



National Women's Law Center presentation for

DARCC Title IX Coalition Meeting

November 2021

Sexual Harassment in Schools

Sexual harassment affects too many students.

- **Sexual harassment affects too many students.**
 - K12:
 - 56% of girls and 40% of boys in grades 7-12 are sexually harassed each year
 - 1 in 5 girls ages 14-18 (21%) are kissed or touched without their consent
 - College:
 - 1 in 4 women, 1 in 5 trans and gender-nonconforming students, and 1 in 15 men are sexually assaulted in college
 - 1 in 3 women & 1 in 6 men are survivors of dating / domestic violence
 - 1 in 6 women & 1 in 19 men have experienced stalking
 - Statistics are often higher for Black and Brown women, LGBTQ students, and disabled students
- **Sexual harassment occurs both in and outside of school.**
 - In school: in class, on Zoom, on campus, during away games, in dorms, etc.
 - Outside of school: in private homes, Greek housing, on social media, etc.

Most students don't report sexual harassment.

- Only 2% of girls ages 14-18 who are kissed or touched without consent tell their schools
- Only 1 in 10 college survivors report sexual assault to their schools
- **Reasons for underreporting to school**
 - Shame or embarrassment
 - Fear of retaliation
 - Fear of school discipline, police, or immigration officials
 - Concern the harasser will get in trouble
 - Belief the harassment was not “serious enough” (e.g., because it began consensually or involved alcohol or drugs)
- **Many students don't report to police**
 - Students who are of color, undocumented, LGBTQ, and/or disabled are afraid of criminal legal system
 - Survivors who are of color and/or LGBTQ often do not want to report assailants who are of color and/or LGBTQ

Students who report are often ignored or punished.

- **Schools often punish sexual harassment victims for:**
 - Consensual sexual activity or premarital sex
 - Reasonable self-defense
 - Expressing trauma symptoms (“acting out”)
 - Missing school to avoid their harasser
 - Telling other students they were sexually harassed
 - Filing a “false complaint”
 - Being the subject of a retaliatory cross-complaint by their harasser
- **Some students are more likely to be ignored or punished:**
 - Black and Brown women, LGBTQ students, pregnant and parenting students, and disabled students
 - Stereotypes label them as “promiscuous,” “aggressive,” less credible, and/or less deserving of protection
- **Students who don’t get help lose access to education:**
 - Lower grades, withdrawal from classes / activities / school

The Trump Title IX Rule

Summary of Trump Title IX policies

- Rescinded 2001, 2011, and 2014 guidances
- Created many harmful requirements that don't apply to any other type of student or staff misconduct—only sexual harassment
 - Schools can (sometimes must) ignore or dismiss survivors' complaints
 - Schools can (sometimes must) mistreat survivors whose complaints are not dismissed
 - Schools can (sometimes must) use uniquely unfair and traumatizing procedures to investigate sexual harassment
- BUT survivors still have some rights
 - There is clarifying language from the Trump rule's 2,000+ page preamble
 - See [Title IX and Supportive Measures FAQ](#) and speaker notes in these slides for more information

1. Ignoring/dismissing Title IX complaints (1/3)

- School must dismiss if incident occurred outside of education program or outside U.S. **BUT**
 - Title IX still covers incidents that occur:
 - Online/digital using school platform (e.g., Zoom)
 - Off-campus during school activity
 - Off-campus in building owned/controlled by “officially recognized” student org (e.g., fraternity)
 - Off-campus but school had “substantial control”
 - Schools can decide for themselves whether they have “**substantial control**” over private incidents, such as:
 - Private off-campus apartment
 - Private hotel room, grows out of a school-sponsored activity
 - Teacher’s visit to student’s home
 - Online harassment using personal device during class

1. Ignoring/dismissing Title IX complaints (2/3)

- School must dismiss if incident doesn't fit a narrow definition (“severe and pervasive”, “effectively denied equal access”) **BUT**
 - “effectively denied” doesn't mean student has to drop out to get help
 - Just need to show sexual harassment has affected ability to learn -- e.g., missing class, trouble concentrating, quit 1 activity (but stayed in others), lower grades
- School may dismiss complaint if the respondent leaves the school at any time during an investigation
- School must dismiss if complainant doesn't go to the school anymore **BUT**
 - Only applies at the time complaint is filed
 - If a survivor files a complaint and then transfers/graduates/drops out, school isn't required to dismiss

1. Ignoring/dismissing Title IX complaints (3/3)

- In colleges/universities, school may ignore sexual harassment if it is not reported to an “appropriate official” **BUT**
 - Schools can decide for themselves which employees are considered “appropriate officials” -- they can designate as many as they want
- **NOTE: Even if your complaint is dismissed:**
 - If complaint is dismissed because it didn’t fit the definition/location requirements, schools can use a “non-Title IX” policy
 - If a complaint is dismissed because one of the parties has left the school, school must still provide supportive measures

2. Mistreating survivors (1/3)

- Schools can treat students “unreasonably”
- Supportive measures can’t be “punitive/burdensome” on respondent **BUT**:
 - **If you don’t feel safe at school, you can ask for:**
 - 1-way no-contact order
 - Transfer to different class, dorm, dining hall, campus workplace, and/or transportation route
 - **If your harasser is a student, your school can:**
 - Move your harasser to a different class, dorm, dining hall, etc.
 - Remove your harasser from a school activity if (1) removal is not a punishment for those who violate Title IX or (2) it is a punishment but your school determines your harasser did harass you
 - **If your harasser is a student-employee, your school can:**
 - Supervise your harasser at their campus workplace
 - Put them on paid administrative leave during your investigation
 - **If your harasser is a non-student employee, your school can:**
 - Put them on paid/unpaid administrative leave during investigation

2. Mistreating survivors (2/3)

- **If sexual harassment has made it harder for you to learn or go to school, your school can:**
 - Give you excused late arrivals, excused absences, or leaves of absence
 - Give you more time for assignments or exams, or an opportunity to resubmit an assignment or retake an exam
 - Let you withdraw from a class without putting a "W" on your transcript, or retake a class without charging you for tuition again
 - Give you a tutor or connect you to tutors outside of school.
 - Adjust your transcript (e.g., remove bad grade, recalculate final grade, change to Pass/Fail, regrade anything unfairly graded by your harasser)
 - Keep you in any school activities/honors/scholarships that have a GPA requirement, even if you no longer meet it
 - Reimburse you for tuition or give you tuition credit on any classes you didn't take or didn't finish
- **If the sexual harassment created a new disability** (e.g., anxiety, depression, PTSD) or exacerbated an existing disability, you also have a right to disability accommodations under Section 504.

2. Mistreating survivors (3/3)

- Title IX prohibits retaliation
- If you report sexual harassment, your school cannot punish you for:
 - Breaking a school rule during the harassment—unless your school has a “zero tolerance” policy for that rule (e.g., drug or alcohol violation)
 - Telling other people about the allegations in your formal complaint
 - Note: it can stop you from telling other people about the evidence in your investigation
 - Making a so-called “false” statement without having actual evidence that you lied.
 - For example, if your school did an investigation and decided that there wasn’t enough evidence that your harasser harassed you, that’s not actual evidence that you made a false statement

3. Unfair investigation procedures

- Schools may use an unfair standard of proof (clear and convincing evidence)
- Schools must presume during the entire investigation that there was no sexual harassment **BUT**
 - They can't assume you're lying or make assumptions about your credibility based on your status as a complainant
- Schools can create longer delays than before **BUT**
 - Can't delay longer than "temporary delay"
- In colleges and universities, all parties and witnesses must attend a live hearing and submit to cross-examination by the other party's advisor **BUT**
 - Trump rule only requires schools to "permit" advisors to conduct cross-examination -- they don't have to
 - Parties may agree to jointly waive their right to cross-examination

Lawsuits against Trump Title IX Rule

- **5 lawsuits**
 - 2 were dismissed
 - 1 was suspended
 - 2 are still litigating (1 is NWLC)
- **NWLC lawsuit**
 - July 2020: filed suit on behalf of 7 student survivors (now 3) + 4 victim rights organizations
 - Nov 2020: 1 hour trial
 - July/Aug 2021: federal judge vacated the “exclusionary rule” (which had required schools to discard all oral/written statements unless the party/witness submits to cross-examination)
 - ED announced it would no longer enforce that provision
 - Effectively, survivors should no longer have to be cross-examined by the respondent’s advisor under the Title IX rule
 - This is consistent with the 5th Circuit’s holding in *Walsh v. Hodge*, that university Title IX proceedings must include cross-examination by at least a hearing panel (but need not include cross-examination by a respondent or respondent’s advisor)
 - NWLC plaintiffs have appealed
 - Texas, 2 right-wing orgs, and 3 male Does have intervened or tried to intervene

Recent federal developments

- **Mar 2021:** Biden ordered ED to review all Title IX policies in 100 days and to “consider” rescinding Trump Title IX rule (100 days ended on 6/16)
- **June 2021**
 - ED held 5 days of [public hearings](#) on Title IX enforcement
 - ED [announced](#) plans to propose a new Title IX rule in May 2022 (if Biden rule follows Trump rule timeline, students won’t have new protections until Feb 2024)
- **July 2021:** ED issued [Q&A](#) on Trump Title IX rule
 - It did not cover supportive measures, so NWLC and KYIX created a
- **Sept 2021**
 - NWLC and partners asked ED to propose new rule by October 2021 (ED said no)
 - Reps. Dingell and Hayes [introduced](#) a bill to fix Title IX litigation standards

What can states do?

- **Regardless of how the lawsuit turns out or what Biden or Congress does, state and local officials can do more to protect students from sexual harassment**
 - Title IX rule focuses too narrowly on disciplinary procedures
 - Title IX bill focuses on when schools are liable for not responding to sexual harassment that has already occurred
- **States and schools can do more to adopt a comprehensive survivor-centered approach**
 - One that does not rely on punitive or carceral responses that disproportionately harm students of color

NWLC Resources



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- **[Title IX and Supportive Measures FAQ](#)**
 - Written at 9th grade reading level for high school & college students
 - How to get supportive measures under Trump Title IX rule
- **[Legal Network for Gender Equity](#)**
 - Connects students who have experienced sex discrimination with local attorneys
 - Also shares know-your-rights resources
- **Stop Harassment State Network**
 - Listserv and monthly calls for state advocates to share information, state bills, policy ideas, etc.
 - Join: send an email with “subscribe” in the body of the email to stop-harassment-state-network-request@lists.nwlc.org
- **[100 School Districts](#)** (see **Appendix**)
 - 12 intersectional, comprehensive, non-punitive policies to prevent and respond to sexual harassment in schools
 - The Report is written for state and school policymakers
 - The Student Toolkit is written at 7th grade reading level for students

**Appendix:
100 School Districts
policies**

**What can states do to
PREVENT sexual harassment?**

Prevention (pt 1)

1. **Provide sex education to all students in every grade level**

- Research shows sexual health education decreases likelihood that a student will be a victim and/or perpetrator of sexual harassment, sexual violence, or dating violence
- Topics should include consent, healthy relationships, reproductive health, and LGBTQ identity

2. **Train all school staff on how to:**

- Recognize and respond to sexual harassment (including indicators of grooming and child sexual abuse)
- Notify the school's Title IX coordinator
- Provide effective supportive measures
- Respond in trauma-informed way
- Avoid rape myths and other stereotypes about girls of color, pregnant and parenting students, LGBTQ students, and students with disabilities

Prevention (pt 2)

3. Remove police from schools

- Black & Indigenous students are disproportionately arrested in schools
- Girls face sexual violence and other sexual harassment by school and local police
- Police don't make schools safer – safety is created by building trust between adults and students and meeting students' mental health and emotional needs.

4. Invest in social workers and other non-police adult helpers

- Invest in counselors, social workers, psychologists, nurses, teachers, principals, and other non-police staff, including staff who are not traditionally credentialed but are qualified
- Note: avoid using non-police staff as proxies for police
- Non-police adults in schools should look like the students they are there to help

Prevention (pt 3)

5. Eliminate school dress codes

- Dress codes promote rape culture, reflect sex and race stereotypes, and are often enforced in a discriminatory manner based on gender, LGBTQ status, race or color, and size
- Harmful messages: “what girls *look like* is more important than what they *think*” + “girls are responsible for not ‘distracting’ boys”
- (At the very least, implement a universal, inclusive, gender-neutral, and non-discriminatory dress code)

6. Respect transgender & nonbinary students

- Trans & nonbinary students in schools with trans-exclusionary restroom/ locker room policies have higher risk of sexual assault & school pushout
- Ensure full & equal access to all sex-separated facilities/programs
- Protect students’ privacy (don’t disclose transgender status to other students, staff, or family without student’s consent)

Prevention (pt 4)

7. **Collect climate survey data on sexual harassment**

- Ask about: prevalence and impact, student attitudes, student and staff views on school responses, awareness of options for reporting and supportive measures
- Confidential, unbiased, reliable, conducted every 1-2 years
- Publish results online in accessible and usable format to inform school policies and programs

**What can states do to
RESPOND to sexual harassment?**

Response (pt 1)

8. **Make it easy to report sexual harassment**

- Policies: plain language, multiple languages, accessible formats
- Options for anonymous, confidential, and formal reporting
- Annual training to students, families, and school staff on how to recognize and report it, and what supportive measures and reporting options are available
- Outreach to local community groups (e.g., cultural, religious)

9. **Provide a wide range of supportive measures to students who report sexual harassment, including:**

- Excused absences
- Counseling
- Tutoring, homework/exam adjustments, continued scholarship/honors eligibility
- Changes in academic/busing/dining/housing/work schedules, one-way no-contact orders

Response (pt 2)

10. **Don't discipline students who report sexual harassment** for misconduct that occurred:
 - *During* the reported incident (e.g., drug or alcohol use, consensual sexual activity, self-defense, COVID violation) or
 - *After* the reported incident because of it (e.g., absences, age-appropriate expressions of trauma, talking about the incident).

11. **Ensure prompt and equitable investigations**
 - Maximum 60 days
 - Equal rights for both sides
 - Don't blame students for "asking for it" or "not acting like a victim"
 - Preponderance of the evidence standard
 - No direct cross-examination or mediation for sexual assault
 - (and more)

Response (pt 3)

12. **Offer a restorative process** that students can choose instead of a traditional disciplinary process.
- Requires wrongdoer to admit they caused sexual harm, centers the victim's needs, and allows wrongdoer to make amends to victim and change future behavior
 - Voluntary, informed, and written consent of all parties
 - At any time before resolution, allow parties to withdraw from restorative process to begin traditional disciplinary process (or vice versa)