

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1392 CD 2018

AMANDA WIBLE,

v.

SCHOOL DISTRICT OF PHILADELPHIA,

Appellant.

Appeal from the September 17, 2018 Judgment of the Court of Common Pleas of Philadelphia County, Pennsylvania, No. 150403169

BRIEF OF *AMICI CURIAE* 23 ORGANIZATIONS DEDICATED TO IMPROVING EDUCATIONAL INSTITUTIONS' RESPONSES TO STUDENT SEXUAL HARASSMENT AND SEXUAL ASSAULT, IN SUPPORT OF APPELLEE AND FOR AFFIRMANCE

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STATEMENT OF INTEREST OF THE *AMICI CURIAE*

Amici curiae are 23 nonprofit organizations dedicated to ensuring that all students are educated in safe and supportive learning environments that are free from discrimination and harassment. Due to the prevalence of sexual harassment and sexual assault and its devastating effect on survivors—particularly children, girls, and LGBTQ and gender-nonconforming youth—*amici* seek to ensure that educational institutions promptly and effectively respond to student-on-student sexual harassment and sexual assault.

Amici have significant expertise on these issues. Some provide direct services to survivors of sexual harassment and sexual assault. These services include crisis intervention and counseling, assistance navigating judicial and quasi-judicial systems, and representing survivors in those systems. Many *amici* engage in policy advocacy to improve institutional responses to sexual harassment and sexual assault by advocating for law reform, by designing and implementing programs to improve societal understanding of the prevalence and seriousness of sexual harassment and sexual assault, and by advocating for best practices to remedy sexual harassment and sexual assault.

Amici share their expertise in this brief in support of a determination that the Pennsylvania Human Relations Act (PHRA) requires covered educational institutions to take prompt and effective remedial action if they know or should

know of student-on-student harassment or assault. Statements of interest for each *amicus* are included as an appendix to this brief. No person or entity other than the *amici curiae*, their members, and their counsel (i) has paid in whole or in part for the preparation of this brief or (ii) has authored this brief in whole or in part.

SUMMARY OF ARGUMENT

This case concerns a girl whose pleas to her schools to intervene and protect her from increasingly violent harassment went unanswered. Because of her schools' inaction, from the time she enrolled in elementary school and until she withdrew from the School District of Philadelphia at the end of ninth grade, Amanda Wible endured regular verbal harassment and multiple physical assaults. This Court should affirm the trial court's conclusion that the PHRA recognizes claims of discrimination against educational institutions that fail to address and remedy student-on-student harassment, such as the harassment Amanda experienced. In so doing, the Court will ensure that, when educational institutions in Pennsylvania fail to address harassment of their students, students may hold their schools accountable.

As highlighted by Amanda's experiences, harassment, left unaddressed, can be extremely damaging. Students who are harassed are more likely to struggle in school and to avoid school altogether, leading to absenteeism, truancy, and dropping out. They are also more likely to suffer from depression, anxiety, and other adverse health consequences. These harms compound and exacerbate the broader societal stigma already experienced by vulnerable students: girls, students who fail to conform to sex stereotypes, and students who embody multiple

marginalized identities, such as gender-nonconforming girls or girls who are or are perceived to be lesbian, gay, bisexual, transgender, and/or queer (LGBTQ).

The trial court correctly held that the text and intent of the PHRA addresses harassment and its effects on students, for it aims to deter public accommodations from unlawfully discriminating “either directly or indirectly” against students, and it provides remedies for discrimination when it occurs. 43 Pa. Stat. Ann. § 955(i)(1). Therefore, given the School District’s failure to address and respond to Amanda and her mother’s complaints of student-on-student harassment, the Court should affirm the trial court’s decision to hold the School District liable for the discrimination at issue in this case.

Additionally, the Court should use this opportunity to clarify the standard of liability as negligence, instead of deliberate indifference. Because courts apply the deliberate indifference standard under spending statutes, and because the PHRA is not a spending statute, courts should evaluate PHRA student-on-student harassment claims under a less-onerous negligence standard. The Court’s clarification will help educational institutions to better understand the scope of their obligation to provide students with access to an education free of discrimination, and thereby benefit countless students across Pennsylvania.

Lastly, the Court should reject the School District’s immunity arguments, which seek to deny Amanda the remedies to which she is entitled.

ARGUMENT

I. Educational institutions’ failure to address and remedy harassment leads to adverse outcomes for survivors and in particular for girls, students who do not conform to sex stereotypes, and students who embody multiple marginalized identities.

Amanda’s story is not an isolated one. Many schools in our Commonwealth are not properly addressing harassment,¹ and, as discussed below, unaddressed harassment leads to detrimental and harmful effects on girls and historically marginalized students.²

A. Sexual harassment can have devastating effects, particularly for girls—yet schools often ignore sexual harassment.

Experiencing sexual harassment is associated with adverse educational outcomes, including having difficulty concentrating when studying, dropping out of extracurricular activities, avoiding school altogether, and switching schools.³

¹ The term “harassment” used throughout this brief encompasses bullying on the basis of protected class characteristics (*e.g.*, race, color, national origin, sex, gender, and disability). *See, e.g.*, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d; Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a); PHRA, 43 Pa. Stat. Ann. § 955(i).

² *See, e.g.* GLSEN, *School Climate in Pennsylvania* 1 (2019), https://www.glsen.org/sites/default/files/Pennsylvania%20State%20Snapshot%20-%202017%20NSCS_0.pdf (reporting that LGBTQ students experience high rates of harassment in Pennsylvania schools).

³ *See* Am. Ass’n of Univ. Women (AAUW), *Crossing the Line: Sexual Harassment at School* 20, 30 (2011), <https://www.aauw.org/files/2013/02/Crossing-the-Line-Sexual-Harassment-at-School.pdf>.

Sexual harassment also takes a psychological toll, as survivors often develop insomnia, anxiety, depression, poor body image, and low self-esteem.⁴

In particular, compared to their male counterparts, girls who experience sexual harassment are more likely to report adverse outcomes resulting from harassment.⁵ Girls are also more likely to experience sexual harassment in the first place: in a nationally representative survey of 1,965 students in grades 7–12, 40% of boys surveyed reported sexual harassment, compared to 56% of the girls surveyed.⁶ And when girls are harassed, they are 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—compounding the adverse effects girls already experience from “the gender-power imbalance that exists in most societies.”⁷

⁴ See *id.* at 3, 15–16; Mons Bendixen et al., *The Effects of Non-Physical Peer Sexual Harassment on High School Students’ Psychological Well-Being in Norway: Consistent and Stable Findings Across Studies*, 63 *Int’l J. Public Health* 3 (2018), <https://link.springer.com/article/10.1007%2Fs00038-017-1049-3>; Steinar Brandslet, *All Forms Of Sexual Harassment Can Cause Psychological Harm*, Gemini (Sept. 11, 2017), <https://geminiresearchnews.com/2017/11/forms-sexual-harassment-can-cause-psychological-harm>.

⁵ See AAUW, *supra* note 3, at 3.

⁶ *Id.* at 2.

⁷ *Id.* at 12 fig.2, 20.

Although educators can prevent future instances of harassment by refusing to “ignore the situation, treat it as a joke, or encourage the harasser,”⁸ many school staff, teachers, and administrators do not intervene when they know a student sexually harasses a peer—even when they personally witness the harassment.⁹ Their inaction not only is a cruel and unlawful response to sexual harassment, but it also creates a school culture in which sexual harassment is viewed as acceptable by the students who perpetrate it.¹⁰

Amanda’s story is a case in point. She experienced sexual harassment for years, suffering sexualized epithets, a boy who “threw items down her shirt and ‘offered to get them,’” peers who made comments about her breasts, and students who pushed her against a female friend and tried to force the two to kiss. *Wible v. Sch. Dist. of Phila.*, No. 150403169, slip op. at 5–6, 9, 11–12 (Phila. Cty. C.C.P. Dec. 17, 2018). As a result, Amanda’s grades suffered, she missed “dances and socials and school trips”, and she enrolled in a cyber charter school to escape the harassment. *Id.* at 3, 14, 17.¹¹ Amanda also developed severe and ongoing

⁸ *Id.* at 32.

⁹ See generally Elizabeth J. Meyer, *Gendered Harassment in Secondary Schools: Understanding Teachers’ (Non)interventions*, 20 *Gender & Educ.* 555 (2008), <https://www.tandfonline.com/doi/full/10.1080/09540250802213115>.

¹⁰ See *id.*

¹¹ Research indicates that cyber charter schools produce worse academic outcomes than traditional brick and mortar schools. See CREDO, *Charter School Performance in Pennsylvania*

psychological ailments, including anxiety, depression, a “profound sleep disturbance,” “excessive emotional reactivity,” post-traumatic stress disorder (PTSD), and amplified musculoskeletal pain disorder. *Wible*, slip op. at 24. In response, the School District failed to remedy the harassment effectively, despite the many reports Amanda and her mother made and incidents of harassment personally observed by school staff. *See id.* at 4, 7–8, 12–16. In so doing, the School District communicated that harassment was acceptable—fueling the ongoing and escalating harassment Amanda experienced.

B. Students who do not conform to sex stereotypes, including LGBTQ youth, are particularly vulnerable to experiencing sexual harassment, but schools are unlikely to take this harassment seriously.

“There is no more obvious form of sex stereotyping than making a determination that a person should conform to heterosexuality,” *EEOC v. Scott Med. Health Ctr., P.C.*, 217 F. Supp. 3d 834, 841 (W.D. Pa. 2016), and students who are perceived as not conforming to traditional gender roles, including students who are or are perceived to be LGBTQ, experience higher rates of bullying and

8-10 (Apr. 2011), https://credo.stanford.edu/reports/PA%20State%20Report_20110404_FINAL.pdf; Editorial, *Troubled Online Charter Schools*, N.Y. Times (Jan. 10, 2012), <https://www.nytimes.com/2012/01/11/opinion/troubled-online-charter-schools.html>.

harassment.¹² In a survey of Pennsylvania LGBTQ students, 70% of respondents had experienced verbal harassment on the basis of their sexual orientation, 27% had experienced physical harassment, and 12% had experienced a physical assault.¹³

When harassed, LGBTQ students are more likely to experience adverse educational and psychological effects—and to experience these effects more acutely—compared to their straight, cisgender counterparts.¹⁴ LGBTQ students subjected to harassment are more likely to skip school, smoke, use alcohol or drugs, or engage in other risky behaviors, and they are more likely to think about or attempt suicide.¹⁵ In a national survey, “over half of LGBTQ students (59.8%)

¹² See Nat’l Acads. of Sci., Engineering, & Med., *Preventing Bullying through Science, Policy, and Practice* 48 (Frederick Rivara & Suzanne Le Menestrel eds., 2016), <https://www.nap.edu/download/23482>; see also AAUW, *supra* note 3, at 3, 6.

¹³ GLSEN, *School Climate in Pennsylvania*, *supra* note 2, at 1 fig.2.

¹⁴ “Cisgender” describes people who are not transgender. See GLAAD, *GLAAD Media Reference Guide - Transgender*, <http://www.glaad.org/reference/transgender> (last visited May 17, 2019).

¹⁵ See Daniel E. Bontempo & Anthony R. D’Augelli, *Effects of At-School Victimization and Sexual Orientation on Lesbian, Gay, or Bisexual Youths’ Health Risk Behavior*, 30 *J. Adolescent Health* 364, 369–73 & tbl.3, fig.2 (2002), [https://www.jahonline.org/article/S1054-139X\(01\)00415-3/abstract](https://www.jahonline.org/article/S1054-139X(01)00415-3/abstract); Stephen T. Russell & Kara Joyner, *Adolescent Sexual Orientation and Suicide Risk: Evidence from a National Study*, 91 *Am. J. Pub. Health* 1276, 1278 tbl.1 (2001), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1446760/pdf/0911276.pdf> (showing higher suicidality proportions among victimized LGBTQ youth).

explicitly reported a hostile school climate,” including “issues with harassment,” as being a factor “in their decision or doubts about finishing high school.”¹⁶

Though LGBTQ students are particularly vulnerable to sexual harassment, school staff tend to view the harassment of gender-nonconforming and LGBTQ students as acceptable conduct, and thus are unlikely to intervene when they are harassed. Of LGBTQ youth respondents to a national survey, 60% of those who were brave enough to report harassment to school staff were betrayed by those who were supposed to protect them, with staff merely telling the harassed student to ignore the harassment or taking no action whatsoever.¹⁷ Some school staff even aggravated the students’ victimization, with 21% telling the reporting student to change their behavior, such as by dressing differently or by trying “not to act ‘so gay.’”¹⁸ And schools’ failure to stop harassment of gender-nonconforming and LGBTQ youth results in a greater likelihood that those youth will experience “sustained victimization over the school year,” which puts them at greater risk of adverse academic and psychological effects.¹⁹

¹⁶ GLSEN, *The 2017 National School Climate Survey* 44 (2018), <https://www.glsen.org/sites/default/files/GLSEN-2017-National-School-Climate-Survey-NSCS-Full-Report.pdf>.

¹⁷ *Id.* at 31.

¹⁸ *Id.*

¹⁹ Nat’l Acads. of Sci., Engineering, & Med., *supra* note 12, at 125.

Again, Amanda’s story personifies these trends. Amanda experienced homophobic harassment on the basis of her nonconformance to traditional gender roles and perceived sexual orientation, ultimately leading to multiple physical assaults resulting in injuries. *Wible*, slip op. at 3, 5–7, 9, 11–13. Despite the frequency and severity of her harassment, school staff often responded to Amanda and her mother’s reports of the harassment with inaction, by telling Amanda to ignore her harassers, or even by punishing Amanda. *See id.* at 4–8, 10, 12–13, 16. These inadequate responses put Amanda at a greater risk of sustained harassment, and indeed she was harassed for years until her mother withdrew her from the School District altogether. *See id.* at 3–17. Finally, the School District’s sustained failure to interrupt the harassment put Amanda at greater risk for the psychological ailments she developed.

C. Students who embody multiple marginalized identities, such as LGBTQ girls, are especially vulnerable to harassment and, perversely, likely to be blamed for the harassment they experience.

Students with intersecting marginalized identities may experience harassment based on multiple personal characteristics, including not just sex-based characteristics, but also their race, ethnicity, and national origin.²⁰ This harassment

²⁰ See Joseph G. Kosciw et al., GLSEN, *The 2007 National School Climate Survey* 77–81 (2008), <https://www.glsen.org/sites/default/files/2007%20National%20School%20Climate%20Survey%20Full%20Report.pdf>; see also Elizabeth M. Diaz & Joseph G. Kosciw, GLSEN, *Shared Differences: The Experiences of Lesbian, Gay, Bisexual, and Transgender Students of*

results in more severe harms than harassment based on one identity alone. For instance, girls who also identify as LGBTQ tend to experience harassment based on both their gender and their sexual orientation.²¹ Tellingly, in a January 2017 survey, more than 1 in 4 LGBTQ girls (27%) had been harassed in the three months since November 2016, and more than half of LGBTQ girls reported that they were a survivor of sexual or other violence.²²

Students experiencing harassment based on multiple characteristics are also more likely to experience more adverse educational outcomes, such as missing school or lower grades.²³ 61% of LGBTQ girls in the 2017 national survey reported trouble concentrating in school.²⁴ And though 67% of girls overall reported experiencing symptoms of PTSD, the rate was even higher for LGBTQ girls, with 83% reporting experiencing symptoms of PTSD.²⁵

Color in our Nation's Schools xi–xii (2009), <https://www.glsen.org/sites/default/files/Shared%20Differences.pdf>.

²¹ See Kosciw, *supra* note 20, at 78–79 & tbl.7.

²² Jasmine Tucker & Neena Chaudhry, *Let Her Learn: Stopping School Pushout for LGBTQ Girls* 1–3 & fig.1, https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/04/Final_nwlc_Gates_LGBTQ.pdf (last visited May 17, 2019).

²³ See Diaz & Kosciw, *supra* note 20, at xii.

²⁴ Tucker & Chaudhry, *supra* note 22, at 3.

²⁵ *Id.*

LGBTQ girls experience hostility not only from peers at school, but also from adults. Girls who are LGBTQ are more likely to be disciplined in school than straight girls—one study found “95% higher odds of discipline”—and that trend is not explained by correspondingly higher rates of misbehavior.²⁶ Girls may even be disciplined merely for reporting harassment: in a survey of LGBTQ students, “nearly one-in-ten students (7.9%) reported that they themselves were disciplined when they reported being victimized,” and, out of students with higher rates of victimization based on sexual orientation, 54.1% experienced school discipline.²⁷ This increased risk of discipline disproportionately puts LGBTQ girls on the school-to-prison pipeline,²⁸ as exemplified by the fact that LGBTQ girls comprise 40% of the female population in juvenile justice facilities.²⁹

²⁶ Joel Mittleman, *Sexual Orientation and School Discipline: New Evidence from a Population-Based Sample*, 47 *Educ. Researcher* 181, 181 (2018), <https://journals.sagepub.com/doi/10.3102/0013189X17753123>.

²⁷ GLSEN, *The 2017 National School Climate Survey*, *supra* note 16, at 31–32, 48–49.

²⁸ The “school-to-prison pipeline” arises when, in the era of zero-tolerance policies, “a teacher’s decision to refer students for punishment can mean they are pushed out of the classroom—and much more likely to be introduced into the criminal justice system.” Marilyn Elias, *The School to Prison Pipeline*, 43 *Teaching Tolerance* (Spring 2013), <https://www.tolerance.org/magazine/spring-2013/the-school-to-prison-pipeline>.

²⁹ See Angela Irvine & Aisha Canfield, *Reflections on New National Data on LGBTQ/GNCT Youth in the Justice System*, 7 *LGBTQ Pol’y J.* 27, 30 (2017), <https://static1.squarespace.com/static/58ba8c479f7456dff8fb4e29/t/59739d333e00be4843e0263b/1500749110120/irvine.canfield.2017.pdf>.

Here, like too many girls in her circumstances, Amanda was often disciplined for reporting harassment she experienced, instead of being protected from her harassers. After an incident when one of Amanda's harassers attacked her, ripped out her hair, and left red marks on her body, both Amanda and her harasser were suspended. *Wible*, slip op. at 7. On another occasion, classmates dragged Amanda to the floor, dumped contents of a trash can on her head, put the trash can itself on her head, and beat her. *Id.* at 9. This time, "Amanda . . . alone was blamed" and told that "the attack was her fault." *Id.* at 10.

Amanda's tragic case provides a prime example of what happens when educational institutions fail to address harassment promptly and effectively. In view of the statistics surrounding girls and LBGTQ youth, similar mistreatment will continue, until educational institutions are held accountable for refusing to address harassment.

II. Unaddressed student-on-student harassment is cognizable under the PHRA as a form of unlawful discrimination.

The PHRA is intended to protect children like Amanda from unaddressed student-on-student harassment at school, as evident in its text and in Pennsylvania courts' interpretation of the law since its inception. Given the PHRA's explicit prohibition on even "indirect[]" discrimination, 43 Pa. Stat. Ann. § 955(i)(1), an educational institution may be liable for failing to address student-on-student

harassment. Liability exists even if, as the School District argues, its “own conduct was not based on a protected category.” Appellant’s Br. 23.

A. The PHRA’s text and established case law support interpreting the PHRA liberally to encompass protections from student-on-student harassment in education, including sexual harassment based on perceived nonconformance to sex stereotypes.

The PHRA’s text states that public accommodations—which include educational institutions, *see* 43 Pa. Stat. Ann. § 954(l)—may not discriminate based on sex, “either directly or indirectly,” *id.* § 955(i)(1). That prohibition is set within the overarching and sweeping purposes of the PHRA: “to assure equal opportunities to all individuals and to safeguard their rights to public accommodation . . . regardless of sex.” *Id.* § 952(b). What’s more, the PHRA mandates that its provisions “be construed liberally for the accomplishment of the purposes thereof.” *Id.* § 962(c). To do so is “a task which compels consideration of more than the statute’s literal words,” *PHRC v. Chester Sch. Dist.*, 233 A.2d 290, 295 (Pa. 1967), and so the Court should affirm the trial court’s holding that the PHRA’s ban on direct and indirect public accommodations discrimination encompasses unaddressed student-on-student harassment in educational institutions.

Indeed, from shortly after the PHRA public accommodation provisions’ enactment in 1955, *see* Act of Feb. 28, 1961, No. 19, 1961 Pa. Laws 47, courts have followed the PHRA’s mandate of liberal construction to address

discrimination in ever-changing social contexts. For example, in 1967, the Pennsylvania Supreme Court held that, when a school district “fail[s] to act” and take “corrective measures” in response to de facto racial segregation, it unlawfully discriminates under the PHRA. *PHRC*, 233 A.2d at 294–95. And later, a federal court likewise followed the guiding principle, holding that AIDS constituted a disability for the purposes of triggering the PHRA’s protections against disability discrimination. *Cain v. Hyatt*, 734 F. Supp. 671, 678–80 (E.D. Pa. 1990) (citing 43 Pa. Stat. Ann. § 962(a)).

In light of this history, the PHRA’s text directs this Court to find that under the PHRA’s public accommodations provisions, students have a cause of action against educational institutions that do not take prompt and effective action against student-on-student harassment.³⁰ The Pennsylvania Human Relations Commission (PHRC), charged with the PHRA’s administration, *see* 43 Pa. Stat. Ann. § 956(a), has already paved the way: it provides, as examples of unlawful education discrimination, a classmate who “repeatedly makes sexual comments or gestures”

³⁰ Although the School District quotes a footnote in a nonbinding case for the proposition that no court has before acknowledged this cause of action, *see* Appellants’ Br. 23 (citing *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 204 n.4 (3d Cir. 2001)), the PHRA explicitly allows the Court to interpret the PHRA “liberally” to ensure equal opportunities in public accommodations, 43 Pa. Stat. Ann. § 962(a); *see also id.* § 952(b).

and classmates that “harass . . . a peer because of . . . her . . . sex.”³¹ Accordingly, the Court should affirm the trial court’s conclusion that the PHRA protects students like Amanda, which is consistent with the PHRA’s text and with existing jurisprudence. *See Wible*, slip op. at 26–29.

B. Educational institutions may be held liable for “indirect” discrimination regardless of their subjective intentions.

Contrary to the School District’s argument, even if its “own actions were not alleged to be based on . . . sex,” Appellant’s Br. 23, liability under the PHRA for “indirect[.]” discrimination does not require “intentional or affirmative acts on the part of the wrongdoer,” *PHRC*, 233 A.2d at 294. Prevailing case law for over half a century has recognized that the PHRA’s protections apply to schools and that “inaction” against discrimination—without subjective intent to discriminate—amounts to unlawful discrimination under the PHRA. *See id.* at 294–95 (issued by the Pennsylvania Supreme Court in 1967). The School District therefore cannot assert a defense based on its lack of subjective intent or “act[ion] on the basis of sex.” Appellant’s Br. 25.

³¹ Pa. Human Relations Comm’n, *Education Discrimination*, <http://www.phrc.pa.gov/File-A-Complaint/Types-of-Complaints/Pages/Education.aspx> (last visited May 17, 2019).

C. The PHRA provides an important remedial scheme to address student-on-student harassment.

Although the School District asserts that students like Amanda have ample alternative remedies for harassment they experience, *see* Appellant’s Br. 27–29, the PHRA’s “make-whole” remedies for discrimination and harassment are not duplicative of other available remedies, *Hoy v. Angelone (Hoy II)*, 720 A.2d 745, 749 (Pa. 1998).³²

For instance, tort claims cannot be brought against public school districts, which have governmental immunity. *See* 42 Pa. Cons. Stat. §§ 8541–8542. If the educational institution is also at fault, tort claims against harassers or their parents will provide partial remedies at best. *See generally id.* § 7102(a.1)(1) (declaring that, “where liability is attributed to more than one defendant,” each defendant is liable for only a portion of the total damages).

Criminal and delinquency charges provide even fewer remedies, for they may not lead to prosecution or conviction. Even if prosecutors pursue charges, compensatory remedies are limited. *See generally* 18 Pa. Cons. Stat. § 1106; 42 Pa. Cons. Stat. § 9721(c); 18 Pa. Stat. Ann. § 11.707(b)(1). What’s more, vulnerable students—e.g., students of color, undocumented students, or LGBTQ students—

³² *See* 43 Pa. Stat. Ann. §§ 959(f)(1), 963(c)(3); *see also infra* subsection III.C (discussing the distinctions between the PHRA and spending statutes such as Title IX of the Education Amendments of 1972).

may decline to report harassment to the police due to increased risk of mistreatment, bias, or deportation.³³

Meanwhile, under the Pennsylvania Public School Code, students also lack remedies. The Public School Code appears to provide no private right of action or compensatory remedies in its Safe Schools provisions. *See* 24 Pa. Stat. Ann. §§ 13-1310-A(c), 13-1312-A.

In addition, applicable federal statutes such as the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400–1482, may afford equitable relief commonly in the form of compensatory education services to remediate a denial of a free, appropriate, public education. 20 U.S.C. § 1415(i)(2)(C)(iii); *see also Lester H. ex rel. Octavia P. v. Gilhool*, 916 F.2d 865, 872–73 (3d Cir. 1990). But federal statutory considerations constrain available remedies in critical ways, *see, e.g., infra* subsection III.A (discussing Title IX), so federal statutes provide insufficient relief to remedy the extraordinary harm Amanda suffered.

³³ *See generally* Sandy E. James et al., Nat’l Ctr. for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* 14–15 (2016), <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF> (transgender women); Hannah Giorgis, *Many Women of Color Don’t Go to the Police After Sexual Assault for a Reason*, *The Guardian* (Mar. 25, 2015, 7:49 AM), <https://www.theguardian.com/commentisfree/2015/mar/25/women-of-color-police-sexual-assault-racist-criminal-justice> (women of color); Jennifer Medina, *Too Scared to Report Sexual Abuse. The Fear: Deportation*, *N.Y. Times* (Apr. 30, 2017), <https://www.nytimes.com/2017/04/30/us/immigrants-deportation-sexual-abuse.html> (undocumented women).

III. A negligence standard should apply to PHRA student-on-student harassment claims.

The trial court correctly held that the School District's response to the sexual harassment Amanda experienced did not meet its obligations under the PHRA. *Wible*, slip op. at 26–31. As the trial court explained, the School District “was deliberately indifferent” because “the School District had actual notice of what was occurring” and made “no reasonable attempt . . . to proactively address the harassment.” *Id.* at 30–31. Courts have held, under Title IX of the Education Amendments of 1972, a federal statute, that such deliberate indifference to known acts of harassment warrants liability in damages and is tantamount to intentional discrimination. *Davis ex rel. LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 643 (1999). The School District's conduct here clearly meets that standard in this case.

While the trial court correctly concluded that the School District should be held liable under the deliberate indifference standard, this Court should take this opportunity to carefully consider whether the standard is suitable in the PHRA context. The Court should both affirm the trial court's liability determination and adopt a more appropriate standard consistent with the PHRA. That is a legal question over which the Court exercises plenary review, *Bailets v. Pa. Turnpike Comm'n*, 181 A.3d 324, 332 (Pa. 2018), and one that no Pennsylvania appellate court has yet addressed. *Amici* urge the Court, in its role as an appellate court, to

address what standard of liability should apply to PHRA student-on-student harassment claims in order to provide needed guidance on this important issue.

As explained below, the deliberate indifference standard was developed under federal case law, not under the PHRA, *see infra* subsection III.A, yet the trial court applied the “deliberate indifference” standard without analyzing its suitability under the PHRA, *see Wible*, slip op. at 26–31. Instead of requiring complainants bringing PHRA student-on-student harassment claims to meet the “high standard” of deliberate indifference, *Davis*, 526 U.S. at 643, this Court should consider adopting a lower negligence standard, holding educational institutions liable when they “knew or *should have known* of the harassment and failed to take prompt and effective remedial action,” *Doe v. Kansas City, Mo. Sch. Dist.*, 372 S.W.3d 43, 54 (Mo. Ct. App. 2012) (emphasis added). This standard not only finds support in federal and state case law, but also provides greater protection to vulnerable students, whose safety depends on school officials’ “comprehensive authority . . . to prescribe and control conduct in the schools.” *Davis*, 526 U.S. at 646.

A. The deliberate indifference standard is uniquely tailored to student-on-student harassment claims arising under spending statutes.

Under Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681–1688, federally funded educational institutions are liable in damages for student-on-student sexual harassment only if they have actual knowledge of the

harassment and respond to it with deliberate indifference, *see Davis*, 526 U.S. at 633, 650. The U.S. Supreme Court arrived at the deliberate indifference standard through three successive opinions, each of which emphasized Title IX’s status as “legislation enacted pursuant to Congress’[s] authority under the Spending Clause.” *Id.* at 640.

First, in *Franklin v. Gwinnett County Public Schools*, the Court held that damages are available under Title IX, but with an important caveat. 503 U.S. 60, 76 (1992). Because generally remedies are limited under spending statutes when the alleged violation is “unintentional” and when the receiving entity of federal funds thereby “lacks notice that it will be liable for a monetary award,” the Court concluded that damages would be available only if a Title IX violation was “intentional.” *Id.* at 74–75 (emphases omitted).

Second, in *Gebser v. Lago Vista Independent School District*, a teacher-on-student sexual harassment opinion, the Court further limited the damages remedy. *See* 524 U.S. 274, 277 (1998). Again, the Court relied on spending statute principles. Echoing *Franklin*’s “central concern” that “the receiving entity of federal funds has notice that it will be liable for a monetary award,” the Court held that damages are available only if the educational institution had “actual knowledge” of the Title IX violation and responded with “deliberate indifference.” *Gebser*, 524 U.S. at 287, 290.

Finally, in *Davis*, issued the year after *Gebser*, the Court extended the deliberate indifference standard to student-on-student cases. 526 U.S. at 633. The Court once more explained that Title IX was “enacted pursuant to Congress’[s] authority under the Spending Clause,” so “a recipient of federal funds may be liable in damages under Title IX only for its own misconduct.” *Id.* at 640. Applying that principle to student-on-student sexual harassment cases, the Court concluded that educational institutions may be liable only “for their deliberate indifference to known acts of peer sexual harassment.” *Id.* at 648.

In *Franklin*, *Gebser*, and *Davis*, the U.S. Supreme Court laid out Title IX’s deliberate indifference standard, always in response to concerns based on Title IX’s status as a spending statute. At least one state court, interpreting a similar state spending statute, followed suit. *See Donovan v. Poway Unified Sch. Dist.*, 84 Cal. Rptr. 3d 285, 306–16 (Cal. Ct. App. 2008). But, as discussed below, when an antidiscrimination statute is not a spending statute, courts take a different approach.

B. Courts apply a negligence standard to peer-on-peer harassment claims arising under antidiscrimination statutes that are not spending statutes.

Many federal and state antidiscrimination statutes are not spending statutes, including Title VII of the Civil Rights Act of 1964, the PHRA, and various other state antidiscrimination statutes. These statutes do not impose conditions on

government funds; instead, they are “outright prohibition[s],” designed to punish actors responsible for discrimination and to compensate victims of discrimination. *Gebser*, 524 U.S. at 286–87 (comparing Title VII); *see also Warren ex rel. Good v. Reading Sch. Dist.*, 278 F.3d 163, 170 (3d Cir. 2002) (discussing Title VII); 43 Pa. Stat. Ann. § 955(i)(1) (PHRA); Mo. Rev. Stat. § 213.065(1) (Missouri Human Rights Act); N.J. Stat. Ann. § 10:5-4 (New Jersey Law Against Discrimination).

Courts have adopted less-onerous negligence standards for peer-on-peer harassment claims under antidiscrimination statutes that are not spending statutes. For example, for coworker-on-coworker harassment claims under Title VII, the employer is liable simply “if it was negligent in controlling working conditions,” *Vance v. Ball St. Univ.*, 570 U.S. 421, 424 (2013)—*i.e.*, if it “failed to provide a reasonable avenue for complaint” or “failed to take prompt and appropriate remedial action” when it “knew or should have known of the harassment,” *Huston v. Procter & Gamble Paper Prods. Corp.*, 568 F.3d 100, 104 (3d Cir. 2009).³⁴

Likewise, in Pennsylvania, where courts apply Title VII standards in PHRA employment discrimination cases, the Pennsylvania Superior Court has adopted a negligence standard for PHRA peer-on-peer harassment claims in employment.

³⁴ *See also Davis*, 526 U.S. at 642 (noting that imposing liability for what an institution “knew or should have known” amounts “to a negligence standard” (emphasis omitted)).

See Hoy v. Angelone (Hoy I), 691 A.2d 476, 480 (Pa. Super. Ct. 1997), *aff'd*, 720 A.2d 745 (Pa. 1998).

Moreover, in two other states whose antidiscrimination statutes are not spending statutes, the courts of those states have explicitly rejected Title IX’s deliberate indifference standard in the education context, instead adopting negligence standards in student-on-student sexual harassment. *See Doe*, 372 S.W.3d at 52–54; *L.W. v. Toms River Regional Schs. Bd. of Educ.*, 915 A.2d 535, 549–50 (N.J. 2007).³⁵

C. The PHRA is not a spending statute, so this Court should adopt a negligence standard for PHRA student-on-student harassment claims and should hold the School District liable under that standard.

The PHRA’s public accommodations provisions impose “outright prohibition[s]” by prohibiting discrimination without reference to funding sources. *Gebser*, 524 U.S. at 286; *see* 43 Pa. Stat. Ann. § 955(i)(1). Given that the PHRA is not a spending statute, this Court should reject higher standards established under spending statutes such as Title IX. Accordingly, under the PHRA, an educational institution should be held liable for a student-on-student harassment claim “if it

³⁵ In adjudicating a student-on-student harassment claim under Vermont law, the Vermont Supreme Court likewise rejected Title IX’s deliberate indifference standard, explaining that remedies under the Vermont law were “not cabined by the contractual considerations present in the context of Spending Clause litigation.” *Washington v. Pierce*, 895 A.2d 173, 182–84 (Vt. 2005). The court ultimately adopted an alternative standard, which it derived from Vermont’s unique statutory scheme. *See id.* at 184–86.

knew or should have known of the harassment and failed to take prompt and effective remedial action.” *Doe*, 372 S.W.3d at 54.

This negligence standard is in keeping with the PHRA’s “remedial” purpose. *Hoy II*, 720 A.2d at 749. Notably, in some Title IX cases, courts have denied remedies to students by holding that there was not actual notice of harassment or that there were not other judicially imposed requirements to establish deliberate indifference. *See, e.g., Baynard v. Malone*, 268 F.3d 228, 238 (4th Cir. 2001) (holding that a plaintiff did not prove actual notice, even though the plaintiff’s principal had received multiple previous reports of the harasser’s inappropriate sexual contact with other students).³⁶ Imposing the higher deliberate indifference standard would permit more schools to shirk their responsibilities to protect students from discrimination and from the resulting harms that are foreseeable and preventable.

Because Amanda has proven her PHRA sexual harassment claim under a deliberate indifference standard, *see Wible*, slip op. at 26–31, she has also proven her claim under a “lower” negligence standard, *Doe*, 372 S.W.3d at 53.

Specifically, the trial court’s findings establish that, throughout Amanda’s ten

³⁶ *See generally* Jared P. Cole & Christine J. Back, Cong. Research Serv., R45685, *Title IX and Sexual Harassment: Private Rights of Action, Administrative Enforcement, and Proposed Regulations* 9–18 (Apr. 12, 2019), <https://crsreports.congress.gov/product/pdf/R/R45685> (discussing and collecting cases).

years as a student in School District schools, she and her mother repeatedly informed the School District of Amanda’s harassment, yet time after time the School District failed to remedy the harassment. *See* Findings of Fact and Conclusions of Law 2–5, ¶¶ 4–44, *Juanita J.W. v. Sch. Dist. of Phila.*, No. 150403169 (Phila. Cty. C.C.P. May 30, 2018).³⁷ *Amici* urge this Court to adopt a negligence standard for PHRA student-on-student harassment claims and, applying that standard here, to affirm the trial court’s liability determination.

IV. Public school districts and educational institutions may be held liable for—and are not immune from—PHRA public accommodations discrimination claims.

Contrary to the School District’s opening argument, *cf.* Appellant’s Br. 11–22, the School District is not immune from a PHRA public accommodations discrimination claim for damages. As discussed below, the School District’s position is refuted by the applicable statutory text, as well as by Pennsylvania case law, relevant legislative history, and analogous statutory schemes.

³⁷ This Court must sustain trial court findings of fact unless they are “clearly or manifestly erroneous” or “arbitrarily made.” *In re Estate of Banks*, 189 A.2d 154, 156 (Pa. 1963).

A. The applicable statutory text does not grant local governmental immunity to public school districts and educational institutions facing PHRA public accommodations discrimination claims.

The School District’s asserted immunity lacks support in the applicable statutory text, whether one looks to the Pennsylvania Political Subdivision Tort Claims Act or to the PHRA.

Under the Tort Claims Act, local agencies receive immunity for claims arising from an “injury to a person or property.” 42 Pa. Cons. Stat. § 8541. As the trial court noted, this language “refers only to common law torts.” *Wible*, slip op. at 29. Indeed, the Tort Claims Act’s exceptions to immunity all contemplate potential tort liability, providing exceptions for “[v]ehicle liability,” “[c]are, custody or control of personal property,” “[r]eal property,” “[t]rees, traffic controls and street lighting,” “[u]tility service facilities,” “[s]treets,” “[s]idewalks,” and “[c]are, custody or control of animals.” 42 Pa. Cons. Stat. § 8542(b).

The PHRA’s text also does not support the School District’s asserted immunity, as shown at multiple points throughout the statute. First, the PHRA bans discriminatory practices in school districts by explicitly regulating—and subjecting to potential damages liability—“any person being the . . . superintendent” of a public accommodation. 43 Pa. Stat. Ann. § 955(i).

Second, the PHRA defines regulated “person[s]” to include the state government and “all political subdivisions . . . thereof,” *id.* § 954(a), and

Pennsylvania’s Statutory Construction Act defines “[p]olitical subdivision” to include a “school district” or “vocational school district,” 1 Pa. Cons. Stat. § 1991. Although the PHRA’s separate definition of “political subdivision” does not explicitly include school districts, *see* 43 Pa. Stat. Ann. § 954(m), the Statutory Construction Act’s commonsense definition prevails “unless the context clearly indicates otherwise,” 1 Pa. Cons. Stat. § 1991. As discussed, the PHRA’s text and context do not “clearly” indicate that the PHRA intends to exclude school districts from its reach. *Id.*; *see supra* and *infra* Section IV.

Finally, the PHRA defines regulated “public accommodation[s]” to include “kindergartens, primary and secondary schools, high schools, academies, colleges and universities,” again showing the PHRA’s aim to regulate school districts. 43 Pa. Stat. Ann. § 954(l). Overall, the PHRA’s text repeatedly shows that it intends to hold school districts liable—including via payment of damages, if warranted—for any discriminatory public accommodations practices. This statutory goal finds no obstacle in the text of Tort Claims Act, which, as discussed above, does not reach claims under the PHRA.

B. Pennsylvania case law, relevant legislative history, and analogous statutory schemes support the conclusion that public school districts and educational institutions are not immune from PHRA public accommodations discrimination claims.

Looking beyond statutory text, the School District’s immunity argument also lacks support under Pennsylvania case law. Both this Court and the Pennsylvania

Supreme Court have confirmed that the Tort Claims Act’s purpose “is to limit governmental exposure to tort liability,” not to limit liability for claims outside tort law, such as statutory PHRA claims. *Flood v. Silfies*, 933 A.2d 1072, 1076 n.7 (Pa. Commw. Ct. 2007).³⁸ PHRA public accommodations case law only confirms that school districts are fully subject to liability under the PHRA. *See, e.g., PHRC*, 233 A.2d at 294 (noting that the PHRA must be “construed liberally for the accomplishment of [its] purposes” (quoting 43 Pa. Stat. Ann. § 962)).

In addition, the PHRA’s legislative history refutes the School District’s argument that, in cases against school districts, damages are available only for claims of discrimination in employment. *See* Appellant’s Br. 15–18. When the General Assembly enacted the PHRA’s public accommodations provisions, it intended available remedies for employment and public accommodations claims to be identical. For instance, during floor debates, a senator explained that, just as employment discrimination complainants “go before . . . the Human Relations Commission . . . to have a hearing,” public accommodations complainants would

³⁸ *Accord Meyer v. Cmty. Coll. of Beaver Cty.*, 2 A.3d 499, 501–03 (Pa. 2010); *see, e.g., Dorsey v. Redman*, 96 A.3d 332, 341–42 (Pa. 2014) (holding that the Tort Claims Act does not provide immunity to Probate, Estates and Fiduciaries Code claims); *Hidden Creek, L.P. v. Lower Salford Twp. Auth.*, 129 A.3d 602, 610–13 (Pa. Commw. Ct. 2015) (same, for Municipality Authorities Act claims).

likewise have “a preliminary hearing and screening by the Commission.”³⁹ So, instead of enacting a separate law or separate public accommodations provisions, the General Assembly adopted section-by-section amendments, methodically extending preexisting employment protections and remedies to public accommodations. *See* Act of Feb. 28, 1961. This legislative backdrop suggests no intended distinction between PHRA employment discrimination remedies and PHRA public accommodations discrimination remedies.

Lastly, analogous legislative schemes in other states decline to extend tort immunity to claims under remedial antidiscrimination statutes. For instance, courts in Tennessee have repeatedly held that the Tennessee Governmental Tort Liability Act “communicates the Legislature’s intent to address governmental immunity for specific and enumerated *tort* claims” and not for discrimination claims, which “are actionable only by virtue of statutory fiat” and “are not really torts qua torts.” *Sneed v. City of Red Bank*, 459 S.W.3d 17, 27–28 (Tenn. 2014).⁴⁰

³⁹ Pa. Legis. J., 145th Gen. Assemb., 1961 Sess., Vol. 38, No. 1, at 257 (Jan. 31, 1961) (comments by Sen. McMenemy).

⁴⁰ *Accord Childers v. Hardeman Cty. Bd. of Educ.*, No. 13-1209, 2015 WL 225058, at *12 (W.D. Tenn. Jan. 15, 2015). In the limited instances when courts hold that tort immunity extends beyond traditional tort claims, they do so only “when the ‘essential nature’ of the claim is a state tort claim, even if that claim raises federal constitutional or statutory issues.” *Moore v. Pielech*, No. 10-0453, 2011 WL 1325088, at *5 (S.D. Ohio Apr. 5, 2011).

Courts around the country accordingly refuse to extend tort immunity to discrimination claims.⁴¹

Based on the text and context of the applicable laws, this Court should reject the School District's attempts to escape liability under the PHRA. The School District failed to take prompt and effective remedial action against the student-on-student sexual harassment that Amanda experienced. *See Wible*, slip op. at 26–31. Therefore, the School District committed an unlawful discriminatory practice under the PHRA, *see supra* Sections II–III, and should be held liable in accordance with the trial court's order.

⁴¹ *See, e.g., State ex rel. Franklin v. City of Topeka*, 969 P.2d 852, 857 (Kan. 1998); *Chambers v. City of Detroit*, 786 F. Supp. 2d 1253, 1271 (E.D. Mich. 2011); *Luboyeski v. Hill*, 872 P.2d 353, 356–58 (N.M. 1994); *Clackamas Fire Prot. Dist. No. 1 v. Or. Bureau of Labor & Indus.*, 624 P.2d 141, 151 (Or. Ct. App. 1981); *Eason v. Memphis Light, Gas & Water Div.*, 866 S.W.2d 952, 955–56 (Tenn. Ct. App. 1993).

CONCLUSION

For these reasons, as well as those set forth in the Brief for Appellee, *amici* respectfully urge the Court to affirm the ruling below.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT COMPLIANCE

Pursuant to Pa. R. App. P. 2135, the text of this *amicus curiae* brief consists of 6967 words as determined by the Microsoft Word word-processing program used to generate this document.

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CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

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APPENDIX OF INDIVIDUAL STATEMENTS OF *AMICI CURIAE*

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN

American Association of University Women (AAUW) was founded in 1881 by like-minded women who had challenged society's conventions by earning college degrees. Since then it has worked to increase women's access to higher education through research, advocacy, and philanthropy. Today, AAUW has more than 170,000 members and supporters, 1,000 branches, and 800 college and university partners nationwide. AAUW plays a major role in mobilizing advocates nationwide on AAUW's priority issues to advance gender equity. In adherence with its member-adopted Public Policy Program, AAUW supports equitable educational climates free of harassment, bullying, and sexual assault, and vigorous enforcement of Title IX and all other civil rights laws pertaining to education.

AMERICAN CIVIL LIBERTIES UNION ACLU OF PENNSYLVANIA

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with more than 1.7 million members dedicated to the principles of liberty and equality embodied in the U.S. Constitution. Through its Women's Rights Project and LGBT & HIV Project, the ACLU has taken a leading role advocating for the rights of girls, women, and LGBTQ survivors of gender-based harassment and violence through litigation, advocacy, and public education. The ACLU has sought to strengthen the responses of governments, employers, schools and housing providers to gender-based violence and the remedies available to victims and survivors. The ACLU of Pennsylvania is the Pennsylvania state affiliate of the ACLU.

ATLANTA WOMEN FOR EQUALITY

Atlanta Women for Equality, Inc. is a nonprofit legal organization dedicated to shaping schools according to true standards of equality and empowering women and girls to assert their rights to equal treatment. To accomplish these goals, Atlanta Women for Equality provides free legal advocacy for women and girls facing gender discrimination including sexual harassment and assault at school and advocates for protecting and expanding educational opportunities through policy advocacy. It is important that women and girls who face sexual harassment and assault are able to receive fair treatment from every system in which they may be

involved, from school proceedings to the criminal justice system, that does not expose them to increased trauma.

CALIFORNIA WOMEN’S LAW CENTER

The California Women’s Law Center (CWLC)’s mission is to break down barriers and advance the potential of women and girls through transformative litigation, policy advocacy and education. Our issue priorities include gender discrimination, violence against women, women’s health and economic justice. For thirty years, CWLC has been on the frontlines fighting against sexual violence and harassment on all school campuses and to ensure that survivors are able to seek justice.

EDUCATION LAW CENTER

The Education Law Center-PA is a non-profit legal advocacy organization dedicated to ensuring access to a quality public education for all children in Pennsylvania. For over 40 years, ELC has advocated on behalf of the most at-risk students—children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness. Our priority areas include ensuring all students have equal access to safe and supportive schools and the full range of services and programs they need to succeed. We work to eliminate systemic inequalities that lead to disparate educational outcomes based on race, gender, sexual orientation, gender expression, disability status, and other categories.

END RAPE ON CAMPUS

End Rape on Campus is a national 501(c)(3) nonprofit organization that works to end campus sexual violence through direct support for survivors and their communities; prevention through education; and policy reform at the campus, local, state, and federal levels. This case is an important step in ensuring that educational institutions prevent student-on-student sexual harassment. We seek to change culture in order to create a world free from sexual violence, and work to end gender-based discrimination and all forms of violence in educational settings, for students, faculty, and all members of a university community.

GENDER JUSTICE

Gender Justice is a nonprofit legal and policy advocacy organization based in the Midwest that is committed to the eradication of gender barriers through impact litigation, policy advocacy, and education. As part of its litigation program, Gender Justice represents individuals and provides legal advocacy as *amicus curiae* in cases involving issues of gender discrimination. Gender Justice has an interest in ensuring that students are safe in schools and free from gender discrimination.

GWEN'S GIRLS, INC.

Gwen's Girls Incorporated (GG) is a 501(c)(3) nonprofit organization that was established in 2002 to provide prevention and intervention services to young women and girls living in neighborhoods inundated with poverty, drugs, and violence in the Pittsburgh, Allegheny County region. GG's mission is to empower girls and young women to have productive lives through holistic, gender-specific programs, education and experiences. National reports have suggested that girls experience sexual harassment at astounding rates and that Black girls face discrimination within various systems which can increase the likelihood that they experience trauma and impact the way they are treated when they do. Despite the fact that girls have a legal right to protection from sexual harassment under Title IX of the Education Amendments Act of 1972, many schools respond insufficiently in terms of prevention and intervention of sexual harassment. Black girls' experiences of sexual harassment within schools are just one form of trauma that can impact their overall well-being. There is an urgent need for a collaborative, systematic approach to address sexual harassment in K-12 schools to ensure the safety of all girls, and particularly Black girls.

JUVENILE LAW CENTER

Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the foster care and justice systems. Founded in 1975, Juvenile Law Center is the first non-profit, public interest law firm for children in the country. Among other things, Juvenile Law Center works to ensure that children's rights are protected and that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights. Juvenile Law Center has a particularized interest in ensuring access to quality education and that youth—especially youth whose identities have been historically marginalized, such as LGBT/GNC youth—are educated in a supportive, positive school environment where they feel safe and have a voice.

LEGAL VOICE

Legal Voice is a regional nonprofit public interest organization that works to advance the legal rights of all women, girls, and LGBTQ communities 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 LGBTQ communities, 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.

NATIONAL COUNCIL OF JEWISH WOMEN PITTSBURGH

The National Council of Jewish Women (NCJW) is a grassroots organization of volunteers and advocates who turn progressive ideals into action. For 125 years, NCJW Pittsburgh Section has championed the needs of women, children, and families as the only Jewish women's organization in Pittsburgh dedicated to grassroots advocacy and community service. From the Civil Rights Act of 1964 to the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act, NCJW has been and continues to be on the front lines helping to enact landmark civil rights legislation. We know that for all children to have the opportunity to learn, they need to be free from discrimination and educated in schools where they are safe, affirmed, and included.

NATIONAL CRITTENTON

National Crittenton catalyzes social and systems change for girls, young women, and gender non-conforming young people impacted by chronic adversity, violence, discrimination, and injustice. We serve as the umbrella for the 26 members of the Crittenton family of agencies providing direct services in 31 states and the District of Columbia. Like the young woman in the case at bar, many of the young people we support show courage and resilience in the face of the violence and discrimination they have endured. National Crittenton's advocacy has focused on creating safe, just and healthy school environments where children and youth can learn, grow and thrive. Sadly, for girls sexual harassment continues to be a factor that negatively impacts their ability to feel safe in schools at all grade levels. As such, National Crittenton advocates for gender and cultural responsive trauma and healing informed school environments. As well as training for all

schools staff. Additionally, many of the Crittenton agencies operate schools from early learning centers through high school.

NATIONAL WOMEN’S LAW CENTER

The National Women’s Law Center (NWLC) is a non-profit legal advocacy organization dedicated to the advancement and protection of women’s legal rights and opportunities since its founding in 1972. Because equal access to education in an environment free of sexual harassment is essential to full equality, NWLC seeks to ensure that no individual is denied educational opportunities based on sex and that all individuals enjoy the full protection against sex discrimination promised by law.

PENNSYLVANIA CHAPTER OF THE NATIONAL ORGANIZATION FOR WOMEN (NOW)

The Pennsylvania Chapter of the National Organization for Women is committed to fighting against the rape culture that our society is encumbered in and this commitment includes ensuring that educational institutions prevent and stop student-on-student sexual harassment rather than dismissing claims that are brought forward. Sexual harassment at school is unacceptable, causing personal pain and embarrassment and creating a negative learning environment for children in their formative years. Students need to feel safe in the cafeteria, hallways, and classrooms—places where sexual harassment commonly occur and which the educational institution is responsible for. Administrators, teachers, students, and parents must nurture an inclusive, supportive, and respectful environment in their efforts to decrease and eliminate sexual harassment, and the responsibility of each educational institution does not stop at simply handing out a sexual harassment policy which is never proactively addressed or improved upon. With so many educational institutions involved in addressing adverse childhood experiences and the negative impacts they have throughout a person's life, the School District of Philadelphia’s failure to stop the harassment, and in some instances, creation of an environment that enabled it, is more than troubling.

PENNSYLVANIA COALITION AGAINST RAPE

The Pennsylvania Coalition Against Rape (PCAR) is a private nonprofit organization. Founded in 1975, PCAR is the oldest anti-sexual-violence coalition in the country and is widely respected at both the state and national levels for its leadership in efforts to prevent sexual violence and to provide support and justice to survivors. PCAR is committed to ending sexual violence and believes that

sexual violence can be prevented. Sexual harassment is a serious and widespread problem. The statistics are staggering: 81 percent of women and 43 percent of men report experiencing some form of sexual harassment and/or assault in their lifetime. Every institution has a responsibility to nurture an environment that promotes the safety and wellbeing of their constituents, and this is particularly important when it comes to schools. Sexual harassment impedes learning. Schools are required to ensure that students are not denied access to educational opportunities due to gender based discrimination or hostile environments, which are the signature marks of sexual harassment. A meaningful and safe educational opportunity requires that those with the authority to do so, within the school setting, take action to prevent and stop sexual abuse and harassment among students.

PHILADELPHIA NOW EDUCATION FUND

The Philadelphia NOW Education Fund (PNEF) was formed in 2005 to promote public awareness of women's issues with the ultimate goal of achieving gender equity. PNEF is committed to fighting discrimination based on sexual orientation or gender identity in all areas, including education, employment, housing, public accommodations, health services, child custody and military policies. The sexual violence that the plaintiff experienced falls within the continuum of sexual violence/rape culture endemic in our society. What the plaintiff experienced was devastating with long term consequences of such trauma. School is supposed to be a safe space for children to thrive and learn. Instead, the callous indifference exhibited by the School District of Philadelphia after being informed repeatedly about the sexual harassment endured by the plaintiff, caused her to withdraw from school and hence she was denied equal access to public accommodation based on her sex. That the School District is continuing to shrug its responsibility to make school a safe space for all its students and refusing to make restitution to the plaintiff is a travesty. It is sending a painful message to the plaintiff that the very institution that is supposed to nurture and educate her is abandoning her as well as all students.

SOUTHWEST WOMEN'S LAW CENTER

The Southwest Women's Law Center was established in 2005 to create greater opportunities for women and girls in New Mexico so that they may fulfill their personal and economic potential. To be free from student-on-student torment and sexual harassment in educational institutions is integral to those goals.

WOAR-PHILADELPHIA CENTER AGAINST SEXUAL VIOLENCE

WOAR-Philadelphia Center Against Sexual Violence is the only rape crisis center in Philadelphia. WOAR's mission is to end all forms of sexual violence through advocacy and education. Each year, WOAR provides professional counseling and court and medical accompaniment to an average of 12,427 victims of sexual violence and reaches more than 65,000 children and adults in the Philadelphia community with educational programs about sexual assault and abuse. In 2018, WOAR received over 5000 telephone calls to the 24-hour crisis hotline and its court advocates accompanied 842 survivors to preliminary court and trial. WOAR's education department conducted 1,003 school based workshops on such topic as: sexual harassment, consent, boundary setting, healthy relationships, and good touch/bad touch.

WOMEN AGAINST ABUSE, INC.

Women Against Abuse (WAA) is a nonprofit agency based in Philadelphia that specializes in advocating for and providing services to victims of domestic violence. The organization operates safe haven shelters and transitional housing for domestic violence victims who are trying to get away from their abusers. It also operates a legal center that is among the first in the nation dedicated to serving victims of domestic violence. Women Against Abuse also operates a prevention and education department. WAA educators work directly with teens in Philadelphia schools to help prevent dating violence, to teach students about the dynamics of dating violence and to encourage them to model healthy relationships for their peers.

WOMEN AND GIRLS FOUNDATION OF SOUTHWESTERN PENNSYLVANIA

Women and Girls Foundation of Southwestern PA works to break down barriers, so that every girl can rise and every woman can soar. To this end, we have a vested interest in ensuring that educational institutions prevent and stop student-on-student sexual harassment, as female students are largely the victims of such actions. Harassment has harmful educational and psychological effects on girls, LGBTQ youth, and gender nonconforming youth, and these lasting effects can prevent students from succeeding as productive adults in their communities. We stand in support of the *amicus* brief in *Wible v. School District of Philadelphia*.

WOMEN'S LAW CENTER OF MARYLAND, INC.

The Women's Law Center of Maryland, Inc. is a nonprofit, public interest, membership organization of attorneys and community members with a mission of improving and protecting the legal rights of women. Established in 1971, the Women's Law Center achieves its mission through direct legal representation, research, policy analysis, legislative initiatives, education, and implementation of innovative legal-services programs to pave the way for systematic change. Through its various initiatives the Women's Law Center pays particular attention to issues related to gender discrimination and sexual harassment, whether in the employment realm or in public accommodations.

WOMEN'S LAW PROJECT

The Women's Law Project (WLP) is a non-profit 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 all women throughout their lives. To this end, WLP engages in high-impact litigation, advocacy, and education. The core values of the WLP are a belief in the right of all women to bodily integrity and personal autonomy; dedication to listening to women and being guided by their experiences; and commitment to fairness, equality, and justice. WLP is committed to ending harassment and violence against women and children and to safeguarding the legal rights of women and children who experience sexual harassment and sexual assault. WLP provides representation and counseling to survivors of sexual harassment and sexual assault, participates in *amicus curiae* briefs seeking to ensure appropriate remedial measures for survivors of sexual harassment and sexual assault, and engages in public policy advocacy work to improve institutional responses to sexual harassment and sexual assault.