



# Ending Sexual Harassment

ENFORCEMENT IS KEY

**H**ARASSMENT AFFECTS STUDENTS' WELL-BEING AND their ability to succeed academically. Supreme Court rulings have established that sexual harassment of students constitutes discrimination in education and violates Title IX.

Efforts to address sex-based harassment have increased as knowledge of this issue has spread. In particular, awareness campaigns by educational institutions and Title IX advocates, as

well as legal remedies, have resulted in organized efforts by schools to curb such harassment. Nonetheless, sexual and gender-based harassment remain pervasive problems in K-12 schools and on college campuses.

While sexual harassment disproportionately affects girls and women, studies show that boys and men also experience harassment. When any students experience sexual or gender-based harassment on campus or in the classroom, the hostile environment created by such conduct can undermine educational opportunities for those students and their peers.

---

## What Constitutes Harassment?

Harassment can take many forms. It includes verbal acts like name-calling, posting of inappropriate images and graphics, written statements, or other actions that may be

physically threatening, harmful, or humiliating. Harassment of students may come from other students or from school employees such as teachers, coaches, or other staff. To constitute

## KEY FINDINGS

- 1. Any form of harassment based on sex is unlawful under Title IX**, including harassment based on gender stereotypes. The law applies whether the harassment involves students of the opposite or of the same sex, and whether it is conducted in person, online, or through other media.
- 2. Despite efforts to curb sexual harassment, including sexual assault, this form of discrimination is still prevalent** in schools and on college campuses. Both male and female students report being sexually harassed, with consequences that can undermine their academic success.
- 3. More than half of girls and 40% of boys in grades 7 through 12 reported being sexually harassed** during the 2010–2011 school year. Among lesbian, gay, bisexual, and transgender students, harassment is even more extensive; 85% say they have been verbally harassed, and 19% report physical assault.
- 4. Being called gay or lesbian in a negative way is a common form of harassment in middle and high schools.** Boys and girls were equally likely to experience this form of harassment in 2010–2011 (18%), although reactions differed, with 21% of boys and 9% of girls identifying it as their worst experience with harassment.
- 5. Nearly two-thirds of college students aged 18–24 experience some form of sexual harassment.** The numbers for men and women are similar, although women report greater emotional and educational disruption from harassment.
- 6. When sexual harassment occurs, Title IX requires that schools take immediate, effective action** to eliminate the hostile environment, prevent its recurrence, and remedy the effects on the victim. These steps are essential for creating an environment in which all students can succeed.

sexual harassment, the conduct must be of a sexual or gender-based nature.

### WHEN HARASSMENT INVOKES TITLE IX

Harassment prohibited by Title IX includes any unwelcome or unwanted behavior based on sex, including conduct of a sexual nature. It also can include harassment of a student because he or she does not conform to stereotypical notions of masculinity or femininity, such as harassment of a male student because he is on the dance team or exhibits effeminate mannerisms, or harassment of a female student because she takes shop class or wears short hair and baggy clothes. Although Title IX does not specifically prohibit discrimination on the basis of sexual orientation or gender identity, when lesbian, gay, bisexual, or transgender (LGBT) students are subjected to harassment because of failure to conform to gender stereotypes, Title IX applies.

Title IX's protection extends to sexual harassment in all of a school's programs or activities, whether the harassment occurs on school property, on a school bus, or at an off-site school event. Schools are obligated to respond to sexual harassment charges if the conduct is severe or pervasive enough that it creates a hostile school environment—meaning that it interferes with or limits a student's ability to participate in or benefit from school, including all activities and services.

Harassment does not have to include intent to harm or be directed at a specific target. The harasser and the victim do not have to be of the opposite sex, and the harassment does not need to take the form of a sexual advance.

Any form of sexual violence, including rape, constitutes sexual harassment and is covered under Title IX as well as other statutes. The U.S. Department of Education's Office for Civil Rights (OCR), which enforces Title IX, recently

reaffirmed in its April 2011 Guidance that rape is always severe enough to create a hostile school environment.<sup>1</sup>

A school- or district-wide anti-bullying policy does not free a school from complying with Title IX. Regardless of any policies in place, if sexual or gender-based harassment is sufficiently severe, pervasive, or persistent, a school is obligated under Title IX to take effective steps to end the harassment.

### **BULLYING, CYBERBULLYING, AND SEXUAL HARASSMENT**

Many forms of bullying, including hazing and cyberbullying, constitute sex-based harassment that is prohibited under Title IX. Such harassment includes demeaning a student because of his or her gender or sexual activity. For example, harassment may include common behaviors such as using cell phones or the Internet to target students by calling them sexually charged epithets like “slut” or “whore”; spreading sexual rumors; rating students on sexual activity or performance; disseminating compromising photographs of a student; or circulating, showing, or creating emails or websites of a sexual nature. Conduct often dismissed as just “boys being boys” or “mean



girls,” when severe, can actually be prohibited harassment.

In order to clarify schools’ obligations under Title IX with regard to harassment, OCR issued a Guidance document in October 2010 specifying that Title IX prohibits sex-based bullying and harassment that interferes with a student’s education, whether it is conducted in person or in electronic form. The Guidance states, “bullying fosters a climate of fear and disrespect that can seriously impair the physical and psychological health of its victims and create conditions that negatively affect learning, thereby undermining the ability of students to achieve their full potential.”<sup>2</sup>

---

## **Scope of Harassment at the K-12 Level**

Bullying and other forms of harassment are prevalent in schools. Recent surveys have found that both male and female students are affected in large numbers, although girls face harassment more frequently than boys. Harassment can have serious emotional consequences for these students; it can also cause educational problems such as difficulty concentrating on schoolwork, absenteeism, and poor academic performance.<sup>3</sup>

### **ELEMENTARY SCHOOL**

A 2010 nationwide survey of more than 1,000 students and 1,000 teachers at elementary schools, conducted by the Gay, Lesbian and Straight Education Network (GLSEN), found that sexual harassment is common even though most schools have anti-bullying and/or anti-harassment policies in place:<sup>4</sup>

- Three-quarters of all elementary school students (75%) reported that students at their school are called names, made fun of, or bullied with at least some regularity.

## SEXUAL HARASSMENT RESOURCES

### **Crossing the Line: Sexual Harassment at School.**

American Association of University Women (AAUW).  
<http://www.aauw.org/learn/research/crossingtheline.cfm/>.

**Title IX Protections from Bullying & Harassment in School: FAQs for Students.** National Women's Law Center (NWLC). Available at <http://www.nwlc.org/resource/title-ix-protections-bullying-harassment-school-faqs-students>.

**Cyberbullying and Sexual Harassment: FAQs about Cyberbullying and Title IX.** NWLC. Available at <http://www.nwlc.org/resource/cyberbullying-and-sexual-harassment-faqs-about-cyberbullying-and-title-ix/>.

**Pregnancy Harassment Is Sexual Harassment: FAQs about Title IX and Pregnancy Harassment.** NWLC. Available at <http://www.nwlc.org/sites/default/files/pdfs/titleixpregnancyharassmentfactsheet.pdf>.

**Drawing the Line: Sexual Harassment on Campus.** AAUW Educational Foundation. Available at <http://www.aauw.org/learn/research/upload/DTLFinal.pdf>.

**Harassment-Free Hallways: How to Stop Sexual Harassment in School.** AAUW Educational Foundation. Available at <http://www.aauw.org/learn/research/upload/completeteleguide.pdf>.

- Nearly half of elementary school teachers (47%) believe that bullying, name calling, or harassment is a very serious or somewhat serious problem at their school.
- Students who do not conform to traditional gender norms are more likely than others to say they are called names, made fun of, or bullied at least sometimes at school (56% versus 33%).
- One-third of students (33%) have heard kids at school say that girls should not do or wear certain things because they are girls. Even more (39%) have heard their peers say that boys should not do or wear certain things because they are boys.

- Nearly half of all teachers (48%) reported that they hear students make sexist remarks at their school.

## MIDDLE AND HIGH SCHOOL

Sexual harassment is part of everyday life at many middle and high schools. A nationally representative survey of 1,965 students in grades 7–12 found that nearly half of students (48%) experienced some form of sexual harassment during the 2010–2011 school year.<sup>5</sup> The majority of those students (87%) said it had a negative effect on them. Nearly all the behavior documented in the survey was peer-to-peer sexual harassment.

Other findings include the following:

- Girls were significantly more likely than boys to face sexual harassment, although the numbers for both were high, with 56% of girls and 40% of boys reporting that they had been sexually harassed.
- Sexual harassment by text, email, Facebook, or other electronic means affected 30% of all students. Many of the students who were sexually harassed through cyberspace were also sexually harassed in person.
- Verbal harassment was the most frequently cited behavior, reported by 46% of girls and 22% of boys. Physical harassment was also disturbingly common, particularly among girls. Unwelcome touching was reported by 13% of girls and 3% of boys, while 4% of girls and less than 1% of boys said they had been forced to do something sexual.
- Being called gay or lesbian in a negative way was reported by girls and boys in equal numbers (18%), although reactions differed, with 21% of boys and 9% of girls identifying it as their worst experience with harassment.
- The survey revealed a cycle of harassment, with many victims reporting that they victimized others. Most students who admitted to sexually harassing another student (92% of



girls and 80% of boys) were targets of sexual harassment themselves.

### HARASSMENT OF LGBT STUDENTS

Another national survey looking specifically at the experiences of LGBT students in sixth through twelfth grades found that the overwhelming majority of these students face some form of sex-based harassment:<sup>6</sup>

- Nearly nine out of ten LGBT students (85%) were verbally harassed at school because of their sexual orientation; 64% were harassed because of their gender expression.

- More than one-third of these students (40%) were physically harassed (e.g., pushed or shoved) at school in the past year because of their sexual orientation, and 27% were physically harassed because of their gender expression.

- One in five (20%) were physically assaulted (e.g., punched, kicked, injured with a weapon) because of their sexual orientation, and 13% because of their gender expression.

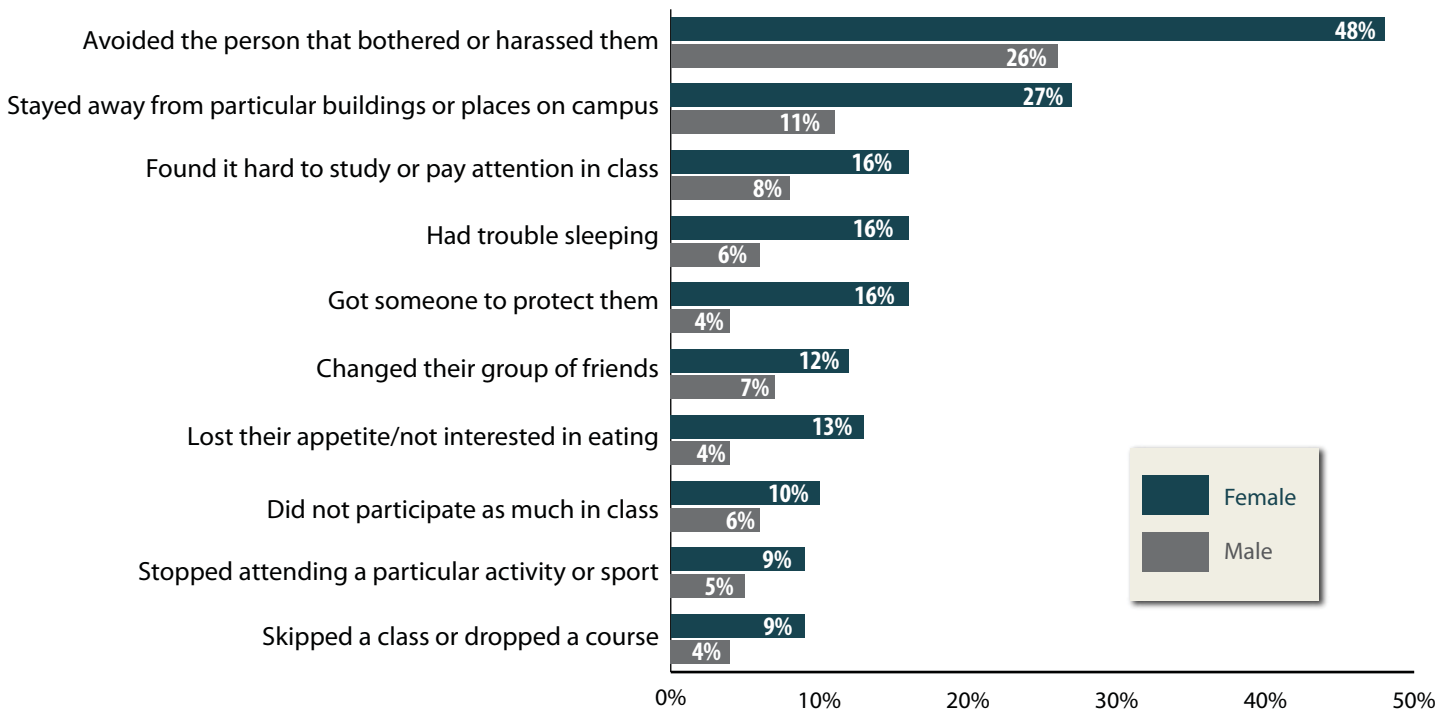
- More than half of LGBT students (53%) were harassed or threatened by their peers via electronic media.

## Sexual Harassment on College Campuses

Sexual harassment is prevalent on college campuses and can prevent students, both male and female, from receiving the full social and academic benefits of higher education. Creat-

ing a campus environment that is free from bias and harassment is important both for ensuring success in education and for shaping

### Effects of Sexual Harassment on the Educational Experience of College Students, by Gender



NOTE: Base = Respondents who experienced harassment (n=1,225); 659 female and 556 male college students ages 18–24.

SOURCE: AAUW Educational Foundation, *Drawing the Line: Sexual Harassment on Campus*, 2005.

the attitudes and behaviors that will govern the nation's future workforce and broader society.

A research report from the American Association of University Women, *Drawing the Line: Sexual Harassment on Campus*,<sup>7</sup> found that sexual harassment on campus is widespread yet often goes unreported:

- Nearly two-thirds of college students, including 62% of women and 61% of men, experience some type of sexual harassment.
- Fewer than 10% of these students tell a college or university employee about their experiences, and an even smaller number report them to a Title IX coordinator.
- LGBT students are more likely to be harassed; nearly three-quarters (73%) say they have experienced sexual harassment on campus.
- Men and women are equally likely to be harassed, but in different ways and with dif-

ferent responses. Women are more likely to be upset, angry, or afraid after being sexually harassed, and are also more likely to drop a class, avoid an area or activity, or otherwise change their behavior in ways that affect their educational experience.

- Men are more likely than women to harass, although substantial numbers of both sexes are involved; 51% of male students admit to sexually harassing someone in college, compared with 31% of female students.

A campus culture that tolerates inappropriate verbal and physical contact and that intentionally or unintentionally discourages reporting these behaviors undermines the emotional, intellectual, and professional growth of millions of young adults and violates Title IX. Sexual harassment on campus takes an especially heavy toll on young women, making it harder for them to get the education they need to take care of themselves and their families in today's economy.

### Middle and High School Students Speak: Emotional Impact of Sexual Harassment

"I felt threatened for my personal safety."

—9th-grade boy

"Very scared."

—10th-grade girl, on being touched in an unwelcome, sexual way

"Everyone was saying I was gay, and I felt the need to run away and hide."

—9th-grade boy

"I thought of suicide."

—8th-grade girl, on being the target of sexual rumors

"An 8th-grade guy passed by me and said, really softly, 'What's up, sexy?' and then kept on walking. It really creeped me out."

—7th-grade girl

SOURCE: AAUW. *Crossing the Line: Sexual Harassment at School*, 2011.

## Title IX Protection Against Sex-Based Harassment

### ENFORCEMENT AND REDRESS

In 1992, the Supreme Court recognized that sexual harassment is a type of sex discrimination prohibited by Title IX and held that monetary damages are available in an action brought to enforce Title IX.<sup>8</sup> In the 1998 case of *Gebser v. Lago Vista School District*, the Court established the standard for recovering damages in a harassment case: A harassed student must show that a school official with authority to take corrective measures had "actual knowledge" of the harassment and responded with "deliberate indifference"—a higher standard than exists for employees who are sexually harassed.<sup>9</sup>

A year later, in *Davis v. Monroe County Board of Education*, the Supreme Court ruled that

schools may also be liable for damages under Title IX for peer-on-peer harassment. To recover damages, the harassed student must show that the school had actual knowledge of the harassment and responded with deliberate indifference, and that the harassment was “so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.”<sup>10</sup> The Court made clear that these standards are limited to private actions for monetary damages.<sup>11</sup>

In addition to filing a lawsuit for damages, a student who has been harassed can file a suit for injunctive relief or seek a remedy from OCR. OCR has repeatedly made clear in its Guidance documents that if a school knows, or *should know*, that a hostile environment exists, it is “responsible for taking immediate effective action to eliminate the hostile environment and prevent its recurrence.” A school also has a responsibility “to remedy the effects on the victim that could reasonably have been prevented had the school responded promptly and effectively.”<sup>12</sup>

In 2009, in a unanimous decision, the Supreme Court clarified that Title IX is not the exclusive mechanism for addressing gender discrimination in schools.<sup>13</sup> Plaintiffs are also able to bring suits under 42 U.S.C. § 1983 for gender discrimination in schools that violate the Equal Protection Clause, so multiple avenues of relief exist for those who have experienced discrimination in education on the basis of sex.<sup>14</sup>

### **REQUIRED PROCEDURES FOR RESPONDING TO HARASSMENT**

An April 2011 Guidance document from OCR noted the seriousness of sexual harassment, including sexual violence, and spelled out Title IX’s procedural requirements for schools in responding to reported incidents:<sup>15</sup>

1. Institutions covered by Title IX are required to create and widely distribute a notice of

### **College Students Speak: Educational Impact of Sexual Harassment**

“I felt violated and could not focus on my classes. I also felt limited in where I could go on campus.”

– Female, 4th year

“They [harassers] distract from the working environment and make it harder to concentrate because you become paranoid.”

– Male, no year given

“It makes me feel very uncomfortable and it affects my willingness to accept the advice or lectures offered by professors.”

– Female, 4th year

“In school if you let things get to you, you aren’t able to perform. Best thing is to just shake it off and keep going.”

– Male, no year given

“I felt uncomfortable and did not want to be in class.”

– Female, no year given

SOURCE: AAUW Education Foundation. *Drawing the Line: Sexual Harassment on Campus*, 2005.

nondiscrimination, designate at least one employee to coordinate its efforts, and adopt and publish grievance procedures for prompt and equitable resolution of complaints of sex discrimination, including sexual harassment and sexual violence.

2. Schools must ensure that their employees are trained to identify harassment and report it to appropriate school officials. In addition, schools must provide training so officials with the authority to address harassment know how to respond properly.
3. When a harassed student or other party files a complaint, the school must investigate the allegations in a prompt, thorough, and impartial way. Both parties must have an equal opportunity to present witnesses and other evidence. In determining whether sexual harassment occurred, the school must



use the “preponderance of the evidence” standard of proof; in other words, the complainant must show that it is more likely than not that the sexual harassment occurred.

4. It is improper for a school to require a student who complains of harassment to work out the problem

directly with the alleged perpetrator. In cases of sexual assault, even voluntary mediation is not appropriate.

5. Both parties must be notified in writing about the outcome of the complaint and any appeal.

To create a school environment in which all students can succeed, students must feel comfortable acknowledging and reporting harassment, and schools must respond in accordance with Title IX requirements.

---

## NCWGE Recommendations

- Congress should enact legislation to ensure that students receive the same level of protection from harassment in school that employees receive in the workforce. Schools, like employers, should be obligated to prevent harassment and to address any harassment that they know about, or should know about. Also, harassment should be deemed to create a hostile environment when it is sufficiently severe or pervasive to deny a victim access to the educational opportunities and benefits provided by the school.
- Congress should pass the Student Non-Discrimination Act, which would establish a federal ban on discrimination and harassment in public K-12 schools based on a student’s actual or perceived sexual orientation or gender identity. Congress should also pass the Safe Schools Improvement Act, which would require schools and districts to develop comprehensive student conduct policies that include clear prohibitions regarding bullying and harassment.
- OCR should conduct public education and technical assistance activities to guide school districts in their compliance efforts, particularly in light of the October 2010 and April 2011 Guidance documents issued and recent technological developments affecting cyberbullying and harassment.
- Educational institutions at all levels should create clear and accessible sexual harassment policies to protect and educate students. These policies should be part of school discipline policies and codes of conduct and should include provisions for effectively protecting students after harassment has occurred.<sup>16</sup> These policies also should protect against harassment based on actual or perceived LGBT status.
- Title IX coordinators and their respective schools/universities should proactively disseminate information and conduct trainings in the school and campus community to ensure that students and employees are aware of sexual harassment policies, as well as the school’s process for filing complaints.
- Schools must safeguard harassment victims by providing close follow-up, including working with victims’ families, until the danger of continued harassment has passed.
- Students, faculty, staff, and parents/guardians should talk openly about attitudes and behaviors that promote or impede progress toward a harassment-free climate in which all students can reach their full potential.



---

## References

1. U.S. Department of Education Office for Civil Rights (OCR), *Dear Colleague Letter on Sexual Harassment and Sexual Violence* (April 4, 2011). Available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf/>.
2. OCR, *Dear Colleague Letter on Bullying and Harassment* (Oct. 26, 2010). Available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf/>.
3. D.J. Chesire. *Test of an Integrated Model for High School Sexual Harassment* (Doctoral dissertation). 2004. Available from Proquest Dissertations and Theses database (UMI No. 3196663).
4. Gay, Lesbian and Straight Education Network (GLSEN), *Playgrounds and Prejudice: Elementary School Climate in the United States*. 2012. [http://www.glsen.org/binary-data/GLSEN\\_ATTACHMENTS/file/000/002/2027-1.pdf/](http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/002/2027-1.pdf/).
5. American Association of University Women (AAUW). *Crossing the Line: Sexual Harassment at School*. 2011. <http://www.aauw.org/learn/research/crossingtheline.cfm/>.
6. GLSEN, *The 2009 National School Climate Survey*. [http://www.glsen.org/binary-data/GLSEN\\_ATTACHMENTS/file/000/001/1675-2.pdf/](http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1675-2.pdf/).
7. AAUW Educational Foundation, *Drawing the Line: Sexual Harassment on Campus*, 2005. Available at <http://www.aauw.org/learn/research/upload/DTLFinal.pdf/>.
8. *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992).
9. *Gebser v. Lago Vista Independent School Dist.* 524 U.S. 274 (1998).
10. *Davis v. Monroe County Board of Education*, 526 U.S. 629, 650 (1999).
11. *Ibid.* at 639; *Gebser*, 524 U.S. at 283.
12. OCR, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX* (January 19, 2001). Available at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html/>.
13. *Fitzgerald v. Barnstable School Committee*, 555 U.S. 246, 25–59 (2009).
14. Although the facts of the Fitzgerald case had to do with sexual harassment, the Supreme Court's holding applies more broadly to all types of cases regarding sex discrimination in schools.
15. OCR, *Dear Colleague Letter on Sexual Harassment and Sexual Violence* (April 4, 2011). Available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf/>.
16. AAUW Educational Foundation, *Harassment Free-Hallways: How to Stop Sexual Harassment in School* (2004). Available at <http://www.aauw.org/learn/research/upload/completeguide.pdf/>.