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


- 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
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
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.
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
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

- **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

Elizabeth Tang
she/her
Senior Counsel
National Women’s Law Center
etang@nwlc.org
Appendix:
100 School Districts policies
What can states do to PREVENT sexual harassment?
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.
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
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)
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?
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
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)
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)