

**California Model Policy on School Response to Teen
Dating Violence and Sexual Violence**

July 2007

California Women's Law Center

PREFACE

California Model Policy on School Response to Teen Dating Violence and Sexual Violence is intended to provide California school systems with a model policy recommended by the California Women's Law Center (CWLC) and based on current California and federal law. This model policy is intended to provide information on California and federal law only. It should not be construed as legal advice and receiving or reading this document does not make you a client of CWLC. Local counsel in each school district should be consulted regarding the adoption and implementation of this or any other policy. If you have questions regarding this Model Policy, please contact the author, Emily Austin, CWLC Staff Attorney.

ACKNOWLEDGEMENTS

This model policy is the result of the hard work, dedication and generosity of many individuals and organizations. CWLC thanks Kaiser Foundation Hospitals for their generous funding of this project. CWLC also thanks Abigail Sims of Peace Over Violence and Brandy Davis of Break The Cycle for their feedback, practical experience in school systems, and knowledge about teen dating violence and sexual violence. We thank CWLC Staff Vicky Barker and Marci Fukuroda for providing copious feedback and edits of the model policy.

The California Women's Law Center works to ensure, through systemic change, that life opportunities for women and girls are free from unjust social, economic, and political constraints. CWLC programs are designed to enable individuals to use the law that governs their rights and assist them in addressing the legal issues that perpetuate women's growing poverty. By focusing on Gender Discrimination, Violence Against Women, Women's Health, and Reproductive Justice, CWLC dedicates its resources to making the constitutional promise of equality a reality, and to protecting the rights of women and girls everyday.

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MODEL POLICY STATEMENT

I. PURPOSE

XYZ School District (“the District”) finds that teen dating violence and sexual violence is a complex public health and safety problem that requires a comprehensive, interdisciplinary approach to ensure that students and staff can learn and work in a safe, secure, and peaceful school environment. The District further finds that dating and sexual violence crosses race, gender, sexual orientation, and socioeconomic lines.¹

The District recognizes that teen dating violence and sexual assault affect students while on campus, even when incidences of violence and abuse occur off campus or during non-school hours.

The District acknowledges that it has a unique responsibility to respond to teen dating violence and sexual violence in its role as an educator and caretaker of students.

II. DEFINITIONS

A. Teen Dating Violence

Teen dating violence is a pattern of emotional, verbal, sexual and/or physical abuse used by one person in a current or past intimate relationship to exert power and control over another where one or both of the partners is a teenager.² Abuse may include insults, coercion, social sabotage,³ sexual harassment, threats and/or acts of physical or sexual abuse. The abuser uses this pattern of violent and coercive behavior to gain power and maintain control over the teen dating partner.

B. Sexual Violence

Sexual violence is sexual assault, abuse, harassment, or stalking of an adult or minor child, including sexual violence committed by perpetrators who are strangers to the victim and sexual violence committed by perpetrators who are known or related by blood or marriage to the victim.

C. Teen Partner

Teen partner means an adolescent between the ages of 13 and 19 with whom a person has or has had a dating or sexual relationship, including a same-sex relationship, or with whom a person has had intimate and continuous social contact.⁴

D. Dominant Aggressor/Abuser

¹ National Teen Dating Violence Prevention Initiative, American Bar Association (2006).

² *Teen Dating Violence – Overview*, National Resource Center on Domestic Violence (2004).

³ Social sabotage includes spreading rumors and gossip, and vandalizing property or distributing materials that contain images or language that disparages a person.

⁴ *Teen Dating Violence – Overview*, National Resource Center on Domestic Violence (2004).

In cases of dating violence, the dominant aggressor/abuser must be identified. The dominant aggressor/abuser means the person determined to be the most significant, rather than the first, aggressor. The following should be considered when identifying the dominant aggressor: (1) whether either person made threats creating fear of physical injury; (2) whether there is a history of domestic or sexual violence between the persons involved; (3) whether either person acted in self-defense; and (4) whether either person used or threatened to use a weapon and/or physical force.⁵

E. Victim/Survivor

The victim or survivor is the target of the dominant aggressor's coercive and/or violent acts.⁶

III. FEDERAL AND CALIFORNIA LAWS REQUIRE SCHOOLS TO RESPOND TO TEEN DATING VIOLENCE

School districts have a legal duty to respond to complaints of teen dating violence under federal and state law.

A. Federal Law

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 and sexual violence 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.”⁷

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.⁸ Sexual violence is an extreme form of sexual harassment. Teen dating violence can be a form of sexual harassment because it often

⁵ Cal. Pen. Code § 13701 (e.g. Penal Code §13701 requires peace officers to identify the “dominant aggressor” in a domestic violence incident. “Dominant aggressor” is defined as follows : “the person determined to be the most significant, rather than the first, aggressor. In identifying the dominant aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person involved acted in self-defense”); ESSA Model Legislation § 4(11).

⁶ New York OPDV, *Sample Teen Dating Violence Policy* (available at http://www.opdv.state.ny.us/public_awareness/teen_dat_viol/modelpolicy.html).

⁷ 20 U.S.C. § 1681(a) (2007).

⁸ 5 C.C.R. § 4916(a) (2007).

involves unwelcome touching, sexual demands, verbal abuse, and physical coercion of a sexual nature.

b) School liability for teen dating violence

School districts are liable for student-on-student sexual harassment, and accordingly acts of teen dating violence 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.⁹

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.¹⁰ 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.¹¹

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.¹² Failure to adopt and implement policies on sexual harassment and teen dating violence that qualifies as sexual harassment exposes school districts to civil liability 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.”¹³ 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.¹⁴ Therefore, failing to respond to teen dating violence that qualifies as sexual harassment exposes school districts and their officials to civil liability under the Equal Protection Clause.¹⁵

⁹ *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.)

¹⁰ *Doe v. Petaluma City Sch. Dist.*, 949 F. Supp. 1415, 1426 (N.D. Cal. 1996).

¹¹ *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).

¹² See 34 C.F.R. § 106.31 (2007).

¹³ *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (internal quotations and citations omitted).

¹⁴ *Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1135 (9th Cir. 2003).

¹⁵ *Annamaria M. v. Napa Valley Unified Sch. Dist.*, 2006 WL 1525733 (N.D. Cal. 2006)(citing *Flores*, 324 F.3d at 1135).

iii. 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 teen dating violence 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.¹⁶

vi. 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.¹⁷ Because teen dating violence and sexual violence pose serious safety concerns, school safety plans should include teen dating violence and sexual violence.

vii. 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 tracking incidences of teen dating violence and sexual violence that occur on campus. Each state must forward this information to the United States Department of Education on an annual basis.¹⁸

viii. 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.¹⁹ This requirement permits victims to transfer to another school after experiencing an on-campus violent or threatening incident of teen dating violence or sexual violence.

viv. Limitations of Freedom of Speech at School

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.²⁰

Offenders of teen dating violence and sexual violence often use speech and expressive conduct to harass their victims. Speech and expressive conduct can also be used by other students to retaliate against a victim who reports teen dating violence and/or sexual violence to

¹⁶ *Plumeau v. School Dist. No. 40*, 130 F.3d 432, 439 n.4 (9th Cir. 1997); *Flores*, 324 F.3d at 1136.

¹⁷ 20 U.S.C. § 7161(3)(B) (2007).

¹⁸ 20 U.S.C. §§ 7102, 7132 (2007).

¹⁹ 20 U.S.C. § 7912 (a) (2007).

²⁰ *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).

the school or police. When teen dating or sexual 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.²¹

B. California Law

i. Duty to Provide Safe Schools

The California Constitution, Article I, § 28(c) states that “[a]ll students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful.” Also, parents have a right to a safe and secure learning environment for their children.²² A safe learning environment is maintained by preventing and responding to teen dating and sexual violence. While not conferring an express right to sue a school district for failing to keep a campus safe, this constitutional mandate may be used to demonstrate the standard of care the school district must provide to students and can be enforced under California laws that govern injuries to person and property (*See* Section B, Subsection viii, *Duty to Supervise Students*).²³

ii. Duty to Combat Sexual Harassment

California school districts have an affirmative obligation to combat racism, sexism, and other forms of bias against students, and a duty to provide equal educational opportunities for all students.²⁴ This duty involves taking actual steps to eradicate and address all forms of sexual harassment, including acts of teen dating violence and sexual violence that constitute sexual harassment.

iii. Duty to Respond to Hate Violence

California’s Hate Violence Prevention Act mandates that schools “[a]dopt policies directed toward creating a school environment . . . that is free from discriminatory attitudes and practices and acts of hate violence.”²⁵ Hate violence includes violence against an individual because of her/his gender or sexual orientation and therefore may include teen dating violence and sexual violence.²⁶ School policies should address teen dating violence and sexual violence as a form of hate violence.

²¹ *Id.* at 1179.

²² Cal. Educ. Code § 51101(a)(7) (2007).

²³ *See Dailey v. Los Angeles Unified School District*, 2 Cal.3d 741 (1970) (finding that teachers had sufficient notice of dangerous activity and failed to properly supervise students); *M.W. v. Panama Buena Vista Union School District*, 110 Cal.App.4th 508 (2003) (finding that the school had a duty of care to protect students from sexual assault and the school had to take reasonable steps to protect students); *Leger v. Stockton Unified School District*, 202 Cal.App.3d 1448 (1988) (finding that school districts had a duty to use reasonable care to protect students); Cal. Educ. Code §§ 201(d-f), 32281, 32282(a)(2)(E), 32228(c)(4), 32260 (2007).

²⁴ Cal. Educ. Code § 201(b) (2007).

²⁵ Cal. Educ. Code § 233(a)(1), *et seq.* (2007); *and see* Cal. Educ. Code § 231.5(b) (2007).

²⁶ Cal. Penal Code § 422.55 (a)(2-6) (2007).

iv. *Duties for Educators*

preventing and responding to on-campus incidents of teen dating violence and sexual is clearly within the purview of educators and administrators.²⁷ Each teacher is charged with impressing upon their students the ideas of “harmonious relations” and human dignity.²⁸ Moreover, California law encourages schools to spend funds on age-appropriate instruction in dating violence prevention.²⁹

v. *Duty to Protect Students*

State law provides that all persons in California have “the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property” because of their sex, sexual orientation or because another person perceives them to have one or more of these characteristics.³⁰ The general right to be free from violence or threat of violence includes teen dating violence and sexual assault. Therefore, a school district’s failure to adequately respond to complaints of teen dating and sexual violence can constitute intentional sex discrimination in violation of state law.³¹

vi. *Duty to Create School District Safety Plans*

California schools are required to establish comprehensive school safety plans, submit these plans to the state Department of Education, and review/revise these plans once a year.³² A school district that fails to create a safety plan can be fined \$2,000.³³

School safety plans must identify “appropriate strategies and programs that will provide or maintain a high level of school safety and address the school’s procedures for complying with existing laws related to school safety,” such as providing a safe and orderly learning environment.³⁴ Because the pervasive nature of teen dating and sexual violence compromises school safety, school districts should have a safety plan for responding to such violence, even if not expressly mandated by state law.

vii. *Duty to Report Reasonable Suspicion of Child Abuse*

Teachers, administrators, and other school personnel are mandated reporters and must report any reasonable suspicion of child abuse to law enforcement or child protective services.³⁵ A mandated reporter’s failure to report can result in criminal liability and fines.³⁶

²⁷ *Durant v. Los Angeles Unified Sch. Dist.*, 111 Cal. App. 4th 386, 390-90 (2nd Dist. 2003).

²⁸ Cal. Educ. Code § 233.5(a) (2007).

²⁹ Cal. Educ. Code § 32228(c)(4) (2007).

³⁰ Cal. Civil Code §§ 51, 51.7(a) (2007).

³¹ *Annamaria*, 2006 WL 1525733 at 13; *Nicole M. v. Martinez Unified Sch. Dist.*, 964 F.Supp. 1369, 1389 (N.D. Cal. 1997).

³² Cal. Educ. Code § 32280 *et seq.* (2007).

³³ Cal. Educ. Code § 32287 (2007).

³⁴ Cal. Educ. Code § 32282(a)(2) (2007).

³⁵ Cal. Penal Code § 1165.6 (2007).

³⁶ Cal. Penal Code §§ 111651.1-11166, 11172 (2007).

Although mutual violence between two minors is not considered child abuse, non-mutual violence against a minor, regardless of whether the offender is also a minor, may be reportable child abuse.³⁷ Consequently, incidents of teen dating violence are subject to state child abuse reporting laws. In fact, teen dating violence rarely involves a “mutual affray” between minors. Rather, it is common in these cases that one student is a dominant aggressor of violence and abuse toward the other, even if a situation appears to involve a mutual affray. Therefore, violence between teenage intimate partners should trigger an investigation by the mandated reporter as to whether the incident constitutes reportable child abuse.

Mandated reporting of child abuse trumps confidentiality protections (i.e. counselor confidentiality privilege) for victims of dating or sexual violence. Mandated reporters should explain the scope of their confidentiality privilege when counseling victims of teen dating violence.

viii. Duty to Supervise Students

Under California tort law, school officials and school districts can be liable for injuries caused by violent acts that could have been prevented through the proper supervision of students and employees.³⁸ As discussed above, state law charges school districts and school employees with the legal duties of properly supervising students and responding to violence, which includes teen dating violence, at school.³⁹ A student can recover for injuries caused by a breach of these duties through the tort of negligent supervision.⁴⁰

ix. Duty to Discipline Offenders

Pursuant to Education Code § 48915, students will generally be recommended for expulsion for teen dating violence-related assaults that cause serious physical injury to another person (except in self-defense), and for committing or attempting to commit a sexual assault or sexual battery on or off campus.⁴¹ Although expulsion is typically recommended only when other methods of discipline fail, students may be expelled for first-time offenses where the accused’s presence at school “causes a danger to persons or property or threatens to disrupt the instructional process.”⁴² Teen dating violence often meets this standard because of the continuing danger to other students, particularly the student-victim.

School districts must provide due process for students who they feel should be suspended or expelled. In cases of suspension, the accused’s due process rights are satisfied with an informal meeting with the principal, the accused and his or her parents.⁴³ Furthermore, the

³⁷ See Cal. Penal Code § 11165.6 (2007).

³⁸ *Panama Buena*, 110 Cal. App. 4th at 683; *Durant*, 111 Cal. App. 4th at 390-90.

³⁹ *Dailey*, 2 Cal.3d at 750-51.

⁴⁰ *Id.* at 750-51.

⁴¹ Cal. Educ. Code § 48915 (2007).

⁴² Cal. Educ. Code § 48900.5 (2007).

⁴³ *Granowitz v. Redlands Unified Sch. Dist.*, 105 Cal. App. 4th 349, 354-55 (Ct. App. 2003); see Cal. Educ. Code § 48911(a) (in California suspensions can only last 5 days, unless there is an expulsion hearing pending).

accused is not entitled to know the identities of his accusers and school officials have a duty to protect victim confidentiality to the extent possible.⁴⁴

In cases of possible expulsion there must be a hearing prior to the expulsion.⁴⁵ The accused and his/her parents are entitled to appear in person, be represented by an attorney or advocate, review the documents that will be used in the hearing, question the witnesses and evidence presented at the hearing, and present oral and written evidence on the accused's behalf at the hearing.⁴⁶ Further, the accused can be suspended until the expulsion hearing.⁴⁷

IV. TEEN DATING AND SEXUAL VIOLENCE VICTIM'S RIGHTS⁴⁸

The District is committed to creating a campus environment that promotes timely and fair adjudication of teen dating and sexual violence cases.

Students who become victims of teen dating and/or sexual violence are entitled to certain rights that shall be respected by all school administrators and employees. These rights include, but are not limited to, the following:

1. **Right to be treated with respect and dignity**

This includes not being blamed by staff and/or students (referred to as victim blaming), and not spreading rumors or retaliating against the victim.

2. **Right to be informed of his/her options with regard to notifying law enforcement authorities, and to be assisted in notifying such authorities**

To the extent state and federal law allow, victims must make a voluntary and informed decision to notify authorities.⁴⁹

3. **Right to not have parents/guardians notified, if such notification would endanger the survivor/victim**

In some cases, parental notification will endanger the victim and prevent the victim from obtaining important services. In these cases, guardians/parents should not be notified unless the victim voluntarily consents in writing.

4. **Right to be free from pressure not to report crimes to civil or criminal authorities**

This includes the right to be free from pressure to report a crime as a lesser offense than the victim perceives, and the right to be free from any suggestion that a victim somehow

⁴⁴ *Granowitz*, 105 Cal. App. 4th at 356; 5 C.C.R. § 4621(a) (2007); Cal. Educ. Code § 48918(f) (2007).

⁴⁵ Cal. Educ. Code § 48918(a) (2007).

⁴⁶ *Id.*

⁴⁷ Cal. Educ. Code § 48911(c) (2007).

⁴⁸ From LACAAW, *Sample Teen Dating Violence Policy and Protocol*, citing the Los Angeles Community College District.

⁴⁹ In the case of reportable child abuse, mandatory reporters must report regardless of victim consent.

contributed to his or her own victimization by contributory negligence, or by assuming the risk of being assaulted, or by otherwise sharing the responsibility for what is alleged to have occurred.

5. **Right to have any violence committed against him/her investigated by the proper civil and criminal authorities**

This right is in addition to, and independent of, school disciplinary proceedings.

6. **Right to full and prompt cooperation from school personnel in obtaining and securing evidence necessary for any potential criminal/civil proceedings**

Failure to fully and promptly cooperate to the extent possible may be considered a form of retaliation against the victim.

7. **Right to be informed of any disciplinary actions taken against the offender**

Knowing about subsequent disciplinary actions, such as suspension or expulsion, helps victims with safety planning.

8. **Right to attend classes and to work in an environment free from unwanted contact or proximity with alleged assailants insofar as the school is able to provide**

To the extent possible, victims and alleged perpetrators should be separated on campus. This might involve changing class schedules or having the parties agree to stay a certain number of feet away from each other in a Stay Away Contract. (See Exhibit C, Sample Stay Away Contract).

9. **Right to be free from violence at school**

All students in California have the inalienable right to an education in a safe school environment.⁵⁰ The District will take affirmative steps to prevent and respond to dating and sexual violence that occurs both on and off campus.

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

Under Title IX of the Education Amendments of 1972 and California Education Code §§ 230 *et seq.*, all students have the right to be free from sex discrimination and sexual harassment at school.⁵¹ Sexual harassment includes teen dating and sexual violence perpetrated against students. (See The District Sexual Harassment Policy and Protocol).

⁵⁰ Cal. Const. Art I, § 28(c); Cal. Educ. Code § 201 (2007); Cal. Civil Code §§ 51, 51.7 (2007).

⁵¹ 20 U.S.C. § 1681 (2007); Cal. Educ. Code § 230 *et seq.* (2007).

11. Right to transfer from school

Victims of teen dating and sexual violence have a right to transfer to another school.⁵² A victim's decision to transfer to another school must be informed and voluntary. The offender will generally be required to transfer whenever there is a choice between transferring the victim or the offender.

12. Right to referrals for services

Victims of teen dating and sexual violence have the right to have access to counseling, medical services, and victim support services both on and off-campus. The District shall refer the victim of teen dating or sexual violence to a community-based advocate. The District will maintain a list of domestic violence/dating violence/sexual assault agencies and services in the community and make this list available to victims. Participation in any referral program is voluntary for victims.

13. Right to have a support person present

All parties in a teen dating or sexual violence case have the right to have a support person present during all stages of the investigation. A support person includes domestic violence victim advocates, parents/guardians, or other advisors.

V. SPECIALLY TRAINED PERSONNEL (“STP”)

A. Definition and Duties of the STP

The District will designate or appoint at least one staff person, hereinafter the Specially Trained Personnel (STP), who is a school social worker, psychologist, counselor, or nurse and who is trained to address in a confidential and sensitive manner the needs of youth who are victims of dating or sexual violence. The STP will be responsible for:

- Connecting victims to appropriate in-school and community-based programs and services.
- Connecting offenders to appropriate in-school and community-based programs and services.
- Communicating with and listening to students who are victims of dating or sexual violence.
- Implementing the school district's policies, procedures and protocols for responding to dating and sexual violence.
- Coordinating investigations of complaints of teen dating and sexual violence.

⁵² 20 U.S.C. § 7912(a) (2007).

- Assisting students in their efforts to preserve their right to a safe educational environment.⁵³
- Notifying appropriate individuals of the incident of violence (teachers, staff, administrators, counselors, parents) based on what disclosure the victim consents to and what is safe for the victim, within the limits of the law.
- Maintaining the confidentiality of the victim to the extent allowed by state and federal law.

B. STP Training

At a minimum, the STP shall be trained to understand the following:⁵⁴

- Elements specific to teen dating violence:
 - theories and dynamics of domestic violence including a definition of domestic and dating violence,
 - power, control and cycles of violence,
 - barriers to leaving abusive relationships,
 - aspects of healthy and unhealthy relationships,
 - effects of domestic violence on survivors,
 - offender characteristics and accountability,
 - medical and legal advocacy including orders of protection,
 - crisis intervention, safety planning and referrals.
- Elements specific to sexual violence:
 - theories and history of sexual violence and oppression,
 - types of sexual violence including stranger rape, acquaintance/campus rape, child sexual abuse and incest, multiple assailants/gang rape, and same sex rape,
 - medical and legal advocacy with sexual violence victims including criminal and civil legal options, and consent by minors to medical procedures, and information about drugs facilitating rape,
 - crisis intervention, safety planning and referrals.
- Basic training on the intersection of other crimes and teen dating violence/sexual assault (i.e. vandalism, terrorist threats).
- Student confidentiality, including legal duties to keep student confidences and the scope of confidentiality in relation to state and federal law.
- Knowledge and contact information for local community resources on teen dating violence, domestic violence, and sexual violence.

⁵³ ESSA Model Legislation § 1003.

⁵⁴ ESSA Model Legislation § 1003(2).

VII. ADMINISTRATOR AND TEACHER TRAINING

Administrators and faculty shall complete 4 hours of training on sexual assault and teen dating violence every 2 years.

Training curriculum will be conducted by or in coordination with dating violence, domestic violence, and sexual assault victims' advocates and organizations.

Recent faculty hires will receive training within their first year at the District, and then will be trained on a continuing basis every 2 years with faculty.

VIII. TEEN DATING AND SEXUAL VIOLENCE PREVENTION EDUCATION FOR STUDENTS

The District includes teen dating violence and healthy relationship education in the district health care curriculum.⁵⁵ The District will work with local domestic violence organizations to develop and provide this curriculum to students.⁵⁶

All students in grades 7 through 12 will be educated on teen dating and sexual violence prevention for 3 hours every year.

Teen dating and sexual violence prevention education programs shall.⁵⁷

- Define dating violence or relationship violence as including physical, sexual, verbal, and emotional or psychological abuse,
- Identify power and control issues as they relate to teen dating violence,
- Expose beliefs and attitudes that blame victims of violence,
- Be culturally competent and accessible,
- Increase empathy for victims,
- Encourage bystander accountability and peer interventions,
- Encourage victims, bystanders, and offenders to seek help,
- Address gender role stereotypes,
- Challenge social norms that permit or support abuse,
- Promote individual and community activism,
- Support the development of pro-social conflict management skills that contribute to healthy relationships.

IX. TEEN DATING VIOLENCE RESPONSE PROTOCOL

The District hereby incorporates the following response protocol to teen dating violence into its school district policies:

⁵⁵ The District recognizes that the purpose of health care curriculum is to encourage healthy images of gender, dating and marriage; *see* Cal. Educ. Code § 51930 (2007).

⁵⁶ The District acknowledges that California law encourages "community participation" in providing comprehensive health care curriculum; *see* Cal. Educ. Code § 51890 (2007).

⁵⁷ Adopted from Peace Over Violence's *Violence Prevention Education for Students Curriculum Outline*.

A. Complaint Protocol

1. Victims, students, faculty/staff, or parents may file a complaint of teen dating and sexual violence with the STP.
2. The complaint can be verbal or written. If verbal, the STP shall immediately document the complaint in writing (*see* Documentation Protocol).
3. All school employees have an affirmative obligation to report incidents of teen dating and sexual violence to the STP.
4. The STP will meet with the victim and offender separately in a private room. This is the only way to ensure safety and to facilitate full disclosure on the part of the victim.
5. The STP will ascertain with the victim each of the following:
 - Whether notification of the victim's parents would jeopardize the safety of the student,
 - What steps are needed to ensure the victim's safety,
 - And whether the steps needed would infringe on the alleged offender's employment or education rights. (If so, the alleged offender must be informed of the allegation(s) before any measures are implemented).
6. The STP will conduct an investigation. Investigations will continue regardless and independent of the status of any criminal investigation.
7. The STP will meet with any witnesses in order to obtain a clear picture of the types of abuse that have taken place. (The STP will take all steps possible to corroborate all elements of the allegations and witness stories).
8. Following the investigation, the STP will complete a written report and submit the report to the appropriate administrator. If the report makes a finding that teen dating violence and/or sexual violence has occurred, the report shall include recommendations for disciplinary action against the offender.
9. The Principal, Assistant Principal or other administrator(s) in charge of disciplinary actions will review the recommendation(s) and take disciplinary action (according to District policies on suspension/expulsion/contacting police/detention/class schedule changes, etc.) (*See* Exhibit A, Chart of Recommended Disciplinary Actions).

B. Documentation Protocol

1. Teen dating and sexual violence complaints and investigations are kept in a file separate from academic records. This practice is recommended to prevent inadvertent disclosure of confidential information.⁵⁸
2. Each complaint of teen dating or sexual violence, either written or orally given, must be documented. Documentation includes:
 - All allegations constituting the original complaint (*See* Exhibit B, Dating or Sexual Violence Incident Form),

⁵⁸ Parents will likely have access to complaint documentation as a type of school record under the Federal Educational Rights and Privacy Act, 20 U.S.C. § 1232g (2007). The California code section that provides for parental access of student records "does not authorize a school to inform a parent or guardian, as provided in this section, or to permit participation by a parent or guardian in the education of a child, if it conflicts with a valid restraining order, protective order, or order for custody or visitation issued by a court of competent jurisdiction." Cal. Educ. Code § 51101(d) (2007).

- All evidence, statements, etc. gathered in support of or contradiction to the allegations,
 - Report of findings and recommendation(s) for action from the STP to disciplinary or other administrator(s),
 - Safety planning actions taken by the STP or other school personnel, including changing the victim's or offender's schedule and school activities and making other accommodations for the victim,
 - Follow-up actions, including any responses to disciplinary and safety planning actions and status reports from the victim.
3. In addition to the information specified above, the District shall track and archive aggregate, annual data on the incidence, types and prevalence of teen dating and sexual violence.

X. SUSPENSION AND EXPULSION

The District recognizes that a single incident of physical dating violence or sexual violence on school campus, and/or repeated non-physical incidents of dating abuse on school campus are grounds for long-term suspension or expulsion.

Other grounds for suspension or expulsion that arise in teen dating and sexual violence situations include: causing, attempting to cause, or threatening physical injury to another person; willfully using force or violence upon the person of another; and committing or attempting to commit a sexual assault or sexual battery as defined in the Cal. Penal Code §§ 261, 266c, 286, 288, 288a, 289, 243.4.⁵⁹ Sexual harassment, by itself, is also a ground for suspension or recommendation for expulsion.⁶⁰

XI. CONFIDENTIALITY

All information concerning a student's status as a victim of dating or sexual violence provided to the District's employees shall be retained in the strictest confidence by District employees, except to the extent that disclosure is requested or consented to in writing by the victim, or is otherwise required by applicable federal or state laws.⁶¹ Confidentiality includes a policy of not informing other faculty/staff about the complaint without the express, voluntary, and written consent of the victim/survivor.

XII. PARENTAL/GUARDIAN NOTIFICATION

The parent(s) or guardian(s) of youth involved in a dating or sexual violence complaint may be notified of the complaint, except if such notification is not in the best interest or impairs the safety of the victim.

⁵⁹ Cal. Educ. Code § 48900 (2007); Cal. Pen. Code §§ 261, 266c, 286, 288, 288a, 289, 243.4 (2007).

⁶⁰ Cal. Educ. Code § 48900.2 (2007).

⁶¹ ESSA Model Legislation § 1002; *e.g.*, Cal. Pen Code § 11165.6 (2007) (state law requires that child abuse be reported to law enforcement or child protective services under certain circumstances).

XIII. REASONABLE ACCOMMODATIONS

The District shall make reasonable accommodations for victims of teen dating and sexual violence. Victims must be informed of their right to reasonable accommodations. Reasonable accommodations include, but are not limited to:

- Change in class schedule,
- Previewing offender's class schedule,
- Safety planning for egress and regress from school,
- Campus security escorts,
- School transfers,
- Excused absences for abuse-related services, court appearances, etc.

XIV. REASONABLE SUPERVISION

The District shall provide reasonable supervision of students and employees. This supervision includes, but is not limited to:

- Taking complaints or suspicions of teen dating violence seriously,
- Responding to teen dating violence with appropriate discipline,
- Safety planning with the victim of teen dating violence,
- Coordinating services for the victim and offender of teen dating violence,
- Making other accommodations to help the victim maintain her/his class schedule, level of academic rigor, and participation in extracurricular activities.

XV. ENFORCEMENT OF RESTRAINING ORDERS

Campus security and administrators must call law enforcement if they have a reasonable belief that there has been a violation of a restraining or protective order on school campus, in the immediate proximity of school campus, or during a school sponsored event.

Campus police must report and promptly respond to claims of a violation of a restraining or protective order. Failure to promptly respond by campus police will be reported to law enforcement's complaint department by the STP or school administrator.

If the school district does not have campus police officers, local law enforcement will be contacted to report a violation of a restraining or protective order.

XVI. STAY AWAY CONTRACTS

Stay Away Contracts are contracts entered into by the offending party in an incident. These contracts state that each student, while on campus, will try to keep a set distance (e.g. 500 feet) away from the other student, to the best of their ability. Stay Away Contracts are private agreements between the parties and are separate from court mandated restraining or protective orders.

When school administrators are aware of an existing court mandated protective order and the perpetrator attends the same campus as the victim, or when the circumstances warrant further protection of the victim on campus, the STP will meet with the perpetrator to have him/her sign a Stay Away Contract. Then the STP will meet with the victim to go over the terms of the contract and tell the victim what s/he should do if the contract is violated. The contract will contain the distance perpetrator and victim must stay away from each other and disciplinary consequences that will be enforced by the school if the perpetrator breaches the contract.

XVII. MANDATED CHILD ABUSE REPORTING

District personnel who are mandatory reporters must report reasonable suspicion of child abuse to law enforcement or child protective services.⁶²

Violence perpetrated against a teenage intimate partner triggers an investigation by the STP as to whether the incident constitutes reportable child abuse.

Victims must be told that law enforcement/child protective services will be notified before a child abuse report is made by school personnel.

XVIII. RETALIATION

The District will not tolerate retaliation by administrators, school district employees, teachers, or students against a person who files a complaint or participates in an investigation of a complaint of teen dating violence or sexual violence.⁶³

XIX. APPEALS PROCESS

Complaints about the District's response to teen dating and sexual violence, or appeals of the District's decisions shall be filed either orally or through a written complaint with the STP or Title IX Coordinator, or in the alternative, an appeal can be filed with the California Department of Education.

XX. TRACKING TEEN DATING VIOLENCE

The District shall track data on the incidence, types, and prevalence of teen dating and sexual violence in schools.⁶⁴ Data tracked will include the gender of the parties, location of the incident, type of assault, and services recommended to the victim. This data will be made

⁶² Cal. Penal Code § 1165.6 (2007).

⁶³ 34 CFR §§ 106.8(b), 106.71, 100.7(e) (2007) (Title IX regulations prohibit intimidation, threats, coercion, or discrimination for the purpose of interfering with any right or privilege granted by Title IX); *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 20.

⁶⁴ 20 USC § 7101 *et seq.* (2007).

available to the public, the California Department of Education, and the National Center for Education Statistics.⁶⁵

XXI. NOTICE ABOUT TEEN DATING AND SEXUAL VIOLENCE POLICIES

The District shall provide notice of this policy and protocol in the following ways:

- Sending an annual letter to parents and guardians which contains the policy, a summary of the protocol, and information on where complaints can be filed,
- Posting notices targeted to students on campus about the policy that contain information on how students can file complaints,
- Including the policy and protocol in student, parent, and school employee handbooks.

⁶⁵ 20 USC § 7132 (2007).

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EXHIBIT A. CHART OF RECOMMENDED DISCIPLINARY ACTIONS

<u>Behaviors Not Allowed</u> ⁶⁶	<u>Consequences</u>	<u>Contact Administrator</u>	<u>Contact Parents/Caregiver</u>	<u>Referral</u>
Verbal/Nonverbal/Written <ul style="list-style-type: none"> • Use of put-downs, insults, name calling, swearing, or offensive language • Screaming or yelling at another • Making threats, being intimidating or getting friends to threaten or scare another 	First Offense <ul style="list-style-type: none"> • Verbal • Warning/Education 	May inform	May inform	<ul style="list-style-type: none"> • If appropriate, dating or other violence prevention counselor
	Repeat Offense <ul style="list-style-type: none"> • Teacher student conference • Send to office/Detention 	Inform	Inform	<ul style="list-style-type: none"> • Dating or other violence prevention counselor
Physical <ul style="list-style-type: none"> • Hitting, punching, pinching, pushing, shoving, grabbing, slapping, kicking, choking, pulling hair, biting, throwing things, arm twisting • Intimidation, blocking exits, punching walls, knocking things around • Damaging or destroying another's property • Restraining, pinning someone to the wall, blocking their movements 	First Offense <ul style="list-style-type: none"> • Detention/Education/Suspension 	Must Inform	Parent Conference	<ul style="list-style-type: none"> • Dating or other violence prevention counselor • School security • Police
	Repeat Offense <ul style="list-style-type: none"> • Detention plus Diversion Program • Suspension/Expulsion • Dangerousness Assessment 	Must Inform	Parent Conference	
Using Weapons	Suspension/Expulsion	Must Inform	Must Inform	<ul style="list-style-type: none"> • Police
Stalking	Suspension/Expulsion	Must Inform	Must Inform	<ul style="list-style-type: none"> • Police
Sexual <ul style="list-style-type: none"> • Name calling, such as slut, bitch, fag • Cat calls or whistling • Spreading sexual gossip or graffiti • Comments about a person's body or unwanted verbal or written sexual comments • Staring or leering with sexual overtones, sexual gestures 	First Offense <ul style="list-style-type: none"> • Detention/Suspension • Education 	Must Inform	Parent Conference	<ul style="list-style-type: none"> • Sexual harassment counselor • Dating violence or rape counselor • School Security • Police
	Repeat Offense <ul style="list-style-type: none"> • Suspension/Expulsion • Psychological Assessment 	Must Inform	Parent Conference before admittance to new school or re-admittance	
Forcing obscene materials on others	Suspension/Expulsion	Must Inform	Must Inform	<ul style="list-style-type: none"> • Police
Pulling off or lifting clothes to expose private parts	Suspension/Expulsion	Must Inform	Must Inform	<ul style="list-style-type: none"> • Police
Rape or attempted rape	Suspension/Expulsion	Must Inform	Must Inform	<ul style="list-style-type: none"> • Police

⁶⁶ Adapted from Massachusetts Department of Education, *Sample Written Policy Chart*, <http://www.doe.mass.edu/ssce/tdv/guidelines/polich.html>.

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EXHIBIT B. DATING OR SEXUAL VIOLENCE INCIDENT FORM

Today's Date: _____ Name of Complainant: _____
Name of Victim: _____ Victim Wishes to Remain Anonymous

Victim's gender: Female Male Other: _____
Victim's current age: _____ Age at time of incident: _____
Victim's current academic grade level: _____

Is this the first time the victim is reporting this incident to XYZ employee:
 Y N Unknown

Date of Incident: _____ Location of Incident: _____ On Campus Off Campus

Description of Incident (attach additional sheets if needed):

Type of Coercion/Force Used (check all that apply):	Name of Witnesses:	Contact Info:
<input type="checkbox"/> Verbal	_____	_____
<input type="checkbox"/> Physical	_____	_____
<input type="checkbox"/> Weapon	_____	_____
<input type="checkbox"/> Life Threatening	_____	_____
<input type="checkbox"/> Abduction	_____	_____
<input type="checkbox"/> Other: _____	_____	_____

Was the Victim under the influence of alcohol/drugs at the time of the incident?
 Y N Unknown

Was the Offender under the influence of alcohol/drugs at the time of the incident?
 Y N Unknown

Number of Offenders: _____
Names of Offender(s): _____ Offender's gender: _____ Age (if known): _____

Offender's relationship to Victim: _____
Offender's relationship to XYZ School: _____

Reported to Campus Security: Y N Reported to Police: Y N
Reported to Child Protective Services: Y N

Reporter's Printed Name: _____ Signature: _____
Reporter's Contact Information: _____

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EXHIBIT C. SAMPLE STAY AWAY CONTRACT

I, _____ (Contracting Party's name) _____, agree to stay _____ (Number of feet) _____ feet away from _____ (Victim's name) _____ while on _____ (School site) _____ campus and surrounding areas, including sports fields, gyms, library, parking lots, and other:

I agree to inform administration of changes to my school schedule and extra curricular activities.

Furthermore, I agree to the following: _____ (Additional restrictions here)

If I violate this contract on purpose, I understand that I will be disciplined in the following ways:

- _____ Hours of Community Service
- Anger Management Counseling
- Restricted from Extracurricular Activities
- _____ Hours of Detention
- Suspension
- Other: _____

Print Contracting Party Name: _____

Signature of Contracting Party: _____

Date: _____

Print School Official Name: _____

Signature of School Official: _____

Date: _____