

Serving Middle and High School Survivors in Education Settings

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Deputy Director, External Affairs

January 2025



**VICTIM
RIGHTS
LAW CENTER**

Preparation of this material was supported by grant number 15JOVW-23-GK-05167-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, and conclusions expressed are those of the author(s) and do not necessarily represent the views of the U.S. Department of Justice.

VRLC's Massachusetts Direct Services Team

Introduction

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TA@victimrights.org



VRLC's TA Team is Here to Help!

Expert Advice

Case
Consultation

Training

Mentorship

Individual and
Programmatic
Support

Crafting
Policies

Document
Review

Legal
Research and
Resources

By Email: ta@victimrights.org

Online: <https://victimrights.org/request-ta/>

Resource Library: <https://victimrights.org/resource-library/>

Objectives:

- Understand the prevalence and impact of sexual assault in middle and high school settings
- Identify key legal needs of and remedies for sexual assault survivors in school
- Learn more about how VRLC's Youth in Education Settings project can support your work

Who Is Targeted for Sexual Assault?

Individuals Who Are:

- **Minors**
- Limited English proficient
- Transgender
- Bisexual women
- Living in poverty
- Experiencing homelessness/houselessness
- Undocumented
- Living with intellectual and developmental disabilities
- Incarcerated or detained
- Older / **younger**
- History of mental illness/mental health needs
- Criminal history
- Living in a residential facility
- Prior victimization

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How Do VRLC Lawyers Support VRLC Clients?

Your VRLC Lawyer is here to help you with your case. Their job is to:



Listen to you



Tell you your options



Answer your questions

Client Empowerment Model

As a client of the VRLC, YOU are in charge of your case. Your lawyer will listen to YOU about what you want to do.



A few things to know about working with a VRLC lawyer:



We believe you.



Everybody is welcome.



VRLC services are free.



It is okay to disagree with your lawyer.



Your lawyer will only ask what they need to know.



It is okay to change your mind.

You have **Confidentiality** and **Attorney-Client Privilege** with your VRLC lawyer. Your lawyer will only share your private information with other people after you have signed a **Release of Information**.

Always ask your lawyer if you have any questions!

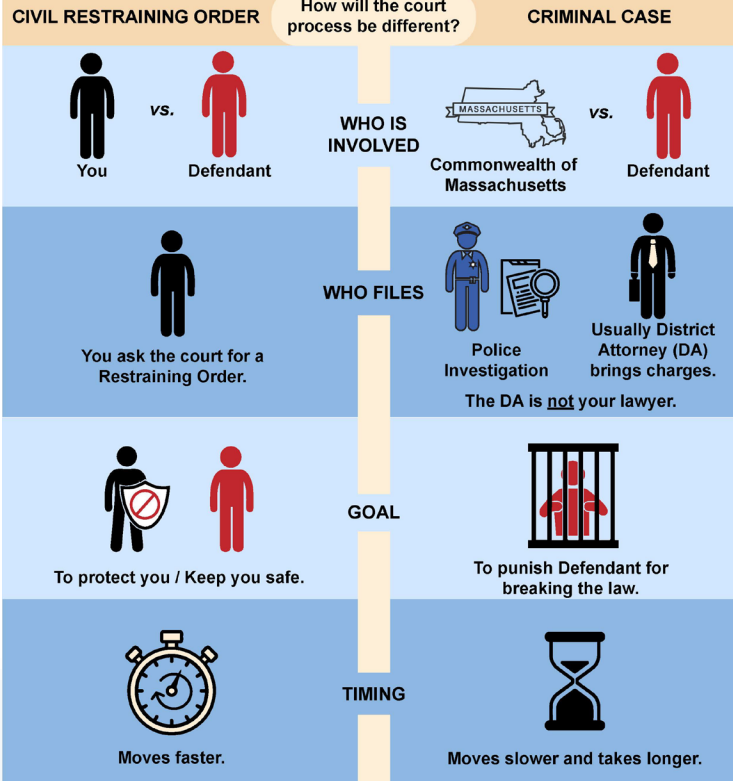
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WHAT IS THE DIFFERENCE BETWEEN A CIVIL RESTRAINING ORDER CASE AND A CRIMINAL CASE?

Your VRLC lawyer will explain this document and talk to you about how these things might apply to your sexual assault case in Massachusetts.

This is only a guide to help you remember what you and your VRLC lawyer talked about.



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UNDERSTANDING THE SUPERIOR COURT PROCESS

Your VRLC lawyer will explain this document and talk to you about how these things might apply to your sexual assault case in Massachusetts.



HOW A SUPERIOR COURT CASE BEGINS



District Attorney (DA) brings case to Grand Jury.

If the case was started in District Court it may still go to Grand Jury, but if not:

GRAND JURY:



23 people hear the evidence. At least 12 must think a crime happened.

OR

PROBABLE CAUSE HEARING:

Judge hears witness testimony and evidence to decide if case should go to Superior Court.



Grand Jury meets in private. Defendant is not there.



Defendant is there.



Grand Jury may also ask you questions.

DA may ask you to testify.

Defense Attorney may also ask you questions.

IF INDICTED the case will be heard in Superior Court

ARRAIGNMENT: Defendant is charged with a crime and usually enters a plea. Defendant is told their rights and given rules to follow.

Not Guilty

Guilty



Plea



Defendant's Rights



Bail / Conditions of release



Scheduling

PRE-TRIAL HEARINGS: Court hearings to work out any issues about evidence and to decide if case will go to trial.

May include:



Plea Deals



Motion Hearings



Scheduling

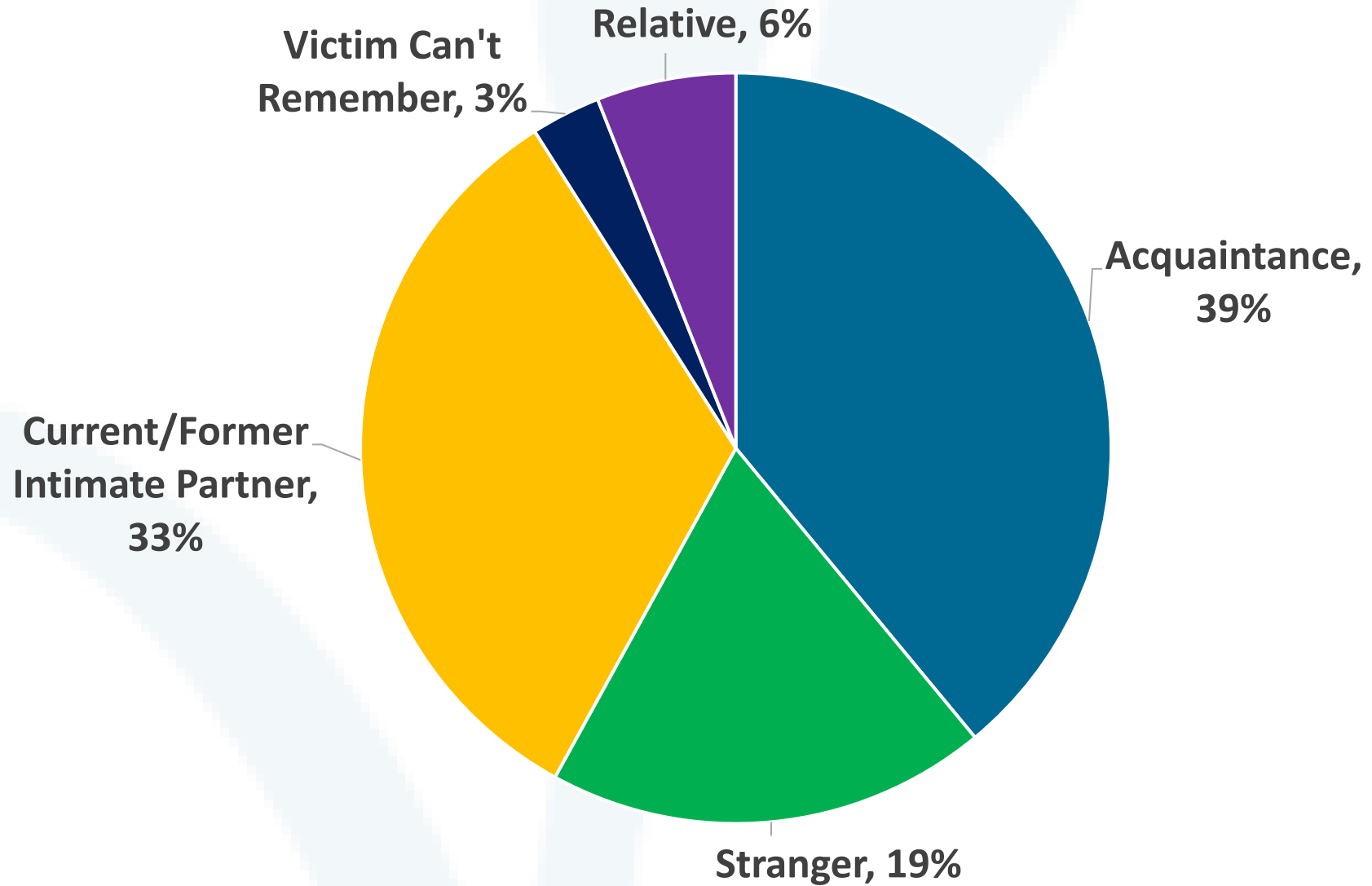


Review Evidence

There can be many hearings before trial.

If anyone is asking for your medical, mental health, or school records, tell your lawyer right away. This might be a **Rule 17 Dwyer Motion**.

Relationship to Perpetrator



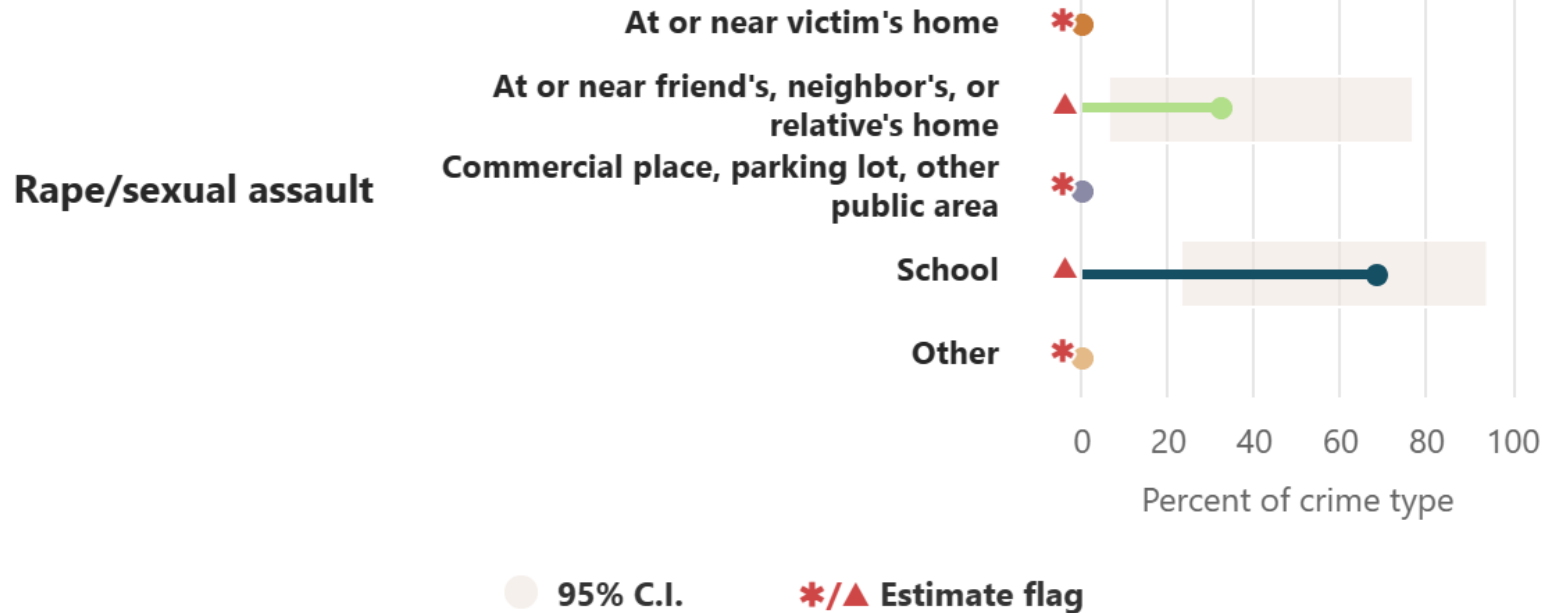
Prevalence

- In 2021, about 1 in 12 (8.5%) high school students reported that they had been forced to have sex at some time in their lives.
- These rates were significantly higher among:
 - Female students (14%)
 - Indigenous students (18%)
 - Lesbian, gay, bisexual, and questioning students (20%).



Percent of victimizations by crime type by location of incident, 2022

Age: 12 to 14



Where is sexual violence occurring?

"95% C.I.": 95% confidence interval.

"S.E.": Standard error.

Estimate flag of "▲": Interpret data with caution, based on 10 or fewer sample cases or the coefficient of variation is greater than 50%.

Estimate flag of "*":

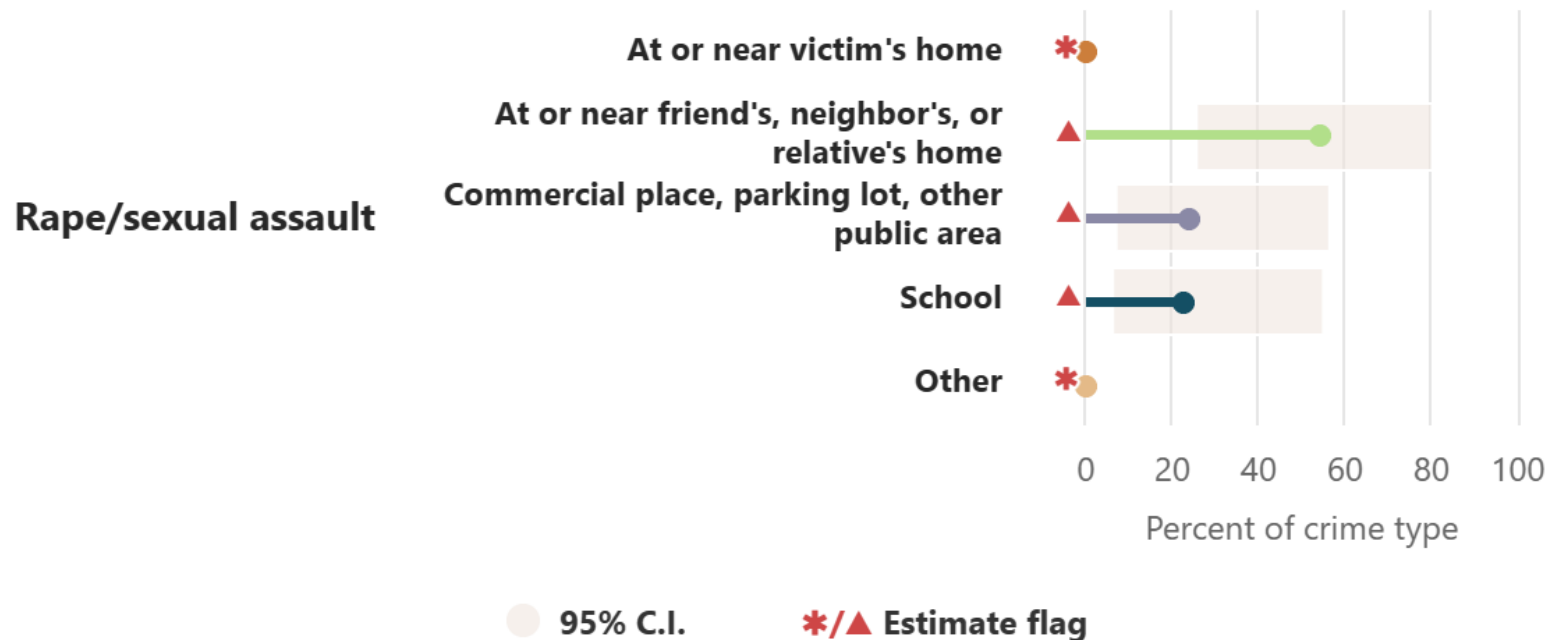
- For numbers, indicates estimate is equal to 0 victimizations.
- For rates, indicates estimate rounds to less than .05 victimizations per 1,000.
- For percents, indicates estimate rounds to less than .5 percent.

Source: Bureau of Justice Statistics, National Crime Victimization Survey, 2022.

<https://ncvs.bjs.ojp.gov/single-year-comparison/crimeType>

Percent of victimizations by crime type by location of incident, 2022

Age: 15 to 17



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What we often see

- District resources stretched very thin
- Supportive measures not offered, family/student must proactively advocate
- Districts rely on students to propose ideas and identify where they feel unsafe
- Limited understanding of Title IX requirements, much better understanding of state laws and special education
- Victims referred to local law enforcement

Issue Spotting Education Issues

- "The school won't tell me anything about their investigation."
- "The school won't suspend/expel the student who hurt me."
- "I don't feel safe at school."
- "I can't focus on classes anymore. My grades are dropping, and I've started skipping school."
- "I don't have good relationships with people at school anymore."
- "I've started getting into trouble at school."
- "I don't get to make any decisions about what happens at school."

Education Remedies in K-12

Title IX

**Unsafe
School
Option**

Section 504

IDEA



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Kai

- Kai is a high school junior.
- Last summer, Kai was sexually assaulted by a classmate from the same school.
- How might Title IX help Kai?

Title IX

Education Amendments of 1972
20 U.S.C. § 1681 et seq.; 34 C.F.R. § 106

What is Title IX?

It's a federal law that prohibits discrimination on the basis of sex, including sexual harassment, in schools.

What does this mean?

- *If* a student
 - a) experiences sexual harassment, sexual assault, dating/domestic violence, or stalking
 - b) on school grounds or at school events, including field trips and extracurricular activities, and
 - c) the school receives federal funding,
- *Then* the school must respond to those incidents.

What Is “Sexual Harassment” Under Title IX?

- Sexual Assault
- Dating Violence (VAWA)
- Domestic Violence (VAWA)
- Stalking (VAWA)
- Quid Pro Quo Sexual Harassment and
- Unwelcome conduct that a reasonable person would find so severe, pervasive, AND objectively offensive that it denies a person equal educational access

Jurisdiction under Title IX

- In the United States
- On Campus/within educational program or activity
- Survivor and perpetrator must be accessing education at the same institution
- Limited to sexual harassment as defined by Title IX

Supportive Measures Under Title IX

Defined as:

- ✓ **non-disciplinary,**
- ✓ **non-punitive**
- ✓ **individualized services**
- ✓ offered as appropriate, as **reasonably available**, and
- ✓ without fee or charge to the complainant or the respondent
- ✓ **before or after the filing of a formal complaint or where no formal complaint has been filed.**

(§ 106.30)



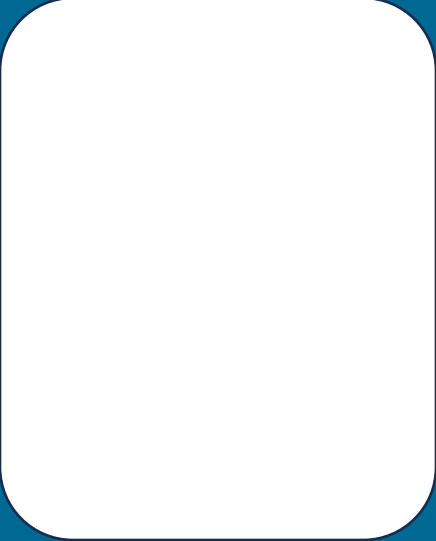
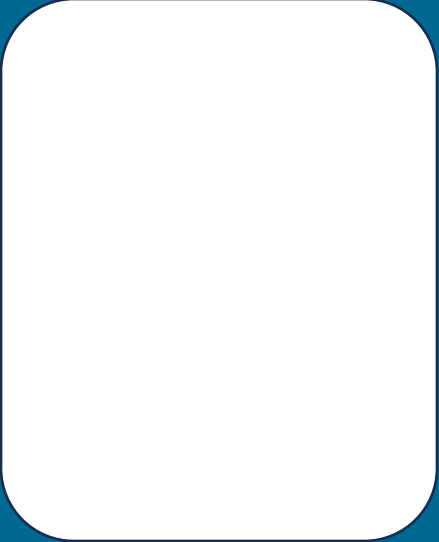
Supportive Measure Examples

- off-bell schedule
- hall pass
- designated space to eat lunch
- reserved time with guidance counselors
- early dismissal
- escort
- designated bathrooms
- assigned hallways

Is filing a Title IX complaint
ever helpful in K-12?

Questions to help you decide...

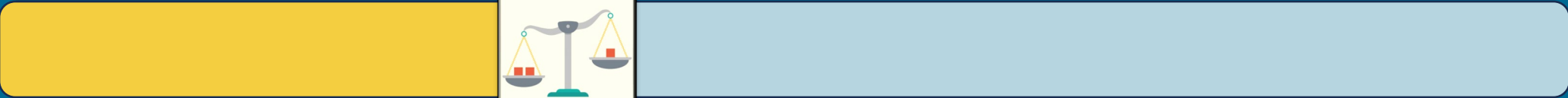
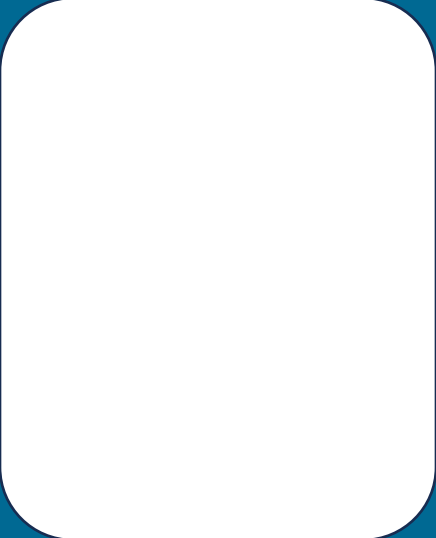
What are the survivor's goals?



Questions to help you decide...

What are the survivor's goals?

Will a TIX investigation achieve those goals?



Questions to help you decide...

What are the survivor's goals?

Will a TIX investigation achieve those goals?

Do the jurisdiction's school discipline laws allow for survivor's goals?



Questions to help you decide...

What are the survivor's goals?

Will a TIX investigation achieve those goals?

Do the jurisdiction's school discipline laws allow for survivor's goals?

Is there any other resolution that would achieve the survivor's goals?



Kai

- Kai is a high school junior.
- Last summer, Kai was sexually assaulted by a classmate from the same school.
- How might Title IX help Kai?

Kai

- Kai would like to transfer to another school, is that an option?

Unsafe School Choice Option

Section 9532 of the Elementary and
Secondary Education Act
20 U.S.C. § 7912

Unsafe School Choice Option

- Applies to public elementary schools, middle schools, and high schools.
- School must offer student who experiences a violent crime at school the option to **transfer** to another school in the district.



Kai

- Kai is now at a different school and feels safer, but is still struggling academically. What are Kai's options?

Section 504

Rehabilitation Act of 1973
20 U.S.C. § 794; 34 C.F.R. § 104

Section 504 Overview

- Eliminates/prohibits **disability discrimination**.
- Applies to education programs/activities that receive **federal financial assistance** (preschool through higher-ed).
- Requires **accommodations/aids/services** for eligible students with disabilities.
- Requires school districts to designate a 504 Coordinator.
- Overlaps with ADA Title II requirements/definitions.

Eligibility for 504 Services



- Student must
 - have physical or mental **disability**
 - that **substantially limits**
 - at least one **major life activity** and
 - **need aids/services** b/c of disability.
- School conducts evaluation to determine eligibility.
 - School cannot consider beneficial effects of mitigating measures the student is using to determine disability status.
 - Group of people knowledgeable about student, evaluation data, and placement options makes the decision. (504 Team)
- Parent/guardian (not student) holds right to request/consent to evaluation, and to appeal eligibility decision.

504 Services

- Typically documented in a **504 Plan**.
- Services/aids/benefits/accommodations are **individualized** to student's needs so they can **equally access their education**.
- Can (but rarely does) include specially designed instruction (special education).

Kai

- Kai's 504 plan is not being followed and some of what Kai needs extends outside of the current plan. Is there another option?

Individuals with Disabilities Education Act

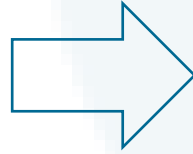
20 U.S.C. § 1400; 34 C.F.R. §§ 300, 303

IDEA Part B Overview

- Makes **special education and related services** (FAPE) available to eligible students with certain disabilities.
- Applies to
 - **public schools (preschool through high school)**
 - state and local correctional facilities
 - state schools and agencies that educate children with disabilities
- Requires an **Individualized Education Program (IEP)** for every eligible student.

Eligibility Criteria for IDEA Services

1. Student must have one of **13 disabilities**.



AND

2. Student must **need special education** and related services b/c of that disability.

- Developmental delay (ages 3-9)
- Autism
- Deaf-blindness
- **Emotional disturbance**
- Hearing impairment
- Intellectual disability
- Multiple disabilities
- Orthopedic impairment
- Other health impairment
- Specific learning disability
- Speech/language impairment
- Traumatic brain injury
- Visual impairment

Emotional Disturbance

- **Inability to learn** not explained by intellectual, sensory, or health factors, and/or
- Inability to build/maintain **interpersonal relationships** w/peers and teachers, and/or
- **Inappropriate behavior or feelings** under normal circumstances, and/or
- General **pervasive** mood of **unhappiness or depression**, and/or
- Tendency to develop **physical symptoms or fears** associated w/personal or school problems.

- Exhibited over **long period**
- Exhibited to **marked degree**
- **Adversely affects** educational performance

IDEA Evaluation Overview

- School conducts full and individualized evaluation to determine eligibility (disability & need).
- Complete within 60 days of parental consent (or state-established timeframe).
- Test in all areas related to suspected disability.

IDEA Eligibility Meeting

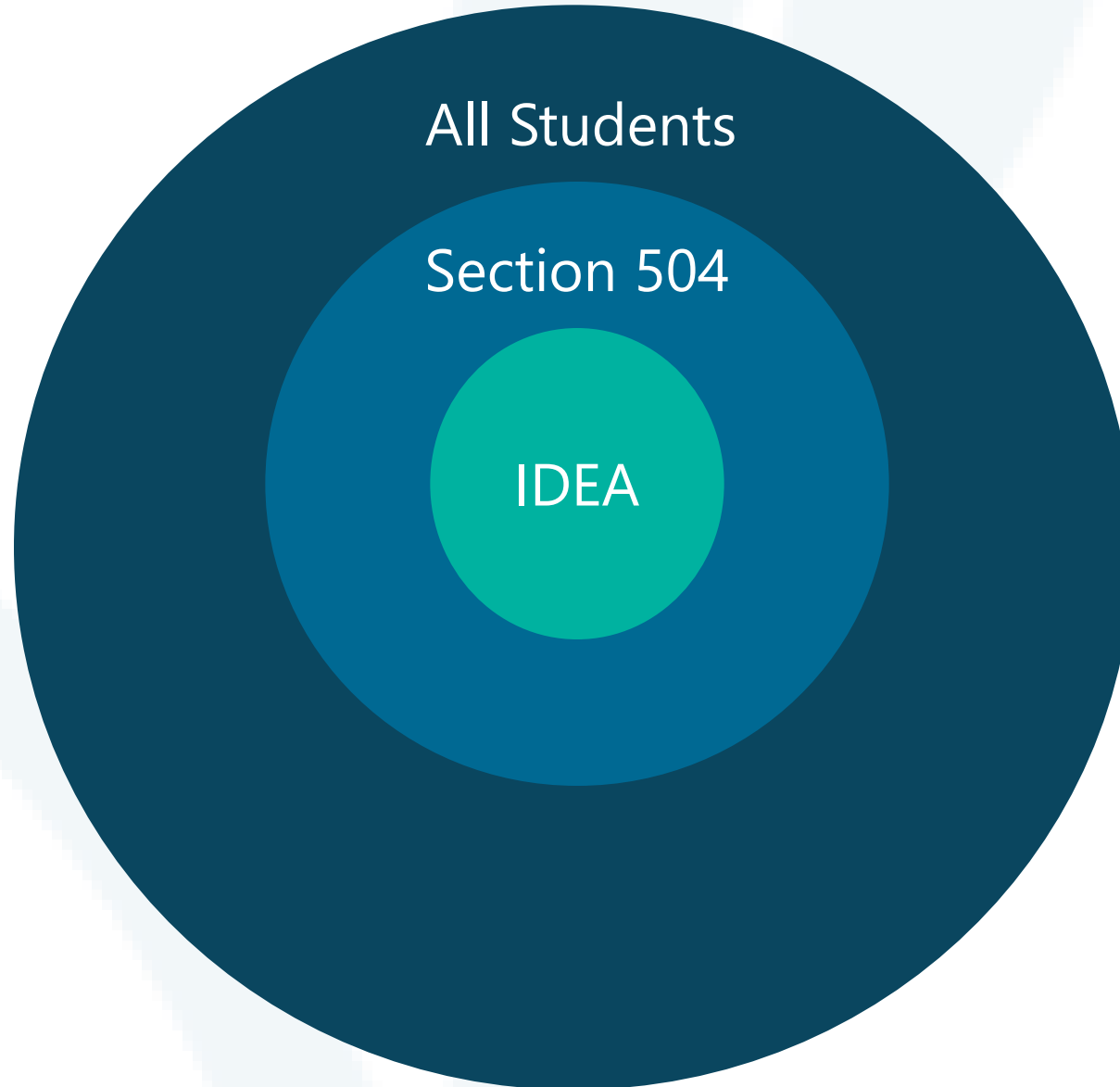
- After evaluation is complete, group of **qualified professionals and parent determine eligibility** (disability and need).
- Group of professionals typically = IEP Team
 - Person who can interpret evaluation results (school psych.)
 - A general ed. teacher
 - A special ed. teacher or related service provider
 - A school administrator
 - Others with knowledge or special expertise regarding the student.
- Student can participate when appropriate.

The IEP

- Developed and revised by IEP Team (includes parent and, if appropriate, student). Reviewed at least annually.
- Parts:
 - Present levels of academic achievement and functional performance
 - Measurable annual goals
 - Progress monitoring and reporting
 - Description of provided special education and related services
 - start date, frequency, location, duration
 - Explanation of removal from regular education classes, if any
 - Accommodations for state and district assessments, if needed
 - Transition services (starts at age 16 or younger if appropriate)

Section 504 vs. IDEA

The relationship between Section 504 and



Other Legal Issues: Kai

- Kai may also seek a civil protection order – availability depends on the jurisdiction.
- Kai may need support with criminal advocacy.
- Kai may need support protecting their education or therapy records if requested.

Youth in Education Settings Legal Services Project

YES Project

- Resources
- Listserv
- Quarterly Community-Building Strategy Calls
- Webinars
- Virtual Institute
- Individual Technical Assistance

Join the K-12 DVSSAS listserv now!



<https://www.surveymonkey.com/r/K-12-DVSAS-List>

Initial Meeting Checklist

for Minor Survivors/Clients and their Caregivers/Guardians

First Contact with Caregivers/Guardians

Often, especially with younger children, a minor survivor's caregiver/guardian will try to get help and services for the minor. They may be your first contact on the case. ***During this first conversation with the caregiver/guardian, it can be useful to:***

- Establish your role.** At the outset, plainly describe your role to the caregiver/guardian. Inform them who is empowered to make decisions about your services. Be clear with them about who your client will be. Explain how you will prioritize the minor's interests and goals.
- Set expectations.** Clearly inform the caregiver/guardian about the services you do and do not provide. If your office has materials that summarize your services, you might share them during this first conversation.
- Explain privacy laws.** Let the caregiver/guardian know about the privacy laws that affect your professional relationship with them and the minor. If your conversations with each other are protected by privilege and/or confidentiality, let them know that you will not share confidential information about their case with people outside your office. Tell them about any exceptions to these laws that would require you to share confidential information. If your jurisdiction has a parent-child privilege, discuss that and how it impacts any attorney-client and/or victim-advocate privilege you may have with the caregiver/guardian(s). Share with them any materials summarizing the privacy laws regarding your

Explore VRLC's Resource Library!

The screenshot shows the VRLC Resource Library website. At the top left is the VICTIM RIGHTS LAW CENTER logo. The navigation menu includes HOME, ABOUT US, LEGAL HELP, TRAINING AND RESOURCES, MAKE AN IMPACT, and CONTACT. A DONATE button and a search icon are in the top right. The main heading is "Resource Library". Below the heading is a breadcrumb trail: Home · Resource Library. The search section includes a "Search by Keyword" field with a "Go" button. The "Filter by Category" section has five dropdown menus: "Select a Jurisdiction:", "Select a Topic:", "Select a Population:", "Select a Language:", and "Select a Format:". There is a "Sort by Filter" button and a "Reset the Form" link. The "Featured Resources" section displays two items: "Initial Meeting Checklist for Minor Survivor/Clients and their Caregivers/Guardians" and "Safety Planning Guide for Middle and High School Student Survivors". Below this, it states "Your Search Returned 353 Resources" and shows a pagination control for "Page 1 of 18" with buttons for "1", "2", "3", "Next", and "Last".

<https://victimrights.org/resource-library/>



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