



*The National Women's Law Center presents*

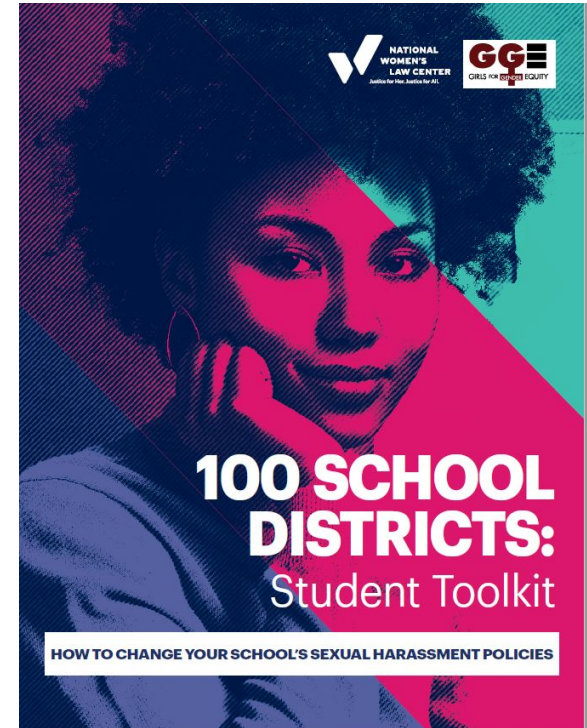
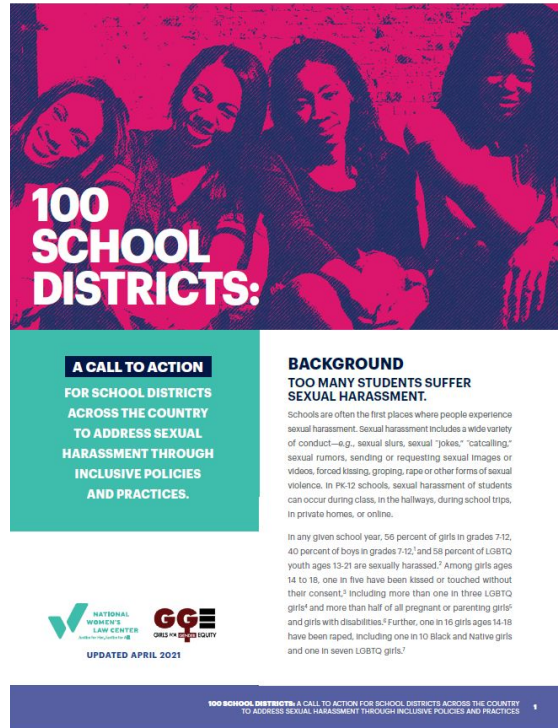
# 100 School Districts

*January 2022*

# 100 School Districts Report & Student Toolkit

- This presentation provides an overview of the 12 policy recommendations detailed in the *100 School Districts Report* and *Student Toolkit*
- Note: This presentation omits citations for brevity and readability.
- Please see the *100 School Districts Report* and *Student Toolkit* for full discussion and citations:

<https://nwlc.org/100schooldistricts>



# **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 Title IX Rule

# The 2020 Title IX rule

1. **Schools are legally required or permitted to ignore many reports of sexual harassment if:**
  - It doesn't fit a narrow definition
  - It takes place in private off-campus or online locations
  - One of the people doesn't go to the school anymore
  - In colleges/universities, it is not reported to a high-ranking employee.
2. **Schools can mistreat or further harm survivors:**
  - Schools can treat students “unreasonably” as long as it's not “clearly unreasonable”
  - Schools cannot provide a full range of supportive measures
  - Schools can use mediation to resolve student-on-student sexual assault
3. **Schools can—and, in many cases, must—use uniquely unfair investigation procedures for sexual harassment – for example:**
  - Schools must presume there was no sexual harassment
  - Schools can create unreasonable delays
  - Schools can (and sometimes must) apply an unfair standard of proof
  - In colleges and universities, schools must use live hearings with cross-examination.



# Lawsuits against 2020 Title IX Rule

- **5 lawsuits**
  - 2 were dismissed
  - 1 was suspended
  - 2 are still litigating (1 is National Women's Law Center)
- **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”
    - The exclusionary rule had required schools to discard all oral or written statements made by a party or witness who did not submit to cross-examination at a live hearing
    - Now, 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
  - NWLC plaintiffs have appealed
  - The State of Texas, 2 conservative organizations, and 3 male “John 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 2020 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 2020 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

**What can school districts do to  
PREVENT sexual harassment?**

# Prevention (pt 1)

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

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

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

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

# Prevention (pt 2)

## 3. **Remove police from schools**

- Black & Indigenous students are disproportionately arrested in schools
- Girls face sexual violence and other sexual harassment by school and local police
- Police don't make schools safer – safety is created by building trust between adults and students and meeting students' mental health and emotional needs.
- As an interim step, schools can reduce the number of school police on campus

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

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

# Prevention (pt 3)

## 5. **Eliminate school dress codes**

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

## 6. **Respect transgender & nonbinary students**

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

# Prevention (pt 4)

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

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



**What can school districts do to  
RESPOND to sexual harassment?**

# Response (pt 1)

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

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

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

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

# Response (pt 2)

10. **Don't discipline students who report sexual harassment** for misconduct that occurred:
  - *During* the reported incident (e.g., drug or alcohol use, consensual sexual activity, self-defense, COVID policy 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** – for example:
  - 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

# Response (pt 3)

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

# NWLC Resources



**Elizabeth Tang**

*she/her*

Senior Counsel

**National Women's Law Center**

[etang@nwlc.org](mailto:etang@nwlc.org)

- **100 School Districts**
  - Report is for policymakers
  - Student Toolkit is written at 7th grade reading level for students
- **Title IX and Supportive Measures FAQ**
  - Written at 9th grade reading level for high school and college/grad students
  - Explains how to get supportive measures under 2020 Title IX rule
- **Legal Network for Gender Equity**
  - Connects students who have experienced sex discrimination with local attorneys
  - Also shares know-your-rights resources

**Questions?**