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ADMINISTRATIVE COMPLAINT

COMPLAINANT

Lena Sclove


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PRELIMINARY STATEMENT

1. This Complaint is filed by Lena Sclove pursuant to the Clery Act, 20 U.S.C. § 1092(f), and the regulations and policies promulgated thereunder. *See* 34 C.F.R. Part 668. In relevant part, the Clery Act requires education programs and activities participating in the federal student financial aid and work-study programs to have and publicize “[p]rocedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported.” 20 U.S.C. § 1092(f)(8)(B)(iii).

2. As detailed in the Factual and Legal Allegations below, Lena Sclove, a student at Brown University (“Brown”), was strangled twice and sexually assaulted by another Brown student in Providence, Rhode Island in August 2013. In responding to Ms. Sclove’s report of sexual misconduct, Brown directed Ms. Sclove to a health facility that was unequipped to preserve evidence of strangulation or assault, and failed to make clear that she could file both a student misconduct complaint and a criminal complaint. In so doing, Brown violated the Clery Act by failing to explain adequately the importance of preserving evidence as may be necessary to the proof of criminal sexual assault or the procedures to follow in case of a sex offense.

3. Ms. Sclove requests that the Department of Education investigate these allegations, take all necessary steps to remedy any unlawful conduct identified in its investigation or otherwise on the part of Brown, secure an assurance of compliance with the Clery Act from Brown, and monitor any resulting agreement. In particular, Brown should develop, disseminate, and implement a Clery-Act-compliant policy that refers students reporting possible sexual assaults to health facilities prepared to collect evidence; develop, disseminate, and implement a Clery-Act-compliant policy that properly explains that student misconduct complaints and criminal complaints are not mutually exclusive.

JURISDICTION

4. The Department of Education is responsible for ensuring compliance with the Clery Act and receiving information about, investigating, and remedying violations of the Clery Act and its implementing regulations and guidelines. 34 C.F.R. Part 668, Subpart G.

5. Ms. Sclove has not filed this administrative complaint with any other government agency or court. She filed an administrative complaint regarding the Title IX aspects of her case with the Department of Education Office on Civil Rights Boston Office on May 14, 2014.

6. Brown University utilizes the various federal student aid programs that are authorized by Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 et seq. and 42 U.S.C. § 2751 et seq.,¹ and is therefore subject to the requirements of the Clery Act.

FACTUAL ALLEGATIONS

7. Lena Sclove is a student at Brown University in Providence, Rhode Island. On Friday, August 2, 2013, just before the start of the second semester of Ms. Sclove’s junior year, a fellow student with whom she had previously been intimate walked her home from an off-campus party in Providence. While on the sidewalk, he pinned her against a pole and strangled her, and despite her protests that she felt unwell and wanted to go home, took advantage of her intoxication to walk her to his apartment off campus shortly thereafter. There, he forced vaginal penetration and strangled her again. Throughout, the respondent ignored Ms. Sclove’s statements that she did not want to have sex, as well as the fact that she cried during the incident. In the immediate aftermath of the assault, Ms. Sclove suffered bruising on her neck and physical pain.

1 See, e.g., <http://www.brown.edu/about/administration/financial-aid/2012-13-regular-decision-us-citizens-and-permanent-residents>.

8. Traumatized from the assault, five days later, on August 7, 2013, Ms. Sclove called the Brown Sexual Assault Response Line, staff of which set up an appointment for Ms. Sclove on the same day with Brown Health Services. Brown Health Services took a history of Ms. Sclove's account of the incident, took blood and urine to test Ms. Sclove for sexually transmitted infections, and provided emergency contraception. Brown Health Services did not perform any physical examination of her, take any photographs of any injuries, or recommend that she visit an emergency room, hospital, or police department for a forensic sexual assault examination. Upon information and belief, Brown Health Services is not equipped to collect evidence of physical assault or strangulation.

9. No one at the Brown Sexual Assault Response Line or Brown Health Services explained to Ms. Sclove the option of reporting the assault to the police or the importance of preserving physical evidence. Ms. Sclove was given pamphlets to take home, which stated that any hospital examination should have occurred within 96 hours of the assault.² No one reviewed them with her and she was not able to concentrate when she read them because of the trauma she was experiencing.

10. Brown Health Services also referred Ms. Sclove to Brown's Coordinator of Sexual Assault Prevention and Advocacy ("Coordinator"). On Thursday, August 8, the Coordinator assisted Ms. Sclove in drafting an e-mail to the respondent explaining the impact of the assault on her. At the Coordinator's suggestion, Ms. Sclove called the Special Victims Unit of the Brown Department of Public Safety ("SVU") (Brown's campus police) to discuss safety planning around the possibility of future contact with the respondent. The SVU spoke with Ms. Sclove over the phone and also sent her an e-mail reiterating that she could report problems to the Brown Department of Public Safety. Ms. Sclove stayed in frequent contact with the Coordinator over the following week.

11. On August 15, 2013, Ms. Sclove met with the Coordinator and a Dean for approximately an hour to discuss the process for filing a complaint with the Brown Office of Student Life. Less than five minutes of that meeting were used to explain to Ms. Sclove that she could file a report with the Brown Department of Public Safety or the Providence Police Department for the purpose of pursuing a criminal prosecution. Nonetheless, that meeting, thirteen days after the assault, constituted the first time that a Brown official explained that option in any detail.

12. Despite her many conversations with Student Health Services, the SVU of the Brown Department of Public Safety, and Brown staff, Ms. Sclove did not receive clear guidance regarding her rights and was left with the understanding that she could pursue either a Brown

² According to the U.S. Department of Justice Office on Violence Against Women, "[e]xaminers and law enforcement representatives, in particular, should be aware of the standard cutoff time for evidence collection in their jurisdictions, which is typically indicated in instructions in evidence collection kits. But it is important to remember that evidence collection beyond the cutoff point is conceivable and may be warranted in particular cases. . . . Individuals responding to sexual assault victims should avoid basing decisions about whether to collect evidence on how they think patients' characteristics or circumstances will affect the investigation and prosecution." Office on Violence Against Women, U.S. Department of Justice, A National Protocol for Sexual Assault Medical Forensic Examinations 73-74 (2d ed. 2013), available at <https://www.ncjrs.gov/pdffiles1/ovw/241903.pdf>.

student misconduct complaint or file a criminal complaint, but not both. Brown personnel convinced Ms. Sclove that her assault would be handled more humanely if she opted for the school's disciplinary process instead of the criminal process.

13. On August 20, 2013, Ms. Sclove filed a complaint with the Brown Office of Student Life, the body charged with enforcing the Brown Code of Student Conduct ("Code"). The Code provides that "[s]erious or persistent minor violations of University rules or regulations may result in suspension or expulsion."

14. On August 22, 2013, Brown issued an order directing Ms. Sclove and the respondent to refrain from contacting each other "until the Office of Student Life determines it is no longer necessary." Ms. Sclove was given the options of either no no-contact order at all for either party, or mutual no-contact orders. It was strongly impressed on Ms. Sclove that she would be in significant trouble if she violated the no-contact order.

15. Throughout fall 2013, while attempting to continue her studies, Ms. Sclove experienced significant symptoms of trauma, including panic attacks, flashbacks, and depression. Everywhere she walked, she felt that she was being followed. She dropped two internships in mid-August 2013 and was unable to continue them in the fall as planned. She stopped teaching an English class a week early in August 2013.

16. During the period of August to October 2013, she spotted the respondent in the distance at the dining hall, campus center, and main green approximately every week, which consistently caused her panic attacks and nausea. She began avoiding all public spaces in order to avoid him and obtained special permission to move out of her dorm and off campus.

17. Brown investigated her complaint during the fall of 2013. Ms. Sclove attended one to three meetings every week relating to different administrative aspects of the process. She also had to organize supporting statements and documentation from numerous witnesses.

18. In order to cope with the trauma and the administrative burden of the complaint process, eventually Ms. Sclove decided to audit one of her classes, which resulted in her attending Brown part-time during the fall 2013 semester.

19. After investigating Ms. Sclove's allegations and holding a full hearing in which Ms. Sclove and the respondent testified separately and were questioned by a disciplinary panel assembled by the Office of Student Life, the disciplinary panel concluded in mid-October 2013 that the respondent was responsible for all charges against him. Accordingly, by letter dated October 18, 2013, the respondent was pronounced responsible for four separate violations of the Code: (1) "Actions that result in or can be reasonably expected to result in physical harm to a person or persons"; (2) "Sexual misconduct that involves non-consensual physical contact of a sexual nature"; (3) "Sexual misconduct that includes one or more of the following: penetration, violent physical force, or injury"; and, (4) "Illegal possession or use of drugs and/or alcohol and/or drug paraphernalia."

20. Based on these findings, the investigative board recommended that the respondent be suspended from Brown for two years. However, on October 18, 2013, a Senior Associate Dean exercised his discretion to decline to follow this recommendation, choosing instead to reduce the respondent's suspension to one year, until the fall 2014 semester.

21. Ms. Sclove appealed, pointing out that she feared that her safety would be endangered if the respondent were allowed to return to campus while she was there, and that this sanction would not give her time to complete her coursework and graduate before the respondent returned to campus. Her parents also submitted an appeal letter pointing out that many rapists are serial rapists whose presence endangers the entire student body.³

22. On November 15, 2013, Brown's Vice President for Campus Life and Student Services ("Vice President") affirmed the length of the one-year suspension, stating that "the length of the suspension imposed . . . is reasonably consistent with precedent in similar cases," and offered to place the respondent on probation and reinstitute the no-contact order if the respondent returned to campus.

22. As a result of the assault and its aftermath, including Brown's mishandling of the assault, Ms. Sclove was diagnosed with post-traumatic stress disorder, social anxiety, and a noise phobia. She also suffered migraines and a spinal injury in connection with the assault. Because the injury rendered her unable to walk without assistance, Ms. Sclove was forced to spend the spring 2014 semester on a medical leave. Combined with her inability to take on a full course load the previous semester, this circumstance has delayed Ms. Sclove's graduation by a full year thus far.

23. In February 2014, Ms. Sclove learned from a source not affiliated with Brown that the Providence Police Department permits sexual assault victims to make reports of crimes without requiring victims to pursue criminal charges. Accordingly, she met with the Providence Police Department in February and March 2014 and made a report about the August 2013 incident.

24. In May 2014, the respondent announced his intention not to return to Brown during the following school year.

25. Ms. Sclove has been contacted by fellow students who have had similar experiences with Brown's handling of sexual misconduct complaints, and makes this complaint on a class basis.

LEGAL ALLEGATIONS

26. The Clery Act requires postsecondary institutions to develop and distribute a statement of policy that informs students of "[p]rocedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported." 20 U.S.C. § 1092(f)(8)(B)(iii).

³ See, e.g., Legal Momentum National Judicial Education Program, *THE UNDETECTED RAPIST* (2000), available at <https://www.legalmomentum.org/store/undetected-rapist-dvd>; D. Lisak & P.M. Miller, *Repeat Rape and Multiple Offending Among Undetected Rapists*, 17 *VIOLENCE AND VICTIMS* 73 (2002).

27. The Clery Act's implementing regulations also require this policy statement to inform students of their option to notify appropriate law enforcement authorities, including on-campus and local police, and to assure students that the school will assist the student in notifying the authorities if the student requests that assistance. 34 C.F.R. § 668.46(b)(11).

28. The Brown Sexual Assault Response Line's referral of Ms. Sclove solely to Brown Health Services was inappropriate in light of the fact that Brown Health Services was apparently not equipped to preserve evidence of a sexual assault or strangulation. Brown Health Services did not even perform a physical examination of Ms. Sclove for the purpose of collecting or preserving evidence of either sexual assault or strangulation, much less actually attempt to document any evidence.

29. By failing to inform Ms. Sclove of the importance of evidence collection when it received her report on August 7, 2013, Brown violated the Clery Act.

30. During Ms. Sclove's conversations with Student Health Services, the Brown Department of Public Safety, and Brown staff throughout the period of August 2013 to January 2014, Ms. Sclove was left with the understanding that she could pursue either a Brown student misconduct complaint or file a criminal complaint, but not both. The written policies provided to Ms. Sclove after she arrived at Student Health services on August 7, 2013 were confusing and unclear on this topic, and further discouraged criminal reporting.

31. In failing to make clear to Ms. Sclove that she could use both the student misconduct process and the criminal complaint process, Brown violated its duty under the Clery Act to inform students of their option to notify appropriate law enforcement authorities.

REMEDIES SOUGHT

32. Ms. Sclove requests:

a. that the Department of Education investigate Brown to determine whether it is meeting its obligations to students to have and publicize procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported, 20 U.S.C. § 1092(f)(8)(B)(iii);

b. that the Department of Education take all necessary steps to remedy any unlawful conduct identified in its investigation or otherwise on the part of Brown, as required by the Clery Act and its implementing regulations, 34 C.F.R. Part 668;

c. that if any violations are found, the Department of Education secure an assurance of compliance with the Clery Act from Brown, as well as full remedies for the violations found. In particular, Brown should develop, disseminate, and implement a Clery-Act-compliant policy that refers students reporting possible sexual assaults to health facilities prepared to collect evidence; develop, disseminate, and implement a Clery-Act-compliant policy that properly explains that student misconduct complaints and criminal complaints

are not mutually exclusive; and take the trauma likely experienced by victims into account when implementing these policies;

d. that the Department of Education monitor any resulting agreements with Brown to ensure that compliance with the Clery Act is achieved;

e. that if appropriate, the Department of Education fine Brown pursuant to 34 C.F.R. § 668.84; and

f. Finally, Legal Momentum is a non-profit organization that has taken on representation of the Complainant in her administrative complaints with the Department of Education pro bono and has put in a significant amount of time working to resolve this matter, including attorney time in research, drafting of complaints, and extensive communications with our client. We have complete documentation of our time spent and expenses, and will make them available to the Department of Education upon request regarding fees and costs.

Respectfully submitted,

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