

# TITLE IX

## FACT SHEET

# Cyberbullying and Sexual Harassment: FAQs About Cyberbullying and Title IX

### What is **cyberbullying**?

Cyberbullying is the use of communications technology to harm, threaten, or otherwise victimize another person. Cyberbullying can take many forms. Especially among youth, some frequent examples include offensive texts or instant messages, rumor-spreading emails, videos cruelly mocking other students posted to video-sharing sites like YouTube, the creation of Facebook or MySpace pages that humiliate other students, and forwarding "sexts," private messages or intimate images sent from one student to another, to other students or even to the entire school. These are just a few of the many ways that children and youth use technology to attack and personally demean others.

While the basic elements of cyberbullying resemble "traditional" bullying and harassment, cyberbullying has the additionally painful element of inescapability—the tormenters can reach the victim at literally any time of day, in any place, including at home, at soccer practice, or at an after-school job. Cyberbullying is also unique with respect to the speed and ease with which rumors, taunts and slurs can be disseminated and with which other students can be recruited to join in ganging up on the target. Further, the relative anonymity of cyberbullying increases its frequency and intensity, since it's easier to say things online than to a person's face.

### Can **cyberbullying** also be sexual harassment?

Much cyberbullying *is* sexual harassment. Conduct does not have to be sexual in nature to constitute harassment. It can also include demeaning a person

because of that person's gender or that person's sexual activity. For example, sexual harassment can include harassing a person because girls should not take shop classes, or be a math whiz, or play a particular sport. Other examples include using cell phones or the internet to target students with sexual epithets like "slut" or "whore," disseminating compromising photographs of a student, or spreading rumors about a student's sexual activity or partners. Conduct too often dismissed as just "boys being boys" or "mean girls," when severe, can actually be prohibited harassment.

### Does the law prohibit **sexual harassment** in schools?

Yes. Title IX is a federal law that prohibits discrimination on the basis of sex in schools that receive federal funding. Sexual harassment is a form of sex discrimination, so sexual harassment is prohibited by Title IX. In addition, some states have separately outlawed sexual harassment, and some schools and districts have policies prohibiting sexual harassment.

### Must schools respond to **cyberbullying**?

Often, yes. Sexual harassment—including sexual harassment in the form of cyberbullying—can make the school environment hostile for a student when it is severe or pervasive enough to interfere with the student's education. All schools covered by Title IX have an obligation to take prompt and effective action to end hostile environments caused by sexual harassment, prevent the recurrence of such harassment, and remedy its effects. And in lawsuits, schools that have actual knowledge of harassment and are deliberately indifferent to it may be held liable for damages.

In addition, as a matter of educational policy schools *should* respond to cyberbullying, because students cannot learn and succeed if they do not feel safe at school. A positive, safe, and respectful school environment is critical to student achievement, so it is in everyone's best interest for schools to do all they can to detect, swiftly address, and ultimately deter cyberbullying and other forms of harassment.

### What about **cyberbullying** that happens outside of school?

Some schools question whether they can get involved in cyberbullying that is done "off campus," from home computers, cell phones, or elsewhere, because of concerns about students' rights to free speech. However, courts have held that schools may discipline students for off-campus cyberspeech consistent with the First Amendment if it was reasonably foreseeable that the speech would create a substantial disruption in the school environment.

In order to clarify schools' obligations, the Department of Education's Office for Civil Rights (OCR) issued a "Dear Colleague" letter in October 2010 to make it clear that sex-based bullying and harassment that is severe or pervasive enough to interfere with a student's education, although it may occur in electronic form, is still prohibited by Title IX. OCR did not distinguish between on- and off-campus conduct.

In short, Title IX requires schools to respond to hostile environments in their education programs caused by sexual harassment, regardless of where—or in what form—the conduct occurs. Though courts have not yet addressed the intersection of Title IX and the First Amendment, if sexual harassment in the form of off-campus cyberbullying creates a hostile environment for a student, it will likely also be reasonably foreseeable that the conduct would cause a substantial disruption in the school. In such a case, a school would be required to intervene under Title IX and would be constitutionally able to address the harmful conduct without impermissibly violating its students' rights to free speech.

### What can students and their families do to combat cyberbullying?

- Don't respond to cyber attacks with bad or risky behavior of your own.
- Keep evidence of the harassment. For example, print out copies of harassing text messages and emails, keep harassing voicemails, and keep a record of harassing phone calls.
- Immediately report the harassment to school administrators, including the principal and your school's Title IX Coordinator. Make sure the school has actual knowledge of the harassment, and ask the school to address it and prevent it from happening again.
- Be persistent. If the harassment continues, make sure administrators know the harassment is ongoing and that you expect them to intervene and protect you or, if a parent, your child.
- Keep records of the school's response(s) to your complaint(s).

### What can schools do to combat cyberbullying?

- Do not just ignore allegations of cyberbullying, or treat it as just "kids being kids." Many serious incidents can be prevented if victims' cries for help are answered or rumors of harassment investigated more thoroughly.
- Be proactive. Instead of just dealing with individual incidents of harassment as they occur, provide education for students and staff about appropriate behavior.
- Contact the parents of the perpetrators so they can be involved with disciplining their children; also reach out to the parents of the victim to make sure they are aware of the situation and what you are doing to address it.
- Make sure that any response to the conduct is tailored to the school environment. Courts have held that responses to harassment that are objectively reasonable but which the school knows are ineffective can constitute deliberate indifference, for which the school can be held liable.
- Consider both classroom-based and school-wide interventions, including positive behavior interventions and support.
- Make sure the burden of any actions taken to correct and prevent the harassment falls on the accused, not the victim.

**Are you being bullied or harassed at school? Email us at [info@nwlc.org](mailto:info@nwlc.org).**