



JUNE 2019 | FACT SHEET

Survivor Justice Is Disability Justice:

Schools Must Protect Students with Disabilities from Sexual Harassment

Supporting students with disabilities means addressing sexual harassment, including sexual assault. Students with disabilities are more likely than their peers to experience sexual harassment, less likely to report it, and more likely to be pushed out of school as a result of sexual harassment. Schools must meet their obligations to address sexual harassment under both Title IX—the federal law that prohibits sex discrimination in schools—and laws that protect the civil rights of students with disabilities.

Sexual harassment hurts students with disabilities

- **PREVALENCE:** More than one in five girls ages 14-18 are kissed or touched without their consent,¹ and children with disabilities are almost three times more likely to be sexually abused than their peers.² In college, one in three disabled women are sexually assaulted, compared to one in five women without disabilities.³

Did you know? Students with disabilities are far more likely to be *victims* than *perpetrators* of sexual assault.⁴

- **UNDERREPORTING:**
 - **All students:** Only 12 percent of college survivors and 2 percent of girls ages 14-18 report sexual assault to their schools or the police.⁵ Students often choose not to report because they are afraid of retaliation, because they believe their abuse is not important enough for others to care about, because they are embarrassed or ashamed or find it too emotionally difficult to report, because they believe no one is willing or able to help, because they do not want their assailant to get in trouble, and/or because they fear that reporting will make the situation even worse.⁶
 - **Students with disabilities:** People with disabilities are six times less likely than their peers to report sexual assault.⁷ In addition to the reasons that all students underreport sexual assault, students with

disabilities may choose not to report because their assailant is their caregiver, because it can be more difficult for students with cognitive or developmental disabilities to recognize or describe the harassment they experience, because information on reporting harassment is often inaccessible, and/or because of the particular stigma from both having a disability and being a survivor.⁸

Sexual harassment pushes students with disabilities out of school

- **HARMFUL EFFECTS ON ALL STUDENTS:** Sexual harassment can cause students to experience anxiety disorders, depression, post-traumatic stress, and self-harm. Students who experience sexual violence are also more likely to have trouble studying, miss school, or get in trouble at school.⁹
- **PUNISHMENT OF COMPLAINANTS WITH DISABILITIES:** Students who report sexual harassment (“complainants”) are often punished by their schools for engaging in so-called “consensual” sex acts¹⁰ or premarital sex,¹¹ for defending themselves against their harassers,¹² or for merely telling other people about the harassment in violation of a “gag order” or nondisclosure agreement imposed by their school.¹³ Complainants with disabilities are even more likely than complainants without disabilities to be disbelieved, ignored, or punished due to both sex- and disability-based stereotypes—e.g., that they are “not credible” or “asexual.”¹⁴
- **PUNISHMENT OF RESPONDENTS WITH DISABILITIES:** When students with disabilities are named as harassers (“respondents”), they may sometimes be unfairly or excessively disciplined because of ableism (and other unlawful stereotypes based on race, color, national origin, sexual orientation, and/or gender identity). However, it is important to note that boys with disabilities are *not* more likely than their peers to be disciplined for sex-based misconduct (although they are more likely than their peers to be disciplined for *general* misconduct).¹⁵

Civil rights laws protect students with disabilities during sexual harassment investigations

- **TITLE IX PROTECTS ALL STUDENTS:** Title IX requires schools that receive federal funds to investigate any

student report of sexual harassment to find out if the harassment has created a **hostile environment**. A hostile environment exists when sexual harassment has made it harder for the harassment victim to learn or stay in school.

- **TITLE IX PROTECTS STUDENTS WITH DISABILITIES:** Title IX’s requirement of an “equitable” response means that schools must give the same rights to complainants and respondents,¹⁶ including those with disabilities. This includes giving all parties equal notice of the proceeding, ensuring equal rights to present evidence and call witnesses, and considering the disabilities of both complainants and respondents in responding to sexual harassment.
- **TITLE IX IS CONSISTENT WITH DISABILITY CIVIL RIGHTS LAWS:** Title IX does not require schools to take any actions inconsistent with laws that protect students with disabilities, including Section 504 of the Rehabilitation Act of 1973 (Section 504), the Americans with Disabilities Act (ADA), and the Individuals with Disabilities Education Act (IDEA):
 - **All students with disabilities:** All students with disabilities in a school disciplinary proceeding have a right to reasonable accommodations under Section 504 and the ADA. A school may not unreasonably delay a sexual harassment investigation in order to provide reasonable disability accommodations, because prompt accommodations are already required under disability civil rights laws.
 - **Complainants with disabilities:** Complainants in a sexual harassment investigation have a right to request reasonable disability accommodations. This includes the opportunity to answer questions in writing or through a neutral school employee instead of being subjected to live cross-examination by the respondent or the respondent’s adviser, if their disability makes it difficult to answer questions in this live cross-examination format.
 - **Respondents with disabilities:** Respondents in a sexual harassment investigation are likewise entitled to reasonable disability accommodations that also protect complainants’ rights. If a respondent is found responsible for sexual harassment, the respondent has a right to proportionate discipline. For example, K-12 respondents with disabilities are entitled to a “manifestation determination” under the IDEA to

determine whether the disciplinary violation was a manifestation of their disability before they can receive a “change in placement”—i.e., a transfer, suspension, or other removal of more than ten consecutive school days.¹⁷

Ableism and inaccessible services in schools hurt both complainants and respondents in sexual harassment investigations

Some schools fail to meet their obligations to students with disabilities, resulting in inadequate responses to sexual harassment for both complainants and respondents. For example:

- **INACCESSIBLE SEXUAL HARASSMENT PROGRAMS AND SERVICES:** Lack of accessibility means that students have a harder time finding information about sexual harassment programs and services.¹⁸ This inaccessibility can include physical barriers, inaccessible websites and training materials, and lack of interpreters.¹⁹
- **INADEQUATE DISABILITY ACCOMMODATIONS:** Schools often fail to provide reasonable accommodations for complainants and respondents with disabilities to access the support they need.²⁰ For example, at the K-12 level, schools often do not meet their legal duties to identify students with disabilities or fully implement these students’ Individualized Education Programs (IEPs). Similarly, in higher education, schools often do not make it easy for students to make their disability known to the school or to request disability services.²¹
- **LACK OF COORDINATION:** Lack of coordination between a school’s office of disability services and Title IX office means that students are underserved by both. For example, these offices should work together to identify students with disabilities who are involved in Title IX proceedings (without disclosing this information to third parties unless permitted by privacy laws) so that students receive the supports and services needed. These offices should also work together to create and disseminate Title IX information in an accessible manner (e.g., materials for students who are blind, deaf, have limited vision, or partial hearing loss; plain-language documents for students with intellectual disabilities; distribution of materials via accessible websites).

Here’s how schools can better address sexual harassment involving students with disabilities

- **TRAINING FOR ALL STUDENTS:** Schools should invest in an age-appropriate sex education curriculum that teaches consent, harmful gender norms, and other topics related to sexual harassment of all students—including sexual harassment of students with disabilities—by employees and by other students. Training should also affirmatively and accessibly inform students with disabilities of their rights under the ADA, IDEA, Section 504, and Title IX, and should include representation of students with both physical and intellectual disabilities.
- **TRAINING FOR ALL EMPLOYEES:** Schools should train all employees on how to recognize sexual harassment and how to avoid unlawful stereotypes based on disability, race, color, national origin, and/or sex (including sexual orientation and gender identity) when addressing sexual harassment involving complainants and/or respondents with disabilities.
- **ACCOMMODATIONS FOR COMPLAINANTS AND RESPONDENTS:** Schools should provide reasonable academic, safety, and mental health accommodations, including disability accommodations, to ensure that complainants and respondents are able to learn and stay in school. This requires collaboration between the school’s disability and Title IX offices.
- **AMNESTY FOR COMPLAINANTS:** Schools should implement reasonable amnesty policies for complainants to ensure that students who report sexual harassment are not improperly punished for engaging in “consensual” sex acts, being the “aggressor” when engaging in self-defense against their harassers, telling other people about the harassment, or “acting out” when behaving in ways entirely consistent with their age and disability. These policies can also help ensure that harassment victims are not deterred from asking their schools for help or from otherwise speaking out by the fear of being punished.
- **FAIR DISCIPLINE FOR RESPONDENTS:** Schools should administer proportionate discipline and rehabilitative measures for respondents. These policies help to ensure that respondents are not excessively punished or improperly removed from school and that they receive reasonable accommodations in accordance with the ADA, IDEA, and Section 504.

- 1 National Women's Law Center, *Let Her Learn: Stopping School Pushout for Girls Who Have Suffered Sexual Harassment* (2017), at 1 [hereinafter NWLC Harassment Report], <https://nwlc.org/resources/stopping-school-pushout-for-girls-who-have-suffered-harassment-and-sexual-violence>.
- 2 National Women's Law Center, *Let Her Learn: Stopping School Pushout for Girls with Disabilities* (2017), at 7, <https://nwlc.org/resources/stopping-school-pushout-for-girls-with-disabilities>.
- 3 National Council on Disability, *Not on the Radar: Sexual Assault of College Students with Disabilities* (2018), at 17 [hereinafter NCD Disability Report], <https://www.ncd.gov/publications/2018/not-radar-sexual-assault-college-students-disabilities>.
- 4 *Id.* at 22.
- 5 NWLC Harassment Report, *supra* note 1, at 2 (girls ages 14-18); Poll: *One in 5 women say they have been sexually assaulted in college*, WASH. POST (June 12, 2015), <https://www.washingtonpost.com/graphics/local/sexual-assault-poll-college-students>.
- 6 GLSEN, *The 2017 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools* (2018), at 27, <https://www.glsen.org/article/2017-national-school-climate-survey-1>; Association of American Universities, *Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct* (2015), at 36, <https://www.aau.edu/key-issues/aau-climate-survey-sexual-assault-and-sexual-misconduct-2015>; Rape, Abuse & Incest National Network, *Campus Sexual Violence: Statistics*, <https://www.rainn.org/statistics/campus-sexual-violence>.
- 7 Jesse Krohn, *Sexual Harassment, Sexual Assault, and Students with Special Needs: Crafting an Effective Response for Schools*, 17 UNIV. PENN. J. L. & SOCIAL CHANGE (2014) 32, <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1163&context=jlasc>.
- 8 *Id.* at 32-33.
- 9 NWLC Harassment Report, *supra* note 1, at 8.
- 10 E.g., Aviva Stahl, *'This Is an Epidemic': How NYC Public Schools Punish Girls for Being Raped*, VICE (June 8, 2016), https://broadly.vice.com/en_us/article/59mz3x/this-is-an-epidemic-how-nyc-public-schools-punish-girls-for-being-raped.
- 11 E.g., Sarah Brown, *BYU Is Under Fire, Again, for Punishing Sex-Assault Victims*, CHRONICLE HIGHER EDUC. (Aug. 6, 2018), <https://www.chronicle.com/article/BYU-Is-Under-Fire-Again-for/244164>.
- 12 NAACP Legal Defense & Educ. Fund, Inc. and National Women's Law Center, *Unlocking Opportunity for African American Girls: A Call to Action for Educational Equity* (2014), at 25, <https://nwlc.org/resources/unlocking-opportunity-african-american-girls-call-action-educational-equity>.
- 13 E.g., Tyler Kingkade, *When Colleges Threaten To Punish Students Who Report Sexual Violence*, HUFFINGTON POST (Sept. 9, 2015), https://www.huffingtonpost.com/entry/sexual-assault-victims-punishment_us_55ada33de4b0caf721b3b61c.
- 14 Taylor S. Parker, *The Less Told Story: The Intersection of Title IX and Disability*, at 9, https://www.researchgate.net/publication/326997956_The_Less_Told_Story_The_Intersection_of_Title_IX_and_Disability.
- 15 U.S. Gov't Accountability Office, *K-12 Education: Discipline Disparities for Black Students, Boys, and Students with Disabilities* (2018), at 73, 88, 90, <https://www.gao.gov/assets/700/690828.pdf> (whereas 13.8% of boys with disabilities and 6.6% of boys without disabilities have received an out-of-school suspension for general misconduct, 0.3% of all boys and 0.3% of boys with disabilities have been disciplined for sex-based misconduct).
- 16 34 U.S.C. § 106.8(b).
- 17 20 U.S.C. § 1415(k)(1).
- 18 NCD Disability Report, *supra* note 3, at 31-42.
- 19 *Id.*
- 20 *Id.*
- 21 *Id.* at 45.