



Title IX and Sexual Harassment

The American Association of University Women believes that increasing and ensuring access to educational opportunities for all women and girls is a critical step towards financial security and economic independence. To advance this goal, AAUW's member-adopted 2009-2011 Public Policy Program states, in part, that AAUW advocates "vigorous enforcement of Title IX and all other civil rights laws pertaining to education;" and "...increased support for and access to, higher education for women and disadvantaged populations."¹ One pervasive problem that continues to hinder equity in education at every level of our nation's schools is sexual harassment.²

Scope of the Problem

Sexual harassment on college and university campuses has a damaging impact on the educational experience of many college students.³ Similarly, persistently high rates of sexual harassment among students at the secondary level disrupt students' ability to learn and succeed in their studies.⁴ 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.⁵ 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.⁶ Disturbingly, according to AAUW's own research, student reports of sexual harassment 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.⁷
- At the postsecondary level, nearly two-thirds of college students (62 percent) say they have been sexually harassed⁸, including nearly one-third of first year students;⁹ 41 percent of students admit they have sexually harassed another student.¹⁰

Almost a decade ago, AAUW's own research revealed that 83 percent of girls and 79 percent of boys reported having experienced sexual harassment, and over one in four students stated that harassment happens "often."¹¹ Since AAUW's first research into this area in 1993, students have become more aware of their school's harassment policies and the resources available to them.¹² Unfortunately, students' increased awareness has not translated into fewer incidents of sexual harassment, nor has it increased the likelihood they would report such incidents.¹³ Sexual harassment has serious implications for students, some of whom may experience a hostile educational environment on a daily basis. However, most do not report it or even talk openly about sexual harassment as a serious issue.¹⁴ In fact, according to AAUW's research report, *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 in a friend; and only 7 percent of students report the incident to a college employee.¹⁵

Consequences of Sexual Harassment in Schools

A college education is increasingly becoming a prerequisite for many career paths and for lifelong economic security. Sexual harassment on campus disrupts the college experience in large and small ways. Young adults on campus are shaping behaviors and attitudes that they will take with them into the workforce and broader society. A campus environment that encourages—even 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, making it harder for them to get the education they need to take care of themselves and their families. 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.¹⁶

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.¹⁷ 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.¹⁸

How Title IX Protects Students

Title IX protects students from unlawful sexual harassment in all of a school's programs or activities, whether they take 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.¹⁹

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.²⁰

Case Law and Regulations Addressing Sexual Harassment in Schools

In 1997, the U.S. Department of Education's Office for Civil Rights (OCR) 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.²¹ 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, however, the U.S. Supreme Court found in *Gebser v. Lago Vista Intermediate School District* that school districts were not liable for teacher-to-student sexual harassment unless there was prior knowledge of the harassment and demonstrated deliberate indifference.²²

In 1999, the U.S. Supreme Court ruled again on sexual harassment in schools in *Davis v. Monroe*

*County Board of Education.*²³ The court found that school districts can be held liable 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.

In 2001, OCR released important new policy guidance on sexual harassment to clarify a school's obligations in light of the *Gebser* and *Davis* decisions.²⁴ 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.

Bullying and Teasing

Related to sexual harassment is bullying, although there is not necessarily a sex or gender connection. A 2006 National School Boards Association study found that 75 percent of those high school students surveyed said they are not bullied during the school day.²⁵ However, half of those surveyed reported that they see other students being bullied at least once a month.²⁶ More disturbing is that almost half of students surveyed stated that they doubted teachers could stop the behavior.²⁷ In addition, more recent research shows that bullying affects nearly one in three American school children in grades six through ten.²⁸ AAUW believes that parents, educators, and advocates should focus on changing the culture of harassment and bullying in schools, and promote students' use of existing resources to address the problems. AAUW also advocates passing legislation to better address bullying and harassment; these measures should include the Department of Education Office for Civil Rights' definition of harassment and identify the classes that are protected (including actual or perceived race, color, national origin, sex, disability, sexual orientation, gender identity, and religion).

Recommendations

While many schools and universities have taken the first step in creating policies and procedures to address this problem, more can 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.

In addition to creating an atmosphere for productive and proactive dialogue on this issue, AAUW believes we 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, Title IX coordinators and their respective schools/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.
- Third, the 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.
- Fourth, the Department of Education must be required to annually collect data across all areas of education at the elementary, secondary, and postsecondary levels. The data must be broken down by sex so that progress in achieving gender equity can be measured and tracked.
- Fifth, all federal agencies should be required to proactively conduct Title IX compliance reviews. Title IX applies to all federal agencies and all aspects of education. All agencies are required to ensure they are not violating Title IX, however very few Title IX reviews are conducted outside of the Department of Education—and those that are conducted are often cursory at best. Agencies should ensure that universities that receive agency funding are complying with Title IX.

Resources for Advocates

It is AAUW advocates across the county who speak their minds on issues important to them that truly advance AAUW's mission. Stay informed with updates on sexual harassment policies and other issues by subscribing to AAUW's Action Network. Make your voice heard in Washington and at home by using AAUW's Two-Minute Activist to urge your members of Congress to support programs that alleviate the culture of harassment in education. Write a letter to the editor of your local paper to educate and motivate other members of your community. Attend town hall meetings for your members of Congress, or set up a meeting with your elected official's district office near you to discuss these policies. AAUW members can also subscribe to *Washington Update*, our free, weekly e-bulletin that offers an insider's view on the latest policy news, resources for advocates, and programming ideas. For details on these and other actions you can take, visit www.aauw.org/takeaction. For more information, read AAUW's related position papers on Title IX, gender equity in athletics, and single sex education, and AAUW's research, including *Drawing the Line: Sexual Harassment on Campus*. You can find these and other resources on our website at www.aauw.org.

Conclusion

Communities must come together to shine a light on the issue of sexual harassment and help students, faculty and staff, as well as parents and guardians, understand the many forms of sexual harassment and promote respectful and appropriate behaviors.

For the latest research on this issue, refer to AAUW's Educational Foundation reports available at <http://www.aauw.org/research/index.cfm>. For testimony on Title IX's impact on sexual harassment, given by Lisa Maatz, AAUW's Director of Public Policy and Government Relations, at a Congressional hearing in June 2007, visit http://www.aauw.org/About/newsroom/pressreleases/upload/titleIXTestimony_061907.pdf.

For more information, call 202/785-7793 or e-mail VoterEd@aauw.org

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¹ American Association of University Women. (June 2009). *2009-11 AAUW Public Policy Program*. Retrieved July 9, 2009, from http://www.aauw.org/advocacy/issue_advocacy/principles_priorities.cfm.

² The AAUW Educational Foundation released its research report, *Drawing the Line: Sexual Harassment on Campus*, on Jan. 24, 2006. This report presents comprehensive findings on sexual harassment on college campuses.

³ AAUW Educational Foundation. (2006). *Drawing the Line: Sexual Harassment on Campus*, 4.

⁴ AAUW Educational Foundation. (2001). *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School*, 4.

⁵ AAUW Educational Foundation. (2006). *Drawing the Line: Sexual Harassment on Campus*, 9-10.

⁶ AAUW Educational Foundation. (2001). *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School*, 2.

⁷ *Ibid*, 4.

⁸ AAUW Educational Foundation. (2006). *Drawing the Line: Sexual Harassment on Campus*, 15.

⁹ *Ibid*, 2.

¹⁰ *Ibid*, 22.

¹¹ 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. 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. All of these publications, including *Drawing the Line*, are available at www.aauw.org/research.

¹² AAUW Educational Foundation. (2001). *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School*, 4.

¹³ *Ibid*, 5.

¹⁴ AAUW Educational Foundation. (2006). *Drawing the Line: Sexual Harassment on Campus*, 33.

¹⁵ *Ibid*, 32.

¹⁶ *Ibid*, 29.

¹⁷ AAUW Educational Foundation. (2001). *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School*, 32.

¹⁸ *Ibid*.

¹⁹ U.S. Department of Education, Office for Civil Rights. *Sexual Harassment: It's Not Academic*. Retrieved January 14, 2009, from <http://www.ed.gov/about/offices/list/ocr/docs/ocrshpam.html>.

²⁰ U.S. Department of Education, Office for Civil Rights. *Sexual Harassment: It's Not Academic*. Retrieved January 14, 2009, from <http://www.ed.gov/about/offices/list/ocr/docs/ocrshpam.pdf>.

²¹ U.S. Department of Education, Office for Civil Rights. *Sexual Harassment Guidance 1997*. Retrieved January 14, 2009, from <http://www.ed.gov/about/offices/list/ocr/docs/sexhar01.html>.

²² Cornell University Law School. Alida Star Genser and Alida McCullough, Petitioners v. Lago Vista, Independent School District. Retrieved July 2, 2009 from <http://www.law.cornell.edu/supct/html/96-1866.ZO.html>.

²³ National Women's Law Center. *Sexual Harassment, Davis v. Monroe Brief*. Retrieved January 14, 2009, from <http://www.nwlc.org/pdf/DavisBrief.pdf>.

²⁴ U.S. Department of Education, Office for Civil Rights. *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties; Notice*. Retrieved January 14, 2009, from <http://www.ed.gov/legislation/FedRegister/other/2000-4/110200b.html>.

²⁵ Hutton, Thomas. (August 2006). No Right of Passage: Coming to Grips with Harassment and Bullying. *Leadership Insider* (National School Boards Association), 1.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Members of the National Safe Schools Partnership (June 2007). *Bridging the Gap in Federal Law: Promoting Safe School and Improved Student Achievement by Preventing Bullying and Harassment in our Schools*. Retrieved on January 9, 2009, from http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/000/912-1.pdf.