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(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. R. _____

To amend title IX of the Education Amendments of 1972 to establish standards of liability for harassment on the basis of sex, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mrs. DINGELL introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend title IX of the Education Amendments of 1972 to establish standards of liability for harassment on the basis of sex, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Title IX Take Respon-
5 sibility Act of 2021”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) As the Supreme Court has held in *Franklin*
2 *v. Gwinnett County Public Schools*, 503 U.S. 60, 75
3 (1992), and *Davis v. Monroe County Board of Edu-*
4 *cation*, 526 U.S. 629, 633 (1999), covered entities
5 are liable for harassment on the basis of sex under
6 their education programs and activities under title
7 IX of the Education Amendments of 1972 (20
8 U.S.C. 12681 et seq.) (referred to in this Act as
9 “title IX”).

10 (2) As courts have properly recognized, experi-
11 encing the effects of sexual harassment under an
12 education program or activity, whether perpetrated
13 by employees or agents of the program or activity,
14 by peers of the victim, or by others, can be a form
15 of unlawful and intentional discrimination that in-
16 flicts substantial harm on beneficiaries of the pro-
17 gram or activity and violates the obligation of a cov-
18 ered entity to maintain a nondiscriminatory environ-
19 ment.

20 (3) Title IX protects persons, of any gender,
21 from discrimination on the basis of sex in education
22 programs and activities that receive Federal funding.
23 Supreme Court opinions have established that under
24 title IX, schools are responsible for addressing sex-
25 ual harassment, regardless of the location of the har-

1 assessment, when it impacts a person's access to an
2 educational program or activity.

3 (4) Perpetrators of sexual harassment and vio-
4 lence at school are not limited to students. Incidents
5 have also involved faculty, administrators, coaches,
6 and other staff members.

7 (5) A school culture that tolerates inappropriate
8 verbal and physical contact and that intentionally or
9 unintentionally discourages reporting these behaviors
10 undermines the emotional, intellectual, and profes-
11 sional growth of millions of young people.

12 (6) Sexual harassment of students ~~is~~ especially
13 among women and girls, students of color, disabled
14 students, and LGBTQ students, is widely prevalent
15 in K-12 and higher education, for example:

16 (A) 1 in 5 girls ages 14 through 18 have
17 been kissed or touched without their consent,
18 58 percent of LGBTQ youth ages 13 through
19 21 are sexually harassed, and children with dis-
20 abilities are 2.9 times more likely than their
21 peers to be sexually assaulted.

22 (B) Historically marginalized and under-
23 represented groups are more likely to experi-
24 ence sexual harassment than their peers, with
25 Native American, Black, and Latina girls being

1 more likely than white girls to be forced to have
2 sex when they do not want to do so.

3 (C) In college, 1 in 4 women, 1 in 15 men,
4 and 1 in 4 transgender, nonbinary, and gender-
5 nonconforming students are sexually assaulted
6 during their time as undergraduates.

7 (D) 1 in 3 college women and 1 in 6 col-
8 lege men are survivors of dating violence or do-
9 mestic violence.

10 (7) Few students report harassment to their
11 schools, often because of shame or self-blame, fear
12 of retaliation, fear of being ignored or disciplined,
13 fear of police or immigration officials, or lack of
14 knowledge of services schools can offer to help.

15 (8) Failure to meaningfully enforce title IX
16 leads to discrimination by creating a hostile learning
17 environment that impedes educational attainment,
18 damages rights to equal access to education, and un-
19 dermines learning for all.

20 (9) When schools fail to protect survivors, in-
21 cluding by offering supportive measures that are de-
22 signed to preserve and to restore their equal access
23 to education, survivors often suffer in the form of
24 lower academic achievement, lost scholarships, and
25 lost degrees.

1 (10) Current title IX regulations issued by the
2 Secretary of Education entitled “Nondiscrimination
3 on the Basis of Sex in Education Programs or Ac-
4 tivities Receiving Federal Financial Assistance” (85
5 Fed. Reg. 30026, May 19, 2020)) have made it
6 more difficult for student survivors to report harass-
7 ment and receive help and pose uniquely burdensome
8 procedures for cases of sexual harassment that are
9 not required for any other type of student or staff
10 misconduct, only further sweeping sexual violence
11 under the rug.

12 (11) Title IX’s language is broad and sweeping,
13 making clear Congress’ intent to open the court-
14 house doors to victims of a wide range of sex dis-
15 crimination in schools. However, since title IX’s pas-
16 sage, courts have created barriers that make it ex-
17 traordinarily difficult for survivors to obtain redress
18 from schools through private litigation.

19 (12) In a 5 to 4 opinion in *Gebser v. Lago Vista*
20 Independent School District, 524 U.S. 274 (1998),
21 the Supreme Court held that students subjected to
22 sexual harassment may receive a damages remedy
23 under title IX only when school officials have “ac-
24 tual notice” of the harassment and are “deliberately

1 indifferent”, or respond in a clearly unreasonable
2 manner, to it.

3 (13) Although they do not affect the relevant
4 standards for individuals to obtain injunctive and
5 equitable relief for harassment on the basis of race,
6 color, sex, national origin, age, or disability under
7 covered programs and activities, *Gebser* and similar
8 opinions severely limit the availability of remedies
9 for such individuals by imposing new, more stringent
10 standards for recovery of damages under title IX.
11 Yet in many cases, damages are the only remedy
12 that would effectively rectify past harassment.

13 (14) These limitations on effective relief thwart
14 Congress’ underlying purpose to protect students
15 from harassment, and they create prohibitively high
16 standards for title IX sexual harassment lawsuits
17 that are more onerous than those applicable to work-
18 place sexual harassment lawsuits under title VII of
19 the Civil Rights Act of 1964 (42 U.S.C. 2000e et
20 seq.). As a result, schools are required to do less to
21 address harassment against their students than to
22 address the same harassment of their employees,
23 meaning that students, who are children and young
24 adults, must suffer worse harassment than adult em-
25 ployees before they are entitled to a remedy in court.

1 (15) Some lower courts have added additional
2 onerous barriers under which a school is only liable
3 for its failure to address known sexual harassment
4 if the victim later experiences further actionable sex-
5 ual harassment.

6 (16) A Federal court of appeals opinion in
7 *Kollaritsch v. Michigan State University Board of*
8 *Trustees*, 944 F.3d 613, 621-24 (6th Cir. 2019),
9 went so far as to foreclose money damages if a vic-
10 tim of sexual harassment does not experience further
11 actionable harassment as a result of the recipient's
12 deficient response to a complaint, even if the recipi-
13 ent's conduct causes educational injuries under title
14 IX.

15 (17) *Gebser* and subsequent opinions create an
16 incentive for covered entities to insulate themselves
17 from knowledge of harassment on the basis of sex
18 rather than adopting and enforcing practices that
19 will minimize the danger of such harassment. The
20 opinions thus undermine the purpose of prohibitions
21 on discrimination in the civil rights laws to induce
22 covered programs or activities to adopt and enforce
23 practices that will minimize the danger that vulner-
24 able students or other persons will be exposed to
25 such odious behavior.

1 (18) Legislative action is necessary and appro-
2 priate to reverse *Gebser* and other court opinions and
3 restore the availability of a full range of remedies for
4 harassment based on sex.

5 (19) Restoring the availability of a full range of
6 remedies for harassment will—

7 (A) ensure that students and other persons
8 of federally funded programs and activities have
9 protection from harassment on the basis of sex;

10 (B) encourage covered entities to adopt
11 and enforce meaningful policies and procedures
12 to prevent and remedy harassment;

13 (C) deter incidents of harassment; and

14 (D) provide appropriate remedies for dis-
15 crimination.

16 **SEC. 3. PROHIBITION OF HARASSMENT.**

17 (a) PROHIBITION OF HARASSMENT.—Section 901 of
18 the Education Amendments of 1972 (20 U.S.C. 1681) is
19 amended by adding at the end the following:

20 “(d) PROHIBITION OF HARASSMENT.—

21 “(1) If an agent or an employee of a covered
22 entity engages in harassment, regardless of where
23 the harassment occurs, on the basis of sex, which is
24 enabled or assisted by the authority exercised as an
25 employee or agent of the covered entity, against a

1 person who is participating in or receiving benefits,
2 services, or opportunities from an education program
3 or activity, or who is attempting to do so, and the
4 harassment alters the aggrieved person's ability to
5 do so, including by creating an intimidating, hostile,
6 or offensive environment, the covered entity is liable
7 for sex discrimination.

8 “(2)(A) If a person who is an agent or em-
9 ployee of a covered entity engages in harassment, re-
10 gardless of where the harassment occurs, on the
11 basis of sex against a person who is participating in
12 or receiving benefits, services, or opportunities from
13 an education program or activity or who is attempt-
14 ing to do so—

15 “(i) the harassment is not enabled or as-
16 sisted by the authority exercised as an employee
17 or agent of the covered entity;

18 “(ii) the harassment alters the aggrieved
19 person's ability to participate in or receive bene-
20 fits, services, or opportunities from an edu-
21 cation program or activity, including by cre-
22 ating an intimidating, hostile, or offensive envi-
23 ronment; and

1 “(iii) the covered entity knew, or in the ex-
2 ercise of reasonable care should have known, of
3 the harassment,
4 then the covered entity is liable for sex discrimina-
5 tion unless it can demonstrate that it exercised rea-
6 sonable care to promptly prevent and correct the ef-
7 fects of any harassment based on sex.

8 “(B) If a person who is not an agent or em-
9 ployee of a covered entity engages in harassment, re-
10 gardless of where the harassment occurs, on the
11 basis of sex against a person who is participating in
12 or receiving benefits, services, or opportunities from
13 an education program or activity or who is attempt-
14 ing to do so, and the harassment alters the ag-
15 grieved person’s ability to do so, including by cre-
16 ating an intimidating, hostile, or offensive environ-
17 ment, and the covered entity knew, or in the exercise
18 of reasonable care should have known, of the harass-
19 ment, then the covered entity is liable for sex dis-
20 crimination unless it can demonstrate that it exer-
21 cised reasonable care to promptly prevent and cor-
22 rect the effects of any harassment based on sex.

23 “(C) A covered entity shall ~~to~~ exercise reason-
24 able care in response to harassment based on sex if
25 any of the following individuals knew, or in the exer-

1 cise of reasonable care should have known, about the
2 harassment:

3 “(i) An agent or employee who has the au-
4 thority to take action to redress the harass-
5 ment.

6 “(ii) An agent or employee who has the
7 duty to report to an administrator harassment
8 or any other misconduct by others.

9 “(iii) An individual who a harassment vic-
10 tim or reporting party could reasonably believe
11 has this authority or responsibility.

12 “(D) A showing that the covered entity has ex-
13 ercised reasonable care to promptly prevent and cor-
14 rect the effects of any harassment based on sex in-
15 cludes a demonstration by the covered entity that it
16 has—

17 “(i) established, adequately publicized, and
18 enforced an effective and comprehensive harass-
19 ment prevention policy and complaint procedure
20 that is likely to provide redress and avoid harm
21 without exposing the person subjected to the
22 harassment to undue risk, effort, or expense;

23 “(ii) if requested by the aggrieved person
24 or otherwise deemed necessary to protect the
25 aggrieved person or other persons within the

1 program or activity from a significant ongoing
2 threat, undertaken a prompt, thorough, and im-
3 partial investigation, unless the allegations are
4 patently frivolous;

5 “(iii) provided supportive measures that
6 had the purpose and effect of preserving and
7 restoring the aggrieved person’s equal access to
8 the education program or activity, regardless of
9 whether the aggrieved person requested an in-
10 vestigation; and

11 “(iv) after receiving notice, taken other
12 necessary, immediate, and appropriate correc-
13 tive action designed to stop the harassment that
14 occurred and correct its effects, regardless of
15 whether the aggrieved person experienced sub-
16 sequent harassment.”.

17 (b) CIVIL ACTION.—Section 902 of the Education
18 Amendments of 1972 (20 U.S.C. 1682) is amended—

19 (1) by inserting “(a)” before “Each Federal de-
20 partment and agency which is empowered”; and

21 (2) by adding at the end the following:

22 “(b) Any person aggrieved by the failure of a covered
23 entity to comply with this title, including any regulation
24 promulgated pursuant to this title, may bring a civil action

1 in any court of competent jurisdiction to enforce such per-
2 son's rights.”.

3 (c) ACTIONS BROUGHT BY AGGRIEVED PERSONS.—
4 Title IX of the Education Amendments of 1972 (20
5 U.S.C. 1681 et. seq.) is amended by inserting after section
6 902 the following:

7 **“SEC. 902A. ACTIONS BROUGHT BY OR ON BEHALF OF AG-**
8 **GRIEVED PERSONS.**

9 “In an action brought against a covered entity by (in-
10 cluding on behalf of) an aggrieved person who has been
11 subjected to discrimination prohibited under this title (in-
12 cluding its implementing regulations), the plaintiff may re-
13 cover equitable and legal relief (including compensatory
14 and punitive damages), and attorney's fees (including ex-
15 pert fees).”.