

CREATING POLICIES & PROCEDURES

Teen dating and sexual violence that can have a devastating effect on positive youth development and the educational process. Teen dating violence generates a spectrum of negative effects on students that seriously undermines a school's ability to promote academic growth and achievement.

In order to respond to teen dating and sexual violence, schools need to develop a set of objectives and guidelines on what the school community can do to prevent and respond to this form of violence. In fact, federal and state law require that students be safe and protected at school and impose potential liability on a school for injuries arising out of teen dating and sexual violence.

Courts have interpreted teen dating violence as a form of sexual harassment.

Federal Law

School districts have a legal duty to respond to complaints of teen dating violence under federal and state law, including sex discrimination, sexual harassment and violence against a minor:

I. 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 teen dating violence. 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 education program or activity receiving Federal financial assistance.”¹

Sexual harassment is a form of sex discrimination. Such harassment consists of unwelcome sexual conduct and includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.² Teen dating violence 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 teen dating violence

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.³ School districts are liable for student-on-student sexual harassment, and accordingly teen dating violence, 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.⁴

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.⁵ Second, an ineffective or inadequate response can be found to be deliberately indifferent.⁶

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.⁷ Failure to adopt and implement policies on sexual harassment and teen dating violence that qualifies as sexual harassment exposes school districts to future law suits under Title IX.

II. 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.”⁸ 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.⁹ Therefore, failing to



respond to teen dating violence that qualifies as sexual harassment exposes school districts and their officials to liability under the Equal Protection Clause.¹⁰

III. Duty to Train Employees on Sexual Harassment Policies

School districts can be liable for failing to train employees on sexual harassment, and accordingly teen dating violence that qualifies as sexual harassment. Federal courts have held that school districts have the 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.¹¹

IV. 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 programs and/or activities that promote school safety.¹²

V. Duty to Track Teen Dating Violence

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 incidences of teen dating violence. Each state must forward this information to the United States Department of Education on a biannual basis.¹³

VI. Limitations of Freedom of Speech at School

Perpetrators of teen dating violence often use speech and expressive conduct to harass their victims. When teen dating violence involves speech or expression as a form of harassment, such speech can be restricted by the school in the interest of the safety and rights of other students.¹⁴

Students have limited freedom of speech while they are at school. The Ninth Circuit has held that schools can restrict discriminatory speech when such speech endangers or impinges on the rights of students.¹⁵

1 20 U.S.C. § 1681(a).

2 29 C.F.R. § 1604.11; see *Franklin v. Gwinnett County Pub. Sch.*, 503 U.S. 60, 75 (1992), applying Title VII definition of sexual harassment in Title IX Case.

3 *Davis v. Monroe County Bd of Ed.*, 526 U.S. 629 (1999).

4 *Id.* at 650.

5 *Doe v. Petaluma City Sch. Dist.*, 949 F. Supp. 1415, 1426 (N.D. Cal. 1996).

6 *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1034 (9th Cir. 1998); See 34 C.F.R. § 106.31(b); *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).

7 34 C.F.R. §§ 106.8 (b), 106.9.

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

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

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

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

12 20 U.S.C. §§ 7115, 7161 (3) (B).

13 20 U.S.C. §§ 7102, 7116.

14 *Id.*

15 *Harper v. Poway Unified Sch. Dist.*, 445 F.3d 1166, 1178 (9th Cir. 2006) (“students have the right to be secure and to be let alone”) (Internal quotations and citations omitted).



Recommended Policy

School should have written policy regarding:

- Protocol for responding to dating and sexual violence. Including:
 - Duty to comply with civil and criminal orders of protection.
 - How to keep written documentation of every action taken by a school official on behalf of a student experiencing dating violence or sexual violence.
 - Confidentiality for students.
 - Reporting requirements.
- Training for school employees.
- Prevention education for students
- Accommodations and services for student experiencing dating and sexual violence.
- Parents' and students' rights.

Recommended protocol for responding dating and sexual violence:

- Establishing the school's commitment to preventing and addressing teen dating and sexual violence.
- Establishing the school's commitment to victim safety and offender accountability.
- Establishing clear roles and responsibilities for school staff.
- Explicitly define types of prohibited behavior including physical, verbal and sexual violence, as well as stalking and technology abuse.
- Informing students of school policies and his/her rights under the policy, including accommodations and grievance process.
- Informing students of confidentiality and reporting requirements.
- Providing students with list of local resources, including on and off campus services, and refer to appropriate services. Offer to connect the student with a domestic violence or sexual assault advocate.
- Creating an individual *safety plan* that address on and off campus safety for victims.
- Creating an individual *stay-away plan* that address on and off campus accountability for offenders and safety for victims. (*All explicit conditions and responsibilities should be placed on offenders, as they are the only one's responsibly for the abusive behavior; and not on the victim, which only serves to re-victimize and disempower the victim.)
- Assisting with enforcement of protections orders.
- Creating school-based alternative to protective orders, such as *stay-away plans*.
- Counseling for impacted students, including victims, offenders and witnesses.
- Regular screening of all students by school counselors and school nurses for risk of teen dating violence.
- Coordinating with other community partners to provide comprehensive and systematic approach to dealing with teen dating and sexual violence.
- School Resource Officers play a primary roll in responding to and addressing incidents of violence, including dating violence, and should be an essential part of creating a comprehensive and systematic approach to dealing with teen dating and sexual violence.



Training for school employees

Schools have a duty to provide training on dating violence and sexual violence to school employee and must take all available steps to provide access to such training.

Recommended training topics:

- Theories and dynamic of dating and sexual violence
- Barriers to teens leaving abusive relationships
- Characteristic of healthy and unhealthy relationships
- Effects of dating violence and sexual violence on victims
- Dating violence in special populations, including LGBTQ teens and parenting teens
- Cultural competence and its relationship to dating violence and sexual violence
- Crisis intervention, lethality assessment, and safety planning
- Intersections of dating violence and other school safety planning
- Application of district and federal laws

Recommended accommodations for students experiencing dating and sexual violence:

- Change of class seat assignment
- Change of locker assignment
- Change of student class schedule
- Permission to leave class to see a counselor
- Private space for meeting with counselors and school employees regarding dating violence and sexual violence issues
- Excused absence for classes missed due to dating or sexual violence
- Make-up class work, including homework, quizzes, tests, and any other graded work for classes missed due to dating or sexual violence

Routine screening:

School counselors and school nurses should regularly screen all students for the risk of teen dating violence.

- Use a safe, private location. Try to create a casual and comfortable environment.
- Frame the questions:
 - "Because violence and abuse are so common in people's live, I now ask everyone I see about violence."
 - "I don't know if this a concern for you, but many teens I see are dealing with abuse issues, so I've started asking questions about abuse routinely."
- Used indirect questions to get started:
 - "Are you dating? Do you have a boyfriend/girlfriend?"

THINGS TO SAY

WHEN A VICTIM DISCLOSES:

- "You're not alone in this experience."
- "What happened isn't your fault."
- "You're not to blame for what happened."
- "You don't deserve to be treated this way."
- "Violence and abuse are against the law, and help is available."
- "You're not crazy; violence in relationships is more common than you might think."
- "I'll be here any time you want to talk more about what happened."
- "I understand how difficult it can be to make changes, and that it might be scary to think about losing this relationship."
- "I'm concerned about your safety"



- "Every couple has conflicts. What happens when you argue or fight with your boyfriend/girlfriend?"
- More direct questions:
 - "Have you ever been physically hurt - hit, kicked, slapped, shoved, pushed - by your partner?"
 - "Have you ever been forced to do something sexual that you didn't want to do?"
 - "Has any of this happened to you in previous relationships?"
- Always be clear about what is and what is not confidential, and what your obligations are per school policy.
- If abuse is strongly suspected, even if the student does not disclose, provide appropriate education and referrals and schedule a follow-up appointment within a month.
 - Be aware of verbal and non-verbal cues (eye contact or not, patterns of silence, spacing, and active listening during the interview).
 - Use your student's language: "Does your guy disrespect you?"

Sources:

- "Safe Schools Model Policy: A Comprehensive Approach to Addressing Dating Violence and Sexual Violence in District of Columbia Schools" Break the Cycle: Empowering Youth to End Domestic Violence (<http://www.breakthecycle.org/system/files/pdf/dc-model-school-policy.pdf>)
- "A Guide to Addressing Teen Dating and Sexual Violence in a School Setting" Peace Over Violence, California Women's Law Center for the Crime and Violence Prevention Center, California Attorney General's Office (http://peaceoverviolence.org/media/downloadables/ca_tdv_a_guide_to_addressing_teen_dating_violence_adaoe.pdf)
- New York State Office for the Prevention of Domestic Violence - What can schools do? (http://www.opdv.state.ny.us/teen_dat_viol/schools.html)
- "Building Safe School: A Guide to Addressing Teen Dating Violence - A Resource Manual for School Employees" Break the Cycle: Empowering Youth to End Domestic Violence (<http://www.breakthecycle.org/system/files/pdf/ta-teacher-manual.pdf>)

