

CHALLENGING SEX OR GENDER-BASED HARASSMENT AT SCHOOL: STUDENT RIGHTS & COMPLAINT OPTIONS

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Gender-based violence and sex-based harassment are widespread problems in K-12 schools throughout the country and in Pennsylvania. For example, nearly half of students in grades 7-12 reported experiencing sexual harassment in the 2017-18 school year.¹ During the 2020-21 school year, school districts nationwide reported 14,900 students as being harassed or bullied on the basis of sex; of these students, 63% were girls, and 37% were boys.²

The U.S. Government Accountability Office has found that K-12 students who experience hostile behaviors, including sexual harassment and assault, are more likely to experience depression and anxiety as well as decreased participation and achievement in school.³

Students have the right to be free from sex- or gender-based discrimination, harassment, and violence at school. This right is guaranteed to all students under Title IX of the Education Amendments of 1972, a civil rights law that applies to all schools receiving federal funds (including charter schools and approved private school placements).⁴ The U.S. Department of Education released new regulations under Title IX, effective Aug. 1, 2024, which provide strengthened protections against sex discrimination. In addition, students in Pennsylvania are also protected by the Pennsylvania Human Relations Act (PHRA), which prohibits gender-based discrimination in education.⁵

This fact sheet explains your right to file a complaint to challenge gender-based discrimination, harassment, and violence in school.

Note that this fact sheet reports the requirements of the 2024 Title IX rule. There are some legal challenges to the 2024 rule explained below. Schools that are enjoined from enforcement of the 2024 rule remain subject to Title IX case law, the 2020 Title IX rule, and Pennsylvania anti-discrimination law. For more information see ELC's legal analysis, [2024 Title IX Regulations and State Anti-Discrimination Laws Continue to Protect Rights of Transgender Students](#).

Unless there is a court order directing Pennsylvania schools otherwise – and at this stage that is the case for only specific schools listed [here](#) – all schools are required to comply with the 2024 federal regulations by Aug. 1, 2024. If your school is currently under an injunction barring enforcement of the 2024 Title IX rule, please see this fact sheet for a comparison of the 2020 rule requirements: [New 2024 Title IX Rule: Schools' Obligation to Ensure Freedom From Sex Discrimination](#).

However, all schools remain subject to Title IX case law and PHRA regulations.

WHAT IS SEX OR GENDER-BASED HARASSMENT?

Under both federal and state law, sex-based discrimination includes harassment on the basis of gender identity, sexual orientation, sex stereotypes, and sex characteristics (including intersex traits, transgender status, and gender expression).⁶ These forms of harassment can come from anyone, including adults and other students of any gender.

When a student is bullied based on membership in a protected class like sex, then the targeted bullying is considered harassment.⁷ One example of gender-based harassment is sexual harassment, which includes sexual violence, *quid pro quo* harassment, and hostile environment harassment. Harassment that causes a hostile environment is defined as “severe or pervasive” sex-based conduct that “denies or limits” a student’s ability to participate in their education. More specific examples of gender-based harassment include, but are not limited to, the following:

- repeated and/or unwanted text messages or emails;⁸
- threats, insults, or slurs;⁹
- purposely and consistently misgendering a student;¹⁰
- stalking;¹¹
- sexually touching students;¹²
- slapping, kicking, punching, pushing, hitting, or otherwise assaulting;¹³
- obscene jokes or comments related to gender or sexuality;¹⁴
- spreading sexual rumors or passing around sexual photos of someone;¹⁵
- pressuring, forcing, or intimidating students into sexual activities.¹⁶

WHICH STUDENTS ARE MOST OFTEN SUBJECTED TO GENDER-BASED DISCRIMINATION AND HARASSMENT?

Research shows that Black girls are more likely to experience sexual harassment and sexual assault¹⁷ and less likely to be believed if they report it.¹⁸ This pattern occurs in schools as well.¹⁹ The few studies that have examined Black girls’ experience of sexual harassment and assault in schools identify underlying racism and racial stereotyping as the root cause of this cycle of victimization. As one researcher explains, school policies and educator responses

“create a nexus of subjugation that determines Black girls’ experiences are imagined, rather than material. Instead of being seen as the victims of intersectional violence, Black girls are viewed as the aggressor and disciplined for protecting themselves, or they are forced to endure their harassment in silence.”²⁰

This conclusion aligns with other research findings that teachers and administrators stereotype Black girls as dangerous²¹ and “adultify” Black girls, viewing them as less innocent.²² This conclusion is also supported by gross disparities in school exclusion practices whereby Black girls are suspended at a rate six times higher than their white peers without any difference in behavior.²³

WHAT IS THE STATUS OF LEGAL CHALLENGES TO THE NEW TITLE IX RULES? WHAT IS THE IMPACT IN PENNSYLVANIA?

In summer 2024, a number of lawsuits were initiated by other states seeking to prevent the 2024 final regulations from taking effect.²⁴ Pennsylvania is not a party to any of these lawsuits challenging the 2024 final regulations. At this time, there are no “universal” injunctions that would enjoin the final regulations from taking effect nationally. Some Pennsylvania schools are subject to a court order in the lawsuit *Kansas v. U.S. Department of Education*, which was brought by other states and the national organization Moms for Liberty.

The *Kansas* district court judge issued an opinion on July 2, 2024, holding that the U.S. Department of Education cannot enforce the 2024 rule within the plaintiff states²⁵ as well as any schools where the children of members of the organizational plaintiffs (e.g., Moms for Liberty) attend school.²⁶ The judge ordered plaintiffs to submit a list of impacted schools²⁷ and noted that future members of Moms for Liberty are entitled to the injunction.²⁸ Through multiple filings as of Aug. 16, 2024, plaintiffs have identified a total of 244 Pennsylvania schools in 85 school districts and three charter schools.²⁹ The Department of Education has appealed the *Kansas* decision and similar injunctions in other states.

Unless there is a court order directing Pennsylvania schools otherwise – and at this stage that is the case for only specific schools listed [here](#) – all schools are required to comply with the 2024 federal regulations by Aug. 1, 2024. If your school is currently under an injunction barring enforcement of the 2024 Title IX rule, please see this fact sheet for a comparison of the 2020 rule requirements: [New 2024 Title IX Rule: Schools’ Obligation to Ensure Freedom From Sex Discrimination](#). **Schools that are enjoined from enforcement of the 2024 rule remain subject to Title IX case law, the 2020 Title IX rule, and Pennsylvania anti-discrimination law.** For more information see ELC’s legal analysis, [2024 Title IX Regulations and State Anti-Discrimination Laws Continue to Protect Rights of Transgender Students](#).

After the court challenges and appeals finally conclude there will not be a grace period for compliance, so the time to prepare for implementation is now. Students and parents concerned their school has not implemented the 2024 Title IX rule can contact ELC’s Helpline at 215-238-6970.

WHAT CAN I DO IF I HAVE A COMPLAINT?

In Pennsylvania, schools can be held liable for failing to address gender-based harassment, discrimination or violence under both Title IX and the PHRA. At the school level, reports should be made to the Title IX coordinator, whose contact information and procedure for reporting must be made available to students by the school. Both verbal and written informal complaints are sufficient to require a response from the school.³⁰

As described in further detail below, students or families can also submit complaints to the U.S. Department of Education Office for Civil Rights (OCR) under Title IX or to the Pennsylvania Human Relations Commission (PHRC) under the PHRA if the school fails to act, acts improperly, or treats

the complaint with “deliberate indifference.”³¹ Students and families can submit to both OCR and PHRC, but only one agency will move forward at a time. For more explanation of these complaint options, see ELC’s [webinar](#) and [related slides](#) about race and sex-based discrimination in public schools, including how to file complaints to OCR and PHRC, and ELC’s fact sheet, [How to File a Complaint to the Pennsylvania Human Relations Commission](#).

DOES MY SCHOOL HAVE AN OBLIGATION TO DO ANYTHING?

Yes. **First**, schools are required to have and distribute a policy against sex discrimination.³² **Second**, they must employ a Title IX coordinator to whom students or parents can report complaints in person or by phone, email, and mail. All non-confidential employees are required to notify the Title IX coordinator about conduct that may constitute sex-based discrimination. Schools are also required to ensure that students know the procedure for filing complaints. Schools must notify students and parents of the Title IX coordinator’s role and contact information and duty to provide supportive measures.³³ **Third** and most importantly, once a student or family member files a complaint, schools are required to investigate the complaint in a “prompt and effective” manner.³⁴

Even if no complaint is filed, if a school knows or reasonably **should** know about potential gender-based harassment or violence (for instance, if a school employee witnesses or is told about the incident), then the school must promptly investigate and take steps to address the issue.³⁵

Schools must address complaints of harassment or other discrimination if the complainant was participating in or trying to participate in school at the time of the incident and must address off-campus conduct that creates a hostile environment at school, not just conduct that occurs within an educational program or activity.

HOW CAN I FILE A REPORT WITH MY SCHOOL, AND HOW WILL I KNOW WHETHER THE INVESTIGATION IS HAPPENING?

Students have the right to be safe from gender-based harassment and violence at all school education programs and activities, including while in class (whether remote or in-person), in the school building, on field trips, during extracurriculars, and on school transportation.³⁶ Once a student or parent files a complaint with the school Title IX coordinator, the student has the right to present any evidence or witnesses to support their case during the investigation.³⁷ Additionally, the student has the right to be notified of the time frame during which the school will investigate the complaint, when they will be notified of the outcome, and when and how to appeal the final outcome.³⁸ Notably, schools cannot pressure students to file reports, nor can they pressure students to not file reports.

Schools cannot retaliate against anyone to interfere with their Title IX rights or **punish** students for reporting discrimination, including by imposing discipline for any misconduct, or making them switch classes, extracurriculars, or schools.³⁹ Schools are responsible for preventing retaliation, including peer retaliation.⁴⁰

DOES MY SCHOOL HAVE ANY RESPONSIBILITIES REGARDING HOW IT CONDUCTS THE INVESTIGATION?

Yes. When investigating a formal complaint, the school must gather evidence sufficient to make its determination regarding the issues presented; apply the proper burden of proof (typically a

preponderance of the evidence, which means something is more likely than not); provide equal opportunities to both parties to present evidence and witnesses, including expert witnesses; remove any decisionmakers with conflicts of interest or bias; and allow the reasonable participation of each party's advisor in meetings. The school must provide adequate notice to both parties of allegations, dismissals, delays, meetings, and proceedings. At least 10 days prior to any required hearing, the school must also create an investigative report that fairly summarizes relevant evidence.⁴¹

CAN I USE AN INFORMAL PROCESS TO ADDRESS MY COMPLAINT?

Yes. In certain circumstances, at any time prior to reaching a determination, a school may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. However, if the report involves sexual assault, the school is never allowed to use informal methods that would force students being targeted to communicate with the perpetrator.⁴² If an informal process is used, a school must provide both parties with a written notice of the allegations and requirements of the informal resolution process and obtain the parties' voluntary, written consent to the informal resolution process. If the school attempts to remedy the harassment or violence through an informal process like mediation with the perpetrator, either party has the right to withdraw from the informal process at any time.⁴³

WILL I KNOW IF SANCTIONS ARE IMPOSED?

Yes. If any sanctions are imposed on the perpetrator that relate to the student (like suspension or being transferred out of classes), the student who experienced the discrimination has the right to be notified of the sanctions imposed.⁴⁴ Schools must also offer individualized support services to students experiencing sex-based discrimination, as described below.

WHAT SUPPORTIVE MEASURES ARE AVAILABLE TO ME?

If you have experienced gender-based harassment or violence and are struggling in school, Title IX requires the school to provide you with "supportive measures."⁴⁵ This is required even if the school is still investigating or has not investigated at all, and even if the complaint is dismissed; you are entitled to supportive measures if you make a confidential report to school staff or file a formal complaint.⁴⁶

To support students who have experienced harassment or violence, schools can put many supportive measures in place, including no-contact orders, free counseling, modifications of work, and changes to class schedules.⁴⁷ The school can also implement a safety plan and pick a specific person at the school to check in with the student and communicate with the family about how the safety plan is going. Additionally, schools can change the location of the perpetrator's locker or class seat, increase supervision during times that the student and perpetrator could come into contact, change the perpetrator's bus route or arrival time, assign an adult escort to the alleged perpetrator (if a student), or bring in cultural competency training, among many other examples.⁴⁸

For more information on students' rights to be free of bullying and harassment (including bullying not related to gender), see ELC's fact sheet, [The Right to Be Free from Bullying and Harassment](#).

WHAT ARE SOME TIPS FOR DOCUMENTING VIOLATIONS AND SUBMITTING COMPLAINTS?

Before submitting a complaint, it is important to document instances of discrimination. Keep records – don't delete emails, texts, screenshots, videos, social media posts, images of injuries, or anything else that attorneys may need to see later. Track any contact you have with the school on the matter and any actions that the school takes. If the school responds through a phone call, follow up every time with an email that reflects what happened in the call.

When filing a complaint, try to **be specific**. Provide details on the impact of the discrimination and explain why you think it was because of gender. Try to describe who acted, who might have seen it happen, who knew, what actions were taken, and when and where it happened. Include any documents like medical records, emails, or screenshots that support your cause. Include dates, the names of people involved, and information on any reports you have filed or tried to file with the school Title IX coordinator or elsewhere.

HOW DO I FILE A COMPLAINT WITH THE OFFICE FOR CIVIL RIGHTS?

The federal Department of Education Office for Civil Rights (OCR) enforces Title IX and evaluates and investigates complaints alleging sex discrimination. Anyone can submit a complaint to OCR, but a legal guardian will have to sign for a minor.⁴⁹ You can choose not to give the name of the affected student in the report, but if the student's identity is necessary to resolve the complaint, you may have to sign a consent form. Anonymous reports are not permitted.⁵⁰ You are allowed, but not required, to have an attorney help you with the report. You will need to provide your contact information (and if you are submitting for someone else, the name and address of the student experiencing discrimination), the name and address of the school that you are reporting, what kind of discrimination occurred, and what happened.

To file an OCR complaint, students and families can submit complaints through an [online portal](#) by filling out [this form](#) and emailing it to ocr@ed.gov or sending it through the mail. The complaint must be submitted within 180 days of the last act of discrimination, although there are some exceptions if you have a good reason for missing the deadline.⁵¹ Sometimes students experience many acts of harassment and violence over a long time period. You can submit a complaint to OCR even if you never filed a report with the school—but if you did file a report with the school, you need to file your OCR complaint within 60 days of completing the school's grievance process.⁵²

Once a complaint has been submitted to OCR, there is no required timeline for OCR to determine whether they will investigate. OCR's investigation process will include initial contact with the student, determination of whether to investigate, notification of the opening of an investigation, opportunities to resolve the matter prior to OCR concluding its investigation, conducting the investigation, reaching an outcome, and finally, exploring remedies. Remedies generally include policy changes or compensation, but the school can agree to other remedies, as well.

HOW DO I FILE A COMPLAINT WITH THE PENNSYLVANIA HUMAN RELATIONS COMMISSION?

PHRA violations can be reported to the Pennsylvania Human Relations Commission. The PHRA's definition of sex-based discrimination includes sexual orientation, gender transition, transgender

identity, gender expression, and gender identity, and the PHRC actively monitors the implementation of school policies that could be discriminatory against LGBTQ+ students.⁵³

To file a complaint, call the PHRC (717-787-4410), visit one of their regional offices, or complete PHRC's [Education Intake Questionnaire](#) and send it to PHRC@pa.gov.⁵⁴ Unlike Title IX reports, PHRA violations can only be submitted by the person experiencing harassment or violence. Reports must be filed within 180 days of an act of discrimination unless you have a good reason for missing the deadline. As long as a complaint is filed within 180 days of an act of discrimination, any ongoing harassment or violence will be covered, including those that occurred more than 180 days ago.⁵⁵ The alleged perpetrator will be notified that a report has been entered against them. You will be asked to provide witness names, addresses, and contact information, as well as any relevant documents that support your case. The PHRC will investigate, and if it finds sufficient evidence of discrimination, will attempt to resolve the issue with the school or may hold a public hearing on the case and issue an order.⁵⁶ To learn more about filing a complaint, see ELC's fact sheet [How to File a Complaint to the Pennsylvania Human Relations Commission](#).

The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice – visit www.elc-pa.org/contact or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.

¹ *Where We Stand: Sexual Harassment and Violence in Schools*, AM. ASS'N OF UNIV. WOMEN <https://www.aauw.org/resources/policy/position-school-harassment/>; Jodi Lipson, *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School* (2001), <https://eric.ed.gov/?id=ED454132> (finding that 8 in 10 students reported experiencing at least one incident of being sexually harassed in school).

² *Sexual Violence and Sex-based Harassment or Bullying in U.S. Public Schools During the 2020-21 School Year*, U.S. DEP'T OF EDUC. (Nov. 2023), https://www2.ed.gov/about/offices/list/ocr/docs/crdc-sexual-violence-snapshot.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=

³ *Students' Experiences with Bullying, Hate Speech, Hate Crimes, and Victimization in Schools*, U.S. GAO (Nov. 2021) (also reporting over 1,000 cases of rape and 7,000 cases of sexual assault other than rape in K-12 public schools).

⁴ See Title IX, 20 U.S.C.A. § 1681.

⁵ Pa. Human Relations Act, 43 PA. STAT. ANN. § 955. See also *Wible v. School District of Philadelphia*, No. 15-043169 (Phila. Cty. Ct. of Comm. Pls. 2018) (awarding a settlement against a school district under the PHRA after the school failed to prevent severe gender-based harassment and violence).

⁶ Protected Classes Under the PHRA and PFOA, 16 PA. CODE § 41.201-41.207 (effective Aug. 16, 2023), <https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol53/53-24/788.html> (final regulations defining terms related to sex, sexual orientation, and gender identity used in the PHRA and PFOA); Pa. Human Relations Comm'n, Guidance on Discrimination on the Basis of Sex under the Pennsylvania Human Relations Act 2-3 (Mar. 3, 2021), <https://www.pa.gov/content/dam/copapwp-pagov/en/phrc/documents/Sex%20Discrimination%20Guidance%20PHRA-3-3-2021.pdf> (delineating prohibitions in the PHRA against discrimination on the basis of sex prohibit discrimination on the basis of sex assigned at birth, sexual orientation, transgender identity, gender transition, gender identity, and gender expression); see, e.g., *Bostock v. Clayton Cnty.*, 590 U.S. 644, 140 S.Ct. 1731 (2020) (holding that dismissal of an employee for being gay or transgender is sex-based discrimination under Title VII); *B.P.J. by Jackson v. W. Virginia State Bd. of Educ.*, 98 F.4th 542 (4th Cir.

2024), *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020), as amended (Aug. 28, 2020); *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1047 (7th Cir. 2017) (Title IX); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 288 (W.D. Pa. 2017); *M.A.B. v. Bd. of Educ. of Talbot Cnty.*, 286 F. Supp. 3d 704, 719 (D. Md. 2018) (Title IX). See also *Parents for Privacy v. Barr*, 949 F.3d 1210, 1239-40 (9th Cir. 2020) (Title IX); *Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 535 (3d Cir. 2018) (Title IX); *United States EEOC v. Scott Med. Health Ctr., P.C.*, 217 F. Supp. 3d 834, 841 (W.D. Pa. 2016) (gay male employee stated a claim of sex discrimination based on sex stereotyping that a person should conform to heterosexuality).

⁷ See 42 U.S.C.A. § 2000d; 42 U.S.C.A. § 12182; 20 U.S.C.A. § 1681; *Davis Next Friend LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629 (1999) (stating that sexual harassment is a form of discrimination under Title IX and finding that when the harassment is so severe that it effectively bars access to an educational opportunity or benefit and the school acts with deliberate indifference, the school can be liable for student-on-student harassment).

⁸ *Torres v. Sugar-Salem School District #332*, No. 4:17-cv-00178-DCN, 2019 WL 4784598 (D. Idaho Sept. 30, 2019) (awarding a settlement against a school district after a school counselor groomed, sexually abused, and sent flirtatious text messages to students).

⁹ For examples of successful gender-based violence and harassment claims involving insults, threats, or slurs, see *K. S. A. v. State of Hawaii, Department of Education*, No. 16-00115 ACK-KJM (D. Haw. 2018) (awarding a settlement against the state department of education relating to the bullying two boys endured, including being called homophobic slurs); *Nugent v. Carl Junction R-1 School District*, No. 3:13-cv-05089-MJW (W.D. Mo. 2015) (awarding a settlement against a school district after a student committed suicide following bullying including sexual orientation slurs, physical threats, theft, and destruction of property); North Bend School District (Oregon Department of Education Complaint) (awarding injunctive relief partly on the basis of the homophobic slurs two LGBTQ+ students endured); *Riccio ex rel. Andree v. New Haven Board of Education*, 467 F. Supp. 2d 219 (D. Conn. 2006) (awarding a settlement against a board of education after an eighth-grade student endured physical harassment and anti-gay verbal harassment based on her perceived sexual orientation).

¹⁰ See *Davis Next Friend LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629 (1999); *U.S. Department of Education Confirms Title IX Protects Students from Discrimination Based on Sexual Orientation and Gender Identity*, U.S. DEP'T OF EDUC. (June 16, 2021), <https://www.ed.gov/news/press-releases/us-department-education-confirms-title-ix-protects-students-discrimination-based-sexual-orientation-and-gender-identity>; *2024 Title IX Regulations and State Anti-Discrimination Laws Continue to Protect Rights of Transgender Students*, EDUC. L. CTR.-PA (August 9, 2024), <https://www.elc-pa.org/wp-content/uploads/2024/07/2024-07-Title-IX-Rule-Challenges-ELC-Analysis.pdf>.

¹¹ *Stalking and Title IX: The Basics*, Stalking Prevention, Awareness, and Resource Center (2021), <https://www.stalkingawareness.org/wp-content/uploads/2021/11/Campus-Stalking-Title-IX-Basics.pdf>.

¹² *Brinkley v. Waters*, No. 2:18-CV-89, 2021 WL 1233352 (S.D. Ga. Mar. 31, 2021) (awarding a settlement against a school after the school failed to comply with mandatory reporting laws after students were sexually abused by a teacher); *Belcher v. Robertson County, Tenn.*, No. 3:13-0161, 2014 WL 6686741 (M.D. Tenn. Nov. 26, 2014) (awarding a settlement against the county after a child sexually touched and harassed other students).

¹³ *Shively v. Green Local School District Board of Education*, No. 5:11-cv-02398-BYP (N.D. Ohio 2015) (awarding a settlement against a school after the school failed to take action after a student was taunted with gender-based slurs and assaulted).

¹⁴ *Doe v. Georgetown County School District* (D. S.C. 2015) (awarding a settlement against a school district after a high school cheerleading coach repeatedly bullied, harassed, and belittled a cheerleader in front of her teammates, including derogatory comments about her body).

¹⁵ See *K.J. v. Hillsborough Township School* (N.J. Super. Ct. Somerset Cnty. Filed Sept. 7, 2018) (awarding a settlement against a school district after a principal was sexually inappropriate with a student).

¹⁶ *Burke v. Brentwood Union School Dist.*, No. 3:15-cv-00286 (N.D. Cal. 2015) (awarding a settlement against a school after a student was pressured into performing sexual acts and taking sexual pictures by another student, which led to a “sexting ring”).

¹⁷ Wendy S. Heipt, *Girls’ Court: A Gender Responsive Juvenile Court Alternative*, 13 SEATTLE J. SOC. JUST. 803, 805 at note 30, at 805 (2015) (finding that girls of color have “significantly higher rates of sexual victimization and trauma, rates that have been estimated to be as high as 90 percent”).

¹⁸ Kimberlé S. Crenshaw with Priscilla Ocen and Jyoti Nanda, *Black girls matter: Pushed out, overpoliced, and underprotected* (2015), https://www.atlanticphilanthropies.org/wp-content/uploads/2015/09/BlackGirlsMatter_Report.pdf.

¹⁹ See, e.g., Jodi Lipson, *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School* (2001), <https://eric.ed.gov/?id=ED454132> (67% of Black girls reported having been “touched, grabbed, or pinched in a sexual way” by someone in school; 50% of Black girls reported someone in school pulled at their clothing in a sexual way; and 28% of Black girls reported being forced to kiss someone.).

- ²⁰ Jennifer M. Wilmot, Valentina Migliarini and Ancy Annamma Subini, *Policy as Punishment and Distraction: The Double Helix of Racialized Sexual Harassment of Black Girls*, <https://journals.sagepub.com/doi/10.1177/0895904820984467>. See also Nat'l Women's L. Ctr., *Dress coded. Black girls, bodies and bias in D.C.* (2018); Sonja C. Tonnesen, *Commentary: "Hit it and quit it": Responses to Black girls' victimization in school* 28 BERKELEY J. GENDER, L. & JUST. 1 (2013); *Dress Codes Hurt Learning for Black Girls in D.C., New NWLC Report Finds*, NAT'L WOMEN'S L. CTR. (2018), <https://nwlc.org/press-releases/dress-codes-hurt-learning-for-black-girls-in-d-c-new-nwlc-report-finds/>; Connie Wun, *Against captivity: Black girls and school discipline policies in the afterlife of slavery*, 30 EDUC. POL'Y 171 (2015).
- ²¹ Venus E. Evans-Winters with Girls for Gender Equity, *Flipping the script: The dangerous bodies of girls of color*, 17 CULTURAL STUD. ↔ CRITICAL METHODOLOGIES 415 (2017).
- ²² Rebecca Epstein, Jamilia J. Blake and Thalia González, *Girlhood interrupted: The erasure of Black girls' childhood*. GEORGETOWN L. SCH. CTR. ON POVERTY AND INEQUALITY (2017), <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/girlhood-interrupted.pdf>.
- ²³ See, e.g., Off. for C.R., U.S. Dep't of Educ., *Civil rights data collection: School climate and safety* (2014), <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>; Off. for C.R., U.S. Dep't of Educ., *Civil rights data collection: School violence factors in the educational environment* (2020), <https://www2.ed.gov/about/offices/list/ocr/docs/sexual-violence.pdf>.
- ²⁴ See *Which States Have Sued to Stop Biden's Title IX Rule?*, EDWEEK, updated August 01, 2024, <https://www.edweek.org/policy-politics/which-states-have-sued-to-stop-bidens-title-ix-rule/2024/07#:~:text=Legal%20challenges%20to%20Biden's%20Title%20IX%20rule%20and%20their%20status&text=The%20awsuits%20all%20take%20issue,to%20be%20included%20in%20regulation>.
- ²⁵ *Kansas v. U.S. Dep't of Educ.*, --F.Supp. 3d--, 2024 WL 3273285, *20-21 (D.Kan. Jul. 2, 2024).
- ²⁶ *Id.* at *21.
- ²⁷ *Id.* at *21.
- ²⁸ *Kansas v. U.S. Dep't of Educ.*, 2024 WL 3471331, *4 (D. Kans. July 19, 2024).
- ²⁹ Only six Pennsylvania public schools were identified by the first deadline of July 15, but on July 19 the court extended the deadline for identifying schools. See Plaintiffs Notice of List of Schools, *Kansas v. U.S. Dep't of Educ.*, No. 5:24-cv-04041, ECF No. 67 (D. Kan. July 15, 2024) (identifying six Pa. public schools); *Kansas v. U.S. Dep't of Educ.*, 2024 WL 3471331, ** (D. Kans. July 19, 2024) (denying Ed. Dept.'s motion for stay pending appeal and extending deadline to July 24 for plaintiffs to submit names of member schools). After a deadline extension to July 26, 2024, plaintiffs identified 118 Pennsylvania schools from 49 school districts and 3 charter schools. See Plaintiffs Notice of List of Schools, *Kansas v. U.S. Dep't of Educ.*, No. 5:24-cv-04041, ECF No. 72 (D. Kan. July 26, 2024) (identifying 118 Pa. schools). Plaintiffs submitted a third supplemental list of schools on July 31, 2024, with 126 additional Pennsylvania schools from 45 school districts. See Plaintiffs Notice of Supplemental List of Schools, *Kansas v. U.S. Dep't of Educ.*, No. 5:24-cv-04041, ECF No. 74 (D. Kan. July 31, 2024) (identifying 126 additional Pa. schools).
- ³⁰ 34 C.F.R. § 106.2 (effective Aug. 1, 2024) (defining complaint as "an oral or written request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or this part").
- ³¹ *Id.* § 106.44(a) (establishing and explaining the standard of "deliberate indifference"); *Wible v. School District of Philadelphia*, No. 15-043169, 26-29 (Phila. Cty. Ct. of Comm. Pls. 2018); *Hill v. Madison County School Board*, 957 F. Supp. 2d 1320 (N.D. Ala. 2013) (holding a school liable for deliberate indifference to sexual harassment under Title IX); *Callahan ex rel. Roe v. Gustine Unified School District*, 678 F. Supp. 2d 1008 (E.D. Cal. 2009).
- ³² 34 C.F.R. § 106.45 (setting forth the grievance procedure requirements for schools).
- ³³ *Id.* § 106.44(a) (requiring schools to offer supportive services to victims); 34 C.F.R. § 106.8(b) (requiring the Title IX Coordinator's contact information to be displayed on the website).
- ³⁴ 34 C.F.R. § 106.44(a) (requiring that schools must promptly investigate reports and must not respond with deliberate indifference); 34 C.F.R. § 106.44(b)(1); 106.45(b)(3)(i) (requiring schools to investigate complaints).
- ³⁵ 34 C.F.R. § 106.30 (defining "actual knowledge" and "notice").
- ³⁶ Exec. Order No. 14021, 86 F.R. § 13803 (1) (2021) (clarifying that Title IX protections apply to "all education programs or activities receiving Federal financial assistance").
- ³⁷ Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance Final Rule, 34 C.F.R. § 106 (2020); 34 C.F.R. § 106.45(b)(5)(ii) (requiring an equal opportunity for all parties to present cases, evidence, and witnesses).
- ³⁸ 34 C.F.R. § 106.45 (providing framework for grievance procedures and requirements for schools).
- ³⁹ *Doe v. School Board of Miami-Dade County*, No. 1:19-cv-20204 (S.D. Fla. 2019) (holding a school liable after a high school student reported sexual assault and was suspended after reporting).
- ⁴⁰ 34 C.F.R. § 106.71 (effective Aug. 1, 2024).

⁴¹ *Id.* § 106.45(b)(5).

⁴² *Id.* § 106.45(b)(9).

⁴³ *Id.*

⁴⁴ *Id.* § 106.45(b)(7) (requiring schools to make certain information, including information on sanctions, available to the victim).

⁴⁵ *Id.* § 106.44(b)(1); 34 C.F.R. § 106.30.

⁴⁶ 34 C.F.R. § 106.2, 106.44(g)(2) (effective Aug. 1, 2024).

⁴⁷ *Id.* § 106.30; Know Your IX and Nat'l Women's L. Ctr., *Frequently Asked Questions on Title IX and Supportive Measures for K-12 Students*, NAT'L WOMEN'S L. CTR. (2021), <https://nwlc.org/wp-content/uploads/2021/11/Supportive-Measures-FAQ-K12-vF.pdf>.

⁴⁸ *What to Do When Your Child is Bullied or Harassed*, EDUC. L. CTR.-PA (Sept. 2019), <https://www.elc-pa.org/wp-content/uploads/2019/07/Parents-Guide-on-Bullying-Harassment-in-Schools-Final-w-App072619.pdf>.

⁴⁹ 34 C.F.R. § 106.8(a) (stating that anyone can submit a Title IX report).

⁵⁰ Case Processing Manual (CPM), Off. for C.R., U.S. Dep't of Educ. 5 (July 18, 2022), <https://www2.ed.gov/about/offices/list/ocr/docs/ocrspm.pdf>.

⁵¹ *Id.* at 9.

⁵² Off. for C.R., U.S. Dep't of Educ., *How to File a Discrimination Complaint With the Office for Civil Rights*, U.S. DEP'T OF EDUC. (Sept. 2010), <https://www2.ed.gov/about/offices/list/ocr/docs/howto.pdf>.

⁵³ Pa. Human Relations Comm'n, *Guidance on Discrimination on the Basis of Sex under the Pennsylvania Human Relations Act 3* (Aug. 2, 2018) (delineating prohibitions in the PHRA against discrimination on the basis of sex prohibit discrimination on the basis of sex assigned at birth, sexual orientation, transgender identity, gender transition, gender identity, and gender expression); PHRC Statement on Central Bucks School District Policy, Pa. Human Relations Comm'n (Jan. 13, 2023) (commenting on potentially discriminatory school policies and allegations of sex-based discrimination against LGBTQ+ students in the Central Bucks School District and elsewhere).

⁵⁴ See *Education Discrimination*, PA. HUMAN RELATIONS COMM'N, <https://www.phrc.pa.gov/Complaints/Pages/Education.aspx>.

⁵⁵ *Wible v. School District of Philadelphia*, No. 15-043169 (Phila. Cty. Ct. of Comm. Pls. 2018) (applying the “continuing violations doctrine” and considering the entire time period of 2003-2013 pursuant to a 2013 complaint).

⁵⁶ *Filing a Complaint*, PA. HUMAN RELATIONS COMM'N, <https://www.pa.gov/en/agencies/phrc/programs-and-services/file-a-complaint.html>.