

STATEMENT OF

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**BEFORE THE UNITED STATES SENATE COMMITTEE ON HEALTH,
EDUCATION, LABOR AND PENSIONS**

HEARING ON:

“Reauthorizing the Higher Education Act: Combating Campus Sexual Assault”

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Summary of Statement
Mollie Benz Flounlacker
Association of American Universities

With other higher education associations in Washington, AAU has been deeply involved in efforts to combat sexual assault. This testimony describes the national climate survey AAU has undertaken as well as AAU's views on the Campus Accountability and Safety Act (CASA).

While there is recognition that sexual assault is a broad societal problem, the focus today is on what colleges can do to provide safer settings for their students. Schools take seriously their responsibility to educate students about awareness and prevention, to encourage students to report sexual assaults, to support the survivors of sexual assaults and to ensure all students involved have access to fair and equitable processes. One sexual assault on campus is too many. Those represented by AAU and by the higher education associations, with which we work closely, are deeply committed to working with Congress to better protect students.

As an association of research universities, AAU decided the best way to help its members address this issue was to develop and implement a sexual assault climate survey for its members to better understand the attitudes and experiences of their students with respect to sexual assault. We believe the survey data will help inform campus policies for preventing and responding to sexual assault on campus. AAU will publicly release the aggregate results this fall. We have encouraged our campuses to release their institutional results, and we anticipate many of the 27 universities (26 AAU members plus one non-AAU institution) that implemented the survey will do so.

In addition to the survey's value to participating universities and their students, we hope the aggregate data and analysis will provide useful information to policy makers as they work on possible legislative and administrative initiatives. Researchers will also benefit from the contribution this survey will make to the body of research on this complex issue.

In addition to our work on the climate survey, AAU has actively engaged with the Senate sponsors of the CASA legislation. AAU has joined the broader higher education community in submitting two sets of comments on the legislation, [including the most recent on the version of the bill introduced](#) earlier this year. AAU supports the goals of CASA, including most of the core requirements. Our goal is to help ensure that any new requirements in CASA complement existing requirements to better protect students and help schools understand their responsibilities. Clarity regarding the establishment of new roles and responsibilities for colleges regarding sexual assault is particularly important given the number of other federal laws, regulations, and guidance implicated when dealing with this issue. We support and appreciate many of the changes incorporated into the current version of the legislation. There are still some areas where we have remaining concerns and potential solutions, and we believe the bill will continue to improve as the legislative process moves forward.

Statement of Mollie Benz Flounlacker
Association of American Universities

Chairman Alexander, Ranking Member Murray, and Members of the Committee, thank you for this opportunity to testify on the important issue of combating campus sexual assault.

I am Mollie Benz Flounlacker, associate vice president for federal relations at the Association of American Universities. AAU is a nonprofit 501(c)(3) organization of 62 leading public and private research universities, 60 of which are in the United States and two of which are in Canada. Founded in 1900 to advance the international standing of U.S. research universities, AAU today focuses on issues of importance to research-intensive universities, such as funding for research, research policy issues, and graduate and undergraduate education. AAU member universities are on the leading edge of innovation, scholarship, and solutions that contribute to the nation's economy, security, and wellbeing.

Along with other higher education associations in Washington, AAU has been deeply involved in efforts to combat sexual assault. Today, as requested by the Committee, I will describe the national climate survey that AAU has undertaken, and I will provide AAU's views on the CASA legislation.

The past year has brought intense scrutiny to the problem of campus sexual assault and how colleges handle sexual assault cases. While there is recognition that sexual assault is

a broad societal problem, the focus today is on what colleges can do to provide safer settings for their students. Schools take seriously their responsibility to educate students about awareness and prevention, to encourage students to report sexual assaults, to support the survivors of sexual assaults and to ensure that all students involved have access to fair and equitable processes. One sexual assault on campus is too many. Those represented by AAU and by the higher education associations with which we work closely, are deeply committed to working with Congress to better protect students.

Campuses need clarity, consistency, and flexibility when appropriate with respect to federal expectations, requirements, and enforcement. Congress can be most helpful to colleges' efforts by providing clear standards and guidance to help schools understand their responsibilities and affording them institutional flexibility to improve policies to better protect students.

AAU member university presidents and chancellors have long identified sexual assault on their campuses as an extremely important issue that they need to address head-on; some describe it as the number-one issue keeping them awake at night. Over the past two years at least, AAU has spent more time with its membership addressing this issue than almost any other issue.

As an association of research universities, AAU decided that the best way to help its members address this issue was to conduct research that would enable them to better understand the attitudes and experiences of their students with respect to sexual assault. To do this, AAU developed and implemented a sexual assault climate survey for its members using a leading social science research firm, Westat. The survey was developed

by Westat and a multi-disciplinary design team created by AAU and composed of recognized experts on survey design and methodology, as well as campus leaders directly responsible for dealing with sexual assault and issues of gender, health, and student affairs. Dr. Bonnie Fisher, a nationally recognized expert on sexual assault, was hired by Westat to work closely with the AAU-Westat team to develop the content and analysis of the survey. The AAU team was led by Dr. Sandra Martin, Professor and Associate Chair for Research, Department of Maternal and Child Health, and Associate Dean for Research, Gillings School of Public Health, at the University of North Carolina at Chapel Hill. The starting point for the survey design team was the survey instrument developed by the White House Task Force to Protect Students from Sexual Assault, which was included in the notalone.gov April 2014 report. The survey instrument was designed to address the following core research questions:

- What is the campus climate around sexual assault and sexual misconduct?
- What do students know about and think of resources related to sexual assault and sexual misconduct?
- What are the frequency and nature of misconduct because of coercion and lack of consent due to incapacitation?
- What are the frequency and nature of sexual harassment, intimate partner violence, and stalking?

We believe the survey data will help inform campus policies on how to better prevent and respond to sexual assault on campus. AAU will publicly release the aggregate results this fall. We have encouraged our campuses to release their institutional results, and we

anticipate that many, if not all, will do so. 27 universities (26 AAU members plus one non-AAU institution) implemented the survey.

In addition to the survey's value to participating universities and their students, we hope the aggregate data and analysis will provide useful information to policy makers as they work on possible legislative and administrative initiatives. Researchers will also benefit from the important contribution this survey will make to the body of research on this complex issue.

In addition to our work on the climate survey, AAU has actively engaged with the Senate sponsors of the CASA legislation, introduced by Senator Claire McCaskill, and subsequently with Senate Health, Education, Labor and Pensions Committee staff. AAU has joined the broader higher education community in submitting two sets of comments on the legislation, [including the most recent on the version of the bill introduced](#) earlier this year. AAU supports the goals of CASA, including most of the core requirements. Our goal is to help ensure that any new requirements in CASA complement existing requirements to better protect students and help schools understand their responsibilities. Clarity in the establishment of new roles and responsibilities for colleges regarding sexual assault is particularly important given the number of other federal laws, regulations, and guidance implicated when dealing with this issue. We support and appreciate many of the changes incorporated into the current version of the legislation. There are still some areas where we have remaining concerns and potential solutions, and we believe the bill will continue to improve as the legislative process moves forward. We

offer the following examples of some of the most pressing issues we would like to see addressed in the legislation. Again, previous comment letters have been submitted with a full list of concerns.

Confidential Advisor

We strongly support giving survivors of sexual assault access to a confidential advisor whose *sole* responsibility is to counsel and support the victim. In fact, many colleges already provide such services. Colleges need to ensure that members of the campus community are aware of these confidential counseling services and that they know how to contact a counselor in the event of an assault. It is essential that confidentiality and support be the core responsibilities of a confidential advisor. The advisor should be positioned to provide students, regardless of the geography of the incident, information on college reporting processes, on how to file an official police report, and on available on- and off-campus resources. We believe the confidential advisor should not have responsibilities for fact-finding. Moreover, the confidential advisor should not have investigatory powers (including giving the victim the option to have a recorded interview) or reporting requirements. Any requirements that the advisor act in an investigatory role, rather than in a mental health or trauma-counseling role would compromise confidentiality under state laws and the Family Educational Rights and Privacy Act (FERPA). We believe it is necessary that these advisors have proper training to handle their responsibilities. Colleges should be responsible for having a reasonable number of advisors based on an assessment of institutional needs. There is no precedent for the Department of Education to specify how many employees colleges must have for

a particular job category. To repeat, we are fully supportive of the role of a confidential advisor in helping counsel and support a survivor.

Memoranda of Understanding with Local Law Enforcement

Colleges want state and local law enforcement agencies to be involved in dealing with crimes on campus, including incidents of sexual violence. Memoranda of Understanding (MOUs) can be very useful tools for improving coordination and establishing procedures for responding to and handling reports of sexual assault. Many colleges already have, or are in the process of developing, MOUs. Some state laws also require colleges to develop MOUs. Under the proposed legislation, institutions must enter into MOUs with any law enforcement agencies with “first responder” responsibilities for the campus.

Unfortunately, for a large university in particular, this can mean any number of agencies; combined with the bill’s lack of a clear definition of “campus,” this would require colleges to negotiate multiple MOUs with first-responder agencies for multiple locations. In some cases, the first responder is in fact the campus police. We believe that the most important MOU is with the local law enforcement that may be reasonably expected to respond to reports of sexual assault from students, regardless of whether the incident takes place on or off campus. We believe the content requirements specified in CASA could be made more flexible and less prescriptive, while still ensuring better coordination and clarification of roles and responsibilities between the college and local law enforcement. Additionally, the current waiver to the MOU requirement gives the Secretary of Education a wide degree of discretion in determining whether to grant a

waiver. The language needs to be clarified to make it clear that the MOU needs to be mutually acceptable to both parties and that a waiver should be granted if the college has acted in good faith.

Climate Survey

AAU can offer unique feedback on the survey section of the legislation. We strongly support the use of campus climate surveys and believe that if based on sound research protocols, they can help campuses better understand the attitudes and experiences of their students with respect to sexual assault so campuses can make policy changes to better prevent and respond to sexual assault on campus. Many colleges are in the process of developing and implementing such surveys.

We have concerns about the requirement for the Secretary of Education to develop a *single* survey instrument, without the input of higher education experts, for use at *all* institutions. We also have concerns about the survey completion standard, because colleges have no legal authority to compel student participation in any survey. The legislation also leaves important operational questions about the survey unanswered, including who administers the survey and how information gained from the survey will be made available, in what form, at what level of specificity, and by whom. We believe that a campus-controlled (either directly or contractually administered) survey would help colleges, to the extent possible, maximize their student participation rates. It is important that schools have control over survey administration, including incentive options, among

other issues, in order to ensure that the survey meets the unique and local circumstances of the college and thus helps administrators better understand students' experiences.

In order to allow for national reporting, the Department of Education, in consultation with higher education survey and content experts, could develop a set of core questions based on a clear set of measurable objectives around the incidence and prevalence of sexual assault and students' use of institutional policies and procedures. If colleges are to report survey results to the Department of Education, then they should strive to report them in a contextualized manner that provides the most accurate information for students and protects any personally identifiable information. We recommend the frequency of the survey be reduced to once every four years, so as not to burden the student body, particularly survivors, and allow schools time to address and improve policies, practices, and outreach in-between survey administration. Again, we support the core concept of a climate survey as an important tool for better understanding students' experiences and available institutional resources, as well as helping institutions improve their policies and protections for students.

Campus Disciplinary Processes

Colleges take very seriously their responsibilities to survivors of sexual assault. The legislation creates new 24-hour requirements for institutions to notify both the accuser and accused of campus disciplinary decisions and outcomes in proceedings for sexual violence. While we believe that colleges should make every effort to inform both parties promptly, this short timeframe may be unrealistic in certain circumstances and is likely to

lead to unintended and negative consequences for students. A temporary delay also may be necessary to protect a student in fragile circumstances following a traumatic event. In most cases, these notices would require legal review, thereby requiring additional time. We believe colleges should be given greater flexibility, perhaps a three-day period with flexibility given for extenuating circumstances.

Clery Act Expansion

The legislation would expand Clery Act reporting to include information about the handling of student disciplinary actions in situations involving sexual violence. The expansion conflicts with the purposes of the Clery Act, which is designed to disseminate crime information as defined by law and as reported to and by police. Decisions about whether to proceed with campus disciplinary action reflect an entirely different set of considerations. For example, certain conduct may be a violation of campus policies even if it would not constitute a crime under state law, while crimes reported under the Clery Act may involve individuals who are not subject to the campus disciplinary process. Combining Clery Act crime reporting with information on campus disciplinary proceedings, particularly without the appropriate context, would likely be confusing and misleading for students and families, as well as for policymakers and the media. We recommend further consideration be given to appropriate ways to bring greater transparency to campus processes without confusing students.

Higher Education Responsible Employee

We greatly appreciate the legislative intent to clarify who on campus is a responsible employee for purposes of Title IX. While we understand the authors' reluctance to amend Title IX, we are concerned that the bill's current language would create two separate categories of responsible employees for CASA purposes and for Office for Civil Rights (OCR) guidance, further complicating and confusing campus efforts.

Fines

The legislation authorizes the Secretary of Education to impose fines of up to one percent of an institution's operating budget per violation for failure to comply with any Title IX requirements or with various CASA requirements. Unfortunately, the legislation does not establish clear standards to guide federal officials in determining the appropriate level within this range and distinguish between technical and egregious violations. In testimony before this Committee, the Department unambiguously stated that it does not need or want the authority to impose such fines—it believes it has the tools needed to ensure compliance with laws and guidance addressing sexual assault.

Grant Program to Improve Prevention and Response to Sexual Assault

It is critical to support further research to find the most effective policies and strategies for preventing and addressing sexual assault on campus. Today there is no definitive body of research on best practices for education and prevention, in particular, and we support the inclusion of a grant program for this purpose in the bill. We recommend that Congress provide a dedicated funding stream for these grants rather than rely on fines to fund these grants. We also recommend that grants be awarded on the basis of the

strongest proposals with the most promising ideas rather than criteria such as endowment size or tuition rate.

OCR Responsibilities

The Department of Education also has a role to play in supporting college efforts to better address college sexual assault. OCR should be required to resolve its investigations in a timely way. According to OCR internal guidelines, investigations are expected to be concluded in 180 days of the date filed, but this rarely happens. It is not uncommon for OCR to take two or more years to resolve cases. To ensure prompt resolution of civil rights violations and basic equity to institutions and their students, OCR should be required to resolve investigations within 24 months of their initiation, unless the institution being investigated has willfully obstructed or impeded the review. In addition, colleges and universities should be provided with appropriate notice to be able to respond effectively to complaints filed with OCR. This means sharing the specific allegations with the institution once an investigation is launched. It also means that a college or university should not be expected to sign a voluntary resolution agreement without first seeing the findings that OCR intends to issue publicly in the case. Transparency and openness would benefit all and provide for collaboration and partnership when resolving complaints.

Lastly, in recent years, OCR has issued significant guidance that it enforces without having subjected that guidance to the notice and comment provisions of the

Administrative Procedure Act. This means that no affected party has the opportunity to raise questions or ask for clarifications.

For example, in April 2011, OCR issued what it termed “significant guidance” announcing campus obligations to address sexual assault under Title IX, including the imposition of the “preponderance of evidence” standard, without seeking public comment. Questions about this document quickly emerged, but it took OCR more than three years to issue further clarification. In the interim, campuses were forced to intuit what OCR wanted them to do. OCR has continued this trend. While the agency contends that the “guidance does not add requirements to applicable law,” it is clear from recent resolution agreements with OCR that these guidance documents contain new policy positions which are being treated as compliance requirements under the law.

It is essential that all stakeholders, including colleges and stakeholder groups, be allowed to comment on and inform policies. Ultimately, such input makes policies stronger. Overall, colleges and the Department need to work collaboratively to make progress on this issue.

AAU and its members, along with the other associations with which we work on these issues, are committed to working with Congress to better protect students. Thank you again for this opportunity to testify.

Mollie Benz Flounlacker, Associate Vice President for Federal Relations at the Association of American Universities, is responsible for higher education policy and funding issues. She is also responsible for humanities policy and funding issues. Prior to working at AAU, she was a legislative aide for Maryland State Senate President Thomas V. Mike Miller, Jr. She received a B.A. in government at The College of William and Mary and an M.A. in higher education administration and public policy from The George Washington University.