



Pursuing Justice for Women and Girls



TEEN DATING VIOLENCE in California

Schools:

KNOW YOUR RIGHTS



AUGUST 2017

Teen dating violence (TDV), also known as adolescent relationship abuse (ARA), is a major public health concern. It is a problem in all communities, and exists across geographic, cultural, racial and socioeconomic lines.

Teen dating violence does not occur in a vacuum. It is the result of social attitudes and practices that normalize unhealthy behavior in inter-personal relationships.¹ Adolescents are often pressured to conform to gender roles that reinforce unequal power and control between dating partners.² Certain behaviors in a relationship, like teasing or name-calling, and extreme jealousy or possessiveness, are often normalized and condoned by peers, media, family and adults.³ However, these behaviors can become abusive and develop into more serious forms of violence.⁴ Moreover, teens in abusive relationships experience a greater incidence of other serious risk behaviors.

What is teen dating violence?

Teen dating violence (TDV) is a pattern of abusive behaviors, perpetrated by a teen or adolescent in a dating/romantic relationship in order to gain power and maintain control over their partner.⁵ TDV can take many forms, including abuse that is physical, sexual, emotional, and economic in nature. It can occur

¹ California Adolescent Health Collaborative, Teen Dating Violence: Keeping California Adolescents Safe in Their Relationships, The Public Health Institute (2009), at 1 available at

<https://www.phi.org/uploads/application/files/tclc858ekss4bgd598vmntzlf2quiqklnyak8ehxllzegrm9j.pdf>.

² *Id.*

³ *Id.*

⁴ Teen Dating Violence, Centers for Disease Control and Prevention (July 21, 2016), available at

https://www.cdc.gov/violenceprevention/intimatepartnerviolence/teen_dating_violence.html (“CDC”).

⁵ California Adolescent Health Collaborative, *supra* note 1, at 1.

in person or electronically, in public or behind closed doors, and between current or past dating partners.⁶

Forms of teen dating violence⁷

Physical	Sexual	Verbal & Emotional	Economic
Coercion, intimidation and threats	Unwanted sexual touching	Put downs, name calling, shaming, and insults	Preventing partner from going to school or work
Hitting, shoving, slapping, hair pulling, etc.	Getting partner drugged or drunk to force sex	Shifting responsibility to victim: “you made me do it”	Giving an allowance or gifts to control partner
Restriction of clothing or activities	Demanding a “right” to, and coercing, sex	Isolating partner from family, friends & community	Destroying partner’s property
Stalking	Birth control sabotage (“stealthling”) or refusing to use protection	Surveillance using cell phones, online networking, or friends	Stealing or demanding money from partner

Why is teen dating violence a problem?

IT OCCURS IN EVERY COMMUNITY

“Other than differences by age and gender, **ARA rates were consistent by race/ethnicity, geographic region, urbanicity, and household characteristics**, highlighting the importance of universal prevention programs.”⁸

IT IS EXTREMELY COMMON

According to The National Survey of Teen Relationships and Intimate Violence (STRiV), the first comprehensive national portrait dedicated specifically to ARA⁹ released in October 2016, **2 out of 3 youths (ages 12-18) who were in a relationship or had been in one in the past year reported that they had been victimized (69%) or perpetrated violence (63%).**¹⁰

- **Psychological abuse was the most commonly reported form of ARA (over 60%).**
- **Rates of sexual abuse (18%) and physical abuse (18%) were lower, but substantial.**
- **12% reported perpetrating physical and/or sexual abuse.**

⁸ Bruce G. Taylor et al., The National Survey of Teen Relationships and Intimate Violence (STRiV), 7-8 (2016), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/250292.pdf>.

⁹ *Id.* at 10.

¹⁰ *Id.* at 7. The study is “the first to provide a comprehensive national portrait of teen violence with detailed measurements of both who perpetrates such violence and who has been victimized.” National Institute of Justice, [A National Survey Shines a Light on the Nature and Scope of Teen Dating Violence](https://www.nij.gov/topics/crime/intimate-partner-violence/teen-dating-violence/pages/survey-shines-light-on-the-nature-and-scope-of-teen-dating-violence.aspx), Office of Justice Programs (Feb. 1, 2017), available at <https://www.nij.gov/topics/crime/intimate-partner-violence/teen-dating-violence/pages/survey-shines-light-on-the-nature-and-scope-of-teen-dating-violence.aspx>.

⁶ CDC, *supra* note 4.

⁷ California Adolescent Health Collaborative, *supra* note 1, at 2.

The study's estimates of ARA victimization exceed rates found in all other national studies by a wide margin despite that it measures any ARA experience from only the current or recent relationship rather than a broader lifetime measure.¹¹ Differing methodology may account for this discrepancy: unlike the other national studies, STRiV measured psychological abuse and also surveyed youth who had dropped out of school.¹² Moreover, STRiV covered, but was not limited to, serious and/or injurious assaults, or items framed in terms of criminal behavior.¹³ Local and regional studies using more detailed measures have reported ARA rates in line with the STRiV estimates, with about 50-60% of teens reporting victimization.

1 in 5 female high school students report being physically and/or sexually abused by a dating partner.¹⁴

1 in 3 high school students experience either physical or sexual violence, or both, at the hands of someone they are dating.¹⁵

22% of females and 15% of males who ever experienced rape, physical violence, or stalking by an intimate partner first experienced partner violence between 11–17 years of age.¹⁶

1 in 10 high school students has been purposely hit, slapped or physically hurt by a girlfriend or boyfriend.¹⁷

¹¹ Taylor et al., *supra* note 8, at 8.

¹² *Id.*

¹³ *Id.*

¹⁴ Jay G. Silverman et al., *Dating Violence Against Adolescent Girls and Associated Substance Use, Unhealthy Weight Control, Sexual Risk Behavior, Pregnancy, and Suicidality*, 286 J. OF THE AM. MED. ASS'N, Aug. 2001, at 572.

¹⁵ Kevin J. Vagi et al., *Teen Dating Violence (Physical and Sexual) Among US High School Students: Findings From the 2013 National Youth Risk Behavior Survey*, 169 J. OF THE AM. MED. ASS'N PEDIATRICS, 2015, at 474.

¹⁶ *Understanding Teen Dating Violence*, Centers for Disease Control and Prevention, at 1 (2016), available at <https://www.cdc.gov/violenceprevention/pdf/teen-dating-violence-factsheet-a.pdf>.

¹⁷ Laura Kann et al., *Youth Risk Behavior Surveillance Summary: U.S. 2013, U.S. Dept. of Health and Human Services*, Centers for Disease Control and Prevention, 10-11 (2014) available at <https://www.cdc.gov/mmwr/pdf/ss/ss6304.pdf>.

In CA, 8.2% of respondents aged 14 to 17 reported ever being “hit, slapped, or physically hurt on purpose” by their partner.¹⁸

Lesbian, gay, bisexual (LGB) youth are more likely to experience physical and psychological abuse, sexual coercion and cyber dating abuse than their heterosexual peers.¹⁹

While a large age difference is a risk factor for intimate partner violence, **most teens who experience dating violence report that their offender was close in age. Only 10% of abused women ages 15–17 have partners over the age of 21.**²⁰

IT EVADES DETECTION

Some forms of TDV/ARA may be difficult to discern, both to outsiders as well as to the adolescents involved in the abusive relationship.²¹ While TDV/ARA is not a new phenomenon, the rate at which teens have adopted technology to facilitate dating relationships outpaces the development of relevant literature, and presents a new space for potential abuse to occur.

A 2014 study examining these new patterns of violence found that **cyber dating abuse is common and associated with ARA and sexual assault.**²²

¹⁸ Office of Women's Health, *California Adolescent Health 2009* 89 (2009 California Department of Health Care Services & California Department of Public Health), available at <http://www.dhcs.ca.gov/dataandstats/reports/Documents/OWHReports/AdolHealthReport09.pdf>

¹⁹ Meredith Dank et al., *Dating Violence Experiences of Lesbian, Gay, Bisexual, and Transgender Youth*, 43 J. OF YOUTH ADOLESCENCE 846 (2014).

²⁰ California Adolescent Health Collaborative, *supra* note 1, at 3.

²¹ *Id.* at 2.

²² Rebecca N. Dick et al., *Cyber Dating Abuse Among Teens Using School-Based Health Centers*, 134 AM. ACAD. OF PEDIATRICS 1560, 1560 (Dec. 2014).

The 2013 National Youth Risk Behavior Survey found that **more than half of high school students who experience sexual or physical abuse by a dating partner have also been bullied electronically.**²³

The 2003 California Health Interview Survey found that only **37.7% of teens who had experienced abuse talked to someone about the abuse.**²⁴

The vast majority of parents believe TDV/ARA is not an issue, or admit they do not know if it is an issue.²⁵

IT HAS LONG-LASTING, DAMAGING EFFECTS

Youth who experience TDV are at significantly higher risk for:

- **Depression and/or anxiety**²⁶
- **Tobacco, alcohol and drug use or abuse**²⁷
- **Antisocial behaviors and aggression**²⁸
- **Thoughts about suicide**²⁹
 - Over 50% of youth who have experienced both dating violence and rape attempt suicide, compared to 12.5% of non-abused girls and 5.4% of non-abused boys who attempt suicide.³⁰
- **Unhealthy weight control behaviors**³¹
- **Sexual risk behaviors**³²

²³ Vagi et al., *supra* note 15.

²⁴ Office of Women's Health, *supra* note 18, at 89.

²⁵ "81% of parents surveyed either believe teen dating violence is not an issue or admit they don't know if it's an issue." See Family Violence Prevention Fund and Advocates for Youth, *Women's Health*, June/July 2004.

²⁶ CDC, *supra* note 4.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Diann Ackard & Diane Neumark-Sztainer, *Date Violence and Date Rape Among Adolescents: Associations with Disordered Eating Behaviors and Psychological Health*, 26 CHILD ABUSE AND NEGLECT 455, 455 (May 2002).

³¹ Silverman et al., *supra* note 14 at 472.

- **Pregnancy**
 - **4–6 times as likely to become pregnant**³³
 - Pregnant teens are at a higher risk of abuse than pregnant adults. 21.7% of teens and 15.9% of adults experience abuse during pregnancy.³⁴
- **Sexually Transmitted Diseases**
 - Twice as likely to contract STDs³⁵
- **Future victimization during college and beyond**

Why does dating violence happen?

Violence is related to certain risk factors. An important goal of research on TDV is to understand which youth are more vulnerable to experiencing violence in their relationships. Identifying youth at risk for violence increases the likelihood of early intervention and prevention.³⁶

Risks of having unhealthy relationships increase for teens who:³⁷

- Believe that dating violence is acceptable
- Are depressed, anxious, or have other trauma symptoms
- Display aggressive or delinquent behavior
- Use drugs or illegal substances
- Have early sexual activity or have multiple sexual partners
- Have a friend involved in dating violence

³² *Id.*

³³ *Id.*

³⁴ Barbara Parker et al., *Physical and Emotional Abuse in Pregnancy: A Comparison of Adult and Teenage Women*, 42 NURSING RESEARCH 173, 173-77 (1993).

³⁵ Michele R. Decker et al., *Dating Violence and Sexually Transmitted Disease/HIV Testing and Diagnosis Among Adolescent Females*, 116 PEDIATRICS 272, 272-76 (2005).

³⁶ *Risk and Protective Factors, Psychosocial Health Behaviors and Teen Dating Violence*, National Institute of Justice, Office of Justice Programs, U.S. Dept. of Just. (2015), available at <https://www.nij.gov/topics/crime/intimate-partner-violence/teen-dating-violence/Pages/risk-factors.aspx>.

³⁷ CDC, *supra* note 4.

- Have conflicts with a partner
- Witness or experience violence in the home

Teen dating violence is preventable

Schools are uniquely poised to educate teens about dating violence. Schools have a responsibility to educate and support teens, who may not have other support systems or resources to deal with, prevent or stop dating violence. Schools are also places where teen victims may be forced to encounter their abusers, and ultimately, schools have a legal responsibility to address teen dating violence. Studies suggest that schools may be able to integrate their relationship abuse efforts alongside their sexual harassment prevention efforts.³⁸

CALIFORNIA LAW

School Duties Regarding Teen Dating Violence

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, and community colleges, colleges, and universities have the inalienable right to attend campuses which are safe, secure and peaceful.”³⁹

This constitutional mandate sets the standard of care that school districts must provide to their students. Maintaining a safe learning space is particularly relevant to combating teen dating violence, as school officials are in a unique position to recognize and respond to warning signs, and can play a key role in implementing preventive measures against teen dating violence.

³⁸ National Institute of Justice, *supra* note 10.

³⁹ CAL. CONST. art. I, § 28(c).

II. Duty to Combat Discrimination and Harassment⁴⁰

“California’s public schools have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity.”⁴¹ Harassment on public school grounds directed at individuals on the basis of personal characteristics infringes on the obligation of school districts to provide a safe learning environment for students and jeopardizes equal education opportunity as guaranteed by the California and the United States Constitution.⁴²

III. Duty to Create School District Safety Plans

All California public schools (K-12), in conjunction with local law enforcement agencies, are required to develop a comprehensive school safety plan that creates strategies aimed at the prevention of, and education about, potential incidents involving crime and violence on the school campus.⁴³ California schools must submit these safety plans to California’s Department of Education, and these plans must be reviewed or revised once a year.⁴⁴ Willful failure to make such a report may result in a fine up to \$2,000 against the school district or county of education.⁴⁵ The prevalent nature of teen dating and sexual violence presents a pressing need for schools to develop safety plans to respond to teen dating violence specifically, even if state law does not expressly mandate it.

⁴⁰ CAL. EDUC. CODE § 201.

⁴¹ *Id.* § 201(b).

⁴² *Id.* § 201(c).

⁴³ CAL. EDUC. CODE § 32280.

⁴⁴ *Id.*

⁴⁵ CAL. EDUC. CODE § 32287.

IV. Duty to Foster an Environment Free from Discriminatory Attitudes

Educators and administrators in public schools have a duty to foster and create an environment on campus that is “free from discriminatory attitudes, practices, events, or activities”⁴⁶ in order to prevent acts of hate violence, which includes on-campus incidents of teen dating violence and sexual violence.⁴⁷

V. Duty to Respond to Hate Violence⁴⁸

California’s Hate Violence Prevention Act mandates that public schools (K-12) are required to create a school environment that is free from discriminatory attitudes and practices and acts of hate violence.⁴⁹ As used in the Hate Violence Prevention Act, “hate violence” refers to any act punishable under §§ 422.6, 422.7, or 422.75 of the California Penal Code.⁵⁰ Hate violence includes acts by persons that “willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state”⁵¹ in whole or in part because of one or more of the actual or perceived characteristics of the victim, such as: disability, *gender*, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics.⁵²

⁴⁶ CAL. EDUC. CODE § 233.5(b).

⁴⁷ *Id.*

⁴⁸ “Hate violence” means any act of physical intimidation or physical harassment, physical force or physical violence, or the threat of physical force or physical violence, that is directed against any person or group of persons, or the property of any person or group of persons because of the ethnicity, race, national origin, religion, sex, sexual orientation, gender identity, gender expression, disability, or political or religious beliefs of that person or group. CAL. EDUC. CODE § 67380(c)(1).

⁴⁹ CAL. EDUC. CODE § 233(a)(1).

⁵⁰ *Id.* § 233(e).

⁵¹ CAL. PEN. CODE § 422.6(a).

⁵² CAL. PEN. CODE § 422.55.

Thus, because teen dating violence and sexual violence includes actions that injure and oppress the free exercise of rights (e.g. the right to enjoy a safe learning environment) because of characteristics of the victim (i.e. gender), teen dating violence should be considered a form of hate violence. Accordingly, school policies should address teen dating violence and sexual violence as a form of hate violence.

VI. Duty to Report Reasonable Suspicion of Child Abuse

Child abuse includes sexual abuse and the willful harming, injuring, or endangering of the person or health of a child.⁵³ In the context of teen dating violence, child abuse liability does not extend to a “mutual affray between minors.”⁵⁴ Recent studies on teen dating violence are conflicted about whether it usually involves mutual physical aggression or one-sided physical aggression.⁵⁵ A more nuanced view of physical aggression in TDV suggests that although non-sexual violence by both partners can be reciprocal, sexual violence has dramatic gender differences, with females sustaining significantly more sexual violence than males.⁵⁶ In cases where teen dating violence involves mutual physical aggression, it would likely be classified as a “mutual affray between minors” and

⁵³ CAL. PEN. CODE § 11165.6.

⁵⁴ *Id.*

⁵⁵ Compare *Is Mutual Abuse Real?* DOMESTICSHELTERS.ORG (Jun 15, 2015), <https://www.domesticshelters.org/domestic-violence-articles-information/is-mutual-abuse-real#.WMgfUBLyvBI>; *The Myth of Mutuality*, TEEN DATING VIOLENCE TECHNICAL ASSISTANCE CENTER, (July 2009), <http://www.breakthecycle.org/sites/default/files/Myth%20of%20Mutuality.pdf> (arguing that mutual physical aggression in teen dating violence is rare) with Monica H. Swahn et al., *Nonreciprocal and Reciprocal Dating Violence and Injury Occurrence among Urban Youth*, 11 WEST J. EMERGENCY MED. 264, 264-68 (Aug. 2010) https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2941364/pdf/wjem11_3p264.pdf (arguing that mutual physical aggression in teen dating violence is common).

⁵⁶ Maura O’Keefe, *Teen Dating Violence: A Review of Risk Factors and Prevention Efforts*, NATIONAL ELECTRONIC NETWORK ON VIOLENCE AGAINST WOMEN (Apr. 2005), <http://www.stdhivtraining.org/resource.php?id=240>.

fall outside the purview of the child abuse law. However, in situations where the violence is one-sided, such as in cases of sexual violence where females are predominantly the victims, mandated reporters may be required to investigate in order to determine whether the situation constitutes reportable child abuse.

Teachers, counselors, administrators, and other school employees who work with youths are all mandated reporters and must report any reasonable suspicion of child abuse to law enforcement or child protective services.⁵⁷ Mandated reporters are required to make a report to a qualifying agency, whenever they have knowledge of or observe a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.⁵⁸ A mandated reporter's failure to report can result in criminal liability and fines.⁵⁹

VII. Duty to Supervise Students

Under California negligence 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.⁶⁰ The standard of care that school district employees must abide by is the degree of care "which a person of ordinary prudence, charged with (comparable) duties, would exercise under the same circumstances."⁶¹ Ordinary care requires more than just being present; care must be taken to foresee and avoid any situations that could be potentially dangerous, even if the precise injury has never occurred before.⁶² Furthermore, school

⁵⁷ CAL. PEN. CODE § 11165.7.

⁵⁸ CAL. PEN. CODE § 11166(a).

⁵⁹ CAL. PEN. CODE § 11166(c).

⁶⁰ Barbara J. Glaeser & Kevin F. Calcagnie, *The ABC's of School Liability in California: A Primer for Lawyers, School Districts and Educators*, CONSUMER ATTORNEYS OF CALIFORNIA, 34 (Nov. 2005), <http://faculty.fullerton.edu/lorozco/lawglaeser.pdf>.

⁶¹ *Hoyem v. Manhattan Beach City Sch. Dist.*, 22 Cal. 3d 508, 513 (1978).

⁶² *Ziegler v. Santa Cruz City High Sch. Dist.*, 168 Cal. App. 3d 277, 284 (1959).

authorities must take reasonable preventive measures if they are aware of threats of violence, even if no previous acts of violence or injury had occurred at a particular location.⁶³

However, under the negligence standards, no supervision may be required where the school has no reason to think any is required.⁶⁴ For example, a school district's duty to supervise its students likely does not extend to protecting a non-student from injuries caused by a student off-campus if school officials neither knew nor reasonably should have known that the particular student had those violent tendencies.

Applying this duty to supervise to the teen dating violence context, a school district likely cannot be held liable for injuries inflicted by a student on a non-student they are dating off-campus if the school district neither knew, nor reasonably should have known that the student had such violent tendencies.⁶⁵

RECENT CHANGES IN CALIFORNIA

CA Teen Dating Violence Prevention Project (2012)⁶⁶

The California Department of Public Health, Violence Prevention Unit initiated the California Teen Dating Violence Prevention Project to achieve three goals:

- 1) raise TDV as a public health priority
- 2) enhance partnerships and coordination with key TDV prevention stakeholders
- 3) build the capacity of state and local organizations to support TDV prevention programs and policies

⁶³ *Leger v. Stockton Unified School Dist.*, 202 Cal. App. 3d 1448, 1459-60 (1988).

⁶⁴ *Id.* at 1460.

⁶⁵ *Hoff v. Vacaville Unified Sch. Dist.*, 19 Cal. 4th 925, 937 (1988).

⁶⁶ *Teen Dating Violence Prevention Project*, CALIFORNIA DEPARTMENT OF PUBLIC HEALTH (Apr. 2012), available at <http://www.cdph.ca.gov/Pages/TeenDatingViolencePreventionProject.aspx>.

California Education Code § 51225.36 (January 1, 2016)⁶⁷

This addition to the Education Code states that school districts requiring a course in health education to graduate from high school must also include instruction in sexual harassment and violence, including, but not limited to, the affirmative consent standard, laid out in § 67385(a).⁶⁸

California Education Code § 33544 (January 1, 2016)⁶⁹

This addition to the Education Code provides that during the next revision of the “Health Framework for California Schools,” the Instructional Quality Commission must consider including sexual harassment and sexual violence. If the Instructional Quality Commission includes comprehensive information on sexual harassment and violence in the revised “Health Framework for California Schools,” it must comply with certain conditions.

California Healthy Youth Act (January 1, 2016)⁷⁰

The Healthy Youth Act requires school districts to provide students with comprehensive sexual health and HIV prevention education at least once in middle school and once in high school. The goals of this act are to:

- a. provide pupils with the knowledge and skills necessary to protect their sexual and reproductive health from HIV, other sexually transmitted infections, and unintended pregnancy;
- b. provide pupils with the knowledge and skills they need to develop healthy attitudes concerning adolescent

⁶⁷ CAL. EDUC. CODE § 51225.36.; SB 695. Cal. Leg. Reg. Sess. 2015-2016 (Cal. 2015).

⁶⁸ CAL. EDUC. CODE § 67385(a).

⁶⁹ CAL. EDUC. CODE § 33544.; SB 695. Cal. Leg. Reg. Sess. 2015-2016 (Cal. 2015).

⁷⁰ CAL. EDUC. CODE §§ 51930-51939.

- growth and development, body image, gender, sexual orientation, relationships, marriage, and family;
- c. promote understanding of sexuality as a normal part of human development;
- d. ensure pupils receive integrated, comprehensive, accurate, and unbiased sexual health and HIV prevention instruction and provide educators with clear tools and guidance to accomplish that end; and
- e. provide pupils with the knowledge and skills necessary to have healthy, positive, and safe relationships and behaviors.

Overall, this act is different from past legislation because it includes new language about adolescent relationship abuse and reinforces a focus on healthy attitudes, behaviors, and relationships.

Resolution Commemorating February as Teen Dating Violence Awareness and Prevention Month⁷¹

The California Legislature has passed concurrent resolutions to proclaim the month of February as Teen Dating Violence Awareness and Prevention Month.

FEDERAL LAW

Of the federal laws that are relevant for schools in addressing teen dating violence and ensuring the safety, fairness and availability of educational opportunities of their students, Title IX of the Education Amendments of 1972 is particularly important to understanding how a school should appropriately respond to dating violence.

⁷¹ S. Con. Res. 103, 2016 (Cal. 2016); S. Con. Res. 16, 2017 (Cal. 2017)

I. Duties under Title IX of the Education Amendments of 1972

Title IX

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”⁷² Title IX gives students the right to be free from sex discrimination at schools that receive federal funds.⁷³

A. *Right to be free from sex discrimination, sexual harassment, and sexual violence in the education setting*

Schools that receive federal funds can be liable under Title IX for failing to adequately respond to teen dating violence and sexual violence against students. Sexual violence, which includes teen dating violence, is a form of sexual harassment, and sexual harassment is a form of sex discrimination under Title IX.

Even though Title IX does not explicitly include sexual assault as a form of sex-based discrimination in the education setting, two U.S. Supreme Court cases establish that sexual assault is a form of sex discrimination: *Gebser v. Lago Vista Independent School District*⁷⁴, and *Davis v. Monroe County Board of Education*⁷⁵. In *Gebser*, the Court held that sexual harassment of a student by a teacher was a form of sex discrimination under Title IX. Thus, after *Gebser*, sexual harassment is categorized as a form of sex discrimination under Title IX.⁷⁶ In *Davis v. Monroe County Board of Education*⁷⁷, the Court

⁷² 20 U.S.C. §1681(a).

⁷³ U.S. Dep’t of Educ., Know Your Rights: Title IX Prohibits Sexual Harassment and Sexual Violence Where You Go to School (April 2011), <https://ed.gov/about/offices/list/ocr/docs/title-ix-rights-201104.pdf>.

⁷⁴ *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 280-81 (1998).

⁷⁵ *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 633 (1999).

⁷⁶ *Gebser*, 524 U.S. at 280-81.

included known student-to-student sexual assault as a form of sexual harassment for which schools could be held accountable. Thus, *Davis* establishes the crucial link of establishing sexual assault or violence as a form of sexual harassment. As a result of the rulings in *Gebser* and *Davis*, both sexual harassment and sexual assault are banned under the Title IX prohibition of sex-based discrimination in education programs. Accordingly, teen dating violence, which includes student to student sexual assault, would also be banned in education programs as a form of sex-based discrimination under Title IX.

B. *School liability for teen dating violence using the deliberate indifference standard*

In *Gebser*, the Court ruled that the plaintiff must prove that a school exhibited “deliberate indifference” to known acts of sexual harassment in order to hold the school liable under Title IX.⁷⁸ Deliberate indifference can be found in two circumstances: 1) if a school district fails to affirmatively act to protect its students or 2) if a school district acts in a way that is ineffective or inadequate in protecting its students, even though it knows or reasonably should know that its actions are ineffective or inadequate.⁷⁹

Using this “deliberate indifference” standard, in *Davis v. Monroe County Board of Education*⁸⁰ the Court found that 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

⁷⁷ *Davis*, 526 U.S. at 633.

⁷⁸ *Id.*

⁷⁹ *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1034 (9th Cir. 1998).

⁸⁰ *Davis*, 526 U.S. at 633.

educational opportunities or benefits, and (5) the school is deliberately indifferent to the harassment.⁸¹

C. Required school district policies and protocols regarding teen dating violence

Title IX regulations require that each educational institution have written policies and procedures in place to respond to sex discrimination.⁸² Failure to adopt such policies and procedures opens educational institutions up for lawsuits 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 any person within its jurisdiction equal protection of the law.⁸³ The Ninth Circuit held that the deliberate indifference and failure to act of school administrators in situations of student to student sexual harassment can constitute evidence that the school district violated the student's constitutional rights under the Equal Protection Clause.⁸⁴ Thus, failing to respond to teen dating violence, which is a form of sexual harassment, can open schools up to liability under the Equal Protection Clause.⁸⁵

III. Duty to Train Employees on Sexual Harassment Policies

School districts can be liable for failing to train employees on sexual harassment, and because teen dating violence is a form of

⁸¹ *Id.*

⁸² 34 C.F.R. §§ 106.8 (b), 106.9.

⁸³ U.S. CONST. amend. XIV, § 1.

⁸⁴ *Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1135 (9th Cir. 2003).

⁸⁵ *Davis*, 526 U.S. at 633; *A Guide to Addressing Teen Dating and Sexual Violence in a School Setting*, PEACE OVER VIOLENCE, (Feb. 2008), http://www.peaceoverviolence.org/media/downloadables/ca_tdv_a_guide_to_addressing_teen_dating_violence_adaoe.pdf.

sexual harassment, this is an area that school districts should include in their sexual harassment training.⁸⁶ The Ninth Circuit has noted that school districts may 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 implement such training.⁸⁷

L.A.U.S.D.'S RESPONSE TO TDV

Resolution to Promote Healthy Relationships and Prevent Teen Dating Violence in the Los Angeles Unified School District (October 11, 2011)⁸⁸

This resolution sets distinct goals for how the school district should promote healthy teen relationships and demonstrates LAUSD's commitment to create a school climate that encourages healthy relationships and addresses ways to prevent all forms of adolescent dating abuse. It contains provisions on how LAUSD should respond to teen dating and sexual violence, preventive education of teen dating violence for its students, parent engagement and education strategies, and data collection and reporting requirements.⁸⁹

⁸⁶ *Id.*

⁸⁷ *Plumeau v. Sch. Dist. No. 40*, 130 F.3d 432, 439 n.4 (9th Cir. 1997).

⁸⁸ LOS ANGELES UNIFIED SCHOOL DISTRICT, *Resolution to Promote Healthy Relationships and Prevent Teen Dating Violence at Los Angeles Unified School District* (Oct. 11, 2011),

<http://achieve.lausd.net/site/handlers/filedownload.ashx?moduleinstanceid=7764&dataid=9139&FileName=Resolution%20to%20Promote%20Healthy%20Relationships%20and%20Prevent%20Teen%20Dating%20Violence.pdf>.

⁸⁹ *Id.*