SEX-BASED HARASSMENT & TITLE IX COMPLIANCE IN K-12 SCHOOLS:
USING RESEARCH TO INFORM BEST PRACTICES

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ABSTRACT

Title IX of the Educational Amendments of 1972, often simply referred to as Title IX, prohibited discrimination in education on the basis of sex in the United States for the first time. Title IX prohibits sex discrimination in areas such as sports options, class options and sexual harassment. Sexual violence is considered a type of sex-based harassment and schools are mandated by Title IX to appropriately prevent and respond to sexual violence. Title IX applies to any educational setting that receives federal funding, regardless of the age of the students. In the 40+ years since Title IX was originally passed, the Department of Education’s Office of Civil Rights (OCR) has issued guidance for educational settings, primarily in the form of “Dear Colleague” letters. Recently, colleges and universities have received higher levels of scrutiny in their compliance with Title IX and very little attention has been paid to K-12 schools.

This paper will discuss what K-12 schools are doing in light of policy mandates and guidance set forth by the OCR, as well as relevant case law. School policies, grievance procedures, remedies and prevention efforts will be examined through the lens of these requirements to help determine best practices. There is very little literature evaluating programs and procedures specifically related to Title IX in K-12 schools, but using available information and research, this paper will offer recommendations for K-12 schools to improve compliance as closely to OCR recommendations as possible, given resources available.
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“However bad you think that a college campus’ lack of accountability is on these cases, I think go back 15 years before and that’s what you’re looking at for high schools.”

-Colby Bruno, senior legal counsel at the Victim Rights Law Center in Boston, MA

INTRODUCTION

Title IX of the Educational Amendments of 1972, often simply referred to as Title IX, prohibits discrimination in education on the basis of sex. The text of the law reads: No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance. Sex discrimination is prohibited in areas such as sports options, class options and sex-based harassment in federally funded educational settings. Sexual violence is considered a type of sex-based harassment and schools are mandated by Title IX to appropriately prevent and respond to sexual violence. In this paper, the term “sex-based harassment” will be used to encompass the spectrum of harassment of a sexual nature—ranging from sexual comments and groping to sexual assault and rape.

Though Title IX has always applied to all educational settings regardless of age, including protections against sex-based harassment, much more attention has been given to the college/university level. However, more recently, sexual violence experts are charging primary and secondary schools to take a more proactive approach to sex-based harassment prevention. In a personal interview in August 2016 with Howie Kallem, Title IX coordinator at Duke University, Kallem stated that college students will enter their first year one of two ways: already accustomed to environments allowing sexual
violence to occur or knowing nothing about sexual violence or Title IX—neither of which were desirable. A 2011 nationally representative survey found that, of women who had experienced rape, 40% of them were first raped before they were 18. Another survey, of college women at one university, found that before they had even begun college, 18% had experienced attempted or completed incapacitated rape and 15% had experienced attempted or completed forcible rape.

Despite the passage of Title IX in 1972, regulations regarding it were not released until 1975. Since then, the Office of Civil Rights (OCR) has issued guidance for Title IX in the form of several resource guides and Dear Colleague letters. Historically, the guidance offered in these letters often resulted from case resolutions of Title IX violations. Students would file OCR complaints under Title IX in reaction to situations that were not originally explicitly laid out in the guidance. The case resolutions, discussed further later in this paper, broadened the scope of Title IX.

The White House Task Force to Protect Students from Sexual Assault recently released a guidance document specifically targeted toward K-12 schools, in September 2016. The document reiterates the legal obligations that schools have to prevent and respond appropriately to sex-based harassment. As of December 2015, 68 K-12 Title IX cases in 63 school districts were under investigation by the OCR.

**BACKGROUND**

**SEX-BASED HARASSMENT IN K-12 SCHOOLS**

The problem of sexual harassment and sexual violence in K-12 schools is pervasive and varied. Some of the more extreme incidents become well-publicized. There
was the case in Steubenville, Ohio in 2012, where a female student was gang-raped by two male football players, with videos and photos of the incident uploaded to social media.\textsuperscript{10} Closer to home, in Durham, North Carolina in 2014, a male student raped a female student, on school property, though it is unknown if it was during school hours.\textsuperscript{11} A Netflix documentary released in September 2016 tells the stories of teenage girls who have been sexually assaulted, centered on Audrie Pott and Daisy Coleman.\textsuperscript{12} Audrie Pott died by suicide a week after her alcohol-facilitated sexual assault and the public shaming she endured afterwards. Daisy Coleman and her family had to move away from their hometown from the backlash of her accusing a football player of alcohol-facilitated sexual assault.\textsuperscript{13}

The numbers are alarming. A 2010 survey of 18,030 high school students found that 18.5\% reported being victims of unwanted sexual activity in the last year, while 8\% reported behavior in line with perpetrating unwanted sexual activity.\textsuperscript{14} The 2013 National Youth Risk Behavior survey found that 21\% of girls and 10\% of boys had experienced physical and/or sexual dating violence.\textsuperscript{15} The constant availability of the Internet and increased usage of social media has created new avenues for digital sex-based harassment and bullying. A 2011-2012 study of teen dating violence and technology found that girls were twice as likely to report sexual cyber dating abuse than boys.\textsuperscript{16}

There are limited data depicting the specific problem of sex-based harassment in K-12 schools, due to differences in reporting and recording.\textsuperscript{17} The American Association of University Women (AAUW) conducted a survey in 2011 of 1,965 seventh- through twelfth-grade students to capture the scope of sex-based harassment in secondary schools. 48\% of students reported they had experienced sex-based harassment in the last year and
87% of those that reported experiencing it, reported that the experience(s) had a negative effect on them.\textsuperscript{18} There are differences in how different genders experience sexual harassment. Girls are more likely to report sex-based harassment than boys—56% of girls reported to AAUW while 40% of boys did. The survey also reported that 33% of girls and 24% of boys disclosed that they had witnessed sex-based harassment at school; 56% of whom reported that they had witnessed more than one incident.\textsuperscript{18} When it comes to the official reports collected by the Civil Rights Data Collection of the Department of Education, however, more than two thirds of K-12 schools reported zero cases of sex-based harassment in the 2013-2014 school year.\textsuperscript{19}

Results of a 2010-2011 survey of 5,907 13-18 year olds suggest that LGBTQ youth face overall higher rates of sex-based harassment.\textsuperscript{20} Of the 5,139 cisgender teens surveyed, 72% of lesbian/queer girls, 66% of bisexual girls, 66% of gay/queer boys, 53% of questioning girls, 50% of bisexual boys and 47% of questioning boys reported experiencing sex-based harassment in the last year; 23% of heterosexual boys and 43% of heterosexual girls reported experiencing sex-based harassment during that time frame. When the data were categorized by gender identity, 81% of transgender teens and 69% of gender non-conforming/other gender teens reported experiencing sex-based harassment in the last year—much higher rates than the experiences reported by 34% of cisgender boys and 52% of cisgender girls.

Survivors of sexual violence are more likely to deal with elevated anxiety and depression levels, use substances and have disordered eating habits, among many other things.\textsuperscript{21-23} Some studies have shown these effects to be cumulative over the lifetime after experiencing chronic sex-based harassment.
SEX-BASED HARASSMENT VS. BULLYING

All too often, K-12 schools lump less severe acts of sex-based harassment together with bullying. Early bullying behavior can be predictive to later perpetration of sex-based harassment. Though sex-based harassment and bullying have many similarities, it is important to recognize their differences. Stein asserts that schools may be labeling behavior that constitutes sex-based harassment as bullying in order to avoid their legal responsibility under Title IX. In the 1990’s, there began to be a shift toward recognizing sex-based harassment in schools as an issue, but the issue became obscured, Stein asserts, after the Columbine massacre in 1999. Stein charges that schools have since placed more energy into preventing the rare disastrous events like school shootings, rather than addressing the sex-based harassment endured by students daily. Stein believes this is ignoring the systemic issue of civil rights that is racial and sexual harassment to demonizing behavior of individual “bullies.” Stein also notes that there is a federal definition of harassment through civil rights legislation, while bullying is defined differently state-to-state. Sexually violent hazing is not just bullying either. The sexual and violent aspects of the behavior fall under sex-based harassment as well.

TITLE IX & SEXUAL VIOLENCE

Title IX is applicable to any educational setting that receives federal funding and encompasses all school programs and extracurricular activities, including sports, classes/educational opportunities and clubs. Title IX applies to both students and employees of schools. Title IX does not only apply to girls, but to anyone discriminated against on the basis of sex. This also includes real or presumed gender identity and those
who do not conform to stereotypical gender norms. The perpetrator does not have to be a different gender for incidents to be considered sex-based harassment. Sexual orientation is not explicitly covered by Title IX (or any federal civil rights legislation), but harassment incidences involving LGBTQ+ individuals may still be considered sex-based harassment. The real or perceived sexual orientation of the victim or anti-LGBTQ+ behavior accompanying sex-based harassment does not negate the Title IX responsibility.

Title IX guarantees the right to education free from discrimination on the basis of sex, including a hostile environment created by sex-based harassment. In cases of sex-based harassment, incidents may occur on or off school property, including school-sponsored activities off campus. Even if incidents occur off campus in non-school-related activities, schools may still be responsible under Title IX. If a victim of sex–based harassment attends school with their perpetrator, the victim can file a Title IX grievance with the school due to hostile educational environment.

Title IX has three required components for educational institutions to be in compliance: a publicized anti-sex discrimination policy, established and publicized grievance procedures, and an assigned Title IX coordinator. It should be noted that due to case law and OCR guidance, these measures alone do not prevent liability under Title IX. Educational institutions can be held liable for failing to respond “reasonably” to incidents of sex-based harassment, failing to respond at all (“deliberate indifference”), retaliating against complainants, discouraging victims from reporting, and more. In addition to the OCR guidance, there have been checklists and assessment tools for Title IX procedures and policies created by organizations such as the Association of Title IX Administrators,
Break the Cycle, Futures Without Violence and the White House Task Force to Protect Students from Sexual Assault.\textsuperscript{8,30-32}

Educational institutions are required to have anti-discrimination policies that explicitly address the prohibition of discrimination based on sex. This policy is required to be publicized to the school community, including students, parents and employees. The Office of Civil Rights recommends that the policy be posted in multiple locations, such as the school website, student handbook and physically in the school building. The policy should be clear that sex-based harassment is a type of sex discrimination and give examples of behavior that constitutes sex-based harassment. The OCR recommends that policies and procedures be written in accessible language to their audience, such as age-appropriate terminology and available in languages other than English for non-native speakers or parents that may not speak English.\textsuperscript{33}

Each school must have established grievance procedures and these should also be made available to the school community. Every Title IX grievance filed must be investigated. Schools are not allowed to discourage reporting or retaliate for reporting. Schools are then responsible for investigating the grievance and determining remedies for the victim and discipline for the perpetrator. To ensure equity, both parties must be afforded the same opportunities to give testimony and provide witnesses and evidence, as well both being notified of the outcome of an investigation. The OCR requires that grievance procedures provide for prompt and equitable resolutions. Schools are required to eliminate the hostile environment occurring due to sexual violence, prevent recurrence and remedy effects. The OCR recommends designated time frames in which investigations must be completed and suggests that the whole process should take less
than 60 days. In consideration of trauma, the OCR recommends that, as much as possible, to provide opportunities for confidential reporting and sharing information between investigations to avoid re-traumatization of victims.

Every school must be assigned a Title IX coordinator. In K-12 schools, this is usually one person serving as coordinator for the entire district. The coordinator’s contact information should be posted and accessible in both print and online. The Title IX coordinator is responsible for ensuring that schools are in compliance with the law. They must be knowledgeable about the policies and practices ensuring a gender equitable environment, as well as the process for filing a Title IX grievance. Coordinators often also serve as the investigators of grievances. The OCR recommends that Title IX coordinators be consulted in the investigation procedures if they are not the primary investigators. Coordinators are responsible for monitoring school climate and programs for gender equity. They should also serve as the technical assistance providers about sex discrimination and Title IX to students and other employees. Coordinators are responsible for maintaining records of Title IX grievances and investigations. The OCR recommends that the Title IX coordinator be an employee with some authority and that they be fully supported by administration, in order to be able to most effectively carry out their duties. They should have adequate training on Title IX, as well as sexual violence prevention and response.

**LANDMARK CASE LAW**

The original Title IX guidance was clear on prohibiting schools themselves (including administration, teachers and staff) from discriminating based on sex, including
sex-based harassment. The two types the OCR recognizes are:\textsuperscript{29,34}

- \textit{Quid pro quo}: when the perpetrator requires sexual services in exchange for tangible benefit.

- \textit{Hostile environment}: when the experience of sex-based harassment creates a difficult, hostile, offensive environment interfering with the victim’s right to an education.

The only punishment that the OCR would threaten is the removal of federal funding, which they are reluctant to do since they are aware that withdrawal would most affect low-income students. In the more than 40 years since Title IX was enacted, the OCR has never withdrawn federal funding as part of their resolutions.

Over the years, the responsibility has fallen to the courts to interpret Title IX’s scope. The following are some of the landmark cases that have relevance to sex-based harassment:

- 1979—\textit{Cannon v. University of Chicago}: The Supreme Court affirmed the right of individuals to bring private suits against educational institutions for violating Title IX. Since this ruling, private actions have been an option used in addition to OCR investigations to effectively enforce Title IX.\textsuperscript{35}

- 1980—\textit{Yale v. Alexander}: This was the first case in which sexual harassment was argued as sex discrimination and therefore illegal under Title IX. The case was eventually dismissed, but spurred Yale to create formal grievance procedures for sex-based harassment, which other schools began to follow suit.\textsuperscript{36}

- 1992—\textit{Franklin v. Gwinnet County Schools}: The Supreme Court ruled that educational institutions could be liable for monetary damages in civil court. This
was not a sanction coming from the OCR, but provided complainants with a legal avenue to seek financial restitution in violations of Title IX.\textsuperscript{35}

- 1993—\textit{Doe v. Petaluma}: In this case, federal district court held that schools could be held liable for student-on-student sex-based harassment for the first time.\textsuperscript{37}

- 1998—\textit{Gebser v. Lago Vista Independent School District}: This Supreme Court verdict protected educational institutions—they could not be held responsible for sex-based harassment that they had no notice or knowledge of occurring. Therefore, without knowledge of harassment, educational institutions could not be considered as acting deliberately indifferent by not addressing it.\textsuperscript{35}

- 1999—\textit{Davis v. Monroe County Board of Education}: This Supreme Court case established that educational institutions could not only be held liable for monetary damages in cases of teacher-on-student harassment, but in cases of student-on-student harassment as well. The standard used in this case was that if sex-based harassment was “so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit," then institutions were responsible for addressing it through Title IX. The \textit{Davis} standard has been used as the measure in subsequent Title IX cases.\textsuperscript{35,37}

- 2005—\textit{Jackson v. Birmingham}: The Supreme Court ruled that the protection against retaliation applied to the complainant even if they were not the ones being discriminated against in the complaint. This was a case of a coach speaking out about funding differences for the girls’ sports teams and then suffering retaliation from the school in the form of negative evaluations and eventually being fired.\textsuperscript{38}
• 2007—*Simpson v. University of Colorado*: The federal district court ruled that educational institutions can be held liable for deliberate indifference by not providing training on sex-based harassment to employees, thereby creating unofficial policies allowing sex-based harassment to occur. The ruling also affirmed jurisdiction over perpetrators and situations that school has institutional control and responsibility for, even if the incidents occurred off campus.\(^{38}\)

Case law continues to provide guidance to educational institutions on their duties to be in compliance with Title IX. Through these landmark cases, it has been made clear that:

A) Sex-based harassment is considered sex discrimination.

B) Schools are responsible for addressing both teacher-on-student harassment and student-on-student harassment.

C) Private action may be taken under Title IX and educational institutions can be held liable for monetary damages.

D) Schools can only be held liable for “deliberate indifference” to sex-based harassment if they had notice or knowledge of the incident(s).

E) Schools are not allowed to retaliate against a complainant, even if the incident did not discriminate against the complainant themselves.

F) Schools are responsible for providing training to employees to protect against sex-based harassment.
CURRENT STATE OF K-12 SCHOOLS AND SEXUAL HARASSMENT PROTECTIONS UNDER TITLE IX

POLICIES AND PROCEDURES

There has been little research on best practices for Title IX compliance in K-12 schools. The following three studies contribute to the evidence base in terms of school policy and procedure.

Policy Compliance

There is only one study, Lichty et al., that examined policy compliance with Title IX in K-12 schools. Using the criteria outlined by the Office of Civil Rights and the American Council on Education, Lichty et al reviewed sexual harassment policies at 784 randomly selected primary and secondary schools in four states in the Midwestern United States. This study focused on accessibility of the information—if policies were published on the Internet, content—how well the policies adhered to ten specific components from the guidelines from the Office of Civil Rights and the American Council on Education, and consistency—how much variation there was in policies across educational levels.

The first aspect of the policy examined was accessibility. For the purposes of this study, accessibility was defined by the availability of the Title IX policy on the school or school district website. Of the 784 schools and school districts, Lichty et al found only 110 of them had their policies posted online—14%. The study did not analyze how difficult it was to find policies on websites and acknowledged policies may have been well publicized, just not on the Internet. The conclusion of this study was that schools and school districts should make much better use of the Internet as a method of disseminating information about Title IX policies. It should be noted that this is the most
recent study of its kind, but was published eight years ago. It is likely that with the increasing reliance on the Internet, more schools and school districts would have that information online today. These 110 policies identified via Internet were the basis of the following two aspects of policy analysis.

The second aspect of the policy examined was content. Lichty et al analyzed policies in how well they addressed the ten following components: explicit policy in place against sex-based harassment, definition of sex-based harassment included, examples of sex-based harassment behaviors included, inclusion of school’s responsibility and intention to stop harassment, identification of a formal grievance procedure, statement that all grievances will be investigated, inclusion of a timeline for investigations, contact information for the Title IX coordinator, statement of consequences for offenders and statement of how individuals will be educated about sex-based harassment and the policies in place. On average, policies included only half of the ten criteria. The criteria most likely to be included were: consequences for offenders, a definition of sex-based harassment and the contact information for the Title IX coordinator. More than half of the policies did not include examples of sexually harassing behavior, a statement of the school’s responsibility and intention to investigate grievances, a timeline for grievance process or a plan for educating the school community about sex-based harassment. This study evaluated policies by their inclusion of certain components—but did not assess the quality of those inclusions. That is, though a policy may have included the recommended component, it may not have done so in the recommended way. This study also did not examine accessibility of language in the policies—whether it was age-appropriate for the audience and available in the native
language of non-native English speakers. Lichty et al acknowledged this would also contribute to the effectiveness of policies—if the intended audience cannot understand the policies, then their use is limited.

The third aspect of the policy examined was consistency. The study evaluated whether components included were consistent across age group of students. There was some consistency between middle and high schools but much less between them and elementary schools. High schools and middle schools included significantly more of the components than elementary schools. Lichty et al offers a possible explanation—the tendency to believe that sex-based harassment does not happen in elementary school, despite evidence to the contrary.

**Policy Dissemination**

The second study of note is one that Potter et al conducted with first year college students on methods of disseminating information about sexual misconduct policies. Though conducted at the university level, this study offers insight on how information is best conveyed. The study used randomized control design to assign seven universities diverse in student bodies to an experimental or control condition. Working with professors with large introductory courses, each was assigned either to the control or to one of four levels of the intervention. The first level was a short video emailed to the students that explained the sexual misconduct policy. The second level was to have the professor read the policy out loud to the class. The third level was to have the professor read the policy out loud to the class and then facilitate a discussion about it. The fourth level was to have the professor read the policy out loud to the class, facilitate a discussion about it and then also email the video from the first level afterwards.
To assess knowledge change, students took pre- and post-tests. Results indicated that students were very unlikely to watch the emailed video since it was not mandatory—less than 30% of students did so. The only significant changes in knowledge were seen in the two groups that included facilitated discussion. There was also a significant change in confidence in ability to access needed services in the case of self or friend being assaulted for all three groups that were read the sexual misconduct policy. There was also a significant increase in confidence in finding more information at the university about sexual violence, but again, only seen in the groups that had facilitated discussion. These results suggest that being exposed to the information in more than one way will increase likelihood of increases in knowledge.

**Anti-Bullying Legislation**

The third study to note is a 2011 Department of Education examination of anti-bullying laws at the state level. This study covered anti-bullying laws not related to Title IX or civil rights. They found that very few made a distinction of the definition of sex-based harassment. Most included sexual harassment under the classification of “bullying,” without detail of the gender-based or sexual nature that makes it unique. Though these laws were not directly related to Title IX, it is important to not conflate bullying too closely with sex-based harassment anytime policy is involved.

**PREVENTION PROGRAMS**

The OCR requires that educational institutions take preventive measures against sexual harassment, but do not mandate how this should be done. There have been many curriculums developed for K-12 settings in the area of prevention of bullying, sexual
harassment, dating violence and sexual violence. Nation et al. have identified important components to effective prevention programming. They argue that programs should:

1. Be comprehensive, addressing multiple risk and protective factors going beyond merely raising awareness.
2. Use a variety of teaching methods, including interactive and skills-based activities.
3. Provide sufficient dosage to ensure impact.
5. Foster positive relationships.
6. Be developmentally appropriate and occur at the developmental stage most impactful.
7. Be socio-culturally relevant to the target population.
8. Be conducted by well-trained staff.
9. Include an outcome evaluation.

In a September 2016 personal interview with Nan Stein, K-12 sex-based harassment expert and professor at Wellesley College, she expressed that the most important aspects of prevention programming were that programs should:

- Be school-wide and provide saturation in the subject.
- Occur in all grades, every year, with different lessons each year.
- Use culturally and age appropriate language.
- Center the experiences of students.
Federal legislation was recently passed as part of the Every Student Succeeds Act of 2015 providing support for schools to establish relationship violence prevention programs. There is no mandate—Title IX is the only federal mandate requiring sex-based harassment prevention programs—but schools can apply for funding to be used specifically in this area. The legislation does not endorse any particular programs.

**Programs with an Evidence Base**

Evaluation of sexual violence prevention programs is an emerging field. DeGue et al conducted a systematic review on the available evaluations of strategies to prevent first-time sexual violence perpetration. Only two curriculums were found to be effective in reducing sexual violence perpetration and victimization: Safe Dates and Shifting Boundaries.

Safe Dates is a ten-week program for middle and high school students focused on dating and relationship violence prevention. The curriculum covers topics such as gender stereotypes, healthy communication and sexual violence prevention using varying formats of small and large group discussions, role-plays, games, and art. There is also a parent component, Families for Safe Dates, to encourage a family prevention approach. Rigorous, four-year longitudinal study found decreases in both dating and sexual violence perpetration as well as dating and sexual violence victimization. The Safe Dates curriculum is designed as comprehensive dating violence prevention and only devotes one lesson to sexual violence prevention. There is no focus on sexual harassment specifically. In the SAMHSA National Registry of Evidence-based Programs and Practices (NREPP), Safe Dates is the only program listed as having “promising outcomes” in dating violence prevention, based on the evidence supporting it.
Shifting Boundaries is a bullying and sexual harassment prevention curriculum designed for middle school students. It is currently undergoing rigorous evaluation, but has shown evidence of decreases in both perpetration and victimization of sexual harassment and a decrease in sexual violence victimization. There has not been a significant decrease observed in sexual violence perpetration. It is also important to note that Taylor et al.\textsuperscript{48-49} found no significant changes in sexual harassment or sexual violence victimization or perpetration when Shifting Boundaries was only implemented at the classroom level. The significant decreases were observed when the curriculum was used as a building-level intervention.

Other Programs

There are a plethora of other sex-based harassment prevention programs focusing on children and teens that have not yet been rigorously evaluated, varying in target populations, settings, tactics, and more. Some curricula focus on engaging with boys, such as Men of Strength, Wise Guys and Coaching Boys into Men.\textsuperscript{50-52} Some teachers have used their academic courses to facilitate discussions about sexual violence.\textsuperscript{53} Some programs have combined support groups with prevention education, like Expect Respect.\textsuperscript{54}

Some programs focus specifically on bystander intervention, such as ONE ACT at the University of North Carolina at Chapel Hill.\textsuperscript{55} Though there are only limited evaluations of such programs thus far, the evidence is promising.\textsuperscript{56-59} In a small sample of 218 high school students interviewed through focus groups, Edwards et al.\textsuperscript{60} researched tendencies to intervene during incidences of sex-based harassment as a bystander. 93.6% reported that in the last year they had had the opportunity to intervene in a case of dating
or sexual aggression, but 37.4% said they did not do so. 56.8% reported they would be likely to intervene if someone said “she deserved to be raped,” but were much less likely to intervene in other situations: when sexist jokes were made (35.2%), catcalls (31.2%) or when they witnessed a friend being taken upstairs during a party who looked intoxicated (29.2%).

**RECOMMENDATIONS MOVING FORWARD**

*STRENGTHENING TITLE IX*

There are many concerns and criticisms over Title IX’s current enforcement and effectiveness. As mentioned previously, the only true threat the OCR has against educational institutions is the ability to withdraw funding and yet it has never done so. Also, despite the extensive guidance and clarification on Title IX’s scope, the current system is designed as reactive—the OCR does not have mechanisms in place to review policies and procedures unless they are called in to investigate. Thus, there are no consequences for not being in compliance with Title IX unless someone makes a complaint to the OCR.

There are three main suggestions to address these flaws in the current system of enforcement: increasing focus on prevention of sexual harassment and sexual violence, introducing audits to check if schools are in compliance, and instituting fines when OCR investigations find institutions at fault in complaints.

The first two of these proposals would begin the change of Title IX to being more proactive, as opposed to reactive, as it currently stands. Silbaugh⁶¹ argues the public health approach of a focus on primary prevention, saying that as long as Title IX and
institutions are primarily focused on how to deal with sexual harassment and violence when it occurs, it will continue to occur. Implementing audits would also be a proactive approach, as a way to enforce Title IX with all educational institutions—not just the ones that get caught in violation.

However, when educational institutions are found to be in violation, there need to be stronger consequences in place. In the current system, the OCR requires institutions to commit to certain systemic changes to ensure increased Title IX compliance in the future. The fact that some schools have been under investigation by the OCR more than once suggests that these changes are not always being made. Brodsky et al\textsuperscript{62} suggest that instituting fines for schools found to be in violation would be a stronger incentive to change. Withdrawal of federal funding altogether would likely be more damaging to students than institutions themselves, but fines would send the message that institutions will be held responsible in a way that is actually painful rather than merely inconvenient.

Title IX has broadened its scope over the years to protect against sexual harassment, but there still seems to be little progress being made in sex-based harassment prevention or response. It is time to strengthen enforcement in a proactive way.

**WORKING WITH RAPE CRISIS CENTERS**

Educational institutions are limited in their resources and capacity; increasing Title IX compliance may seem like too much to ask. Schools and school districts should take advantage of local community agencies, such as rape crisis centers. Local rape crisis centers can help their local schools and school districts with their Title IX compliance by establishing relationships with Title IX coordinators, as well as principals, counselors and
other school employees. School districts and rape crisis centers may want to create an official *Memorandum of Understanding (MOU)* outlining their partnership. Here are some ways that rape crisis centers can help schools with Title IX compliance:

1. Act as sexual violence experts and serve as consultants for school districts improving their Title IX compliance around sexual violence.
2. Work with schools to provide and evaluate sexual violence prevention programming.
3. Partner with schools to provide resources for victims of sexual violence, such as counseling.
4. Serve as consultants to evaluate current and/or develop new Title IX policies and procedures.
5. Provide training for district employees on Title IX, their responsibilities, recognizing sexual violence and their part in prevention.
6. Serve as confidential resource for victims, educating them about their rights and options under Title IX.
7. Provide agency promotional materials for schools to distribute to students, employees and parents.

*STATE AND LOCAL POLICIES*

In the September 2016 personal interview with Nan Stein, she expressed the need for state and local policies addressing sex-based harassment. Title IX is broad-reaching civil rights legislation, but leaves flexibility all the way down to the district level for solutions. Stein suggested that creating anti-sex discrimination policies locally is an
essential piece of addressing sex-based harassment. Stein also expressed the primary concern for any new policies or programs—funding. She expressed that without funding, passing state or local policies is merely a public relations tactic. With all the pressure on improving academic outcomes, funding can be difficult to come by when it comes to socio-emotional skills.

CONCLUSION

In the 44 years since the passage of Title IX, we are still struggling to ensure educational equity. Sexual harassment and sexual violence have increasingly gained attention as something that no longer must be tolerated in daily life. Through all the guidance of the Office of Civil Rights and case law resulting from litigation, schools still too often fail to protect students by preventing and responding appropriately to sexual harassment. More research is necessary to further define best practices, especially in K-12 schools.
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30. Title IX Policy and Grievance Procedure Checklist. The Association of Title IX


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