



“We are excited to partner with AAUW to expand awareness and enforcement of this important civil rights law,” Kristen said.

She and her staff have a multilayered approach to addressing Title IX compliance in high schools. They engage in direct negotiation with school districts to enforce compliance. They provide advice, counseling, and advocacy to schools,

parents, and students, and they work to inform state and federal legislators about how important equal opportunities are for girls. They also engage in class action litigation to enforce Title IX. Currently, LAS-ELC is working on California legislation A.B. 685, which would require the state office that approves architectural plans for schools to consider Title IX compliance before approving construction.

“Female athletes are our best ambassadors for Title IX,” said Kristen. “Because young women from all walks of life enjoy participation in sports, showing how they benefit and having them advocate for Title IX can move people who come from different political perspectives.”

As our members know, AAUW has been an advocate of Title IX since AAUW member Rep. Patsy Mink (D-HI) began champion-

ing the bill in the 1970s, and we are excited to collaborate with LAS-ELC on some of their initiatives. Title IX has come a long way in the past 37 years, and it will continue to change lives in the years to come.

High school administrators, as well as teachers, coaches, students, parents, and the community as a whole, must be informed about Title IX and learn what they can do to make the spirit of the law reality. AAUW and LAS-ELC are seeking AAUW members with an interest in Title IX and equity in athletics to become community leaders on the issue. If you are interested in this role or in learning more about the current initiatives, please contact laf@aauw.org.

Benefits of Participating in Athletics

- Physical activity can help women maintain a healthy weight and lower their risk of developing cancer and other diseases. (National Women's Law Center. *Keeping Score: Girls' Participation in High School Athletics in Massachusetts*. 2004.)

- Girls who participate in some kind of sport experience higher than average levels of self-esteem and lower levels of depression. (Colton, M. & Gore, S. (1991). "Risk, Resiliency, and Resistance: Current Research on Adolescent Girls." Ms. Foundation for Women.)

- Athletic participation can teach valuable life skills that will be useful later in life. Women will learn collaboration, dedication, and perseverance. (National Women's Law Center. *Keeping Score: Girls' Participation in High School Athletics in Massachusetts*. 2004.)

- Female athletes have better grades and higher graduation rates than non-athlete females. In high school, athletic participation can lead to college scholarships. (National Women's Law Center. *Keeping Score: Girls' Participation in High School Athletics in Massachusetts*. 2004.)

- Team sports participation is associated with a lower prevalence of sexual risk-taking behaviors for young women. (Kulig, K., Brenner, N. & McManus, T. (2003). "Sexual activity and substance use among adolescents by category of physical activity plus team sport participation." *Pediatrics and Adolescent Medicine*.)

whose retirement benefits were smaller because of their pregnancy leave will not have their benefits recalculated.

On June 29, the U.S. Supreme Court issued a 5-4 opinion in favor of the petitioners in the case *Ricci v. DeStefano*. AAUW joined the National Women's Law Center, in conjunction with the National

Partnership for Women and Families, in signing an amicus brief in support of the defendants, the city of New Haven, Connecticut. The case involved a firefighter promotion test that the city feared had a disparate impact on minority firefighters, so no promotions were made. A group of 20 white firefighters and one Hispanic fire-

fighter sued New Haven for violating their Title VII employment rights.

Pending Rulings

AAUW signed onto three new amicus briefs this year. In February, AAUW joined the National Women's Law Center in signing an amicus brief in support of the

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appeal filed by the by LAF-supported plaintiffs in *Mansourian, et al. v. Regents of the University of California, et al.* The brief focused on how the district court erred in applying the actual notice/deliberate indifference standard required in Title IX sexual harassment cases to the athletics context. The plaintiffs argued that this standard has no place in the athletics context, in which the school itself decides how many opportunities, benefits, and services to provide to its students.

In June, AAUW signed on to an amicus brief in support of the plaintiff in a sexual harassment case, *Harris v. Mayor and City Council of Baltimore City*, before the 4th Circuit U.S. Court of Appeals. Harris encountered persistent harassment in her job at the Baltimore Department of Public Works, including being called inappropriate names and being forced to sit at a table covered in pornographic images of women. The federal district court awarded summary judgment to the city on Harris's hostile work environment claim, finding that the treatment Harris endured was not perpetrated "because of sex" and was not sufficiently severe or pervasive. The amicus brief, authored by the National Partnership for Women and Families, argues against this finding.

Also in June, AAUW joined the National Partnership for Women and Families and the

Would you like to have an LAF-supported plaintiff or lawyer speak at your state convention this year? If so, apply for an LAF Case Support Travel Grant by October 15. Visit the AAUW website to learn more: www.aauw.org/advocacy/laf/awards/travelgrant.cfm.



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AAUW

Breaking through Barriers

About LAF

The AAUW Legal Advocacy Fund partners with other civil and women's rights organizations to support strategic litigation that affects women in all workplaces. Through our campus programs and online resource library, LAF educates campuses and the general public about barriers faced by women and the legal rights, policies, and strategies that can help to eradicate sex discrimination in higher education and the workplace.

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LAF/UPDATE

Summer 2009

From the President



Carolyn Garfein

Since 1981, the AAUW Legal Advocacy Fund has awarded millions of dollars to plaintiffs seeking redress from sex discrimination. This support, however, is just a drop in the bucket in addressing the ongoing gender-based problems—pay inequity, sexual harassment, stereotyping, bias, and other obvious and covert actions—that demean and unfairly disadvantage women in the workplace.

To make the most difference, AAUW is selecting cases with significant potential to create systemic change that reduces discrimination and sets precedents that protect women in the future. Case selections for LAF support are made throughout the year; so, if you know of such a case, please e-mail laf@aauw.org to receive a Case Recommendation Form.

We are all aware that the work of LAF is supported by the generous donations of our members. Because the need is great, we maximize our impact by employing a variety of strategies to combat discrimination in addition to our litigation support. One of the most effective is our LAF Campus Outreach Program grants to educate college students about gender-based discrimination. I encourage you to work with a college or university in your community to help design a campus event focused on a sex discrimination topic. These grants are awarded on a funds-available basis, so apply early to ensure that your project receives funding. Visit www.aauw.org/advocacy/laf/campusOutreach.cfm for more information.

None of these efforts would be possible without the generous support of you, our donors. Thank you for all your past contributions, and thank you in advance for what I know you will continue to give. Let's make 2009 a banner year for advancing equity through the work of the AAUW Legal Advocacy Fund.

Carolyn H. Garfein
President, AAUW

Also in This Edition

- Campus Sexual Assault Policies
- Amicus Brief Updates
- Latest Case Updates

Working Toward Title IX Compliance

The AAUW Legal Advocacy Fund and the AAUW Research Department are entering into a collaboration with the Legal Aid Society of San Francisco—Employment Law Center (LAS-ELC) in California to help raise awareness among AAUW members and schools nationwide about Title IX compliance and enforcement in high school athletics.

Title IX of the Education Amendments of 1972 is one of the great success stories in women's history. The law, which prohibits sex discrimination in educational programs and activities that receive federal funding, is much broader than the sports context, but one of its most celebrated outcomes has been the expansion of athletic opportunities for female students.

The Women's Sports Foundation found that female high school athletic participation increased by 940 percent between 1971 and 2008. Despite this remarkable increase, girls still lag behind boys in participation, especially at the high school level. According to the Women's Sports Foundation's 2009 report *Play Fair: A Title IX Playbook for Victory*, girls comprise 49 percent of the nation's high school population, but they only account for 41 percent of athletes.

Many schools struggle to comply with Title IX requirements such as equal financial assistance and equal participation, often because they are uninformed. However, while schools may claim that they do not have funds to provide more athletic opportunities for girls, it is still their responsibility to allocate existing funds fairly. Compliance is possible on any budget. That's where AAUW and LAS-ELC come in.

Beginning this fall, AAUW will work to inform our members nationwide about Title IX and, with LAS-ELC,

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LAF to Help Campuses Develop Sexual Assault Policies

Each year, an astonishing number of women attending college are the targets of sexual assault. A recent study by RTI International on campus sexual assault found that 19 percent of the 5,446 female students surveyed reported experiencing sexual assault or attempted sexual assault since entering college. The Rape, Abuse, and Incest National Network reports that college-age women are four times more likely than any other age group to be sexually victimized.

Despite the statistics documenting the problem, many colleges and universities are reluctant to address campus sexual assault through prevention programs or by creating and enforcing a comprehensive sexual assault policy. This may be because no school wants to publicize or openly address incidents that make their students or institutions seem unsafe, but such a position hurts students and is illegal.

Currently, many colleges' handling of sexual assault may be in violation of Title IX of the Education Amendments of 1972, which requires colleges and universities to provide equal access to educational opportunities. According to Harvard Law

School professor and Title IX expert Diane Rosenfeld, sexual assault "interferes with a student's access to educational opportunities, and a victim's sense of safety at the school will be diminished." Additionally, she notes that "rape and sexual assault can seriously impact a student's health and well-being, and the survivor's educational opportunities are therefore compromised."

To address this widespread problem, the AAUW Legal Advocacy Fund and the AAUW Research Department are collaborating with Rosenfeld, her clinical students, and SAFER (Students Active for Ending Rape) on two exciting initiatives to help colleges and universities better address the problem of sexual assault, particularly through the creation and enforcement of a strong sexual assault policy.

The first initiative is a new manual being published by LAF this fall, entitled *Preventing and Addressing Campus Sexual Misconduct: A Guide for Schools*, which will address the prevalence of sexual assault on campus and Title IX compliance requirements and will provide detailed information about what an optimal campus sexual assault policy would include. The manual

is written for administrators, faculty, and students, and it will be distributed to AAUW's 500 college and university partners.

Rosenfeld is the lead author of the manual and says one of her main reasons for writing it is to see colleges and universities "take up the issue of sexual assault and not be afraid to talk about it." She said, "The norm is that there is not a good campus policy on sexual misconduct, and the exception is that there is a compliant and effective policy."

Because campus environments vary so much, the manual will list and explain several model elements that every policy should include. One of these elements is an anonymous reporting mechanism for victims of sexual assault, which could increase the number of victims who report assaults and could also make universities more aware of the extent and pervasiveness of sexual assault at their institution.

Dan Routh, one of Rosenfeld's students who helped write the manual, said, "Seemingly small procedural mechanisms, like altering report mechanisms, can make a huge difference in a victim's recovery and a perpetrator's punishment."

Rosenfeld hopes that the manual will be the catalyst for colleges and universities to enact these recommendations and to learn how to minimize sexual assault on their campuses. She said, "I chose to partner with AAUW on this project because of the quality, amount, and reach of the membership, and because AAUW has the people to start the discussion."

In addition to the manual, AAUW will also produce a Program in a Box for AAUW members who are interested in becoming community activists on this issue. In particular, AAUW members will have the opportunity to participate in one



Diane Rosenfeld

LAF to Help Campuses Develop Sexual Assault Policies continued from page 2

of SAFER's campus activism programs to help bring change to their local campuses.

SAFER, a small nonprofit organization founded in 1999 and based in New York City, focuses on empowering students to organize grassroots strategies to improve their campus sexual assault policies. SAFER provides interested students with a manual about grassroots organizing, on-site trainings, and the chance to participate in a SAFER campus activist mentoring program.

Margaret Mikkelsen, a member of the board of advisors for SAFER, said, "Focusing on campus sexual assault policies is so important because policies play a central role in setting norms and contributing to a



SAFER board member Margaret Mikkelsen with a SAFER volunteer at a 2008 fundraiser.

culture that does not tolerate sexual assault. A strong, prevention-focused policy sends a message to all members of a community that they are valued and respected and that violence against them will not be tolerated."

Interested AAUW members will be able

Case Updates

Do you know about or are you involved in a case that centers on a workplace or higher education sexual discrimination issue? Is the case potentially significant with respect to future cases or likely to set or reinforce precedent that will discourage gender discrimination and benefit women? If so, please contact laf@aauw.org for a case recommendation form, and AAUW will consider providing organizational and/or monetary support to the case to help ensure that all women have a fair chance. Read more about LAF's expanded case support program online at www.aauw.org/advocacy/laf/cases.

Pending Cases

Jaureguito v. Feather River Community College, Thein v. Feather River Community College, Wartluft v. Feather River Community College

In spring 2008, the lawyers in these cases submitted closing and reply briefs to the California State Personnel Board from the November 2007 trial. The judge in the board hearings was expected to submit a decision to the California State Personnel Board by March 2009. The judge recently notified the plaintiffs that a decision will be submitted in summer 2009, and that

the brief submitted by the NWLC. The University of California filed an appellate brief in May 2009, and plaintiffs submitted a reply brief. There is still no date for oral arguments.

Schuster v. Berea College
In August 2008, the Kentucky Court of Appeals reversed the judgment of the lower court in favor of Berea College. The appeals court found that the trial court had repeatedly denied Schuster use of critical discovery. Berea College challenged that decision in a motion for reconsideration. In December 2008, the Kentucky Court of Appeals once again ruled in favor of Schuster. Berea College filed a motion for discretionary review with the Kentucky Supreme Court on December 5, 2008. The court plans to issue a ruling by the end of the year on the college's motion.

Mansourian, et al. v. Regents of the University of California, et al.

Mansourian has filed an appeal of the judge's ruling against her. The ruling, however, dealt with whether or not there was sufficient notice of the discrimination, not with whether or not discrimination occurred. The appeal also questions whether a Title IX claim supplants an equal protection claim. In February 2009, the National Women's Law Center (NWLC), the ACLU, and other women's rights groups submitted appellate briefs supporting the Mansourian briefs. AAUW signed onto

A Message from Development

Please remember that without financial support, we cannot provide these essential LAF programs. We hope that you will join the other generous donors and support our work by using the enclosed donation envelope. If you have any questions or would prefer to make a contribution over the phone, please contact Tremayne Parquet at 202/728-7611 or Pamela Kreeger at 202/785-7766 for assistance.

AAUW Legal Advocacy Fund Major Donors

We extend sincere thanks to these donors, whose contributions to LAF were received between December 16, 2008, and May 31, 2009.

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Amicus Brief Updates

Through its Legal Advocacy Fund and Public Policy Department, AAUW seeks opportunities to sign amicus briefs for cases that will impact women's equity in the workplace and in education.

Recent Rulings

Since January, the U.S. Supreme Court issued rulings on four cases for which AAUW signed amicus briefs.

Jacqueline Fitzgerald, a kindergarten student in Massachusetts, was forced repeatedly by an older boy to remove her clothes during bus rides to school, but the school board refused to intervene. The Fitzgerald family sued the school district in *Fitzgerald v. Barnstable School Committee*,

alleging violations of both Title IX and the equal protection clause of the Constitution.

AAUW signed an amicus brief supporting the Fitzgerald family. In late January, the court ruled unanimously that those persons who sue under the Title IX statute may simultaneously do so under another civil rights statute known as Section 1983.

Vicky Crawford, an employee of the Nashville Metro School District, was asked by her employers to cooperate with an internal investigation into sexual harassment allegations against her boss. Crawford was later fired, and she believes she was terminated in retaliation for her role in the investigation. She filed a lawsuit, *Crawford v. Metropolitan Government of Nashville and Davidson County*. AAUW signed an amicus

brief in support of Crawford.

While Title VII of the Civil Rights Act of 1964 contains an antiretaliation provision, two lower courts narrowly interpreted the law and found that an internal investigation is not protected by Title VII. The U.S. Supreme Court ruled in late January 2009 that workers cannot be fired or otherwise retaliated against for cooperating with internal sexual harassment investigations that arise under Title VII of the 1964 Civil Rights Act.

On May 18, the U.S. Supreme Court ruled in *AT&T Corp. v. Hulteen* that Congress did not make the Pregnancy Discrimination Act retroactive; therefore, the women employees of AT&T who took pregnancy leave before the law passed and

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