

December 22, 2017

Mr. Scott Schools
Associate Deputy Attorney General
Office of the Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Schools:

On behalf of the Department of Justice Gender Equality Network (DOJ GEN), we thank you for taking the time to meet with us on Wednesday. We very much appreciate the opportunity to discuss your commitment to eradicating sexual harassment and misconduct at the Department and our suggestions for ways to enforce the agency's "zero tolerance" policy.

As you know, the Office of the Inspector General (OIG) identified systemic issues with the Department's handling of sexual harassment and misconduct complaints.¹ To recap what we discussed, we urge the Department to enact the following reforms in accordance with the OIG's recommendations and observations:

- Establish a table of penalties consisting of recommended (but not mandatory) disciplinary actions for sexual harassment and misconduct to help standardize responses across the Department.² As a recent congressional report issued by the House Committee on Oversight and Government Reform revealed,³ the Justice Department is one of the few federal agencies that lacks an agency-wide table of penalties. We believe that this contributed to the Civil

¹ DOJ OIG, Management Advisory Memorandum, *The Handling of Sexual Misconduct and Harassment Allegations by Department of Justice Components* (May 2017), available at <https://oig.justice.gov/reports/2017/1705-v2.pdf>.

² A table of penalties should be used in conjunction with the *Douglas* factors, not in lieu of them. See <https://www.opm.gov/policy-data-oversight/employees-relations/reference-materials/douglas-factors.pdf>; *Douglas v. Veterans Administration*, 5 M.S.R.P. 280, 305-06 (1981). Whereas the *Douglas* factors delineate criteria that offices must generally consider when punishing any misconduct (such as the employee's job level or disciplinary history), a table of penalties lists specific offenses and suggests disciplinary actions for each, ranging from reprimand to removal.

³ Committee on Oversight and Government Reform, U.S. House of Representatives, 115th Cong., *Tables of Penalties: Examining Sexual Misconduct in the Federal Workplace and Lex Federal Responses* (Oct. 19, 2017), available at <https://oversight.house.gov/wp-content/uploads/2017/10/Tables-of-Penalties-Majority-Report.pdf>.

Division's and law enforcement components' inconsistent and often inadequate handling of substantiated cases, as the OIG's reviews of those components illustrated.⁴ We agree with the Oversight Committee's conclusion that any agency without an agency-wide table of penalties should create one.

- Require policies outlining when sexual harassment or misconduct allegations must be reported to a component's headquarters or front office, and to the OIG. The OIG has identified too many instances of offices mishandling allegations as local management issues.⁵ Individual offices are less likely to be qualified to properly handle allegations; oversight from above is crucial to promote consistency and identify systemic issues.
- Ban known serious perpetrators and those under investigation from receiving awards. Rewarding these individuals, which is often done publicly, signals a lax policy toward sexual harassment and misconduct and discourages employees from reporting.⁶ We understand the benefits of incentivizing strong work performances by issuing awards, but doing so should not be done at the expense of employees' safety.

We also encourage the Department to take additional steps:

- Supplement annual training requirements with regular reminders about the ways employees can report allegations, and educate those new to the Department about their rights. It is critical that employees understand that they can report complaints to an Equal Employment Opportunity counselor and that they only have 45 days to do so. If employees choose not to file an EEO complaint, they should know whom in their component they can turn to if they feel uncomfortable seeking relief from direct managers, and they should be assured that speaking up will not result in retaliation.
- Strengthen the annual training requirement. The Department-wide sexual harassment training through Learn DOJ is perfunctory compared to prior years when employees were required to watch a lengthy video and pass a quiz. In addition to explaining what type of behavior violates agency policy, any

⁴ DOJ OIG, *Review of the Handling of Sexual Harassment and Misconduct Allegations by the Department's Civil Division*, Evaluation and Inspections Report 17-03 (May 2017) ("Civil Division report"), available at <https://oig.justice.gov/reports/2017/e1703.pdf> ("Civil Division report"); DOJ OIG, *The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components*, Evaluations and Inspections Report (March 2015), available at <https://oig.justice.gov/reports/2015/e1504.pdf>.

⁵ As we mentioned, it has come to our attention that one of the perpetrators discussed in the OIG's Civil Division report, whose counseling by his local office proved ineffective, has continued to exhibit troubling behavior in the last six months despite further counseling by his office.

⁶ Just last month, the Civil Division announced to all of its employees that it will issue a prestigious award to another individual whose egregious sexual misconduct was described in the OIG's Civil Division report.

annual training should carefully describe how employees can report violations that they experience or witness.⁷

- Reconsider relying on the practice dubbed “pass the trash,” whereby serious offenders are moved from one office to another. Transferring predators around the Department telegraphs a permissive attitude toward hazardous behavior and subjects new offices to future incidents. We believe that in a predator who must be removed from a victim should usually be removed from the Department.
- Conduct an agency-wide climate survey to assess the effects of sexual harassment and misconduct and examine employees’ perceptions about the Department’s response to it. A recent Department of Interior workplace survey revealed that in a 12-month period, 35% of employees experienced some form of harassment or assault, much of which was gender-based or sexual in nature.⁸ Nearly 30% of those who reported the behavior were punished for doing so and nearly 40% were encouraged to drop the issue. We believe that the Bureau of Justice Statistics may be able to design and conduct a similar survey here, the results from which could better equip the Department to respond.

The Department’s efforts to address its handling of these issues comes at a fortuitous time – the recent maelstrom of high-profile sexual harassment and misconduct cases has ignited a nationwide dialogue.⁹ As more private and public employers take steps to better protect their employees, we hope and believe that the Justice Department can serve as a role model.

⁷ See Select Task Force on the Study of Harassment in the Workplace Report of EEOC Co-Chairs Chai R. Felblum & Victoria A. Lipnic (June 2016), *available at* https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm#_Toc453686319 (“We believe effective training can reduce workplace harassment, and recognize that ineffective training can be unhelpful or even counterproductive. However, even effective training cannot occur in a vacuum – it must be a part of a holistic culture of non-harassment that starts at the top.”).

⁸ See Department of the Interior 2017 Work Environment Survey (December 2017), *available at* https://www.doi.gov/sites/doi.gov/files/uploads/doi_wes_graphical_overview.pdf.

⁹ In response, many institutions have already taken swift and decisive action to address the issue. For example, some private companies have scrutinized their policies and enacted new requirements for employees. In Congress, a bipartisan bill has been introduced that seeks to raise awareness and improve the complaint process. The Departments of State and Homeland Security are reexamining their policies after receiving an open letter from 223 female current and past employees. See Carol Hymowitz, Lukas I. Alpert and Suzanne Vranica, *Harassment Scandals Prompt Rapid Workplace Changes*, Wall Street Journal (Nov. 11-12, 2017), *available at* <https://www.wsj.com/articles/the-workplace-after-weinstein-harassment-scandals-prompt-rapid-changes-1510333058>; Deborah Barfield Berry, *Lawmakers push for tougher sexual harassment standards on Capitol Hill* (November 15, 2017), *available at* <https://www.usatoday.com/story/news/politics/2017/11/15/lawmakers-push-tougher-sexual-harassment-standards-capitol-hill/867135001>; CBS News, *State, DHS Respond to 223 Women in National Security Field Speaking Out on Sexual Harassment* (Nov. 29, 2017), *available at* <https://www.cbsnews.com/news/state-dhs-respond-to-223-women-in-national-security-field-speaking-out-on-sexual-harassment>.

We look forward to learning more about your plans and we continue to offer you our help. Thank you again for your willingness to include us in the discussion.

Respectfully,

/s/ Stacey I. Young
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President, DOJ GEN

/s/ Melanie Krebs-Pilotti
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cc: Arthur Gary
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