

# Legal Duty of Schools Memo: Relevant Federal and State Laws

A discussion of the key federal and state laws that schools must be aware of when developing and implementing a dating violence policy.

## Federal Law

### Duties and Requirements under Title IX

#### A. *Right to be free from sex discrimination and sexual harassment*

Schools that receive federal funds can be liable under Title IX of the Education Amendments of 1972 for failing to adequately respond to abusive behavior against students. Title IX guarantees that “[n]o person in the United States shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving federal financial assistance.”<sup>1</sup> Sexual harassment is a form of sex discrimination. Such harassment consists of unwelcome sexual conduct including sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.<sup>2</sup> Sexual violence is an extreme form of sexual harassment. Adolescent dating abuse can be a form of sexual harassment because it often involves unwelcome touching, sexual demands, verbal abuse, and physical coercion of a sexual nature.

#### B. *School liability for adolescent dating abuse*

School districts are liable for student-on-student sexual harassment, and accordingly acts of adolescent dating abuse that constitute sexual harassment, when (1) a student has been sexually harassed; (2) the school has actual knowledge of the harassment; (3) the harassment was severe, pervasive and objectively offensive; (4) the harassment caused the student to be deprived of access to educational opportunities or benefits; and (5) the school is deliberately indifferent to the harassment.<sup>3</sup>

Deliberate indifference is found in two circumstances. First, a school district that fails to affirmatively act to protect students can be found to be deliberately indifferent.<sup>4</sup> Second, a school district that knows or reasonably should know that its actions to protect students are ineffective or inadequate can be found to be deliberately indifferent.<sup>5</sup>

#### C. *Required school district policies and protocols*

Title IX regulations require that each educational institution has a written policy and protocol for responding to sexual harassment.<sup>6</sup> Failure to adopt and implement policies on sexual harassment and adolescent dating abuse that qualifies as sexual harassment exposes school districts to civil liability under Title IX.

<sup>1</sup> 20 U.S.C. § 1681(a) (2007).

<sup>2</sup> 5 C.C.R. § 4916(a) (2007).

<sup>3</sup> *Davis v. Monroe County Bd of Ed.*, 526 U.S. 629, 651 (1999) (The United States Supreme Court has held that a student who is subjected to sexual harassment by another student can sue a school district to recover monetary damages arising from the district’s failure to respond to student-on-student sexual harassment.)

<sup>4</sup> *Doe v. Petaluma City Sch. Dist.*, 949 F. Supp. 1415, 1426 (N.D. Cal. 1996).

<sup>5</sup> *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1034 (9th Cir. 1998); See 34 C.F.R. § 106.31(b) (2007).; Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, U.S. Department of Education, Office for Civil Rights (January 2001) at 12; *Vance v. Spencer County Public Sch. Dist.*, 231 F.3d 253, 261 (6th Cir. 2000).

<sup>6</sup> See 34 C.F.R. § 106.31 (2007).

### Duty to Provide Equal Protection of the Laws.

The Equal Protection Clause of the Fourteenth Amendment mandates that no state shall deny to any person within its jurisdiction equal protection of the laws, “which is essentially a direction that all persons similarly situated should be treated alike.”<sup>7</sup> Federal courts have held that a school district’s deliberate indifference to peer sexual harassment, a form of sex discrimination, can constitute evidence that the district violated a student’s constitutional rights under the Equal Protection Clause.<sup>8</sup> Therefore, failing to respond to adolescent dating abuse that qualifies as sexual harassment exposes school districts and their officials to civil liability under the Equal Protection Clause.<sup>9</sup>

### Duty to Train Employees on Sexual Harassment Policies

School districts can be liable for failing to train employees on sexual harassment, and accordingly acts of adolescent dating abuse that constitute sexual harassment. Federal courts have held that school districts have a legal duty to train employees, when (1) the need for training is obvious and (2) it is highly foreseeable that a student’s constitutional rights will be violated if the district fails to conduct such training.<sup>10</sup>

### Duty to Promote School Safety

School districts that receive funds under the Safe and Drug-Free Schools and Communities Act, as amended by the No Child Left Behind Act, must have a plan that promotes school safety.<sup>11</sup> Because abusive behavior poses serious safety concerns, school safety plans should include abusive behavior.

### Duty to Track Adolescent Dating Abuse

In addition, school districts that receive Safe and Drug-Free School and Communities Act funds must track incidents of violence and crime on campus which includes tracking incidences of abusive behavior that occur on campus. Each state must forward this information to the United States Department of Education on an annual basis.<sup>12</sup>

### Unsafe School Choice Option

The Unsafe School Choice Option of the No Child Left Behind Act of 2001 requires that each state that receives federal funding offers to the parents of each student who attends a “persistently dangerous” public school, or “who becomes a victim of a violent criminal offense” while on school grounds the option to attend a safe public school.<sup>13</sup> This requirement permits victims to transfer to another school after experiencing an on-campus violent or threatening incident of adolescent dating abuse or sexual violence.

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7 City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985) (internal quotations and citations omitted).

8 Flores v. Morgan Hill Unified Sch. Dist., 324 F.3d 1130, 1135 (9th Cir. 2003).

9 Annamaria M. v. Napa Valley Unified Sch. Dist., 2006 WL 1525733 (N.D. Cal. 2006)(citing Flores, 324 F.3d at 1135).

10 Plumeau v. School Dist. No. 40, 130 F.3d 432, 439 n.4 (9th Cir. 1997); Flores, 324 F.3d at 1136.

11 20 U.S.C. § 7161(3)(B) (2007).

12 20 U.S.C. §§ 7102, 7132 (2007).

13 20 U.S.C. § 7912 (a) (2007).

## State Law

### Required Dating Violence Policy and Prevention Education

Several states have recently passed laws requiring the implementation of school policies addressing teen dating violence and/or mandating prevention education for students. Many more states have introduced such laws and it is likely that this trend will continue to grow. Each state's law is different, so it is important for schools and districts to stay informed of new developments in their state's law.

### Mandatory Reporting of Teen Dating Abuse

The federal Child Abuse Prevention and Treatment Act requires each state to set its own standards regarding mandatory reporting, including defining child abuse and identifying mandated reporters. In some states, the definition of child abuse is broad enough to include peer on peer teen dating abuse. It is important for schools to know what requirements their state's mandatory reporting law imposes on school employees at all levels, as well as whether their state's definition of child abuse includes teen dating abuse.

In addition, certain professions impose other codes of confidentiality on their members. For example, mental health professionals, attorneys, or medical professionals may be obligated to follow professional codes of conduct that other school employees are not required to follow. It is important for schools to be aware of what restrictions these codes impose, how they affect other school policies, and how they interact with mandatory reporting duties.

### Other State Laws

There may be additional duties imposed on schools by individual state law. Schools are encouraged to consult an attorney with expertise in education law in order to ensure that they are complying with all state legal mandates.



Schools are in a unique position to implement **prevention and intervention programs that reach teens.**