

Addressing Sexual Misconduct of Students in K-12 Schools

By Will J. Gordillo

Introduction

The significance and impact of the global COVID-19 pandemic has changed education forever, forcing stakeholders to rethink customary standards related to teacher preparedness; instruction; testing; attendance; length of the school day; supports for behavior and mental health; safety protocols; risk mitigation; and student well-being.

After a year of pandemic schooling, there is also greater public awareness and concern about incidents of sexual misconduct as a result of the new [Title IX Regulations on Sexual Harassment](#)¹ and the #MeToo movement. This unprecedented reshaping of education has cast a critical light on today's contemporary issues—equity and justice; disciplinary policies; an omnipresent emphasis on the necessity for more stringent school safety protocols; behavioral health supports; prominent shortcomings of governmental funding formulas; and the heightened role of technology in classroom learning—issues within education that span the continuum. The three [Elementary and Secondary School Emergency Relief \(ESSER\) Acts](#)² passed in December 27, 2020, provide additional flexible funding to address these substantial issues. Unlike the [Elementary and Secondary Education Act \(ESEA\)](#)³ and the [Individuals with Disabilities Education Act \(IDEA\)](#),⁴ ESSER funds are not required to supplement and not supplant local/state dollars and offer school districts an unprecedented amount of funding flexibility.

The ever-growing challenges that center around student-on-student sexual harassment and assault at K-12 (kindergarten through 12th grade) schools has caught the attention of the Behavioral Threat Assessment Team at Public Consulting Group (PCG). In addition to the #MeToo movement drawing attention to issues of sexual harassment, especially in colleges and the workplace, the issue is a rising factor in K-12 education.⁵ While the new Title IX regulations include a framework for how K-12 schools should respond to reports of assault and harassment, schools typically lack staff who are trained and equipped with skills to successfully handle incidents of sexual misconduct. Without focused public attention on how to effectively and efficiently adhere to mandates and regulations stipulated in Title IX, it is doubtful that new government rules alone will improve the handling of sexual misconduct allegations in K-12 environments. Furthermore, these complex rules are difficult to implement without the support of an electronic platform to guide and track their application.

PCG produces products based on research that reflect best practices. They are designed purposefully to help reduce incidents of concerning behaviors and threats that adversely impact many K-12 students. Preventative Safety Assessments for Concerning Behaviors and Threats is an evidenced-based tool that supports practices designed to prevent incidents of targeted school violence in K-12 schools. Research from the American Psychological Association Zero Tolerance Task Force indicates that zero-tolerance policies can lead to higher rates of exclusionary disciplinary actions and are not associated with improved school safety.⁶ According to New York University, a more rehabilitative and prevention-focused consequence for a student

is to mandate regular sessions with a school counselor or social worker and provide the student with assistance in developing a problem-solving process to hone social skills, manage impulses, listen to others, and resolve conflicts instead of forcing them out of school.⁷

Students who engage in sexual misconduct or other types of adverse behaviors and victims of such perpetrators are vulnerable students of concern who might be in distress or calling out for help. PCG maintains that by integrating incident response management and threat assessment practices in a distinct pathway, stakeholders are better equipped and prepared to focus on prevention and effectively manage incidents of sexual misconduct exhibited by students.

Title IX Sexual Harassment

Sexual harassment is a form of sex discrimination that is prohibited in K-12 educational settings by Title IX. It is defined by Title IX Regulations on Sexual Harassment⁸ as, “unwelcome conduct that is so severe, pervasive, and objectively offensive that it effectively denies equal access to the educational program or activity.” Under these regulations, school districts and schools are required to take appropriate steps to address sex discrimination, including sexual harassment that is student-on-student or staff-on-student. There is documented evidence from the National Center for Education Statistics that sexual misconduct is an ever-growing and prominent issue in education.⁹

According to a 2019 report from the National Center for Educational Statistics, the number of reported forcible sex offenses on school campuses increased from 2,200 in 2001 to 10,400 in 2017 (a 372 percent increase).¹⁰ Also, both the 2015–16 Civil Rights Data Collection and the Data Highlight on School Climate and Safety published in 2018 indicated that students reported approximately 9,700 incidents of sexual assault, rape, or attempted rape at elementary and secondary schools in the 2015 to 2016 academic year.¹¹ Sexual content is now more readily accessible to children through print, media, and the internet. An increased exposure of children to inappropriate pornographic sexual content is alarming and may perpetuate the causal effect of more reported incidents of sexual misconduct, harassment, intimidation, and bullying in today’s K-12 schools.

Most recently, on May 6, 2020, the U.S. Department of Education (DOE) issued a final rule that amended Title IX of the Education Amendments of 1972.¹² The rule describes how schools, colleges, and universities must receive and investigate allegations of sexual harassment. The rule includes important definitions and process requirements that key district and designated elementary and secondary school personnel must learn and implement. Definitions are included for the following: actual knowledge of sexual harassment; complainant; consent; formal complaint; sexual assault; and supportive measures. Processes include the filing of formal complaints; the role of Title IX coordinators; public notice; detailed standards for grievance and investigation procedures; informal resolution; emergency removal; appeals; and record keeping.

Note: a school district is obligated to investigate only allegations of sexual harassment contained in a complaint that is sent to the district’s Title IX coordinator or official with the authority to take corrective action.

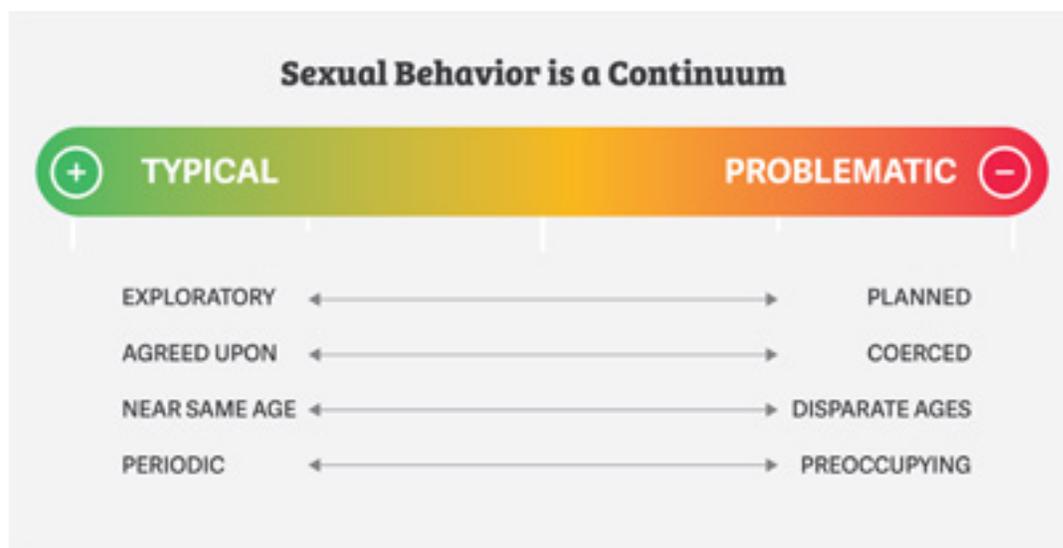
Understanding Sexual Misconduct & Manifestation of Sexual Threats

It is important to understand that sexual misconduct frequently manifests itself across a variety of threatening behaviors often involving student-on-student sexual assault and harassment. It is happening with disturbing frequency at every level of education from pre-kindergarten to college. Sexual harassment and assault have become offenses that occur regularly in the U.S.¹³ When they occur in schools and there is failure to address them, students can infer that such behavior is permissible, perhaps even tolerated. Without proven strategies designed to tackle these problems through classroom curriculum, policy, staff training, and education, they are more likely to become entrenched and woven into the very fabric of school and community culture.

Employee-on-student sexual harassment occurs when an employee conditions an aid, benefit, or service on the student’s participation in unwelcome sexual conduct. Student-on-student sexual harassment occurs when the unwelcome conduct is so severe, pervasive, and objectively offensive that it effectively interferes with one’s educational program or activity. Such behaviors can include:¹⁴

- Sexual comments, words, pictures, suggestions, jokes, and/or gestures
- Sexual advances (i.e., verbal, nonverbal, or physical)
- Technology, cyber, and/or social media-based harassment
- Requests, insinuations, and/or solicitations for sexual favors
- Flashing or mooning
- Peeping
- Stalking
- Having hurtful sexual rumors intentionally communicated to a third party
- Gripping, pulling, or grasping clothing in a sexual manner

Sexual behavior spans a continuum from typical to problematic. The challenge for school districts is to ensure that their student discipline code, policies, and procedures comprehensively address prevention and intervention for matters of problematic behavior.



Mitigating Risk: School District Adoption of Policies & Procedures

A recent report published by the National Center for Education Statistics on crime and violence in U.S. public schools identified through the School Survey on Crime and Safety (SSOCS) found that, from 2011 to 2015, approximately 17,000 sexual assaults were committed by U.S. students, a number most likely to be higher as assaults are notoriously under-reported or mislabeled as bullying, particularly among young victims. Another study indicated that 5.2 percent of surveyed schools reported an incident of sexual assault other than rape. This added up to a total of 7,100 recorded incidents in the 2017 to 2018 academic year, translating to a significant increase in the number of schools reporting sexual assault nationwide.¹⁵

To minimize, prevent, and/or respond effectively to incidents, PCG's best-practice recommendations for school districts and/or school boards include the following steps:

- Be proactive
- Adopt a student code of conduct
- Develop clear and comprehensive policies and procedures and hold staff accountable for knowing and implementing policies
- Identify champions for change to support policy awareness and implementation
- Improve communication about mandated policies and procedures so that staff, students, parents, and guardians have an awareness of sexual misconduct laws and policies, including how to file a complaint with the Title IX coordinator while providing meaningful access to this information for non-native-English speakers
- Offer regularly scheduled in-person staff, student, and parent training regarding the adoption of policies, procedures, and the ramifications for violations
- Leverage technology and provide clear guidance on how to report and investigate incidents

When school districts adopt and update misconduct policies and procedures that clearly specify expectations and set appropriate boundaries among teachers and students, they establish guardrails; set institutional norms and expectations; address compliance requirements; and help school districts mitigate institutional risks and liability.¹⁶

Reducing School District Liability & Risks

Sexual harassment and violence can have a devastating impact on victims both physically and emotionally. Not only do survivors' emotional and psychological scars endure long after an attack, their social lives, education, and future aspirations are often shattered. For many, the trauma is insurmountable; gender-based harassment and sexual assault have driven an increasing number of students to suicide.

In 1999, the U.S. Supreme Court addressed this issue in the case, *Davis v. Monroe County Board of Education*.¹⁷ The Court found that a school board may be liable for financial damages if it was deliberately indifferent to sexual harassment. This liability is met when school personnel have actual knowledge of harassment that was so severe, pervasive, and objectively offensive that it essentially deprived the victim of access to the school's educational opportunities or benefits. The Title IX Regulations on Sexual Harassment,¹⁸ amended on May 6, 2020, adopted this Supreme Court standard.

Because of the significant social/emotional consequences of sexual harassment, lawsuits seeking damages against school districts for unaddressed sexual harassment of students have proliferated. For example, a mother in Miami, FL, filed a lawsuit in 2012 after she said her second grader was repeatedly abused by an older boy at his charter school. Eventually, the seven-year-old child attempted suicide by walking into traffic with his eyes closed, according to the family's lawsuit. The case resulted in one of the largest verdicts in student-on-student sexual abuse. A jury awarded the family \$5.25 million in 2014. The school appealed, and in 2015, reached a confidential settlement for an undisclosed amount.¹⁹

The 2019 edition of *Jury Verdicts and Settlements in Bullying Cases*²⁰ reported 20 years of bullying and harassment cases filed against school districts in federal/state courts throughout the U.S. The associated costs resulting from these jury verdicts and settlements for school districts often ranged from hundreds of thousands to tens of millions of dollars.

PCG's Behavioral Threat Assessment (BTA) Pathway for Sexual Misconduct Incident Response

The Title IX regulatory requirements²¹ and potential litigation and enforcement are motivating incentives for school districts to have compliant sexual misconduct policies and procedures along with training to support their implementation. The use of an associated electronic incident response protocol helps school districts to track the complexities of complaint management processes and to proactively assess practices and trends.

To support school personnel in their assessment of student threats in K-12 schools, PCG has developed an industry-leading digital solution, for preventative assessment of threats (<https://publicconsultinggroup.com/bta>). This behavioral threat assessment solution, which is based on research, best practices, and state/federal statutes, includes a new component, Sexual Misconduct Response (SMR). Together with the solution's Suicide Risk Assessment and Fire-Setting Response, the components support the work of school professionals who are addressing these challenging areas of concern. When implemented and utilized effectively, this platform's tools have the capacity to support school districts and schools in adhering to federal and state requirements using prevention-focused practices.

The SMR pathway tool examines sexual misconduct through a normative versus non-normative lens for the purpose of intervention for students of concern; the mitigation of risk to others; and interventions and supports for any student who might have been impacted by an act of sexual misconduct. SMR addresses a broad spectrum of student sexual misconduct resulting in student-on-student sexual harassment, intimidation, and bullying, which may also be criminal in nature.

SMR also helps K-12 schools to implement a case management approach to capture and handle incidents of alleged sexual misconduct between students. The approach is aligned with school board policies associated with sexual harassment, intimidation, and bullying, as well as Title IX requirements²² and code of school conduct violations. Comprehensive out-of-the-box configurations initiate and methodically address a sexual misconduct incident response to help district/school teams to:

- Implement a process for capturing and handling incidents/complaints involving sexual misconduct between students from beginning to end until there is a resolution
- Support early intervention in addressing and responding to student-on-student sexual misconduct incidents in a proactive and consistent manner
- Conduct a comprehensive investigative process for each SMR reported as sexual harassment, intimidation, bullying, or other sexual misconduct, which may be in violation of district and school policies and procedures
- Complete interviews of victims, offenders, and witnesses; make risk level determinations; develop interventions; formulate a plan to address and resolve; and generate a report that includes the details of how the SMR was handled
- Generate reports and plans developed to document evidence of actions taken to resolve SMR and related documentation
- Make the necessary SMR documentation accessible to the district Title IX compliance officer(s), as needed, to finalize the investigative and report submission process—to comply with the [U.S. Department of Education's Office of Civil Rights \(OCR\)](#)²³ 60-day timeline rules on formal complaints being received in writing and filed.

PCG Comprehensively Supports Threat Assessment in K-12 Schools

The fluidity of problems presented by the COVID-19 pandemic has complicated even further school districts’ challenges to identify, assess, and provide interventions to students who pose a threat of targeted violence either to themselves or others. PCG’s threat assessment suite reinforces and leverages researched best practices through guided system processes. The suite’s prevention/intervention strategies are designed to help school districts develop and implement a successful, comprehensive approach to promoting safe schools.

Behavioral Threat Assessment (BTA). PCG’s BTAs are a proven method of early intervention that can help prevent acts of targeted violence in school environments. BTAs are recommended by the [Federal Bureau of Investigation \(FBI\)](#)²⁴, [the DOL](#)²⁵, and the [U.S. Secret Service](#)²⁶ to help schools manage risks and assess threats through a cloud-based case management platform.

Suicide Risk Assessment. PCG’s suicide risk assessment pathway tool gives school districts the opportunity to implement a standardized procedure to assess a student’s suicide risk. By leveraging this tool, staff utilize common terminology, which is understood by all, so that effective discussions on a student’s status and the formulation of plans for appropriate action can take place.

Sexual Misconduct Response. PCG’s SMR pathway tool helps K-12 schools to implement a case management approach to capture and handle incidents of sexual misconduct between students. It is aligned to support school board policies and codes of student conduct for addressing sexual harassment, intimidation, and bullying.

Fire-Setting Response. PCG’s new fire-setting incident response pathway tool empowers K-12 schools to implement a case management approach to handle incidents of fire setting by students. It is aligned to district policies and procedures and codes of student conduct [i.e., policies for improper or unapproved use of fire including: juvenile fire setting; fire lighting; juvenile arson; youth fire setting; child arson; fire play experimentation; playing with lighters or matches; and other fire-related incidents (e.g., fireworks; explosives or bottle bombs; pulling a false alarm; igniting aerosols or accelerants; observing others misusing fire; etc.)].

Professional Development. PCG’s subject matter experts provide much-needed guidance, training, and support to establish and/or enhance a multi-tiered system of supports (MTSS), social emotional learning, and school safety frameworks to implement integrated evidenced-based practices that address student well-being with school safety in mind.

Best-Practice Considerations for Addressing Sexualized Behaviors of Students in K-12 Schools



POLICIES & PROCEDURES

Adopt policies and procedures that will address sexual harassment, intimidation, bullying or other incidents of sexual misconduct by a district or school multidisciplinary team.



TRAINING

Offer annual, in-person staff, student, and parent training and include real-life situational examples.



REPORTING

Have clear guidance for reporting and encourage staff, students, and parents to report a sexual misconduct incident or incidents.



INVESTIGATIONS

Proactively develop collaborative relationships for the investigatory process among school educators, law enforcement, criminal justice, and child welfare and consider the use of multi-disciplinary teams that include school resource officers on school campuses.



RESPONSE

Provide support to staff, parents, and students; develop protocols for proper responses to an incident; and establish accountability measures.



TECHNOLOGY

Incorporate the use of technology solutions, as they will make it easier for staff, students, and parents to report incidents of sexual misconduct and for collaborative multi-disciplinary school teams to investigate and respond consistently with the utmost student and school safety in mind.

About the Author

Will Gordillo, a senior associate, provides thought leadership and consulting services to support special education initiatives and behavioral threat assessment policies, practices, and solutions to project implementations nation-wide. Will is currently supporting the implementation of integrated solutions for behavioral threat assessment, suicide risk assessment, sexual misconduct response, and fire-setting response to help manage and address the behavioral mental health and wellness of students with school safety in mind.

About the Public Consulting Group

Public Consulting Group (PCG) is a management consulting firm with its headquarters based in Boston, Massachusetts. Established in 1986, PCG employs over 3,200 employees and operates from strategically positioned offices across the United States and in Canada; United Kingdom; and Poland. The firm has extensive experience in all 50 states, clients in 5 Canadian provinces, and a growing practice in the European Union. PCG directly serves 6,200 school districts, 28 state departments of education, 17 of the 25 largest urban school districts, and 57,000 schools.

PCG is a multifaceted consulting firm with a global presence, a knowledgeable and experienced cadre of educational staff, and the financial capacity to support students, teachers, educational leaders, and community stakeholders. The firm has a solid history of collaborating with some of the largest school districts and has earned the trust of these highly respected districts and many of their state departments.

To learn more about PCG's threat assessment platform for schools, contact us.



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www.publicconsultinggroup.com/bta

Endnotes

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