

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

ROBERT SCHANNE,
Appellant

v.

JENNA ADDIS,
Appellee

Docket No. 106 MAP 2014

**BRIEF FOR *AMICUS CURIAE* WOMEN'S LAW PROJECT AND 23
ORGANIZATIONS DEDICATED TO IMPROVING THE LIVES OF
WOMEN AND GIRLS IN SUPPORT OF APPELLEE**

Question of Law Certified by the Third Circuit Court of Appeals
Case No. 12-4044, Doc. 003111677284 filed 7/11/2014

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
LIST OF <i>AMICI CURIAE</i>	v
STATEMENT OF INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	4
I. APPLICATION OF THE ABSOLUTE AND QUASI-JUDICIAL PRIVILEGE IN THIS CASE WOULD FURTHER THE PURPOSE OF THE PRIVILEGE.	4
II. THE PRIVILEGE IS PARTICULARLY IMPORTANT IN SCHOOL SEXUAL MISCONDUCT CASES.	8
A. Sexual Assault and Harassment are Widespread and Severely Harmful to Students.....	9
B. The Application of Absolute Privilege to Protect Victims of Sexual Misconduct from Subsequent Civil Liability Furthers the State’s Interest in Eradicating Sexual Misconduct.	12
III. RESPONDENTS IN SCHOOL-LEVEL QUASI-JUDICIAL PROCEEDINGS DO NOT NEED TO SUE FORMER STUDENTS FOR DEFAMATION TO VINDICATE THEIR LEGAL RIGHTS.	16
CONCLUSION.....	19

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Cannon v. University of Chicago</i> , 441 U.S. 677 (1979).....	12
<i>Chancellor v. Pottsgrove School District</i> , 501 F.Supp.2d 695 (E.D. Pa. 2007).....	9
<i>Cleveland Board of Education v. Loudermill</i> , 470 U.S. 532 (1985).....	6, 16
<i>Ferrer v. Trustees of University of Pennsylvania</i> , 825 A.2d 591 (Pa. 2002).....	17
<i>Gniotek v. City of Philadelphia</i> , 808 F.2d 241 (3d Cir. 1986)	17
<i>Goss v. Lopez</i> , 419 U.S. 565 (1975).....	17
<i>Hartman v. Keri</i> , 883 N.E.2d 774 (Ind. 2008).....	14, 17
<i>Marino v. Fava</i> , 915 A.2d 121 (Pa. Super. Ct. 2006).....	4, 5
<i>Milliner v. Enck</i> , 709 A.2d 417 (Pa. Super. Ct. 1998).....	4, 5
<i>Murphy v. Duquesne University</i> , 777 A.2d 418 (2001).....	17
<i>Pasour v. Philadelphia Housing Authority</i> , No. CIV.A. 13-2258, 2013 WL 4014514 (E.D. Pa. Aug. 7, 2013).....	18
<i>Paulsen v. Golden State University</i> , 602 P.2d 778 (Cal. 1979).....	17

<i>Pawlowski v. Smorto</i> , 588 A.2d 36 (Pa. Super. Ct. 1991).....	4, 5
<i>Post v. Mendel</i> , 507 A.2d 351 (Pa. 1986).....	4, 7
<i>Reichardt v. Flynn</i> , 823 A.2d 566 (Md. 2003)	14
<i>Schanne v. Addis</i> , 898 F. Supp.2d 751 (E.D. Pa. 2012).....	7, 8, 15
<i>Weissman v. Mogol</i> , 462 N.Y.S.2d 383 (N.Y. Sup. Ct. 1983).....	14
Statutes	
20 U.S.C. § 1681(a)	12
24 Pa. Stat. § 1127-1132 (2014)	22
Other Authorities	
118 CONG. REC. 5803 (1972).....	12
Alan C. Kerckhoff, et al., <i>Education, Cognitive Skill, and Labor Force Outcomes</i> , 74 SOC. OF EDUC. 1, 18 (2001)	11
Caroline Hendrie, <i>Sexual Abuse By Educators Is Scrutinized</i> , EDUC. WEEK, Mar. 10, 2004.....	10
CATHERINE HILL & HOLLY KEARL, AM. ASS’N OF UNIV. WOMEN EDUC. FOUND., <i>CROSSING THE LINE: SEXUAL HARASSMENT AT SCHOOL 10-11</i> (2011)	9
CHAROL SHAKESHAFT, U.S. DEP’T OF EDUC., <i>EDUCATOR SEXUAL MISCONDUCT: A SYNTHESIS OF EXISTING LITERATURE 17</i> (2004)	10, 11, 12, 13, 14
CHRISTOPHER P. KREBS, ET AL., NAT’L INST. OF JUSTICE, <i>THE CAMPUS SEXUAL ASSAULT (CSA) STUDY 1-1</i> (2007)	11

Courtney E. Ahrens, et al, <i>To Tell or Not to Tell: The Impact of Disclosure on Sexual Assault Survivors’ Recovery</i> , 25 VIOLENCE & VICTIMS 631 (2010).	13
David Lisak et al., <i>False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases</i> , 16 VIOLENCE AGAINST WOMEN 1318 (2010)	13
Dorothy L. Espelage & Melissa K. Holt, <i>Dating Violence & Sexual Harassment Across the Bully-Victim Continuum Among Middle and High School Students</i> , 36 J. YOUTH ADOLESCENCE 799 (2007)	11
James E. Gruber & Susan Fineran, <i>Comparing the Impact of Bullying and Sexual Harassment Victimization on the Mental and Physical Health of Adolescents</i> , <i>Sex Roles</i> 80 (2008)	11
Jane Elizabeth Zemel & Steve Twedt, <i>Dirty Secrets: Why Sexually Abusive Teachers Aren’t Stopped</i> , PITTSBURGH POST-GAZETTE, Oct. 31, 1999	10
Martha Irvine, et al., <i>Sex Abuse a Shadow Over U.S. Schools</i> , EDUC. WEEK, Oct. 24, 2007	10
PATRICIA TJADEN & NANCY THOENNES, EXTENT, NATURE, AND CONSEQUENCES OF RAPE VICTIMIZATION: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY, NAT’L INST. OF JUST. SPECIAL REPORT 33 (2006)	12, 13
RESTATEMENT (SECOND) OF TORTS § 587 (1977)	4, 5
SIMONE ROBERS, ET AL., NAT’L CENTER FOR EDUC. STATISTICS AND U.S. DEP’T OF ED., INDICATORS OF SCHOOL AND CRIME SAFETY: 2012 10 (2013)	9
U. S. Constitution	3, 16
U.S. DEP’T OF EDUC., OFFICE FOR CIVIL RIGHTS, DEAR COLLEAGUE LETTER: SEXUAL VIOLENCE 4 (Apr. 4, 2011)	6, 15, 17
U.S. DEP’T OF EDUC., REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES 13 (2001)	6, 9

LIST OF *AMICI CURIAE*

Arizona Coalition to End Sexual and Domestic Violence
Chicago Alliance Against Sexual Exploitation
Connecticut Sexual Assault Crisis Services
End Violence Against Women International
Equal Rights Advocates
Feminist Majority Foundation
H.A.V.I.N.
Illinois Coalition Against Sexual Assault
Legal Momentum
Legal Voice
Maryland Coalition Against Sexual Assault
National Crime Victim Law Institute
National Network to End Domestic Violence
National Women's Law Center
Ohio Alliance to End Sexual Violence
Pennsylvania Coalition Against Rape
Pittsburgh Action Against Rape
Southwest Women's Law Center
Survivors, Inc.
Victim Rights Law Center
Women Organized Against Rape
Women's Law Center of Maryland, Inc.
Women's Law Project
Women's Sports Foundation, Inc.

STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici curiae are 24 non-profit organizations dedicated to improving the lives of women and girls. Due to the prevalence of sexual harassment and its pernicious effect on young women, the *amici* have an interest in ensuring that victims are able to report school-based sexual misconduct, which Title IX seeks to eradicate, without fear of retaliatory litigation. The *amici* include many types of organizations. Some provide direct services to victims of sexual harassment and assault. These services range from crisis intervention and counseling to assistance navigating judicial and quasi-judicial systems, including school internal disciplinary systems. Many of the *amici* engage in policy advocacy to improve institutional responses to sexual harassment and to reduce the incidence of violence against women. These advocacy efforts include lobbying for law reform as well as designing and implementing education and training programs to raise the awareness of the public, police, and courts about the realities of sexual assault and the harmful myths that continue to prevent victims from obtaining justice.

The *amici* have extensive experience with Title IX and special expertise regarding the extent and impact of peer- and teacher-perpetrated sexual harassment and assault in secondary schools. They share their expertise in this brief in support of a determination that absolute privilege extends to protect former students from civil liability stemming from reports of teacher-perpetrated sexual misconduct

when the statements are made prior to the initiation of a quasi-judicial proceeding and without the specific intent to lead to such a hearing.

Individual statements of interest of *amici curiae* are contained in Appendix A to this brief.

SUMMARY OF ARGUMENT

This is a case about protecting the purpose of and enforcing a federal statute that requires federally-funded schools to address and prevent sexual harassment and assault. Defendant-appellee Jenna Addis confided in her friend and neighbor, Susan O'Bannon (who was also a teacher at Ms. Addis's former high school), that while Ms. Addis was in high school, she had engaged in a sexual relationship with one of her high school teachers, plaintiff-appellant Robert Schanne. In telling Ms. O'Bannon, Ms. Addis said she did not want Mr. Schanne to victimize other students. Consistent with her legal obligations, Ms. O'Bannon conveyed Ms. Addis's report of sexual misconduct to school authorities. As a result, after an investigation and hearing, the school terminated Mr. Schanne's employment. In response, Mr. Schanne sued the school challenging his termination and sued Ms. Addis for defamation.

Both the law and the public interest in protecting students from sexual misconduct support Ms. Addis's entitlement to absolute immunity for her statements to Ms. O'Bannon; without Ms. Addis's statements, the school would

not be able to protect other students from sexual misconduct. The absolute judicial and quasi-judicial privileges exist to protect communications that are necessary for the exploration of legal claims that would be hampered without such protection – the very kinds of communications that are at issue in this case. Ms. Addis’s communication to Ms. O’Bannon resulted in an investigation required by federal law and a quasi-judicial proceeding required by the U. S. Constitution.

Title IX requires all federally-funded schools, including Lower Merion High School (the school at issue here), to address and prevent sexual harassment and assault because of their prevalence and pernicious impact on students’ ability to receive an education. The severe underreporting of sexual harassment and assault, however, hinders the impact of Title IX, endangering the health and welfare of students when schools are unable to hold sexual offenders accountable for their harmful behavior. One of the reasons victims often fail to report harassment and assault is because they fear retaliation. Application of the absolute privilege in this case, where the alleged perpetrator sued an alleged victim over the very report relied on by federal law, will protect the very individuals whose reports are necessary to increase the safety of school communities.

ARGUMENT

I. APPLICATION OF THE ABSOLUTE AND QUASI-JUDICIAL PRIVILEGE IN THIS CASE WOULD FURTHER THE PURPOSE OF THE PRIVILEGE.

To protect the integrity of the judicial system, Pennsylvania adopted an absolute privilege from defamation liability for statements made in relation to an ongoing or potential judicial or quasi-judicial proceeding. *Milliner v. Enck*, 709 A.2d 417, 419 n.1 (Pa. Super. Ct. 1998); *Pawlowski v. Smorto*, 588 A.2d 36, 42 (Pa. Super. Ct. 1991).¹ The privilege furthers public interests that outweigh the right of defamation plaintiffs to seek redress for alleged harm caused by the statements. *Marino v. Fava*, 915 A.2d 121, 123 (Pa. Super. Ct. 2006). It protects “the public interest in according to all men [and women] the utmost freedom of access to the courts of justice for settlement of their private disputes.” RESTATEMENT (SECOND) OF TORTS § 587, cmt. a (1977); see *Post v. Mendel*, 507 A.2d 351, 355 (Pa. 1986). Put plainly, absolute immunity exists primarily to ensure that threats of private suits for defamation do not hamper the full disclosure of the truth and, in turn, access to civil remedies.

Pennsylvania courts have applied this privilege broadly to effectuate its purpose, irrespective of the intent behind the publication of an allegedly

¹ Mr. Schanne concedes that the pre-termination hearing is “quasi-judicial,” which generally means a proceeding conducted by a “tribunal which performs a judicial function.” See *Milliner*, 709 A.2d at 419.

defamatory statement. Contrary to Mr. Schanne’s interpretation, Pennsylvania courts have not — and should not— read this privilege so narrowly as to apply only to statements set forth in pleadings and in-court communications. Rather, as Ms. Addis argues, courts have repeatedly applied it to statements made ancillary to and preliminary to the initiation of judicial proceedings. *See, e.g., Milliner*, 709 A.2d at 420 (“It is clear that an allegedly defamatory communication is absolutely privileged when it is published prior to a ‘judicial proceeding’ as long as that communication has a bearing on the subject matter of the litigation.”). Even *malicious* statements are protected, further underscoring how a defendant’s “intent” is irrelevant when analyzing application of the privilege. *Pawlowski*, 588 A.2d at 41 (“Importantly, the existence of the privilege does not depend upon the motive of the defendant in making the allegedly defamatory statement.”); *Marino*, 915 A.2d at 123.

Although an absolute judicial privilege does not apply to every single statement that could possibly relate to a judicial or quasi-judicial proceeding, it does and should apply where, as here, those statements bear a close relationship to such a proceeding. *Cf.* RESTATEMENT (SECOND) OF TORTS § 587, cmt. e (1977) (“The *bare possibility* that the proceeding *might* be instituted is not to be used as a cloak to provide immunity for defamation when the possibility is not seriously considered.”) (emphasis added). Here, the quasi-judicial proceeding was not

hypothetical or a mere possibility. It actually happened, as a direct consequence of Ms. Addis's initial disclosure to a school employee whom federal law mandated report the disclosure to the school.

Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., requires federally-funded schools like Lower Merion to implement a non-discrimination policy and procedures to respond to sexual harassment, including sexual assault. *See* U.S. DEP'T OF EDUC., REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES 13 (2001) (hereinafter, "2001 OCR Guidance"). To comply with the law, schools must train school employees on how to report sexual harassment to appropriate school officials. This is so regardless of whether the victim, who may be young and unfamiliar with her or his legal rights, has "seriously considered" the judicial or quasi-judicial hearing that may result from the disclosure. U.S. DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, DEAR COLLEAGUE LETTER: SEXUAL VIOLENCE 4 (Apr. 4, 2011) (hereinafter, "2011 Dear Colleague Letter"). Schools, in turn, must investigate these reports. *Id.* In public schools, even if the disclosure does not ultimately lead to a Title IX-related grievance proceeding, it may lead to a constitutionally-mandated pre-termination hearing for school employees. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985) (mandating pre-termination hearing for public school employees).

In this case, Title IX's mandated reporting and hearing procedures unfolded precisely as the statute contemplates. Ms. Addis reported the sexual misconduct of her former teacher, Mr. Schanne, to her friend and neighbor, Susan O'Bannon, whom Ms. Addis knew was a teacher at Lower Merion High School. Ms. Addis made this report because she did not want Mr. Schanne, who was still a teacher at the school, to victimize other students. *See Schanne v. Addis*, 898 F.Supp.2d 751, 758 (E.D. Pa. 2012). Ms. O'Bannon concluded that Ms. Addis had disclosed the sexual misconduct to her because of her official position at the school. Accordingly, she informed the principal of Ms. Addis's report, just as federal law required her to do. *Id.* at 754.

Applying the privilege to this case does not "cloak" allegedly defamatory statements of current or former public school students with immunity when such statements have only a tenuous relationship to a quasi-judicial hearing. Regardless of whether Ms. Addis fully understood or intended the resulting quasi-judicial process, her communication to Ms. O'Bannon led directly to an investigation and pre-termination hearing involving Mr. Schanne. This fact distinguishes Ms. Addis' communication from the non-privileged statements at issue in *Post*, in which the defamation defendant sent an extrajudicial letter to a judge with no immediate role in the proceedings that might ensue from the conduct described. *See Post v. Mendel*, 507 A.2d 351, 356-57 (Pa. 1986). Thus, Ms. Addis's communication was

“pertinent and material” to and part of the “regular course of preparing” for the quasi-judicial pre-termination hearing that caused Mr. Schanne’s suspension and eventual discharge from employment. *Schanne*, 989 F.Supp.2d at 754. Put another way, the quasi-judicial hearing would not have happened but for Ms. Addis’s communication. Indeed, few, if any, quasi-judicial hearings could occur in a school without some initial communication that a subject of the investigation could claim was defamatory.

II. THE PRIVILEGE IS PARTICULARLY IMPORTANT IN SCHOOL SEXUAL MISCONDUCT CASES.

Across the United States and in Pennsylvania, school-based sexual assault and harassment are widespread and severely harmful to students, limiting students’ access to educational opportunities and negatively affecting their health and well-being. Recognizing these harms, Title IX requires all federally-funded schools to address and take steps to prevent harassment and assault. But the severe underreporting of these violations — partly due to fears of retaliation — limits schools’ ability to eradicate sexual misconduct from their communities. Refusing to apply the privilege at issue here, where an alleged perpetrator has sued over the very disclosure federal law encourages, would undermine decades of efforts to increase student safety.

A. Sexual Assault and Harassment are Widespread and Severely Harmful to Students.

An alarmingly high number of students in elementary through high school in the United States, including in Pennsylvania, are subjected to peer- or teacher-perpetrated sexual victimization, ranging in severity from sexual comments and gestures to forceful and nonconsensual sexual activity.² With specific regard to sexual relationships between teachers and students, such as the relationship at issue in this case, the inherently unequal balance of power often results in educator-perpetrated misconduct that perhaps *appears* consensual but is in fact coerced by the exploitative influence of a trusted teacher. *See Chancellor v. Pottsgrove Sch. Dist.*, 501 F.Supp.2d 695, 706-08 (E.D. Pa. 2007) (“a high school student who is assigned to a teacher’s class does not have the capacity to welcome that teacher’s physical sexual conduct”); 2001 OCR Guidance at 8.

Surveys over the last two decades have found that about one-half of all students in middle and high school have reported experiencing unwanted sexual behavior in the past year.³ The best available survey data suggest that almost 10 percent of students in public middle and high schools in the United States have

² *See, e.g.*, SIMONE ROBERS, ET AL., NAT’L CENTER FOR EDUC. STATISTICS AND U.S. DEP’T OF ED., INDICATORS OF SCHOOL AND CRIME SAFETY: 2012 10 (2013).

³ CATHERINE HILL & HOLLY KEARL, AM. ASS’N OF UNIV. WOMEN EDUC. FOUND., CROSSING THE LINE: SEXUAL HARASSMENT AT SCHOOL 10-11 (2011) (“AAUW Report”) (AAUW surveys in 1993 and 2001 found that 8 in 10 students were sexually harassed in school at some time during their school career).

been sexually victimized by a school employee.⁴ In 1999, the *Pittsburgh Post-Gazette* reviewed 727 teacher-perpetrated sexual misconduct cases from across the country, including in Pennsylvania, and found that, while only a small minority of educators were known sexual perpetrators, they were responsible for multiple episodes of misconduct.⁵ This finding in particular underscores the importance of encouraging reporting to catch school personnel who prey on students before they abuse others. The *Associated Press* conducted similar reviews of disciplinary records from state departments of education, including Pennsylvania's, and found thousands of cases in which educators were sanctioned for sexual misconduct.⁶

The pervasiveness of sexual harassment and assault in schools is a significant public health concern for adolescents and young adults. It causes victims serious physical, psychological, and educational harms that can affect them for the rest of their lives. Although many instances of sexual assault leave no obvious injuries, it can result in bruising, genital injuries, sexually transmitted

⁴ CHAROL SHAKESHAFT, U.S. DEP'T OF EDUC., EDUCATOR SEXUAL MISCONDUCT: A SYNTHESIS OF EXISTING LITERATURE 17 (2004).

⁵ Jane Elizabeth Zemel & Steve Twedt, *Dirty Secrets: Why Sexually Abusive Teachers Aren't Stopped*, PITTSBURGH POST-GAZETTE, Oct. 31, 1999; see also SHAKESHAFT, *supra* note 4, at 44 (citing a 2001 New York City study).

⁶ Martha Irvine, et al., *Sex Abuse a Shadow Over U.S. Schools*, EDUC. WEEK, Oct. 24, 2007 (The Associated Press reviewed 2,500 cases from 2001 to 2007); see also Caroline Hendrie, *Sexual Abuse By Educators Is Scrutinized*, EDUC. WEEK, Mar. 10, 2004.

infections, and pregnancy.⁷ Psychological effects include feelings of humiliation, depression, anxiety, fear, distrust, confusion, low self-esteem, and doubts as to whether they can ever have a healthy relationship.⁸ Victims of educator sexual misconduct have also reported experiencing sleep disorders, appetite loss, and a range of effects that would negatively impact their academic achievements, including having trouble paying attention, difficulty studying, avoiding the teacher or other educators, difficulty participating in class, cutting class, and staying home from school altogether.⁹ The loss of educational opportunities may limit future workplace opportunities and result in lower lifetime earnings.¹⁰

Given the physical and psychological effects of sexual harassment and related misconduct and their impact on students' ability to participate in and benefit from education, weighty governmental interests undergird the federal law that requires schools to remedy sexual harassment when it occurs and to take active measures to prevent it from happening to other students. Congress enacted Title

⁷ CHRISTOPHER P. KREBS, ET AL., NAT'L INST. OF JUSTICE, THE CAMPUS SEXUAL ASSAULT (CSA) STUDY 1-1 (2007).

⁸ SHAKESHAFT, *supra* note 4, at 42-3 (reanalysis of AAUW data); Dorothy L. Espelage & Melissa K. Holt, *Dating Violence & Sexual Harassment Across the Bully-Victim Continuum Among Middle and High School Students*, 36 J. YOUTH ADOLESCENCE 799, 807 (2007); see also James E. Gruber & Susan Fineran, *Comparing the Impact of Bullying and Sexual Harassment Victimization on the Mental and Physical Health of Adolescents, Sex Roles* 80, 86 (2008) (finding that girls who were sexually harassed or bullied experience poorer "self-esteem, mental and physical health, [and] more trauma symptoms" than boys).

⁹ SHAKESHAFT, *supra* note 4, at 42.

¹⁰ See, e.g., Alan C. Kerckhoff, et al., *Education, Cognitive Skill, and Labor Force Outcomes*, 74 SOC. OF EDUC. 1, 18 (2001).

IX precisely to remedy “the continuation of corrosive and unjustified discrimination against women in the American educational system.” 118 CONG. REC. 5803 (1972) (remarks of Senator Bayh); *see also Cannon v. Univ. of Chicago*, 441 U.S. 677, 704 (1979). Society cannot realize this purpose, however, if students and former students are too afraid to report the harassment and other inappropriate conduct they have endured.

B. The Application of Absolute Privilege to Protect Victims of Sexual Misconduct from Subsequent Civil Liability Furthers the State’s Interest in Eradicating Sexual Misconduct.

Decades of research have documented that many victims in the school setting do not report sexual harassment or assault to school officials, family members, or police. One study found that only 31.8 percent of students victimized by peers or educators told a parent, while only 14.6 percent told a teacher and 14.1 percent told another school employee.¹¹ Of those harassed by a school employee, only 11.6 percent reported it to another teacher while 10.6 percent told another school employee.¹² Research also shows that very few victims of sexual

¹¹ SHAKESHAFT, *supra* note 4, at 34 (a reanalysis of AAUW data).

¹² *Id.* at 35 (on underreporting of educator sexual misconduct to police); *see also* PATRICIA TJADEN & NANCY THOENNES, EXTENT, NATURE, AND CONSEQUENCES OF RAPE VICTIMIZATION: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY, NAT’L INST. OF JUST. SPECIAL REPORT 35 (2006), *available at* <http://www.ncjrs.gov/pdffiles1/nij/210346.pdf> (last visited Nov. 17, 2014) (on underreporting of rape to police).

misconduct report the misconduct to police.¹³ It is similarly common for victims not to disclose sexual misconduct and abuse until long after it has stopped.¹⁴

Victims delay reporting or choose not to report sexual harassment and assault for a range of reasons, including, among others, humiliation, fears that school officials and police officers will not believe them, and concerns about retaliation.¹⁵ With educator-perpetrated sexual misconduct, the barriers to reporting are especially high because the perpetrator's role as a trusted authority figure may add to the victim's fears that school administrators will not believe them when they report the misconduct. The societal misconception that a high percentage of sexual assault allegations are false, which social science research has debunked,¹⁶ contributes to these fears. This misconception may also make threats of retaliatory defamation lawsuits — which are expensive to defend — more likely to silence victims, since many victims already fear that the justice system is predisposed not to believe them.¹⁷

¹³ *Id.*

¹⁴ See, e.g., Courtney E. Ahrens, et al, *To Tell or Not to Tell: The Impact of Disclosure on Sexual Assault Survivors' Recovery*, 25 VIOLENCE & VICTIMS 631, 642 (2010).

¹⁵ SHAKESHAFT, *supra* note 4, at 35 (discussing reporting of educator misconduct); see also TJADEN & THOENNES, *supra* note 12, at 35 (discussing reporting rates to police of rape).

¹⁶ David Lisak et al., *False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases*, 16 VIOLENCE AGAINST WOMEN 1318 (2010) (synthesizing methodologically sound research to find that false allegations are made in only 2.1 percent to 10.9 percent of cases and reporting that the author's own study found that only 5.9 percent of cases were false).

¹⁷ See SHAKESHAFT, *supra* note 4, at 35.

Recognizing the problems of underreporting and fears of retaliatory litigation, courts in other jurisdictions have properly granted absolute privilege to protect students and parents who raise allegations of sexual misconduct against educators. *See Hartman v. Keri*, 883 N.E.2d 774 (Ind. 2008) (applying absolute privilege to bar professor’s defamation suit against two graduate students stemming from formal complaints of sexual harassment filed with university); *Reichardt v. Flynn*, 823 A.2d 566 (Md. 2003) (applying absolute privilege to communications made to public school authorities about sexual misconduct); *see also Weissman v. Mogol*, 462 N.Y.S.2d 383 (N.Y. Sup. Ct. 1983) (applying absolute privilege to parents’ communications to board of education about teacher performance and conduct). These courts acknowledge the important public interests the privilege serves, including protecting the freedom to participate in proceedings without fearing defamation suits and encouraging the reporting of misconduct. As the Supreme Court of Indiana stated in *Hartman*, “Protecting [victim] complaints with anything less than an absolute privilege could chill some legitimate complaints for fear of retaliatory litigation.” 883 N.E.2d 774 at 778. Judge Brody of the United States District Court for the Eastern District of Pennsylvania recognized this chilling effect, and the interests the absolute privilege would promote, in her well-reasoned analysis in the opinion giving rise to the certified question. *Schanne*, 898 F.Supp.2d at 758.

Judge Brody also rightly considered the circumstances that make it difficult for a student or former student to report teacher-perpetrated sexual harassment. She duly noted “the confusion that accompanies the breakdown of the traditional student-teacher relationship.” *Schanne*, 898 F.Supp.2d at 757-58. Ms. Addis explained her confusion and reluctance to report to Principal Hughes, stating that “[i]t was causing me too much pain and I didn’t know if I was ever coming forward.” *Id.* at 758. Judge Brody therefore aptly concluded, “[i]t is logical that Addis confided in a teacher [] whom she considered a friend.” *Id.* This logic is entirely consistent with Pennsylvania privilege law and with Title IX reporting law.

It is beyond dispute that reporting sexual harassment is often fraught with confusion, even when the alleged perpetrator is a peer. Despite OCR guidance on how to provide victims with clear information about anti-harassment policies and grievance procedures, including by notifying students of their options for redress and interim remedial measures, it is often difficult for victims to discover how and to whom to make a complaint. *See* 2011 Dear Colleague Letter at 10, 15. The initiation of a pre-termination hearing against public school employees is even less clear from a student perspective. If a victim cannot even make an initial disclosure to a trusted school official without worrying about being sued for defamation, then victims will not learn about the very mechanisms that are supposed to be available

to help them. School procedures will remain under-utilized and unsafe school environments will persist, harming future students because no one believed they could come forward to report the first instance of sexual misconduct.

III. RESPONDENTS IN SCHOOL-LEVEL QUASI-JUDICIAL PROCEEDINGS DO NOT NEED TO SUE FORMER STUDENTS FOR DEFAMATION TO VINDICATE THEIR LEGAL RIGHTS.

There is nothing to be gained by refusing to apply the absolute judicial privilege to allegations of sexual misconduct against a teacher by a former student, like the one at issue here, where the allegation was made prior to the commencement of quasi-judicial proceedings and without an intent that it lead to such proceedings. Respondents in school-level proceedings, like Mr. Schanne, have the opportunity to combat allegations and seek redress and even full relief without bringing defamation claims against students or former students who allege sexual misconduct. At the school-level, the pre-termination hearing affords respondents ample opportunity to confront complainants and dispute allegations. Indeed, public school employees have due process rights under the U.S. Constitution and statutorily-protected procedural rights similar to constitutionally-mandated due process. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985), *Gniotek v. City of Phila.*, 808 F.2d 241, 244 (3d Cir. 1986) (pre-termination procedures required “notice and an opportunity to respond.”); 24 Pa. Cons. Stat. Ann. §§ 11-1127 through 11-1132 (requiring a detailed written

statement of the charges, a hearing, and appeal rights). For those who are unionized, grievance procedures are also available.

Individuals at public schools who are accused of sexual misconduct also have due process rights pursuant to school nondiscrimination policies related to Title IX. *See Goss v. Lopez*, 419 U.S. 565 (1975) (applying due process to school disciplinary proceedings). For federally-funded schools, whether public or private, OCR has made it clear that in sexual harassment proceedings, Title IX provides *equal* rights to complainants and respondents. For example, parties have “an equal opportunity to present relevant witnesses and other evidence,” and “similar and timely access to information that will be used at the hearing,” among other protections. 2011 Dear Colleague Letter at 11; *see also Hartman v. Keri*, 883 N.E.2d 774, 777 (Ind. 2008). Respondents in school-level proceedings also have the protections of the terms of their contractual relationship with the school, including an implied covenant of good faith and fair dealing. *See, e.g., Murphy v. Duquesne Univ.*, 777 A.2d 418 (Pa. 2001); *Ferrer v. Trs. of Univ. of Pa.*, 825 A.2d 591 (Pa. 2002); *Paulsen v. Golden State Univ.*, 602 P.2d 778 (Cal. 1979).

To the extent respondents in quasi-judicial hearings believe that the process at the school level somehow prevented them from adequately defending themselves (potentially in violation of due process, Title IX, or contractual principles), they can avail themselves of the civil system in a lawsuit against *the*

school, and, if successful, recover full compensation. Notably, a due process claim against the school could provide full relief for any alleged harm to the plaintiff's reputation. *See, e.g., Pasour v. Phila. Hous. Auth.*, No. CIV.A. 13-2258, 2013 WL 4014514, at *3 (E.D. Pa. Aug. 7, 2013) (42 U.S.C. § 1983 permits damages arising from a due process violation that causes “a stigma to his reputation”) (quoting *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971)).

As a result, a respondent in a school-level quasi-judicial proceeding, like Mr. Schanne, already has relief available, and could be made whole, for all of the same damages claimed against a current or former student — without ever threatening the alleged victim with a defamation lawsuit. The alleged perpetrator's rights are adequately protected even without the availability of a civil remedy against the alleged victim personally. As such, there is no justification that outweighs the public policy which underlies the application of absolute privilege in cases like this, where a former student makes an allegation of sexual misconduct against her former teacher before the commencement of quasi-judicial proceedings (and without any intent to spark quasi-judicial proceedings). Refusing to recognize an absolute privilege in this case will do nothing more than chill complaints of sexual harassment, assault and related misconduct and endanger students and the school community.

CONCLUSION

For these reasons, this Court should hold that the absolute judicial privilege applies to a former student's allegation of sexual misconduct against a former teacher where the allegation is made prior to the commencement of a quasi-judicial proceeding and without any intent to initiate a quasi-judicial proceeding.

DATED: November 17, 2014

Respectfully Submitted,

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CERTIFICATION OF COMPLIANCE WITH Pa.R.A.P. 2135

I, James N. Boudreau, hereby certify that the foregoing brief complies with the word count limit described in Pa.R.A.P. 2135.

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APPENDIX A

STATEMENTS OF INTEREST OF AMICI CURIAE

ARIZONA COALITION TO END SEXUAL AND DOMESTIC VIOLENCE

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

CHICAGO ALLIANCE AGAINST SEXUAL EXPLOITATION

The Chicago Alliance Against Sexual Exploitation (CAASE) is a not-for-profit organization that opposes sexual violence and exploitation by directly addressing the culture, institutions and individuals that perpetrate, profit from, or support such harms. CAASE engages in prevention and community engagement work, policy reform, and, through its legal department—the Sexual Assault Justice Project—direct legal services to survivors of sexual assault and exploitation, including where the assault has occurred in an educational setting or was perpetrated by a classmate. Through its various work, CAASE sees the following: girls under the age of eighteen are frequently victimized by sexual assault; perpetrators of sexual assault against minor girls are overwhelmingly known to the victims, often through school; and minor victims of sexual assault experience high levels of anxiety, depression, and other mental health ramifications due to the attack that severely affect their right to education and future well-being. On behalf of its individual clients and in support of its overall mission, CAASE advocates for the rights of victims of sexual assault to be treated with fairness, dignity, and respect and to be protected against retaliation for reporting sexual misconduct. CAASE is interested in seeing that law furthers—and does not undermine—victims' ability to report misconduct and their rights to safety and equality.

CONNECTICUT SEXUAL ASSAULT CRISIS SERVICES

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

END VIOLENCE AGAINST WOMEN INTERNATIONAL

End Violence Against Women International (EVAWI) is a nonprofit organization working to improve criminal justice and community responses to gender-based violence. EVAWI works to pursue our vision of a world where gender-based violence is unacceptable; where perpetrators are held accountable, and victims receive the compassion, support, and justice they deserve. EVAWI signs on to join this *amicus* brief because of its implications for those who are sexually harassed or assaulted in the educational system. EVAWI is acutely aware of the many barriers victim of sexual harassment and assault face when reporting their abuse and accessing institutional remedies. It is therefore not surprising that so many victims reach out to someone familiar and trusted when they are ready to disclose. Victims need the information, support, and advocacy such individuals can offer, to help them navigate processes that are often complex, difficult, and confusing. Full immunity must be granted to victims, or else they will be effectively cut off from institutional remedies and abusers will be given a free pass to perpetrate with impunity.

EQUAL RIGHTS ADVOCATES

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

FEMINIST MAJORITY FOUNDATION

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

H.A.V.I.N. (HELPING ALL VICTIMS IN NEED)

H.A.V.I.N., Helping All Victims In Need, is a Sexual Assault/Domestic Violence Program located in Armstrong County, Pennsylvania. HAVIN provides crisis counseling, support and advocacy for victims of sexual violence. It is critical that victims of sexual assault are able to initiate school procedures for handling sexual misconduct allegations without fearing retaliatory litigation.

ILLINOIS COALITION AGAINST SEXUAL ASSAULT

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

LEGAL MOMENTUM

Legal Momentum, the Women's Legal Defense and Education Fund, is the nation's oldest legal advocacy organization for women. Legal Momentum advances the rights of all women and girls by using the power of the law and creating innovative public policy. Among its activities, Legal Momentum has long advocated for educational equity for girls and women, including advocating for sports equity in schools and opposing sex segregation, sexual harassment, bullying, and sexual violence in schools. We also provide resources, referrals, and representation to survivors of sexual violence at school. Legal Momentum joins this brief to emphasize that privilege of statements about sexual violence is critical to the use of Title IX to protect the safety and equality of students.

LEGAL VOICE

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

MARYLAND COALITION AGAINST SEXUAL ASSAULT, INC.

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

NATIONAL CRIME VICTIM LAW INSTITUTE

The National Crime Victim Law Institute (NCVLI) is a nonprofit educational and advocacy organization located at Lewis and Clark Law School in Portland, Oregon. NCVLI's mission is to actively promote balance and fairness in the justice system through crime victim-centered legal advocacy, education, and resource sharing. NCVLI accomplishes its mission through education and training; promoting the National Alliance of Victims' Rights Attorneys; researching and analyzing developments in crime victim law; and litigating as *amicus curiae* issues of national importance regarding crime victims' rights in state and federal cases nationwide. This case involves the fundamental rights of all victims to access justice and seek redress of harm.

NATIONAL NETWORK TO END DOMESTIC VIOLENCE

The National Network to End Domestic Violence (NNEDV) is the leading voice for domestic violence victims and their allies. NNEDV members include all 56 of the state and territorial coalitions against domestic violence and dual domestic and sexual violence coalitions, including over 2,000 local programs. NNEDV has been a premiere national organization advancing the movement to end violence against women for over 20 years, having led efforts among advocates and survivors in urging Congress to pass the landmark Violence Against Women Act (VAWA) of 1994 and subsequent reauthorizations. NNEDV has expertise in the nature and dynamics of violence against women, including sexual violence, and the legal needs of and challenges facing survivors of domestic violence and sexual assault. As a result, NNEDV has a particular interest in the ability of sexual assault victims to come forward and report incidents without the chilling effect of potential defamation lawsuits.

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 rights and opportunities and the corresponding elimination of sex discrimination from all facets of American life. Since 1972, NWLC has worked to secure equal opportunity in education. This includes not only the right to an educational environment that is free from all forms of discrimination and harassment, but also access to effective means of enforcing that right and remedying such conduct. NWLC has played a leading role in the passage and enforcement of federal civil rights laws and in numerous *amicus* briefs involving sex and race discrimination in education before the United States Supreme Court, federal courts of appeals, and state courts.

OHIO ALLIANCE TO END SEXUAL VIOLENCE

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

PENNSYLVANIA COALITION AGAINST RAPE

The Pennsylvania Coalition Against Rape (PCAR) is a private non-profit 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. Over the past 39 years, PCAR has successfully worked as an agent of change —educating society about the severe and long-lasting impact of sexual violence, confronting victim-blaming attitudes, challenging injustice, and advocating for policies for victims of sexual violence to provide them with the compassion, privacy and dignity they deserve.

PITTSBURGH ACTION AGAINST RAPE

Founded in 1972, Pittsburgh Action Against Rape (PAAR) is one of the oldest rape crisis centers in the country. PAAR is the only organization in Allegheny County solely dedicated to victims of sexual violence. PAAR provides comprehensive, trauma-focused services to child and adult victims of sexual violence including 24-hour hotline, medical and legal advocacy, crisis counseling; group and individual counseling, education/prevention programming for children and community groups; and clinical training for mental health professionals.

SOUTHWEST WOMEN'S LAW CENTER, INC.

The Southwest Women's Law Center is a non-profit policy and advocacy law center that focuses on advancing positive outcomes for girls and women in the State of New Mexico by ensuring access to all Title IX protections. The Southwest Women's Law Center is dedicated to preventing sexual violence against girls and women on all school and college campuses and has been advocating for protections for girls and women under Title IX since 2005. Accordingly, the Law Center is uniquely qualified to comment on, and inform, the Court about the impact of its decision in *Schanne v. Addis*.

SURVIVORS, INC.

Survivor's Inc. is a private, non-profit organization that provides a 24 hour hotline, information and referral, individual peer counseling, support group counseling, legal advocacy/accompaniment, medical advocacy/accompaniment, advocacy in other systems that victims may possibly need to access, emergency/transitional shelter, and community education and prevention education. From July 2013 to June 2014, Survivors, Inc. provided 5,103 days of shelter and nearly 4,666 hours of counseling to 1,112 victims of sexual assault and battering, with nearly 250 community education, primary prevention and training events to over 15,000 individuals. Survivors, Inc. works very closely with Adams County schools and colleges, especially in respect to Title IX. We join as *amicus curiae* because of the far-reaching implications of this case for victims of sexual assault, many of whom face institutional barriers that have a chilling effect on those who are willing to seek justice.

VICTIM RIGHTS LAW CENTER

The Victim Rights Law Center (VRLC) is non-profit legal organization based in Boston, Massachusetts with a satellite office in Portland, Oregon. The mission of the VRLC is to provide legal representation to victims of rape and sexual assault to help rebuild their lives; and to promote a national movement committed to seeking justice for every rape and sexual assault victim. The VRLC has met its mission over the past 11 years through direct representation of victims in Massachusetts and Oregon (in education, immigration, privacy, employment, housing, physical safety, and other civil and administrative matters) and national legal advocacy, training and education regarding civil remedies for victims of sexual assault. Each year, the VRLC provides legal counsel to over five hundred sexual assault victims, and trains and provides technical assistance to hundreds of professionals across the United States and U.S. Territories. The VRLC is recognized as the national expert in the legal needs of sexual assault victims, including Title IX. The breadth of VRLC's work reflects the deep and reverberating impact of sexual assault throughout all aspects of a victim's life. The VRLC knows firsthand that fear of retaliation will only contribute to the significant underreporting of sexual assault, which has a direct impact on the safety and educational trajectories of students, as well as the common interest to eradicate sexual assault within schools throughout the United States.

WOMEN ORGANIZED AGAINST RAPE

Women Organized Against Rape (WOAR) is a vital non-profit organization dedicated to addressing sexual violence in our society. Based in Philadelphia, Pennsylvania, WOAR works with law enforcement, hospitals and courts to serve the needs of women and girls who are survivors of sexual violence. WOAR's professional staff and committed volunteers provide comprehensive sexual assault counseling, advocacy, as well as community education and training.

WOMEN'S LAW CENTER OF MARYLAND, INC.

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

WOMEN'S LAW PROJECT

The Women's Law Project (WLP) is a nonprofit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. The WLP's mission is to create a more just and equitable society by advancing the rights and status of women through high-impact litigation, policy advocacy, public education, and individual counseling. WLP is committed to ending violence against women and children and to safeguarding the legal rights of women and children who experience sexual abuse, including within our schools. To this end, WLP provides counseling to victims of violence through its telephone counseling service, engages in public policy advocacy work to improve the response of educational institutions to sexual violence, and serves as counsel to victims of sexual violence. It is essential that schools are able to appropriately address and prevent sexual harassment and assault in their environments, a goal they cannot meet when victims are too afraid to report the misconduct they have endured.

WOMEN'S SPORTS FOUNDATION, INC.

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