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Submitted via www.regulations.gov

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Re: Docket ID ED-2023-OPE-0207, Request for Information on Sexual Violence at Educational Institutions

Dear Secretary Cardona, Assistant Secretary Paydar, and Deputy Assistant Secretary Schott:

The National Women's Law Center ("NWLC") submits this comment in response to the request for information from the Department of Education ("the Department") regarding information on sexual violence at educational institutions.

NWLC is a nonprofit organization that has worked since 1972 to combat sex discrimination and expand opportunities for women and girls in every facet of their lives, including education. Founded the same year as Title IX of the Education Amendments of 1972 was enacted, NWLC has participated in all major Title IX cases before the Supreme Court as counsel¹ or amicus. NWLC is committed to eradicating all forms of sex discrimination in school, including sexual violence, discrimination against LGBTQI+ students, discrimination against pregnant and parenting students, and sex discrimination against students who are vulnerable to experiencing multiple forms of discrimination, such as girls of color and disabled girls. We equip students with the tools to advocate for their own Title IX rights at school, assist policymakers in enforcing Title IX and strengthening protections against sex discrimination, and litigate on behalf of students whose schools fail to adequately address their reports of sex discrimination in violation of Title IX.

Below are NWLC's comments in response to Questions 2, 3, 4, 5, 6, and 7 of the request for information, which are applicable to elementary, secondary, and postsecondary educational settings.

Q2. How can educational institutions best provide survivor resources, including health care, sexual assault kits, sexual assault nurse examiners, culturally responsive and linguistically inclusive standards of care, trauma informed services, academic supports, and access to confidential advocacy and support services?

1. Supportive measures

NWLC and student survivor- and youth-led organization, Know Your IX, published a [Supportive Measures FAQ](#) for students and school staff to better understand what supportive measures are available to student survivors under Title IX. These measures can be crucial for restoring or preserving student survivors' access to educational benefits and opportunities. The following is a summary of relevant portions of the FAQ. (See **Q5** below for suggestions on culturally responsive care.)

All school staff who are involved in providing or enforcing a supportive measure should be informed of such measures in writing, so they can proactively implement the measure. For example, if a survivor can have extra time on assignments or exams, their teachers or professors and TAs should receive a written copy of this supportive measure. Similarly, if a complainant has a one-way no-contact order against the respondent, the

¹ E.g., *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167 (2005); *Davis v. Monroe Cnty Bd. of Educ.*, 526 U.S. 629 (1999).

school should give a written copy of it to both parties' instructors, academic advisors, student life staff, club advisors, athletics coaches, and deans or assistant principals, so they can all help enforce it.

Schools should also designate a staff member who can authorize supportive measures without requiring students to share information that could trigger a mandatory report to police. Many survivors may be afraid to request the supportive measures they need to stay in school because they are afraid of interacting with police, and this can be especially pronounced for students who are Black, Latinx, Muslim, and/or immigrants.

Safety measures. If a survivor does not feel safe at school due to harassment, the school can offer the following supportive measures:

- Issue a *one-way (or unilateral)* no-contact order that prohibits the respondent from directly communicating² with the complainant, both in person and online.
- Move the complainant to a different class, dorm, lunch period or dining hall, campus workplace, and/or transportation route to and from these places, if requested by the complainant.
- Give the complainant a campus escort between classes and other school activities.
- If the respondent is a *student*, move the respondent to a different class, dorm, lunch period or dining hall, campus workplace, and/or transportation route. The school can and should do this without forcing the complainant to move too.
- If the respondent is a *student-employee*: supervise the respondent in their workplace interactions with other students; or if there is an investigation, put them on paid administrative leave during the investigation.³
- If the respondent is a *non-student employee*, and there is an investigation, put them on paid or unpaid administrative leave during the investigation.
- If the respondent is *not a student or employee*, ban them from coming onto school property.

Academic measures. If the harassment and its impact on the survivor has made it harder for a survivor to learn or attend school, the school can offer the following supportive measures:

- Provide any excused late arrivals, absences, or leaves of absence that are needed, if requested.
- Allow the complainant more time to submit an assignment or take an exam, or an opportunity to resubmit an assignment or retake an exam.
- Allow the complainant to take a leave of absence, withdraw from a class (without putting a "W" on their transcript), or retake a class (without charging them for tuition again).
- Allow the complainant to attend classes online by joining the physical classroom via a Zoom screen, enrolling in a separate online class, or recording lectures and providing additional office hours to ensure they still have the opportunity to ask questions.
- Provide a tutor or connect the complainant to tutors outside of school and help pay for the tutoring and any related transportation costs for the complainant.
- Adjust the complainant's transcript so that their grades are not negatively impacted because of the harassment: *e.g.*, remove a bad grade, remove an affected assignment or test from the final grade, change a C or D to a Pass, or assign another instructor to regrade any assignments or exams that were unfairly graded (if the instructor was the harasser).
- Allow the complainant to remain in any school activities, leadership positions, honors programs, campus jobs, or scholarships that have a GPA, credit, or attendance requirement, even if they no longer meet those requirements.
- If the complainant has a scholarship based on participation in an extracurricular activity that is shared with the respondent, offer to convert the scholarship to one not based on participation in that activity.
- Reimburse the complainant for tuition or provide a tuition credit on any classes not taken or finished, and apply any retroactive reimbursements as necessary.

Health measures. If the harassment has affected a survivor's physical or mental health, the school can offer the following supportive measures:

- Help schedule visits for the survivor with a school's nurse, therapist, psychologist, or another school staff member who is not their guidance counselor or academic advisor. This is important so that the guidance counselor or academic advisor can write the survivor a fair recommendation letter for college, internships, jobs, or graduate school without being biased from other interactions with the student outside of their guidance counselor or academic advising responsibilities. If the school does not have a

² A one-way no-contact order does not necessarily prohibit the respondent from being at the same school-wide events as the complainant.

³ Paid administrative leave during the investigation is important to ensure the respondent can continue to afford their education.

nurse, therapist, or psychologist, it can give the complainant information about therapists and psychologists nearby and should help pay for these appointments and any related transportation costs.

- Arrange for the complainant to be able to take a break or leave the classroom whenever they feel anxious or afraid, without having to get permission each time from their instructor.
- Help the complainant find other local health and other services, such as a local hospital, rape crisis center, victim advocate, disability advocate, addiction counselor, housing advocate, or lawyer.

Disability accommodations. Students who have a preexisting disability or develop a new disability because of harassment (e.g., anxiety, depression, post-traumatic stress disorder) have a right to supportive measures or accommodations under both Title IX and Section 504. See NWLC's fact sheet [Survivor Justice Is Disability Justice](#). Schools should enable collaboration between their disability and Title IX offices to comply with legal requirements as well to ensure that disabled students are given appropriate and effective supportive measures.

Educational conversations. Schools can always have a non-punitive, educational conversation with respondents to explain what the school's policies on sex-based harassment are, why the respondents' behavior towards the complainant is harassment, and address ways for respondents to change their behavior. These conversations are not considered discipline and are especially constructive for younger students.

2. Confidential advocacy and support services

Making confidential services available, whether or not a survivor wishes to initiate a formal complaint, is important to support survivors while respecting their autonomy and privacy—especially when the survivor is an adult. When schools act against survivors' wishes in initiating formal investigations related to harassment, this can lead to educational disengagement, including withdrawal from extracurricular activities, campus life, and academic and honor societies.⁴

Schools should adopt the following policies with respect to confidential employees—employees with whom survivors can privately discuss their victimization with and seek information, without fear that an unwanted report might be made to the Title IX coordinator or law enforcement:

- Designate at least one confidential employee (preferably a diverse set of employees proportional to student enrollment). Employees who work in victim services or advocacy offices, mental health services, and campus resource centers, or offices for women, LGTBQI+ students, disability services, and other minority students who are particularly vulnerable to sexual misconduct should be categorically designated as confidential employees. If it is helpful, enter into a memorandum of understanding with local community-based organizations that serve survivors to provide confidential employees.
- Require confidential employees to clearly indicate their confidential status on their office doors, in their email signatures, on their website profiles, in employee directories, and in other relevant locations.
- Prohibit confidential employees from serving as advisors in Title IX investigations.

Schools should require confidential employees to tell a disclosing survivor both orally and in writing:

- How to report the incident to the Title IX coordinator.
- How the Title IX coordinator can help them—by offering supportive measures (even without an investigation), opening an investigation, and/or facilitating an informal resolution.
- That the confidential employee will not report the incident to the school.

K12 schools. For disclosures of sex-based harassment that do not rise to the level of possible child abuse that may trigger state mandatory reporting laws, confidential employees in K-12 schools should serve as a fully confidential resource for children, without reporting to either the Title IX coordinator or law enforcement. They should also offer to help the student report the harassment to the Title IX coordinator (while making clear that they would not do so without the student's consent).

Higher education. When a non-confidential employee at an institution of higher education receives a disclosure in the following situations, they should treat it as confidential, and the school should respond by creating school-wide training and prevention programs and ensuring that students are aware of their reporting options and resources for survivors:

⁴ Merle H. Weiner, *A Principled and Legal Approach to Title IX Reporting*, 85 Tenn. L. Rev. 71, 76 (2017); Carly P. Smith, Marina N. Rosenthal, & Jennifer J. Freyd, *The UO Sexual Violence and Institutional Betrayal Campus Survey* 34-36 (Oct. 24, 2014), <https://dynamic.uoregon.edu/jjf/campus/SmithRosenthalFreydGSU22-24October2014.pdf>.

- At a public awareness event (e.g., Take Back the Night).
- In an application (e.g., personal statement or interview).
- In an anonymous school climate survey.

3. Trauma-informed approach

Training for Title IX personnel should include the following about common responses to trauma:

- **Memory:** People who have experienced a traumatic event may not be able to recall some details of an event, may not recall some details in chronological order, or may recall some details better over time. This is because experiencing a traumatic event causes increased activity of the amygdala (responsible for fear and anxiety) and decreased activity in the hippocampus and prefrontal cortex (responsible for memory, attention, and executive control).⁵ As a result, traumatic memories are stored and retrieved differently from non-traumatic memories, and trauma can cause partial or full amnesia.⁶ Unfortunately, victims who recall memories in this way are often perceived as evasive or lying.⁷
- **During victimization:** Trauma can trigger a flight, fight, freeze, or fawn response.⁸ Many victims display counterintuitive behaviors during their assaults. For example, many victims often don't fight back due to tonic immobility (paralysis), dissociation (a feeling of leaving one's body), or a strategic decision to avoid physical injury or death. Survivors of any gender and with any genitalia can experience involuntary physiological stimulation despite a lack of consent or sexual desire. In addition, many survivors—70% of incapacitated survivors and 48% of violent rape survivors—have no injuries.⁹
- **After victimization:** Many survivors exhibit counterintuitive post-assault behaviors. For instance, survivors often delay reporting for many reasons, including because they do not always immediately recognize an assault as assault—particularly when the assailant is a romantic partner. Many victims contact their assailant after the assault in an attempt to normalize the encounter; sometimes, they try to reassert control by seeking a subsequent *consensual* encounter with their assailant. Furthermore, victims often appear emotionless or even smile or laugh when recounting their assault to avoid being labeled “hysterical,” to avoid letting their assailant see how much they are suffering, or as a form of self-preservation when repeatedly recounting a traumatic event.¹⁰

Training should emphasize that the presence or lack of certain behaviors *commonly* associated with trauma should not be seen as dispositive of whether a Title IX violation occurred in a *particular* case. Not all counterintuitive behaviors are necessarily driven by trauma, and Title IX personnel need not accept everything a party or witness recounts as true simply because evidence consistent with trauma is present. Nevertheless, it is critical for Title IX personnel to understand the *potential effects of trauma* so they can interview all parties and witnesses in an effective way. This benefits everyone:

- **Complainants:** Understanding the potential effects of trauma can help Title IX personnel ask questions that elicit more evidence without causing a complainant to withdraw or shut down. It can also help an interviewer avoid assuming that a complainant is necessarily lying simply because their behavior deviates from the stereotype of a “perfect victim.”
- **Respondents and witnesses:** A trauma-informed interview approach can benefit respondents and witnesses too, as they are likely anxious during an interview, even if not traumatized.¹¹

When interviewing a party or witness, Title IX personnel should:

- **Ask open-ended questions.** Research shows that even in the case of non-traumatic memories, witnesses make less accurate statements when responding to leading questions, compound or complex questions, rapid-fire questions, closed (yes-no) questions, double-negative questions, and questions

⁵ E.g., Christopher T. H. Liang et al., *Trauma-Informed Care Training for Educators: Some Preliminary Evidence*, 1 J. of Prevention and Health Promotion 240, 242 (2020); Linda Grabbe & Elaine Miller-Karas, *The Trauma Resiliency Model: A “Bottom-Up” Intervention for Trauma Psychotherapy*, 24 J. of the Am. Psychiatric Nurses Ass'n 76, 77 (2018).

⁶ Legal Momentum, National Judicial Education Program, *Judges Tell: What I Wish I Had Known Before I Presided in an Adult Victim Sexual Assault Case* 9 (Oct. 30, 2017), <https://www.legalmomentum.org/library/judges-tell-what-i-wish-i-had-known-i-presided-adult-victim-sexual-assault-case> [hereinafter *Judicial Manual*].

⁷ Jeffrey J. Nolan, Holland & Knight, *Fair, Equitable Trauma-Informed Investigation Training* 4 (July 2019), <https://www.hklaw.com/en/insights/publications/2019/07/fair-equitable-trauma-informed-investigation-training>.

⁸ *Id.*

⁹ *Judicial Manual*, *supra* note 6, at 5, 7, 9-10; Nolan, *supra* note 7, at 5.

¹⁰ *Judicial Manual*, *supra* note 6, at 7-9; Nolan, *supra* note 7, at 4-5.

¹¹ Nolan, *supra* note 7, at 8-10.

that jump around from topic to topic.¹² Traumatic memories are even more vulnerable to misleading, suggesting, and confrontational questioning.¹³ Similarly, children subjected to these types of questions, common in cross-examination, are more likely to repudiate accurate statements and reaffirm inaccurate ones.¹⁴

- Focus on what a witness can recall about their experience, including their thought processes and sensor perceptions. Do not demand that they “start at the beginning” and recount all details in a seamless, chronological manner.¹⁵
- Allow the witness to think and speak at their own pace. Don’t interrupt or try to fill pauses.¹⁶
- Ask for clarification. For example, if a complainant has engaged in a counterintuitive behavior or described the incident differently on different occasions, ask them in a respectful and nonjudgmental way to “help the investigator understand” their thought process or their different observations.¹⁷

Q3. What best practices should educational institutions consider for responding to and preventing sexual violence and dating violence on their campuses, including the online environment, and which may take into consideration an institution’s educational level, size, and resources?

In 2021, NWLC and Girls for Gender Equity published a report called [100 School Districts: A Call to Action for School Districts Across the Country to Address Sexual Harassment Through Inclusive Policies and Practices](#) detailing 12 comprehensive, intersectional, survivor-centered, and non-punitive policies that schools can adopt to prevent and address sex-based harassment, including sexual violence and dating violence, and intersectional harassment (e.g., harassment based on both sex and disability). While the report is focused on K-12 schools, all of the policy recommendations are applicable to institutions of higher education as well. The following is a summary of policy recommendations from this report on preventing and responding to sex-based harassment:

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

See **Q4.1** below and Advocates for Youth’s [Rights, Respect, Responsibility](#) curriculum for K12 students and the Future of Sex Education Initiative’s [National Sex Education Standards](#).

2. Train all staff on sex-based harassment

See **Q4.2** below.

¹² Emily Henderson, *Bigger fish to fry: Should the reform of cross-examination be expanded beyond vulnerable witnesses?*, 19(2) Int’l J. Evid. & Proof 83-99 (2015), <https://doi.org/10.1177/1365712714568072>.

¹³ Daisy A. Segovia et al., *Trauma memories on trial: is cross-examination a safeguard against distorted analogue traumatic memories?*, 25 Memory 95-106 (2017), <https://doi.org/10.1080/09658211.2015.1126608>.

¹⁴ Rhiannon Fogliati & Kay Bussey, *The Effects of Cross-Examination on Children’s Coached Reports*, 21 Psych., Public Policy, & Law 10 (2015) (cross-examination led children to recant their initial true allegations of witnessing transgressive behavior and significantly reduced children’s testimonial accuracy for neutral events); Saskia Righarts et al., *Young Children’s Responses to Cross-Examination Style Questioning: The Effects of Delay and Subsequent Questioning*, 21(3) Psych., Crime & Law 274 (2015) (cross-examination resulted in a “robust negative effect on children’s accuracy”; only 7% of children’s answers improved in accuracy); Fiona Jack and Rachel Zajac, *The Effect of Age and Reminders on Witnesses’ Responses to Cross-Examination-Style Questioning*, 3 J. of Applied Research in Memory and Cognition 1 (2014) (“adolescents’ accuracy was also significantly affected” by cross-examination-style questioning); Rhiannon Fogliati & Kay Bussey, *The Effects of Cross-Examination on Children’s Reports of Neutral and Transgressive Events*, 19 Legal & Crim. Psychol. 296 (2014) (cross-examination led children to provide significantly less accurate reports for neutral events and actually reduced the number of older children who provided truthful disclosures for transgressive events); Saskia Righarts, Sarah O’Neill & Rachel Zajac, *Addressing the Negative Effect of Cross-Examination Questioning on Children’s Accuracy: Can We Intervene?*, 37 (5) Law and Human Behavior 354, 354 (2013); Joyce Plotnikoff & Richard Woolfson, *‘Kicking and Screaming’: The Slow Road to Best Evidence, in Children and Cross-Examination: Time to Change the Rules?* 21, 27 (John Spencer & Michael Lamb eds. 2012) (a hostile accusation that a child is lying “can cause a child to give inaccurate answers or to agree with the suggestion that they are lying simply to bring questioning to an end”); Rachel Zajac & Harlene Hayne, *The Negative Effect of Cross-Examination Style Questioning on Children’s Accuracy: Older Children are Not Immune*, 20 Applied Cognitive Psychology 3 (2006) (43% of older children changed their originally correct answers to incorrect ones under cross-examination); Rachel Zajac et al., *Asked and Answered: Questioning Children in the Courtroom*, 10 Psychiatry, Psychology and Law 199 (2003); Rachel Zajac & Harlene Hayne, *I Don’t Think That’s What Really Happened: The Effect of Cross-Examination on the Accuracy of Children’s Reports*, 9(3) J. of Experimental Psych.: Applied 187 (2003) (“Cross-examination did not increase the accuracy of children who made errors in their original reports. Furthermore, cross-examination actually decreased the accuracy of children whose original reports were highly accurate.”).

¹⁵ Nolan, *supra* note 7, at 5.

¹⁶ Harter Secret & Emery LLP, *Conducting Trauma-Informed and Legally-Compliant Investigations, Hearings, and Appeals* 38-40 (2016), https://www.hsela.com/files/Conducting_Trauma-Informed_and_Legally-Compliant_Investigations_Hearings_and_Appeals.pdf.

¹⁷ Nolan, *supra* note 7, at 10.

3. Remove all police from schools

Police make schools more dangerous. School shootings result in nearly three times *more* deaths in schools where armed police are present.¹⁸ Students of color, especially Black and Indigenous students, are disproportionately arrested in schools. Black girls, trans, and gender nonconforming youth are also particularly vulnerable to sexual harassment and violence by school police (see 2024 report by In Our Names Network and Interrupting Criminalization: [Sexualization Not Safety: Black Girls, Trans, and Gender Nonconforming Youth's Experiences of Police Presence in Schools](#)).

Safety is created through building trust between adults and students; teaching students about consent, bodily autonomy, and healthy relationships; meeting the mental health and emotional needs of students and their families; and creating schools that are inclusive, affirming, and healing. However, these investments are often considered to be unaffordable but would not be if schools were to remove police from schools and reinvest those funds toward healing, restorative, and preventative tools. Many school districts across the country have already taken steps to remove police from schools.¹⁹

4. Invest in non-police school staff

Schools should ensure that there are many qualified staff—including counselors, social workers, psychologists, nurses, teachers, professors, and administrators—who are able to address students' emotional needs, respond to the social and emotional dynamics students navigate, and to help ensure young people understand healthy relationships and consent. Unfortunately, many schools have never invested meaningfully in hiring these staff. For example, in 2020, in New York City, the largest school district in the country, a student body of over 1 million students was served by only 1,456 school social workers and 2,892 counselors.²⁰

It is important to note that the “counselors not cops” frame requires truly decriminalizing schools, which means non-police school staff must also not serve as mere police proxies. For example, school-based social workers frequently make referrals to police and child welfare agencies, which can particularly deter survivors of color from seeking help. See ACLU's 2019 report [Cops and No Counselors](#).

5. Abolish dress codes

Dress codes promote rape culture and deprive students of equal opportunities to learn. Not only do dress codes frequently reflect sex and race stereotypes, but they are also often enforced in a manner that discriminates on the basis of gender, transgender status, race or color, and size (see NWLC's 2018 report, [Dress Coded: Black Girls, Black Bodies, and Bias in D.C. Schools](#)). When schools remove students—usually girls—from the classroom over a dress code violation, they send dangerous messages to all students that: (i) what girls look like is more important than what they think, (ii) girls are responsible for ensuring boys are not “distracted,” and (iii) girls provoke sexual harassment and violence. These harmful messages are exacerbated for girls of color—especially Black girls—who are more likely to be viewed as “promiscuous,” are more likely to be ignored or punished when they report sexual harassment and violence, and are more likely to be disciplined for a dress code violation.²¹

For all of these reasons, schools should eliminate dress codes. At a minimum, schools should implement a universal, inclusive, and gender-neutral dress code that does not perpetuate discriminatory stereotypes (see p.31-32 of *Dress Coded* report for minimum guidelines).

¹⁸ Jillian Peterson *et al.*, *Presence of Armed School Officials and Fatal and Nonfatal Gunshot Injuries During Mass School Shootings, United States, 1980-2019*, 2021 JAMA NETWORK OPEN 4(2) (Feb. 16, 2021), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2776515>.

¹⁹ See, e.g., Girls for Gender Equity, *Police-Free Schools Movement Map*, <https://www.ggenyc.org/the-schools-girls-deserve/police-free-schools-movement-map>; Kara Harris, *There's a Movement to Defund School Police, Too*, BLOOMBERG (Aug. 24, 2020), <https://www.bloomberg.com/news/articles/2020-08-24/minneapolis-denver-and-oakland-defund-school-police>.

²⁰ Girls for Gender Equity, *Assessing School Support Staff in A Time of Crisis* (Mar. 2021), <https://campaigns.ggenyc.org/wp-content/uploads/2021/04/2021-Report-on-School-Counselors-Social-Workers.pdf>.

²¹ See National Women's Law Center, *Dress Coded: Black Girls, Black Bodies, and Bias in D.C. Schools* (2018), <https://nwlc.org/resource/dresscoded/>; *infra* notes 36-37.

6. *Respect transgender and nonbinary students*

Trans and nonbinary students are more likely to experience sexual assault when they are restricted from using sex-separated facilities matching their gender identity.²² To protect trans and nonbinary students' right to equal educational opportunities, schools should ensure that:

- Trans and nonbinary students have full and equal access to sex-separate facilities and programs that match their gender identity, including restrooms, locker rooms, athletics programs, single-sex classes, and single-sex housing
- Single-occupancy facilities are made available as an option—but never a requirement—for any student who wants additional privacy.
- Trans and nonbinary students are addressed and referred to by their chosen names and pronouns, regardless of what is reflected in legal documents or official school records
- A student's transgender or nonbinary status or deadname is never disclosed to other students, school staff, or even family members (who often may be unaware or unsupportive of the student's gender identity) without the student's consent.

See GLSEN and National Center for Transgender Equality's [Model Local Education Agency Policy on Transgender and Nonbinary Students](#).

7. *Collect school climate survey data*

Climate surveys can inform school programs, policies, and practices for preventing and responding to all types of harassment, including sexual violence and dating violence. Effective school climate surveys:

- Ask about the prevalence and impact of different types of harassment (including sexual violence and dating violence), student attitudes toward harassment, student and staff perceptions of the effectiveness of school responses to harassment, and awareness of reporting and supportive measures for student victims.
- Ask voluntary demographic questions about race, ethnicity, gender, transgender status, sexual orientation, disability, religion, etc.
- Are confidential, fair, unbiased, scientifically valid, reliable, and implemented every 1-2 years among all students and school staff.
- Publish survey data online in an accessible and usable format for all students, families, and staff.

8. *Make it easy to report harassment*

Sex-based harassment (including sexual violence and dating violence) is vastly underreported,²³ but there are many ways schools can make reporting easier:

- Ensure harassment policies are written in plain language, available in multiple languages and accessible formats, and distributed widely among students, families, and school staff (see NWLC's [Model Student Sexual Harassment Poster](#), written at a 7th grade reading level).
- Assign at least one Title IX coordinator or liaison to each school building or campus (not just to the entire school district or university system).
- Create a mechanism for *anonymous* reporting, so that schools can identify and address patterns of sexual harassment while respecting students' privacy.
- Ensure students know that under the Title IX regulations, they can report *confidentially* and receive supportive measures without triggering a Title IX investigation. If there are certain situations where a school cannot honor a student's request for confidentiality and must initiate a Title IX investigation (e.g., the respondent is a serial harasser, a weapon was used, there are multiple harassers, or the harasser is an employee), ensure that students are aware of the limitations of confidential reporting at school and

²² Diane Ehrensaft & Stephen M. Rosenthal, *Sexual Assault Risk and School Facility*

Restrictions in Gender Minority Youth, PEDIATRICS (May 6, 2019), <https://pediatrics.aappublications.org/content/143/6>.

²³ GLSEN, *The 2021 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools* 25 (2022), <https://www.glsen.org/research/2021-national-school-climate-survey>; David Cantor *et al.*, *Report on the AAU Campus Climate Survey on Sexual Assault and Misconduct* at A7-27, A7-30, A7-92 (Oct. 15, 2019), <https://www.aau.edu/key-issues/campus-climate-and-safety/aa-campus-climate-survey-2019>; National Women's Law Center, *Let Her Learn: Stopping School Pushout for Girls Who Have Suffered Harassment and Sexual Violence* 2 (2017), https://nwlc.org/wp-content/uploads/2017/04/final_nwlc_Gates_HarassmentViolence-1.pdf; American Association of University Women, *Crossing the Line: Sexual Harassment at School* 2-3 (2011), <https://www.aauw.org/app/uploads/2020/03/Crossing-the-Line-Sexual-Harassment-at-School.pdf>.

know about options for confidential reporting to a local victim advocacy organization outside of school.

For school districts: Create a mechanism for minor students to report sexual violence and dating violence confidentially without triggering a mandatory report by the school district to local police. See the US government's guide to [state mandatory reporting laws](#).

- Provide annual training to all students, families, and school staff on what anonymous and confidential reporting options are available and what supportive measures are available to victims.
- Inform local community groups, such as local youth centers and cultural, religious, and LGBTQI+ organizations, on how students can report sexual harassment to their schools, so that community leaders can be effective partners in addressing sexual harassment when students turn to them for guidance.

9. Provide supportive measures to complainants

See **Q2.1** above and [Supportive Measures FAQ](#).

10. Protect—don't punish—complainants

Schools should refrain from disciplining students for the following conduct:

- Conduct disclosed as a result of the harassment being reported and investigated (e.g., consensual sexual activity, drug or alcohol use, trespassing, reasonable self-defense).
- Conduct that occurs because of the harassment (e.g., expressing age-appropriate trauma symptoms, missing class after the harassment).
- Telling other people about the harassment.
- Making a so-called "false" statement solely because the school determines that the harassment did not occur.

In addition, schools should refrain from:

- Disciplining a complainant for charges the school knew or should have known were filed for the purpose of retaliation (e.g., a respondent who has been disciplined for sex-based harassment files a counter-complaint against their victim alleging the victim was the actual harasser).
- Pressuring or requiring a complainant to take time off, transfer to another school, or enroll in an "alternative" education program that isolates them from their friends and instructors.
- Requiring a complainant to enter a confidentiality agreement as a prerequisite to obtaining supportive measures, an investigation, an informal resolution, or any other Title IX rights; or disciplining a complainant for violating such a confidentiality agreement; unless otherwise permitted by Title IX. (For example, schools can take reasonable steps to protect the privacy of parties, witnesses, and others while an investigation is pending.)

To safeguard against unfair discipline against survivors, schools should review disciplinary actions taken against students who have reported sex-based harassment to determine whether there is a causal connection between the harassment and the misconduct.

11. Ensure prompt and equitable investigations

In addition to what is explicitly required by the Title IX regulations, schools should take the following steps to ensure a prompt and equitable investigation of harassment:

- Finish investigations within 60 days after the filing of a complaint, except in extraordinary circumstances.
- Give timely written notice to all parties about each stage of the investigation, including updates of, and explanations for, any delay in the investigation.
- Give both parties equal rights to be interviewed, identify witnesses, submit and review evidence, be assisted by an advisor or support person, and appeal the school's decision.
- Require the parties to keep confidential any information they learn about each other during an investigation, without restricting their ability to discuss the allegations with others when seeking legal advice, counseling or other emotional support, or witnesses and other evidence.

- Unless required by law to provide cross-examination,²⁴ allow the parties to submit written questions that are posed by a neutral school official or hearing panel to the other party and witnesses.
- Apply a preponderance of the evidence standard to determine whether the harassment occurred.
- At the conclusion of an investigation, inform both parties of the decision and rationale. Inform the complainant of any supportive measures and any punishment of the harasser that directly affects the victim, such as a no-contact order, suspension, transfer, or expulsion. (But do not inform the respondent of supportive measures that pertain solely to the complainant.)
- Continue providing any necessary supportive measures to the complainant even if there is insufficient evidence to conclude that the harassment occurred.

In addition, schools should refrain from the following:

- Disbelieve complainants because of their clothing or appearance, alcohol or drug use, prior sexual history; or because they did not fight back, did not report immediately, continued dating or being friends with the respondent, or continued to do well in school
- Use mediation or conflict resolution to address sex-based harassment. Conflict resolution is inappropriate for resolving harassment because it assumes both the victim and harasser share responsibility for the harassment, can allow harassers to pressure survivors into inappropriate resolutions, and often requires direct interaction between the parties, which can be retraumatizing.

Finally, schools should use a trauma-informed approach when interviewing complainants (see **Q2.3** above).

12. Offer a restorative process as an option.

Schools should allow (but not require or pressure) parties to address sex-based harassment using a restorative process: a process to acknowledge the harm that occurred, center the victim's needs, and repair the harm caused. A restorative process first requires the wrongdoer to admit that they caused harm. The process must be driven by the victim's needs and desired outcomes—including what constitutes an adequate apology, changed behavior, restitution, and accountability. The victim is not required to forgive the wrongdoer. Studies have found that victims of sexual harm who undergo a well-implemented restorative process feel safe and respected and would recommend the process to others, and that students who cause sex-based harm achieve better learning outcomes through a well-implemented restorative process than through a traditional disciplinary process.²⁵

A restorative process allows the harmer to choose accountability over denial and allows shame to be constructive instead of destructive. By creating a space for the harmer to repair the harm caused and reenter the community, they are able to understand:

- My world will not end if I admit I was wrong.
- I will not be shunned forever.
- I am not defined by the worst thing I've ever done.

Furthermore, a restorative process recognizes that harmers have also been victims and can give them the skills they need to address their own past traumas.

The following requirements should be met before conducting a restorative process:

- All parties must give voluntary, informed, and written consent. See [Sample Agreement to Participate in Informal Resolution](#) on pages 31-33 as an example of what the parties and school can sign.
- The respondent must admit they caused sex-based harm to the complainant.
- The parties must agree not to disclose any information they learn about each other during the restorative process without the other party's consent, although they may discuss the allegations with others when seeking legal advice, counseling, or other emotional support, or with the participants in their restorative process. See [Sample Agreement to Participate in Informal Resolution](#) on pages 31-

²⁴ Only 2 federal appellate courts require institutions of higher education to use adversarial cross-examination. *Doe v. Univ. of Scis.*, 961 F.3d 203, 215 (3d Cir. 2020) (fundamental fairness requires private universities to provide cross-examination if credibility is at issue); *Doe v. Baum*, 903 F.3d 575, 581 (6th Cir. 2018) (due process requires public universities to provide cross-examination if credibility is at issue and serious sanctions are possible). The California Supreme Court also held in 2023 that private universities are not required to provide cross-examination. *Booermeester v. Carry*, 15 Cal. 5th 72 (2023), cert. denied, No. 23-464, 2023 WL 8531945 (U.S. Dec. 11, 2023).

²⁵ David Karp & Kaaren Williamsen, *Five Things Student Affairs Administrators Should Know About Restorative Justice and Campus Sexual Harm* 12 (2020), <https://www.naspa.org/report/five-things-student-affairs-administrators-should-know-about-restorative-justice-and-campus-sexual-harm1>.

33 as an example of what the parties and school can sign. And see [Sample Memorandum of Understanding: Restorative Justice Informal Resolution Agreement](#) on pages 34-37 as an example of what the school and local prosecutor can sign to ensure that the local prosecutor's office understands that information learned in the informal resolution is confidential will not be used in a criminal proceeding.

- The facilitator must be well-trained on restorative justice, sex-based harassment, and trauma-informed practices.
- The parties must be allowed to withdraw from a restorative process to begin a traditional disciplinary process or vice-versa at any time before the end of the process.

Q4. What factors should be considered as educational institutions develop or implement sex education programs, as appropriate, for students, training initiatives for school staff in sexual violence prevention, and equitably designed and applied discipline models?

The following is a summary of recommendations from NWLC's 2021 report [100 School Districts](#) on sex education and staff training:

1. Sex education

Schools should provide sex education to all students in every grade level. Providing sex education for K-12 students decreases the likelihood that a student will be a victim and/or perpetrator of sexual harassment, sexual violence, or dating violence.²⁶ K-12 students in every grade level should receive sex education that is comprehensive, evidence-based, medically accurate, age and developmentally appropriate, culturally and linguistically responsive, trauma-informed, and affirming of LGBTQI+ individuals. The curriculum should address a wide range of topics, including consent, healthy relationships, dating violence, child sexual abuse, and reproductive rights, health, and justice. See Advocates for Youth's [Rights, Respect, Responsibility](#) curriculum for K12 students and the Future of Sex Education Initiative's [National Sex Education Standards](#).

2. Staff training

Schools should provide ongoing training to all staff on sexual harassment, including custodial, dining, transportation, and clerical staff; school police and security guards; contractors; and administrators.

- *Skills:* Trainings should include how to recognize harassment and respond in the moment someone learns about it or observes it, how to notify the Title IX coordinator, where to find the school's policies, the difference between Title IX and state mandatory reporting obligations, and how to provide effective supportive measures to student survivors.
- *Victim-centered content:* Trainings should include content on the prevalence, dynamics, and underreporting of sexual harassment; the impact of trauma on victims and how to respond in a trauma-informed way; and how to recognize and avoid relying on rape myths and other stereotypes that label girls of color, pregnant or parenting students, LGBTQI+ students, and disabled students as more "promiscuous," more "aggressive," less credible, and/or less deserving of protection.²⁷
- *Format:* Trainings should be conducted at least every two years in person rather than online whenever possible and should include best practices, open discussions, and specific examples in the school setting.

Additional training should be provided to all Title IX personnel (*i.e.*, Title IX coordinators, investigators, decision-makers, and informal facilitators) on how to conduct a trauma-informed investigation (see **Q2.3** above), a lethality assessment, or an informal process; and how to comply with the school's procedures.

²⁶ Girls for Gender Equity, *How Comprehensive Sexual Health Education Can Decrease Sexual Harassment* (2019), https://campaigns.ggenyc.org/wp-content/uploads/2021/01/Sex-Ed-Prevents-Harassment_External-Copy.pdf; see also SEICUS, *If you care about sexual assault prevention ... Then you should care about SEX ED* (2023), <https://siecus.org/wp-content/uploads/2023/05/If-Then-Sexual-Assault.pdf>.

²⁷ See *infra* notes [Error! Bookmark not defined.](#)-37.

3. Discipline models

Schools should not punish students who report sex-based harassment. (See **Q3.10** above.)

Schools should ensure that all disciplinary processes give equal rights to complainants and respondents, and that complainants are not retraumatized by the investigation. (See **Q3.11** above.)

In lieu of a disciplinary process, schools should allow (but not require or pressure) parties to choose to address sex-based harassment using a restorative process. (See **Q3.12** above.)

Finally, schools should ensure that respondents who are found responsible for sex-based harassment receive proportionate and progressive correction. This is especially important for K12 respondents and some developmentally disabled respondents, who may not have known that their behavior was wrong and would benefit more from education than punishment. Even if a disciplinary process is used rather than a restorative process, the school should still try to include restorative and educational components, such that the respondent understands:

- The foundations of consent and healthy relationships
- The root causes of their violence, including how to address any past trauma.
- That they are not defined by their worst moments, and they can make amends to the complainant and change their future behavior.

Q5. What are culturally responsive and linguistically inclusive approaches to supporting survivors, which include consideration of race; ethnicity; national origin; limited English proficiency; religion; immigration status; lesbian, gay, bisexual, transgender; queer or intersex (LGBTQI+)status; ability; disability; socio-economic status; exposure to trauma, and other compounding factors?

Schools must use culturally responsive approaches when addressing sex-based harassment to ensure that all students receive the support they need when disclose or report harassment and that certain groups of students are not disbelieved, ignored, or punished when they seek help. For example, school officials should receive training on the following information:

- **Pregnant and parenting students** are often labeled as “promiscuous” because their pregnancy or child is evidence that they have previously engaged in sexual intercourse—regardless of whether it was consensual. As a result, they are often more vulnerable to harassment and more likely to be blamed for it.²⁸ For example, 56% of girls ages 14-18 who are pregnant or parenting have been kissed or touched without their consent.²⁹
- **LGBTQI+ students** are often perceived as “promiscuous,” “hypersexual,” “deviant,” or “attention-seeking” and therefore blamed for their own harassment.³⁰ 38% of LGBTQ girls ages 14-18 have been kissed or touched without their consent.³¹ Transgender and gender-nonconforming students are three times more likely than their peers to fear they will not be believed when reporting sexual assault, and many also fear their sexual assault will be minimized due to their harasser’s gender.³²
- **Disabled students** are often seen as less credible when reporting harassment and may also have greater difficulty describing or communicating about the harassment they experienced, particularly if

²⁸ Jennie M. Kuckertz & Kristen M. McCabe, *Factors Affecting Teens’ Attitudes Toward Their Pregnant Peers*, 16 *Psi Chi J. Undergraduate Rsch.* 33 (2011), https://www.psichi.org/resource/resmgr/journal_2011/spring11jnkuckertz.pdf.

²⁹ National Women’s Law Center, *Let Her Learn: Stopping School Pushout for Girls Who Are Pregnant or Parenting* 12 (2017), <https://nwlc.org/resources/stopping-school-pushout-for-girls-who-are-pregnant-or-parenting>.

³⁰ See, e.g., Gillian R. Chadwick, *Reorienting the Rules of Evidence*, 39 *CARDOZO L. REV.* 2115, 2118 (2018), <http://cardozolawreview.com/heterosexism-rules-evidence>; Laura Dorwart, *The Hidden #MeToo Epidemic: Sexual Assault Against Bisexual Women*, *MEDIUM* (Dec. 3, 2017), <https://medium.com/@lauramdorwart/the-hidden-metoo-epidemic-sexual-assault-against-bisexual-women-95fe76c3330a>.

³¹ National Women’s Law Center, *Let Her Learn: Stopping School Pushout for LGBTQ Girls* 2 (2017), <https://nwlc.org/resource/stopping-school-pushout-for-lgbtq-girls>.

³² David Cantor *et al.*, *Report on the AAU Campus Climate Survey on Sexual Assault and Misconduct* A7-27, A7-30–31 (Oct. 15, 2019), <https://www.aau.edu/key-issues/campus-climate-and-safety/aau-campus-climate-survey-2019> [hereinafter AAU Report].

they have a cognitive or developmental disability.³³ Disabled children and adults are about 3 times more likely than nondisabled peers to be sexually abused.³⁴

- **Girls and women of color** are labeled as “promiscuous,” less deserving of protection and care than white girls and women, or simply unable to be sexually harassed.³⁵ Latina girls and women are stereotyped as “hot-blooded,” Indigenous girls and women as “sexually violable” conquests, Black girls and women as “angry” or “aggressive,” and Asian American and Pacific Islander girls and women as “submissive.”³⁶ In addition, Black girls are often adultified—perceived as more adult-like and less innocent than their white peers.³⁷ Moreover, Black women report their assaults at far lower rates compared to white women; even at HBCUs, Black women are frequently ignored or punished after reporting their assaults by Black men or told to “give [their harassers] a pass” because their respective schools are “brother-and-sister institutions.”³⁸
- **Boys and men**, especially male athletes, often find it harder to recognize or report when they have been sexually harassed due to traditional stereotypes about masculinity.³⁹ Even when they do recognize that they have been abused, many do not report it because they fear the abuse will be minimized due to their harasser’s gender, because their body showed involuntary arousal, or because they fear their harasser will counter-accuse them.⁴⁰
- **Younger children and teens** may be afraid to report sexual and dating violence to their schools because they may not recognize it as such, because they are afraid of getting themselves or their harasser (who could be a well-liked student or employee) into trouble, or because they were groomed and manipulated into thinking it was “normal” behavior or that it was their fault. In addition, nearly all school employees are required to report suspected sexual abuse of minors to police, and many survivors do not want the police to be involved in their cases. This may be because the criminal legal system does not provide the remedies they are seeking, because police are notoriously ineffective at addressing sex-based harassment,⁴¹ because police are often purveyors of sexual and domestic violence,⁴² or because the survivors are abolitionists who want to dismantle the entire prison industrial complex.⁴³ In particular, many Black, Latinx, and Indigenous students; undocumented students; LGBTQI+ students; and disabled students are wary of police due to their heightened risk of being subjected to police violence or deportation.

³³ Angela Browne et al., *Examining Criminal Justice Responses to and Help-Seeking Patterns of Sexual Violence Survivors with Disabilities* 11, 14–15, (2016), <https://www.ojp.gov/pdffiles1/nij/grants/250196.pdf>; Leigh Ann Davis, *People with Intellectual Disabilities and Sexual Violence* 2 (Mar. 2011), <https://www.thearc.org/document.doc?id=3657>.

³⁴ National Women’s Law Center, *Let Her Learn: Stopping School Pushout for Girls With Disabilities* 7 (2017), <https://nwlc.org/resource/stopping-school-pushout-for-girls-with-disabilities>.

³⁵ Nancy Chi Cantalupo, *And Even More of Us Are Brave: Intersectionality & Sexual Harassment of Women Students of Color*, 42 HARV. J.L. & GENDER 16, 17, 24–29 (2019); Rebecca Epstein et al., *Girlhood Interrupted: The Erasure of Black Girls’ Childhood* 1 (2018), <https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2017/08/girlhood-interrupted.pdf>; Katherine Giscombe, *Sexual Harassment and Women of Color*, CATALYST (Feb. 3, 2018), <http://www.catalyst.org/2018/02/13/sexual-harassment-and-women-of-color>.

³⁶ Cantalupo, *supra* note 35, at 17, 24–25; Epstein, *supra* note 35, at 2–6.

³⁷ Leticia Smith-Evans & Janel George, NAACP Legal Defense and Education Fund, Inc. & National Women’s Law Center, *Unlocking Opportunity for African American Girls: A Call to Action for Educational Equity* 5, 18, 20, 25 (2014), https://nwlc.org/wp-content/uploads/2015/08/unlocking_opportunity_for_african_american_girls_report.pdf; see also Sonja C. Tonnesen, *Commentary: “Hit It and Quit It”: Responses to Black Girls’ Victimization in School*, 28 Berkeley J. Gender, L. & Just. 1 (2013), <https://lawcat.berkeley.edu/record/1125570>.

³⁸ Clarissa Brooks, *How HBCUs Can Make It Hard for Sexual Assault Survivors to Speak Up*, Teen Vogue (Dec. 21, 2017), <https://www.teenvogue.com/story/hbcus-and-sexual-assault-op-ed>; Samhita Mukhopadhyay, *At Historically Black Colleges, The National Discussion of Sexual Abuse Takes on Fraught Layer of Racial Politics*, The Intercept (Dec. 4, 2017), <https://theintercept.com/2017/12/04/spelman-morehouse-college-campus-sexual-abuse/>; Caitlin Dickerson & Stephanie Saul, *Two Colleges Bound by History Are Roiled by the #MeToo Moment*, N.Y. Times (Dec. 2, 2017), <https://www.nytimes.com/2017/12/02/us/colleges-sexual-harassment.html>; Lauren Rosenblatt, *Why it’s harder for African American women to report campus sexual assaults, even at mostly black schools*, L.A. Times (Aug. 28, 2017), <http://www.latimes.com/politics/la-na-pol-black-women-sexual-assault-20170828-story.html>; Elahe Izadi, Spelman, *Morehouse investigate gang-rape allegations posted by anonymous Twitter account*, Wash. Post (May 5, 2016), <https://www.washingtonpost.com/news/grade-point/wp/2016/05/05/spelman-morehouse-investigate-gang-rape-allegations-posted-by-anonymous-twitter-account/>; Anita Badejo, *Our Hands Are Tied Because Of This Damn Brother-Sisterhood Thing*, BuzzFeed (Jan. 21, 2016), <https://www.buzzfeed.com/anitabadejo/where-is-that-narrative>.

³⁹ E.g., Brief of Nat’l Women’s L. Ctr., Women’s Sports Foundation, and 49 Additional Organizations as *Amici Curiae* in Support of Plaintiffs-Appellants at 22–23, *Moxley v. Ohio State Univ.*, No. 21-3991 (6th Cir. Feb. 9, 2022), ECF No. 55, <https://nwlc.org/wp-content/uploads/2022/02/Moxley-v-OSU-55-NWLC-WSF-amicus-2.9.22.pdf>.

⁴⁰ AAU Report, *supra* note 32, at A7–28–29.

⁴¹ *The Criminal Justice System: Statistics*, RAINN, <https://rainn.org/statistics/criminal-justice-system> (last visited Feb. 14, 2024).

⁴² Andrea J. Ritchie, *How some cops use the badge to commit sex crimes*, Wash. Post (Jan. 12, 2018), https://www.washingtonpost.com/outlook/how-some-cops-use-the-badge-to-commit-sex-crimes/2018/01/11/5606fb26-eff3-11e7-b390-a36dc3fa2842_story.html.

⁴³ Cassandra Mensah, *If We Abolish Police, What Happens to Rapists?*, Teen Vogue (June 24, 2020), <https://www.teenvogue.com/story/what-happens-to-rapists-if-abolish-police>.

The impact of these stereotypes on the support survivors receive—or do not receive—is compounded when survivors occupy multiple marginalized identities. For example, if a disabled Black girl reports being sexually harassed, she will also likely experience all of the pernicious stereotypes that come with experiencing sex-based harassment while being Black, disabled, and a girl.

Finally, training materials for Title IX personnel should reflect the diverse identities of complainants and respondents:

- Use gender-neutral pronouns or alternate gender-specific pronouns for complainants and respondents in examples and case studies.
- Use names and descriptions that reflect the diversity of complainants and respondents across race, ethnicity, sexual orientation, transgender status, disability, and other protected classes.

Q6. What are promising practices for engaging student groups, community organizations or families of students in efforts to prevent and address sexual violence and dating violence?

Whenever schools change their policies on sex-based harassment, it should be done in partnership with a diverse group of students, including student survivors; community organizations that serve different student populations, including sexual and domestic violence advocates and local rape crisis centers; and, in the K-12 context, students' families.

Q7. In what ways can the Federal Government support educational institutions in improving the prevention of, and response to, sexual violence and dating violence, including online threats, harassment and intimidation, and other forms of technological abuse?

Double OCR funding. The Department of Education's Office for Civil Rights (ED OCR) needs more funding—at least double its current budget—in order to ensure educational institutions are appropriately addressing sex-based harassment, including by issuing guidance documents, providing technical assistance, collecting civil rights data, investigating complaints, and enforcing resolution agreements. Since ED was first established in 1980, the number of students in K-12 and higher education in the United States has grown by 34%. And as of 2022, OCR receives more than 6 times as many complaints as it did in 1981.⁴⁴ However, the number of OCR staff has been cut in half over that same time period, resulting in *one-twelfth* the investigatory capacity.⁴⁵ In addition, OCR also has more than 800 pending investigations dating back to 2010.⁴⁶

With the ever-increasing proliferation of racist, sexist, ableist, and anti-LGBTQI+ policies at the school, state, and federal levels, students now more than ever need vigorous enforcement of civil rights laws by OCR. As Catherine Lhamon, Assistant Secretary for Civil Rights, has noted, “[i]f current funding levels were doubled as the civil rights groups requested [in February 2024], OCR would be able to hire four times [as] many staff” as in FY 2024. “And we would close more cases, and we would close them more quickly, if we had more of us to do that work.”⁴⁷

Clarify off-campus and online harassment obligations. When the forthcoming Title IX regulations are finalized, OCR should ensure that schools know they must respond to off-campus and online harassment that impacts a student's education. After all, nearly nine in ten college students live off campus,⁴⁸ and 41% of college sexual assaults involve off-campus parties.⁴⁹ In addition, many fraternity and sorority houses are located off campus, and students are far more likely to experience sexual assault if they are in a sorority (nearly 1.5

⁴⁴ Department of Education, Office for Civil Rights, *Fiscal Year 2022 Annual Report 8* (2023), <https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2022.pdf>.

⁴⁵ *Id.*

⁴⁶ Department of Education, Office for Civil Rights, *Pending Cases Currently Under Investigation at Elementary-Secondary and Post-Secondary Schools* (last updated Feb. 14, 2024), <https://ocracas.ed.gov/open-investigations>.

⁴⁷ Naaz Modan, *Federal discrimination complaints continued upswing in 2023 with no signs of slowing* (Feb. 22, 2024), <https://www.k12dive.com/news/discrimination-complaints-increased-again-in-2023-no-signs-of-slowing-in-2/708187>.

⁴⁸ Rochelle Sharpe, *How Much Does Living Off-Campus Cost? Who Knows?*, N.Y. TIMES (Aug. 5, 2016), <https://www.nytimes.com/2016/08/07/education/edlife/how-much-does-living-off-campus-cost-who-knows.html> (87%).

⁴⁹ United Educators, *Facts From United Educators' Report - Confronting Campus Sexual Assault: An Examination of Higher Education Claims* (2015), https://www.ue.org/sexual_assault_claims_study.

times more likely) or fraternity (nearly three times more likely).⁵⁰ Furthermore, 16% of young adults in the U.S. experience at least one type of sexual abuse in an online setting before age 18, with a majority of online harassers being current or former intimate partners and one-third of harassers being under age 18.⁵¹ When schools fail to provide effective responses to off-campus and online harassment, the impact on students' education can be devastating. As usage of online platforms, including social media, increases, OCR guidance is every more important to help schools understand their obligations to address this harassment.

* * * * *

Thank you for your consideration of our recommendations. If you have any questions, please contact us as set out below.

Thank you,
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⁵⁰ Jennifer J. Freyd, *The UO Sexual Violence and Institutional Betrayal Surveys: 2014, 2015, and 2015-2016* (Oct. 16, 2014), available at <https://www.uwire.com/2014/10/16/sexual-assault-more-prevalent-in-fraternities-and-sororities-study-finds> (finding that 48.1% of women and 23.6% of men in Fraternity and Sorority Life (FSL) have experienced non-consensual sexual contact, compared with 33.1% of women and 7.9% of men not in FSL).

⁵¹ University of New Hampshire, Crimes against Children Research Center, *UNH Study Finds One-in-Six US Children Experience Online Sexual Abuse* (Oct. 14, 2022), <https://www.unh.edu/unhtoday/news/release/2022/10/14/unh-study-finds-one-six-us-children-experience-online-sexual-abuse>.