoena witnesses, control evidence and impose legal standards. **Our disciplinary and grievance procedures were designed to provide appropriate resolution of institutional standards for student conduct, especially with respect to academic matters. They were never meant for misdemeanors, let alone felonies. While we take our obligations to the victims/survivors of sexual assault very seriously and are fully aware of our responsibilities with respect to sexual assaults, our on-campus disciplinary processes are not proxies for the criminal justice system, nor should they be.**”*

We are delighted and fully support Education Secretary Betsy DeVos' repeal of the deeply flawed Dear Colleague Letter issued on April 4, 2011 by the Office of Civil Rights (OCR). We are heartened to see that the Office of Civil Rights is working diligently to restore due process and fundamental civil rights for students, especially for those facing a Title IX investigation.

As long as colleges are required to adjudicate sexual assault allegations, then schools must provide accused students basic due process rights including but not limited to: the right to have counsel present during the hearing; the right to effectively cross-examine; timely access to written complaints and evidence; timely and adequate notice of actual charges; elimination of gag orders impeding the ability to talk to witnesses and gather evidence; the exclusion of hearsay evidence and hearing panels composed of thoroughly trained objective triers of fact.

After listening to his prepared remarks and answers provided to questions posed during Mr. Marcus' hearing before your committee last week, we have full faith in his ability to carry out his job to ensure that all students are treated equitably and are provided equal access to education as required under the laws that he would be required to enforce.

In closing, I want to express my appreciation for the work of this committee and for holding a hearing to examine the views of Mr. Marcus as the next Assistant Secretary for Civil Rights working under the guidance of the Secretary of Education. Our organization fully supports the nomination of Mr. Marcus and we ask for your support as well.

Respectfully,

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