

Case No. 14-12481

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*In the*  
**United States Court of Appeals**  
*for the*  
**Eleventh Circuit**

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JAMES HILL, as guardian and next of friend of BHJ,

*Plaintiff-Appellant,*

v.

MADISON COUNTY SCHOOL BOARD, et al.,

*Defendants-Appellees.*

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*On Appeal from the United States District Court  
for the Northern District of Alabama*

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**BRIEF OF AMICI CURIAE WOMEN'S LAW PROJECT AND THIRTY-TWO  
ORGANIZATIONS DEDICATED TO GENDER EQUALITY IN SUPPORT  
OF BRIEF OF APPELLANT**

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James Hill v. Madison County School Board, et al.

**CERTIFICATE OF INTERESTED PERSONS AND  
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Civil Procedure and Rule 26.1-1 of the Local Appellate Rules for the United States Court of Appeals for the Eleventh Circuit, that the following persons listed below have or may have an interest in the outcome of this case:

Alabama Coalition Against Rape

Arizona Coalition to End Sexual and Domestic Violence

California Women's Law Center

Chicago Alliance Against Sexual Exploitation

Connecticut Sexual Assault Crisis Services

Connecticut Women's Education & Legal Fund

End Violence Against Women International

Equal Rights Advocates

Feminist Majority Foundation

Florida Council Against Sexual Violence

Hawaii State Commission on the Status of Women

Hawaii State Democratic Women's Caucus

Illinois Coalition Against Sexual Assault

James Hill v. Madison County School Board, et al.

Jane Doe, Inc. (Massachusetts Coalition Against Sexual Assault and Domestic Violence)

Kentucky Association of Sexual Assault Programs

Legal Momentum

Legal Voice

Maryland Coalition Against Sexual Assault

Missouri Coalition Against Domestic and Sexual Violence

National Center for Victims of Crime

National Crime Victim Law Institute

National Network to End Domestic Violence

New Mexico Coalition of Sexual Assault Programs

Ohio Alliance to End Sexual Violence

Public Justice

Southwest Women's Law Center

Texas Association Against Sexual Assault

Vermont Network Against Domestic and Sexual Violence

Victim Rights Law Center

Women's Law Center of Maryland

Women's Law Project

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James Hill v. Madison County School Board, et al.

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James Hill v. Madison County School Board, et al.

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James Hill v. Madison County School Board, et al.

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James Hill v. Madison County School Board, et al.

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In accordance with Rule 26.1 of the Federal Rules of Appellate Procedure, *amici curiae*, by and through its undersigned counsel, certify that no *amici* has a parent corporation and no *amici* has issued any stock.

In compliance with Fed. R. App. P. 29(c)(5), *amici curiae* hereby state that none of the parties to this case nor their counsel authored this brief in whole or in part; no party or any party's counsel contributed money intended to fund preparing or submitting the brief; and no one else other than *amici* and their counsel contributed money that was intended to fund preparing or submitting this brief.

## TABLE OF CONTENTS

	<b>PAGE</b>
CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT .....	C-1
STATEMENT OF INTEREST OF <i>AMICI</i> .....	1
STATEMENT OF THE ISSUE .....	2
SUMMARY OF THE ARGUMENT .....	2
ARGUMENT AND CITATIONS OF AUTHORITY .....	4
I.    Title IX Requires Schools to Provide a Safe Learning Environment for Students by Preventing and Remediating Sexual Harassment.....	4
A.    Sexual Harassment in Schools Is Pervasive and Harmful.....	4
B.    Title IX Is Designed to Combat Peer-on-Peer Sexual Harassment .....	8
II.   The Middle School’s Response to a Known Risk of Sexual Harassment Was Clearly Unreasonable and Violated Title IX .....	12
A.    Under Sparkman’s “Catch Them in the Act” Policy, BHJ Had to Put Herself In Harm’s Way Before The School Would Appropriately Investigate Her Claims of Sexual Harassment .....	12



B.	The District Court Improperly Ignored the School’s Knowledge of the “Baiting” Scheme in Assessing the School’s Actual Notice and Deliberate Indifference.....	14
C.	The District Court Improperly Imposed a Heightened “Actual Notice” Requirement.....	19
III.	The District Court Made Factual Conclusions On The Erroneous Assumption That A 14-Year-Old Has The Same Capacity As An Adult To Consider And Agree To A Dangerous Scheme Proposed By School Authority Figures .....	22
A.	Blaming the Victim Contravenes Title IX’s Purpose of Protecting Students from Sexual Harassment .....	22
B.	Children’s Immaturity Limits Their Ability to Assess Risks in Comparison to Adults.....	23
C.	The Power Dynamic Between Students and School Authority Figures Discourages Students from Defying The Instructions of Staff.....	25
IV.	Conclusion .....	27
	CERTIFICATE OF COMPLIANCE.....	30
	CERTIFICATE OF SERVICE .....	31
	APPENDIX.....	A-1

**TABLE OF AUTHORITIES**

<b>CASES</b>	<b>PAGE(S)</b>
<i>Alexander v. Yale Univ.</i> , 459 F. Supp. 1 (D. Conn. 1977), <i>aff'd</i> , 631 F.2d 178 (2d Cir. 1980) .....	9
<i>Bostic v. Smyrna Sch. Dist.</i> , No. 01-0261, 2003 U.S. Dist. LEXIS 3458 (D. Del. Feb. 24, 2003).....	25
<i>Cannon v. Univ. of Chicago</i> , 441 U.S. 677, 99 S. Ct. 1946 (1979).....	9
<i>Carmichael v. Galbraith</i> , No. 12-11074, 2014 WL 2767590 (5th Cir. June 19, 2014).....	10
<i>Contrast Davis ex rel. Doe v. Dekalb County Sch. Dist.</i> , 233 F.3d 1367 (11th Cir. 2000) .....	16
<i>Davis v. Monroe County Board of Education</i> , 526 U.S. 629, 119 S. Ct. 1661 (1999).....	<i>Passim</i>
<i>Doe v. School Board of Broward County</i> , 604 F.3d 1248 (11th Cir. 2010).....	<i>Passim</i>
<i>Franklin v. Gwinnett County Public Schools</i> , 503 U.S. 60, 112 S. Ct. 1028 (1992).....	9
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*Mary M. v. N. Lawrence Cmty. Sch. Corp.*, 131 F.3d 1220 (7th Cir. 1997) .....25

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 and Sexual Violence A-4 (Apr. 29, 2014) .....11

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 Middle and High School Students*, 36 J. Youth Adolescence  
 799, 807 (2007).....6

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 and Sexual Harassment Victimization on the Mental and  
 Physical Health of Adolescents*, 59 Sex Roles 80, 86 (2008) .....7

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 of a Decision: Decision-Making Competence in Adolescents and  
 Adults*, 22 J. of Applied Dev. Psychol. 257, 268 (2001) .....23

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 Assault on Mental Health*, 71 Am. J. of Orthopsychiatry 108,  
 114-17 (2001) .....7

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Alan C. Kerckhoff, et al., *Education, Cognitive Skill, and Labor Force Outcomes*, 74 *Sociology of Education* 1, 18 (2001) .....8

Christopher P. Krebs et al., Nat'l Inst. of Justice, *The Campus Sexual Assault (CSA) Study 1-1* (2007) .....6

Marta Laupa, *Children's Reasoning About Three Authority Attributes: Adult Status, Knowledge, and Social Position*, 27 *Dev. Psychol.* 321, 328 (1991).....27

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 (Sept. 9, 2013) p.5.....5

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**STATUTES**

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Ala. Code § 13A-6-64.....25

Ala. Code § 13A-6-70.....24

20 U.S.C. § 1681(a) .....8

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62 Fed. Reg. 12,034, 12,040 (Mar. 13, 1997).....24

65 Fed. Reg. 66092 (Nov. 2, 2000)..... 10, 15, 24

## STATEMENT OF INTEREST OF *AMICI*

*Amici* are 33 organizations dedicated to improving the lives of women and girls. Due to the prevalence of sexual harassment and its pernicious effect on young females, *Amici* have an interest in ensuring that Title IX is appropriately enforced to improve schools' responses to sexual harassment and assault. *Amici* include many types of organizations. Some provide direct services to victims of sexual harassment and assault. These services range from crisis intervention and counseling to assistance navigating judicial and quasi-judicial systems, including universities' internal disciplinary systems. Many *Amici* engage in policy advocacy to improve institutional responses to sexual harassment and to reduce the incidence of violence against women. These advocacy efforts include lobbying for law reform as well as designing and implementing education and training programs to raise the awareness of the public, police, and courts about the realities of sexual assault and the harmful myths that continue to prevent victims from obtaining justice.

*Amici* have extensive experience with Title IX and special expertise regarding the extent and impact of peer-on-peer sexual harassment and assault in secondary schools. They submit this brief to aid the Court in evaluating whether the district court should have permitted BHJ to proceed with her Title IX claim against the Madison County School Board ("School Board").



Individual statements of interest of *amici curiae* are in an appendix to this brief.

### **STATEMENT OF THE ISSUE**

Did the district court err by granting summary judgment to the School Board on Plaintiff-Appellant's Title IX claim even though the School Board Approved a Dangerous Baiting Scheme to Catch a Known Harasser that Resulted in Plaintiff's Rape?

### **SUMMARY OF THE ARGUMENT**

Congress, the Supreme Court, and the Department of Education's Office for Civil Rights have all made clear that Title IX is intended to prevent and remedy sexual harassment in schools to ensure a safe environment in which students can learn. Sexual harassment — including sexual violence — is a pervasive problem in our nation's schools, making it critical that schools address the problem appropriately to prevent sexual harassment from limiting students' opportunities and affecting their health and well-being. The policies and practices for addressing sexual harassment at Sparkman Middle School run afoul of Title IX because they substantially increase the risk that students will be sexually harassed and assaulted. The school's policy of refusing to discipline acts of sexual harassment unless the perpetrator is "caught in the act" caused school employees to use BHJ as "bait" to catch a known harasser, which, in turn, caused BHJ to be raped. The district court

failed to appreciate the role of the school's sexual harassment policy and conduct in causing BHJ's rape.

The district court also applied an inappropriately heightened "actual notice" requirement that, if adopted, would absolve schools of the responsibility to respond to known sexual harassment in all but the narrowest of circumstances. The district court found that actual notice requires knowledge of harassment that is already so severe as to deny the victim educational opportunity. As this Court's precedent makes clear, however, schools are required to respond to known harassment before it reaches that level of severity. Actual notice of lesser harassment is sufficient when the school responds with deliberate indifference and this deliberate indifference *results in* harassment severe enough to deprive the victim of educational opportunity.

The court inappropriately minimized the significance of CJC's extensive disciplinary record and past sexual misconduct, which included several incidences of sexual harassment known to school administrators. CJC's past misconduct, in conjunction with the school's knowledge of the dangerous baiting scheme, was more than sufficient to apprise the school of a significant risk that BHJ would be subject to sexual assault, or at the very least, further harassment.

Finally, the court also erred by absolving the School Board of liability based on BHJ's allegedly "voluntary" participation in the plan to catch the harasser. Her

participation is neither relevant to the school's responsibilities under Title IX nor can it be considered voluntary in light of the power dynamic between school authority figures and adolescent students like BHJ.

For all of these reasons, the district court's grant of summary judgment to the School Board should be reversed.

## **ARGUMENT AND CITATIONS OF AUTHORITY**

### **I. Title IX Requires Schools to Provide a Safe Learning Environment for Students by Preventing and Remediating Sexual Harassment.**

#### **A. Sexual Harassment in Schools Is Pervasive and Harmful.**

It is important to understand both the prevalence of sexual harassment and its severe impact on female students to appreciate the important role that Title IX plays in providing a safe learning environment for young women. In the United States, too many students in elementary through high school are subjected to sexual victimization, ranging from sexual comments and gestures to being forced to engage in sexual activity. Research indicates that adolescents are at a great risk of sexual victimization in the school setting in comparison to other settings.<sup>1</sup> In a survey conducted by the American Association of University Women ("AAUW") on sexual victimization in secondary schools, almost half of all students in grades seven through twelve reported having experienced unwanted sexual behavior in the

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<sup>1</sup> Simone Robers, et al., *Indicators of School and Crime Safety: 2012*, Nat'l Ctr. for Educ. Statistics, U.S. Dep't of Educ. and Bureau of Justice Statistics, U.S. Dep't of Justice, at 10 (2014).

past year, including sexual harassment in person as well as through texting, email, Facebook, or other electronic means.<sup>2</sup> Surveys over the last two decades have found similarly high incidences of sexual harassment.<sup>3</sup> In middle school, bathrooms are among the most common locations for harassment.<sup>4</sup>

While sexual harassment in secondary school affects both girls and boys, studies have found that it disproportionately affects young women. AAUW found that in grades seven through twelve, 56 percent of girls and 40 percent of boys reported experiencing sexual harassment.<sup>5</sup> Girls are also more likely to experience physical intimidation of a sexual nature, more likely to be forced to do something sexual in nature, and more likely to be repeatedly sexually victimized than boys.<sup>6</sup>

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<sup>2</sup> Catherine Hill & Holly Kearl, Am. Ass'n of Univ. Women Educ. Found., *Crossing the Line: Sexual Harassment at School* 11 (2011) ("AAUW Report"); see also Elizabeth A. Mumford, et al. *Middle School Sexual Harassment, Violence and Social Networks*, 37 Am. J. Health Behav. 769, 770-75 (2013) (stating that 49 percent of 7th and 8th graders in a New York City school reported being a victim of peer sexual harassment and 28 percent reported being subjected to sexual violence).

<sup>3</sup> See, e.g., AAUW Report at 10-11 (AAUW surveys in 1993 and 2001 found that 8 in 10 students were sexually harassed in school at some time during their school career); see also, L. Dean Webb, et al., *What Schools Can Do to Combat Student-to-Student Sexual Harassment*, 81 NASSP Bulletin 72 (Jan. 1997).

<sup>4</sup> Sarah Rinehart, et al., *Sexual Harassment and Sexual Violence Experiences Among Middle School Youth* 5 (Apr. 6, 2014), available at <http://www.aera.net/Newsroom/RecentAERAResearch/SexualHarassmentandSexualViolenceExperiencesAmongMiddleSchoolYouth/tabid/15450/Default.aspx>.

<sup>5</sup> AAUW Report at 11.

<sup>6</sup> *Id.*; Marie Skubak Tillyer, et al, *The Short-Term Repeat Sexual Victimization of Adolescents in School*, Crime & Delinquency 1, 17 (Sept. 9, 2013).

The prevalence of sexual assault of secondary school students in Alabama has been documented. In 2013, the Centers for Disease Control and Prevention found 13 percent of Alabama high school girls had been physically forced to have sexual intercourse and 13.7 percent had experienced sexual dating violence.<sup>7</sup>

The prevalence of sexual harassment and assault in schools is a significant public health concern for adolescents, causing victims serious physical, psychological, and educational harms that can be long-lasting. Sexual harassment sometimes involves physical force and physical injury. One of the most severe forms of sexual harassment — rape — can result in genital injury, bruising, sexually transmitted infections, and pregnancy.<sup>8</sup>

Sexual harassment can also result in a range of psychological effects, including feelings of shock, humiliation, depression, anxiety, anger, distrust, fear, low self-esteem, and suicidal thoughts.<sup>9</sup> Physical and verbal sexual harassment often causes difficulty sleeping, with girls experiencing more difficulties than boys, lower self-esteem, disruptive behaviors, an increased likelihood of substance

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<sup>7</sup> Centers for Disease Control, High School Youth Risk Behavior Survey (2013), available at <http://www.cdc.gov/HealthyYouth/yrbs/index.htm> (last visited Aug. 18, 2014).

<sup>8</sup> Christopher P. Krebs et al., Nat'l Inst. of Justice, *The Campus Sexual Assault (CSA) Study 1-1* (2007).

<sup>9</sup> Dorothy L. Espelage & Melissa K. Holt, *Dating Violence & Sexual Harassment Across the Bully-Victim Continuum Among Middle and High School Students*, 36 *J. Youth Adolescence* 799, 807 (2007); Rana Sampson, U.S. Dep't of Justice, *Acquaintance Rape of College Students* 8 (2003), available at <http://www.cops.usdoj.gov/pdf/e03021472.pdf>.

abuse, and suicidal thoughts.<sup>10</sup> Studies have also documented the long-lasting psychological effects of childhood sexual assault on victims, including higher incidences of depression and post-traumatic stress disorder.<sup>11</sup>

Given the physical and psychological effects of sexual harassment, it is no surprise that it impacts a student's ability to participate in and benefit from education.<sup>12</sup> Sexual harassment causes difficulty concentrating on schoolwork, truancy, absenteeism, and poor overall academic performance.<sup>13</sup> Students who have been subjected to sexual harassment are more likely to express reluctance about attending school.<sup>14</sup> Victims of sexual harassment may quit an activity or sport, or use different routes in school to avoid the people who caused them harm.<sup>15</sup> Some are so significantly affected that they stay home from school or

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<sup>10</sup> *Id.*; see also James E. Gruber & Susan Fineran, *Comparing the Impact of Bullying and Sexual Harassment Victimization on the Mental and Physical Health of Adolescents*, 59 *Sex Roles* 80, 86 (2008) (finding that girls who were sexually harassed or bullied experience poorer "self-esteem, mental and physical health, [and] more trauma symptoms" than boys).

<sup>11</sup> See, e.g., Rochelle F. Hanson, et al. *Impact of Childhood Rape and Aggravated Assault on Mental Health*, 71 *Am. J. of Orthopsychiatry* 108, 114-17 (2001).

<sup>12</sup> See AAUW Educ. Found., *Harassment Free Hallways: How to Stop Sexual Harassment in School: A Guide for Students, Parents, and Schools* 9 (2004).

<sup>13</sup> AAUW Report at 20.

<sup>14</sup> *Id.* at 22.

<sup>15</sup> *Id.*

change schools.<sup>16</sup> The loss of these educational opportunities may also limit future workplace opportunities, resulting in lower lifetime earnings.<sup>17</sup>

In this case, BHJ suffered physical trauma from the sexual assault and severe depression that required her to undergo psychological treatment. Her grades suffered, she stopped participating in extracurricular activities, and the distress she experienced at Sparkman Middle School forced her to transfer to another school. R-104 at 10; R-87-1 at 26; R-87-1 at 27. Consistent with the severe trauma reported by sexual assault victims like BHJ, this Court has repeatedly found that sexual harassment culminating in sexual assault is sufficiently severe to deny a student access to educational opportunities. *See Williams v. Bd. of Regents*, 477 F.3d 1282, 1298 (11th Cir. 2007); *Doe v. Sch. Bd.*, 604 F.3d 1248, 1250 (11th Cir. 2010).

**B. Title IX Is Designed to Combat Peer-on-Peer Sexual Harassment.**

Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a), is intended to prevent the type of scenario that occurred in this case—the sexual assault of a 14-year-old student resulting from a school’s clearly unreasonable response to peer-on-peer sexual harassment. By imposing liability where a school’s deliberate indifference results in harassment so severe as to deny a student

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<sup>16</sup> *Id.*

<sup>17</sup> *See, e.g.,* Alan C. Kerckhoff, et al., *Education, Cognitive Skill, and Labor Force Outcomes*, 74 *Sociology of Education* 1, 18 (2001).

educational opportunities, Title IX imposes an obligation on schools to *respond* to sexual harassment. By extension, Title IX prohibits schools from adopting policies that *foster* sexual harassment.

Congress enacted Title IX to remedy “the continuation of corrosive and unjustified discrimination against women in the American educational system.” 118 Cong. Rec. 5803 (1972) (remarks of Senator Bayh); *see also Cannon v. Univ. of Chicago*, 441 U.S. 677, 704, 99 S. Ct. 1946, 1961 (1979). Actions by Congress, the courts, and the United States Department of Education’s Office for Civil Rights (“OCR”) have made clear that Title IX plays a critical role in ensuring that educational institutions prevent and remedy the sexual harassment of students.

In *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60, 112 S. Ct. 1028 (1992), the Supreme Court held that sexual harassment is a form of sex discrimination prohibited by Title IX.<sup>18</sup> The Supreme Court later recognized that Title IX extends to peer-on-peer sexual harassment, holding in *Davis v. Monroe County Board of Education* that federally funded educational programs may be liable for damages under Title IX when their “deliberate indifference to known acts

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<sup>18</sup> Lower courts and OCR applied Title IX to sexual harassment prior to *Franklin*. *See Alexander v. Yale Univ.*, 459 F. Supp. 1, 4 (D. Conn. 1977), *aff’d*, 631 F.2d 178 (2d Cir. 1980) (finding that Title IX supports a claim for *quid pro quo* sexual harassment); *Eden Prairie Schools, Dist. #272*, OCR Case No. 05-92-1174; 62 Fed. Reg. 12046 (1997).



of harassment” causes “students to undergo harassment or make them vulnerable to it.” 526 U.S. 629, 632, 644-45, 119 S. Ct. 1661, 1666, 1678 (1999).

Consistent with guidance from Congress and the Supreme Court, OCR has interpreted Title IX as having a broad remedial purpose that includes remedying peer-on-peer sexual harassment.<sup>19</sup> In 1997, OCR published sexual harassment guidelines reiterating that Title IX protects against peer-on-peer sexual harassment that limits a student’s ability to participate in or benefit from an educational program, and explaining many factors that may cause conduct to rise to this level. 62 Fed. Reg. 12046 (Mar. 1997); *Davis*, 526 U.S. at 647-48, 651, 119 S. Ct. at 1673, 1675; *see also* OCR, Revised Sexual Harassment Guidance: Harassment of Students By School Employees, Other Students, Or Third Parties (2001) (reiterating enduring principles from 1997 guidance and updating guidance to reflect additional Supreme Court precedent); 65 Fed. Reg. 66092 (Nov. 2, 2000) (“2001 Guidance”).

In subsequent publications and Dear Colleague Letters, OCR reiterated that “[t]he sexual harassment of students, including sexual violence, interferes with students’ right to receive an education free from discrimination and, in the case of

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<sup>19</sup> When interpreting Title IX, OCR’s sexual harassment policy interpretations have generally been afforded “appreciable deference.” *Carmichael v. Galbraith*, No. 12-11074, 2014 WL 2767590, at \*5 (5th Cir. June 19, 2014); *Rosa H. v. San Elizario Indep. Sch. Dist.*, 106 F.3d 648, 658 (5th Cir. 1997) (discussing deference afforded to OCR policy notices on peer sexual harassment).

sexual violence, is a crime.” Apr. 4, 2011 Dear Colleague Letter 1. OCR broadly defines sexual harassment to include “unwelcome conduct of a sexual nature” including “unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature.” 2001 Guidance at 2, citing *Davis*, 526 U.S. at 653, 119 S. Ct. at 1676 (alleged conduct of a sexual nature that would support a sexual harassment claim included verbal harassment and “numerous acts of objectively offensive touching”). Given the impact that sexual harassment has on a student’s ability to obtain an education, OCR requires schools to respond promptly, effectively, and impartially to such harassment. Dear Colleague Letter at 4, 15; 2001 Guidance at 9; U.S. Dep’t of Educ., Office for Civil Rights, Questions and Answers on Title IX and Sexual Violence A-4 (Apr. 29, 2014).

Despite this clear guidance, evidence from Title IX court decisions indicates that schools across the country are regularly mislabeling and minimizing sexual harassment and otherwise failing to respond promptly and appropriately to it. *See* Nan Stein, Sexual Harassment Overview Paper, in National Summit on Gender-Based Violence Among Young People Reading Materials 1, 1 (2011), *available at* <http://www2.ed.gov/about/offices/list/osdfs/gbvreading.pdf>. In this case, Sparkman Middle School officials minimized CJC’s history of sexual misconduct, and failed to take appropriate steps to thwart his continued harassment of female

students, as discussed *infra* in Section II. Despite its knowledge that CJC was pressuring female students for sex, the school left CJC unsupervised while on detention. Furthermore, by refusing to thoroughly investigate and remedy reports of sexual harassment that were uncorroborated, the school inexcusably increased the risk of harm to students. Sadly, this policy culminated in the school consenting to a plan to catch CJC in the act that caused the rape of BHJ.

**II. The Middle School's Response to a Known Risk of Sexual Harassment Was Clearly Unreasonable and Violated Title IX.**

**A. Under Sparkman's "Catch Them in the Act" Policy, BHJ Had to Put Herself In Harm's Way Before The School Would Appropriately Investigate Her Claims of Sexual Harassment.**

The district court improperly ignored the school's unreasonable sexual harassment policy, as implemented by the principal, in its Title IX analysis. A school violates Title IX when an official policy increases the risk of harassment and ultimately causes it to occur. *See Simpson v. Univ. of Colorado Boulder*, 500 F.3d 1170, 1177-79 (10th Cir. 2007) (finding that university could be liable under Title IX where official policy authorized unsupervised football recruiting parties despite known risk of sexual assault at such parties). In the instant case, Ronnie Blair, the Principal of Sparkman Middle School, implemented a sexual harassment policy that required a complainant to provide additional evidence to support her report of sexual harassment *before* the school would take any action to investigate and remedy the harassment. R-87-2 at 15.

The school's policy of requiring corroboration prior to investigating sexual harassment treats the victim's testimony as insufficient. This corroboration requirement, like those that used to be imposed by common law and criminal sexual assault statutes, reinforces the stereotype that women are untrustworthy and likely to lie about sexual harassment, a pernicious but common rape myth.<sup>20</sup> In fact, there is no empirical evidence that women are likely to make false accusations, and corroborative evidence like physical injuries are rare even in sexual assault cases.<sup>21</sup>

The corroboration requirement sends a message to students that the school administration will not investigate, or even believe, their complaints of sexual assault. Moreover, in this case, the corroboration requirement resulted in the aide's foreseeably dangerous plan to catch CJC in the act. Rape myths that discredit women's complaints and excuse sexual violence have no place in the law or in the sexual harassment policies of a school, where they thwart Title IX's purpose to protect students from sex discrimination.<sup>22</sup>

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<sup>20</sup> Michelle J. Anderson, *The Legacy of the Prompt Complaint Requirement, Corroboration Requirement, and Cautionary Instructions on Campus Sexual Assault*, 84 B.U.L. Rev. 945, 954-59 (2004).

<sup>21</sup> David Lisak, et al., *False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases*, 16 Violence Against Women 1318, 1329-31 (2010) (a well-regarded analysis by David Lisak shows that such accusations are rare).

<sup>22</sup> See, e.g., Martha R. Burt, *Rape Myths and Acquaintance Rape*, in *Acquaintance Rape: The Hidden Crime* 27 (Andrea Parrot & Laurie Bechhofer, eds., 1991);

**B. The District Court Improperly Ignored the School’s Knowledge of the “Baiting” Scheme in Assessing the School’s Actual Notice and Deliberate Indifference.**

The district court clearly erred by failing to take into account Assistant Principal Dunaway’s knowledge of the scheme to use BHJ as bait in assessing whether the recipient school board had actual notice of, and acted with deliberate indifference to, a known risk of sexual harassment. It is indisputable that, by approving the scheme, Dunaway, an “appropriate person” under Title IX, had notice “sufficient to alert [her] to the possibility of [BHJ’s] harassment.” *Doe*, 604 F.3d at 1254; *KB v. Daleville City Bd. of Educ.*, 536 Fed. Appx. 959, 961 (11th Cir. 2013). Indeed, this case is highly unusual because an appropriate person had advanced knowledge of the specific, imminent risk of sexual assault to BHJ. On top of the knowledge that CJC had been repeatedly punished for sexual harassment and was persistently propositioning girls, including BHJ, to have sex with him in the bathroom, Assistant Principal Dunaway had actual knowledge that a teacher’s assistant planned to use BHJ as bait to catch CJC in the act.

The district court’s failure to adequately consider Dunaway’s knowledge of the scheme suggests not only that schools are free to ignore known circumstances putting students at risk of sexual assault, but also that schools may turn a blind eye to employee actions that actually increase the likelihood of student assault. Such a

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Kimberly A. Lonsway & Louise F. Fitzgerald, *Rape Myths in Review*, 18 *Psych. of Women Quarterly*, 133, 134 (1994).

result is plainly at odds with *Williams v. Board of Regents of the University System of Georgia*, 477 F.3d 1282 (11th Cir. 2007) and *Doe v. School Board of Broward County*, 604 F.3d 1248 (11th Cir. 2010) — two Eleventh Circuit opinions underscoring a recipient school’s obligation to prevent known risks of sexual assault. The scheme also conflicts with OCR’s instruction “that it is improper for a student who complains of harassment to be required to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the school.” 2011 Guidance at 8.

Given CJC’s past misconduct, Dunaway either realized or clearly should have realized the risk to BHJ posed by the scheme. CJC had been repeatedly disciplined for, among other infractions, “sexual harassment” and making “inappropriate comments” of a sexual nature, R-87-2 at 32; R-87-4 at 35, “inappropriate touching,” R-87-4 at 33; R-87-7 at 7, and refusing to “keep [his] hands off a female student.” R-87-4 at 39. Moreover, school officials were aware of other unrecorded and unpunished acts of sexual harassment by CJC, including sexual touching and unwelcomed repeated propositioning. R-87-7 at 7. Multiple acts of intentional harassment are sufficient to create actual notice, especially where there are multiple complainants. *See, e.g., Doe*, 604 F.3d at 1259 (school had actual notice where two persons complained about the harasser even if these prior complaints were “not clearly credible”); *KB*, 536 Fed. Appx. at 961 (school

had actual notice that janitor might harass middle school students even though the only past complaints against him were made by two teachers whose buttocks he touched); *Contrast Davis ex rel. Doe v. Dekalb County Sch. Dist.*, 233 F.3d 1367, 1372 (11th Cir. 2000) (finding no actual notice where school had received only one complaint against the harasser involving incidental touching during a football game and the student's perception that harasser would have touched her imminently had she not moved away).

The school's knowledge of CJC's history, and that he had been propositioning BHJ to have sex with him in the bathroom, should have alerted it to the obvious danger of the scheme. The district court discounted Dunaway's knowledge of this propositioning because Dunaway learned of it "only minutes before the assault." Order 16. However, the temporal proximity between when Dunaway learned of the propositioning and the assault bears no legal significance. The fact that she learned of it directly before her acquiescence to the scheme only reinforces that she should have been aware of the overt danger posed by the scheme. Under Title IX, the standard is actual knowledge of discrimination or harassment "sufficient to alert the school official of the possibility of the Title IX plaintiff's harassment"—a standard satisfied here. *Doe*, 604 F.3d at 1254. It should not matter that she learned of the factors giving rise to the risk only moments before the risk came to fruition so long as she had an opportunity to

remedy the risk and her failure to do so constituted deliberate indifference, which it clearly did.

As both this Court and the Supreme Court have explained, “The Title IX inquiry is contextual” and requires a school to “respond in a manner that is not ‘clearly unreasonable *in light of the known circumstances.*’” *Doe*, 604 F.3d at 1263 (quoting *Davis*, 526 U.S. at 648, 119 S.Ct. at 1673-74) (emphasis added). Here, the “known circumstances” comprising the risk that BHJ would suffer sexual harassment included CJC’s disciplinary record, his past harassment of BHJ in particular, and the fact that BHJ was directed by an adult to accompany CJC into an enclosed, unsupervised space and to misrepresent to him her consent to sexual contact. *See Doe*, 604 F.3d at 1261 (adopting a broad construal of “known circumstances”). This circumstance imposed an overt danger of not only harassment but also sexual assault—a danger which, sadly but unsurprisingly, came to fruition.

The entire point of Title IX’s actual notice and deliberate indifference requirements is to ensure that a funding recipient is held liable only where its own misconduct “subjects” a student to sexual harassment. *See Davis*, 526 U.S. at 644-45, 119 S. Ct. at 1672; *Williams*, 477 F.3d at 1293. As the Supreme Court has explained, a school’s liability under Title IX is tied to its ability to prevent the harassment:



The statute's plain language confines the scope of prohibited conduct based on the recipient's degree of control over the harasser and the environment in which the harassment occurs. [A funding recipient] may not be liable for damages unless its deliberate indifference "subjects" its students to harassment. That is, the deliberate indifference must, at a minimum, "cause students to undergo" harassment or "make them liable or vulnerable" to it. Random House Dictionary of the English Language 1145 (1966) (defining "subject" as "to cause to undergo the action of something specified; expose" or "to make liable or vulnerable; lay open; expose")... Moreover, because the harassment must occur "under" "the operations of" a funding recipient, *see* 20 U.S.C. § 1681(a); § 1687, the harassment must take place in a context subject to the school district's control...

*Davis*, 526 U.S. at 644-45, 119 S. Ct. at 1672. Because of the school's ex ante knowledge of the scheme, the causal nexus between the school's conduct (or lack thereof) and the harassment is much stronger in this case than in the typical peer-on-peer harassment case. The school was aware not only of a generalized risk that CJC would commit further acts of sexual harassment "during school hours and on school grounds," *id.* at 646, 119 S.Ct. at 1672, but also a highly specific risk that BHJ would be subject to harassment — and possible assault — at a specific time and place. Given this knowledge, the school had "substantial control over the context in which the harassment occur[ed]" and could have easily prevented it. *Davis*, 526 U.S. at 646, 119 S.Ct. at 1673. Assistant Principal Dunaway, an appropriate person with authority to take corrective action, had knowledge of the scheme and an opportunity to thwart it, yet failed to do so.

It is clear that when a recipient school has such superior knowledge regarding a risk of sexual harassment, Title IX requires action. The school's failure to respond to this specific, known risk caused BHJ's assault and was "clearly unreasonable in light of the circumstances," amounting to no less than deliberate indifference. *See id.* at 630, 119 S. Ct. at 1665; *Doe*, 604 F.3d at 1263 (concluding that a reasonable jury could find that the school caused sexual harassment by "substantially increase[ing] the risk faced by female students.").

**C. The District Court Improperly Imposed a Heightened "Actual Notice" Requirement.**

The district court also erred by finding that actual notice requires knowledge of past harassment so severe as to create a hostile environment. Opinion at 16 (concluding that the recipient lacked actual notice as a matter of law because CJC's disciplinary history "did not give the Board actual knowledge that CJC's behavior constituted sexual harassment so severe that it was depriving female students of educational opportunities."). The district court erroneously conflated Title IX's "actual notice" requirement with its harm requirement. Contrary to the district court's opinion, a showing of actual notice requires only that an appropriate person had actual knowledge of discrimination or harassment "sufficient to alert the school official of the possibility of the Title IX plaintiff's harassment." *Doe*, 604 F.3d at 1254. As discussed in Section II(B), that standard was met in this case.

Actual notice does not require a funding recipient to know of harassment that has already reached a level of severity that deprives the victim of educational opportunity. Rather, as this Court has found multiple times, recipient schools have a duty under Title IX to respond to known sexual harassment *before* the harassment reaches that point. Even where harassment reaches the required level of severity and pervasiveness only after the recipient school acted with deliberate indifference, the harassment is nonetheless actionable under Title IX. *See Williams*, 477 F.3d at 1294-95; *Doe*, 604 F.3d 1257. Thus, a school may be held liable if it is deliberately indifferent to known harassment, and the result is that the plaintiff is subjected to further harassment so severe, pervasive, and objectively offensive that it can properly be said to deprive the plaintiff of an educational opportunity or benefit, which is precisely what occurred here. *Id.*

In *Doe*, 604 F.3d 1248, for instance, this Court reversed a grant of summary judgment to a school, rejecting the district court's conclusion that notice was inadequate because the previous complaints against the harasser "alleged only inappropriate conduct that did not rise to the level of Doe's violent sexual assault." *Id.* at 1257. This Court observed that "in a Title IX student-on-student harassment case [] the plaintiff [may] sufficiently allege[] actual notice where the primary substance of that notice differ[s] significantly from the circumstances of the plaintiff's harassment," for notice need only apprise the school of a "substantially

increase[ed] risk faced by female students.” *Id.* at 1257, 1263. “[L]esser harassment may still provide actual notice...for it is the risk of such [severe harassment] that the Title IX recipient has the duty to deter.” *Id.* at 1258. Thus, even though the two previous student complaints did not allege conduct sufficiently severe or pervasive to bar the students’ access to educational opportunity, this Court found there was at least a material question as to notice. *Id.* See also *KB*, 536 Fed. Appx. at 966 (concluding that the school board had actual notice that a janitor might harass a student even though his past acts of harassment were exclusively against teachers and thus could not have deprived students of educational opportunity); *Williams*, 477 F.3d at 1294-95 (finding that plaintiff student adequately pleaded notice where personnel’s only notice of risk derived from their knowledge of harasser’s misconduct at *other* schools).

Under the district court’s interpretation, recipient schools would be free to ignore known harassment until it reaches such severity that the victim is effectively denied educational opportunity, even if the school knew of the harassment much earlier and could have prevented its continuation. Such a result would contravene not only the purpose of Title IX but also clear Eleventh Circuit precedent. See *Doe*, 604 F.3d at 1258 (“[L]esser harassment may still provide actual notice...for it is the risk of such [severe harassment] that the Title IX recipient has a duty to deter.”).

**III. The District Court Made Factual Conclusions on the Erroneous Assumption that a 14-Year-Old Has the Same Capacity as an Adult to Consider and Agree to a Dangerous Scheme Proposed by School Authority Figures.**

The district court improperly absolved the School Board of liability under Title IX by concluding, “as far as [assistant principal] Dunaway knew, BHJ agreed to the plan and was participating in it freely in order to catch CJC.” Opinion at 17. A 14-year-old sexual harassment victim cannot “freely” participate as “bait” in a sting operation concocted by school employees, particularly when the employee has told the student the sting operation must succeed before the school will take action against her harasser. R-93-1 at 3. The district court’s ruling improperly disregards BHJ’s young age and the inherent power dynamic that exists between students and school authority figures, in contravention of Title IX.

**A. Blaming the Victim Contravenes Title IX’s Purpose of Protecting Students from Sexual Harassment.**

The district court’s focus on the victim’s behavior — instead of the behavior of the school official, who was not only indifferent to the BHJ’s safety, but actually *increased* the risk to her — is tantamount to victim-blaming, which excuses sexual violence. *See, e.g.,* Martha R. Burt, *supra*, at 27 (2001); Kimberly A. Lonsway & Louise F. Fitzgerald, *supra*, at 134. Title IX was enacted to protect students like BHJ, and nothing in Title IX’s history or precedent suggests that a school’s deliberate indifference to a minor student’s safety may be excused if the

school commands or convinces the minor student to take steps that render her less safe.

**B. Children’s Immaturity Limits Their Ability to Assess Risks in Comparison to Adults.**

The district court’s finding that BHJ “freely” participated in the dangerous scheme contradicts social and cognitive science indicating that adolescents in the 6<sup>th</sup> through 8<sup>th</sup> grades do not have the ability to make decisions as well as adults, a principle long recognized by courts and legislatures. Adolescents, like BHJ, have a more limited ability to assess options, weigh risks, and see long-term consequences in comparison to adults. Bonnie L. Halpern-Felsher & Elizabeth Cauffman, *Costs and Benefits of a Decision: Decision-Making Competence in Adolescents and Adults*, 22 J. of Applied Dev. Psychol. 257, 268 (2001). Adolescents also score lower than adults on measures of psychosocial maturity, particularly self-restraint, consideration of future consequences, and self-reliance. *Id.* Furthermore, psychosocial capabilities associated with improved decision-making and assessment of risk, such as resistance to peer pressure, continue during development into adulthood. Laurence Steinberg, *Risk Taking in Adolescence: New Perspectives From Brain and Behavioral Science*, 16 Current Directions in Psychological Science 55, 56 (2007).

Courts have considered the victim's age as one of the constellation of surrounding circumstances when evaluating Title IX claims, recognizing that children typically do not have the capacity to assess risk and make decisions on the same level as adults. *Davis*, 526 U.S. at 651, 119 S. Ct. at 1675 (citing, *inter alia*, OCR 1997 Title IX Guidance). As acknowledged by *Davis*, OCR has also recognized the relevance of age in Title IX analyses. As OCR explained in the 1997 Guidance and reiterated in the 2001 Guidance, younger children generally need a greater level of protection against sexual harassment:

If younger children are involved, it may be necessary to determine the degree to which they are able to recognize that certain sexual conduct is conduct to which they can or should reasonably object and the degree to which they can articulate an objection.

62 Fed. Reg. 12,034, 12,040 (Mar. 13, 1997); 2001 OCR Guidance at 8.

Instead of applying this principle, the district court found, without explanation, that a 14-year-old middle school student had the same capacity as adult educators to foresee and appreciate the potential consequences of participating in the baiting scheme. Indeed, the law of Alabama recognizes that BHJ does not have the same capacity as adults. Under Alabama law, BHJ cannot legally consent to sexual contact. *See* Ala. Code § 13A-6-70 (“[a] person is deemed incapable of consent if he is... [l]ess than 16 years old.”). Moreover, given the age difference between CJC and BHJ, there are no set of circumstances

in which the sexual contact could have been deemed consensual. Ala. Code § 13A-6-64 (under this statute, the contact is necessarily sodomy of the second degree because of the age disparity). While Title IX is separate from criminal law, it is clear that Title IX does not tolerate sexual conduct that would constitute a crime. Moreover, the Court of Appeals for the Seventh Circuit has expressly found that “[i]f elementary school children cannot [] consent to sex in a criminal context, they similarly cannot be said to welcome it in a civil context.” *Mary M. v. N. Lawrence Cmty. Sch. Corp.*, 131 F.3d 1220, 1225 (7th Cir. 1997); *Bostic v. Smyrna Sch. Dist.*, No. 01-0261, 2003 U.S. Dist. LEXIS 3458 (D. Del. Feb. 24, 2003).

Given that BHJ could not have ‘welcomed’ the sexual assault resulting from the scheme, it was plainly erroneous and contrary to Title IX’s purposes for the district court to excuse the school’s shockingly unreasonable conduct in approving the scheme based on a finding that BHJ “freely” participated in the scheme.

**C. The Power Dynamic Between Students and School Authority Figures Discourages Students from Defying the Instructions of Staff.**

Focusing on BHJ’s “free” participation in the scheme also ignores the legally-recognized relationship of power between students and school officials. The Supreme Court has recognized the supervisory role of school authorities over students in primary and secondary school. *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 655-56, 115 S. Ct. 2386, 2392 (1995). As explained by the Alabama



Supreme Court, school is “compulsory,” and, “[o]nce at school, students must follow a regimented schedule,” and a student “cannot come and go as he/she wishes.” *Smith v. Smith*, 922 So. 2d 94, 100 (Ala. 2005) (quotation omitted). The Alabama Code makes it a misdemeanor for a parent to “fail[ ] to compel the child to properly conduct himself or herself as a pupil in accordance with the written policy on school behavior adopted by the local board of education,” and mandates reporting of such parents to the district attorney for prosecution. Ala. Code § 16-28-12(a).

This supervisory role creates a power dynamic between school staff and students that the district court ignored when it blamed BHJ for participating in the school aide’s and assistant principal’s plan. OCR has recognized that the power dynamic between teachers and students affects a student’s apparent willingness to accept harassing or unreasonable conduct:

Schools should be particularly concerned about the issue of welcomeness if the harasser is in a position of authority... [B]ecause students may be encouraged to believe that a teacher has absolute authority over the operation of his or her classroom, a student may not object to a teacher’s sexually harassing comments during class; however, this does not necessarily mean that the conduct was welcome. Instead, the student may believe that any objections would be ineffective in stopping the harassment or may fear that by making objections he or she will be singled out for harassing comments or other retaliation.

2001 OCR Guidance at 8. While the present case is one of peer sexual harassment, the power dynamic between teachers and students remains an issue because the district court excused the school's role in proposing, approving, and implementing a plan by a teacher's aide that resulted in the rape of BHJ. The district court's ruling implies that the 14-year-old victim stood on the same emotional, psychological, and legal footing as the school authority figures, an implication that is clearly wrong under legal authority and according to social science.

Social science confirms the influence of teachers and other staff's status on secondary school students' decision-making. Elementary and middle school students tend to believe that adults in assigned positions of authority are incapable of making mistakes.<sup>23</sup> This level of trust in the competence of authority figures explains why a middle school student would participate in a plan proposed and implemented by a teacher's aide and approved of by an assistant principal that put the student at further risk of sexual harassment and physical violence.

#### **IV. Conclusion**

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<sup>23</sup> Marta Laupa, *Children's Reasoning About Three Authority Attributes: Adult Status, Knowledge, and Social Position*, 27 *Dev. Psychol.* 321, 328 (1991) (studying students in grades 1 -7); *see, e.g.,* Michael Lovorn, et al. *Who's in Control? Teachers from Five Countries Share Perspectives on Power Dynamics in the Learning Environment*, 11 *J. of Research in Int'l Educ.* 70 (2012) ("There are few places in society where power dynamics are as significant and influential as in Kindergarten-Grade 12 (K-12) classrooms," including the dynamic between teachers and students).

The district court erred in granting summary judgment to the School Board on BHJ's Title IX claim. Under Title IX, a school board may be liable for damages when its policies or practices make students vulnerable to sexual harassment. Here, there is evidence that Sparkman Middle School caused BHJ's rape by using her as bait to catch a known harasser, pursuant to a policy that prohibits disciplining a student for sexual harassment unless "caught in the act." *Amici* respectfully request that the Court reverse dismissal of the Title IX claim and remand the case for further proceedings.

Respectfully submitted this 17th day of September, 2014.

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**CERTIFICATE OF COMPLIANCE**

This is to certify that *Brief of Amici Curiae Women's Law Project and Thirty-Two Organizations Dedicated to Gender Equality in Support of Brief of Appellant* complies with the type-volume limitation of Fed. R. App. P. 29. This brief contains 6629 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14-point font.

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 17, 2014, a true and correct copy of the *Brief of Amici Curiae Women's Law Project and Thirty-Two Organizations Dedicated to Gender Equality in Support of Brief of Appellant* was electronically uploaded to the Eleventh Circuit Court of Appeals, along with submission of seven paper copies to the Clerk of Court, and true and correct copies were served upon the following via Federal Express Overnight Delivery:

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## **APPENDIX**

### **STATEMENTS OF INTEREST OF AMICI CURIAE**

#### **ALABAMA COALITION AGAINST RAPE, INC.**

The Alabama Coalition Against Rape (ACAR) endeavors to continually improve the treatment of sexual violence survivors and to ultimately end sexual violence. ACAR works to improve treatment of and services to sexual assault victims, to increase public awareness of sexual assault, and to improve investigation and prosecution of sexual assault. It is imperative that courts appropriately apply Title IX to address and prevent sexual harassment and sexual violence.

#### **ARIZONA COALITION TO END SEXUAL AND DOMESTIC VIOLENCE**

The Arizona Coalition to End Sexual and Domestic Violence (ACESDV) is a private non-profit organization which works to prevent and end sexual and domestic violence in Arizona and nationally. Founded in 1980, ACESDV is Arizona's federally-recognized coalition for both domestic violence and sexual violence. It provides training, technical assistance, and systems advocacy for more than 35 member programs. These member programs provide assistance to survivors of sexual and domestic violence, including emergency shelter, transitional housing, legal advocacy, emergency hotline, counseling, and case management.

#### **CALIFORNIA WOMEN'S LAW CENTER**

The California Women's Law Center (CWLC) is a private, nonprofit public interest law center specializing in the civil rights of women and girls. The California Women's Law Center was established in 1989 to address the comprehensive civil rights of women and girls in the following priority areas: Gender Discrimination, Women's Health, Reproductive Justice and Violence Against Women. Since its inception, CWLC has placed a strong emphasis on eradicating sex discrimination and violence against women. CWLC has authored numerous *amicus* briefs, articles, and legal education materials on these issues. Therefore, the California Women's Law Center has the requisite interest and expertise to join in the *amicus* brief in *Hill v. Madison Co. Sch. Bd.*



## **CHICAGO ALLIANCE AGAINST SEXUAL EXPLOITATION**

The Chicago Alliance Against Sexual Exploitation (CAASE) is a not-for-profit organization that opposes sexual abuse and exploitation by directly addressing the culture, institutions and individuals that perpetrate, profit from, or support such harms. CAASE engages in prevention and community engagement work, policy reform, and, through its legal department — the Sexual Assault Justice Project — direct legal services to survivors of sexual assault and exploitation, including where the assault has occurred in an educational setting or was perpetrated by a classmate. On behalf of its individual clients and in support of its overall mission, CAASE advocates for the rights of victims of sexual assault — including those who are not yet eighteen— to be treated with fairness, dignity, and respect. CAASE is interested in seeing that law furthers—and does not undermine—victims’ safety and equality and their right to education.

## **CONNECTICUT SEXUAL ASSAULT CRISIS SERVICES**

Connecticut Sexual Assault Crisis Services (CONNSACS) is the statewide coalition of nine community based sexual assault crisis centers. CONNSACS works to end sexual violence through victim assistance, community education, and public policy advocacy.

## **CONNECTICUT WOMEN’S EDUCATION AND LEGAL FUND**

The Connecticut Women’s Education and Legal Fund (CWEALF) is a non-profit women’s rights organization dedicated to empowering women, girls and their families to achieve equal opportunities in their personal and professional lives. CWEALF protects the rights of individuals in the legal system, educational institutions, workplaces and in their private lives. Since its founding in 1973, CWEALF has provided legal information and conducted public policy and advocacy to advance women’s rights. Throughout its history, CWEALF has advanced the meaningful participation of women and girls in educational institutions and in the workplace, and is committed to protecting their rights to be free from discrimination.

## **END VIOLENCE AGAINST WOMEN INTERNATIONAL**

End Violence Against Women International (EVAWI) is a nonprofit organization working to improve criminal justice and community responses to

gender-based violence. EVAWI works to pursue its vision of a world where gender-based violence is unacceptable; where perpetrators are held accountable, and victims receive the compassion, support, and justice they deserve. EVAWI has signed on to join this *amicus* brief because of its implications for those who are sexually harassed or assaulted in the educational system. Sexual assault always involves issues of power and abuse, but they are not always as explicit and egregious as they are in *Hill v. Madison County School Board, et al.* This young woman will inevitably suffer a devastating cascade of effects on her physical, emotional, and educational well-being. EVAWI joins this *amicus* brief in the hope that no such decision will ever be made by a school official in the future, and to encourage case law, constructive dialogue, and institutional reforms to improve school responses to sexual violence.

## **EQUAL RIGHTS ADVOCATES**

Equal Rights Advocates (ERA) is a national non-profit legal organization dedicated to protecting and expanding economic and educational access and opportunities for women and girls. In service of its mission, ERA litigates class actions and other high-impact cases on issues of gender discrimination in employment and education. ERA has a long history of pursuing equality and justice for women and girls under Title IX through advocacy, legislative efforts and litigation. ERA has served as counsel in numerous class and individual cases involving the interpretation of Title IX in the athletics and sexual harassment contexts. ERA also provides advice and counseling to hundreds of individuals each year through a telephone advice and counseling hotline, and has participated as *amicus curiae* in scores of state and federal cases involving the interpretation and application of procedural and substantive laws affecting the ability of women and girls to obtain and enforce their equal rights under the law.

## **FEMINIST MAJORITY FOUNDATION**

The Feminist Majority Foundation (FMF), founded in 1987, is the largest feminist research and action organization dedicated to women's equality and the empowerment of women and girls in all sectors of society. To carry out these aims, FMF engages in research and public policy development, public education programs, grassroots organizing projects, and leadership training and development programs. In addition to our campaign to end campus sexual violence on college campuses, FMF operates an Education Equity Program that promotes widespread education and enforcement of Title IX. FMF has filed numerous *amicus curiae*

briefs in the U.S. Supreme Court and the federal circuit courts to advance the opportunities for women and girls.

### **FLORIDA COUNCIL AGAINST SEXUAL VIOLENCE**

The Florida Council Against Sexual Violence is a statewide nonprofit organization committed to victims and survivors of sexual violence and the sexual assault crisis programs who serve them. FCASV serves as a resource to the state of Florida on sexual violence issues, providing technical assistance to agencies seeking to improve their services for rape victims and up-to-date information to the public. Through its Legal Assistance to Victims Project, FCASV provides direct legal representation to victims of sexual assault across the state who are facing a variety of issues, including violations of Title IX rights. FCASV works with institutions to improve their response to student survivors by providing trainings as well as specific guidance on a variety of issues such as policy and prevention. FCASV hosted a one day Summit in May 2014 for campus-based victim advocates to address Title IX issues and is currently working with campus-based providers to discuss ways to improve state legislation in order to provide better protections for student survivors.

### **HAWAII STATE COMMISSION ON THE STATUS OF WOMEN**

The Hawaii State Commission on the Status of Women (HSCSW) has been working on issues surrounding Title IX for many years. Located in Hawaii, the home of Patsy T. Mink, the HSCSW knows how difficult Title IX was to pass, and how much more difficult it is to accurately implement it and ensure educational institutions adhere to the law. Currently, the HSCSW has been monitoring the United States DOE audit of the University of Hawaii at Manoa for potential Title IX violations, including mishandling of sexual violence cases on the campus. HSCSW denounces acts of sexual violence against any student and wants to ensure that every student has a safe place to learn and flourish.

### **HAWAII STATE DEMOCRATIC WOMEN'S CAUCUS**

The Hawai'i State Democratic Women's Caucus has been active in advocating for the enforcement of Title IX and for other policies and procedures that provide for safer schools and campuses. The Caucus has also advocated for strengthening laws and policies on sexual harassment, on sexual assault, and other forms of violence against women. Over the years, the Caucus has provided

comments and testimony to the Hawai'i State Board of Education, the Hawai'i Civil Rights Commission, the Hawai'i State Legislature, and to the leadership of the University of Hawai'i at Manoa; and has supported the reauthorization of the Violence Against Women Act.

## **ILLINOIS COALITION AGAINST SEXUAL ASSAULT**

The Illinois Coalition Against Sexual Assault (ICASA) is a not-for-profit organization consisting of thirty-one community-based sexual assault centers throughout the state of Illinois and a central headquarters located in Springfield. Founded in 1977, the purpose of ICASA is to end sexual violence and to alleviate the suffering of its victims. To accomplish these goals, ICASA centers counsel victims, advocate for victims who choose to report the crime to medical and criminal justice personnel, present educational programs to the general public, provide information and referral services and promote public policies affecting sexual assault victims. The ICASA administrative staff in Springfield also conduct trainings, maintain a resource library and advocate on a statewide level for the rights of victims of sexual abuse and sexual assault. ICASA has an interest in ensuring that all students have a safe, non-hostile environment in which to learn and that school administrators and staff protects students' rights to a safe learning environment under Title IX. Rape crisis centers in Illinois provide sexual assault prevention education and awareness for students in pre-school through college in an effort to prevent the long-term emotional, physical, and educational harm caused by sexual harassment and sexual assault against students.

## **JANE DOE, INC.**

Jane Doe Inc., The Massachusetts Coalition against Sexual Assault and Domestic Violence (JDI), is the statewide membership coalition of nearly 60 domestic violence and rape crisis centers. JDI's mission is to bring together organizations and people committed to ending domestic violence and sexual assault. JDI creates social change by addressing the root causes of this violence and promoting safety, justice and healing for survivors. JDI advocates for responsive public policy, raises awareness, promotes collaboration and supports its member organizations to provide comprehensive prevention and intervention services. In keeping with its mission, JDI has an interest in guiding schools and other systems in holding perpetrators accountable while not compromising or risking anyone's safety.

## **KENTUCKY ASSOCIATION OF SEXUAL ASSAULT PROGRAMS**

The Kentucky Association of Sexual Assault Programs (KASAP) is the coalition of Kentucky's 13 Regional Rape Crisis Centers. Since it was established in 1990, KASAP has served as a central point of contact on sexual violence issues in Kentucky. KASAP provides technical assistance to member programs and other professionals, advocates for improvements in public policy, fosters coalition building among members and those with common concerns, and promotes prevention and public awareness regarding sexual violence and related issues. The mission of KASAP is to speak with a unified voice against sexual victimization.

## **LEGAL MOMENTUM**

Legal Momentum, the Women's Legal Defense and Education Fund, is the nation's oldest legal advocacy organization for women, [www.legalmomentum.org](http://www.legalmomentum.org). Legal Momentum advances the rights of all women and girls by using the power of the law and creating innovative public policy. Among its activities, Legal Momentum has long advocated for educational equity for girls and women. For example, we have advocated for sports equity in schools, opposed sex segregation, sexual harassment, bullying, and sexual violence in schools. We also provide resources, referrals, and representation to survivors of sexual violence at school. Legal Momentum joins this brief out of concern that the District Court's unnecessarily limited interpretation of Title IX jeopardizes the safety and equality of students.

## **LEGAL VOICE**

Legal Voice, founded in 1978 as the Northwest Women's Law Center, is a regional nonprofit public interest organization that works to advance the legal rights of all women and girls through litigation, legislation, and education. Legal Voice has participated as counsel and as *amicus curiae* in cases throughout the Northwest and the country and is currently involved in numerous legislative and litigation efforts. Legal Voice has been a regional leader in combating sexual violence and sexual harassment against women and girls, as well as advocacy and litigation related to Title IX. Legal Voice has a strong interest in this case because it raises important questions about how educational institutions prevent and respond to sexual harassment and sexual assault in schools.

## **MARYLAND COALITION AGAINST SEXUAL ASSAULT, INC.**

The Maryland Coalition Against Sexual Assault (MCASA) is the statewide collective voice advocating for accessible, compassionate care for survivors of sexual assault and abuse, and accountability for all offenders. Established in 1982 as a private, not-for-profit 501(c)(3) organization, MCASA works closely with local, state, and national organizations to address issues of sexual violence in Maryland. It is a membership organization that includes the state's seventeen rape crisis centers, health care personnel, attorneys, law enforcement, other allied professionals, concerned individuals, survivors of sexual violence and their loved ones. MCASA includes the Sexual Assault Legal Institute (SALI), which provides legal services for sexual assault and abuse survivors.

## **MISSOURI COALITION AGAINST DOMESTIC AND SEXUAL VIOLENCE**

The Missouri Coalition Against Domestic and Sexual Violence is a non-profit membership organization of more than 125 domestic and sexual violence programs that unites Missourians with a common belief that rape and abuse must end, and advances this through education, alliance, research and public policy. A school should be a safe haven for students where they are protected and nurtured, where they receive a fair and equitable education and where they can trust their teachers to provide a safe place for them to report sexual harassment - not use them as bait for further victimization.

## **NATIONAL CENTER FOR VICTIMS OF CRIME**

The National Center for Victims of Crime ("National Center"), a non-profit organization headquartered in Washington, DC, is one of the nation's leading resource and advocacy organizations for all victims of crime. The mission of the National Center is to forge a national commitment to help victims of crime rebuild their lives. The National Center is dedicated to serving individuals, families and communities harmed by crime. Among other things, the National Center advocates laws and policies that create resources and secure rights and protections for crime victims. The National Center has a particular interest in this brief due to its work and dedication to the interests of victims of sexual assault.



## **NATIONAL CRIME VICTIM LAW INSTITUTE**

The National Crime Victim Law Institute (NCVLI) is a nonprofit educational and advocacy organization located at Lewis and Clark Law School in Portland, Oregon. NCVLI's mission is to actively promote balance and fairness in the justice system through crime victim-centered legal advocacy, education, and resource sharing. NCVLI accomplishes its mission through education and training; promoting the National Alliance of Victims' Rights Attorneys; researching and analyzing developments in crime victim law; and litigating as *amicus curiae* issues of national importance regarding crime victims' rights in cases nationwide. NCVLI also provides information to crime victims and crime victims' attorneys through its website, [www.ncvli.org](http://www.ncvli.org). This case involves issues that are fundamental to victims' access to justice.

## **NATIONAL NETWORK TO END DOMESTIC VIOLENCE, INC.**

The National Network to End Domestic Violence (NNEDV) is a not-for-profit organization incorporated in the District of Columbia in 1994 ([www.nnedv.org](http://www.nnedv.org)) whose mission is to create an economic, social, and political environment in which violence against women no longer exists. As a network of the 56 state and territorial domestic violence and dual domestic violence sexual assault Coalitions and their over 2,000 member programs, NNEDV serves as the national voice of millions of women, children and men victimized by domestic violence. NNEDV was instrumental in promoting Congressional enactment and eventual implementation of the Violence Against Women Acts of 1994, 2000, 2005 and 2013. NNEDV is deeply concerned about the ability of students to be safe from sexual harassment and sexual assault. Harassment and assault can have serious long-term impacts on young people's physical and mental health, as well as on their academic performance and growth. Title IX is intended to provide a framework for preventing sexual harassment and assault in schools and responding when incidences do occur, but it is only effective when the law is properly applied. For these reasons, NNEDV expresses its interest in ensuring that this student – and others like her – are afforded the protection of the law and have access to remedies.

## **NEW MEXICO COALITION OF SEXUAL ASSAULT PROGRAMS, INC.**

The New Mexico Coalition of Sexual Assault Programs, Inc. and its Community Justice Project provide technical assistance to rape crisis centers throughout the state. The Community Justice Project is the coalition's only direct

service program and as such provides civil legal services to survivors, including direct representation on Title IX issues. The issues presented in *Hill* are of the utmost importance to the New Mexico Coalition, the survivors its member agencies assist, and its colleagues among the other *amici*.

### **OHIO ALLIANCE TO END SEXUAL VIOLENCE**

As Ohio's statewide coalition, the Ohio Alliance to End Sexual Violence (OAESV) advocates for comprehensive responses and rape crisis services for survivors and empowers communities to prevent sexual violence. OAESV's objectives include the following: ending the isolation of survivors and agencies working on their behalf; improving services and responses to survivors and all those impacted by sexual violence; increasing public awareness about sexual violence; informing and shaping public policy; and ending sexual violence.

### **PUBLIC JUSTICE, P.C.**

Founded in 1982, Public Justice, P.C. ("Public Justice") is a national public interest law firm that specializes in precedent-setting and socially significant civil litigation for victims of corporate, governmental, and individual abuse. Public Justice fights for consumers' and victims' rights, civil rights and civil liberties, workers' rights, the environment, public health and safety, the preservation and improvement of the civil justice system, and the protection of the poor and the powerless. Public Justice has a long history of representing students and coaches in lawsuits to enforce Title IX's prohibition against sex discrimination, particularly in the area of intercollegiate athletics. In addition, as part of its Anti-Bullying Campaign, Public Justice represents students in lawsuits against school districts and officials who fail to protect them from student-on-student bullying and harassment, including sexual harassment prohibited by Title IX.

### **SOUTHWEST WOMEN'S LAW CENTER, INC.**

The Southwest Women's Law Center (SWLC) is a legal, policy and advocacy law center that utilizes law, research and creative collaborations to create opportunities for women and girls in New Mexico to fulfill their personal and economic potential. Its mission is: (1) to eliminate gender bias; and (2) to utilize the provisions of Title IX to protect women against violence in schools and on college campuses. SWLC collaborates with community members, organizations, attorneys and public officials to ensure that the interests of women are protected.



## **TEXAS ASSOCIATION AGAINST SEXUAL ASSAULT, INC.**

The Texas Association Against Sexual Assault (“TAASA”) is a 32-year-old non-profit organization committed to ending sexual violence in Texas. TAASA supports and advocates for survivors of sexual violence, their families, and concerned others. TAASA’s membership extends throughout Texas to eighty rape crisis centers operating 24-hour crisis and support hotlines, providing support groups and victim advocates for hospital and courtroom accompaniment, practicing crisis intervention, and referring victims and their loved ones for mental health and other community resources. TAASA emphasizes the need for compassionate, evidence-based practices by first responders, including educators. Fear of mistrust and maltreatment by authority figures are among the most common reasons child victims do not come forward. Further, the consequences of sexual assault are especially dire for child victims. Because child victims experience sexual assault during psychologically formative years, the harm they suffer can be particularly tragic, manifesting in depression, suicidal thoughts, and drug dependency as they grow older. Thus, this case involves issues of critical importance and longstanding interest to TAASA.

## **VERMONT NETWORK AGAINST DOMESTIC AND SEXUAL VIOLENCE**

The Vermont Network Against Domestic and Sexual Violence is a feminist organization dedicated to eliminating domestic and sexual violence through advocacy, empowerment, and social change. The Vermont Network is a coalition of 14 domestic and sexual violence programs throughout Vermont with a statewide office located in Montpelier. Due to the needs of so many student victims, the Network has prioritized providing technical assistance and information on Title IX and other civil rights to students, parents, and schools. The Vermont Network believes that girls should be valued by the entire community and certainly by the schools and individual employees therein that should, at the very least, not put girls at further risk for sexual assault within their schools. When academic institutions neglect their duty to prevent sexual violence, young women cannot be full and equal participants in their education and growth. In this instance, the dangerous and misguided attempt at policing sexual assault carried out by school officials not only wrought physical and emotional trauma for the victim, but demonstrates the underlying need within this nation to address sexual violence against young women.

## **VICTIM RIGHTS LAW CENTER**

The Victim Rights Law Center (VRLC) is a non-profit legal organization based in Boston, Massachusetts with a satellite office in Portland, Oregon. The VRLC is dedicated to serving the legal needs of sexual assault victims. The VRLC was the first – and remains one of the few – non-profit legal agencies in the country devoted to serving victims of sexual assault. It is the *only* legal victim services organization in the country dedicated to providing free legal representation of victims of non-intimate partner sexual assault. The VRLC has helped represent thousands of sexual assault survivors, and is a nationally recognized expert on civil, non-tort legal remedies for victims of non-intimate partner sexual assault. The VRLC employs attorneys who are experts in Title IX and over the past 11 years the VRLC has represented hundreds of sexual assault students in middle school, high school and college. VRLC attorneys have also trained extensively throughout the country on Title IX and sexual violence.

## **WOMEN'S LAW CENTER OF MARYLAND, INC.**

The Women's Law Center of Maryland, Inc. is a nonprofit, membership organization with a mission of improving and protecting the legal rights of women, particularly regarding gender discrimination, sexual harassment, employment law and family law. Through its direct services and advocacy, the Women's Law Center seeks to protect women and girls from discrimination and ensure that they have equal opportunity to participate in all academic, athletic and employment opportunities.

## **WOMEN'S LAW PROJECT**

The Women's Law Project (WLP) is a nonprofit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. The WLP's mission is to create a more just and equitable society by advancing the rights and status of women throughout their lives. To meet these goals, the WLP engages in high-impact litigation, policy advocacy, public education, and individual counseling. WLP is committed to ending violence against women and children and to safeguarding the legal rights of women and children who experience sexual abuse, including within our schools. To this end, WLP provides counseling to victims of violence through its telephone counseling service, engages in public policy advocacy work to improve the response of educational institutions to sexual

violence, and serves as counsel to victims of student on student sexual violence. It is essential that schools respond appropriately to sexual harassment and that courts hold them accountable under the applicable law.

### **WOMEN'S SPORTS FOUNDATION, INC.**

The Women's Sports Foundation (WSF) is a nonprofit educational organization dedicated to expanding opportunities for girls and women to participate in sports and fitness and to creating an educated public that supports gender equity in sports. The WSF distributes grants and scholarships to female athletes and girls' sports programs, answers hundreds of inquiries per year concerning Title IX and other women's sports related questions, and administers award programs to increase public awareness about the achievements of girls and women in sports.

### **WYOMING COALITION AGAINST DOMESTIC VIOLENCE AND SEXUAL ASSAULT**

The Wyoming Coalition Against Domestic Violence and Sexual Assault (WCADVSA) is a non-profit organization incorporated in the state of Wyoming. The mission of WCADVSA is to create a social, political, and economic environment in which sexual and domestic violence against women no longer exists. The WCADVSA is a network of local sexual assault and domestic violence coalitions that serves as the voice of battered women and their children and those who provide services to them. WCADVSA has a long history of working at the local and state level and with national organizations at the national level to promote accountability to those who perpetrate violence and to help survivors find justice.