INFORMATION HANDOUT
TITLE IX ROLE TRAINING

34 CFR 106.6 1
34 CFR 106.8 3
34 CFR 106.30 5
34 CFR 106.31 7
34 CFR 106.44 9
34 CFR 106.45 11
34 CFR 106.71 18
National Survey of Child and Adolescent Well-Being (Research Brief) 20
Looking Back Facing Forward (Center for Youth Wellness 2018-19 Report) 26
Long-Term Consequences of Child Abuse and Neglect (Children's Bureau) 46
Adverse Childhood Experiences (ACEs) (Powerpoint) 55
Adolescent Resources 59
U.S. Department of Education Title IX Final Rule Overview 60
U.S. Department of Education Q&As Re: Department's Final IX Rule 63
U.S. Department of Education OSEP QA 20-01 74

34 CFR 106.6

This document is current through the September 28, 2020 issue of the Federal Register.

Code of Federal Regulations > Title 34 Education > Subtitle B — Regulations of the Offices of the Department of Education > Chapter I — Office for Civil Rights, Department of Education > Part 106 — Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance > Subpart A — Introduction

Notice

There are multiple versions of this document. To view a complete list of the versions of this section see Table of Contents.

§ 106.6 Effect of other requirements and preservation of rights. [Effective Aug. 14, 2020.]

[PUBLISHER'S NOTE: This section was amended at 85 FR 30026, 30573, May. 19, 2020, effective Aug. 14, 2020. For the convenience of the user, the section has been set out twice. The version effective Aug. 14, 2020, immediately follows this note. For the version effective until Aug. 14, 2020, see the version preceding this section, also numbered § 106.6.]

(a) Effect of other Federal provisions. The obligations imposed by this part are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 292d and 298b-2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); the Equal Pay Act (29 U.S.C. 206 and 206(d)); and any other Act of Congress or Federal regulation.

(Authority: Secs. 901, 902, 905, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1685)

(b) Effect of State or local law or other requirements. The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) Effect of rules or regulations of private organizations. The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives Federal financial assistance.

(d) Constitutional protections. Nothing in this part requires a recipient to:

(1) Restrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution;

(2) Deprive a person of any rights that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution; or

(3) Restrict any other rights guaranteed against government action by the U.S. Constitution.

(e) Effect of Section 444 of General Education Provisions Act (GEPA)/Family Educational Rights and Privacy Act (FERPA). The obligation to comply with this part is not obviated or alleviated by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99.

(f) Title VII of the Civil Rights Act of 1964. Nothing in this part may be read in derogation of any individual's rights under title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq. or any regulations promulgated thereunder.

(g) Exercise of rights by parents or guardians. Nothing in this part may be read in derogation of any legal right of a parent or guardian to act on behalf of a "complainant," "respondent," "party," or other individual, subject to paragraph (e) of this section, including but not limited to filing a formal complaint.

(h) Preemptive effect. To the extent of a conflict between State or local law and title IX as implemented by §§ 106.30, 106.44, and 106.45, the obligation to comply with §§ 106.30, 106.44, and 106.45 is not obviated or alleviated by any State or local law.

Statutory Authority

Authority Note Applicable to Title 34, Subtit. B, Ch. I, Pt. 106

History

[45 FR 30955, May 9, 1980; 65 FR 68050, 68056, Nov. 13, 2000; 85 FR 30026, 30573, May. 19, 2020]

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34 CFR 106.8

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Code of Federal Regulations > Title 34 Education > Subtitle B — Regulations of the Offices of the Department of Education > Chapter I — Office for Civil Rights, Department of Education > Part 106 — Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance > Subpart A — Introduction

Notice

There are multiple versions of this document. To view a complete list of the versions of this section see Table of Contents.

§ 106.8 Designation of coordinator, dissemination of policy, and adoption of grievance procedures. [Effective Aug. 14, 2020.]

[PUBLISHER'S NOTE: This section was revised at 85 FR 30026, 30573, May. 19, 2020, effective Aug. 14, 2020. For the convenience of the user, the section has been set out twice. The version effective Aug. 14, 2020, immediately follows this note. For the version effective until Aug. 14, 2020, see the version preceding this section, also numbered § 106.8.]

(a) Designation of coordinator. Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the "Title IX Coordinator." The recipient must notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator pursuant to this paragraph. Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

(b) Dissemination of policy—

(1) Notification of policy. Each recipient must notify persons entitled to a notification under paragraph (a) of this section that the recipient does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by title IX and this part not to discriminate in such a manner. Such notification must state that the requirement not to discriminate in the education program or activity extends to admission (unless subpart C of this part does not apply) and employment, and that inquiries about the application of title IX and this part to such recipient may be referred to the recipient's Title IX Coordinator, to the Assistant Secretary, or both.

(2) Publications.

(i) Each recipient must prominently display the contact information required to be listed for the Title IX Coordinator under paragraph (a) of this section and the policy described in paragraph (b)(1) of this section on its website, if any, and in each handbook or catalog that it makes available to persons entitled to a notification under paragraph (a) of this section.

(ii)A recipient must not use or distribute a publication stating that the recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by title IX or this part.

(c) Adoption of grievance procedures. A recipient must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part and a grievance process that complies with § 106.45 for formal complaints as defined in § 106.30. A recipient must provide to persons entitled to a notification under paragraph (a) of this section notice of the recipient's grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the recipient will respond.

(d) Application outside the United States. The requirements of paragraph (c) of this section apply only to sex discrimination occurring against a person in the United States.

Statutory Authority

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

History

[45 FR 30955, May 9, 1980; 85 FR 30026, 30573, May. 19, 2020]

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34 CFR 106.30

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Code of Federal Regulations > Title 34 Education > Subtitle B — Regulations of the Offices of the Department of Education > Chapter I — Office for Civil Rights, Department of Education > Part 106 — Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance > Subpart D — Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

§ 106.30 Definitions. [Effective Aug. 14, 2020.]

[PUBLISHER'S NOTE: This section was added at 85 FR 30026, 30574, May. 19, 2020, effective Aug. 14, 2020.]

(a) As used in this part:

Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the recipient. "Notice" as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator as described in § 106.8(a).

Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Consent. The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault, as referenced in this section.

Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under § 106.8(a), and by any additional method designated by the recipient. As used in this paragraph, the phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this part or under § 106.45, and must comply with the requirements of this part, including § 106.45(b)(1)(iii).

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

(1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;

(2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or

(3)"Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

Supportive measures means 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. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The recipient must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

(b) As used in §§ 106.44 and 106.45:

Elementary and secondary school means a local educational agency (LEA), as defined in the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, a preschool, or a private elementary or secondary school.

Postsecondary institution means an institution of graduate higher education as defined in § 106.2(l), an institution of undergraduate higher education as defined in § 106.2(m), an institution of professional education as defined in § 106.2(n), or an institution of vocational education as defined in § 106.2(o).

Statutory Authority

Authority Note Applicable to Title 34, Subtit. B, Ch. I, Pt. 106

History

[85 FR 30026, 30574, May. 19, 2020]

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34 CFR 106.31

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Code of Federal Regulations > Title 34 Education > Subtitle B — Regulations of the Offices of the Department of Education > Chapter I — Office for Civil Rights, Department of Education > Part 106 — Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance > Subpart D — Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

§ 106.31 Education programs or activities.

[PUBLISHER'S NOTE: Authority citation was removed at 85 FR 30026, 30579, May. 19, 2020, effective Aug. 14, 2020.]

(a) General. Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which Subpart C does not apply, or (2) an entity, not a recipient, to which Subpart C would not apply if the entity were a recipient.

(b) Specific prohibitions. Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) Assistance administered by a recipient educational institution to study at a foreign institution. A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at or who are graduates of the recipient institution; Provided, a recipient educational institution which administers or assists in the administration of such scholarships, fellowships, or other awards which are restricted to members of one sex provides, or otherwise makes available reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) Aid, benefits or services not provided by recipient.

(1) This paragraph applies to any recipient which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient;

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient which this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

Statutory Authority

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

History

[45 FR 30955, May 9, 1980, as amended at 47 FR 32527, July 28, 1982; 65 FR 68050, 68056, Nov. 13, 2000]

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34 CFR 106.44

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Code of Federal Regulations > Title 34 Education > Subtitle B — Regulations of the Offices of the Department of Education > Chapter I — Office for Civil Rights, Department of Education > Part 106 — Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance > Subpart D — Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

§ 106.44 Recipient's response to sexual harassment. [Effective Aug. 14, 2020.]

[PUBLISHER'S NOTE: This section was added at 85 FR 30026, 30574, May. 19, 2020, effective Aug. 14, 2020.]

(a) General response to sexual harassment. A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. For the purposes of this section, §§ 106.30, and 106.45, "education program or activity" includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution. A recipient's response must treat complainants and respondents equitably by offering supportive measures as defined in § 106.30 to a complainant, and by following a grievance process that complies with § 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent. The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures as defined in § 106.30, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. The Department may not deem a recipient to have satisfied the recipient's duty to not be deliberately indifferent under this part based on the recipient's restriction of rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.

(b) Response to a formal complaint.

(1) In response to a formal complaint, a recipient must follow a grievance process that complies with § 106.45. With or without a formal complaint, a recipient must comply with § 106.44(a).

(2) The Assistant Secretary will not deem a recipient's determination regarding responsibility to be evidence of deliberate indifference by the recipient, or otherwise evidence of discrimination under title IX by the recipient, solely because the Assistant Secretary would have reached a different determination based on an independent weighing of the evidence.

(c) Emergency removal. Nothing in this part precludes a recipient from removing a respondent from the recipient's education program or activity on an emergency basis, provided that the recipient undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides

the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

(d) Administrative leave. Nothing in this subpart precludes a recipient from placing a non-student employee respondent on administrative leave during the pendency of a grievance process that complies with § 106.45. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

Statutory Authority

Authority Note Applicable to Title 34, Subtit. B, Ch. I, Pt. 106

History

[85 FR 30026, 30574, May. 19, 2020]

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34 CFR 106.45

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Code of Federal Regulations > Title 34 Education > Subtitle B — Regulations of the Offices of the Department of Education > Chapter I — Office for Civil Rights, Department of Education > Part 106 — Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance > Subpart D — Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

§ 106.45 Grievance process for formal complaints of sexual harassment. [Effective Aug. 14, 2020.]

[PUBLISHER'S NOTE: This section was added at 85 FR 30026, 30575, May. 19, 2020, effective Aug. 14, 2020.]

(a) Discrimination on the basis of sex. A recipient's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under title IX.

(b) Grievance process. For the purpose of addressing formal complaints of sexual harassment, a recipient's grievance process must comply with the requirements of this section. Any provisions, rules, or practices other than those required by this section that a recipient adopts as part of its grievance process for handling formal complaints of sexual harassment as defined in § 106.30, must apply equally to both parties.

(1) Basic requirements for grievance process. A recipient's grievance process must—

(i) Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent. Remedies must be designed to restore or preserve equal access to the recipient's education program or activity. Such remedies may include the same individualized services described in § 106.30 as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent;

(ii) Require an objective evaluation of all relevant evidence — including both inculpatory and exculpatory evidence — and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness;

(iii) Require that any individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A recipient must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment in § 106.30, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. A recipient must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence

about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in paragraph (b)(6) of this section. A recipient also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in paragraph (b)(5)(vii) of this section. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment;

(iv) Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process;

(v) Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the recipient offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities;

(vi) Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient may implement following any determination of responsibility;

(vii) State whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment;

(viii) Include the procedures and permissible bases for the complainant and respondent to appeal;

(ix) Describe the range of supportive measures available to complainants and respondents; and

(x) Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

(2) Notice of allegations—

(i) Upon receipt of a formal complaint, a recipient must provide the following written notice to the parties who are known:

(A) Notice of the recipient's grievance process that complies with this section, including any informal resolution process.

(B) Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in § 106.30, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under § 106.30, and the date and location of the alleged incident, if known. The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section. The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

(ii) If, in the course of an investigation, the recipient decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to paragraph (b)(2)(i)(B) of this section, the recipient must provide notice of the additional allegations to the parties whose identities are known.

(3) Dismissal of a formal complaint—

(i) The recipient must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in § 106.30 even if proved, did not occur in the recipient's education program or activity, or did not occur against a person in the United States, then the recipient must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under title IX or this part; such a dismissal does not preclude action under another provision of the recipient's code of conduct.

(ii) The recipient may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the recipient; or specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

(iii) Upon a dismissal required or permitted pursuant to paragraph (b)(3)(i) or (b)(3)(ii) of this section, the recipient must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

(4) Consolidation of formal complaints. A recipient may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this section to the singular "party," "complainant," or "respondent" include the plural, as applicable.

(5) Investigation of a formal complaint. When investigating a formal complaint and throughout the grievance process, a recipient must—

(i) Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the recipient and not on the parties provided that the recipient cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent to do so for a grievance process under this section (if a party is not an "eligible student," as defined in 34 CFR 99.3, then the recipient must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3);

(ii) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

(iii) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;

(iv) Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the recipient may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;

(v) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;

(vi) Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The recipient must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and

(vii) Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

(6) Hearings.

(i) For postsecondary institutions, the recipient's grievance process must provide for a live hearing. At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the recipient under paragraph (b)(5)(iv) of this section to otherwise restrict the extent to which advisors may participate in the proceedings. At the request of either party, the recipient must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. Live hearings pursuant to this paragraph may be conducted with all parties physically present in the same geographic location or, at the recipient's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. Recipients must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

(ii) For recipients that are elementary and secondary schools, and other recipients that are not postsecondary institutions, the recipient's grievance process may, but need not, provide for a hearing. With or without a hearing, after the recipient has sent the investigative report to the parties pursuant to paragraph (b)(5)(vii) of this section and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. With or without a hearing, questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

(7) Determination regarding responsibility.

(i) The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility. To reach this determination, the recipient must apply the standard of evidence described in paragraph (b)(1)(vii) of this section.

(ii) The written determination must include—

(A) Identification of the allegations potentially constituting sexual harassment as defined in § 106.30;

(B)A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

(C) Findings of fact supporting the determination;

(D) Conclusions regarding the application of the recipient's code of conduct to the facts;

(E)A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and

(F) The recipient's procedures and permissible bases for the complainant and respondent to appeal.

(iii) The recipient must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

(iv) The Title IX Coordinator is responsible for effective implementation of any remedies.

(8) Appeals

(i)A recipient must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein, on the following bases:

(A) Procedural irregularity that affected the outcome of the matter;

(B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

(C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(ii)A recipient may offer an appeal equally to both parties on additional bases.

(iii) As to all appeals, the recipient must:

(A) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;

(B) Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;

(C) Ensure that the decision-maker(s) for the appeal complies with the standards set forth in paragraph (b)(1)(iii) of this section;

(D) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;

(E) Issue a written decision describing the result of the appeal and the rationale for the result; and

(F) Provide the written decision simultaneously to both parties.

(9) Informal resolution. A recipient may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section. Similarly, a recipient may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the recipient—

(i) Provides to the parties a written notice disclosing: The allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

(ii) Obtains the parties' voluntary, written consent to the informal resolution process; and

(iii) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

(10) Recordkeeping

(i)A recipient must maintain for a period of seven years records of—

(A) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under paragraph (b)(6)(i) of this section, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;

(B) Any appeal and the result therefrom;

(C) Any informal resolution and the result therefrom; and

(D) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.

(ii) For each response required under § 106.44, a recipient must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity. If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken.

Statutory Authority

Authority Note Applicable to Title 34, Subtit. B, Ch. I, Pt. 106

History

[85 FR 30026, 30575, May. 19, 2020]

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34 CFR 106.71

This document is current through the September 28, 2020 issue of the Federal Register.

Code of Federal Regulations > *Title 34 Education* > *Subtitle B — Regulations of the Offices of the Department of Education* > *Chapter I — Office for Civil Rights, Department of Education* > *Part 106 — Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance* >

§ 106.71 Retaliation. [Effective until Aug. 14, 2020.]

[PUBLISHER'S NOTE: Subpart F was revised at 85 FR 30026, 30578, May. 19, 2020, effective Aug. 14, 2020. For the convenience of the user, Subpart F has been set out twice. The first version is effective until Aug. 14, 2020. The second version is effective Aug. 14, 2020.]

(a) Retaliation prohibited. No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation. The recipient must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required to be adopted under § 106.8(c).

(b) Specific circumstances.

(1) The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under paragraph (a) of this section.

(2) Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation prohibited under paragraph (a) of this section, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Statutory Authority

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

History

[45 FR 30955, May 9, 1980; 85 FR 30026, 30578, May. 19, 2020]

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National Survey of Child and Adolescent Well-Being

No. 20: Adverse Childhood Experiences in NSCAW

research brief

Findings from the NSCAW Study

Introduction and Purpose of the Brief

Child maltreatment has been recognized as a major public health issue.[1-3]Prospective studies have shown that maltreatment and other adverse childhood experiences increase the risk for negative mental and physical outcomes in adulthood and place children at risk for further harm and even death.[4; 5] The health toll associated with maltreatment and other stressful childhood experiences was the subject of a landmark research survey, the Adverse Childhood Experiences Study (ACES). The study, an ongoing collaboration between Kaiser Permanente and the U.S. Centers for Disease Control and Prevention (CDC), is a retrospective survey based on the responses of thousands of adult members of Kaiser Permanente.[6] In the original survey conducted in the mid-1990's, adult respondents were asked to report on 10 adverse experiences that they experienced in childhood, including abuse and neglect. This study demonstrated a significant association between cumulative adverse experiences in childhood and a host of negative adult outcomes, including physical and mental health problems, substance abuse, risky sexual behaviors, suicide attempts, aggression, cognitive difficulties, and poor work performance.[6-11] These adverse childhood experiences significantly increased the odds of developing some of the leading causes of death in adulthood, such as ischemic heart disease, cancer, chronic lung disease, skeletal fractures, and liver disease.[6] By the time children have experienced four or more adverse experiences, the odds of having negative health outcomes in adulthood are up to 12 times that of children without such experiences.

Since the first publication from ACES appeared in 1998, many other countries have studied the association of the same list of adverse childhood events with morbidity and mortality during adulthood.[12; 13] Although most studies focused on adults who reported on their early experiences, researchers in the field are interested in understanding the experience of these adverse events among children who have been reported to the child welfare system (CWS). These children are likely at heightened risk for adverse childhood experiences and, therefore, also likely at increased risk for similar negative adult outcomes. A comparison between the number of adverse childhood events adults reported in the ACES and children who have been reported for maltreatment may provide perspective on the future challenges these children may face, as well as preventive services and treatment services that may be needed.

This brief uses data from the second cohort of National Survey of Child and Adolescent Well-Being (NSCAW II) to examine the prevalence of adverse childhood experiences in a nationally representative study of children reported for maltreatment to the CWS. In addition, the brief compares the number of adverse childhood experiences among children in the CWS with the number of adverse childhood experiences reported in the CDC ACES.

Research Methodology

This brief examines data from children involved in allegations of maltreatment. NSCAW II is a national longitudinal study of the well-being of 5,873 children who had contact with the CWS within a 14-month period starting in February 2008. The cohort included children and families with substantiated and unsubstantiated investigations of abuse or neglect, including children and families who did and did not receive services. Infants and children in out-of-home placement were oversampled to ensure adequate representation of high-risk groups. At baseline, the NSCAW II cohort of children were approximately 2 months to 17.5 years old. The data were drawn from standardized measures of child mental health and well-being, as well as from interviews of caregivers and caseworkers.

The original sample for the ACES consisted of more than 17,000 adults aged 18 years old and over, interviewed from 1995 to 1997 (for a complete description see http://www.cdc.gov/ace/ index.htm). The goal of the ACES was to assess the impact of adverse childhood experiences on a wide variety of health behaviors and outcomes and on health care

utilization. The ACES methods are described elsewhere.[6;7] Major findings from the study can be found on CDC's website at http://www.cdc.gov/ace/about.htm.

Measuring Adverse Childhood Experiences in ACES vs. NSCAW

Table 1 lists the ACES definitions of adverse childhood experiences, along with descriptions of how these were recreated using NSCAW II data. Every effort was made to match as closely as possible each of the ACES constructs with data available from NSCAW. NSCAW was not designed to examine adverse childhood experiences as defined by ACES; therefore, matching ACES variables across the two studies was imperfect. In some instances, NSCAW could not always discern a given adverse experience, such as parent incarceration, which was ascertained only by asking if the child's parent was currently in jail (versus ever incarcerated–the wording used in the ACES). In other instances, NSCAW may have been better positioned to identify some adverse childhood experiences, because of its inclusion of caseworker and caregiver report as well as child self-report when the child was old enough. In comparison the ACES used only adult self-report.

Table 1. List of ACES Definitions and NSCAW Equivalents

ACEs Construct	ACES Definition	NSCAW Equivalent
Physical Neglect	Respondents were asked whether they had enough to eat, if their parents' alcohol drinking interfered with their care, if they ever wore dirty clothes, and if someone was available to take them to the doctor.	Parent report of child neglect,[a] or caseworker report of failure to supervise or provide for the child.
Emotional Neglect	Respondents were asked whether their families made them feel special and loved, and were asked if their family was a source of strength, support, and protection.	Caregiver reported that, in the past 12 months, "many times were you so caught up with problems that you were not able to show or tell your child that you loved him/her?"
Physical Abuse	Sometimes, often, or very often a parent or other adult in the household pushed you, grabbed you, slapped you, threw something at you, or ever hit you so hard that you had marks or were injured.	Parent report of severe assault or caseworker report of physical abuse, such as shaking an infant or hitting an older child.[a]
Sexual Abuse	An adult or person at least 5 years older ever touched or fondled you in a sexual way, or had you touch their body in a sexual way, or attempted oral, anal, or vaginal intercourse with you or actually had oral, anal, or vaginal intercourse with you.	Parent or caseworker report of sexual abuse[a] or forced sex reported by the child.
Emotional Abuse	Often or very often a parent or other adult in the household swore at you, insulted you, or put you down and sometimes, often or very often acted in a way that made you think that you might be physically hurt.	Parent report of psychological aggression, such as threatening the child or calling him/her names.[a]
Mother treated violently	Mother or stepmother was sometimes, often, or very often pushed, grabbed, slapped, or had something thrown at her and/or sometimes often, or very often kicked, bitten, hit with a fist, or hit with something hard, or ever repeatedly hit over at least a few minutes or ever threatened or hurt by a knife or gun.	Caregiver or caseworker report of any domestic violence such as slapping, hitting, or kicking (includes both male and female caregivers who reported domestic violence).
Household Substance Abuse	Lived with anyone who was a problem drinker or alcoholic or lived with anyone who used street drugs.	Caseworker report of active alcohol or drug abuse by the primary or secondary caregiver, or caregiver report of current alcohol abuse.[b]
Household Mental Illness	A household member was depressed or mentally ill or a household member attempted suicide.	Caseworker report of a caregiver having a serious mental health problem, or caregiver elevated mental health symptoms.[c,d]
Parental Separation or Divorce[e]	Parents were ever separated or divorced.	Child was placed out of home currently or at baseline, or caseworker report of abandonment, or caregiver's current marital status is divorced or separated, or mother or father is deceased.
Incarcerated Household Member	A household member went to prison.	Caregiver reports spending time in prison as result of an arrest, or parent currently in a jail or detention center.

[a] Revised Conflicts Tactics Scale.[14]

[b] Assessed by the Alcohol Use Disorders Identification Test[15] or the Drug Abuse Screening Test.[16]

[c] NSCAW does not collect information on suicide attempts; thus, this portion of the ACES construct was not assessed.

[d] Mental health symptoms based on the World Health Organization Composite International Diagnostic Interview, CIDI-SF.[17]

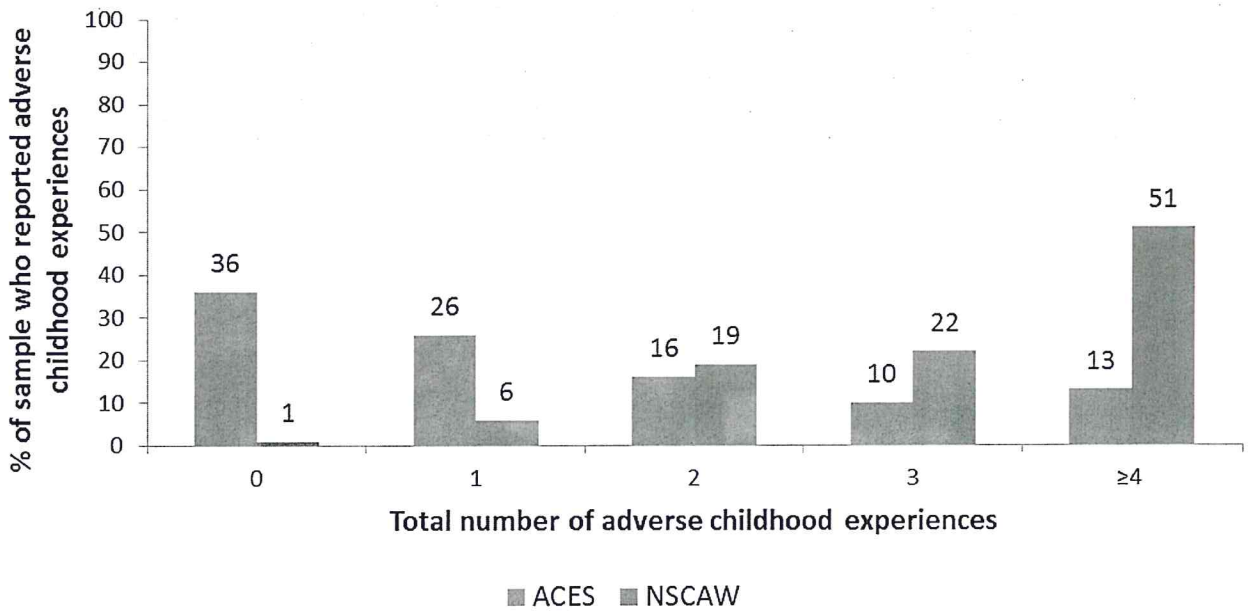
[e] For the NSCAW sample, parental divorce or separation was broadly conceptualized as any type of family separation.

On the whole, the NSCAW sample likely underestimated adverse childhood experiences, compared with the ACES. First, because ACES data were collected by asking adults to recall their childhood experiences from 0 to 18 years, the time period for recall was much larger than that for NSCAW, where the recall time period covered only the time of the index maltreatment event (baseline). Second, children in the NSCAW II sample ranged from 0 to 17.5 years old; thus, children in the younger age ranges would have had less time to experience adverse events by virtue of their young age. Finally, caregivers were repeatedly warned in the informed consent process that abusive or neglectful behaviors would be reported to CWS because of mandated reporting laws, and this may have strengthened reluctance to disclose abusive behaviors. We conducted a comparison of the proportions of caregivers reporting psychological aggression, assault, and neglect between caregivers in the NSCAW survey and a nationally representative sample of parents of children aged 5 to 6.[18] This analysis indicated that the NSCAW caregivers reported somewhat lower prevalence than the general population on nearly all measures of abuse and neglect. It seems likely, therefore, that caregivers tended to withhold information on abusive and neglectful behaviors. For these reasons, the data presented in this brief should be considered underestimates of adverse childhood experiences for NSCAW participants.

Prevalence of Adverse Childhood Experiences in NSCAW

Figure 1 shows the percentage of respondents with a sum total of adverse childhood experiences ranging from zero to four or more. Percentages are shown separately for ACES versus NSCAW for direct comparison. More than a third of the adult ACES respondents reported no experience of any of the adverse childhood events listed in Table 1. In contrast, only 1 percent of the NSCAW sample had zero adverse childhood experiences. Note: although all NSCAW children were reported to child protective services for some type of maltreatment, the ACES does not comprehensively include all possible forms of maltreatment (e.g., exploitation). More than half of the NSCAW sample reported four or more adverse childhood experiences, compared with only 13 percent of the ACES population.

Figure 1. Adverse childhood experiences in NSCAW vs. ACES[a,b]

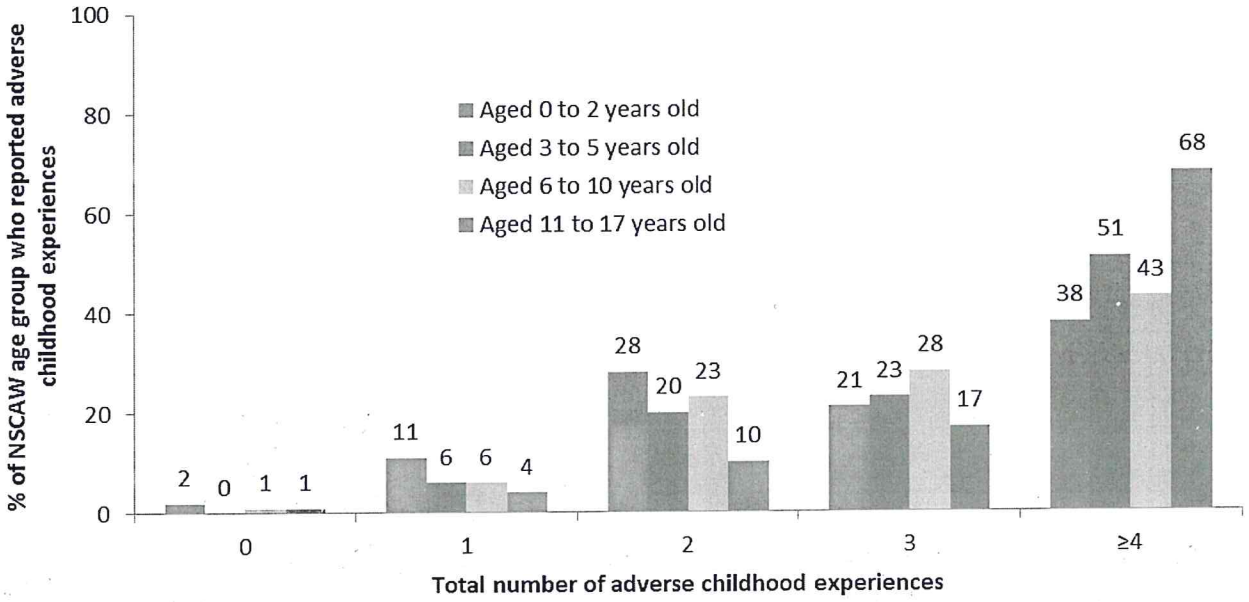


[a] To account for item missingness (less than 10% for all ACE variables), multiple imputation was performed using MPlus 7.[19] Variables entered into the imputation model included child age, child race/ethnicity, caseworker-assessed harm, caseworker-assessed risk, current placement setting, and all 10 ACE variables. The imputation results increase confidence that results are not biased by missing data.

[b] NSCAW respondents reporting no adverse childhood experiences included those who entered CWS due to "other" types of maltreatment that did not map onto the ACES, including abandonment and exploitation. Brief descriptive analyses showed that these children were typically young, living in-home, and had low caregiver-assessed levels of harm and risk.

Figure 2 shows the total number of adverse childhood experiences that four NSCAW age groups reported: 0 to 2 years old, 3 to 5 years old, 6 to10 years old, and 11 to 17 years old. As expected, the older the child, the more time available for adverse childhood experiences to accumulate. These results show that almost four out of 10 of the youngest children had already experienced four or more adverse experiences. In the oldest age group (11 to 17 years old), more than two thirds (68%) of youth had four or more adverse childhood experiences.

Figure 2. Adverse childhood experiences by child age in NSCAW



Summary

More than half of all children reported for child maltreatment had experienced four or more adverse childhood experiences by the time of contact with the CWS. These levels of adverse events are extremely high. As a point of comparison, almost two thirds of the adult population of the ACES reported one or no adverse childhood experiences. Even the youngest children in the NSCAW population have already accrued more adverse childhood experiences than many of the adults interviewed for the ACES.

Given past findings that adverse childhood experiences often predict negative health and behavioral outcomes in adulthood, it is striking that a wide majority (more than 90%) of children referred to CWS have experienced multiple adverse events. Moreover, one in two children in the NSCAW sample reported four or more adverse childhood experiences, a level that has been associated with as much as a 12-fold increase in negative health outcomes in adulthood.[6] In the ACES, only about one in 10 people reported four or more adverse childhood experiences.

Beyond these adverse experiences, children involved with the CWS often live in a context of additional risks, including poverty, out of home placements, moving from one caregiver to the next, and limited access to services. Furthermore, the adverse experiences captured by the ACES may occur chronically for some of these children. Early intervention is critical for vulnerable children, especially those involved with the CWS, to prevent accumulation of multiple adverse childhood experiences.

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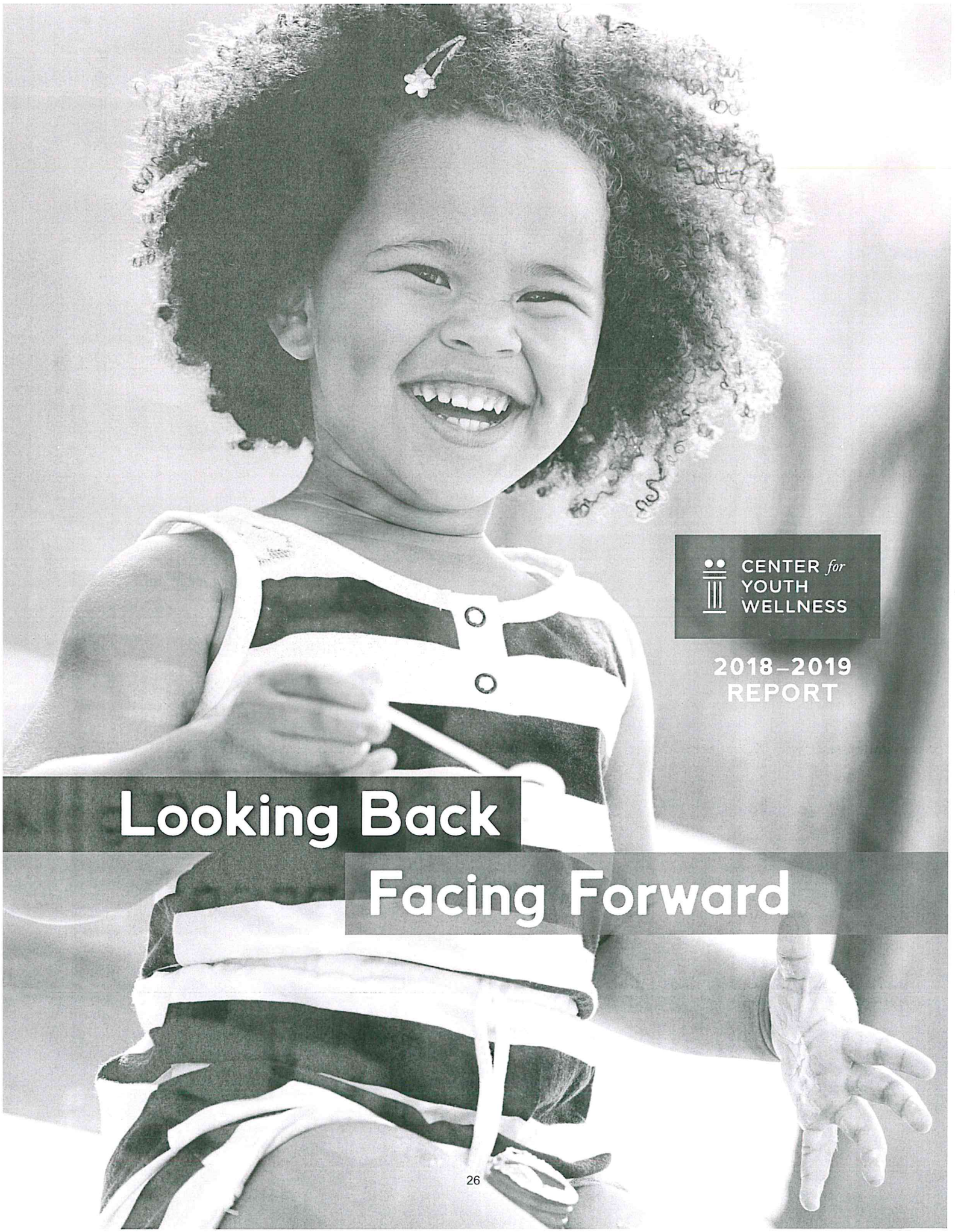
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Available at: National Data Archive on Child Abuse and Neglect (NDACAN), Cornell University, ndacan@cornell.edu

Administration for Children and Families (ACF, OPRE)
http://www.acf.hhs.gov/programs/opre/abuse_neglect/nscaw/

This is the twentieth in a series of NSCAW research briefs focused on children who have come in contact with the child welfare system. Additional research briefs focus on the characteristics of children in foster care, the provision of services to children and their families, the prevalence of special health care needs, use of early intervention services, and caseworker judgment in the substantiation process.





CENTER *for* YOUTH WELLNESS

2018–2019 REPORT

Looking Back Facing Forward

About Us

The Center for Youth Wellness (CYW) is transforming the way society responds to children and families exposed to Adverse Childhood Experiences (ACEs), trauma, and toxic stress. We envision a generation of resilient children and families whose skills to adapt to stress in healthy ways enable them to reach their full potential. We improve children's lives and transform communities in three ways:

- **Advance science and research on ACEs and toxic stress**
- **Increase early intervention and treatment of ACEs across sectors**
- **Sustain the movement to address early adversity and toxic stress**

As public awareness about ACEs increases and the connections between early adversity and many health and social problems are better understood, our efforts to stop this public health crisis and cultivate resilience are more important than ever.

JOIN US ON OUR JOURNEY.



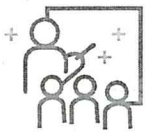
Our Work



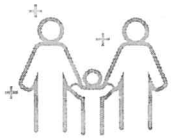
Informing Policy



Activating Pediatricians



Training Providers



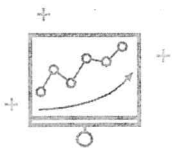
Engaging Parents and Caregivers



Building Community Capacity



Treating ACEs & Toxic Stress



Advancing Research

Facing Forward



Every day when we watch or read the news we see the deep need to address trauma as a society, starting with our very youngest citizens. From our treatment of children at the border to growing violence in our schools and communities, the time for trauma-informed policy and practice has never been more urgent. At CYW we are on the threshold of changing lives through changing health care. In this report we share our past wins and look forward to a future where every child and family has the resources they need to be healthy and resilient.

Your partnership has supported a year of remarkable and inspiring wins on behalf of children and the ACEs movement.

CYW continues to be a critical presence and authority on childhood adversity in California. Our founder Dr. Nadine Burke Harris was appointed by Governor Gavin Newsom as California's first Surgeon General. This pioneering role ensures that the ACEs movement is at the forefront of California's policy agenda. Dr. Burke Harris remains one of the biggest champions for our work as we carry out her vision for a world where screening for ACEs is a routine part of pediatric visits.

CYW and our partners played a critical advocacy role in new legislation that promotes screening for toxic stress and devotes increased resources to California's families. This enormous policy victory for California is a beacon for other states to follow suit.

The designation of our tool for trauma screening in California distinguishes CYW as a pioneer in the field and ensures we will play a role in how this tool is deployed across the medical provider community.

After reflecting upon our work this summer, we now have a new vision for impact. We embrace the excitement of what the future of CYW — or ***CYW 2.0,*** as we've unofficially named it — will hold. On page 6 of this report, you will find our stakeholder engagement ecosystem, and we invite you to meet with us to learn more. While the challenges we face on this new frontier are many, we remain committed to Dr. Burke Harris's bold vision. We look forward to continuing the conversation with you soon.

Be well,

James H. Hickman,
Chief Executive Office

Mary Kelly Persyn,
Board Chair

A NEW CHAPTER FOR CALIFORNIA

When Dr. Nadine Burke Harris founded the Center for Youth Wellness in California in 2012, her mission was clear: universal screening and treatment for trauma and toxic stress caused by ACEs, which are linked to lifelong mental and physical illnesses.



In 2019, California took a giant step toward making this a reality. Dr Burke Harris was appointed by Governor Gavin Newsom to become California's first Surgeon General and continue her campaign for a brighter future for all children, while CYW continued to work on all fronts toward trauma screening and treatment. After trauma screening bills that CYW helped write and sponsor passed the legislature, Governor Newsom signed a budget allotting $40.8 million to screen children and adults on Medi-Cal for trauma and another $120 million for provider training over the next 3 years — a victory CYW was thrilled to celebrate.

NEW LEADERSHIP FOR CYW



In August 2019, CYW's board appointed former healthcare executive James (Jim) Hickman as CYW's CEO. Jim is a senior executive with more than twenty-five years of health care experience, and past leadership roles include CEO of Sutter Health's Better Health East Bay and Bay Area Regional Director of Blue Cross of California's (now Anthem) State Sponsored Programs. Hickman is a member of the Advisory Committee of the Camden Coalition of Healthcare Provider's National Center for Complex Health and Social Needs.

The board membership, led by child advocate and attorney Mary Kelly Persyn of New Teacher Center (Board Chair), includes Maryam Muduroglu, Patricia Duffy, Shoba Farrell, and Natalie Walrond. CYW also works closely with our Community Advisory Council of former patients, parents and caregivers, Bayview community leaders, and neighborhood advocates who advise on CYW's clinical model. CYW relies on the support of private philanthropy to provide all products and services free of charge to pediatricians and clinic patients.

Under this new and exciting leadership, CYW remains committed to removing barriers to care, accelerating screening, and improving the health outcomes for children and their families exposed to ACEs and toxic stress.

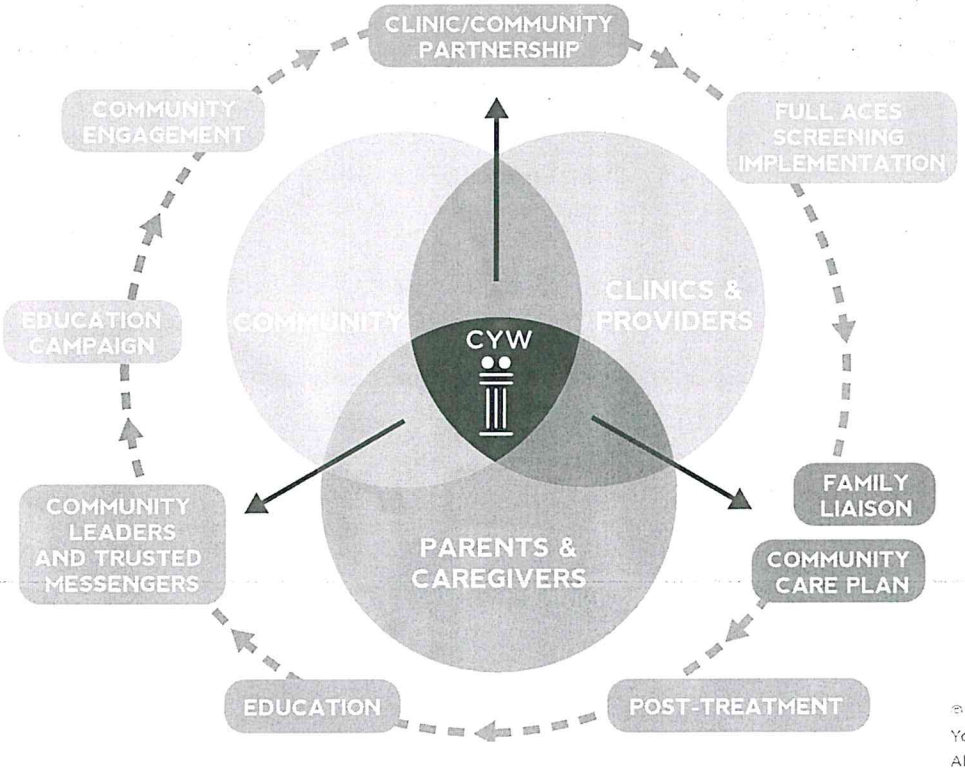
A New Ecosystem of Care

Screening implementation needs to be about more than just a clipboard and a questionnaire: we need an integrated, comprehensive approach.

Looking forward, CYW's expanding scope of work to create healthier lives for children and families who have experienced trauma occurs at speed and scale through varied public and private networks and sectors including:

- Advancing community-based clinical work
- **Educating providers about the scientific foundation of ACEs screening and interventions**
- Providing parents and caregivers with knowledge, tools, and resources
- Building local capacity with community-based organizations who work regularly with pediatric healthcare providers
- Partnering with community healthcare champions to advance ACEs screening and treatment policy
- Raising local, state, and national public awareness of the long-term health effects of ACEs and toxic stress

The diagram below illustrates this new ecosystem of care, which involves clinics and providers, patients and caregivers, and local partners to advance our evidence-based screening and care model in a holistic, community-informed way.



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OUR WORK:
Informing Policy

CYW educates and mobilizes policymakers and thought leaders to advance policy through the California Campaign to Counter Childhood Adversity (4CA). Because all participating California Medi-Cal providers will be reimbursed for integrating ACEs screening as a part of the pediatric well exam starting January 1, 2020, our aim is to raise awareness of ACEs and toxic stress by educating parents, providers, and policymakers on the risks of toxic stress and the benefits of early identification and intervention.

4CA hosted its 3rd annual Policymaker Education Day in Sacramento this year on May 1. In just a few hours, 4CA members made 73 visits to legislative offices and were welcomed by key advisors to Governor Gavin Newsom.

As the state's leading coalition to address child adversity, 4CA and its members have been the impetus for major progress in tackling childhood trauma in California, through bills such as AB340 and AB741 — the state's first ACEs screening and provider training bills.

4CA's Steering Committee:

The Prevention Institute
The Children's Defense Fund
Public Health Advocates
Futures Without Violence
California Department of Public Health
First 5 Association of California
New Teacher Center
Zero to Three
Our Children Our Families Council of San Francisco
ACEs Connection
Children Now
First 5 LA
The Chldren's Clinic
First 5 Butte County
Kidsdata.org / Lucile Packard Foundation
...and other organizations working on behalf of children and families

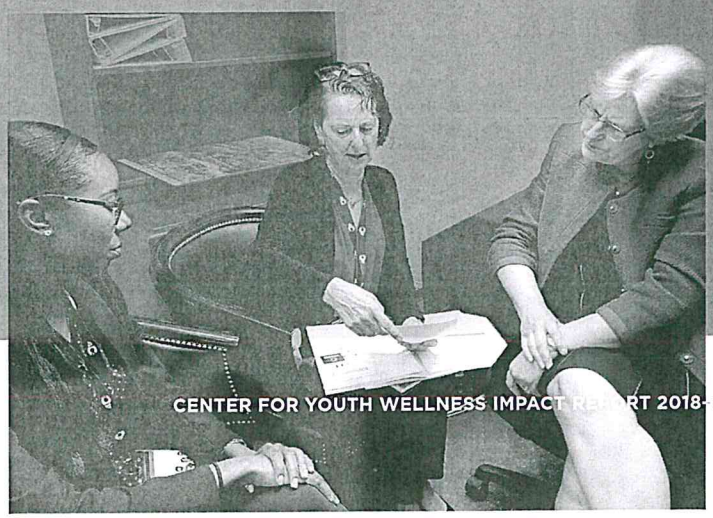
Right: 4CA members, including CYW staffers on the left, with State Sen. Tom Umberg

Below Right: 4CA members speak to a legislative staffer about AB340 at 2018 Policymaker Education Day

Below Left: CYW team and colleagues at the Capitol in Sacramento







OUR WORK:

Activating Pediatricians

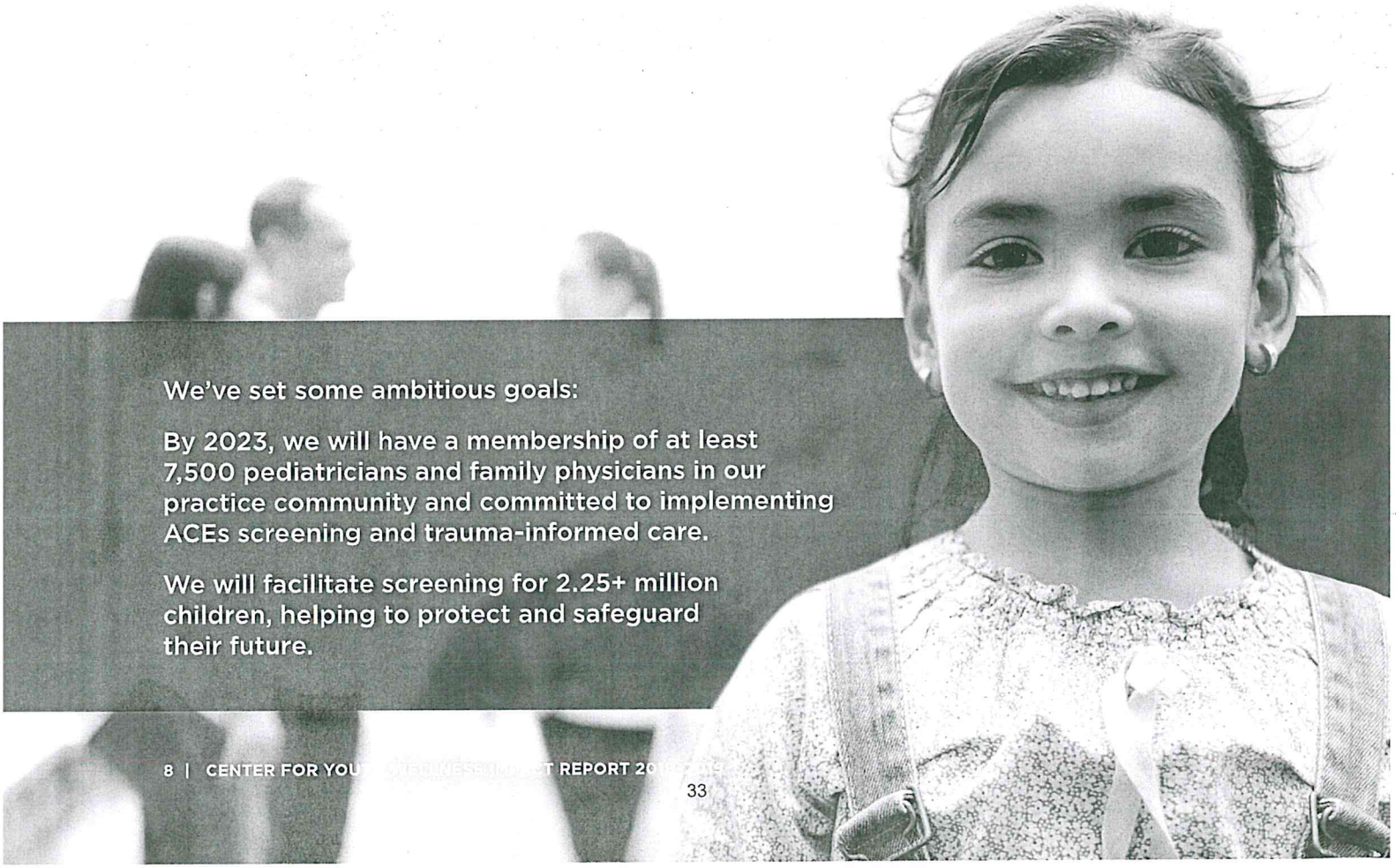
Without early detection and treatment, ACEs can affect children for the rest of their lives, greatly increasing their risk of poor health and early death. But there's plenty of research showing that screening and intervention can mitigate the effects of ACEs and prevent toxic stress.

Despite this knowledge, only an estimated 4% of U.S. pediatricians today are screening their patients for ACEs. The lack of screening is due in large part to the fact that few providers have received any training in how to screen. In 2017, CYW developed and launched the National Pediatric Practice Community on ACEs (NPPC) to engage pediatric providers in a learning community and provide them with resources and training for early intervention with their patients.

Membership in the NPPC's virtual learning community is rapidly growing and currently includes 1,160 pediatric practitioners advancing ACE screening and intervention at 658 institutions, exceeding the program's original goals. CYW's NPPC member website provides the tools clinicians need to implement screening, offers a robust knowledge center, and provides operational and training resources.



NPPC staff with Dr. Amy Shriver (center) of Blank Children's Hospital in Des Moines, Iowa, one of our 2019 pilot sites



We've set some ambitious goals:

By 2023, we will have a membership of at least 7,500 pediatricians and family physicians in our practice community and committed to implementing ACEs screening and trauma-informed care.

We will facilitate screening for 2.25+ million children, helping to protect and safeguard their future.

OUR WORK:

Training Providers

The NPPC pilot program was created in 2017 to better understand the experience and process of integrating ACEs screening into pediatric clinical settings by working closely with a small group of practices.

In 2018, NPPC supported six pilot sites of various sizes, five in California and one in New York City. Sites included a variety of types of service delivery settings — four federally qualified health centers (FQHC), one integrated health system, and one community hospital/academic medical center.

These practices were able to customize the details of their implementation to accommodate diverse community contexts, be responsive to current practice, and capture learning about how ACEs screening can be successfully implemented in different types of pediatric practices.

The NPPC pilot program provides a real-time feedback loop to CYW about on-the-ground needs and challenges pediatricians face in integrating ACEs screening and interventions into their practices.

CYW is scaling our training and technical assistance program to accommodate increased demand for our ACEs and screening implementation expertise. To that end, we have created a robust training package that incorporates a trauma-informed approach and practical realities of the current healthcare system, which will be available online through our learning hub and eligible for CME credits in early 2020.

FIRST PILOT SITE COHORT

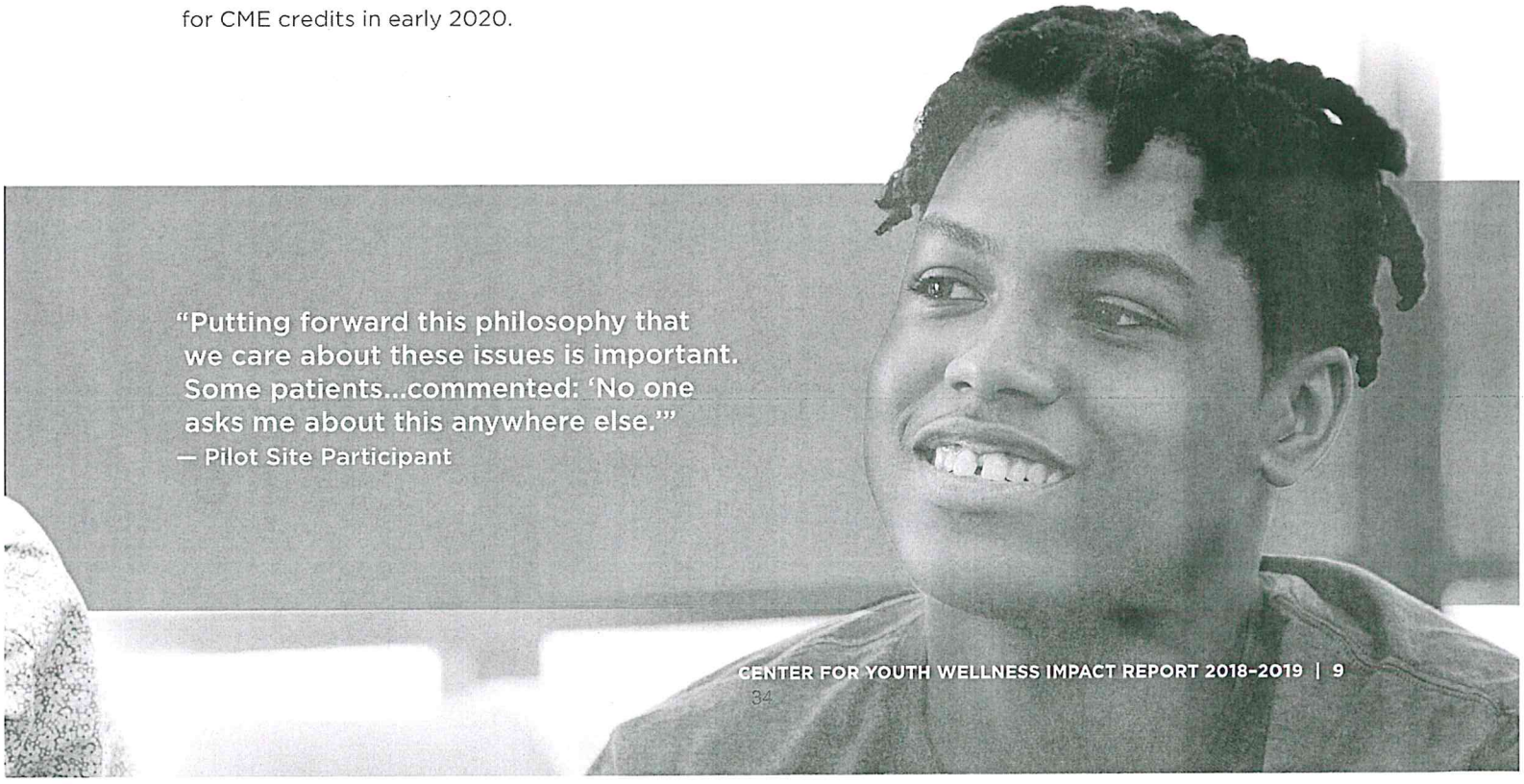
All six sites implemented ACEs screening during their six-month pilot period

1,948 children were screened across the cohort

71% of eligible patients were screened

26% screened received a positive score

53% of patients with a positive score were referred to services



"Putting forward this philosophy that we care about these issues is important. Some patients...commented: 'No one asks me about this anywhere else.'"
— Pilot Site Participant

OUR WORK:

Engaging Parents and Caregivers



If parents experienced severe hardship as children, are they more likely to have children with behavior or mental health problems? The short answer is yes.

Their children are four times as likely to have mental health problems such as depression and anxiety and twice as likely to develop attention deficit hyperactivity disorder (ADHD).

We know that parents can play a powerful role in preventing and reversing the impact of toxic stress on their children, but they can't prevent ACEs if they haven't heard of them. That's why we started the Stress Health initiative.

Since its launch in 2018, CYW's Stress Health public education initiative has reached over 32.6 million people, raising awareness of ACEs and toxic stress across the country focusing specifically on parent and caregiver populations. CYW's social communities grew by 18.3% over the past year. We saw mentions of "ACEs" and "toxic stress" nearly double on Twitter, as compared to the previous year, as well as rise significantly on Facebook. Earned media reach similarly doubled over the past year, far exceeding our goals. For the year ending June 2019, we reached 387 million readers, including mentions in 550 publications.

Our impactful messages resonate with target audiences and help parents and caregivers understand how to take action to support children exposed to ACEs.

STRESS HEALTH

Our goal is to continue to lead the way as a trusted resource for providers, parents and caregivers, and community-based organizations facing a challenging health issue.

OUR WORK:
Building Community Capacity

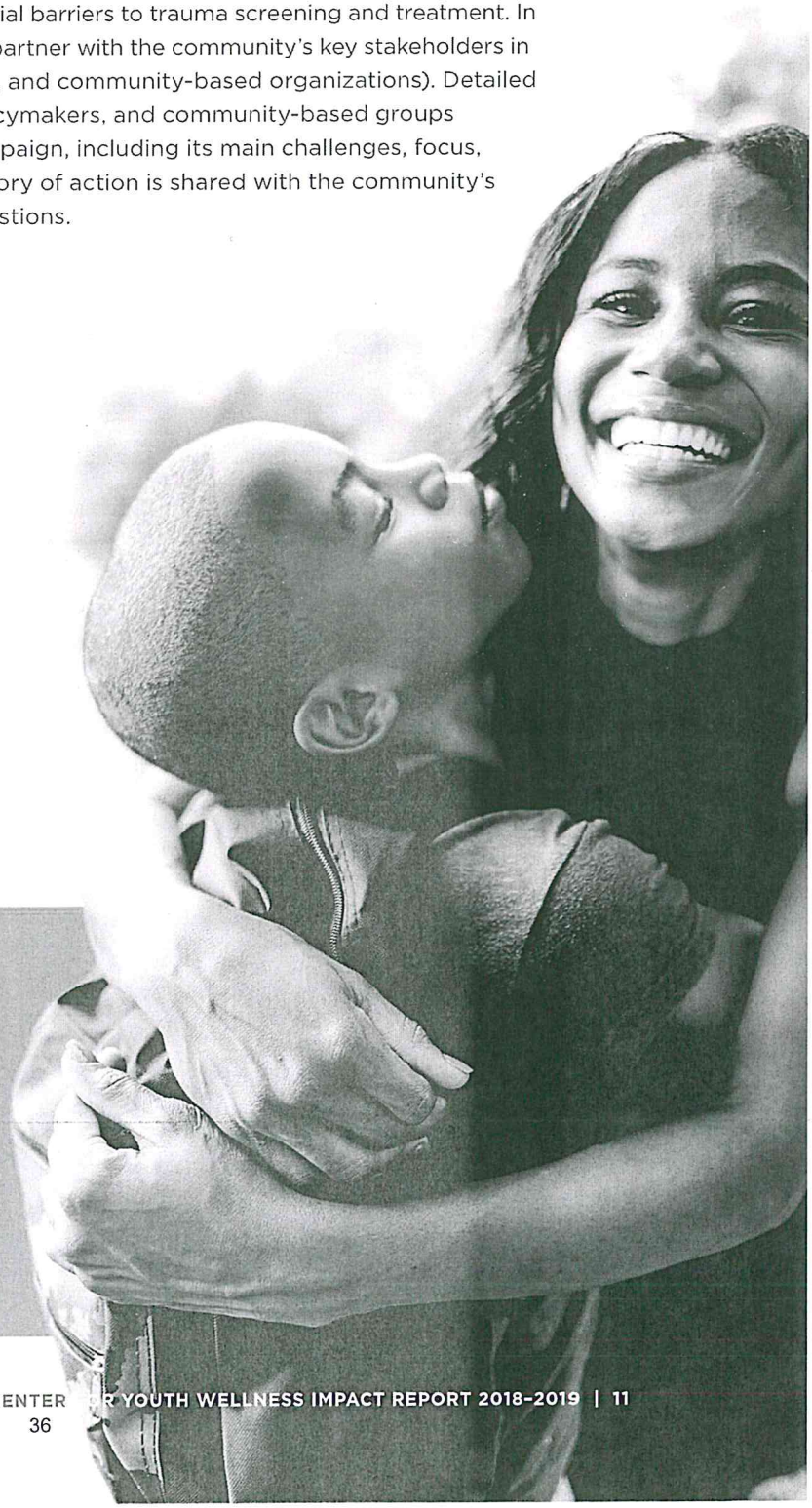
CYW's approach to community readiness to address toxic stress is reflected in our feasibility study in Detroit and our community design sessions in Fresno and Bayview-Hunters Point. **Our goal: To build capacity for ACEs screening and treatment and remove barriers to care.**

How does this happen? CYW begins by doing research to deeply understand a community — its needs, demographics, key influencers, and potential barriers to trauma screening and treatment. In the most important part of our process, we then partner with the community's key stakeholders in three ecosystems (providers, parents/caregivers, and community-based organizations). Detailed interviews and surveys with local providers, policymakers, and community-based groups help us develop our theory of action for the campaign, including its main challenges, focus, strategy, tactics, and desired outcomes. The theory of action is shared with the community's key stakeholders, who review it and make suggestions.

"Taking the learned 'best practices' that CYW already had and ingraining them in the existing process we have within the Fresno County Trauma and Resilience Network helped build our capacity to launch our own campaign here. This type of cross-city collaborative partnership is a great example of leveraging both human and intellectual capital for the health of both communities."

— Artie Padilla, Executive Director of the Every Neighborhood Partnership

The key to our capacity-building work is our bottom-up approach. We work hand in hand with community members to remove obstacles and tailor a solution that works for them.



OUR WORK:
Treating ACEs & Toxic Stress

Since 2012 CYW has operated a clinic in Bayview-Hunters Point, one of San Francisco's most underserved neighborhoods, where mental health clinicians deliver direct services through a co-located, community-based clinical partnership with Bayview Child Health Clinic (BCHC). Services include family-focused care coordination, psychotherapy, psychiatry, biofeedback, wellness therapies, and referrals to local supportive services — all provided at no cost to patient families.

Our Community Advisory Council was formed during Center for Youth Wellness' founding, serving as a thought partner and making recommendations to CYW staff and leadership to incorporate community voices and experiences into programs and processes.

Created in 2018, The Family Advisory Council is comprised of current and/or former patient families, helping to facilitate and provide patient feedback to our clinical team.

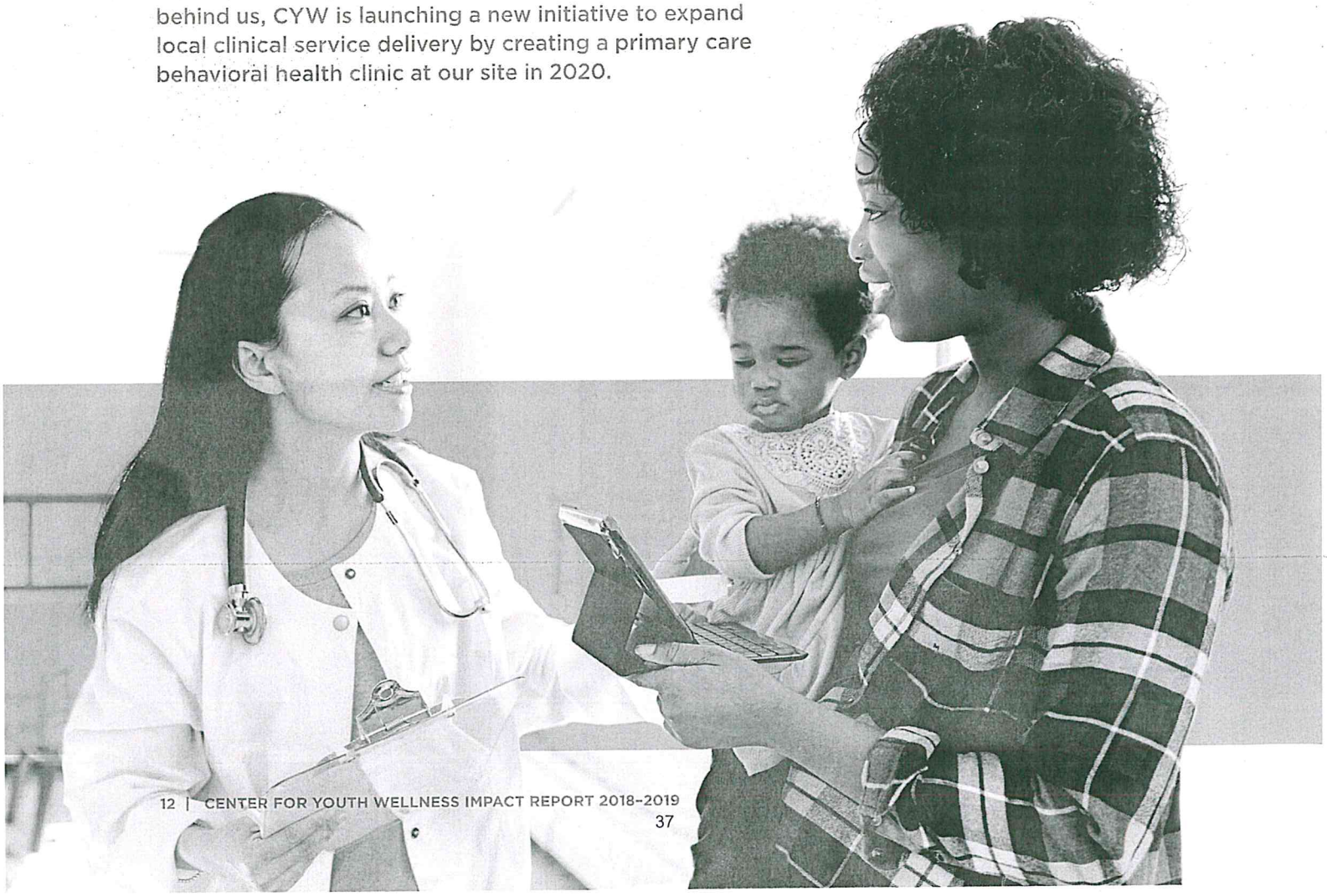
With the development of the PEARLS screening tool behind us, CYW is launching a new initiative to expand local clinical service delivery by creating a primary care behavioral health clinic at our site in 2020.

OVER THE PAST TWO YEARS

918 children were screened at BCHC for exposure to ACEs

134 children were referred to CYW's mental health clinical program,

92 children received free multidisciplinary treatment delivered by CYW in close partnership with their caregivers.



ADDITIONAL CLINICAL AND RESEARCH HIGHLIGHTS



Courses on ACEs and trauma screening

Now that tens of thousands of California health care providers will be gearing up for ACEs screening, there is a pressing need for high-quality instructional guides on ACEs and trauma screening. Representatives from our data, operations, NPPC, marketing, and policy teams are working together to develop a cutting-edge curriculum that providers can take for continuing education credit.



Asthma and toxic stress

As part of our ongoing research on asthma and adversity, CYW researchers conducted a scoping literature review and developed a draft position paper for the management of asthma in the setting of toxic stress. We plan to convene an expert panel to review and disseminate our findings in partnership with Stanford University in early 2020.



Prenatal to 5

In a workgroup made up of Bayview Child Health Center (BCHC) providers, the research and clinical teams developed recommendations on how to improve and better inform ACEs screening in the 0–5 group. The goal is to develop a simple, feasible toolkit for pediatric practices to better identify maternal depression and childhood adversity; the teams also plan to partner with NPPC and a pilot site to test it out.



The Listen for Good Campaign

In an effort to continually improve services, the team collected feedback data from child patients and their families in the Bayview clinic using the Client Satisfaction Questionnaire scale. Overall, the data showed a high level of patient and caregiver satisfaction across the board.

94% patients were satisfied (compared with an average of 75% from 31 other organizations)

Among the comments shared: "They hold us. Our feelings, history, culture differences. They hold it, while helping us work through the many things that have us bound."



Other research work

The clinical and research teams are investigating the impact of neurofeedback on executive functioning — that is, the impact on working memory, mental flexibility, self-control, and self-regulation. So far, preliminary results have shown that neurofeedback was associated with improved functioning in all areas tested.

"CYW is great at bringing families together and working on skill solutions to help and support children and their individual, yet real, matters. The method of involving the whole family allows the individual to feel safe and open to learning alternative methods of acting and thinking that will help them be more successful when dealing with stress or depression throughout their lives. The family is also taught methods to cope with situations that are otherwise difficult without assistance."
— CYW Family Member

OUR WORK:

Advancing Research

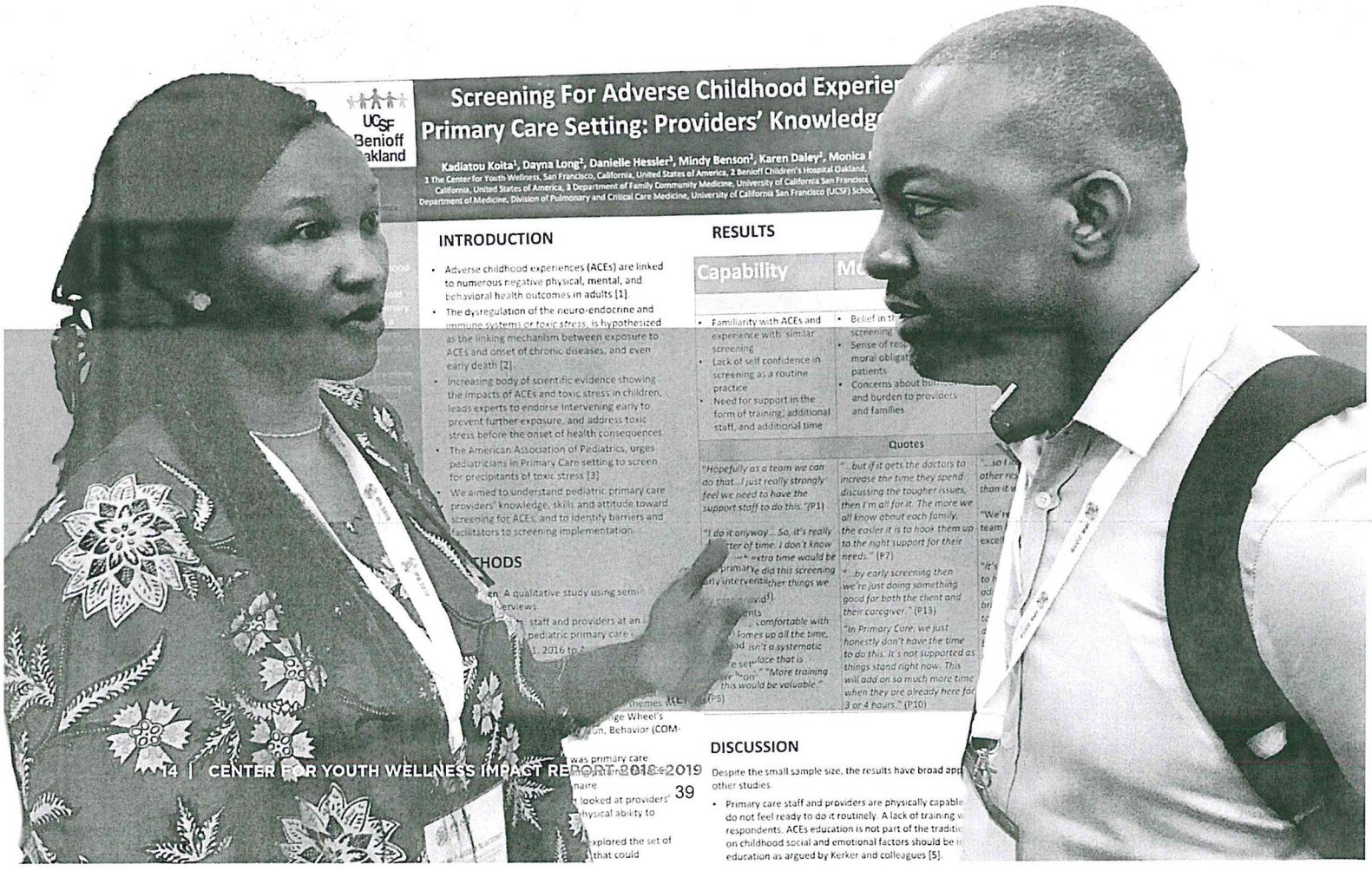
Bay Area Research Consortium (BARC)

In 2015, CYW began a clinical research partnership known as the Bay Area Research Consortium on Toxic Stress and Health (BARC). In collaboration with UCSF Benioff Children's Oakland and the Adversity Biocare Bank at the UCSF School of Medicine and Pharmacy, the team set out to develop a new screening tool that would take into account the impact of hunger, homelessness, and other social inequities on trauma and toxic stress.

The result of the BARC partnership is a screening tool called PEARLS (PEdiatric ACEs Screening and ResiLiency Study). Validated in a randomized controlled trial, the PEARLS tool set the stage for a wave of insights into the biology of toxic stress and how pediatricians and family doctors can intervene to help children heal.

BARC went on to create a Scientific Advisory Council that included experts on trauma from UCSF and Stanford to MIT, Columbia and other organizations. Equally exciting, the state of California chose the PEARLS as the screening tool it plans to use and reimburse for trauma screening in 2020.

"We are over the moon," CYW's senior clinical research manager Kadiatou (Kadi) Koita, MD-GHS, says about the state's choice of the PEARLS for the trauma screening rollout. "We're thinking, 'We did this and it is being validated'... This is wonderful news."



Presentations at scientific conferences

CYW's research team showcased our latest research at key conferences this year. Among other highlights, clinical innovations and research senior manager Dr. Kadiatou Koita's poster session on ACEs screening drew enthusiasm among physicians from many countries at the 2019 International Pediatric Association Congress. In addition, Dr. Neeta Thakur led a poster session presenting findings from the BARC study on ACEs and pediatric asthma at the 2019 American Thoracic Society's international conference in Dallas, Texas.

Left: Senior Clinical Research Manager Kadiatou Koita, MD., MS., presents on ACEs screening and the PEARLS tool at the 29th International Pediatric Association Congress.

RIGHT: CYW staff host the 2018 ACEs Conference, which welcomed nearly 1000 health care providers, experts, and advocates in the child development and health care space.

Publications

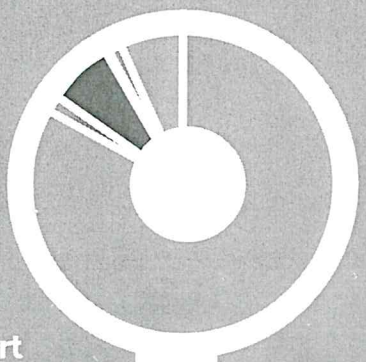
CYW scholars and their research partners continue to make groundbreaking contributions to the science of ACEs and toxic stress. An abstract on asthma and ACEs was published in the American Journal of Respiratory and Critical Care Medicine and concluded that "ACEs are an independent predictor of diagnosed childhood asthma, even after accounting for important social and environmental factors." The team also published the story of the BARC ACEs questionnaire in PLOS One, along with other trauma articles in the Journal of Pediatric Health Care and Child Abuse & Neglect that appeared at the end of 2018.

Our "Toxic Stress in Children and Adolescents" article leads the field as one of the top cited articles in 2018, according to Research Gate.



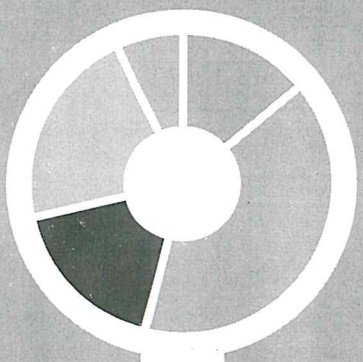
2018 FINANCIALS

We know that early investment in a child's wellness affords us healthier individuals, families, and communities. As a 100% philanthropically funded organization, your support is helping to mitigate the impact of ACEs and toxic stress, building a healthier future for kids and communities.



2018 Operating Revenue & Support

Foundations	8,011,105	83%
Corporate	141,251	1%
Individual Donors	765,364	8%
In-Kind	59,558	1%
Other Revenue	639,039	7%
TOTAL	9,616,317	



2018 Operating Expenses

Clinical Program	1,314,637	14%
Movement Building	3,758,306	39%
Research and Evaluation	1,639,069	17%
Management and General	2,030,678	21%
Other Revenue	639,039	7%
TOTAL	9,584,543	

CYW's revenues slightly exceeded our expenses in 2018, and our general operating reserves remain strong. Our audited financial statements received an unqualified opinion with no deficiencies or material weaknesses in our internal controls.

SUPPORTERS AND FUNDERS

With the help of our incredibly supportive community of donors, we were able to not only meet but exceed our goals for the #JPBMatchChallenge. Since the challenge began in March 2018, 449 supporters contributed over $2 million to build a healthier future for children exposed to adversity — with every new and increased gift being matched, for a total of $4 million. We are so grateful for your inspiring dedication to children and families. The work of the Center for Youth Wellness does not just live in our clinic or our work around the country, but with you, through your advocacy, giving, and belief in healing trauma and building resilience in our families and communities.

$500,000+

The JPB Foundation · Google.org · TARA Health Foundation · Genentech

$100,000 – $499,999

The California Endowment · CHCS Center for Health Care Strategies, Inc. · SFF San Francisco Foundation · the David & Lucile Packard Foundation · Tipping Point Community

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Mimi and Peter Haas Fund · Nadine Burke Harris and Arno Harris† · Elizabeth and Russell Siegelman · JaMel and Tom Perkins



"We're so excited about this relationship and honored to be on this journey together with an incredibly successful, bold, and determined organization."
— Silicon Valley Social Venture Fund (SV2)

THANK YOU, DONORS!

CYW depends on the extraordinary generosity of the following individuals, foundations, government agencies, and businesses. We acknowledge their financial support received from January 1, 2018–June 20, 2019.

$50,000–$99,999

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Hearst Foundations
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Sean N. Parker Center for Allergy and Asthma Research at Stanford University
Shipley and Tony Salewski

$25,000–$49,999

The Avielle Foundation
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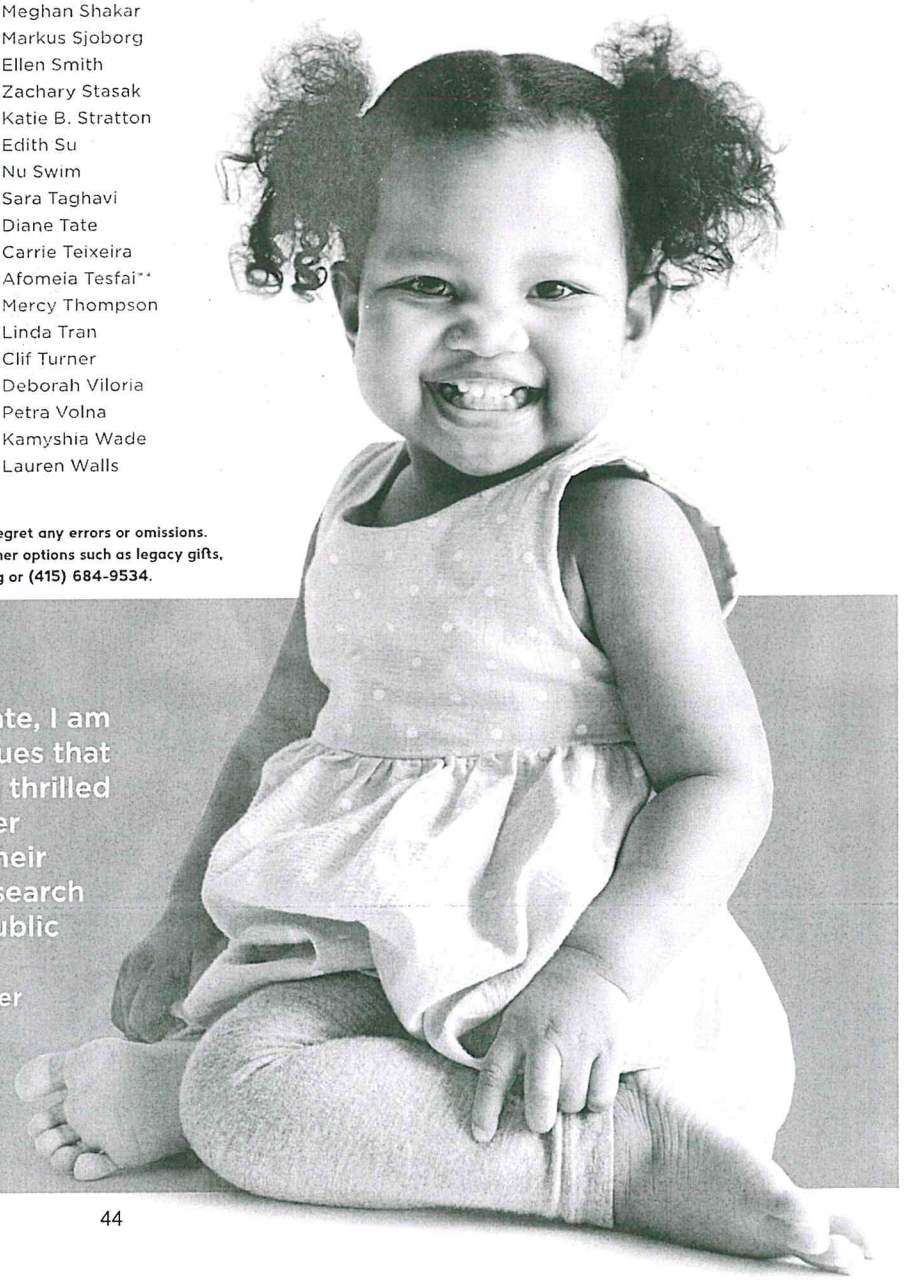
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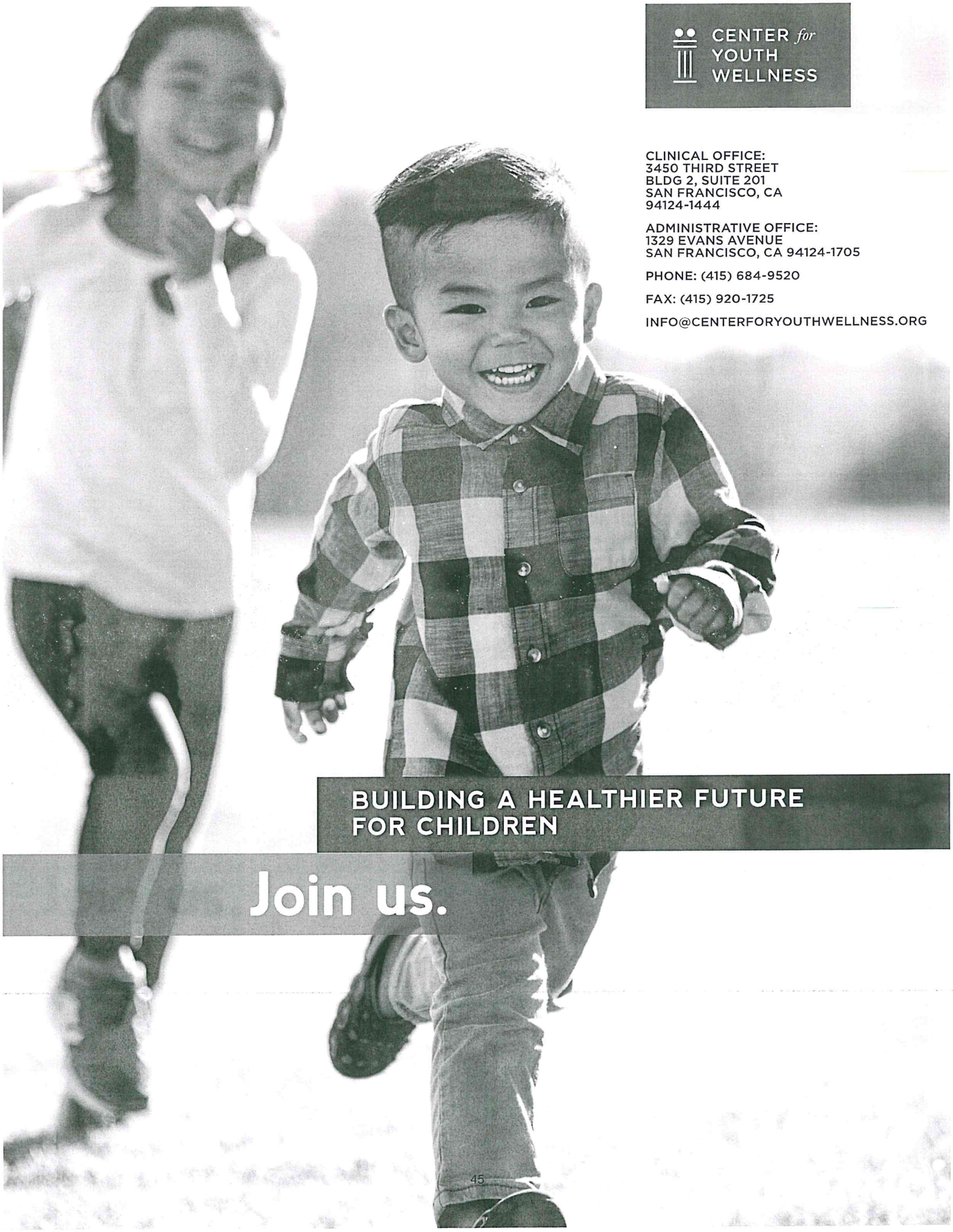
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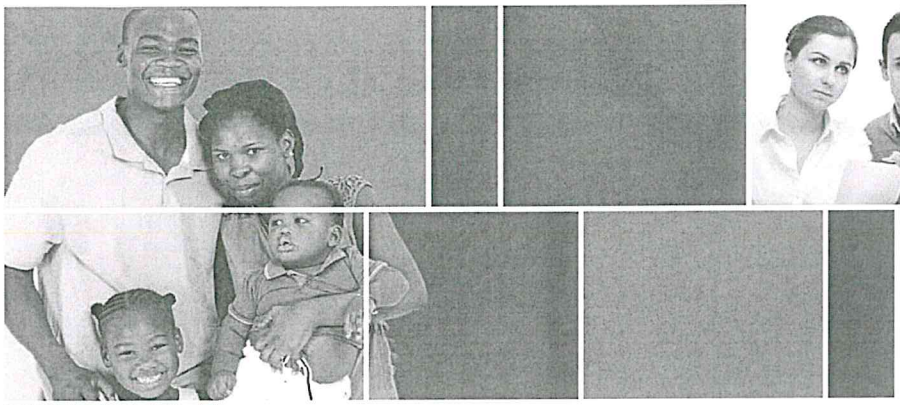
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FACTSHEET

April 2019

Long-Term Consequences of Child Abuse and Neglect

Aside from the immediate physical injuries children can experience through maltreatment, a child's reactions to abuse or neglect can have lifelong and even intergenerational impacts. Childhood maltreatment can be linked to later physical, psychological, and behavioral consequences as well as costs to society as a whole. These consequences may be independent of each other, but they also may be interrelated. For example, abuse or neglect may stunt physical development of the child's brain and lead to psychological problems, such as low self-esteem, which could later lead to high-risk behaviors, such as substance use. The outcomes for each child may vary widely and are affected by a combination of factors, including the child's age and developmental status when the maltreatment occurred; the type, frequency, duration, and severity of the maltreatment; and the relationship between the child and the perpetrator. Additionally, children who experience maltreatment often are affected by other adverse experiences (e.g., parental substance use, domestic violence, poverty), which can make it difficult to separate the unique effects of maltreatment (Rosen, Handley, Cicchetti, & Rogosch, 2018).

WHAT'S INSIDE

Physical health consequences

Psychological consequences

Behavioral consequences

Societal consequences

Federal research on adverse childhood experiences

Preventing and reducing the long-term consequences of maltreatment

Conclusion

References

This factsheet explains the long-term physical, psychological, behavioral, and societal consequences of child abuse and neglect and provides an overview of adverse childhood experiences (ACEs). It also discusses the importance of prevention and intervention efforts and promoting protective relationships and environments.

> For more information on abuse and neglect, read Child Welfare Information Gateway's *What Is Child Abuse and Neglect? Recognizing the Signs and Symptoms*, which is available at https://www.childwelfare.gov/pubs/factsheets/whatiscan, and *Definitions of Child Abuse and Neglect*, which is available at https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/define/.

Physical Health Consequences

Some long-term physical effects of abuse or neglect may occur immediately (e.g., brain damage caused by head trauma), but others can take months or years to emerge or be detectable. There is a straightforward link between physical abuse and physical health, but it is also important to recognize that maltreatment of any type can cause long-term physical consequences.

Childhood maltreatment has been linked to higher risk for a wide range of long-term and/or future health problems, including—but not limited to—the following (Widom, Czaja, Bentley, & Johnson, 2012; Monnat & Chandler, 2015; Afifi et al., 2016):

- Diabetes
- Lung disease
- Malnutrition
- Vision problems
- Functional limitations (i.e., being limited in activities)
- Heart attack
- Arthritis
- Back problems
- High blood pressure
- Brain damage
- Migraine headaches
- Chronic bronchitis/emphysema/chronic obstructive pulmonary disease
- Cancer
- Stroke
- Bowel disease
- Chronic fatigue syndrome

Child abuse and neglect also has been associated with certain regions of the brain failing to form, function, or grow properly. For example, a history of maltreatment may be correlated with reduced volume in overall brain size and may affect the size and/or functioning of the following brain regions (Bick & Nelson, 2016):

- The amygdala, which is key to processing emotions
- The hippocampus, which is central to learning and memory
- The orbitofrontal cortex, which is responsible for reinforcement-based decision-making and emotion regulation
- The cerebellum, which helps coordinate motor behavior and executive functioning
- The corpus callosum, which is responsible for left brain/right brain communication and other processes (e.g., arousal, emotion, higher cognitive abilities)

Fortunately, however, there is promising evidence that children's brains may be able to recover with the help of appropriate interventions (Bick & Nelson, 2016). For additional information about these impacts, refer to Information Gateway's *Understanding the Effects of Maltreatment on Brain Development* (https://www.childwelfare.gov/pubs/issue-briefs/brain-development/).

Additionally, the type of maltreatment a child experiences can increase the risk for specific physical health conditions. For example, one study found that children who experienced neglect were at increased risk for diabetes, poorer lung functioning, and vision and oral health problems. Children who had been physically abused were at higher risk for diabetes and malnutrition. Children who were victims of sexual abuse were more likely to contract hepatitis C and HIV (Widom et al., 2012).

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Epigenetics

Epigenetics refers to changes in how an individual's genes are expressed and used, which may be temporary or permanent (National Scientific Council on the Developing Child, 2010). These changes can even be passed on to the person's children. An epigenetic change can be caused by life experiences, such as child maltreatment or substance exposure. For example, one study found that children who had been maltreated exhibited changes in genes associated with various physical and psychological disorders, such as cancer, cardiovascular disease, immune disorders, schizophrenia, bipolar disorder, and depression (Cicchetti et al., 2016).

Psychological Consequences

Child abuse and neglect can cause a variety of psychological problems. Maltreatment can cause victims to feel isolation, fear, and distrust, which can translate into lifelong psychological consequences that can manifest as educational difficulties, low self-esteem, depression, and trouble forming and maintaining relationships. Researchers have identified links between child abuse and neglect and the following psychological outcomes.

Diminished executive functioning and cognitive skills. Disrupted brain development as a result of maltreatment can cause impairments to the brain's executive functions: working memory, self-control, and cognitive flexibility (i.e., the ability to look at things and situations from different perspectives) (Kavanaugh, Dupont-Frechette, Jerskey, & Holler, 2016). Children who were maltreated also are at risk for other cognitive problems, including difficulties learning and paying attention (Bick & Nelson, 2016).

Poor mental and emotional health. Experiencing childhood maltreatment is a risk factor for depression, anxiety, and other psychiatric disorders throughout adulthood. Studies have found that adults with a history of ACEs had a higher prevalence of suicide attempts then those who did not (Choi, DiNitto, Marti, & Segal, 2017; Fuller-Thomson, Baird, Dhrodia, & Brennenstuhl, 2016). (For additional information about ACEs, see the Federal Research on Adverse Childhood Experiences section later in this factsheet.) Further, adults with major depression who experienced abuse as children had poorer response outcomes to antidepressant treatment, especially if the maltreatment occurred when they were aged 7 or younger (Williams, Debattista, Duchemin, Schatzberg, & Nemeroff, 2016).

Attachment and social difficulties. Infants in foster care who have experienced maltreatment followed by disruptions in early caregiving can develop attachment disorders. Attachment disorders can negatively affect a child's ability to form positive peer, social, and romantic relationships later in life (Doyle & Cicchetti, 2017). Additionally, children who experience abuse or neglect are more likely to develop antisocial traits as they grow up, which can lead to criminal behavior in adulthood (U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, 2017).

Posttraumatic stress. Children who experienced abuse or neglect can develop posttraumatic stress disorder (PTSD), which is characterized by symptoms such as persistent re-experiencing of the traumatic events related to the abuse; avoiding people, places, and events that are associated with their maltreatment; feeling fear, horror, anger, guilt, or shame; startling easily; and exhibiting hypervigilance, irritability, or other changes in mood (Sege et al., 2017). PTSD in children can lead to depression, suicidal behavior, substance use, and oppositional or defiant behaviors well into adulthood, which can affect their ability to succeed in school, and create and nurture important relationships.

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Toxic Stress

Strong, frequent, or prolonged activation of a person's stress response system, often referred to as toxic stress, can have long-lasting damaging effects on an individual's health, behavior, and ability to learn (National Scientific Council on the Developing Child, 2014). Toxic stress can be caused by experiencing ACEs, including child maltreatment. It can change an individual's brain architecture, which can cause the person's stress response system to be triggered more frequently and for longer periods of time and place him or her at an increased risk for a variety of physical and mental health problems, including cardiovascular disease, depression, and anxiety (National Scientific Council on the Developing Child, 2014). Trauma-informed approaches, however, can help improve outcomes for individuals affected by toxic stress, and there is evidence that social and emotional support (e.g., consistent parenting practices, community supports) can alleviate its effects (U.S. Department of Health and Human Services [HHS], Administration for Children and Families [ACF], 2017).

For more information about toxic stress, visit the Center on the Developing Child at Harvard University at https://developingchild.harvard.edu/guide/a-guide-to-toxic-stress/.

Behavioral Consequences

Victims of child abuse and neglect often exhibit behavioral difficulties even after the maltreatment ends. The following are examples of how maltreatment can affect individuals' behaviors as adolescents and adults.

Unhealthy sexual practices. Studies suggest that abused or neglected children are more likely to engage in sexual risk-taking as they reach adolescence, including a higher number of sexual partners, earlier initiation of sexual behavior, and transactional sex (i.e., sex exchanged for money, gifts, or other material support) (Thompson et al., 2017), which increases their chances of contracting a sexually transmitted disease.

Juvenile delinquency leading to adult criminality. Several studies have documented the correlation between child maltreatment and future juvenile delinquency and criminal activities (Herrenkohl, Jung, Lee, & Kim, 2017). According to research funded by the National Institute of Justice within the U.S. Department of Justice, Office of Justice Programs, children who experience maltreatment in the form of physical and emotional abuse are more likely to develop antisocial behaviors and form relationships with other antisocial people (U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, 2017). Furthermore, there is a difference between girls and boys in the way child maltreatment influences delinquent behavior. In the study, girls tended to express internalizing behaviors (e.g., depression, social withdrawal, anxiety), while boys tended to express externalizing behaviors (e.g., bullying, aggression, hostility) leading up to adult criminal behavior (Herrenkohl et al., 2017).

Alcohol and other drug use. Adults who had been maltreated as children are at a significantly higher risk of substance use disorders than adults who have not been maltreated (LeTendre & Reed, 2017; (Choi, DiNitto, Marti, & Choi, 2017).

Future perpetration of maltreatment. Although most children who have experienced abuse and neglect do not go on to abuse or neglect their own children, research suggests they are more likely to do so compared to children who were not maltreated (Yang, Font, Ketchum, & Kim, 2018). This cycle of maltreatment can be a result of children learning early on that physical abuse or neglect is an appropriate way to parent (Child Welfare Information Gateway, 2018). To learn more, read Information Gateway's *Intergenerational Patterns of Child Maltreatment: What the Evidence Shows*, available at https://www.childwelfare.gov/pubs/issue-briefs/intergenerational/.

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Societal Consequences

Although the physical, psychological, and behavioral consequences of child abuse and neglect weigh heavily on the shoulders of the children who experience it, the impact of maltreatment does not end there. Society pays a price for child abuse and neglect in both direct costs (e.g., hospitalizations, foster care payments) and indirect costs (e.g., long-term care, lost productivity at school, juvenile and criminal justice systems costs).

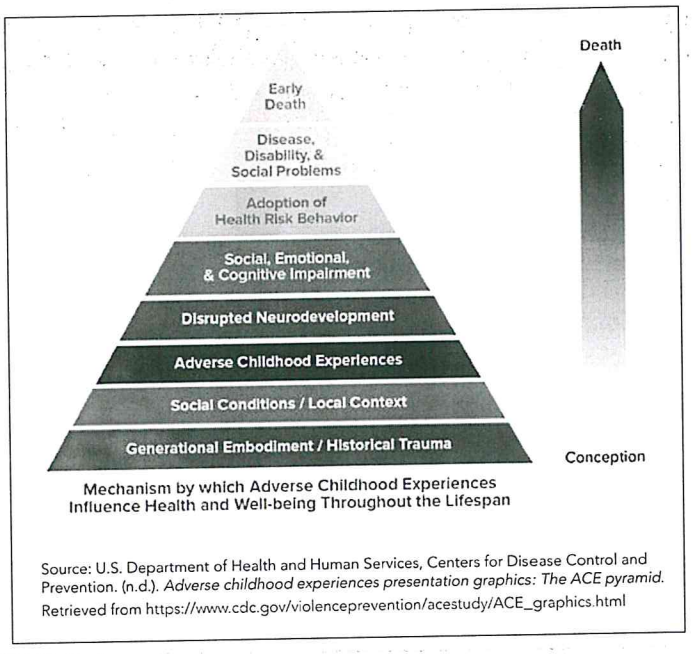
A study by researchers from the Centers for Disease Control and Prevention (CDC) developed estimates using 2015 data for the cost of child maltreatment in the United States. For nonfatal incidents of child maltreatment, the researchers estimated a lifetime cost of $831,000 per child, and for fatal incidents of child maltreatment, it estimated a lifetime cost of $16.6 million per child (Peterson, Florence, & Klevens, 2018). It appraised the annual cost of nonfatal child maltreatment in the United States to be $428 billion (based on the number of substantiated cases of nonfatal maltreatment) or $2 trillion (based on the number of investigated instances of nonfatal maltreatment). The costs in this study include both tangible costs (e.g., child welfare, health care, juvenile justice) and intangible costs (e.g., pain, suffering, grief).

For more information on the economic and societal costs of child abuse and neglect, see the following Information Gateway webpages: Cost-of-Injury Analysis (https://www.childwelfare.gov/topics/preventing/developing/economic/cost-injury/) and Social and Economic Consequences of Child Abuse and Neglect (https://www.childwelfare.gov/topics/can/impact/consequences/).

Federal Research on Adverse Childhood Experiences

ACEs refers to a group of traumatic experiences in childhood, including maltreatment, that can cause toxic stress and affect an individual's physical, psychological, and behavioral well-being.[1] (See figure 1 for a representation of how ACEs affect an individual throughout his or her life.) Between 1995 and 1997, the CDC, in collaboration with Kaiser Permanente's Health Appraisal Clinic, conducted the landmark ACEs study, which examined the correlation between childhood trauma and adult health and well-being outcomes. Research that explores ACEs and how to respond to them is still ongoing. Findings from a subsequent study showed that nearly half of children in the United States experienced at least one ACE and that about 1 in 10 had experienced three or more ACEs (Sacks & Murphey, 2018). For more information about the study, visit https://www.cdc.gov/violenceprevention/acestudy/.

Figure 1. ACEs Pyramid



Source: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention. (n.d.). *Adverse childhood experiences presentation graphics: The ACE pyramid.* Retrieved from https://www.cdc.gov/violenceprevention/acestudy/ACE_graphics.html

[1] The following are the 10 ACEs generally studied: physical abuse, sexual abuse, emotional abuse, physical neglect, emotional neglect, intimate partner violence within the household, substance misuse within the household, mental illness within the household, parental separation or divorce, and incarcerated household member.

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Two additional Federal research initiatives regarding ACES are the National Survey of Child and Adolescent Well-Being (NSCAW) and the Behavioral Risk Factor Surveillance System (BRFSS):

- NSCAW is a project of the Administration on Children, Youth and Families within HHS/ACF. It seeks to describe the child welfare system and the experiences of children and families who come into contact with it. Survey data are collected firsthand from children, parents, other caregivers, caseworkers, and teachers as well as administrative records. As a longitudinal study, NSCAW follows the life course of these children to gather data about service receipt, child well-being, and other outcomes. This information will provide a clearer understanding of the life outcomes of children and families involved with child welfare. For more information, visit https://www.acf.hhs.gov/opre/research/project/national-survey-of-child-and-adolescent-well-being-nscaw.
- BRFSS is an annual national telephone survey that collects State data on U.S. residents ages 18 years or older regarding their health-related risk behaviors, chronic health conditions, and use of preventative services. BRFSS consists of a core module as well as optional modules that States can incorporate. In addition, many States develop their own questions to meet their needs. The HHS CDC developed an optional ACEs module that was available from 2009 to 2011. Since 2011, many States have continued to add the ACEs module to their surveys as State-added questions. For more information, visit the CDC website at https://www.cdc.gov/brfss/index.html.

Promising evidence-based strategies have emerged to help combat the effects of ACEs on future outcomes and well-being. These include enlisting communities to promote stable, safe, and nurturing environments for children; using data to inform programs and services for preventing child maltreatment; and implementing community efforts that support parenting programs and positive parenting behaviors (HHS, CDC, National Center for Injury Prevention and Control, Division of Violence Prevention, 2014).

For more information on ACEs, including related research, refer to the following:

- ACEs Connection [website]: https://www.acesconnection.com/
- *ACEs Resource Packet: Adverse Childhood Experiences (ACEs) Basics*: http://childhealthdata.org/docs/default-source/cahmi/aces-resource-packet_all-pages_12_06-16112336f3c0266255aab2ff00001023b1.pdf?sfvrsn=2
- Adverse Childhood Experiences [webpage] https://www.cdc.gov/violenceprevention/acestudy/index.html
- Childhood Trauma and Positive Health [webpage] http://www.cahmi.org/projects/adverse-childhood-experiences-aces/
- *A National and Across-State Profile on Adverse Childhood Experiences Among U.S. Children and Possibilities to Heal and Thrive* http://www.cahmi.org/wp-content/uploads/2018/05/aces_brief_final.pdf
- *The Prevalence of Adverse Childhood Experiences, Nationally, by State, and by Race or Ethnicity* https://www.childtrends.org/publications/prevalence-adverse-childhood-experiences-nationally-state-race-ethnicity

Preventing and Reducing the Long-Term Consequences of Maltreatment

By reducing the incidence of child abuse and neglect through primary prevention approaches and providing comprehensive, trauma-informed care when it does occur, communities can limit its long-term consequences. In trauma-informed care, service professionals acknowledge a child's history of trauma and how that trauma can have an impact on the symptoms—or consequences—being experienced by the child. For more information on trauma-informed practice, visit Information Gateway at https://www.childwelfare.gov/topics/responding/trauma/. Communities can ensure that public and private agencies have the tools—such as assessments, evidence-informed interventions, and properly trained staff—to provide children and their families with timely, appropriate care to prevent child maltreatment and alleviate its effects.

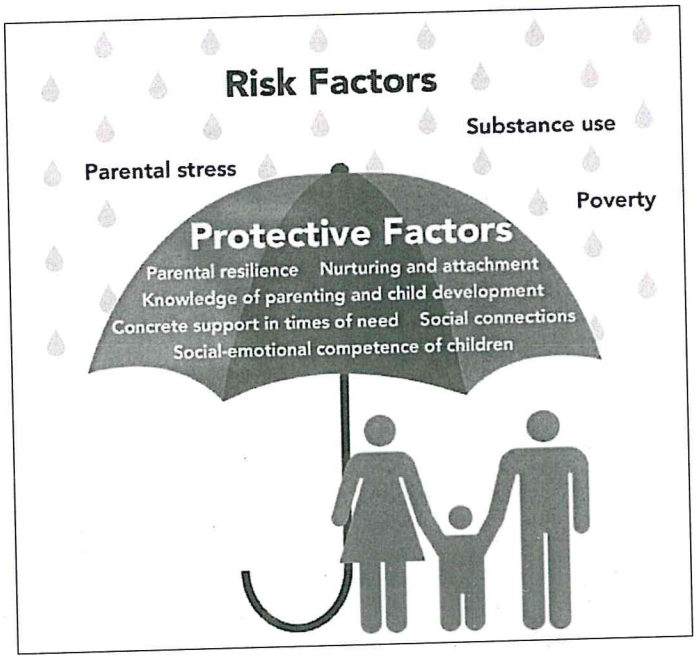
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Communities can also promote a variety of protective factors for children. Protective factors are conditions or attributes of individuals, families, communities, or society that promote well-being and reduce the risk for negative outcomes, including the long-term consequences discussed in this factsheet (Child Welfare Information Gateway, 2015). They can "buffer" the effects of maltreatment. (See figure 2 for an illustration of the relationship between risk and protective factors.) Research shows the following are protective factors for victims of child maltreatment (Child Welfare Information Gateway, 2015):

- Individual level
  - Sense of purpose
  - Agency (self-efficacy)
  - Self-regulation skills
  - Relational skills
  - Problem-solving skills
  - Involvement in positive activities
- Relationship level
  - Parenting competencies
  - Positive peers
  - Parent or caregiver well-being
- Community level
  - Positive school environment
  - Stable living situation
  - Positive community environment

For more information, visit Information Gateway's Preventing Child Abuse & Neglect (https://www.childwelfare.gov/topics/preventing/) and Responding to Child Abuse & Neglect (https://www.childwelfare.gov/topics/responding/) web sections.

Figure 2. Risk and Protective Factors



Conclusion

Child abuse and neglect can have devastating and long-lasting effects on a child and can result in detrimental societal impacts, including high costs for services and increased involvement in the juvenile and criminal justice systems. However, communities can act to stem the effects of maltreatment and even prevent it. Evidence-based services and supports can promote protective factors that mitigate the effects of maltreatment as well as provide families and communities with the tools to stop maltreatment before it occurs. Child welfare agencies can work with families and communities to spearhead initiatives that build upon strengths and address needs.

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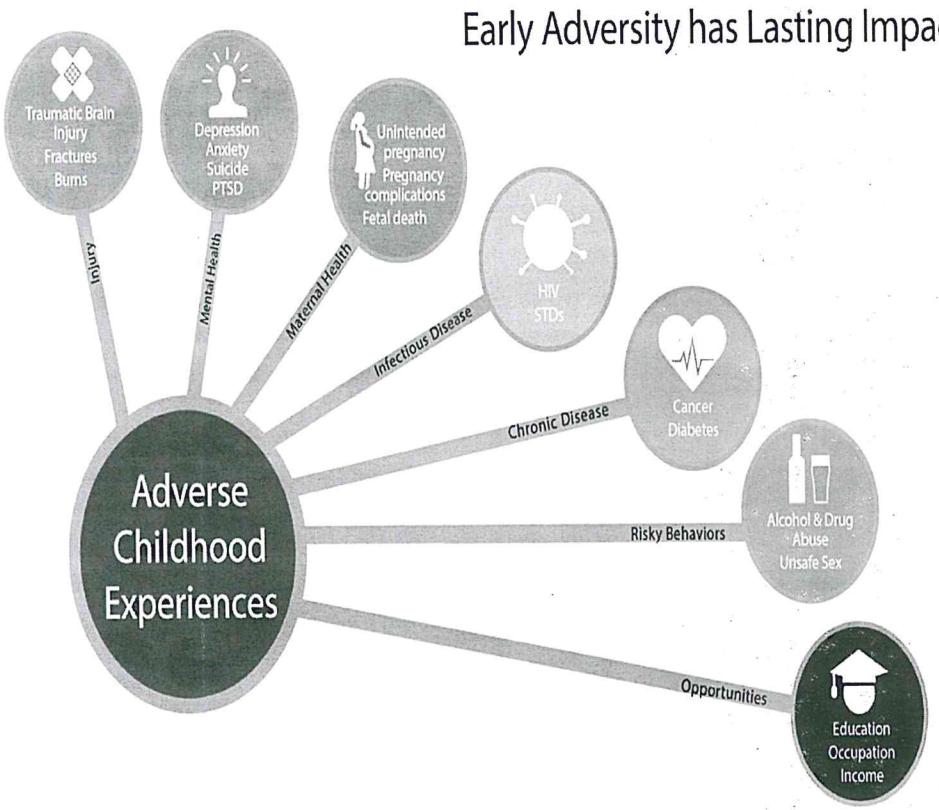
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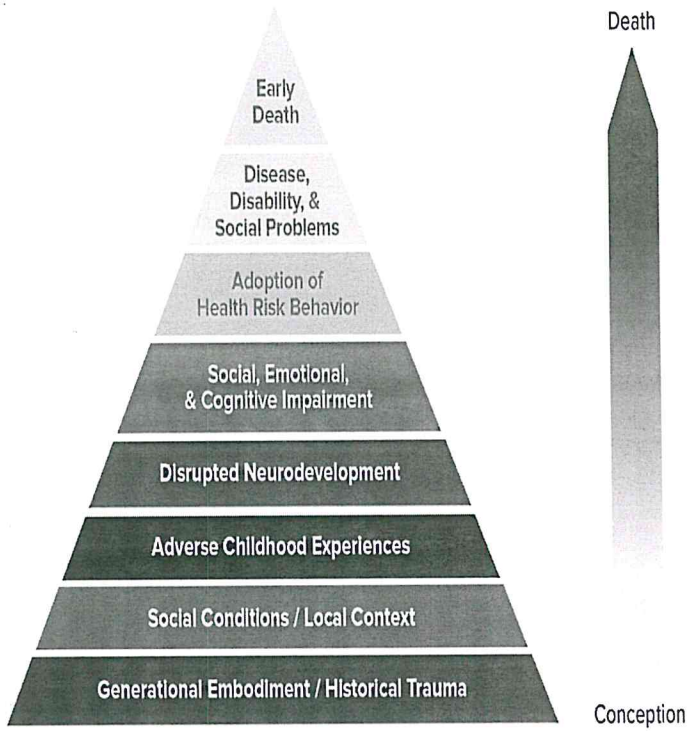
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Suggested Citation:

Child Welfare Information Gateway. (2019). *Long-term consequences of child abuse and neglect.* Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau.

Adverse Childhood Experiences (ACEs)



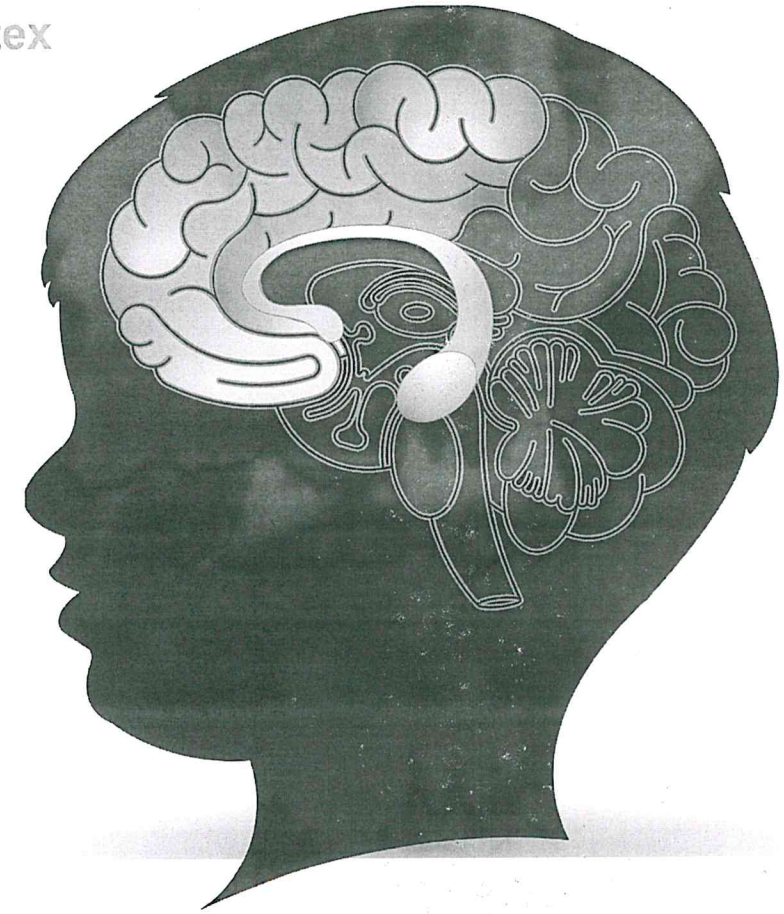


Mechanism by which Adverse Childhood Experiences Influence Health and Well-being Throughout the Lifespan

Regions of the Brain Involved in the Stress Response

Prefrontal Cortex

- evaluation
- thinking
- logic
- what to do



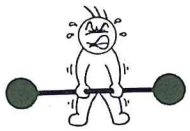
Hippocampus

Regulates memory and emotions

Amygdala

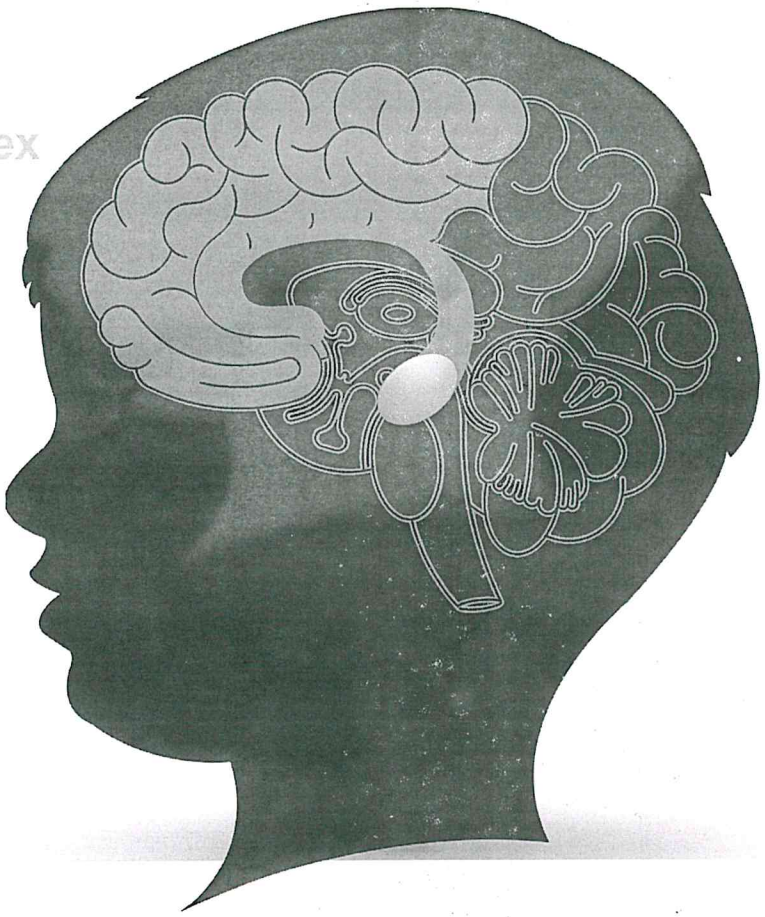
Turns on fight or flight, and stores memories of the event

Chronic Stress Effects



Prefrontal Cortex

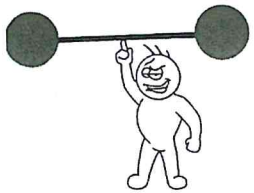
- thinking
- logic
- what to do
- evaluation



Hippocampus



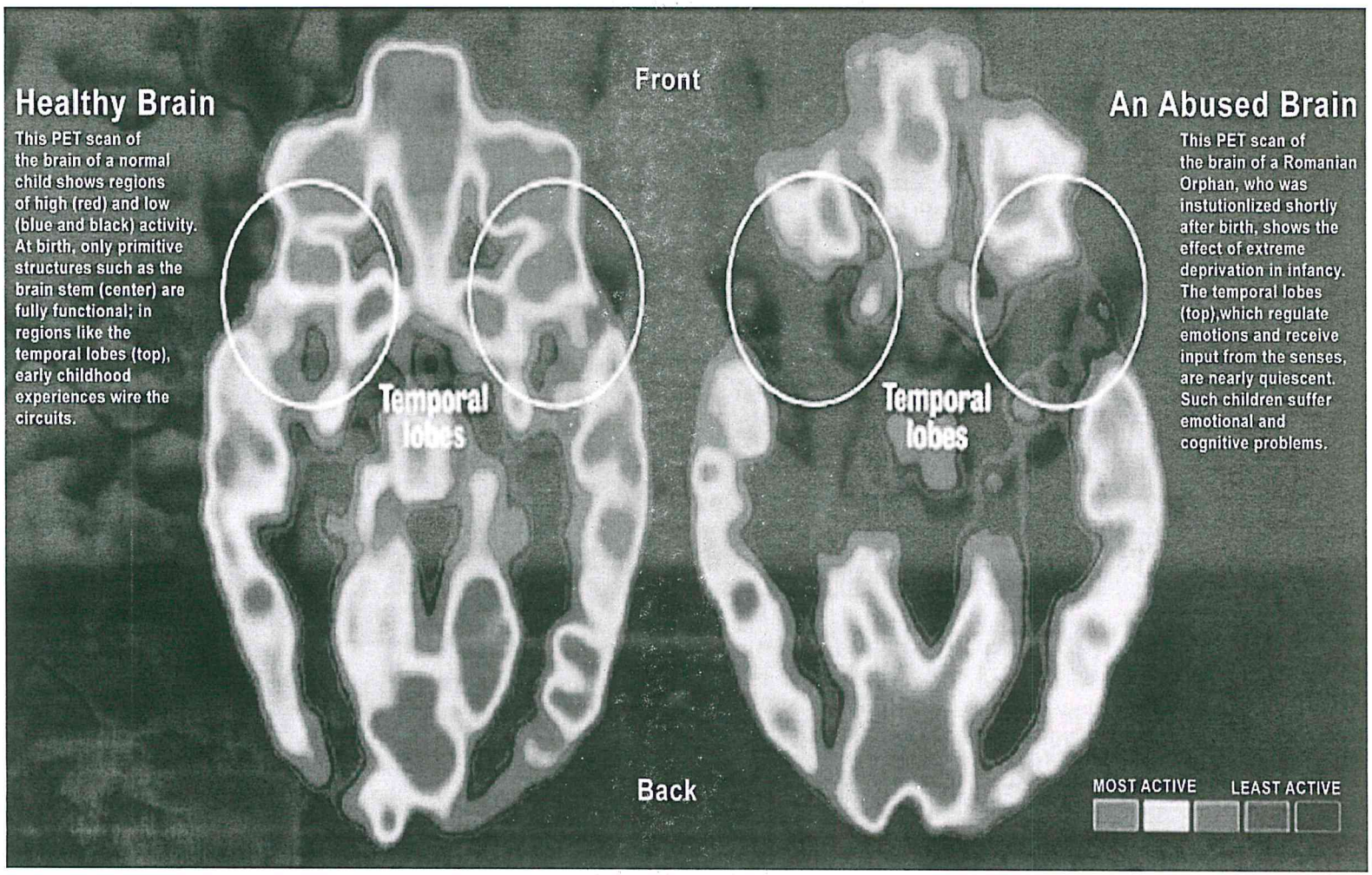
Regulates
memory and
emotions



Amygdala

Turns on fight or flight,
and stores memories
of the event

Chronic Stress Effects



https://www.naccchildlawblog.org/child-welfare-law/what-does-it-mean-to-be-trauma-informed/

ADOLESCENT RESOURCES

Emergency Services	911
National Suicide Prevention Lifeline	1.800.273.TALK (8255)
Kern County Mental Health Hotline	1.800.991.5272
AIDS/HIV Hotline	1.800.367.2437
AlaTeen	661.322.1102
Bakersfield Crisis Pregnancy Center	661.326.1907
Bakersfield Gay and Lesbian Center	661.843.7995
Boys Town National Hotline	1.800.448.3000
CA Youth Crisis Hotline	1.800.843.5200
Crisis Text Line	"Listen" to 741-741
Domestic Violence Hotline	1.800.799.7233
Drug and Alcohol Hotline	1.800.662.4357
GBLTQ National Youth Talk Line	1.800.246.7743
National Runaway Switchboard	1.800.786.2929
Nineline Crisis Counseling Hotline	1.800.999.9999
Planned Parenthood	661.634.1000
Pregnant Minor Program/Cal-Safe	661.852.5651
Pregnant Teens	661.324.0293
Rape, Abuse, Incest Hotline (RAINN)	1.800.656.4673
Self-Injury Hotline	1.800.366.8288
STD Hotline	1.800.227.8922
Teen Crisis Line	1.800.852.8336
The Trevor Project - GLBTQ	1.866.488.7386

U.S. Department of Education Title IX Final Rule Overview

Guiding Principles

- **Historic Recognition of Sexual Harassment as Sex Discrimination**

  For the first time, the Department's Title IX regulations recognize that sexual harassment, including sexual assault, is unlawful sex discrimination. The Department previously addressed sexual harassment only through guidance documents, which are not legally binding and do not have the force and effect of law. Now, the Department's regulations impose important legal obligations on school districts, colleges, and universities (collectively "schools"), requiring a prompt response to reports of sexual harassment. The Final Rule improves the clarity and transparency of the requirements for how schools must respond to sexual harassment under Title IX so that every complainant receives appropriate support, respondents are treated as responsible only after receiving due process and fundamental fairness, and school officials serve impartially without bias for or against any party.

- **Supporting Complainants & Respecting Complainants' Autonomy**

  Under the Final Rule, schools must offer free supportive measures to every alleged victim of sexual harassment (called "complainants" in the Final Rule). Supportive measures are individualized services to restore or preserve equal access to education, protect student and employee safety, or deter sexual harassment. Supportive measures must be offered even if a complainant does not wish to initiate or participate in a grievance process. Every situation is unique, and individuals react to sexual harassment differently. Therefore, the Final Rule gives complainants control over the school-level response best meeting their needs. It respects complainants' wishes and autonomy by giving them the clear choice to file a formal complaint, separate from the right to supportive measures. The Final Rule also provides a fair and impartial grievance process for complainants, and protects complainants from being coerced or threatened into participating in a grievance process.

- **Non-Discrimination, Free Speech, and Due Process**

  The Final Rule reflects core American values of equal treatment on the basis of sex, free speech and academic freedom, due process of law, and fundamental fairness. Schools must operate free from sex discrimination, including sexual harassment. Complainants and respondents must have strong, clear procedural rights in a predictable, transparent grievance process designed to reach reliable outcomes. The Final Rule ensures that schools do not violate First Amendment rights when complying with Title IX.

A School's Response to Sexual Harassment

- Under the Final Rule, any of the following conduct on the basis of sex constitutes sexual harassment:
  - A school employee conditioning an educational benefit or service upon a person's participation in unwelcome sexual conduct (often called "*quid pro quo*" harassment);
  - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or
  - Sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a)).

U.S. Department of Education Title IX Final Rule Overview

- Consistent with Supreme Court precedent and the text of Title IX, a school must respond when: (1) the school has actual knowledge of sexual harassment; (2) that occurred within the school's education program or activity; (3) against a person in the United States. The Final Rule expands "actual knowledge" to include notice to any elementary or secondary school employee, and states that any person (*e.g.*, the alleged victim or any third party) may report to a Title IX Coordinator in person or by e-mail, phone, or mail. The Final Rule also specifies that a school's "education program or activity" includes situations over which the school exercised substantial control, and also buildings owned or controlled by student organizations officially recognized by a postsecondary institution, such as many fraternity and sorority houses.

- Consistent with Supreme Court precedent, a school violates Title IX when its response to sexual harassment is clearly unreasonable in light of the known circumstances, and the Final Rule adds mandatory response obligations such as offering supportive measures to every complainant, with or without a formal complaint.

- Schools must investigate every formal complaint (which may be filed by a complainant or by a school's Title IX Coordinator). If the alleged conduct does not fall under Title IX, then a school may address the allegations under the school's own code of conduct and provide supportive measures.

A Fair Grievance Process

The Final Rule requires schools to investigate and adjudicate formal complaints of sexual harassment using a grievance process that incorporates due process principles, treats all parties fairly, and reaches reliable responsibility determinations. A school's grievance process must:

- Give both parties written notice of the allegations, an equal opportunity to select an advisor of the party's choice (who may be, but does not need to be, an attorney), and an equal opportunity to submit and review evidence throughout the investigation;
- Use trained Title IX personnel to objectively evaluate all relevant evidence without prejudgment of the facts at issue and free from conflicts of interest or bias for or against either party;
- Protect parties' privacy by requiring a party's written consent before using the party's medical, psychological, or similar treatment records during a grievance process;
- Obtain the parties' voluntary, written consent before using any kind of "informal resolution" process, such as mediation or restorative justice, and not use an informal process where an employee allegedly sexually harassed a student;
- Apply a presumption that the respondent is not responsible during the grievance process (often called a "presumption of innocence"), so that the school bears the burden of proof and the standard of evidence is applied correctly;
- Use either the preponderance of the evidence standard or the clear and convincing evidence standard (and use the same standard for formal complaints against students as for formal complaints against employees);
- Ensure the decision-maker is not the same person as the investigator or the Title IX Coordinator (i.e., no "single investigator models");
- For postsecondary institutions, hold a live hearing and allow cross-examination by party advisors (never by the parties personally); K-12 schools do not need to hold a hearing, but parties may submit written questions for the other parties and witnesses to answer;
- Protect all complainants from inappropriately being asked about prior sexual history ("rape shield" protections);

- Send both parties a written determination regarding responsibility explaining how and why the decision-maker reached conclusions;
- Effectively implement remedies for a complainant if a respondent is found responsible for sexual harassment;
- Offer both parties an equal opportunity to appeal;
- Protect any individual, including complainants, respondents, and witnesses, from retaliation for reporting sexual harassment or participating (or refusing to participate) in any Title IX grievance process;
- Make all materials used to train Title IX personnel publicly available on the school's website or, if the school does not maintain a website, make these materials available upon request for inspection by members of the public; and
- Document and keep records of all sexual harassment reports and investigations.

SEX DISCRIMINATION REGULATIONS

Relating to sex discrimination generally, and not only to sexual harassment, the final regulations also:

- Affirm that the Department may require schools to take remedial action for discriminating on the basis of sex or otherwise violating the Department's Title IX regulations;
- Expressly state that in response to any claim of sex discrimination under Title IX, schools are never required to deprive an individual of rights guaranteed under the U.S. Constitution;
- Account for the interplay of Title IX, Title VII, and FERPA, as well as the legal rights of parents or guardians to act on behalf of individuals with respect to exercising Title IX rights;
- Update the requirement for schools to designate and identify a Title IX Coordinator, disseminate their non-discrimination policy and the Title IX Coordinator's contact information to ensure accessible channels for reporting sex discrimination (including sexual harassment), and notify students, employees, parents, and others of how the school will respond to reports and complaints of sex discrimination (including sexual harassment); and
- Clarify that an institution controlled by a religious organization is not required to submit a written statement to the Department to qualify for the Title IX religious exemption.

September 4, 2020

Questions and Answers Regarding the Department's Final Title IX Rule

The Department of Education's Office for Civil Rights, through its new Outreach, Prevention, Education and Non-discrimination (OPEN) Center, issues the following technical assistance document to support institutions with meeting their obligations under the Title IX Rule, which was announced on May 6, 2020, and which became effective on August 14, 2020. Many of the questions were derived from questions posed to the OPEN center through e-mail.

OCR may periodically release additional Question and Answer documents addressing the Title IX Rule.

All references and citations are to the unofficial version of the Title IX Rule, which is available here. A link to the official version of the Rule published in the Federal Register is here.

Disclaimer: Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Effective Date of the Final Rule

Question 1: Can you please clarify whether the new Title IX rules that went into effect on August 14, 2020, will be applied retroactively?

Answer 1: The Title IX Rule will not be enforced retroactively. In the Preamble to the Rule at page 127, the Department states unambiguously that the Department will not enforce these final regulations retroactively. The Department also notes, in footnote 290 of the Rule, the general principle that:

> Federal agencies authorized by statute to promulgate rules may only create rules with retroactive effect where the authorizing statute has expressly granted such authority. *See* 5 U.S.C. 551 (referring to a "rule" as agency action with "future effects" in the Administrative Procedure Act); *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) ("Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result.").

Consistent with the Department's statements in the preamble to the Title IX Rule regarding non-retroactivity, the Rule does not apply to schools' responses to sexual harassment that allegedly occurred prior to August 14, 2020. The Department will only enforce the Rule as to sexual harassment that allegedly occurred on or after August 14, 2020. With respect to sexual harassment that allegedly occurred prior to August 14, 2020, OCR will judge the school's Title IX compliance against the Title IX statute and the Title IX regulations in place at the time that the alleged sexual harassment occurred. In other words, the Rule governs how schools must respond to sexual harassment that allegedly occurs on or after August 14, 2020.

Title IX Coordinator and Other Personnel Issues

Question 2: Does the Title IX Rule specify whether each recipient must have a Title IX Coordinator, or is each school required to have a separate Title IX Coordinator, or both?

Answer 2: The Title IX Rule states in § 106.8(a): "Each *recipient* must designate and authorize *at least one employee* to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the "'Title IX Coordinator.'" (emphasis added).

Question 3: The Title IX Rule allows schools to continue to address misconduct that does not meet the definition of sexual harassment. Can Title IX personnel still review these complaints, and follow procedures similar to those allegations that do meet the definition of sexual harassment?

Answer 3: Yes. The Title IX Rule does not preclude a recipient from using the same Title IX personnel (including the Title IX Coordinator, who must be an employee of the recipient, and Title IX investigators and decision-makers, who may be a recipient's employees or the employees of a third-party, such as a consortium of schools) to review and investigate allegations of misconduct that fall outside the scope of Title IX. Similarly, the Rule does not preclude a recipient from using a grievance process that complies with § 106.45 with respect to allegations that fall outside the scope of Title IX. In the Preamble to the Rule at pages 481-82, for example, the Department states:

> In response to commenters' concerns, the final regulations revise § 106.45(b)(3)(i) to clearly state that dismissal for Title IX purposes does not preclude action under another provision of the recipient's code of conduct. Thus, if a recipient is required under State law or the recipient's own policies to investigate sexual or other misconduct that does not meet the § 106.30 definition, the final regulations clarify that a recipient may do so. Similarly, if a recipient wishes to use a grievance process that complies with § 106.45 to resolve allegations of misconduct that do not constitute sexual harassment under § 106.30, nothing in the final regulations precludes a recipient from doing so. Alternatively, a recipient may respond to non-Title IX misconduct under disciplinary procedures that do not comply with § 106.45. The final regulations leave recipients flexibility in this regard, and prescribe a particular grievance process only where allegations concern sexual harassment covered by Title IX.

The Definition of Sexual Harassment

Question 4: One form of sexual harassment is conduct on the basis of sex that constitutes "[u]nwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity." In this sentence, does "reasonable person" modify only "severe, pervasive, and objectively offensive" only, or the effective denial clause as well? To clarify, can an "effective denial" be something that a reasonable person would experience, even if there is not evidence to show that the Complainant was in fact effectively denied?

Answer 4: The "reasonable person" standard in the second prong of the definition of sexual harassment under § 106.30(a) applies to each of the elements drawn from the U.S. Supreme Court's decision in *Davis v. Monroe County Bd. of Ed.*, 526 U.S. 629 (1999). These elements include: severity, pervasiveness, objective offensiveness, and the effective denial of equal educational access. In the Preamble to the Rule, at page 515, the Department states: "The *Davis* standard ensures that all students, employees, and recipients understand that unwelcome conduct on the basis of sex is actionable under Title IX when a reasonable person in the complainant's position would find the conduct severe, pervasive, and objectively offensive such that it effectively denies equal access to the recipient's education program or activity."

With respect to the denial of the equal access element in particular, in the Preamble to the Title IX Rule, at page 525, states:

> Neither the Supreme Court, nor the final regulations in § 106.30, requires showing that a complainant dropped out of school, failed a class, had a panic attack, or otherwise reached a "breaking point" in order to report and receive a recipient's supportive response to sexual harassment. The Department acknowledges that individuals react to sexual harassment in a wide variety of ways, and does not interpret the *Davis* standard to require certain manifestations of trauma or a "constructive expulsion." Evaluating whether a reasonable person in the complainant's position would deem the alleged harassment to deny a person "equal access" to education protects complainants against school officials inappropriately judging how a complainant has reacted to the sexual harassment. The § 106.30 definition neither requires nor permits school officials to impose notions of what a "perfect victim" does or says, nor may a recipient refuse to respond to sexual harassment because a complainant is "high-functioning" or not showing particular symptoms following a sexual harassment incident.

Similarly, the Preamble to the Title IX Rule, at pages 526-27, states:

> With respect to the denial of equal access element, neither the *Davis* Court nor the Department's final regulations require complete exclusion from an education, but rather denial of "equal" access. Signs of enduring *unequal* educational access due to severe, pervasive, and objectively offensive sexual harassment may include, as commenters suggest, skipping class to avoid a harasser, a decline in a student's

> grade point average, or having difficulty concentrating in class; however, *no concrete injury is required to conclude that serious harassment would deprive a reasonable person* in the complainant's position of the ability to access the recipient's education program or activity on an equal basis with persons who are not suffering such harassment.

(emphasis added).

Filing of a Formal Complaint

Question 5: The Title IX Rule states: "At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed." If a complainant either withdraws from school because of sexual harassment and then files a complaint, or files a complaint but then withdraws as a result of the sexual harassment or stress of the grievance process, how would the regulations affect the complainant's ability to pursue a formal complaint?

Answer 5: Under the Title IX Rule, recipients must promptly respond to a report that an individual has been allegedly victimized by sexual harassment, whether the alleged victim is presently a student or not, in a manner that is not "deliberately indifferent," or clearly unreasonable in light of known circumstances. Students and others who are participating or attempting to participate in the school's program or activity also have the right to file a formal complaint.

In the Preamble to the Title IX Rule, at pages 411-12, the Department further explains:

> A complainant who has graduated may still be 'attempting to participate' in the recipient's education program or activity; for example, where the complainant has graduated from one program but intends to apply to a different program, or where the graduated complainant intends to remain involved with a recipient's alumni programs and activities. Similarly, a complainant who is on a leave of absence may be 'participating or attempting to participate' in the recipient's education program or activity; for example, such a complainant may still be enrolled as a student even while on leave of absence, or may intend to re-apply after a leave of absence and thus is still 'attempting to participate' even while on a leave of absence. *By way of further example, a complainant who has left school because of sexual harassment, but expresses a desire to re-enroll if the recipient appropriately responds to the sexual harassment, is 'attempting to participate' in the recipient's education program or activity.*

(emphasis added). Additionally, the Rule permits Title IX Coordinators to sign a formal complaint, regardless of whether a complainant is "participating or attempting to participate" in the school's education program or activity. A Title IX Coordinator's decision to sign a formal complaint (or not) is evaluated under the deliberate indifference standard: whether the decision was clearly unreasonable in light of the known circumstances.

Conducting an Investigation Hearing

Question 6: May a recipient delegate many of the functions required by the Title IX Rule to an outside entity, such as a Regional Center or consortium of schools?

Answer 6: Yes. In particular, many of the elements of the investigation and hearing processes lend themselves to delegation. The recipient itself remains ultimately responsible for ensuring compliance with the legal obligations under the Title IX Rule.

At page 273 of the Preamble to the Title IX Rule, the Department expressly contemplates and encourages recipients to consider innovative approaches such as consortiums and regional centers:

> The Department appreciates commenters' recommendations for using regional center models and similar models involving voluntary, cooperative efforts among recipients to outsource the investigation and adjudication functions required under the final regulations. The Department believes these models represent the potential for innovation with respect to how recipients might best fulfill the obligation to impartially reach accurate factual determinations while treating both parties fairly. The Department encourages recipients to consider innovative solutions to the challenges presented by the legal obligation for recipients to fairly and impartially investigate and adjudicate these difficult cases, and the Department will provide technical assistance for recipients with questions about pursuing regional center models.

To be sure, there are limitations on the extent to which a recipient may delegate certain responsibilities to other entities. For instance, each recipient must itself employ a Title IX Coordinator. *See* § 106.8 ("Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the "Title IX Coordinator."). Similarly, each recipient is responsible for ensuring that its grievance procedures satisfy the Title IX Rule. *See* § 106.8(c) ("A recipient must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part and a grievance process that complies with § 106.45 for formal complaints as defined in § 106.30"). Still, despite these limitations, the Title IX Rule offers ample opportunity for recipients to find efficiencies in cooperation with other recipients, particularly with respect to investigation and adjudication.

Question 7: What are the rules of evidence at a hearing? Do courtroom rules like the Federal Rules of Evidence apply to a hearing under Title IX?

Answer 7: The Title IX Rule does not adopt the Federal Rules of Evidence for hearings conducted under Title IX. For instance, with respect to which evidence may be introduced, the Rule uses "relevance" as the sole admissibility criterion. *See* § 106.45(b)(1)(ii) (the recipient's grievance process must provide for objective evaluation of all relevant evidence, including evidence that is inculpatory and exculpatory).

The Title IX Rule also deems certain evidence and information to be not relevant or otherwise precludes the recipient from using it: (i) a party's treatment records, without the party's prior

written consent [§ 106.45(b)(5)(i)]; (ii) information protected by a legally recognized privilege [§ 106.45(b)(1)(x)]; (iii) questions or evidence about a complainant's sexual predisposition, and questions or evidence about a complainant's prior sexual behavior unless it meets one of two limited exceptions [§ 106.45(b)(6)(i)-(ii)]; and, for postsecondary institutions, the decision-maker cannot rely on the statements of a party or witness who does not submit to cross-examination [§ 106.45(b)(6)(i)].

In the Preamble to the Title IX Rule, at pages 980-82, the Department explains:

> These final regulations require objective evaluation of relevant evidence, and contain several provisions specifying types of evidence deemed irrelevant or excluded from consideration in a grievance process; a recipient may not adopt evidentiary rules of admissibility that contravene those evidentiary requirements prescribed under § 106.45. For example, a recipient may not adopt a rule excluding relevant evidence whose probative value is substantially outweighed by the danger of unfair prejudice; although such a rule is part of the Federal Rules of Evidence, the Federal Rules of Evidence constitute a complex, comprehensive set of evidentiary rules and exceptions designed to be applied by judges and lawyers, while *Title IX grievance processes are not court trials and are expected to be overseen by layperson officials of a school, college, or university rather than by a judge or lawyer*. Similarly, a recipient may not adopt rules excluding certain types of relevant evidence (e.g., lie detector test results, or rape kits) where the type of evidence is not either deemed "not relevant" (as is, for instance, evidence concerning a complainant's prior sexual history) or otherwise barred from use under § 106.45 (as is, for instance, information protected by a legally recognized privilege). However, the § 106.45 grievance process does not prescribe rules governing how admissible, relevant evidence must be evaluated for weight or credibility by a recipient's decision-maker, and recipients thus have discretion to adopt and apply rules in that regard, so long as such rules do not conflict with § 106.45 and apply equally to both parties.

Question 8: Do recipients have latitude to define relevance on their own?

Answer 8: In the Preamble to the Title IX Rule, at page 811, footnote 1018, the Department states: "The final regulations do not define relevance, and the ordinary meaning of the word should be understood and applied." At page 812 of the Preamble, the Department states:

> Relevance is the standard that these final regulations require, and any evidentiary rules that a recipient chooses must respect this standard of relevance. For example, a recipient may not adopt a rule excluding relevant evidence because such relevant evidence may be unduly prejudicial, concern prior bad acts, or constitute character evidence. A recipient may adopt rules of order or decorum to forbid badgering a witness, and may fairly deem repetition of the same question to be irrelevant.

However, there is a difference between the admission of relevant evidence, and the weight, credibility, or persuasiveness of particular evidence. At pages 981-82 of the Preamble, the Department further explains:

> However, the § 106.45 grievance process does not prescribe rules governing how admissible, relevant evidence must be evaluated for weight or credibility by a recipient's decision-maker, and recipients thus have discretion to adopt and apply rules in that regard, so long as such rules do not conflict with § 106.45 and apply equally to both parties. In response to commenters' concerns that the final regulations do not specify rules about evaluation of evidence, and recognizing that recipients therefore have discretion to adopt rules not otherwise prohibited under § 106.45, the final regulations acknowledge this reality by adding language to the introductory sentence of § 106.45(b): "Any provisions, rules, or practices other than those required by § 106.45 that a recipient adopts as part of its grievance process for handling formal complaints of sexual harassment, as defined in § 106.30, must apply equally to both parties." A recipient may, for example, adopt a rule regarding the weight or credibility (but not the admissibility) that a decision-maker should assign to evidence of a party's prior bad acts, so long as such a rule applied equally to the prior bad acts of complainants and the prior bad acts of respondents. Because a recipient's investigators and decision-makers must be trained specifically with respect to "issues of relevance," any rules adopted by a recipient in this regard should be reflected in the recipient's training materials, which must be publicly available.

(emphasis added) (internal footnotes omitted).

Question 9: The Title IX Rule states that at the postsecondary level, if a party does not appear at a live hearing, or chooses to not answer cross examination questions, that party's statement must not be relied upon "in reaching a determination regarding responsibility." If a complainant opts not to answer cross-examination questions, how does that impact that complainant's statements in an investigative report? Does it mean all statements provided by that party before the hearing—including statements made to an investigator and summarized in the investigation report—are excluded?

Answer 9: The Title IX Rule, at § 106.45(b)(6)(i), requires postsecondary institutions to hold a live hearing with the opportunity for each party's advisor to conduct cross-examination of parties and witnesses.

At page 1179 of the Preamble to the Rule, the Department explains:

> Because party and witness statements so often raise credibility questions in the context of sexual harassment allegations, *the decision-maker must consider only those statements that have benefited from the truth-seeking function of cross-examination*. The recipient, and the parties, have equal opportunity (and, for the recipient, the obligation) to gather and present relevant evidence including fact and expert witnesses, and face the same limitations inherent in a lack of subpoena power

> to compel witness testimony. The Department believes that the final regulations, including § 106.45(b)(6)(i), strike the appropriate balance for a postsecondary institution context between ensuring that only relevant and reliable evidence is considered while not over-legalizing the grievance process.

(emphasis added). And at page 1181 of the Preamble to the Title IX Rule, the Department states:

> The prohibition on reliance on "statements" applies not only to statements made during the hearing, *but also to any statement of the party or witness who does not submit to cross-examination*. "Statements" has its ordinary meaning, but would not include evidence (such as videos) that do not constitute a person's intent to make factual assertions, or to the extent that such evidence does not contain a person's statements. Thus, *police reports, SANE reports, medical reports, and other documents and records may not be relied on to the extent that they contain the statements of a party or witness who has not submitted to cross-examination*. While documentary evidence such as police reports or hospital records may have been gathered during investigation and, if directly related to the allegations inspected and reviewed by the parties, and to the extent they are relevant, summarized in the investigative report, the hearing is the parties' first opportunity to argue to the decision-maker about the credibility and implications of such evidence. Probing the credibility and reliability of *statements* asserted by witnesses contained in such evidence requires the parties to have the opportunity to cross-examine the witnesses making the statements.

(emphasis added) (footnotes omitted). For a further discussion of this topic and how it relates to unprotected speech that itself constitutes sexual harassment under the Title IX Rule, readers are invited to review OCR's blog post on this topic here.

Question 10: When a post-secondary institution holds a live hearing, is the questioning limited to certain subjects?

Answer 10: The Rule requires that schools provide the opportunity for cross-examination, and that party advisors must be permitted to ask *all* relevant questions (including follow-up questions), and *only* relevant questions.

Question 11: At the postsecondary level, are party advisors expected to cross-examine witnesses?

Answer 11: The Title IX Rule, at § 106.45(b)(6)(i), states that a postsecondary institution must hold a live hearing. At the hearing, each party's advisor of choice must be "permitted" to cross-examine witnesses. (Note that the same provision requires the recipient to provide a party with an advisor of the recipient's choice, if the party appears at the hearing without an advisor of the party's choice.)

Question 12: If a party's advisor fails to cross-examine another party on a key statement related to credibility, what is the effect of this on the statement made by the complainant? May the decision-maker consider the key statement?

Answer 12: The Title IX Rule, in § 106.45(b)(6)(i), states: "At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility."

In the Preamble to the Rule at page 1181, the Department states (emphasis added):

> Probing the credibility and reliability of statements asserted by witnesses contained in such evidence requires the parties to have *the opportunity* to cross-examine the witnesses making the statements.
>
> The Department appreciates the opportunity to clarify here that to "submit to cross-examination" means answering those cross-examination questions that are relevant; the decision-maker is required to make relevance determinations regarding cross-examination in real time during the hearing in part to ensure that parties and witnesses do not feel compelled to answer irrelevant questions for fear of their statements being excluded.

(emphasis added).

Thus, the decision-maker is obligated to "permit" each party's advisor to ask all relevant questions. However, this provision provides only an "opportunity" for each party (through an advisor) to conduct cross-examination; this provision does not purport to require that each party conduct cross-examination or will conduct cross-examination to the fullest extent possible. If a party chooses not to conduct cross-examination of another party or witness, that other party or witness cannot "submit" or "not submit" to cross-examination. Accordingly, the decision-maker is not precluded from relying on any statement of the party or witness who was not given the opportunity to submit to cross-examination. The same is true if a party's advisor asks some cross-examination questions but not every possible cross-examination question; as to cross-examination questions *not asked* of a party or witness, that party or witness cannot be said to have submitted or not submitted to cross-examination, so the decision-maker is not precluded from relying on that party's or witness's statements.

Conversely, if a party or witness answers one, or some, but not all, relevant cross-examination questions asked by a party's advisor at the live hearing, then that party or witness has not submitted to cross-examination and that party's or witness's statements cannot be relied on by the decision-maker. *See* Preamble at page 1183 ("the Department declines to allow a party or witness to "waive" a question because such a rule would circumvent the benefits and purposes of cross-examination as a truth-seeking tool for postsecondary institutions' Title IX adjudications").

Question 13: Does an advisor or party have an opportunity to provide input about how evidence should be weighted by the decision-maker?

Answer 13: Yes. The parties must have an equal opportunity to inspect, review, and respond to evidence directly related to the allegations (see § 106.45(b)(5)(vi)), and an equal opportunity to review and respond to the recipient's investigative report (see § 106.45(b)(5)(vii)), allows each party the opportunity to provide input and make arguments about the relevance of evidence and

how a decision-maker should weigh the evidence. In the Preamble to the Rule at p. 1015, the Department states that the Rule:

> . . . balances the recipient's obligation to impartially gather and objectively evaluate all relevant evidence, including inculpatory and exculpatory evidence, with the parties' equal right to participate in furthering each party's own interests by identifying evidence overlooked by the investigator and evidence the investigator erroneously deemed relevant or irrelevant and making arguments to the decision-maker regarding the relevance of evidence and the weight or credibility of relevant evidence.

Note that Sections 106.45(b)(5)(vi) and (vii) require the recipient to "send to each party and the party's advisor, if any" the evidence and the investigative report, so that a party's advisor can advise the party in exercising the party's right to review and respond to the evidence and to the investigative report.

Question 14: Are all witnesses expected to appear at a hearing, or do decision-makers have the flexibility to request witnesses as they deem necessary?

Answer 14: The Title IX Rule does not require that all witnesses appear at a hearing, although it does provide the parties an equal right to present witnesses. At page 1176 of the Preamble of the Title IX Rule, the Department acknowledges that recipients do not have subpoena powers to compel attendance of parties or witnesses at a hearing:

> The Department understands that complainants (and respondents) often will not have control over whether witnesses appear and are cross-examined, because neither the recipient nor the parties have subpoena power to compel appearance of witnesses. Some absences of witnesses can be avoided by a recipient thoughtfully working with witnesses regarding scheduling of a hearing, and taking advantage of the discretion to permit witnesses to testify remotely.

Furthermore, § 106.71(a) protects parties and witnesses against retaliation for deciding to participate or not to participate in a Title IX grievance process. Thus, a witness cannot be compelled to appear at a hearing, and cannot be intimidated, threatened, coerced, or discriminated against if the witness chooses not to appear. However, the parties must have an equal opportunity to "present" witnesses, so the decision-maker cannot request the presence only of witnesses the decision-maker has deemed necessary. The decision-maker has discretion to permit witnesses to testify at the hearing remotely, using technology. *See* § 106.45(b)(6)(i).

Question 15: Some recipients divide hearings between a "responsibility" phase and a "sanctions" phase. Is that bifurcation possible under Title IX?

Answer 15: Yes. The Rule does not preclude a recipient from using one decision-maker to reach the determination regarding responsibility, and having another decision-maker determine appropriate remedies or a complainant or appropriate disciplinary sanctions for the respondent. However, the end result must be that the written determination regarding responsibility includes

the remedies and disciplinary sanctions decided upon in the written determination issued under § 106.45(b)(7).

That provision, at § 106.45(b)(7), requires a recipient's decision-maker(s) to issue a written determination that must include, among other items, the result as to each allegation and rationale for the result, any disciplinary sanctions imposed by the recipient against the respondent, and whether remedies will be provided by the recipient to the complainant. The issuance of a written determination cannot be a piecemeal process that is broken down into chronologically occurring sub-parts.

Recipients should also remain aware of their obligation to conclude the grievance process within the reasonably prompt time frames designated in the recipient's grievance process, under § 106.45(b)(1)(v). Additionally, each decision-maker—whether an employee of the recipient or an employee of a third party such as a consortium of schools—owes an individual and ongoing duty not have a conflict of interest or bias for or against complainants or respondents generally, or with respect to an individual complainant or respondent, pursuant to § 106.45(b)(1)(iii).

If you have questions for the Office for Civil Rights (OCR), want additional information or technical assistance, or believe that a school is violating federal civil rights law, visit OCR's website at www.ed.gov/ocr, or the Department's Title IX page at www.ed.gov/titleix. You may contact OCR at (800) 421-3481 (TDD: 800-877-8339), ocr@ed.gov, or contact OCR's Outreach, Prevention, Education and Non-discrimination (OPEN) Center at OPEN@ed.gov, or e-mail the OPEN Center with additional questions about the Title IX Final Rule at T9questions@ed.gov. Additional information regarding the Title IX Final Rule is available here. You may also fill out a complaint form online at https://www2.ed.gov/about/offices/list/ocr/complaintintro.html.

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION PROGRAMS

OSEP QA 20-01

September 28, 2020

The Office of Special Education Programs (OSEP), within the U.S. Department of Education's (Department) Office of Special Education and Rehabilitative Services, issues this Question and Answer (Q & A) document in response to inquiries concerning implementation of the Individuals with Disabilities Education Act (IDEA) Part B provision of services in the current COVID-19 environment.

Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

To review other Q & A documents that OSEP has provided related to COVID-19, please visit https://sites.ed.gov/idea/topic-areas/#COVID-19. Information specific to the COVID-19 pandemic may be found online at https://www.ed.gov/coronavirus. Additional OSEP K-12 resources, strategies and support materials are available at https://ncsi.wested.org/.

IDEA PART B SERVICE PROVISION

State educational agencies (SEAs) and local educational agencies (LEAs) are facing new and unexpected challenges in providing meaningful instruction to children, including children with disabilities, for the 2020-2021 school year. OSEP recognizes that the COVID-19 pandemic has impacted various parts of the nation in different ways. OSEP also recognizes that circumstances continue to rapidly change, and ultimately, the health and safety of children, families, and the school community is most important.

Decisions about the 2020-2021 school year, including how and when educational and other services are provided, are being made by State and local officials, with continued academic growth and the safety of the local school community being of paramount significance. As public agencies and officials grapple with challenging decisions, administrators, educators, and parents[1] may need to consider multiple

[1] Under 34 C.F.R. § 300.30(a), the term "parent" means: (1) a biological or adoptive parent of a child; (2) a foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; (3) a guardian generally authorized

options for delivering instruction, including special education and related services to children with disabilities. Those options could include remote/distance instruction, in-person attendance, or a combination of both remote/distance instruction and in-person attendance (hybrid model). However, OSEP reminds SEAs and LEAs **that no matter what primary instructional delivery approach is chosen, SEAs, LEAs, and individualized education program (IEP) Teams remain responsible for ensuring that a free appropriate public education (FAPE) is provided to all children with disabilities.** If State and local decisions require schools to limit or not provide in-person instruction due to health and safety concerns, SEAs, LEAs, and IEP Teams are not relieved of their obligation to provide FAPE to each child with a disability under IDEA.

This document is meant to aid LEAs and parents in identifying steps they can take to ensure that as the 2020-2021 school year continues, children with disabilities are well-positioned with an educational program that meets each child's unique needs. Just as a child's needs may change during the school year, so can the circumstances needed to ensure the health and safety of children and the entire school community. Therefore, school staff and parents are encouraged to work together to find ways to meet the needs of children with disabilities, notwithstanding the COVID-19 challenges.

Q1. What steps can an LEA take to ensure each child with a disability has an IEP in effect at the start of the 2020-2021 school year?

Under 34 C.F.R. § 300.323(a), at the beginning of each school year, each public agency, which includes LEAs, must have an IEP in effect for each child with a disability within its jurisdiction. To ensure that an appropriate IEP is in place for each child, the LEA may need to convene a meeting of the child's IEP Team, which includes the individuals described in Q2, to determine whether any revisions to the IEP are needed. 34 C.F.R. § 300.324(b)(1).

We understand circumstances are always subject to change and recognize that ultimately the health and safety of children, families, and the school community is most important. SEAs and their public agencies must make every effort to continue to provide children with disabilities with the special education and related services appropriate to their needs.

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to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); (4) an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or (5) a surrogate parent who has been appointed in accordance with 34 C.F.R. § 300.519 or Section 639(a)(5) of the IDEA.

As conditions continue to change throughout the country, some of the special education and related services included in a child's IEP may need to be provided in a different manner; however, all children with disabilities must continue to receive FAPE and must have "the chance to meet challenging objectives."[2] Therefore, IEP Teams should identify how the special education and related services included in a child's IEP will be provided and should consider a variety of instructional methods and settings.

For example, IEP Teams can discuss how a child's IEP will be implemented with traditional in-person instruction and how services also could be provided through remote/distance instruction if circumstances require a change to distance learning or a hybrid model. In making these determinations, IEP Teams should consider alternate available instructional methodologies or delivery, such as online instruction, teleconference, direct instruction via telephone or videoconferencing, or consultative services to the parent (if feasible).

Q2. Which members of the IEP Team must participate in the review discussed in Q1?

The IEP Team members referenced in 34 C.F.R. § 300.321(a) are generally required to participate in meetings to develop, review, and revise a child's IEP. This list includes, among other participants, the parents of the child; not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); and not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child. Under 34 C.F.R. § 300.321(e), it is permissible for certain members to be excused from attending the IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. If the IEP Team meeting involves a modification to or discussion of the member's area of the curriculum or related services, the member may be excused from attending an IEP Team meeting, in whole or in part, if the parent, in writing, and the public agency consent to the excusal; and the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

Q3. When is an LEA permitted to use the IEP amendment process in 34 C.F.R. § 300.324?

The IDEA Part B regulations provide in 34 C.F.R. § 300.324(a)(4)(i), that in making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an

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[2] *Endrew F. v Douglas County School District Re-1*, 137 S.Ct. 988, 1000 (2017).

IEP Team meeting for the purpose of making those changes, and instead, may develop a written document to amend or modify the child's current IEP. It is important to note that an amendment to an IEP cannot take the place of an annual IEP Team meeting. See also Q6.

If changes are made to the child's IEP through a written document, the public agency must ensure that the child's IEP Team is informed of those changes. Upon request, a parent must be provided with a revised copy of the IEP with the changes incorporated. 34 C.F.R. § 300.324(a)(6). In addition, under 34 C.F.R. § 300.503(a), the public agency must provide the parent with prior written notice that meets the requirements of 34 C.F.R. § 300.503(b) a reasonable time before the public agency (1) proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. This provision applies, even if the IEP is amended without convening an IEP Team meeting, pursuant to 34 C.F.R. § 300.324(a)(4).

Q4. If extended school year (ESY) services were unable to be provided during the summer due to the COVID-19 pandemic, what additional steps can public agencies take to make FAPE available to children with disabilities who require such services?

ESY services are defined as special education and related services that are: (1) provided to a child with a disability beyond the normal school year of the public agency; (2) provided in accordance with the child's IEP; (3) are at no cost to the parents of the child; and (4) meet the standards of the SEA.

Each public agency must ensure that ESY services are available as necessary to provide FAPE to children with disabilities. 34 C.F.R. § 300.106. It is important to remember that IEP Team determinations regarding ESY services are prospective and not intended to make up for past denials of FAPE.

The specific analysis and standards that an IEP Team may use to determine whether a child requires ESY services in order to receive FAPE are left to States to determine. However, the determination must be based on the individual needs of the child, and not on the category of the child's disability.[3]

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[3] 34 C.F.R. § 300.106(a)(3)(i). See also, Assistance to States for the Education of Children with Disabilities and the Early Intervention Program for Infants and Toddlers with Disabilities, Final Rule, 64 Fed. Reg. 12406, 12576-12477 (March 12, 1999).

A child's entitlement to needed ESY services continues to apply even if schools and other facilities are closed due to COVID-19. The Department recognizes ESY services are typically provided to children with disabilities during the summer months. We understand that some ESY services, particularly those that require direct, in-person contact, may not have been able to be delivered this past summer. In such instances, public agencies should consider providing ESY services to the child during the normal school year, during school breaks or vacations where appropriate to the child's needs and consistent with applicable standards. [4]

INITIAL EVALUATION

Q5. What exceptions are available to an LEA in meeting the timeline requirement for conducting initial evaluations and IEP Team meetings when access to school buildings is limited or current health restrictions prevent face-to-face meetings?

Under 34 C.F.R. § 300.301(c)(1), the initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation, or if the State has established a timeframe within which the evaluation must be conducted, within that timeframe. The exceptions to the initial evaluation timeframe are set forth in 34 C.F.R. § 300.301(d). Those exceptions permit extension of the timeframe if a parent repeatedly fails or refuses to produce the child for the assessment; or if the child enrolls in a new school in a new public agency after the relevant timeframe has begun. States may specifically adopt a timeframe within which the initial evaluation must be conducted, including adopting the IDEA 60-day timeframe. States that specifically adopt a timeframe within which the initial evaluation must be conducted, including adopting the IDEA 60-day timeframe, also have the flexibility to establish additional exceptions through State regulation or policy.

INITIAL AND ANNUAL IEP TEAM MEETINGS

Q6. What flexibilities are available to an IEP Team in meeting the initial and annual IEP Team meeting requirements when access to schools is limited or local restrictions prevent face-to-face meetings?

Within 30 days of determining a child needs special education and related services, an IEP must be developed for the child in accordance with

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[4] See also, *Questions and Answers on Providing Services To Children With Disabilities During The Coronavirus Disease 2019 Outbreak* (March 12, 2020), Q&A A-1, regarding consideration of compensatory services, if needed to make up for any skills that may have been lost, when FAPE cannot be provided.

34 C.F.R. §§ 300.320 through 300.324. 34 C.F.R. §§ 300.306(c)(2) and 300.323(c)(1). In addition, under 34 C.F.R. § 300.324(b)(1)(i), each child's IEP must be reviewed periodically, but not less than annually to determine whether the annual goals are being achieved.

The Department recognizes that some States, due to operational constraints because of the COVID-19 pandemic, are currently unable to conduct face-to-face IEP Team meetings. Under 34 C.F.R. § 300.322(a), LEAs must take steps to ensure that one or both parents attend or are afforded the opportunity to participate in an IEP Team meeting by notifying them of the meeting early enough to ensure that they can attend and by scheduling the meeting at a mutually agreed upon time and place. If face-to-face meetings are not feasible or practicable, the Department encourages the use of the flexibility included in 34 C.F.R. § 300.328 which allows LEAs to conduct initial and annual IEP Team meetings through alternate means. Such alternate means could include a telephone or video conference call (if feasible and consistent with privacy standards) if acceptable to the parents and other IEP Team meeting participants.

REEVALUATION

Q7. How can LEAs conduct reevaluations to determine a child's continued eligibility for IDEA Part B when staff cannot conduct in-person meetings or evaluations due to the pandemic?

Under Part B of IDEA, a reevaluation must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. 34 C.F.R. § 300.303(b)(2). The Department acknowledges that, during the pandemic, social distancing measures and each child's individual disability-related needs may make administering some in-person evaluations impracticable and may place limitations on how evaluations and reevaluations are conducted under IDEA Part B.

LEAs should investigate all appropriate assessment instruments and tools to determine if some can be administered or completed remotely during the pandemic, provided that evaluation of the child is based on personal observation (whether in person or through videoconferencing). LEAs should also work with the developers of their current assessment instruments to determine if the instruments can be administered or completed remotely, without significantly impacting the validity and reliability of the results. However, under 34 C.F.R. § 300.304(c)(1)(iii)-(v), tests and other evaluation materials must be used for the purposes for which the assessments or measures are valid and reliable, and must be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments.

Note that when conducting reevaluations under Part B, the IEP Team and other qualified professionals must conduct a review of existing evaluation data on the child.

A reevaluation based solely on a review of existing evaluation data must be sufficiently comprehensive to determine whether the child continues to have a disability and the educational needs of the child. 34 C.F.R. § 300.305(a). The review of existing evaluation data on the child may occur without a meeting and without obtaining parental consent. 34 C.F.R. §§ 300.300(d)(1) and 300.305(a) and (b).