



FEMINIST MAJORITY FOUNDATION

Working for Women's Equality

Eleanor Smeal
President

Peg Yorkin
Chair of the Board

Katherine Spillar
Executive Director

■ Washington DC
1600 Wilson Blvd
Suite 801
Arlington, VA 22209
703 522 2214
703 522 2219 fax

■ West Coast
433 S. Beverly Dr
Beverly Hills, CA
90212
310 556 2500
310 556 2509 fax

December 11, 2017

The Honorable Virginia Foxx
Chairwoman
Committee on Education and the Workforce
United States House of Representatives

The Honorable Bobby Scott
Ranking Member
Committee on Education and the Workforce
United States House of Representatives

RE: Promoting Real Opportunity, Success, and Prosperity through Education Reform Act ("PROSPER Act"), H.R. 4508

Dear Chairwoman Foxx and Ranking Member Scott,

As the Committee on Education and the Workforce considers the Promoting Real Opportunity, Success, and Prosperity through Education Reform Act ("PROSPER Act") during its Committee Markup scheduled for December 12, 2017, the Feminist Majority Foundation writes to express strong opposition to sections 162, 163(e), 488(f)(1), 488(f)(3), and any other provision of the PROSPER Act (H.R. 4508) that would undermine the civil rights of student survivors of sexual assault. We support amendments to strike these provisions and call on Members to consult more closely with student survivors to craft legislation that protects their civil rights and is responsive to their needs.

The Feminist Majority Foundation is a national organization dedicated to the empowerment of women and girls in all spheres. Through our Feminist Campus program, we actively work with students and faculty on hundreds of college campuses—including public and private colleges and universities, including community colleges—across 47 states and the District of Columbia. These groups are committed to gender equity, civil and human rights, equal access to educational opportunities, and the elimination of gender-based violence, including sexual assault.

Sexual assault is now an epidemic at institutions of higher education throughout the United States. One in five women will experience a rape or attempted rape during her time in college, and although women are most at risk of experiencing sexual assault, around one in sixteen men will also experience sexual assault during that time.¹ Rape and sexual assault have long-term physical and psychological consequences for survivors, negatively impacts educational attainment, and imposes significant economic harm.

¹ Washington Post-Kaiser Family Foundation Survey of College Students on Sexual Assault (2015), *available at* <https://www.kff.org/other/poll-finding/survey-of-current-and-recent-college-students-on-sexual-assault/>; Christopher Kred, et al., The Campus Sexual Assault (CSA) Study: Final Report (2007), prepared for National Institute of Justice, *available at* <https://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>.

Title IX of the Education Amendments of 1972, together with the Jeanne Clery Act, are critical tools helping students and schools address sexual assault on campus, yet they require robust enforcement in order to be effective. The willingness of the current administration to provide the resources and support necessary to colleges and universities that would protect survivors of sexual assault, however, has been called into question by the recent rescission of critically-needed guidance on Title IX by the Department of Education. Against that backdrop, it is more important than ever for Congress to listen to survivors and protect their right to have equal access to educational opportunities and obtain an education free from violence.

Section 162: Climate Surveys

The Feminist Majority Foundation supports the use of climate surveys to promote transparency and accountability concerning sexual violence on campus, but the surveys that would be mandated under Section 162 would not lead to greater transparency or accountability. Section 162(b) gives schools broad discretion to determine the content of their surveys. Having each school come up with their own survey, however, does not provide a standardized data set, so the information gathered is not as useful to administrators, current or prospective students and parents, or the Department Education as they attempt to evaluate the climate on any individual campus. The bill also does not explicitly require public dissemination of the climate survey data and explicitly forbids the Department of Education from using the survey results to make comparisons between institutions. The data, therefore, does not educate the public regarding the climate at any particular school, nor does it incentivize accountability.

Section 163(e): Limiting Reporting under the Clery Act

This section provides that a school-designated counselor providing services to survivors of sexual assault are not required to report incidents of sexual assault for inclusion in any report on campus crime statistics. This provision would allow colleges and universities to under-report the number of crimes committed on campus, undermining one of the purposes of the Clery Act, which is to provide information to relevant stakeholders, including the campus community and prospective students and parents, on incidents of crime.

By treating incidents of sexual assault differently than other crimes committed on campus, the provision is also discriminatory. In the context of reporting statistics, there is no valid reason to treat sexual assault reports differently from reports of any other type of physical assault. The result of excluding these reports will be that crimes committed disproportionately against women will not be counted in annual crime statistics. Schools will therefore be able to minimize the prevalence of sexual assault on campus and literally be able to sweep incidents under the rug by not even having to document the problem.

Section 488(f)(1): Delay or Suspension of Campus Investigations or Disciplinary Proceedings

This provision would allow schools to suspend or delay an investigation or disciplinary proceeding involving sexual assault at the request of a law enforcement agency or a prosecutor. The Feminist Majority Foundation is concerned that, as written, this provision fails to recognize that the interests of the criminal justice system and the interests of a college or university, while sometimes aligned, are not the same. Schools must protect the safety of its students and its campus community—a goal that should be shared by the criminal justice system—but schools must also seek to remedy and prevent sex discrimination with respect to students' ability to participate in educational programs.

Any delay or suspension of an investigation or a proceeding impedes the ability of a school to remedy and prevent sex discrimination. Schools cannot delegate that responsibility to law enforcement or to a prosecutor. Further, police investigations move slowly, and law enforcement has been notorious for failing to properly investigate allegations of sexual assault. A student should not be forced to wait months, or years, for the conclusion of an investigation or a criminal complaint before a school can address a complaint of sexual assault on its campus, investigate that complaint, or provide remedies. The results of delay are predictable: student survivors will have their educational opportunities blocked, and some students will be forced to drop-out altogether. Delay could also prevent schools from providing remedies directed at the broader school community.

Section 488(f)(3): Evidentiary Standards

The Feminist Majority Foundation is concerned that, as written, this section could allow schools to design special procedures for institutional disciplinary action in cases involving sexual assault. In particular, the Feminist Majority Foundation is concerned that schools would interpret this language to encourage a different standard of evidence in disciplinary cases involving sexual assault versus other disciplinary cases. Targeting sexual assault cases for a higher evidentiary standard than other disciplinary infractions would suggest a discriminatory purpose.

The Feminist Majority Foundation strongly opposes efforts to change the evidentiary standard in sexual assault cases from the preponderance of the evidence standard, a standard that is used in civil proceedings throughout the nation and is determined to be a fair standard that sufficiently protects the interests of all parties, even in high-stakes litigation. A stricter standard of proof would not protect the interests of respondents and complainants equally and would only serve to make it more difficult for schools to enforce their sexual misconduct policies.

The Feminist Majority Foundation supports amendments to strike any provision of H.R. 4508, including the ones discussed above, that would undermine protections afforded survivors of sexual assault by Title IX or the Clery Act. We look forward to working with policymakers to develop strategies that center the experiences of survivors to prevent sexual assault, and all forms of sex discrimination, on college campuses.

Sincerely,

A handwritten signature in black ink, appearing to read "Gaylynn Burroughs". The signature is fluid and cursive, with a prominent loop at the end.

Gaylynn Burroughs
Director of Policy & Research