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November 30, 2022

The Honorable Miguel Cardona
Secretary
Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Secretary Cardona and Attorney General Garland,

Current college and university policies for involuntary medical leaves of absence (“involuntary MLOAs”) can unfairly exclude students with disabilities from higher education. We should not allow that to happen. No student should be denied access to education because of their disability. I call on the Department of Education (DOE) and Department of Justice (DOJ) to issue involuntary-MLOA guidance, including policy reforms to Section 504 of the Rehabilitation Act of 1973 (Section 504) that protect students’ access to higher education and strengthen non-discrimination protections when they need medical leave.

Involuntary MLOAs arise when a college or university requires a student to take medical leave, often in the context of mental health struggles such as panic attacks, eating disorders, self-harm, or suicidal ideation or attempts.¹ In determining whether a student must take an MLOA, school administrators have to balance two competing legal obligations: (1) complying with disability civil rights law for students with mental health disabilities and (2) ensuring the health and safety

¹ See Gemma J. Schneider, *Between the Lines of Harvard’s Leave of Absence Handbook*, Harvard Crimson, (Apr. 6, 2022), <https://www.thecrimson.com/article/2022/4/6/schneider-column-4/>; Anemona Hartocollis, *Feeling Suicidal, Students Turned to Their College. They Were Told to Go Home*, N.Y. Times (Aug. 28, 2018), <https://www.nytimes.com/2018/08/28/us/college-suicide-stanford-leaves.html>; Jillian Atelsek, *UMD barred a student from returning to her on-campus apartment after a hospital stay*, The Diamondback, (Apr. 14, 2018), <https://dbknews.com/2018/04/14/umd-student-resident-life-hospital-apartment-psychiatrist/>; Ronan Farrow, *Mental health policies at universities draw increasing concern*, Today (June 20, 2016), <https://www.today.com/video/mental-health-policies-at-universities-draw-increasing-concern-708889155922>.

of the entire campus community. Campus health and safety includes that of the student, and shortages in the workforce available to assist students struggling with mental health impact the assessment.² In fact, some universities cite “community disruption” as a justification for imposing involuntary MLOAs.³

Some colleges and universities, such as Boston University⁴, have medical leave policies that appropriately accommodate students with mental or physical disabilities. But many do not. Involuntary MLOA policies can be coercive and exclusionary for some students. Involuntary MLOAs have occurred after students have disclosed mental health disabilities to counselors or fellow students and, in some cases, over the objections of students who wish to remain enrolled and on campus.⁵ One student shared that they were given voluntary LOA paperwork in an exam room “with the understanding that if [they] didn’t sign those, then [they] would be put on a forced leave.”⁶ Colleges and universities have pushed students off campus through involuntary medical leaves and evictions from their housing,⁷ including sending students notifications that they will not be able to return to their dorms, even to collect their belongings.⁸

² See Allie Greenspan, *Danger for whom?: College Officials are confused and anxious about a federal shift that seems to prohibit them from removing students who might harm themselves*, Inside Higher Ed (Dec. 6, 2011), <https://www.insidehighered.com/news/2011/12/06/ocr-shift-harm-self-rules-has-student-affairs-officials-worried>; Zara Abrams, *A crunch at college counseling centers*, American Psychological Association (July 11, 2020), <https://www.apa.org/monitor/2020/09/crunch-college-counseling>; Megan Leonhardt, *What colleges can do right now to help alleviate the mental health crisis on campus*, Fortune (July 30, 2022), <https://fortune.com/well/2022/07/30/what-colleges-can-do-to-alleviate-the-mental-health-crisis-on-campus/>.

³ Anemona Hartocollis, *Feeling Suicidal, Students Turned to Their College. They Were Told to Go Home*, N.Y. Times (Aug. 28, 2018) (“Community disruption” has been used broadly enough to include where a student is not a safety threat, such as “using too many resources, informing friends of suicidal ideation, or requiring wellness checks.”), <https://www.nytimes.com/2018/08/28/us/college-suicide-stanford-leaves.html>; see also *The Ruderman White Paper Reveals: Ivy League Schools Fail Students with Mental Illness*, Ruderman Foundation (Dec. 10, 2018), https://rudermanfoundation.org/white_papers/the-ruderman-white-paper-reveals-ivy-league-schools-fail-students-with-mental-illness/.

⁴ See generally Rich Barlow, *BU Creates First-Of-Its-Kind Guides for Students Seeking a Mental Health Leave, and for Faculty and Staff* (Apr. 27, 2021), <https://www.bu.edu/articles/2021/bu-creates-guides-for-students-faculty-staff-seeking-a-mental-health-leave/>.

⁵ See Elizabeth Pham Janowski, *Sent Away: When students in crisis ask for help, will they be kicked off campus? Depends on the college*, Chronicle (June 27, 2022), <https://www.chronicle.com/article/sent-away>.

⁶ Lucia Geng, *‘A Really Interesting Confidence Thing: What It’s Like to Take a Leave of Absence’*, Chicago Maroon (Apr. 10, 2019), <https://chicagomaroon.com/26810/grey-city/really-interesting-confidence-thing-like-take-leave/>.

⁷ See *Campus Mental Health: Frequently Asked Questions*, Judge David L. Bazelon Center for Mental Health Law (July 2017), <http://www.bazelon.org/wp-content/uploads/2017/08/2017-07-18-campus-mental-health-fact-sheet-FINAL-1.pdf>; see also Jillian Atelsek, *UMD barred a student from returning to her on-campus apartment after a hospital stay*, The Diamondback (Apr. 14, 2018), <https://dbknews.com/2018/04/14/umd-student-resident-life-hospital-apartment-psychiatrist/>.

⁸ See Elena Kadwany, *In ‘historic’ settlement, Stanford agrees to revise leave of absence policies for students in mental health crisis*, Palo Alto Online (Oct. 7, 2019), <https://www.paloaltoonline.com/news/2019/10/07/in-historic-settlement-stanford-agrees-to-revise-leave-of-absence-policies-for-students-in-mental-health-crisis>; Jillian Atelsek, *UMD barred a student from returning to her on-campus apartment after a hospital stay*, The Diamondback (Apr. 14, 2018), <https://dbknews.com/2018/04/14/umd-student-resident-life-hospital-apartment-psychiatrist/>; Anonymous, *What’s best for you: Reflections from a recent graduate forced to take medical leave*, The Tech (Jan. 14, 2016), <https://thetech.com/2016/01/14/leave-v135-n36>.

Students do not only lose their access to higher education when their school imposes an involuntary MLOA, they also can lose access to health, social, and financial supports such as friends, professors, advisors, and any medical professionals treating the student.⁹ Involuntary MLOAs can also result in lost health insurance. If students lose access to their student health insurance, they may be required to pay out of pocket for the recovery care and documentation they need to return to campus.¹⁰ Involuntary MLOAs can further create financial burdens by triggering student loan repayments. Students must repay student loans if their MLOA extends beyond six months,¹¹ which may be more likely to occur at schools with requirements for campus re-entry such as medical documentation, permissions from administrators, and reapplication for admission.¹² And even though students on involuntary MLOAs lose access to classes and on-campus accommodation, they may still have to pay tuition, fees, and housing costs. For students who cannot live with family and do not have the resources to pay rent on their own, this could leave them homeless. As one student put it: “[M]y housing has already been canceled. I have to pay all sorts of fees and things for taking this leave at the last minute.”¹³

Involuntary MLOAs also come with emotional costs. The social and financial challenges associated with involuntary MLOAs can exacerbate existing symptoms while also adding shame and isolation to the experience of depression.¹⁴ Some students on involuntary leave have attempted suicide at home after being sent away.¹⁵ In other words, an involuntary MLOA can make recovery more challenging and have a chilling effect on students considering seeking help.¹⁶

⁹ See [William Wan, ‘What if Yale Finds Out?’: Suicidal students are pressured to withdraw from Yale then have to apply to get back into the university](https://www.washingtonpost.com/dc-md-va/2022/11/11/yale-suicides-mental-health-withdrawals) (Nov. 11, 2022), <https://www.washingtonpost.com/dc-md-va/2022/11/11/yale-suicides-mental-health-withdrawals>.

¹⁰ See [Wan, supra note 14](#).

¹¹ See *Student Loan Repayment*, Federal Student Aid: An Office of the U.S. Department of Education, <https://studentaid.gov/manage-loans/repayment>.

¹² *Justice Department Reaches Agreement with Brown University to Ensure Equal Access for Students with Mental Health Disabilities*, U.S. Department of Justice (Aug. 10, 2021), <https://www.justice.gov/opa/pr/justice-department-reaches-agreement-brown-university-ensure-equal-access-students-mental>; Shera S. Avi-Yonah and Delano R. Franklin, *Barreira Says HUHS Shares Mental Health Evaluations with College Before and After Leaves of Absence*, Harvard Crimson (Apr. 11, 2019), <https://www.thecrimson.com/article/2019/4/11/huhs-shares-leave-info/>; Victor Schwartz, *Mandatory Leave of Absence for College Students with Suicidal Behaviors: The Real Story*, Psychiatric Times (Aug. 26, 2016), <https://www.psychiatrictimes.com/view/mandatory-leave-absence-college-students-suicidal-behaviors-real-story>.

¹³ Sarah Craig and Roman Peregrino, *Where have all the students gone? How leave of absence policies hinder student wellness*, Georgetown Voice (Sept. 11, 2021), <https://georgetownvoice.com/2021/09/11/leaves-of-absence-mental-health/>.

¹⁴ See Anemona Hartocollis, *Feeling Suicidal, Students Turned to Their College. They Were Told to Go Home*, N.Y. Times (Aug. 28, 2018), <https://www.nytimes.com/2018/08/28/us/college-suicide-stanford-leaves.html>

¹⁵ See *id.*; Wan, *supra* note 14.

¹⁶ See *Supporting Students: A Model Policy for Colleges and Universities*, Judge L. Bazelon Center for Mental Health Law (May 15, 2007), <http://www.bazelon.org/wp-content/uploads/2017/04/SupportingStudentsCampusMHPolicy.pdf>.

I commend DOJ and DOE for the actions they have already taken to enforce our nation's civil rights laws and protect disabled students' access to higher education,¹⁷ including reaching settlement agreements with universities for Americans with Disabilities Act (ADA) violations implicating MLOAs.¹⁸ But enforcement measures often occur *after* students have been removed from campus. Any student who loses their access to education due to their disability is one student too many, underscoring the need for DOE and DOJ to collaborate on involuntary-MLOA guidance for all colleges and universities to adopt. As DOE develops Section 504 amendments to strengthen the rights of students with disabilities¹⁹, I call on the Biden administration to issue guidance on involuntary MLOAs and provide clarity to institutions on how they should respond to students' mental health crises.

In response to the issues raised in this letter, and given a forthcoming December 2022 DOE notice of proposed rulemaking in this subject area,²⁰ I respectfully request that, by December 20, 2022, DOE and DOJ respond in writing to the following questions and provide a staff-level briefing.

1. What consideration has DOE given to involuntary MLOAs as part of 504 reform efforts?
2. What data has DOE compiled regarding MLOAs, including involuntary MLOAs?
3. What demographic disparities exist related to involuntary MLOAs, including, but not limited to, disparities based on race, ethnicity, sex, gender, or income?
4. What steps, if any, have DOE and the DOJ taken to reform accommodation and MLOA policies to support disabled students?
5. What efforts have DOJ or DOE made to meet with leaders of student bodies, including student government associations, student councils, and graduate student unions on the issue of involuntary MLOAs?
6. What efforts have DOJ or DOE made to meet with students with mental health disabilities, including those who have been on involuntary MLOAs, on this issue?
7. What efforts have DOJ or DOE made to meet with members of the disability community on the issue of involuntary MLOAs?

¹⁷ See Allie Greenspan, *Danger for whom?: College Officials are confused and anxious about a federal shift that seems to prohibit them from removing students who might harm themselves*, Inside Higher Ed (Dec. 6, 2011), <https://www.insidehighered.com/news/2011/12/06/ocr-shift-harm-self-rules-has-student-affairs-officials-worried>.

¹⁸ See *Justice Department Reaches Agreement with Princeton University to Resolve Americans with Disabilities Compliance Review*, U.S. Department of Justice (Dec. 19, 2016), <https://www.justice.gov/opa/pr/justice-department-reaches-agreement-princeton-university-resolve-americans-disabilities-act>; *Settlement Agreement Between the United States of America and Northern Michigan University Under the Americans With Disabilities Act* (Oct. 18, 2018), https://www.ada.gov/nmu_sa.html; *Justice Department Settles Americans with Disabilities Act Case with Quinnipiac University*, U.S. Department of Justice (Jan. 12, 2015), <https://www.justice.gov/usao-ct/pr/justice-department-settles-americans-disabilities-act-case-quinnipiac-university>.

¹⁹ U.S. Department of Education Announces Intent to Strengthen and Protect Rights for Students With Disabilities by Amending Regulations Implementing Section 504, U.S. Department of Education (May 6, 2022), <https://www.ed.gov/news/press-releases/us-department-education-announces-intent-strengthen-and-protect-rights-students-disabilities-amending-regulations-implementing-section-504>.

²⁰ *Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap*, Office of Information and Regulatory Affairs, Office of Management and Budget (Spring 2022), <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=1870-AA17>

8. What efforts have DOJ or DOE made to meet with leaders of colleges and universities on the issue of involuntary MLOAs?
9. What steps, if any, has DOJ taken to offer guidance to colleges and universities with which it has previously settled claims of ADA violations related to MLOAs to ensure that new policies adhere to the ADA and Section 504 protections?

Accommodating mental health disabilities on college campuses is of urgent concern. College-aged students are experiencing a worsening mental health crisis. From 2020 to 2021, more than 60 percent of students met criteria for one or more mental health problems, representing a 50 percent increase from 2013.²¹ Eighty percent of college students reported the COVID-19 pandemic had negatively affected their health, and of this group, 25 percent reported increased substance use and another 25 percent acknowledged serious suicidal ideation.²² Involuntary-MLOA reform is badly needed to ensure that students are not punished for seeking mental health supports.

Sincerely,



Edward J. Markey
United States Senator

²¹ Sarah Ketchen Lipson et al., *Trends in College Student Mental Health and Help-Seeking by Race/Ethnicity: Findings from the National Healthy Minds Study, 2013-2021*, 306 J. of Affective Disorders 138 (June 1, 2022), <https://www.sciencedirect.com/science/article/abs/pii/S0165032722002774>.

²² Dana Alkhouri, *Pandemic's mental health burden heaviest among young adults*, ABC News (Feb. 21, 2021), <https://abcnews.go.com/Health/pandemics-mental-health-burden-heaviest-young-adults/story?id=75811308>.