

Legal Resource Kit

Sexual Harassment in the Schools

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If you are being sexually harassed at school, the first things you should know are:

- **It is not your fault;**
- **You are not the only one experiencing harassment;**
- **There are laws designed to protect you; and**
- **There are things you can do to help both yourself and others.**

This kit may help you take the first steps.

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Sexual Harassment in the Schools

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THE PROBLEM

Every day in middle schools, high schools, colleges and universities across the country, sexual harassment interferes with women's and girl's educational opportunities⁰. Sexual harassment is a form of sex discrimination, and it is against the law. This kit explains what sexual harassment is, describes the laws that prohibit it and provides some practical advice on dealing with it in schools.

What is Sexual Harassment?

Sexual harassment is a specific form of sex discrimination. Sex discrimination means being treated differently because of your sex. Sexual harassment consists of unwelcome comments or conduct of a sexual nature directed at you simply because of your sex. The conduct may be visual (such as leering and physical gestures), verbal (insulting remarks and jokes and outright verbal abuse), or physical (from pinching and fondling to rape). One key to deciding whether words or actions amount to harassment is whether they are *unwelcome*. The harassment may be by a member of the opposite sex or of your own sex; by a teacher, a principal, a janitor, a counselor or another student. Whoever the harasser may be, if someone is treating you in a way that makes you feel sexually uncomfortable there are things that you can do to get them to stop.

Sexual Harassment in Secondary Schools: The Problem

In many schools, girls are victims of verbal and physical harassment by their peers, teachers, or others in the

school simply because they are girls. Surveys conducted by Legal Momentum, then known as the NOW Legal Defense and Education Fund ("NOW LDEF"), and the Wellesley College Center for Research on Women in 1992¹, and for the American Association of University Women ("AAUW") in 1993² and 2001³ confirm common knowledge: that harassment is a widespread problem for girls in elementary and secondary schools. Although most students today are aware that their schools have sexual harassment policies, the quantity of harassment appears to have gone unchanged and most students do not report the harassment to teachers or other school employees.

These surveys inform us that:

- The majority (83%) of girls experience verbal or physical harassment: 66% of 10th and 11th grade girls and 63% of 8th and 9th grade girls experience physical harassment.
- The vast majority of harassment occurs between students ("peer harassment").
- About 7% of students are harassed by teachers.
- Most harassment occurs in halls or classrooms. Boys are more likely than girls to be harassed in the locker room or bathroom.
- 61% of students who experienced physical harassment experienced it in the classroom.
- When sexual harassment occurs, it is not a one-time only event: 39% of the girls and young women reported being harassed at school on a daily basis during the previous year.
- Almost two-thirds of the girls told their harassers to stop. Over one-third resisted with physical

force.

- Most harassed girls and young women tell someone when they have been harassed. However, most only tell a friend rather than someone with the potential ability to stop the harassment.
- Harassment is a public event; other people are present at over two-thirds of the incidents reported.
- Sexual harassment happens in all kinds of schools and to all kinds of girls -- there are few differences by type of school attended or by racial or ethnic background.
- Most harassers are male.
- Girls are more likely to do nothing or to walk away without telling the harasser to stop if the harasser is a teacher, administrator or other staff member than if the harasser is a fellow student.
- Schools are less likely to do something about a harassment incident when the harasser is a teacher.

This statistic that 61% of those physically harassed experience the harassment in the classroom shows that teachers and school administrators are failing to deal with the harassment in a meaningful manner.

Some adults in the system further betray girls by actually harassing students themselves:⁴

- One girl recounted that, "My counselor kept 'accidentally' brushing my tits as he would get up

to let me out of his room. After the third time, it didn't seem like no accident."

- Another girl said that her biology teacher wanted to look up her dress. "He would ask me to do things like erase the board, and then he would sit and drool as I lifted my arms up."⁵

Sexual harassment takes a terrible toll on girls. The most immediate effect often is retaliation: a teacher might lower a grade or refuse to write a college recommendation; a peer might sabotage the student's work or spread rumors about her.⁶ These actions can also result in loss of self-confidence, lack of trust and belief in the educational system, a reduced ability to perform school work, excessive absenteeism, and even a transfer from a particular course(s), major(s), or school.⁷

Girls are more likely to be harassed than boys, and to be harassed repeatedly. Moreover, the harassment has a far greater impact on girls' emotions and behavior⁸:

- Harassment made 44% of girls vs. 19% of boys, feel self conscious.
- 53% of girls vs. 32% of boys felt embarrassed.
- 33% of girls vs. 15% of boys felt afraid.
- 32% of girls vs. 16% of boys felt confused about who they were.
- 25% of girls vs. 12% of boys doubted whether they could have a healthy romantic relationship.
- 30% of girls vs. 15% of boys did not want to go to school.

- 22% of girls vs. 10% of boys stayed home from school or cut a class.
- 31% of girls vs. 10% of boys changed their seat in class to get further away from a harasser.

Although most students today know that their schools have sexual harassment policies, most students do not report harassment to teachers or other school officials. Most girls say that they would simply tell a friend about harassment. Unfortunately, failing to complain to school authorities can leave the school uninformed about the level of harassment and unable to take action to prevent further harassment.

When boys are not punished, or even reprimanded, for harassing behavior, the message they receive is that harassment is acceptable. Girls, in turn, are taught that it is their role to accept and tolerate this humiliating conduct. It is the responsibility of the schools to protect its students from harassment; to educate all students about the illegality and impropriety of harassment; and to take appropriate disciplinary action against harassers.

Sexual Harassment on College Campuses: The Problem

On campuses across the country, students experience verbal and physical sexual harassment by faculty members and, more frequently, by their peers. Both young women and young men experience this harassment. However, as with high school girls, college women are more likely to be harassed in a physical manner and suffer a greater adverse impact from the harassment than college men.

The AAUW's 2005 study *Drawing the Line on Campus: Sexual Harassment on Campus*⁹ informs us that:

- Sexual harassment is common on campus; more

than 60% of both men and women have experienced harassment.

- Female students are more likely to be the target of physical harassment.
- Male students are more likely to be the targets of homophobic comments.
- Female students are more upset than male students by the harassment.
- Female students are more likely to change their behavior in some way as the result of experiencing harassment.
- Lesbian, gay, bisexual or transgender students are more likely than heterosexual students to experience sexual harassment and to adversely react to it.
- Men are more likely than women to harass. About 80% of the students who were harassed were harassed by a male.
- 18% of students say that faculty and staff often or occasionally sexually harass students.
- 63% of male students and 59% of female students who admitted to sexually harassing someone said they did so because they thought it was funny.
- Sexual harassment of students takes place everywhere on campus.
- Less than 10% of all students report incidents of sexual harassment to a college or university employee, and only 7% of those reported to

someone they knew to be a Title IX coordinator (a school official responsible for addressing harassment and discrimination).

Other studies on the prevalence of campus sexual harassment have reported that students are not the only victims of harassment on campus. 20 percent to 50 percent of women faculty members have experienced some form of sexual harassment from administrators, department chairs or other faculty members¹⁰.

Incidents of sexual harassment of college women range anywhere from name calling to giving an unwanted shoulder massage to coercing sexual intercourse. Some of the more vivid examples of peer harassment documented by researchers Bernice Sandler and Robert Shoop include:¹¹

- Fraternity members rated women as they passed by, in some instances holding up signs ranging from 1 to 10. Some members loudly described the women's physical characteristics (such as breast size) and appearance.
- In many classrooms across the country, male students have hissed, booed or otherwise ridiculed female students when they raised points about women's issues.
- At a technical institution in New England, some women were too intimidated to get dessert because men in the cafeteria often made loud comments about women being too fat when they walked towards the dessert table.

Incidents of sexual harassment often go unreported because women may believe they are responsible for the harassment, may be afraid of retaliation, or may accept the

unwelcome behavior as the norm. Many young women think that they should be old enough to deal with the harassment on their own and so suffer unnecessarily. Many students simply think their schools would not take any action to help them even if they reported harassment.

Sexual harassment's effects upon college women are often deep and damaging. Victims of sexual harassment may drop out of classes, change majors, transfer schools or even drop out of school entirely.¹²

While incidents of sexual harassment can occur in any location on any campus, certain situations and places are more likely to breed sexual harassment. Fraternity and athletic events, cafeterias, dormitories, parties and all situations involving the use of alcohol often lead to peer harassment. Leading experts note that incidents of sexual harassment are most likely to occur on campuses that have not recognized or publicized the issue. They recommend that administrators punish offenders, create strong support networks and train faculty and staff to reduce the incidence of sexual harassment.¹³

SEXUAL HARASSMENT: THE LAW

Title IX of the Education Amendments of 1972¹⁴ is the federal law that specifically prohibits gender discrimination in schools. Title IX prohibits sex discrimination in educational programs and activities receiving federal financial assistance. If a school violates Title IX, it can lose its federal funding. However, federal funds have never actually been withdrawn from a school because of a Title IX violation.

Title IX states:

No person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to

discrimination under any education program or activity receiving federal financial assistance . . .

The courts have recognized two forms of sexual harassment claims: the *quid pro quo* (this for that) claim and the hostile environment claim. The *quid pro quo* claim involves harassment in which someone in a position of authority, such as a teacher, demands sexual favors in exchange for some benefit, such as grades. The hostile environment claim involves unwelcome sexual behavior that creates an intimidating, hostile or offensive environment or unreasonably interferes with an individual's school performance, thus depriving the student of an educational benefit.

In addition to the federal law, several states have passed laws specifically prohibiting gender discrimination and sexual harassment in schools.¹⁵ These laws apply to elementary and secondary schools, as well as post-secondary schools. Some of the state laws provide protection beyond that required by Title IX. For example, a Minnesota law requires each school to post sexual harassment policies throughout the school, to include the policies in the student handbook, and to teach students in grades K through 12 how to prevent violence, including sexual harassment and sexual assault.¹⁶ The Minnesota State High School League, which governs athletic and fine arts activities, is also required by law to have a sexual harassment/violence policy, which includes sanctions for offenders.¹⁷

What Does Title IX Require?

The U.S. Department of Education, Office for Civil Rights (OCR) issued a policy guidance for schools in January 2001, entitled "[Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties](#)."¹⁸ The OCR Guidance

informs schools of the standards used by OCR, through its long-standing policy and practice, to investigate and resolve sexual harassment allegations. These guidelines apply to students at all levels of education, providing school officials with instruction on how to identify harassment and stop it from occurring.

The federal regulations implementing Title IX require schools to have anti-discrimination policies in place.¹⁹ These policies should address sexual harassment. The OCR Guidance clarifies that a school district can comply by having either a specific sexual harassment policy or a general disciplinary code which includes a sexual harassment prohibition.²⁰ Among other things, a school must identify and train an individual responsible for compliance with Title IX (sometimes referred to as a "Title IX coordinator"). Each recipient of federal funds must have at least one trained Title IX coordinator. Some school districts designate one person in the central office to handle allegations of discrimination, but many districts have at least one individual in each school designated as a Title IX coordinator. The school must adopt a policy of nondiscrimination, including prohibiting sexual harassment, post that policy prominently and include it in the school catalog. The posted material should include the name of the Title IX coordinator for the school, her name, address and phone number, and information about how to complain directly to OCR. It also must include a grievance procedure.

In 2004, OCR reviewed the sex discrimination policies of various schools and found that many failed to comply with these requirements. OCR sent letters to state and local educational agencies and to colleges and universities reminding them of these procedural obligations.²¹

If your school does not have a sexual harassment policy, you should ask the school's administration to develop

one.²²

Advocating Within Your School

If you believe your school is treating students unfairly based on sex, there are a variety of strategies you can try before filing a lawsuit. It is always a good idea to try to get your school to resolve a sexually harassing situation before it escalates to a lawsuit. **If, however, you think you might eventually sue your school under Title IX, you must notify certain school officials of the harassment. (See the section on Filing a Lawsuit, below).**

Whether you see other students sexually harassed or experience it yourself, you can take action at your school. For example, you can go directly to school authorities and ask them to remedy the situation. Ways to identify the best school official to talk to will vary with each situation, but you may consider speaking with a trusted faculty member or academic advisor, school counselor, principal, assistant principal, Dean of Student Affairs, or a member of Student Services. Title IX requires each school to appoint a Title IX officer, who might be well equipped to resolve the problem without administrative or judicial intervention. For other ideas, see the Blueprint for Action section of this Legal Resource Kit.

NOTE: If you complain to your school about sexual harassment and the school takes adverse action against you as a result, the school has engaged in an independent illegal action called **retaliation**. The Supreme Court held in 2005 that retaliation is unlawful under Title IX and gives rise to a separate legal cause of action against a school.²³

If these approaches do not work, or you would rather go to the government first (which is your right), here is how

to ask for help:

Filing A Title IX Complaint With OCR

Students who are victims of harassment may file a complaint with the U.S. Department of Education, Office for Civil Rights (OCR). As the federal agency responsible for enforcing Title IX, OCR investigates complaints submitted by individuals and groups. Even if a complaint has not been filed, OCR can conduct compliance reviews, which are broad-based investigations of school districts or universities.

If, after an investigation, OCR finds that discrimination exists, it tries to achieve voluntary compliance by working with the institution to correct the Title IX violations. Failing this, OCR may then conduct administrative hearings that could lead to termination of federal financial assistance to the school. OCR can also refer the matter to the Department of Justice for possible federal prosecution or to state or local authorities for action under state or local laws. The primary purpose of filing a Title IX complaint is to get the school to change its procedures and/or policies. *A student who has been harmed by these policies **cannot** recover money damages simply by filing a complaint with OCR.*

Anybody -- an individual citizen or a group -- can ask the OCR to investigate possible violations of Title IX. Students, teachers, coaches, and administrators are directly protected by the law, and can file charges, known as "complaints." However, you do not have to be a victim of discrimination yourself to file a complaint. Parents, community organizations and ordinary interested citizens may ask OCR to investigate possible violations.

Is There a Deadline?

Generally, you must file a Title IX complaint with OCR within 180 days after the event you are complaining about -- in this case the harassment -- occurs. If the problem is ongoing, for example, if your school has no harassment policy, you can file a complaint at any time.

OCR will not process a case that is being addressed by another agency or a school through a formal grievance procedure. You will have 60 days to refile a complaint with the OCR after the other process is completed.

Is There a Required Form?

No. A letter to OCR explaining why you believe your school or college is violating the law is all it takes. OCR does require that your letter contain certain basic information before it will process your complaint. Your letter should describe the harassment as specifically and thoroughly as possible, so that OCR can conduct a complete investigation. If there is a pattern of discrimination against girls or women throughout the school, school district or college, describe that in detail as well. Sometimes OCR will send back a form for you to complete to provide that information, but usually a letter is enough.

If you prefer to use a complaint form, you can either contact the OCR office or access the form online. To contact the national OCR office to get a form, please see the contact information below for OCR headquarters. To access the complaint online, please use this link: <http://www.ed.gov/about/offices/list/ocr/complaintintro.html>. If you use the online form, you will have to print out the Consent form at the end and mail it to OCR with your signature.

In order for OCR to consider your complaint “complete,” you *must* include the following information in your letter:

- The name and address of the school district, college or other institution you believe is discriminating by sex;
- A general description of the person or persons suffering from that discrimination -- such as “the girls who ride school bus number 9 to the Kennedy School” or “the girls in Professor Snape’s fifth period Chemistry class.” You don’t have to give OCR names or addresses; although, if there are only one or two victims of specific acts of discrimination, it would be helpful if you did;
- The approximate date(s) the harassment (and/or retaliation for complaining about it) occurred and whether it is continuing;
- Your name and address, and, if possible, a telephone number where you can be reached during the day;
- Enough information about the discrimination for OCR to understand what happened.

In addition to the required information, it is a good idea to give OCR the names, addresses and telephone numbers of others who may have additional information about the charges. Explain why OCR should talk with them. Also, if you know about written sources of information, such as student manuals or school board documents, written complaints by other students or other relevant documents, you should call them to OCR’s attention.

If your complaint involves an emergency -- you or someone else is about to be expelled or suspended -- ask OCR to speed up the process. OCR does not have to move faster, but the knowledge that prompt action could keep someone from serious academic injury might prod the government to respond more quickly. A sample letter including all these points follows later in this kit.

What About Confidentiality?

OCR should keep confidential the identity of the person or group who files a complaint, unless the information must be disclosed during the course of an investigation.

If you want your name withheld, it is a good idea to stress in your letter to OCR that you want to keep this matter confidential and ask OCR to tell you in advance if there are plans to reveal your name.

In certain cases, particularly those that involve individual complaints, it is difficult to retain confidentiality. Keep in mind, however, that publicity may work to your advantage. Individuals and groups can sometimes pressure institutions into quickly changing unfair practices simply by generating interest in the issue. Sometimes those changes occur before OCR has a chance to investigate.

If you are concerned that you might be harassed if you alone file a complaint, try to get an organization in your area to file for you. Local chapters of groups such as the National Organization for Women (NOW) and the American Association of University Women (AAUW) might be willing to file your complaint. In any event, taking adverse action against someone in retaliation for filing a complaint is a separate violation of Title IX. If the school or an employee of the school punishes you, lowers a grade or takes any other adverse actions against you

after you complain about sexual harassment (or any other sex discrimination), be sure to tell OCR to add a retaliation charge to the complaint.

What if There Is More Than One Type of Discrimination?

If you believe there is a pattern of sexual harassment or other forms of sex discrimination against girls and women throughout the school, school district or college, say so in the complaint. Describe each kind of discrimination, and ask OCR to look into all of them. Even if you just want to end one particular discrimination problem, your case will be stronger if you can show a general practice of unfair treatment of women and girls or men and boys.

What Will OCR Do With the Complaint?

OCR should acknowledge receiving your complaint within 7 days of receipt. Within 30 days, OCR should contact you either by phone or by mail to let you know if it will be "proceeding" with the complaint, i.e., following up by investigating the matter and attempting to resolve it with your school. OCR does its best to complete its review of claims within 180 days. OCR may choose not to proceed with a complaint for many reasons, some of which are: OCR has not been given enough information to evaluate the complaint; OCR does not think that the actions complained of violate Title IX or for other reasons thinks that the complaint lacks merit; the complaint was not filed within 180 days of the harassment and the delay was not excused; or someone else has filed a similar complaint about the same problem and OCR recently decided that there was no Title IX violation.

OCR uses two different procedures in handling complaints. One, called Early Complaint Resolution or Resolution Between the Parties, is a form of mediation in

which OCR tries to have you and your school resolve the problem together. The other process involves an OCR Investigation of your complaint against the school.

Early Complaint Resolution (Mediation)

Early Complaint Resolution (“ECR”) is a mediation process which is sometimes referred to as Resolution Between the Parties. It is designed to speed up the handling of discrimination complaints. The procedure is fairly simple: OCR will act as a facilitator between you and the school. The idea is for you and the school to settle your differences yourselves, with OCR as a neutral party. This means you will have to look out for your own interests -- no one else will.

OCR will not investigate the facts of your complaint during ECR. If you and the school are able to reach an agreement, you will be required to withdraw your complaint. Be sure that the terms of your agreement are very concrete, so that it is obvious to everyone if they have been fulfilled. OCR does not keep a record of your meetings, will not sign or endorse any letter of agreement between you and the institution, and will not monitor the agreement to make sure it is kept. Sometimes OCR will retain a copy of the agreement in its files.

If the agreement is breached (broken), be sure to let OCR know. You must refile your complaint with OCR within 60 days of learning of the breach or within 180 days of the original discrimination/harassment. OCR will not investigate the breach, but the facts of your original complaint.

There are two important things to remember about ECR. First, it is entirely voluntary; OCR will use this procedure only if both you and the institution agree to participate. Second, it is impossible for you to remain anonymous. If

you want to remain anonymous, do not opt for ECR. If you decide not to go through this procedure or if you and your school cannot reach an agreement, OCR will proceed to investigate your complaint.

Investigation

If you do not voluntarily settle with your school, OCR investigates your complaint, deciding whether the school is currently in compliance with Title IX, and what changes, if any, need to be made in the school's policies for it to come into compliance with Title IX. However, you, as the person filing the complaint, have rights. You can demand and be given certain kinds of information; you can become actively involved in the review process. Specifically, these are your rights:

- You have the right to be interviewed by OCR as part of its investigation, if you wish. It is a good idea to request this in your initial letter to OCR.
- You can have OCR talk with anyone else who might have additional or supporting facts about the discrimination.
- You must be given a copy of the “letter of findings” and, if you request them, copies of other correspondence between OCR and the institution concerning their negotiations.
- You may request that OCR reconsider any decision with which you disagree, including a refusal to investigate your complaint or a determination that no discrimination occurred.
- If you think that the steps which OCR has proposed asking your school to take are not strong enough, you may ask OCR to reconsider

its decision and require the school to make more significant changes in its policies.

Is It Worth Filing a Complaint with OCR?

You alone must decide whether you should file a complaint, but there are some very good reasons for doing so:

- If you have been pressuring a school district or college to end sex-biased practices and have met strong opposition to change, then the act of filing a complaint with the government may break that resistance.
- OCR does carry a lot of weight when it handles an investigation. Although it has never done so, OCR has the power to cut off federal funding to a school or college that refuses to change.
- OCR's estimates of the public demand for an end to sex discrimination in education are based in large part on the number of Title IX complaints filed. The more complaints OCR receives, the more likely it is that OCR will devote greater energy and resources to enforcing Title IX.

Remember: filing a complaint need not require that you spend a lot of time. OCR must let you get involved if you choose, but you can also keep a low profile and let OCR handle the investigation.

Filing a Lawsuit

In addition to filing a complaint with OCR, you can file a lawsuit in court. If you can demonstrate that you are a victim of sexual harassment and that the school knew about the harassment and did not stop it, you could be

entitled to monetary damages from the school district or a court order prohibiting the illegal conduct.

The United States Supreme Court has addressed an individual's right to sue under Title IX on a few occasions. In 1979, the Supreme Court decided a case brought under Title IX called *Cannon v. University of Chicago*.²⁴ The *Cannon* decision marked the first time that the Supreme Court recognized an individual's right to sue a school district for violating Title IX. Thirteen years later, the Supreme Court decided *Franklin v. Gwinnett County Public Schools*,²⁵ a case involving a teacher who sexually harassed a high school student. The Supreme Court ruled in *Franklin* that students may be awarded monetary damages under Title IX if violations are found. You can sue for teacher-student sexual harassment, as detailed in *Gebser v. Lago Vista Independent School District*,²⁶ and for peer sexual harassment, as outlined in *Davis v. Monroe County Board of Education*²⁷ (see below). In 2005, the Supreme Court held in *Jackson v. Birmingham Board of Education*²⁸ that retaliation against someone complaining about sex discrimination is in itself a separate act of sex discrimination under Title IX.

It is clear that you can bring a Title IX case for teacher to student harassment. In *Gebser*, the Supreme Court ruled that schools can be forced to pay money damages to a student who has been sexually harassed by a teacher if the student shows that a school official with the authority to take corrective measures knew about the harassment and acted with deliberate indifference to the problem.²⁹ This means that students and parents must complain about harassment to school or university officials who have the authority to take action to address sexual harassment complaints. Who that might be will differ from case to case. At a minimum, a school district superintendent, school board president, or university dean should satisfy the standard. Principals, Title IX coordinators, university

department heads, provosts, affirmative action officers or other school officials, including teachers or faculty may, under certain circumstances, also have the authority to respond to sexual harassment complaints. To safeguard any potential legal claim, students (and parents) should notify school officials both in your school and at the district office to urge them to investigate the complaint or discipline the sexually harassing teacher. College students should complain to the Dean of Student Affairs or other appropriate official.³⁰ Generally, you should take your sexual harassment complaint to the top.

Gebser also states that a school must act with deliberate indifference in order to be held financially liable for sexual harassment. This means that school officials' responses to sexual harassment must reflect deliberate action – such as actively disregarding known sexual harassment or discouraging students or parents from complaining – or must be so utterly lacking that deliberate indifference can be inferred.³¹ If a school takes some reasonable action to respond to a sexual harassment complaint, it may be hard to establish that the school acted with deliberate indifference.

The Supreme Court addressed the issue of student-to-student (“peer”) sexual harassment in *Davis v. Monroe County Board of Education*. The court applied the *Gebser* liability standard to peer sexual harassment claims: students and their parents may bring a lawsuit for money damages against a school district for student-to-student harassment if the school district has acted with deliberate indifference to known harassment.³² As in *Gebser*, this means that, in order to recover damages, the school district must have known of the harassment and made an official decision not to remedy it. A school official with authority to take corrective action must have been notified of the harassment. While courts are still interpreting what this means, in a teacher-to-student

harassment case this school official may have to be a principal, school board member, or district superintendent with the authority to fire or otherwise discipline the teacher. In student-to-student harassment cases a broader range of adults such as teachers and guidance counselors may be in a position to intervene to discipline the harasser. Keep in mind, however, that it is always safest to take your complaints to the top.

Davis also clarified that schools may be financially liable for sexual harassment when they exercise substantial control over both the harasser and the context in which the harassment occurs. This means that sexual harassment that occurs during extracurricular school-sanctioned activities may be covered. In addition, *Davis* stated that the harassment has to be so severe, pervasive, and objectively offensive that it effectively bars access to an educational opportunity or benefit. This does not mean that you have to show an actual physical deprivation of access to school resources to recover damages for sexual harassment. But you do need to show that the harassment had a negative effect on your ability to learn. For instance, your grades may have dropped, you may have found it difficult to concentrate, you may have stopped going to classes, or you may have spoken up less in class because of the harassment.

An alternative to suing for money damages is to seek an injunction. An injunction is a court order to require or prevent some action.³³ For instance, you can ask for a court order requiring a school district to take action such as implementing a sexual harassment policy or separating you from your harasser. Although courts are reluctant to intervene in the functioning of schools, you may be able to obtain an injunction by showing that a school district knew or should have known of sexual harassment and failed to take prompt and effective remedial action.³⁴ This would be easier to establish than the actual knowledge

and deliberate indifference required for obtaining money damages under *Gebser* and *Davis*.

Most recently, the Supreme Court held in *Jackson v Birmingham Board of Education*³⁵ that retaliation against someone complaining about sex discrimination is in itself a separate act of sex discrimination under Title IX. Although *Jackson* itself involved a male coach complaining about discrimination against the girls' teams he coached, the principle applies with equal force to sexual harassment claims. For example, if you tell your school principal that your track coach has been making sexually inappropriate comments to you and the principal responds by informing you that you are being cut from the track team, you have been retaliated against. The act of cutting you from the team in retaliation for your complaint of harassment is a separate violation of Title IX. It is frequently easier to demonstrate that retaliation has taken place than to demonstrate that the original harassment you complained about took place.

You should also be aware that there are very strict deadlines for filing any lawsuit. **To be certain that you can meet filing deadlines and other requirements of a Title IX lawsuit, you should discuss your case with an attorney.** Title IX itself does not establish a filing deadline – or statute of limitations – for private litigation. The statutes of limitations vary from state to state. However, because Title IX is a federal law, the state laws do not expressly establish a statute of limitations for Title IX claims and more generic statutes of limitations, typically the ones for personal injury, are applied.³⁶ A lawyer should determine which statute of limitations has been applied by the federal courts in your district to Title IX claims.

You need not file an OCR complaint (see above) to be able to file a lawsuit.

Advantages of Complaining to OCR versus Filing a Lawsuit

The advantages of complaining to the U.S. Department of Education Office of Civil Rights are: it does not cost any money; you do not have to be a direct victim of the harassment or other discrimination in order to complain; it is less time-consuming for you; your school may be more willing to cooperate with OCR than with a private attorney; and the stringent time limits, notice requirements and other impediments to bringing a successful Title IX lawsuit as an individual do not apply to OCR. The disadvantages are: you cannot recover financial damages; and, although OCR claims to vigorously enforce Title IX, it has never, in fact, cut off any school's federal funding so its power is effectively limited.

The main advantage of filing a lawsuit is that you could recover financial damages. On the other hand, you must retain an attorney, which could be quite costly; demonstrate that you were personally injured, and otherwise meet the standards of *Gebser* or *Davis* discussed above, such as demonstrating that the school knew about the harassment and was deliberately indifferent to it. Federal courts in some parts of the country are more receptive to Title IX complaints and sexual harassment complaints in general, so you would have to consult with an attorney to determine if suing might be a good choice in your case.

Unsettled Legal Issues

Note: This section discusses technicalities of Title IX case law. If you're not a lawyer or law student, feel free to skip it and move on to the next section.

A number of questions remain open about when a school may be required to pay damages to a victim of

harassment. These include: who must have knowledge of the harassment; what actions are severe and pervasive enough to create a hostile environment; and whether Title IX preempts claims against schools on broader constitutional grounds. Although the Supreme Court has yet to answer these questions definitively, a number of federal courts of appeals have addressed them.

Exactly who constitutes the “appropriate person” to notify about harassment has differed depending on the court and the particular facts of the case. For example, although a principal is often the appropriate person to notify, the Third and Fourth Circuit Courts of Appeals have both held that notifying the principal of harassment was insufficient in certain contexts. In *Bostic v. Smyrna School District*, the Third Circuit found that, although the Principal and Assistant Principal are usually the appropriate persons, this question is one that should be left to the jury on a case-by-case basis.³⁷ In *Baynard v. Malone*, the Fourth Circuit held that an elementary school principal was not the appropriate person because she did not have the authority to hire, fire or suspend teachers and so could not be viewed as a “proxy” for the school district.³⁸ However, in *Williams v. Board of Regents*, the Eleventh Circuit held that both the University President and the Director of the Athletic Program were sufficient persons, where the aggressors were college athletes with a known history of sexual violence.³⁹ Given this mixed state of law, it is best to notify the top official in your school district to ensure that you have provided notice to the appropriate person.

Since the *Davis* case was decided in the Supreme Court (see above), the lower courts have attempted to define the circumstances in which sexual harassment is so severe, pervasive, and objectively offensive that it effectively bars access to an educational opportunity or benefit. A number of courts have found that even a single incident of rape

will meet this standard. In *Soper v. Hoben*, the Sixth Circuit held that being “raped and sexually abused and harassed ... obviously qualifies as being severe, pervasive, and objectively offensive sexual harassment that could deprive [the plaintiff] of access to the educational opportunities.”⁴⁰ More recently, the Eleventh Circuit found that one incident of student gang rape occurring over a two-hour period in a dorm room established Title IX liability because school officials had done nothing to mitigate the dangers posed by the aggressors’ known history of sexual violence.⁴¹ These cases indicate that courts will consider rape a serious enough offense to automatically create a sufficiently severe and pervasive hostile environment.

There are certainly forms of sexual harassment substantially less egregious than rape that may be sufficiently severe to sustain a private case under Title IX. One federal court of appeals found that nicknaming a female student who bore a resemblance to Monica Lewinsky “Monica” and repeatedly referring to her as such throughout the semester, as well as making salacious remarks about details of the Clinton/Lewinsky relationship and attributing them to the student, created a sexually harassing hostile environment.⁴² A case was allowed to go forward when a student claimed that after she complained to the school principal about harassment by her teacher, her teacher “continued to put his arm around her and look at her in a sexual manner, commented that her appearance was not as good as she when she was living at home, and stated that she should find a more mature boyfriend.”⁴³ (Among other things, the teacher had previously made comments to other students that the complaining student would become mistress.)

There are also forms of harassment that the courts have found not to create a sexually discriminatory hostile

environment. For example, a district court found that a male student repeatedly staring at a female student does not constitute sexual harassment actionable under Title IX.⁴⁴ Another district court found that although a student was harassed by her peers, the basis of the harassment was not her sex. While the plaintiff was subjected to what the court termed “arguably gender-based terms (i.e. ‘bitch’, ‘slut’),” the court emphasized that other name-calling as well as physical assaults were not gender-specific and concluded that there was “insufficient evidence tending to suggest that she was treated in a particular manner because of sex.”⁴⁵

Not surprisingly, a request for a date or the giving of flowers between students is not considered sexual harassment, although OCR has indicated that repeated requests made in an intimidating or hostile manner might be considered sexual harassment.⁴⁶

Another unsettled issue concerns who you can sue for sexual harassment and under what statute. Title IX suits are brought against educational institutions as the recipients of federal funds. Sometimes, however, you might also want to sue the individual teacher or other school employee who harassed you – or an administrator who ignored the harassment. This might be because you think those individuals should be held personally financially responsible for your harassment or because you cannot satisfy some requirement for suing the school itself. A federal statute referred to as 42 U.S.C. § 1983 (or simply “Section 1983”) allows suits to be brought against individual state “actors,” such as public school teachers, who have deprived someone of their constitutional rights. The Supreme Court has not explicitly decided whether the availability of Title IX means you cannot file a Section 1983 claim for an incident that could also be covered by Title IX. Many courts have held that students retain their Section 1983 claims against an individual school employee

who harasses them even when also filing a Title IX claim. Indeed, in *Gebser* itself, the Supreme Court said, “Our decision does not affect any right of recovery that an individual may have against a school district as a matter of state law or against the teacher in his individual capacity under state law or under 42 U.S.C. § 1983.”⁴⁷ However, the courts have frequently barred a plaintiff’s Section 1983 claim against a school district or administrator when the student has also filed a Title IX claim. Some courts have refused to extend Section 1983 liability to administrators because the officials were unaware of the abuse or simply because Title IX is the exclusive remedy for sex discrimination in the schools. The First, Second, Third, Seventh and Eleventh Circuits have ruled that Title IX provides the exclusive remedy against administrators and officials responsible for schools’ sexual harassment policy.⁴⁸ However, the Sixth, Eighth and Tenth Circuits have held that Title IX does not preclude claims under Section 1983.⁴⁹ Some courts will also allow a Section 1983 suit against an individual teacher or administrator who personally sexually harassed a student to whom he gained access in his official capacity.⁵⁰ Thus, the question of to what extent Title IX and Section 1983 litigation overlaps remains open and whether you can sue an individual teacher or administrator for sexual harassment may depend upon which part of the country you live in.

Victims of Same-Sex Harassment

In its 2001 Revised Sexual Harassment Guidance, the U.S. Department of Education Office of Civil Rights (“OCR”) stated that the same standards and responsibilities that apply to heterosexual harassment apply to same-sex sexual harassment.⁵¹ The guidance explains that “sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student’s ability to participate in or benefit from the school’s program constitutes sexual harassment prohibited by Title IX.”

The OCR guidance clarifies that Title IX does not prohibit non-sexual harassment focused on the student's sexual orientation itself, such as students banning gays from their lunch table.

A number of courts have recognized Title IX claims of same-sex sexual harassment.⁵² They apply the Supreme Court's analysis in *Oncale v. Sundowner Offshore Services, Inc.*,⁵³ which recognized employer liability for same-sex sexual harassment under Title VII. The courts have followed the liability distinction outlined in the OCR Guide between sexual orientation harassment that has a sexual content and that which does not.⁵⁴ However, some courts have noted that "an individual could sustain a cause of action under Title IX if he were to demonstrate that he was being harassed -- not because he was a homosexual, but because he was acting in a manner that did not adhere to the traditional male stereotypes."⁵⁵ Additionally, one court has expressly held that students have a free speech right to express their sexual orientation at school, such as by displaying "OUT" buttons, without fear of anti-gay harassment as a consequence.⁵⁶

Courts also have allowed cases about sexual harassment of gay and lesbian students to proceed under 42 U.S.C. §

1983, which allows suits against state actors (including local school officials) who have deprived someone of their federal constitutional rights. The Seventh⁵⁷ and Ninth Circuit Courts of Appeals⁵⁸ allowed Section 1983 claims to go forward under the theory that such harassment violates the Equal Protection Clause of the United States Constitution.⁵⁹ The courts held that liability could be found if a school treats complaints of same-sex sexual harassment less seriously than it does complaints of opposite-sex sexual harassment.⁶⁰

If you are a victim of harassment because of your sexual orientation, you may have additional claims under state law.⁶¹ California, Connecticut, the District of Columbia, Maryland, Massachusetts, Minnesota, New Jersey, Vermont, Washington, and Wisconsin prohibit sexual orientation discrimination or harassment in schools under state law.⁶² Additionally, Alaska, Connecticut, Florida, North Dakota, and Pennsylvania have educators' professional ethics codes that set requirements about how teachers and administrators should respond to sexual orientation discrimination.⁶³

Laws against sexual harassment merely establish a minimum level of conduct for schools. The ultimate solution to ending harassment is prevention and education, to teach boys and girls to treat each other with respect. Merely having harassment policies and procedures in place is not sufficient to put an end to sexual harassment. It is of greater importance for teachers, administrators and other adults to treat students and each other with respect, because students learn far more from what they see and hear actually happening around them than they do from written policies or lectures. In addition, complaints of sexual harassment have to be treated seriously and compassionately. It takes courage for a student to come forward with a complaint about another student or teacher. The complaint may also reflect a certain level of desperation because the student has realized that she cannot stop the harasser on her own. But if you are the student taking that step by speaking up to oppose sexual harassment in school, you can do so with pride, knowing that you are helping make your school a better place for all students.

Sample Letter for Filing a Title IX Complaint

Date
Director
Office for Civil Rights, Region
U.S. Department of Education
Address for your region

Dear _____,

I am/We are filing a complaint of sex discrimination and sexual harassment under Title IX of the Education Amendments of 1972 against (name and address of school district, college or other institution receiving federal education aid.)

(The next paragraph should explain what person or group of people you believe is being harassed or otherwise discriminated against. You need only identify them generally – “the girls in the sixth grade gym classes,” for example -- unless it’s just one or two people who have been victims of specific acts of discrimination. In that case it would be helpful to give the Department of Education their names and addresses, although it is not required.)

(Follow this with as complete a description of the sexual harassment and/or other sex discrimination as you can. Make sure to tell what happened, when it happened and if the discrimination is still going on.)

The following people have agreed to provide further information to your staff. (Here list the people willing to tell what happened, when it happened and if the discrimination is still going on. Attach any evidence you may have which supports the complaint, such as letters, student handbooks, and so. Name any people you think were responsible for the discrimination and their position in the school.)

I/We ask that you investigate this complaint immediately and notify me/us when the investigation is complete. And please send me/us a copy of your findings as soon as they are sent to (name and school district or college). In addition, please send me/us copies of all correspondence with (name of institution).

Sincerely,

Name
Address
Daytime phone number

If you are sending copies of your complaint to other persons, list them below. For example:

cc: School Board
Local Organizations
National Organizations
Newspapers

Where to Send Your Title IX Complaint

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EASTERN DIVISION

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Office for Civil Rights, Boston Office
U.S. Department of Education
33 Arch Street, Suite 900
Boston, MA 02110-1491
(617) 289-0111; FAX# (617) 289-0150
TDD: (617) 223-9695

New Jersey, New York, Puerto Rico, Virgin Islands

Office for Civil Rights, New York Office
U.S. Department of Education
32 Old Slip, 26th Floor
New York, NY 10005-2500
(646) 428-3900; FAX# (646) 428-3843
TDD: (212) 637-0478

Delaware, Maryland, Kentucky, Pennsylvania, West Virginia

Office for Civil Rights, Philadelphia Office
U.S. Department of Education
Wanamaker Building, Suite 515
100 Penn Square East
Philadelphia, PA 19107-3323
(215) 656-8541; Fax: (215) 656-8605
TDD: (215) 656-8604

SOUTHERN DIVISION

Alabama, Florida, Georgia, South Carolina, Tennessee

Office for Civil Rights, Atlanta Office
U.S. Department of Education
61 Forsyth Street, S. W., Suite 19T70
Atlanta, GA 30301-3104
(404) 562-6350; FAX# (404) 562-6455
TDD: (404) 331-7236

Arkansas, Louisiana, Mississippi, Oklahoma, Texas

Office for Civil Rights, Dallas Office
U.S. Department of Education
1999 Bryan Street, Suite 1620
Dallas, TX 75201-6810
(214) 661-9600; FAX# (214) 661-9587

North Carolina, Virginia, Washington DC

Office for Civil Rights, District of Columbia Office
U.S. Department of Education Office
P.O. Box 14620
Washington, D.C. 20044-4620
(202) 786-0500; FAX# (202) 208-7797
TDD: (202) 208-7741

MIDWESTERN DIVISION

Illinois, Indiana, Minnesota, Wisconsin, Iowa, North Dakota

Office for Civil Rights, Chicago Office
U.S. Department of Education
Citigroup Center
500 W. Madison Street, Suite 1475
Chicago, IL 60661
(312) 730-1560; FAX (312) 730-1576
TDD: (312) 353-2540

Michigan, Ohio

Office for Civil Rights, Cleveland Office
U.S. Department of Education
600 Superior Avenue East
Bank One Center, Room 750
Cleveland, OH 44114-2611
(216) 522-4970; Fax: (216) 522-2573;
TDD: (216) 522-4944

Kansas, Missouri, Nebraska, South Dakota, Oklahoma

Office for Civil Rights, Kansas City Office
U.S. Department of Education
8930 Ward Parkway
Suite 2037
Kansas City, MO 64114-3302
(816) 268-0550; FAX# (816) 823-1404
TDD: (816) 891-0582

WESTERN DIVISION

Arizona, Colorado, New Mexico, Utah, Wyoming

Office for Civil Rights, Denver Office
U.S. Department of Education

Cesar E. Chavez Memorial Building, Suite 310
1244 Speer Boulevard
Denver, CO 80204-3582
(303) 844-5695; FAX# (303) 844-4303
TDD: (303) 844-3417

California

Office for Civil Rights, San Francisco Office
U.S. Department of Education
Old Federal Building
50 Beale Street, Suite 7200
San Francisco, CA 94105
(415) 486-5555; FAX# (415) 486-5570
TDD: (415) 437-7786

Alaska, Hawaii, Idaho, Nevada, Oregon, Washington, Montana, American Samoa, Guam, Trust Territory of the Pacific Islands

Office for Civil Rights, Seattle Office
U.S. Department of Education
915 Second Avenue, Room 3310
Seattle, WA 981 74 -1099
(206) 220-7900; Fax: (206) 220-7887;
TDD: (206) 220-7907

HEADQUARTERS

Office for Civil Rights, Headquarters
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202-1100
(202) 245-6800; (800) 421-3481; Fax: (240) 245-6840
TDD: (877) 521-2172
E-mail: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

Sexual Harassment in the Schools

A Blueprint for Action

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The following are some things you can do to prevent and respond to sexual harassment in your school.

All Schools

- Every school should have a policy against sexual harassment that is easy to understand and widely distributed. It should include strong statements from school administrators that harassment will not be tolerated.
- The policy should clearly explain how to file a complaint and how the complaint will be handled. There should be several people who can receive complaints. Those designated to receive complaints should be specially trained, but all teachers and staff need to know how to respond if a student comes to them.
- There must be procedures for speedy, fair, confidential investigations with appropriate punishments.
- The policy should state that retaliation -- punishing someone for making a complaint -- will not be tolerated. If the harasser or others try to get back at the complainant, they should be punished.
- If an incident involves physical contact, the school should treat it as it would any other crime on campus and should also inform the complainant that she has the right to file charges with the police.
- The curriculum at all grade levels should discuss respect for others, sexual harassment and violence. Students should be taught appropriate ways to treat each other and how to bring an effective complaint if they experience harassment.
- Colleges and universities should require first-year students and student leaders to attend programs about sexual harassment.
- Teachers and staff should receive special professional education to increase their awareness and explain their duties regarding their own behavior and how to respond when they witness harassment or receive student complaints.

- Hold a school assembly or campus teach-in on the topic and invite a speaker.
- Provide resources on sexual harassment in the school library, guidance office, student health center or other accessible areas.
- Encourage students to start a student group to address harassment and related issues.

Advice for Student Advocates in Elementary and Secondary Schools

- Don't wait until you are harassed personally. Work to change your school's policies and educational atmosphere NOW.
- Organize with friends, and maybe some sympathetic teachers. Go to your principal and ask that she implement a policy. Explain how harassment interferes with your education and makes you feel uncomfortable and unsafe. Remind the principal that she has an obligation under the law to stop harassment and to institute appropriate policies and procedures.
- If the principal doesn't believe that harassment is a problem, show her the AAUW surveys referenced in these materials. If she just thinks it isn't a problem in your school, gather information. Conduct your own informal survey. Maybe you can get your school newspaper to help.
- If your principal still doesn't do anything, ask your parents to talk to her. To reach a lot of parents, you and your friends can request time to discuss harassment at the next PTA meeting.
- If none of these tactics work, ask for time to present your views at a school board meeting. Stress the ways that harassment hurts girls and their education, as well as the fact that the school system has a legal duty to act and could lose a lot of money if a lawsuit is ever filed. Since arranging to speak to the school board might be difficult, you may need to get help from an adult.
- You can alert the school to particular problems, such as a teacher who acts inappropriately or an area of the school where incidents often occur. You can also take group action. Agree to come to the aid of any girl you see being harassed. Help girls who have been harassed to bring complaints to the school's attention. Get a group of girls and boys to verbally confront a harasser and tell him why his actions are wrong.
- Raise consciousness. Put up flyers about harassment. Flyers can define harassment, inform students of their rights or explain the difference between flirting and harassment -- get other ideas from resource materials. Wear t-shirts with anti-harassment slogans. Ask the student government to devote time to the issue. Ask school administrators if you can invite a speaker to your school.

- Reach out to students at other schools. Share ideas and resource materials about sexual harassment. Contact organizations in your area that work on these issues.

Organizing Against Sexual Harassment on College Campuses

- Organize. There's power in numbers. Enlist the aid of professors, fraternities, sororities, student government organizations and campus racial, ethnic and religious organizations such as Hillel, Women's Centers, Asian-American student unions and campus ministries. Encourage these organizations to sponsor, publicize and conduct programs about sexual harassment. Approach administrators as a group to demand the necessary policy changes.
- Administrators may recognize that sexual harassment is a general societal problem but be blind to it as a problem on their own campus. To focus the issue, create a campus-wide task force to gather information about sexual harassment on campus through surveys and focus groups, evaluate policies and procedures for addressing sexual harassment complaints and recommend improvements to school administrators. Publish the task force findings in the school newspaper.
- Ensure that sexual harassment issues are incorporated into new student orientation and existing educational programs such as sexual assault and diversity programs. Develop new educational programs.
- Raise consciousness. Develop and distribute flyers, posters and educational pamphlets about harassment.
- Gain the support of campus athletes and sports teams. Ask prominent school athletes to publicly condemn sexual harassment.

What to Do If You Are Harassed

- You are not to blame for sexual harassment. Sexual harassment may frighten or embarrass you. Before you decide what action you want to take, discuss the problem with your parents or another adult, a roommate or a friend you trust.
- If you feel safe and comfortable doing so, tell the harasser that his behavior bothers you and that you want him to stop. If the harasser is a teacher or other adult, you probably should not confront him alone. Another alternative is to write a letter that describes the behavior and says that it bothers you and you want it to stop. You might want to attach a copy of your school's sexual harassment policy to your letter. Keep a copy of your letter.

- If you don't feel ready to make a complaint, keep notes about the harassment: what happened, when, where, who else was present. Keep these notes separate from your diary or any other personal papers, in case you need to show your notes to someone else.
- When you're ready to complain, go to a trusted individual designated by your school policy. If your school has no policy or you feel uncomfortable talking to the designated people, go to a faculty member, guidance counselor, administrator or health educator. If you're scared, bring a friend or a parent.
- It may be harder and more intimidating to bring a complaint about a teacher or faculty member. You might want to bring a parent or supportive adult. Realize that you will probably face resistance if you complain about a teacher or professor. Gather as much support as possible from others who have witnessed the harassment. Think through what you would like the result of your complaint to be. Do you simply want your harasser to stop the harassment, or do you think he or she has engaged in behavior so egregious that he or she should be removed from teaching? Because the teacher may have tenure, it could take time to get him or her removed. Before you bring your complaint, think through suggestions you can make for avoiding the faculty member after the complaint, such as transferring from the class or independent study just in case the school refuses to remove him or her during the investigation.
- If the school doesn't resolve your complaint in a way that satisfies you, you have the right to file a complaint with the Department of Education's Office for Civil Rights or to bring a lawsuit. As discussed in the section on Filing a Lawsuit earlier in this Legal Resource Kit, you must make your complaint of sexual harassment to a school official who is in a position to discipline the harasser in order to safeguard your legal claim for monetary damages under Title IX. You may want to notify officials both in your school and at the district office.
- The school has no legal obligation to fire a teacher or expel a student who has harassed you. Its obligation is simply to stop the harassment. You have no legal right under Title IX to have the harasser "punished." In all likelihood, the school will refuse to tell you the outcome of your complaint. The school may take the position that the Federal Educational Records Privacy Act prevents it from telling you if a student harasser has even been punished. However, the Office of Civil Rights of the Department of Education asserts that you should be informed of whether a finding of harassment has been made because it impacts you. Moreover, the OCR asserts that your school may adopt a harassment policy or disciplinary code that gives you additional rights.

Sexual Harassment in the Schools

Resource List

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For convenience, resources particularly useful for same-sex sexual harassment are grouped together at the end of this section. For information on where to send a Title IX complaint, see the first section of this kit. The following list may provide you with additional information or assistance with sexual harassment.

Equity Assistance Centers

The following Equity Assistance Centers serve the states listed in each service area. Contact them for help. They may be able to supply films, books, posters, speakers, or other resources.

Region I: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Sharon Lloyd Clark, Director
New England Desegregation Assistance
Center for Equity in Education at Brown University
222 Richmond Street, Suite 300
Providence, Rhode Island 02906
Phone: (800) 521-9550
(401) 274-9548, X274
FAX: (401) 351-9594
e-mail: Sharon_Lloyd_Clark@brown.edu
<http://www.alliance.brown.edu/>

Region II: New Jersey, New York, Puerto Rico, Virgin Islands

Joan Dawson, Executive Director
Equity Assistance Center
New York University

32 Washington Place, Room 72
New York, NY 10003
Phone: 212-998-5100
FAX: (212) 995-4199
e-mail: jqd7069@is6.nyu.edu
<http://www.nyu.edu/education/metrocenter/eac/eac.html>

Region III: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Dr. Sheryl Denbo
Mid-Atlantic Equity Center
5454 Wisconsin Avenue, Suite 655
Chevy Chase, MD 20815
(301) 657-7741
Fax: (301) 657-8782
e-mail: maec@pop.dn.net
<http://www.maec.org>

Region IV: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Jerry Graniero, Director
1401 E. Broward Boulevard
Fort Lauderdale, FL 33301

Phone: (305) 765-3553
FAX: (305) 523-3340
e-mail: info@southeastequity.org
<http://www.southeastequity.org>

**Region V: Illinois, Indiana, Michigan,
Minnesota, Ohio, Wisconsin**

Dr. Percy Bates
Programs for Educational Opportunity
Room 1005
School of Education Building
University of Michigan
Ann Arbor, MI 48109-1259
(734) 763-9910
FAX: (734) 763-2137
e-mail: eqty@umich.edu
<http://www.umich.edu/~eqtynet>

**Region VI: Arkansas, Louisiana, New Mexico,
Oklahoma, Texas**

Bradley Scott
Intercultural Development Research Assoc.
5835 Callaghan Street, Suite 350
San Antonio, TX 78210
(210) 684-8180
FAX: (210) 684-5389
e-mail: bscott@idra.org
<http://www.idra.org>

Region VII: Iowa, Kansas, Missouri, Nebraska

Charles Rankin
Midwest Desegregation Assistance Center
Kansas State University
1100 Mid Campus Drive
401 Bluemont Hall

Manhattan, KS 66506-5327
(785) 532-6408
FAX: (785) 532-5548
e-mail: ronna@coe.edu.ksu.edu
<http://mdac.edu.ksu.edu/>

**Region VIII: Colorado, Montana, North Dakota,
South Dakota, Utah, Wyoming**

Ramon Villareal
Educational Equity Center
Colorado State University
110 Sixteenth Street, Suite 335
Denver, CO 80202
Phone: (303) 623-9384
FAX: (303) 623-9023
e-mail: rigsby@cahs.colostate.edu
<http://www.colostate.edu/programs/EAC/index.html>

Region IX: Arizona, California, Nevada

Anthony Sancho, DAC Director
Desegregation Assistance Center
WestEd/Southwest Regional Education Lab
4665 Lampson Avenue
Los Alamitos, CA 90720
Phone: (562) 598-7661
FAX: (562) 985-9635
e-mail: asancho@wested.org
<http://www.WestEd.org>

**Region X: Alaska, American Samoa, Guam,
Hawaii, Idaho, Northern Mariana Islands,
Oregon, Republic of Palau, Washington**

Joyce Harris, Director
Center for National Origin, Race and Sex Equity



Advancing Women's Rights

395 HUDSON STREET, NEW YORK, NY 10014-3684 (212) 925-6635 FAX: (212) 226-1066

(CNORSE)
Northwest Regional Education Lab
101 S.W. Main Street, Suite 500
Portland, OR 97204-3297
Phone: (503) 275-9604
FAX: (503) 275-0452
e-mail: harrisj@nwrel.org
<http://www.nwrel.org/cnorse/index.html>

State Boards of Education

State Boards of Education may also have information and materials about sexual harassment. Contact them for help.

National Association of State Boards of Education (NASBE), *Sexual Harassment in Schools: What it Is/What to Do: A Policy Guide* (1998), available at http://www.nasbe.org/Educational_issues/Reports/Sexual%20Harrass.pdf. (last visited Dec. 10, 2007)

Minnesota Dep't of Educ., *Sexual Harassment to Teenagers: It's Not Fun/It's Illegal: A Curriculum for Identification and Prevention of Sexual Harassment for Use with Junior and Senior High School Students* (rev. ed. 1996).

Organizations

American Association of University Women
1111 Sixteenth Street, N.W.,
Washington, DC 20036
(202) 785-7700 Fax: (202) 872-1425

American Council on Education
Office of Women in Higher Education
Dr. Judith Sturnick, Director
One Dupont Circle, Suite 800
Washington, DC 20036-1193

(202) 939-9390 Fax: (202) 785-8056

Center for Law and Education
Kathleen Boundy, Exec. Dir.
197 Friend Street, 9th flr.
Boston, MA 02114
(617) 371-1166 Fax: (617) 371-1155

Center for Women's Policy Studies
1211 Connecticut Ave., NW, Suite 312
Washington, DC 20036
(202) 872-1770 Fax: (202) 296-8962
National Association for Women in Education
Lynn M. Gangone
1325 18th Street, NW, Suite 210
Washington, DC 20036
(202) 659-9330 Fax: (202) 457-0946

National Coalition for Sex Equity in Education (NCSEE)
Theodore Martin, Business Manager
PO Box 534
Annandale, NJ 08801
(908) 735-5045 Fax: (908) 735-9674

National Coalition for Women and Girls in Education
c/o National Women's Law Center
11 Dupont Circle, NW, Suite 800
Washington, DC 20036
(202) 588-5180 Fax: (202) 588-5185

National Education Association
Division of Civil and Human Rights
1201 16th Street, NW
Washington, DC 20036-3290
(202) 822-7700 Fax: (202) 822-7578

National Women Student's Coalition

Kendra Fox-Davis
c/o US Student Association
1413 K Street, NW, Ninth Floor
Washington, DC 20005
(202) 347-8772 Fax: (202) 393-5886

Title IX Advocates
Linda Parrington
511C Keokuk St.
Petaluma, CA 94952
(707) 778-7614

Title IX Advocacy Project
Victoria Alzapiedi
140 Clarendon Street, 7th floor
Boston, MA 02116
(617) 247-6722 Fax: (617) 247-6782

Wellesley College Center for Research on Women
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Federal Government:

U.S. Department of Education, Office of Civil Rights,
Online Complaint Form, available at
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End Notes

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4. Physical abuse of a student by a teacher is not only harassment but may constitute child abuse, and may violate the criminal law.
5. NOW Legal Defense and Education Fund Project on Equal Education Rights, *In their Own Voices: Young Women Talk about Dropping Out* 8, 12 (1988).
6. *Id.* at 7.
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10. Bernice R. Sandler & Robert J. Shoop, eds., *Sexual Harassment on Campus* 13 (1997).

11. *Id.* at 52.

12. *Id.* at 57.

13. *Id.* at 55.

14. 20 U.S.C. §§ 1681-1688; Title IX Regulations, 34 C.F.R. §106.

15. Arkansas, California, Florida, Illinois, Iowa, Massachusetts, Michigan, Minnesota, Montana, Oregon, Rhode Island, Tennessee, Texas, Vermont, and Washington have statutes that specifically address sexual harassment in education. Numerous other states have laws prohibiting sex discrimination in school, which would include sexual harassment as well because, as explained above, sexual harassment is a form of sex discrimination.

16. Minn. Stat. § 121A.03 (2007).

17. Minn. Stat. § 128C.02 subd. 2 (2007).

18. 66 Fed. Reg. at 5,512, available at
<http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>.

19. 34 C.F.R. § 106.9.



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20. *Supra* n. 19.

21. Title IX Grievance Procedures, Elementary and Secondary Education, letter dated April 26, 2004, available at http://www.ed.gov/about/offices/list/ocr/responsibilities_ix.html; Title IX Grievance Procedures, Postsecondary Education, letter dated August 4, 2004, available at http://www.ed.gov/about/offices/list/ocr/responsibilities_ix_ps.html.

22. U.S. Department of Education, *Sexual Harassment: It's Not Academic* (1997), available at <http://www.ed.gov/about/offices/list/ocr/docs/ocrshpam.html>.

23. *Jackson v. Birmingham Board of Education*, 544 U.S. 167 (2005).

24. *Cannon v. University of Chicago*, 441 U.S. 677 (1979).

25. *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992).

26. *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998).

27. *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999).

28. *Jackson v. Birmingham Board of Education*, 544 U.S. 167 (2005).

29. *Id.*

30. For example, one federal appellate court found that complaints to a Dean and Affirmative Action Officer put a university on notice of sexual harassment. *Morse v.*



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Regents of the Univ. of Colo., 154 F.3d 1124 (10th Cir. 1998).

31. See *id.* (plaintiff stated claim under *Gebser* for deliberate indifference because university knew of peer sexual harassment and did not take any remedial action).

32. *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999).

33. Black's Law Dictionary 316 (6th ed. 1969).

34. *Frederick v. Simpson College*, 160 F. Supp. 2d 1033 (D. Iowa 2001) (heightened standards of *Gebser* do not apply to injunctive relief, but school should first be given an opportunity to come into compliance voluntarily before an injunction is issued).

35. *Jackson v Birmingham Board of Education*, 544 U.S. 167 (2005).

36. See, e.g., *Doe v. Howe Military School*, 227 F.3d 981, 987 (7th Cir. 2000); *M.H.D. v. Westminster Schools*, 172 F.3d 797, 803 (11th Cir. 1999); *Lillard v. Shelby County Bd. of Educ.*, 76 F.3d 716, 729 (6th Cir. 1996); *Egerdahl v. Hibbing Community College*, 72 F.3d 615, 618 (8th Cir. 1995); *Bougher v. University of Pittsburgh*, 882 F.2d 74, 77-78 (3d Cir. 1989).

37. *Bostic v. Smyrna School District*, 418 F.3d 355 (3d Cir. 2005).

38. *Baynard v. Malone*, 268 F.3d 228 (4th Cir. 2001).

39. *Williams v. Board of Regents*, 477 F.3d 1282 (11th Cir. 2007).



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40. *Soper v. Hoben*, 195 F.3d 845, 855 (6th Cir. 1999).
41. *Williams v. Board of Regents*, 477 F.3d 1282 (11th Cir. 2007).
42. *Hayat v. State Univ. of N.Y.*, 352 F.3d 733 (2d Cir. 2003).
43. *Flores v. Saulpaugh*, 115 F. Supp. 2d 319, 322 (N.D.N.Y. 2000).
44. *O'Hara v. Colonial Sch. Dist.*, 2002 U.S. Dist. LEXIS 12153 (E.D. Pa. 2002).
45. *Patenaude v. Salmon River Cent. Sch. Dist.*, 2005 U.S. Dist. LEXIS 29066 (N.D.N.Y. 2005).
46. U.S. Department of Education, Office of Civil Rights, Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, p. 6, available at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.pdf>.
47. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 293 (1998).
48. *Fitzgerald v. Barnstable School Committee*, 504 F.3d 165 (1st Cir. 2007); *Williams v. Board of Regents*, 477 F.3d 1282 (11th Cir. 2007); *Bruneau v. South Kortright Central School District*, 163 F.3d 749 (2d Cir. 1998); *Waid v. Merrill Area Public Schools, Inc.*, 91 F.3d 857 (7th Cir. 1996); *Pfeiffer v. Marion Ctr. Area. School Dist.*, 917 F.2d 779 (3d Cir. 1990).
49. *Klemencic v. Ohio State University*, 263 F.3d 504 (6th Cir. 2001) (relying on *Soper v. Hoban*, 195 F.3d 845 (6th Cir. 1999)); *Crawford v. Davis*, 109 F.3d 1281 (8th Cir. 1997);



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Seamons v. Snow, 84 F.3d 1226, 1233 (10th Cir. 1996).

50. *Hayut v. State Univ. of N.Y.*, 352 F.3d 733 (2d Cir. 2003) (university professor who created a hostile environment can be held personally liable under Section 1983); *Delgado v. Stegall*, 367 F.3d 668, 674 (7th Cir. 2004) (teacher who is harasser can be held personally liable under Section 1983); *Doe v. Smith*, 470 F.3d 331 (7th Cir. 2006) (dean who molested student can be held personally liable under Section 1983).

51. 66 Fed. Reg. at 5,512, available at

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52. *Siewert v. Spencer-Owen Community School Corporation*, 497 F. Supp. 2d 942, 952-54 (S.D. Ind. 2007); *Doe v. Southeastern Greene School District*, No. 03-717, U.S. Dist. LEXIS 12790, *11-23 (W.D. Pa. Mar. 24, 2006); *Riccio v. New Haven Board of Education*, 467 F. Supp. 2d 219, 225-26 (D. Conn. 2006) (holding that same-sex harassment was actionable under Title IX where the plaintiff was harassed with the use of gender-specific, anti-gay slurs); *Howell v. North Central College*, 320 F. Supp. 2d 717, 722-23 (N.D. Ill. 2004) (explaining that, although plaintiffs could bring sex stereotyping claims of sexual harassment under Title IX, they could not bring claims of harassment based on sexual orientation); *Schroeder v. Maumee Board of Education*, 296 F.Supp. 2d 869, 879-80 (N.D. Ohio 2003); *Montgomery v. Independent School District No. 709*, 109 F. Supp. 2d 1081, 1090-91 (D. Mont. 2000); *Snelling v. Fall Mountain Regional School District*, No. 99-448-JD, U.S. Dist. LEXIS 3591 (D.N.H. Mar. 21, 2001) (finding that there was a triable issue of school liability under Title IX where the plaintiffs were harassed on the basis of perceived sexual orientation).

53. *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998).

54. See, e.g., *Howell v. North Central College*, 320 F. Supp. 2d 717, 722-24 (N.D. Ill. 2004).

55. *Siewert v. Spencer-Owen Community School Corporation*, 497 F. Supp. 2d 942, 953 (S.D. Ind. 2007) (interpreting 7th Circuit precedent to provide for relief under Title IX for harassment motivated by gender stereotyping); *Howell v. North Central College*, 320 F. Supp. 2d 717, 722-23 (N.D. Ill. 2004) (same).

56. *Henkle v. Gregory*, 150 F. Supp. 2d 1067, 1071, 1076 (D. Nev. 2001) (describing how school administrators instructed plaintiff not to reveal that he was gay if he wanted the harassment to stop and finding that this abridged the student's free speech rights).

57. The 7th Circuit covers Illinois, Indiana, and Wisconsin.

58. The 9th Circuit covers Alaska, Arizona, California, Hawaii, Montana, Nebraska, Oregon, and Washington.

59. *Flores v. Morgan Hill Unified School District*, 324 F.3d 1130 (9th Cir. 2003); *Nabozny v. Podlesny*, 92 F.3d 446, 454 (7th Cir. 1996).

60. *Flores*, 324 F.3d at 1137-38; *Nabozny*, 92 F.3d at 457. The particular claim in *Nabozny* was based on a Wisconsin statute, but the decision was written broadly as an interpretation of the Equal Protection Clause. *Id.*; see also *Flores*, 324 F.3d at 1137 (interpreting *Nabozny* in this manner).

61. See, e.g., GLBT Safe Schools Coalition, *GLBT Civil & Human Rights in Brief in Schools &*



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62. *GLBT Civil & Human Rights in Brief in Schools & Families*, *supra* n. 62.

63. *Id.*