



**Testimony prepared for a hearing  
“Building on the Success of 35 Years of Title IX”  
before the  
Higher Education, Lifelong Learning and Competitiveness  
Subcommittee  
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Chairman Hinojosa and members of the subcommittee, thank you for the opportunity to testify today about Title IX and this wonderful civil rights law’s impact on sexual harassment in education since its inception 35 years ago.

Founded in 1881, AAUW has over 100,000 members and 1300 branches across the country. AAUW also has a long and proud 125-year history as an advocate for education and equity for women and girls, releasing its first report on women and education in 1885. Today, AAUW continues its mission through education, research, and advocacy.

Sexual harassment has long been a part of the educational experience, affecting students’ well-being and their ability to succeed academically. The term “sexual harassment,” coined in the early 1970’s, became more commonly used in the 1980’s. Sexual harassment is unwanted and unwelcome sexual behavior—including comments and actions—that directly deprives a person of educational benefits or is sufficiently severe or pervasive to create a hostile environment, thereby limiting full access to education and work. Before Title IX, there was little remedy for addressing sexual harassment in educational settings. However, legal rulings have conclusively determined that Title IX offers protections from sexual harassment for students and employees – indeed, the U.S. Supreme Court explicitly recognized sexual harassment as a violation of Title IX in 1992.<sup>1</sup>

Despite these court holdings, sexual harassment continues to undermine equal opportunity in education. While awareness and reporting have increased, AAUW research has demonstrated the reality that sexual harassment continues to plague our nation’s schools and students. When a student experiences sexual harassment on campus or in the classroom, the hostile environment it creates can undermine their educational opportunity. Awareness of the issue, proactive efforts on behalf of educational institutions and Title IX advocates, and legal remedies have resulted in more efforts to address the problem in recent years – but those efforts have not cured the problem. Further, while it is clear that sexual harassment in the schoolroom and on college campuses disproportionately affects women, boys and men experience harassment as well, and they have used various Title IX remedies in an attempt to improve their situations. While improvements must be noted and praised, and best practices should be shared to create a better educational climate for all, sexual harassment remains a pervasive problem.

AAUW has been at the forefront of research on the topic for more than a decade.<sup>2</sup> Since AAUW's first research into this area in 1993, students have become more aware of their schools' harassment policies and the resources available to them.<sup>3</sup> Unfortunately, students' increased awareness has not translated into fewer incidents of sexual harassment, nor has it increased the likelihood that students will report such incidents.<sup>4</sup> Sexual harassment has serious implications for students, some of whom may experience a hostile educational environment on a daily basis. However, most students do not report it or even talk openly about sexual harassment as a serious issue.<sup>5</sup> In fact, according to AAUW's 2006 research, *Drawing the Line: Sexual Harassment on Campus*, more than one-third of college students tell no one after being harassed; almost half (49 percent) confide only in a friend; and only 7 percent of students report the incident to a college employee.<sup>6</sup> While not all the harassment incidents reported in the 2006 research would necessarily represent a violation of Title IX, these statistics raise serious concerns about barriers that continue to exist for women on our nation's campuses and depict a campus climate that, at a minimum, is likely to be a breeding ground for Title IX sexual harassment violations.<sup>7</sup>

### **Scope of the Problem**

AAUW research reveals a significant climate problem, which if fixed could prevent the need for people to go to file sexual harassment suits to protect their rights. By taking a broad approach in analyzing this issue, AAUW's research seeks to identify the scope of the problem so that schools can take proactive steps to address sexual harassment. In so doing, we hope to promote the best learning environment possible as well as avoid potential litigation. Improving the climate is critical, because sexual harassment on college and university campuses has a damaging impact on the educational experience of many college students.<sup>8</sup> Similarly, persistently high rates of sexual harassment among students at the secondary level disrupt students' ability to learn and succeed in their studies.<sup>9</sup> Most students have an intuitive understanding of what defines sexual harassment, and when asked to provide a definition, describe it as physical and non-physical behaviors including touch, words, looks, and gestures.<sup>10</sup> According to AAUW's own research, student reports of sexually harassing behavior remain high:

- 80 percent of students at the secondary level report that they experience sexual harassment; over one in four say they experience it often.<sup>11</sup>
- At the postsecondary level, nearly two-thirds of college students (62 percent) say they have been sexually harassed,<sup>12</sup> including nearly one-third of first year students;<sup>13</sup> 41 percent of students admit they have sexually harassed another student.<sup>14</sup>

### **Consequences of Sexual Harassment in Schools**

A college education is increasingly becoming a prerequisite for many career paths and for lifelong economic security. With a college student population that has topped 10 million and continues to grow, creating a climate that is free from bias and harassment is a necessary concern for the entire higher education community. Young adults on campus are shaping behaviors and attitudes that they will take with them into the workplace and broader society. A campus environment that tolerates inappropriate verbal and physical contact and that discourages reporting these behaviors undermines the emotional, intellectual, and professional growth of millions of young adults.

AAUW's research shows that sexual harassment on campus takes an especially heavy toll on young women. Among female students who encountered harassment, a third stated that they felt afraid, and about one in five women who report being harassed said that they were disappointed in their college experience as a result of the harassment.<sup>15</sup>

Commonly, students at the secondary and postsecondary level are often resigned that sexual teasing and harassment is just something they have to live with, though they find the incidents troubling and distressing.<sup>16</sup> Girls are far more likely than boys to feel "self conscious" (44 percent to 19 percent), "embarrassed" (53 percent to 32 percent), and "less confident" (32 percent to 16 percent) because of an incident of harassment.<sup>17</sup>

### **How Title IX Protects Students**

Title IX protects students from unlawful sexual harassment in all of a school's programs or activities, whether the harassment takes place in the facilities of the school, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere. Title IX protects both male and female students from sexual harassment, regardless of who the harasser may be.<sup>18</sup>

Title IX also prohibits sexual harassment by any employee or agent of the school. Covered institutions must have a procedure in place that provides for equitable resolution of sexual harassment complaints, which may be the same procedure set up for general Title IX complaints.<sup>19</sup> While many schools and universities have taken the first step in creating policies to address this problem, more must be done to help alleviate the culture of harassment that impacts the lives and educational experiences of so many students.

### **Case Law and Regulations Addressing Sexual Harassment in Schools**

The ground work for protecting students from sexual harassment was first laid in the educational arena in 1972, when Title IX was passed and sex discrimination was prohibited in any educational program or activity that receives federal funding. In 1986, the U.S. Supreme Court first recognized what is now known as hostile environment sexual harassment in *Meritor Savings Bank v. Vinson*.<sup>20</sup> The decision was based on Title VII of the Civil Rights Act of 1964, but was immediately adopted under Title IX as well.<sup>21</sup> The 1992 Supreme Court case, *Franklin v. Gwinnet*,<sup>22</sup> resulted in the landmark Title IX ruling that made it possible for students to seek monetary damages for sexual harassment by a teacher. Since then, the number of sexual harassment cases against colleges and universities, as well as elementary and secondary public schools, has grown substantially.

In 1997, the U.S. Department of Education's Office for Civil Rights issued policy guidance on sexual harassment, outlining Title IX's requirements in this area and providing schools with much-needed help in defining, addressing, and preventing sexual harassment.<sup>23</sup> The 1997 guidance makes clear that inaction is never the right response to sexual harassment, and urges schools to adopt policies and procedures that help prevent such misconduct.

In 1998, *Gebser v. Lago Vista Independent School District*,<sup>24</sup> the U.S. Supreme Court created a new Title IX standard not used in virtually any other anti-discrimination law. The court held that regardless of the absence of policies, grievance mechanisms or other reasonable actions, schools

cannot be held financially responsible for the harm done when a teacher sexually harasses a student unless a school official with authority to take corrective measures had "actual knowledge" of the specific harassment and responded to it with "deliberate indifference."<sup>25</sup> The court rejected standards of Title VII of the Civil Rights Act of 1964, resulting in fewer protections for students than for employees of a school system, and making students vulnerable to sexual harassment.

In 1999, the U.S. Supreme Court ruled again on sexual harassment in schools in *Davis v. Monroe County Board of Education*.<sup>26</sup> The court found that school districts can be held liable under Title IX for student-to-student sexual harassment if the school district knew about the harassment and responded with deliberate indifference. The harassment must be severe, pervasive, and offensive, and it must interfere with the student's ability to get an education. Schools cannot, however, be held responsible for teasing and bullying.

These harsh standards for liability have been extraordinarily damaging for students and have resulted in the dismissal of dozens of harassment claims since the *Gebser* and *Davis* decisions were issued. They create a perverse incentive for schools and school districts to insulate themselves from knowledge of harassment, and provide an inadequate level of protection to students. For these reasons, AAUW and its coalition partners believe that Congress must step in and overturn the liability standards set in the *Gebser* and *Davis* decisions, and restore effective legal protection by providing the same remedies and protections to students that are available to employees who are victims of sexual harassment.

In 2001, U.S. Department of Education Office of Civil Rights released important new policy guidance on sexual harassment to clarify a school's obligations in light of the *Gebser* and *Davis* decisions.<sup>27</sup> The new 2001 guidance reinforces the 1997 guidance that schools are responsible for recognizing and remedying sexual harassment. Further, schools are potentially liable for failing to recognize or remedy such harassment.

In an investigation into sexual harassment complaints filed by students with OCR between 1998 and 2005, conducted by the AAUW Legal Advocacy Fund and to be released this fall, it was found that OCR allowed all university and colleges they found to be in violation of title IX to agree to changes in their policies and procedures rather than institute any form of sanction against the institution – regardless of the egregiousness of the violation. This approach is damaging and sends the implicit message that institutions may as well wait until a complaint is filed than be proactive in ensuring their sexual harassment policies are clear, accessible, effective and enforced.<sup>28</sup>

### **Recommendations**

AAUW believes that parents, educators, and advocates should focus on changing the culture of harassment in schools, and promote students' use of existing resources to address the problems. The federal government also has a role to play in preventing sexual harassment in educational situations, as well as a role in responding when it does happen. Policies aren't enough – follow up action is critical in addressing this problem at all levels of education. While many schools and universities have taken the first step in creating policies and procedures to address this problem,

more must be done to help alleviate the culture of harassment that disrupts the educational experience of so many students.

Sexual harassment defies a simple solution but still demands action. As AAUW's research over the last decade demonstrates, the problem is unlikely to go away on its own. Dialogue is a good first step in the right direction. Students, faculty and staff, and parents and guardians must begin to talk openly about attitudes and behaviors that promote or impede our progress toward a harassment-free climate in which all students can reach their full potential.

AAUW believes we also must commit ourselves to strong Title IX enforcement at the local, state, and federal levels and ensure policymakers maintain a commitment to Title IX.

- First, education programs, activities, and institutions must comply with their Title IX responsibilities and ensure that programs do not discriminate on the basis of sex, including designating an employee to be responsible for compliance with Title IX (typically known as a Title IX coordinator).
- Second, educational institutions at all levels must create and enforce clear and accessible sexual harassment policies to proactively protect and educate students, and post them in an accessible place and on web sites. These policies should be part of school discipline policies and student codes of conduct, and include provisions for effectively protecting students after harassment has occurred.<sup>29</sup>
- Third, educational institutions must take sexual harassment behaviors very seriously, even if those behaviors are not immediately legally actionable. These behaviors can quickly turn into serious sexual harassment and should not be brushed off as harmless joking or minor bullying.
- Fourth, Title IX coordinators and their respective schools or universities must proactively disseminate information in the school and campus community to ensure that students and employees are aware of sexual harassment policies, as well as the school's process for filing complaints.
- Lastly, the U.S. Department of Education must vigorously enforce all portions of Title IX in all aspects of education. Undertaking proactive compliance reviews to identify problems of sex discrimination and fully implementing Title IX regulations are important strategies of solid enforcement.

Thank you again for the opportunity to testify, and for holding this hearing to mark the 35<sup>th</sup> anniversary of Title IX. It continues to be a truly transformative civil rights law. I look forward to answering your questions.

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<sup>1</sup> *Franklin v. Gwinnet County Public Schools*, 503 U.S. 60 (1992).

<sup>2</sup> In 1993, AAUW released *Hostile Hallways: The AAUW Survey on Sexual Harassment in America's Schools*, which revealed that four out of five students in grades eight to 11 had experienced some form of sexual harassment.

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In 2001, the AAUW Educational Foundation released the follow-up report, *Hostile Hallways: Bullying Teasing and Sexual Harassment in School*, which found that nearly a decade later, sexual harassment remained a major problem and a significant barrier to student achievement in public schools. In response, AAUW developed a resource guide, *Harassment-Free Hallways* (2002), which provides guidelines and recommendations to help schools, students, and parents prevent and combat sexual harassment. The AAUW Educational Foundation released *Drawing the Line: Sexual Harassment on Campus*, on Jan. 24, 2006. This report presents the most comprehensive findings to date on sexual harassment on college campuses. All of these publications, including *Drawing the Line*, are available at [www.aauw.org/research](http://www.aauw.org/research).

<sup>3</sup> AAUW Educational Foundation. *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School*, p.4. 2001.

<sup>4</sup> AAUW Educational Foundation. *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School*, p.5. 2001.

<sup>5</sup> AAUW Educational Foundation. *Drawing the Line: Sexual Harassment on Campus*, p.33. 2006.

<sup>6</sup> AAUW Educational Foundation. *Drawing the Line: Sexual Harassment on Campus*, p. 32. 2006.

<sup>7</sup> For its research, AAUW used the following definition of sexual harassment: “unwanted or unwelcome sexual behavior that interferes with your life.”

<sup>8</sup> AAUW Educational Foundation. *Drawing the Line: Sexual Harassment on Campus*, p.4. 2006.

<sup>9</sup> AAUW Educational Foundation. *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School*, p.4. 2001.

<sup>10</sup> AAUW Educational Foundation. *Drawing the Line: Sexual Harassment on Campus*, p. 9-10. 2006. AAUW defines sexual harassment in school as any unwanted and unwelcome sexual behavior that interferes with the student’s ability to perform in an educational setting (*Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School*, p. 2. 2001.)

<sup>11</sup> AAUW Educational Foundation. *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School*, p. 4. 2001.

<sup>12</sup> AAUW Educational Foundation. *Drawing the Line: Sexual Harassment on Campus*, p. 15. 2006.

<sup>13</sup> AAUW Educational Foundation. *Drawing the Line: Sexual Harassment on Campus*, p 2. 2006.

<sup>14</sup> AAUW Educational Foundation. *Drawing the Line: Sexual Harassment on Campus*, p. 22. 2005.

<sup>15</sup> AAUW Educational Foundation. *Drawing the Line: Sexual Harassment on Campus*, p. 29. 2006.

<sup>16</sup> AAUW Educational Foundation. *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School*, p. 32. 2001.

<sup>17</sup> AAUW Educational Foundation. *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School*, p. 32. 2001.

<sup>18</sup> U.S. Department of Education Office for Civil Rights. *Title IX and Sexual Harassment*. <http://www.ed.gov/about/offices/list/ocr/docs/ocrshpam.html> Accessed April 12, 2005.

<sup>19</sup> U.S. Department of Education Office for Civil Rights. *Title IX and Sexual Harassment*. <http://www.ed.gov/about/offices/list/ocr/docs/ocrshpam.html> Accessed April 12, 2005.

<sup>20</sup> *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986).

<sup>21</sup> In *Cannon v. University of Chicago*, 441 U.S. 677 (1979), the U.S. Supreme Court held that Title IX was patterned after Title VII.

<sup>22</sup> *Franklin v. Gwinnet Country Public Schools*, 503 U.S. 60 (1992).

<sup>23</sup> U.S. Department of Education Office for Civil Rights. “[Sexual Harassment Guidance 1997](http://www.ed.gov/about/offices/list/ocr/docs/sexhar01.html).” <http://www.ed.gov/about/offices/list/ocr/docs/sexhar01.html> Accessed April 12, 2005.

<sup>24</sup> *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998).

<sup>25</sup> U.S. Department of Education Office for Civil Rights. *Federal Register*, page 2. <http://www.ed.gov/legislation/FedRegister/other/2000-4/110200b.pdf> Accessed April 12, 2005.

<sup>26</sup> National Women’s Law Center. *Sexual Harassment, Davis v. Monroe Brief*. <http://www.nwlc.org/pdf/DavisBrief.pdf> Accessed April 12, 2005. *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999).

<sup>27</sup> U.S. Department of Education Office for Civil Rights. *Title IX and Sexual Harassment* <http://www.ed.gov/legislation/FedRegister/other/2000-4/110200b.html> Accessed April 12 2005.

<sup>28</sup> This research was conducted based on student sexual harassment complaints filed with and then obtained from OCR through an AAUW FOIA request. The final findings will be released by the AAUW Legal Advocacy Fund in fall 2007.

<sup>29</sup> AAUW Educational Foundation, *Harassment Free-Hallways: How to Stop Harassment in School*, 2004, p. 17.