

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

No. 27 EAP 2025

L.F.V., a minor, by her legal guardians KIMBERLY VARANO and JOSEPH VARANO, and KIMBERLY VARANO and JOSEPH VARANO in their own right,

Plaintiffs-Appellees,

v.

SOUTH PHILADELPHIA HIGH SCHOOL AND PHILADELPHIA SCHOOL DISTRICT,

Defendants-Appellants.

BRIEF OF DISABILITY RIGHTS PENNSYLVANIA, EDUCATION LAW CENTER, KIDSVOICE, RAINN, STOP SEXUAL ASSAULT IN SCHOOLS, AND WOMEN’S LAW PROJECT AS *AMICI CURIAE* IN SUPPORT OF APPELLEES

Appeal from the June 9, 2025 Order of the Commonwealth Court in No. 218 CD 2023, affirming the December 1, 2022 Order of the Philadelphia Court of Common Pleas in No. 220801649.

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INTEREST OF THE AMICUS CURIAE¹

Amici are national and Pennsylvania-based organizations dedicated to protecting and advancing the rights of students, individuals with disabilities, and survivors of sexual violence, including young people who sit at the intersection of these identities. *Amici* use a variety of tools to advocate for the rights of student survivors of sexual abuse and sexual violence, including legal representation, movement building, community education, and public policy development. *Amici* have a strong interest in ensuring that young people have access to educational environments that are safe, supportive, and free of sexual violence, and are concerned that a reversal of the Commonwealth Court’s decision will cause direct and lasting harm to the students, families, and communities *Amici* represent.

Amicus Women’s Law Project (WLP) is a public interest legal organization dedicated to defending and advancing the rights of women, girls, and LGBTQ+ people in Pennsylvania and beyond. WLP works to improve institutional responses to sexual violence, represents and counsels survivors, and engages in public policy advocacy to strengthen how the criminal and civil justice systems respond to sexual violence.

Amicus Disability Rights Pennsylvania (DRP) is an independent, statewide, non-profit corporation designated by Pennsylvania to protect and advocate for

¹ This brief was not authored or paid for, in whole or in part, by any person or entity other than Women’s Law Project.

Pennsylvanians with disabilities, including for children with disabilities in school settings. DRP joins this *amicus* brief to ensure that children with disabilities, and all school children across the Commonwealth, have access to a high-quality education free from abuse and neglect.

Amicus Education Law Center-PA (ELC-PA) is a nonprofit legal advocacy organization dedicated to ensuring that all Pennsylvania children have access to a quality public education. ELC-PA works to eliminate systemic inequalities that lead to disparate educational outcomes based on race, sex, gender, sexual orientation, ethnicity and disability status. ELC-PA supports schools appropriately responding and intervening to prevent sexual abuse and violence and the need for schools' legal liability in cases of negligence.

Amicus KidsVoice is a non-profit, legal organization that annually represents approximately 2,000 abused, neglected, and at-risk children in dependency and termination of parental rights cases in Allegheny County. KidsVoice provides a voice of hope for abused, neglected, and at-risk children. KidsVoice joins this *amicus* brief to support student survivors of sexual assault and underscore the importance of schools appropriately responding and intervening to prevent sexual abuse and violence.

Amicus RAINN (Rape, Abuse and Incest National Network) is the nation's largest anti-sexual violence organization. During its 30 plus years of operation,

RAINN has helped more than four and a half million survivors of sexual assault and their loved ones, including through the National Sexual Assault Hotline.

RAINN is a leader in public education on sexual violence, consults with various industries on best practices for prevention and response to sexual assault/harassment, and advocates on the state and federal levels to improve legislation on sexual violence.

Amicus Stop Sexual Assault in Schools (SSAIS) is a national nonprofit dedicated to ensuring that all students can access an education free from sexual harassment and gender-based harm. SSAIS provides public education and advocacy to students and families navigating Title IX and related civil rights protections. SSAIS advances a comprehensive approach that promotes accountability, transparency, and survivor-centered practices, and contributes expertise to families, educators, and communities on the systemic barriers to safe and equitable learning environments.

INTRODUCTION

At the time the events in this case took place, Plaintiff-Appellee, L.F.V. was a tenth-grade student at South Philadelphia High School. L.F.V. has a severe intellectual disability and was reportedly functioning at a second-grade level. L.F.V. was enrolled in a special education curriculum and had an individualized safety plan provided by her school. According to the allegations in the Civil Action Complaint, on or around October 19, 2021, during gym class, two male students “pushed and pulled” L.F.V. behind the bleachers and sexually assaulted her. (Complaint, ¶ 37). Specifically, one of the boys repositioned L.F.V.’s gym clothes, both boys penetrated her vagina and anus with their fingers, and one of the boys penetrated her vagina and anus with his penis. Afterwards, the two boys instructed L.F.V. to go into the bathroom, take pictures of her genitalia, and text the pictures to them. Appellees allege that had School District employees diligently supervised and monitored L.F.V. and the offending students, this sexual abuse—and the enduring harm L.F.V. continues to suffer—would not have occurred.

As *amici* will explain in this brief, child sexual abuse is a serious and pervasive problem in our country and Commonwealth, including in K-12 schools.²

² We often will use the term *sexual abuse* rather than *sexual assault*. While these terms are often used interchangeably and both are forms of sexual violence, they are distinct. Sexual assault refers to non-consensual sexual contact or penetration. *See* 18 Pa. C.S. § 3124.1. In contrast, sexual abuse is “any unwanted sexual contact obtained by force, threats, or when a victim is unable to consent.” This term more directly captures harm directed at a vulnerable person and situations in which an individual cannot provide informed consent. In addition, we use “sexual violence” as a general term to describe all forms of sexual harm that violate a person’s autonomy and safety. Where we cite to research or specific regulations, such as Title IX, that uses a specific term, we use that terminology.

Sexual violence causes survivors emotional, psychological, and economic harms that can persist throughout their lives. School districts are in the best position to meaningfully prevent sexual abuse and protect students on school grounds. To end sexual abuse in school, school districts must be held accountable when they are negligent in their duty to protect students from such abuse, including when sexual violence is perpetrated by other students. When schools are not held accountable for their negligence, it is student survivors who bear the consequences. This is even more true given the myriad ways our civil, criminal, and administrative legal systems have limited access to justice and remediation for survivors.

As *Amici* will show, there are numerous research-backed programs, policies, and interventions school districts can adopt to address sexual violence at school. Rather than protecting school districts and their budgets by insulating them from liability, school districts should be encouraged—including through the deterrent capacity of potential tort liability—to implement interventions to protect students.

If the Commonwealth is committed to providing a safe place for all students to grow and learn, as *amici* believes it is, Pennsylvania law must ensure that school

for accuracy and consistency. See U.S. Dep’t of Just., Off. on Violence Against Women, *Domestic Violence*, <https://www.justice.gov/ovw/domestic-violence> (last visited Apr. 26, 2026) (defining sexual abuse as “coercing or attempting to coerce any sexual contact or behavior without consent”).

districts are held accountable when they fail in their fundamental duty to protect students from harm. Therefore, *amici* encourage the Court to find, as the Commonwealth Court did, that Pennsylvania law does not exempt school districts from tort liability when the district's negligent acts or omissions enabled the abuse to occur.

I. Child sexual abuse is a rampant problem.

L.F.V.'s story is not unique. Child sexual abuse is a national public health crisis, with 3.7 million children sexually abused every year.³ In the United States, a child is sexually abused every nine minutes.⁴ The majority of child sexual abuse is perpetrated by someone the child knows, such as a family member, teacher, coach, or peer, and a large portion of this abuse happens at school. Growing research shows that over half of child sexual abuse is perpetrated by a peer.⁵

For peer sexual victimization, school is the most common location.⁶ According to the U.S. Department of Education's Civil Rights Data Collection, there were 2,700 incidents of sexual assault, 350 incidents of rape or attempted rape, and 17,000 allegations of sex-based harassment in U.S. public schools during the 2020-

³ Robert R. Redfield, *Report to Congress on Child Sexual Abuse Prevention*, DEPARTMENT OF HEALTH AND HUMAN SERVICES 1, 3, <https://publichealth.jhu.edu/sites/default/files/2023-07/fy-2019-cdc-report-to-congress-child-sexual-abuse-prevention.pdf>.

⁴ *Statistics: Children & Teens*, RAINN (Apr. 23, 2026), <https://rainn.org/facts-statistics-the-scope-of-the-problem/statistics-children-teens/>.

⁵ David Finkelhor et al., *The Lifetime Prevalence of Child Sexual Abuse and Sexual Assault Assessed in Late Adolescence*, 55 J. OF ADOLESCENT HEALTH 1, 4 (2013).

⁶ See Amy M. Young et al., *Adolescents' Experiences of Sexual Assault by Peers: Prevalence and Nature of Victimization Occurring Within and Outside of School*, 38 J. OF YOUTH AND ADOLESCENCE 1072 (2009).

2021 school year.⁷ Across Pennsylvania public and charter schools, during the 2024-2025 school year, there were 1,562 sexual violence infractions, including 697 incidents of sexual harassment, 194 incidents of sexual or indecent assault, and two rapes.⁸ In the Philadelphia School District alone, there were 2 incidents of rape, 20 incidents of sexual harassment and 57 incidents of “obscene and other sexual materials and performances” reported during the 2024-2025 school year.⁹

Anyone can be a victim of sexual violence; however, girls and people with disabilities are disproportionately likely to experience sexual abuse.¹⁰ One in four girls and one in 20 boys experience sexual abuse or assault before they turn 18.¹¹ About 86 percent of all child victims of sexual abuse or assault are female.¹² Specifically, teenage girls aged 16-19 are four times more likely to experience sexual assault or rape than the general population.¹³

Children with disabilities, especially girls with disabilities, are also at an increased risk of sexual abuse.¹⁴ Children with disabilities are three times more

⁷ *Sexual Violence and Sex-based Harassment or Bullying in U.S. Public Schools During the 2020-21 School Year*, U.S. DEP’T. OF EDUC. OFF. for C.R. (Nov. 2023), <https://www.ed.gov/media/document/sexual-violence-and-sex-based-harassment-or-bullying-us-public-schools-during-2020-21-school-year-21418.pdf>.

⁸ *LEA / School Discipline Reports*, PA. DEP’T. OF EDUC., <https://www.safeschools.pa.gov/HistoricV2/SchoolExcel.aspx>.

⁹ *Id.*

¹⁰ See Ann I Alriksson-Schmidt et al., *Are Adolescent Girls with a Physical Disability at Increased Risk for Sexual Violence?*, 80 J. OF SCH. HEALTH 361 (2010).

¹¹ Finkelhor, *supra*, note 5, at 331.

¹² Howard N. Snyder, Ph.D., *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics*, BUREAU OF JUSTICE STATISTICS 1, 4 (2000), <https://bjs.ojp.gov/content/pub/pdf/saycrle.pdf>.

¹³ RAINN, *supra* note 4.

¹⁴ See Emily M. Lund & Jessica Vaughn-Jensen (2012), *Victimization of Children with Disabilities*, 380 THE LANCET 867.

likely to experience sexual abuse than children without disabilities,¹⁵ and are also more likely to experience unwanted sexual coercion, such as being forced to send sexually explicit material.¹⁶

II. Sexual abuse at school causes long-term harm.

Child sexual abuse is costly and devastating for survivors. Child sexual abuse affects every aspect of a child's life and causes long-term psychological, physical, and economic harms to individuals, their families, and their communities. Specifically, when sexual abuse occurs in educational settings, it inflicts significant trauma and long-term distress, causes long-term financial loss, erodes trust in the education system, and deprives student survivors of the opportunity to experience a safe and normal childhood.

A. Emotional harms of child sexual abuse.

Survivors of child sexual abuse experience serious emotional harms over their lifetimes.¹⁷ Traumatic events that occur during childhood increase the risk for future

¹⁵ Nancy Smith & Sandra Hall, *Sexual Abuse of Children with Disabilities: A National Snapshot*, VERA INSTITUTE OF JUSTICE (2013), <https://www.vera.org/publications/sexual-abuse-of-children-with-disabilities-a-national-snapshot>; see also *Sexual Violence and Intimate Partner Violence Among People with Disabilities*, CTR. FOR DISEASE CONTROL (APR. 23, 2024).

¹⁶ See CTR. FOR DISEASE CONTROL, *supra* note 15.

¹⁷ We use the term *survivor* to refer to L.F.V., recognizing both the enduring harms of sexual violence and individuals' ongoing recovery, healing, and self-determination. We adopt this person-centered terminology while acknowledging that individuals may identify as survivor, victim, or something else. The criminal justice system uses the term *victim* to denote an individual subjected to criminal conduct, including sexual abuse, and affords such individuals specific statutory rights and protections. Where we cite or discuss research or authorities that use the term *victim*, we use that terminology for accuracy and consistency.

trauma¹⁸ and create negative emotional reactions for children during a critical developmental period. For example, survivors of child sexual abuse may develop unhealthy attachment patterns and communication issues and may have a harder time processing emotions.¹⁹ Survivors regularly experience physical symptoms of discomfort, nightmares, fearfulness, and loss of enjoyment.²⁰ Children who were sexually abused are significantly more likely to suffer a “lifetime diagnosis of anxiety, depression, eating disorders,”²¹ post-traumatic stress disorder (PTSD),²² and suicidal behavior.²³

For children who experience sexual abuse in school, trauma can affect their ability to concentrate and function, especially when they are forced to return to the same environment where they were abused. In addition, after experiencing sexual violence, survivors are likely to miss school, receive lower grades, skip classes, transfer schools or drop out, and become less engaged in school and extracurricular

¹⁸ See *Overcoming Trauma and PTSD Associated with Physical Spaces*, PEPPERDINE UNIV., (May 15, 2019), <https://onlinegrad.pepperdine.edu/blog/ptsd-trauma-physical-spaces/>.

¹⁹ *Id.*

²⁰ See *Helping Children and Adolescents Cope with Traumatic Events*, NAT’L INST. OF MENTAL HEALTH, <https://www.nimh.nih.gov/health/publications/helping-children-and-adolescents-cope-with-disasters-and-other-traumatic-events>.

²¹ Amresh K. Shrivastava et al., *Child Sexual Abuse and the Development of Psychiatric Disorders: A Neurobiological Trajectory of Pathogenesis*, 26 INDUSTRIAL PSYCH. J. 4, 5 (2018).

²² See Sue Boney-McCoy & David Finkelhor, *Prior Victimization: A Risk Factor for Child Sexual Abuse and for PTSD-Related Symptomatology Among Sexually Abused Youth* 19(12) CHILD ABUSE & NEGLECT 1401; see also Julia Whealin & Erin Barnett, *Child Sexual Abuse*, https://www.ptsd.va.gov/professional/treat/type/sexual_abuse_child.asp.

²³ Jorge Lopez-Castroman et al., *Early Childhood Sexual Abuse Increases Suicidal Intent*, 12 WORLD PSYCH. 149, 149 (2014); Shrivastava, *supra* note 21, at 6.

activities.²⁴ Teenage survivors are more likely to exhibit disruptive behavior patterns, substance abuse, and sexual risk-taking behaviors.²⁵

B. Long-term economic harm.

In addition to emotional trauma, child sexual abuse is associated with long-term financial consequences for survivors, including medical costs and lost wages. For example, in adulthood, child sexual abuse is associated with lower employment rates, incomes, and financial stability. In 2017, the societal economic cost associated with rape totaled to approximately \$1.2 trillion in medical care and \$1.6 trillion in lost work and productivity.²⁶ Research shows that, on average, the lifetime cost of sexual violence for an individual female survivor is \$282,734.²⁷ Loss of financial opportunity can make it harder for survivors of child sexual abuse to establish financial security, pursue future aspirations, and heal.²⁸ One study showed that women who experienced sexual abuse in childhood earned wages 20% below women who were not victims of childhood sexual abuse.²⁹

²⁴ See Melissa K. Ochoa & Katie Constantin, *Impacts of Child Sexual Abuse: The Mediating Role of Future Orientation on Academic Outcomes*, 145 CHILD ABUSE & NEGLECT (2023); see also Emily Clear et al., *Sexual Harassment Victimization and Perpetration Among High School Students*, 20 VIOLENCE AGAINST WOMEN 1203.

²⁵ Venetia Clarke et al., *Medium-Term Health and Social Outcomes in Adolescents Following Sexual Assault: A Prospective Mixed-Methods Cohort Study*, 58 SOCIAL PSYCH. AND PSYCH. EPIDEMIOLOGY 1777 (2023).

²⁶ Cora Peterson et al., *Lifetime Economic Burden of Rape Among U.S. Adults*, 52 AM. J. OF PREVENTATIVE MED. 691, 691 (2017).

²⁷ E.J. Letourneau et al., *The Economic Burden of Child Sexual Abuse in the United States*, 79 CHILD ABUSE & NEGLECT 413, 413 (2018).

²⁸ See Kayla Kelley, *Survivor Safety: The Cost of Recovery - The Economic Impact of Sexual Violence on Survivors* (Dec. 9, 2025), <https://mcasa.org/newsletters/article/survivor-safety-economic-impact-of-sexual-violence>.

²⁹ John Robst, *Childhood Sexual Abuse and the Gender Wage Gap*, 99 ECONOMICS LETTERS 549 (2008).

C. Increased health risks.

Survivors of sexual abuse are also more likely to experience negative health outcomes over their lifetimes and bear the attendant costs of these healthcare issues. According to Johns Hopkins University, child sexual abuse ranks twelfth among preventable risk factors that account substantively for the U.S. burden of disease.³⁰ A large meta-analytic review of the long-term physical health consequences of childhood sexual abuse found that this abuse was associated with negative effects on a survivor's general health, gastrointestinal health, gynecologic health, pain, cardiopulmonary symptoms, and obesity.³¹ Not surprisingly, these survivors reported more medical visits than individuals without a history of child sexual abuse³² and spent more money on healthcare services. Overall, for women who experience sexual abuse as children, lifetime medical costs are about 16% higher than women without a history of child abuse.³³

D. Emotional effects of institutional betrayal.

Along with the deleterious emotional and financial harms of sexual abuse, students who experience sexual violence on school grounds may also experience feelings of institutional betrayal. Institutional betrayal occurs when an institution

³⁰ *One Year's Losses for Child Sexual Abuse in U.S. Top \$9 Billion*, New Study Suggests, JOHNS HOPKINS (2018), <https://publichealth.jhu.edu/2018/one-years-losses-for-child-sexual-abuse-in-us-top-9-billion>.

³¹ See Leah Irish et al., *Long-term Physical Health Consequences of Childhood Sexual Abuse: A Meta-Analytic Review*, 35 J. PEDIATRIC PSYCH. 450 (2009).

³² *Id.*

³³ Amy E. Bonomi et al., *Health Care Utilization and Costs Associated with Childhood*, 23 J. OF GEN. INTERNAL MED. 294 (2008).

“causes harm to an individual who trusts or depends upon that institution...via omission of protective, preventative, or responsive institutional actions.”³⁴ After a student experiences sexual violence on campus, the school’s reaction to this event can compound the student’s emotional harm; indeed, research suggests that survivors can experience a “second assault”³⁵ when they face unresponsive or unhelpful institutional systems.

Survivors who experience both sexual violence and institutional betrayal report experiencing more severe emotional and post-traumatic harm.³⁶ Survivors also face re-traumatization and stigmatic harm if they are forced to return to the school where sexual abuse occurred without appropriate supportive measures and accommodations. Thus, institutions can have a deterministic role on the emotional well-being of students who experience sexual violence at school, with the offending institution either “worsen[ing] post-traumatic outcomes,” or “becom[ing a source] of justice, support, and healing.”³⁷

³⁴ Carly Parnitzke Smith & Jennifer J Freyd, *Institutional Betrayal* 69(6) *Am. Psych.* 575, 578-579 (Sept. 2014).

³⁵ *Id.* at 575.

³⁶ Carly Parnitzke Smith & Jennifer J Freyd, *Dangerous Safe Havens: Institutional Betrayal Exacerbates Sexual Trauma* 26 *J. of Traumatic Stress* 119, 122 (Feb. 2013).

³⁷ *Id.* at 576.

II. Systemic barriers prevent survivors of sexual violence at school from obtaining meaningful relief through the criminal legal system or other civil or administrative forums.

It is axiomatic that our legal system exists, at least in part, to mete out justice for wrongdoing and to make those who have been harmed whole again, often through compensation. Yet, over the past few decades, legal avenues for student survivors of sexual abuse to address this misconduct have been systematically weakened and, in some instances, completely abandoned. Federal courts have set up major hurdles for students wishing to remedy sexual violence through federal civil rights laws. These impediments have been further compounded by the Trump administration's decision to gut the U.S. Department of Education's Office of Civil Rights (OCR), the department tasked with investigating claims of discrimination in public schools. Furthermore, survivors seeking justice through the criminal system are all too likely to encounter police and prosecutors unwilling to investigate and prosecute claims of sexual abuse. Given the obstacles survivors of sexual abuse face in accessing justice, it is vital that this Court not close off one of the only remaining legal avenues available to student survivors in Pennsylvania.

A. Federal administrative oversight as well as federal courts have created significant hurdles for student survivors seeking relief under federal law.

Accessible and available civil remedies are necessary to provide compensation and justice when educational institutions fail to protect students from

sexual abuse. Historically, Title IX has served this purpose. Congress enacted Title IX in 1972 to help protect students at all levels of education from discrimination on the basis of sex.³⁸ Title IX provides a private right of action that allows individual students and their parents to sue schools receiving federal funds for sex discrimination. In theory, Title IX could be an effective means for holding schools accountable for sexual abuse, including when the perpetrator is another student. However, in interpreting Title IX, courts have introduced two major hurdles for student survivors of sexual abuse.

First, courts have held that the standard of liability for schools in such cases is “deliberate indifference,” an exceedingly difficult standard to meet. Under this standard, imposed by the United States Supreme Court in *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999), a school is liable for damages in cases of peer-on-peer sexual harassment or sexual assault “only where [schools] are deliberately indifferent to sexual harassment, of which they have actual knowledge, that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.” *Id.* at 650. Under this standard, schools need only respond to reports of

³⁸ 20 U.S.C. § 1681(a) (stating that “no person. . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination” in publicly funded educational programs.).

sexual harassment and sexual assault in ways that are “not clearly unreasonable.” *Id.* at 649.

The deliberate indifference standard is a stark contrast to other federal protections for sex discrimination, including Title VII, which imposes liability for third party harm under traditional discrimination and hostile-environment frameworks grounded in causation, agency, and negligence principles. *See Fried v. Wynn Las Vegas, LLC*, 18 F.4th 643, 647 (9th Cir. 2021) (“it is well established that an employer can create a hostile work environment by failing to take immediate and corrective action in response to a coworker's or third party’s sexual harassment or racial discrimination the employer knew or should have known about. All federal circuits are in accord on this point.”) (collecting cases). The Third Circuit Court of Appeals has acknowledged that Title IX’s “deliberate indifference” standard is a “high bar.” *See McAvoy v. Dickinson College*, 115 F.4th 220, 227 (3d Cir. 2024). Research has shown the ways this standard has, in practice, created a heightened barrier to justice for students; for example, one study that examined nearly 200 Title IX peer sexual harassment cases found that “a majority of cases were dismissed at the motion to dismiss or summary judgment stages.”³⁹

³⁹ Emily Harvey, *Protecting Title IX's Promise: The Injustice of Indifference in Title IX Peer Sexual Harassment Cases*, 73 Emory L.J. 703, 721 (2024); *see also* Lauren McCoy, *Defining Deliberate Indifference and Institutional Liability Under Title IX*, 32 Marq. Sports L. Rev. 141, 153 (2021) (noting that “[e]xisting case law shows us that a finding of deliberate indifference is rare and only associated with consistent evidence that a school did not respond to a sexual misconduct claim at all.”).

A further limitation for survivors seeking justice under Title IX is the Supreme Court’s 2022 opinion in *Cummings v. Premier Rehab.*, 596 U.S. 212 (2022). In *Cummings* the Court held that “emotional distress damages are not recoverable under the Spending Clause antidiscrimination statutes.” *Id.* at 230. While *Cummings* did not arise in the Title IX context, courts have regularly applied this decision to Title IX. *See, e.g., Harriram v. City Univ. of New York*, 22-CV-097122026, WL 801900 at *10 (S.D.N.Y. March 23, 2026); *B.R. v. F.C.S.B.*, 718 F.Supp.3d 504, 510 (E.D. Va. 2024); *Reed v. Mount Carmel Area School Dist.*, 697 F.Supp.3d 286, 292 (M.D. Pa. 2023). In his dissent in *Cummings*, Justice Breyer commented that the majority’s opinion would have profound implications for student survivors seeking redress under Title IX, stating “victims of intentional discrimination may sometimes suffer profound emotional injury without any attendant pecuniary harms. The Court’s decision today will leave those victims with no remedy at all.” *Cummings*, 598 U.S. at 241–42.

B. Student survivors of sexual abuse at school can no longer obtain meaningful redress through federal administrative channels.

The U.S. Department of Education’s Office for Civil Rights (OCR) has the legal authority to enforce Title IX by investigating complaints, conducting compliance reviews, and providing technical assistance to educational institutions.⁴⁰

⁴⁰ 34 C.F.R. § 100.6-8.

OCR is empowered to investigate schools that fail to prevent or remedy sexual harassment and sexual violence against students, whether sexual violence is committed by employees or other students. If OCR determines that a school district is not in compliance with Title IX, OCR may enter into a resolution agreement with the school district, which typically includes remedial measures the district must undertake, such as revising policies, improving grievance procedures, and providing Title IX training to staff and students. Remedial measures can also include individual relief, such as offering mental health counseling or tutoring to the survivor.⁴¹ Rarely does an OCR resolution agreement mandate monetary compensation for the individual victim to remedy the harm.

Despite the limitations of the remedies available through OCR, OCR's oversight of educational institutions has "been essential in compelling schools to respond appropriately to sexual harassment and assault. Federal enforcement elevate[d] school districts' Title IX awareness and compliance, reducing barriers to reporting, and motivating schools to adopt preventive action."⁴²

OCR's oversight and investigation of sexual violence claims have changed drastically under the second Trump administration. On March 25, 2025, President

⁴¹ See *Office for Civil Rights Recent Resolution Search*, U.S. DEP'T. OF EDUC. CIVIL RIGHTS OFF. [HTTPS://OCRCAS.ED.GOV/OCR-SEARCH?F%5B0%5D=STATE_FULLNAME%3A679](https://ocrcas.ed.gov/ocr-search?f%5B0%5D=STATE_FULLNAME%3A679) (compiling recent disposition letters and resolution agreements involving Title IX complaints between 2010-2025).

⁴² Ester Warkov, *Abandoned by the Department of Education, Advocacy Organizations Demand Action on Student Sexual Violence* (Apr. 1, 2026), <https://msmagazine.com/2026/04/01/trump-department-of-education-colleges-universities-sexual-assault-title-ix/>.

Trump issued Executive Order 14242, initiating the closure of the Department of Education. As a result of this Executive Order, the Department of Education closed seven of OCR's twelve regional offices – including its Philadelphia office, which oversaw all complaints filed against Pennsylvania schools – and placed half of OCR personnel on paid administrative leave, pending layoffs.⁴³ Since March 2025, OCR has all but abandoned its investigations and enforcement of Title IX claims involving sexual violence.⁴⁴ OCR did not enter into any resolution agreements for sexual harassment or sexual assault in 2025,⁴⁵ and it has opened fewer than ten sexual violence investigations across all educational institutions since March 2025.⁴⁶ Federal enforcement of Title IX has collapsed, and student survivors of sexual assault can no longer turn to OCR when their educational institutions fail to protect them from sexual violence.⁴⁷

⁴³ Nidra Nittle, *90% Of Student Discrimination and Harassment Complaints Were Dismissed Last Year. Here's Why* (Feb. 6, 2026), <https://19thnews.org/2026/02/student-civil-rights-cases-dismissed-trump-education-department/>. Some of the employees on forced leave were asked to return to work to OCR in December 2025.

⁴⁴ See Exec. Order No. 14,242, 90 Fed. Reg. 13,679 (Mar. 20, 2025).

⁴⁵ Naaz Modan, *Trump's OCR Resolved No K-12 Sexual Harassment, Assault Complaints in 2025, Data Shows* (Feb. 10, 2026), <https://www.k12dive.com/news/trumps-ocr-resolved-no-k-12-sexual-harassment-assault-complaints-in-2025/811763/>.

⁴⁶ Cory Turner, *Education Department Opens Fewer Sexual Violence Investigations* (Feb. 2, 2026), <https://apnews.com/article/trump-education-department-sex-assault-investigations-c01ffc379de6ca543043c1a17955bb47>.

⁴⁷ See *Letter From 112 Survivor Advocates to McMahon/Richey Re Title IX*, NATIONAL WOMEN'S LAW CENTER (Feb. 23, 2026), https://nwlc.org/wp-content/uploads/2026/03/Letter-from-112-survivor-advocates-to-McMahon_Richey-re-Title-IX.pdf (explaining that OCR has chosen to allow sexual assault survivors' complaints to languish and instead has focused its efforts on implementing anti-trans bathroom and locker room bans to the extent that survivors "no longer view OCR as a credible or good-faith entity.").

C. The criminal legal system regularly fails to obtain justice for survivors of sexual violence and sexual abuse.

The criminal legal system is often ineffectual at addressing and remedying sexual violence. This breakdown starts at the reporting stage. Sexual assault and rape are identified as the most underreported crimes in the U.S., with only about one-third of sexual assaults and rapes reported to law enforcement.⁴⁸ This trend also holds true in the K-12 setting, where sexual assaults “are startlingly common yet underreported.”⁴⁹

While the reasons for underreporting are “multifaceted and involve psychological, sociocultural and systemic factors,”⁵⁰ many survivors express they “do not want to describe their experiences to police, who are often ill-equipped to assess the range of complex, often intangible harms resulting from sexual violence.”⁵¹ Systemic bias, such as victim-blaming, is a major deterrent for survivors from reporting.⁵² For women of color, the effects of systemic racism and prior

⁴⁸ *Statistics: The Criminal Justice System*, RAINN, <https://rainn.org/fasocts-statistics-the-scope-of-the-problem/statistics-the-criminal-justice-system/>.

⁴⁹ *In the News*, 26 SPECIAL EDUCATION LAW BULLETIN NL 4 (Dec. 2020) (discussing a Department of Education report issued in October 2020 collecting data on sexual violence in K-12 schools). Research on the rates of disclosure of child sexual abuse varies depending upon methodology used and the timing of the disclosure, but the evidence is that most child victims delay or never disclose abuse to family, friends, or law enforcement. See Catherine Townsend, *Child Sexual Abuse Disclosure: What Practitioners Need to Know* (2019), www.D2L.org.

⁵⁰ Michelle Wieberneit et al., *Silenced Survivors: A Systematic Review of the Barriers to Reporting, Investigating, Prosecuting and Sentencing of Adult Female Rape and Sexual Assault* 25(5) TRAUMA, VIOLENCE & ABUSE 3742 (2024).

⁵¹ Jill C. Engle, *Sexual Violence, Intangible Harm, and the Promise of Transformative Remedies*, 79 WASH. & LEE REV., 1045, 1051 (2022).

⁵² Jos Pordes et al., *Disclosing Sexual Abuse: An Exploration into Why Female Victims Do Not Report*, 1 INTERNATIONAL JOURNAL OF CRIMINOLOGY AND POLICING EDUCATION 1, 17 (2025).

negative experiences with predominately white-run institutions are additional barriers to reporting.⁵³

For survivors who choose to report crimes of sexual violence, the criminal system is woefully inadequate in protecting survivors and remedying the harms they have experienced. Crimes of sexual violence have disturbingly high attrition rates. Referred to as the “justice gap,” “the disparity between reported cases and cases that result in prosecution and conviction is significant.”⁵⁴ It is estimated that “for every 1000 sexual assaults, 50 reports lead to arrests, 28 cases lead to felony convictions, and only 25 perpetrators are sentenced to incarceration”⁵⁵—a conviction rate of only 2.8%. While there are numerous factors contributing to these high attrition rates,⁵⁶ ultimately the decision to move forward with a prosecution is in the state’s hands, most often through local prosecutors. These offices are often influenced by the same damaging rape myths, including stereotypes about how an “ideal victim” should present.⁵⁷ Additionally, “a prosecutor is less likely to pursue charges if the survivor

⁵³ Alexa Sardina & Alissa Ackerman, *Restorative Justice in Cases of Sexual Harm*, 25 CUNY L. Rev. 1, 7-8 (2022).

⁵⁴ Wieberneit, *supra* note 50, at 3743.

⁵⁵ A research project of the Justice and Gender-Based Violence Research Initiative of the Wellesley Centers for Women studied 2,887 reports of rape or attempted rape made to police between 2013-2019 in six U.S. jurisdictions. This research found that only 19 percent of cases ever led to an arrest and less than two percent went to trial. Furthermore, the researchers found that “social biases” related to stereotypes about the “ideal victim” were a significant factor in whether or not a case moved through the criminal justice system. Linda Williams, Ph.D., *Sexual Violence Case Attrition* (2019), <https://www.wcwonline.org/Archived-Projects/sexual-violence-case-attrition>.

⁵⁶ See Rachel Lovell et al., *The Bureaucratic Burden of Identifying your Rapist and Remaining “Cooperative”*: *What the Sexual Assault Kit Initiative Tells Us About Sexual Assault Case Attrition and Outcomes*, 46 AMERICAN JOURNAL OF CRIMINAL JUSTICE, 528 (2021) (reviewing the literature on the legal and extra-legal factors that contribute to sexual assault attrition as well as the factors involving departmental culture and decision-making, such as the prevalence of rape myths).

⁵⁷ Ashley K. Fansher & Bethany Welsh, *A Decade of Decision Making: Prosecutorial Decision Making in Sexual Assault Cases* 12 SOCIAL SCIENCES 348 (2023).

has what the prosecutor considers a ‘questionable reputation or moral character.’”⁵⁸

Persons with disabilities are subject to even more disadvantages within the criminal system, with individuals diagnosed with mental disabilities not being viewed as “ideal victims” or “credible reporters and witnesses of sexual assault.”⁵⁹

While research is limited on the prosecution and attrition rates of child sexual abuse, the justice gap is still evident. For example, in a five-year study of 500 child sexual abuse cases referred for prosecution, fewer than one in five were prosecuted, and only about half of those resulted in a guilty verdict.⁶⁰ Another study examining the outcomes of 325 cases of child sexual abuse reported to law enforcement, found that over 50 percent of the cases “stalled” at the investigation stage, only 25 percent were prosecuted, and 14 percent resulted in a determination of guilt.⁶¹ Thus, for most survivors of sexual violence, including students who experience sexual abuse at school, the criminal system is not a meaningful avenue for redress.

Given the significant institutional barriers and limitations preventing survivors of peer-on-peer sexual abuse from obtaining justice, it is vital that this Court not further limit access to justice by denying student survivors the opportunity

⁵⁸ Kyle Casey et al., *Rape and Sexual*, 25 GEORGETOWN J. OF GENDER AND THE LAW 871, 880 (2024).

⁵⁹ Nancy M. Fitzsimmons, *Justice for Crimes Victims with Disabilities in the Criminal Justice System: An Examination of Barriers and Impetus for Change*, 13 U. ST. THOMAS L.J. 33, 70 (2016).

⁶⁰ Stephanie Block & Linda Williams, *The Prosecution of Child Sexual Abuse: A Partnership to Improve Outcomes*, OFFICE OF JUSTICE PROGRAMS 1, 21 (Feb. 2019), <https://www.ojp.gov/pdffiles1/nij/grants/252768.pdf>.

⁶¹ L.M. Williams et al., *Prosecution of Child Sexual Abuse: Challenges in Achieving Justice*, WELLESLEY CENTERS FOR WOMEN 1,6 (Apr. 2022), <https://www.wewonline.org/images/pdf/2022-williams-block-pcsa-white-paper.pdf>.

to raise state tort actions, one of the only avenues still available to them for meaningful redress.

III. School districts can implement programs, policies, and interventions for addressing sexual violence to lower their risk of liability and to protect students.

Appellant argues this court should prohibit children who have been sexually abused by a peer at school from recovering monetary damages from their school district because doing so will have “adverse budgetary consequences” for the district. This argument seems to misunderstand the fundamental purpose and structure of tort liability. It is a basic principle of tort law that damages serve the dual aims of compensation and deterrence. *See Speck v. Finegold*, 497 Pa. 77, 85, 439 A.2d 110, 114 (1981) (describing “the fundamental policies of tort law in the Commonwealth: to compensate the victim, deter negligence, and encourage due care.”); *Warriner v. Stanton*, 475 F.3d 497, 500 (3d Cir. 2007) (“in considering the goals of tort law, a court should measure ‘the degree to which deterrence and compensation, the fundamental goals of tort law, would be furthered by the application of a state's local law. . . .’”) (citing *Fu v. Fu*, 160 N.J. 108, 733 A.2d 1133, 1141 (1999)); *Schum v. Bailey*, 578 F.2d 493, 496 (3d Cir. 1978) (stating that while “(t)he primary purpose of a tort’s recovery is to compensate plaintiffs for their injury. . . . (a)n alternate purpose of torts suits is to exact compensation from the tortfeasor in order to deter future misconduct.”) (citing *Henry v. Richardson-Merrell, Inc.*, 508 F.2d 33 (3d Cir.

1975)). The “adverse budgetary consequences” the Appellant warns about are not an unanticipated side effect; they are part of the purpose. If a fundamental purpose of tort law is to incentivize parties to take precautions to prevent harm – i.e. deter bad behavior – then it accomplishes this goal by threatening the parties with meaningful monetary loss.⁶²

With respect to peer-on-peer sexual violence on school grounds, precautionary measures are not merely theoretical; there are a multitude of research-backed programs, policies, and interventions school districts can implement to prevent sexual violence on campus. Prevention strategies range from implementing professional development programs and school-wide trainings, to adopting and enforcing more robust policies, to providing targeted interventions for vulnerable students. Many of these strategies have been around for decades and are well recognized, as they have consistently been included in federal guidance,⁶³ Department of Education resolution agreements,⁶⁴ and CDC recommendations.⁶⁵ To

⁶² See Richard A. Posner, *A Theory of Negligence*, 1 J. LEGAL STUD. 29 (1972).

⁶³ See, e.g., *Recommendations for Educational Institutions on Preventing and Responding to Sexual and Dating Violence*, U.S. DEP’T OF EDUC. (2024), <https://www.ed.gov/media/document/recommendations-educational-institutions-preventing-and-responding-sexual-and-dating-violence-108413.pdf>; see also *Considerations for School District Sexual Misconduct Policies*, WHITE HOUSE TASK FORCE TO PROTECT STUDENTS FROM SEXUAL ASSAULT (Sept. 2016), <https://www.justice.gov/ovw/file/900716/dl?inline=>.

⁶⁴ See, e.g., *Resolution Agreement, Alpine School District, OCR Case No. 08-20-5001*, U.S. DEP’T OF EDUC., OFF. FOR C.R. (Sept. 19, 2023), <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/08205001-b.pdf>; *Resolution Agreement, District of Columbia Public Schools, OCR Directed Inquiry No. 11-11-5901 & OCR Complaint No. 11-14-1260*, U.S. DEP’T OF EDUC., OFF. FOR C.R. (Aug. 8, 2018), <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/11115901-b.pdf>; *Resolution Agreement, Henderson Independent School District*, OCR Reference No. 06-11-1487, U.S. DEP’T OF EDUC., OFF. FOR C.R., (June 2012), <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/06111487-b.pdf>.

⁶⁵ See, e.g., *Program: Rape Prevention and Education Program*, CTRS. FOR DISEASE CONTROL & PREVENTION (May 28, 2025) <https://www.cdc.gov/sexual-violence/programs/index.html> (last visited Apr. 23, 2026); Kathleen C.

prevent sexual violence, most research recommends a multi-pronged approach that includes a variety of individual, interpersonal, institutional, community, and societal interventions.⁶⁶

The Appellant could introduce the following interventions to reduce their risk of tort liability and sexual violence within their schools:

- **Promoting Social Norms that Protect Against Violence:** The CDC recommends programming aimed at altering social norms that accept or enable violence, as a way to reduce and prevent sexual violence.⁶⁷ Examples include programs like *Bringing in the Bystander* and *Green Dot*, which empower young people to take appropriate steps to safely and effectively intervene in situations that promote violence, and programs that focus on teaching young men about their role in preventing sexual violence.⁶⁸ Research suggests that these norms-based strategies can be highly effective at reducing sexual violence perpetration and acceptance.⁶⁹
- **Individual Skill-Based Training:** Teaching students and staff how to identify, prevent, and respond to sexual violence is a key strategy for reducing its prevalence.⁷⁰ Teachers, administrators, coaches, aids, and other school staff can be trained to recognize warning signs, reduce opportunities for harm, enforce safety protocols, and report suspected issues. Student-centered trainings shown to reduce sexual violence perpetration and victimization include programs focused on personal

Basile, PhD, et al., *Sexual Violence Prevention: Resource for Action*, CTRS. FOR DISEASE CONTROL & PREVENTION, 1 (2016), https://www.cdc.gov/violence-prevention/media/pdf/resources-for-action/SV-Prevention-Resource_508.pdf. [hereinafter “CDC Sexual Violence Prevention Toolkit”]; Sarah DeGue et al., *Preventing Sexual Violence on College and University Campuses: Lessons from Research and Practice* (June 18, 2014), <https://stacks.cdc.gov/view/cdc/43896>.

⁶⁶ Basile, *supra* note 65, at 12.

⁶⁷ *Id* at 15.

⁶⁸ *Id* at 16-17.

⁶⁹ See Ann L. Coker et al., *RCT Testing Bystander Effectiveness to Reduce Violence*, 52 AM. J. PREVENTIVE MED. 566 (2017); Ann L. Coker et al., *Evaluation of the Green Dot Bystander Intervention to Reduce Interpersonal Violence Among College Students Across Three Campuses*, 21 VIOLENCE AGAINST WOMEN 1507 (2015); see also Elizabeth Miller et al., “Coaching Boys Into Men”: *A Cluster-Randomized Controlled Trial of a Dating Violence Prevention Program*, 51 J. ADOLESCENT HEALTH 431 (2012).

⁷⁰ Keith L. Kaufman et al., *Recommendations for Preventing Child Sexual Abuse in Youth-Serving Organizations: Implications from an Australian Royal Commission Review of the Literature*, 34 J. INTERPERSONAL VIOLENCE 4199, 4120 (2019).

safety,⁷¹ social-emotional skills⁷² and healthy dating skills.⁷³ Implementing a comprehensive sexual education curriculum may be an especially effective strategy.⁷⁴ These courses should be developmentally appropriate and adapted for students with disabilities.⁷⁵

- **Supportive Practices and Policies:** School districts should maintain Title IX policies prohibiting sexual assault and harassment and outlining grievance procedures for investigating these claims. To address campus sexual violence, policies must align with best practices, be accessible to the community, ensure Title IX staff have appropriate expertise and resources, and include training for all staff.⁷⁶ Given that OCR has closed offices, reduced staff, and abandoned its mission to address sexual assault in schools, as discussed *supra*, it is particularly important for local school districts to shore up their sexual assault and harassment reporting processes and procedures.
- **Assessing and Responding to Gaps:** To reduce instances of sexual violence, school districts should be monitoring and modifying their responses to sexual violence to address deficiencies. This process often includes administering climate surveys to the school community to assess perceptions of sexual violence, measure knowledge about district policies and practices, and elicit suggestions for reducing perpetration.⁷⁷ This process can also involve identifying and addressing physical “hotspots” where sexual violence is more likely to occur. Research has shown that programs like *Shifting Boundaries* are especially effective at the latter.⁷⁸

⁷¹ Sandy K. Wurtele & Maureen C. Kenny, *Primary Prevention of Child Sexual Abuse: Child and Parent-Focused Approaches*, in THE PREVENTION OF SEXUAL VIOLENCE: A PRACTITIONER’S SOURCEBOOK 107, 107 (Keith L. Kaufman ed., NEARI Press 2010).

⁷² Dorothy L. Espelage et al., *A Clinical Trial of the Second Step Middle-School Program: Impact on Aggression & Victimization*, 37 J. APPLIED DEV. PSYCH. 52 (2015).

⁷³ Vangie A. Foshee et al., *Assessing the Long-Term Effects of the Safe Dates Program and a Booster in Preventing and Reducing Adolescent Dating Violence Victimization and Perpetration*, 94 Am. J. Pub. Health 619 (2004).

⁷⁴ Megan Schneider & Nicole Hirsch, *Comprehensive Sexuality Education as a Primary Prevention Strategy for Sexual Violence Perpetration*, 20 TRAUMA, VIOLENCE, & ABUSE 439 (2019).

⁷⁵ See, e.g. Yun-Rye Kim, *Evaluation of a Sexual Abuse Prevention Program for Children with Intellectual Disabilities*, 31 BEHAV. INTERVENTIONS 195 (2016).

⁷⁶ Lauren F. Lichty et al., *Sexual Harassment Policies in K–12 Schools: Examining Accessibility to Students and Content*, 78 J. SCHOOL HEALTH 607 (2008).

⁷⁷ See, e.g. *Resolution Agreement, Alpine School District, OCR Case No. 08-20-5001*, U.S. DEP’T OF EDUC., OFF. FOR C.R., *supra* note 64.

⁷⁸ Bruce G. Taylor et al., *Shifting Boundaries: An Experimental Evaluation of a Dating Violence Prevention Program in Middle Schools*, 14 PREVENTION SCI. 64 (2013).

While amici strongly encourage school districts to take proactive steps to prevent sexual violence, it is important to recognize that districts do not need to be perfect to avoid the “adverse budgetary consequences” Appellant complains of. School districts simply cannot be negligent in their duty to protect children from sexual violence. Given the myriad of research-backed trainings, programs, practices, policies, and protocols available for reducing and preventing the prevalence of sexual violence at schools, as discussed *supra*, amici are confident the Appellant can identify and take reasonable steps to avoid breaching this duty of care in the future.⁷⁹

CONCLUSION

For these reasons, *Amicus Curiae* respectfully request that the Court uphold the order of the Commonwealth Court.

⁷⁹ While *Amici* hope that school districts will choose to adopt measures that protect students from sexual abuse even without the threat of liability, it is worth noting, for those school districts that remain concerned about the budgetary consequences of sexual abuse lawsuits even after implementing such interventions, that under Pennsylvania law school districts are permitted to purchase liability insurance, including insurance covering civil rights violations. *See* 42 Pa. C.S. § 8564. Thus, school districts afraid of the costs they may bear for negligently failing to protect students from peer-on-peer sexual violence can reduce this risk by procuring appropriate insurance coverage.

Date: May 4, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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

Dated: May 4, 2026

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CERTIFICATE OF LENGTH

I certify that this brief complies with the word count requirement set forth in Pennsylvania Rule of Appellate Procedure 531. Excluding matters identified in Pennsylvania Rule of Appellate Procedure 2135(b), this brief is 6,979 words. I have relied on Word's word count function to determine the length of this brief.

Dated: May 4, 2026

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