

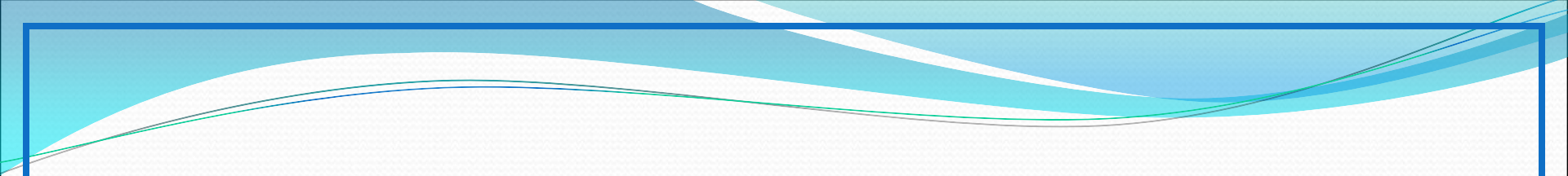
Responding to Teen Dating Violence

How Schools Can Respond To And
Prevent Teen Dating Violence

Laura Riley & Stephanie Rector
California Women's Law Center

<http://www.cwlc.org>

(323) 951-1041



The California Women's Law Center
breaks down barriers and advances the
potential of women and girls through
transformative litigation, policy
advocacy and education.

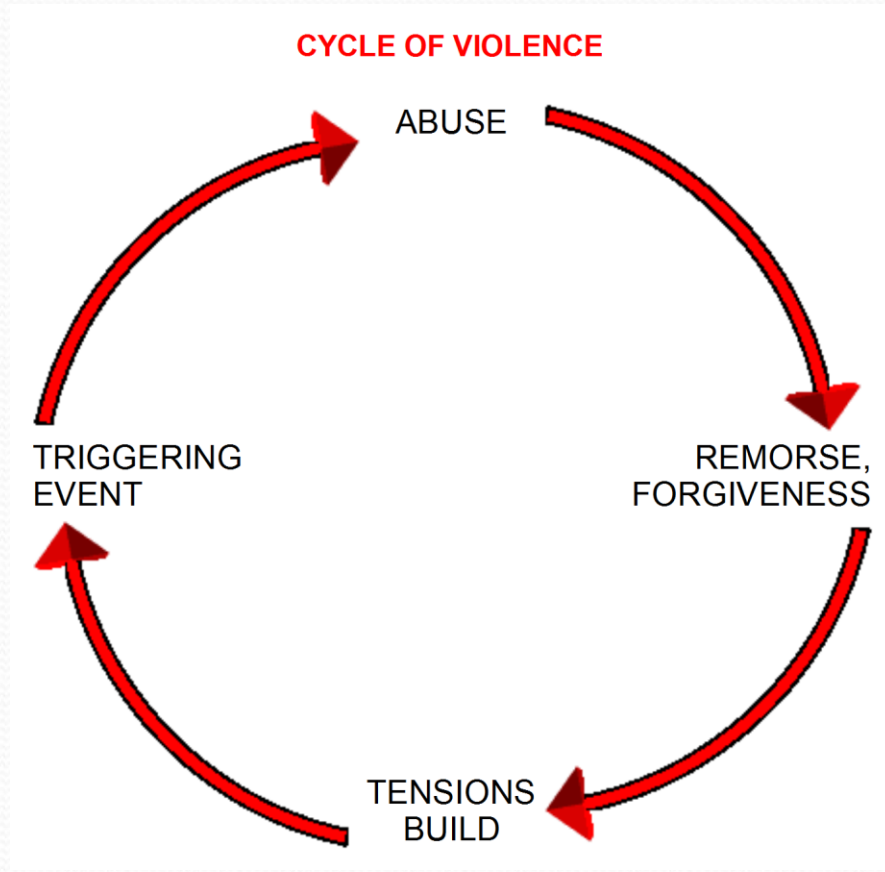
Today's Discussion

- Teen dating violence and why schools are in a position to respond
- The legal responsibilities schools have to address teen dating violence
- Model teen dating violence policy
- Questions and Resources

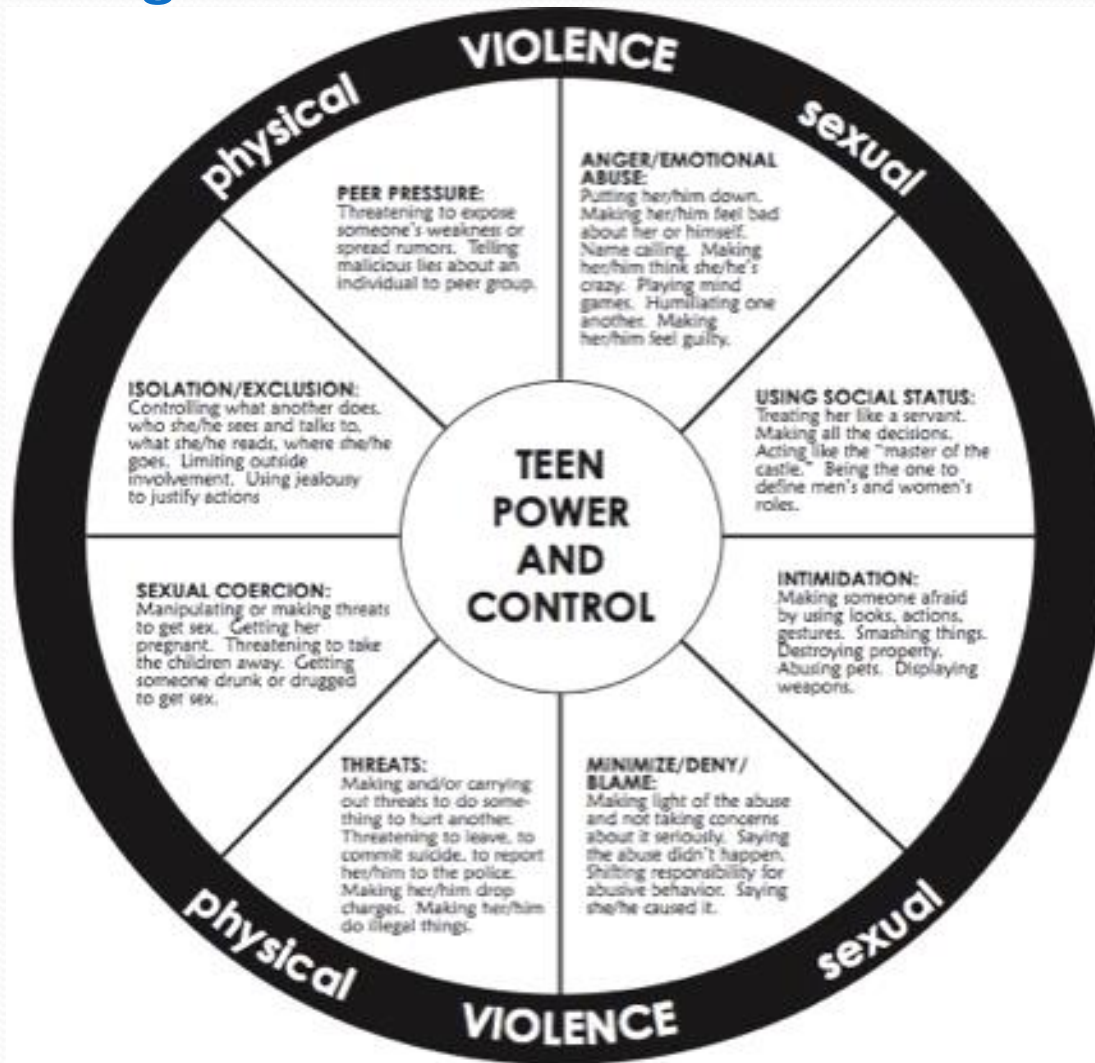
What is Teen Dating Violence?

- A pattern of physical, emotional, verbal or sexual abuse
- used by one person in an intimate relationship to exert power and control over another
- where one or both of the partners is 13-19 years old.

The Cycle of Violence



Teen Dating Violence Power and Control Wheel



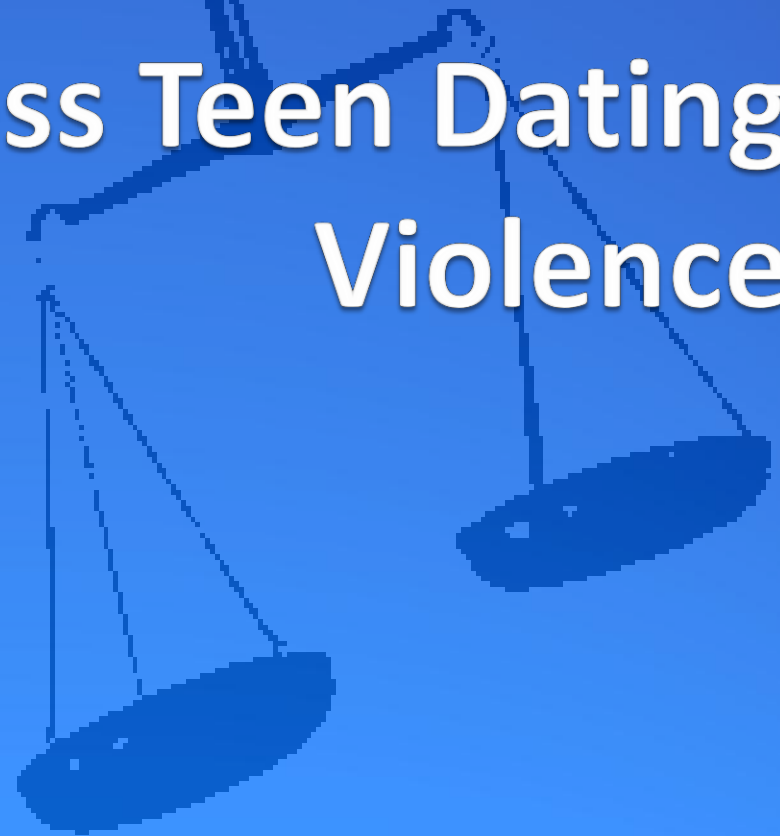
Why is Teen Dating Violence a Problem For All Of Us?

- It is *pervasive*
- It affects *educational success and development*
- It sets the stage for *abusive adult relationships*

Why are Schools Responsible for Addressing Teen Dating Violence?

- Schools have unique opportunities to educate and support teens.
- Schools can't avoid the problem: Teen victims will encounter their abusers.
- Schools can face liability for failing to address dating violence.

Federal Duties Schools Have to Address Teen Dating Violence



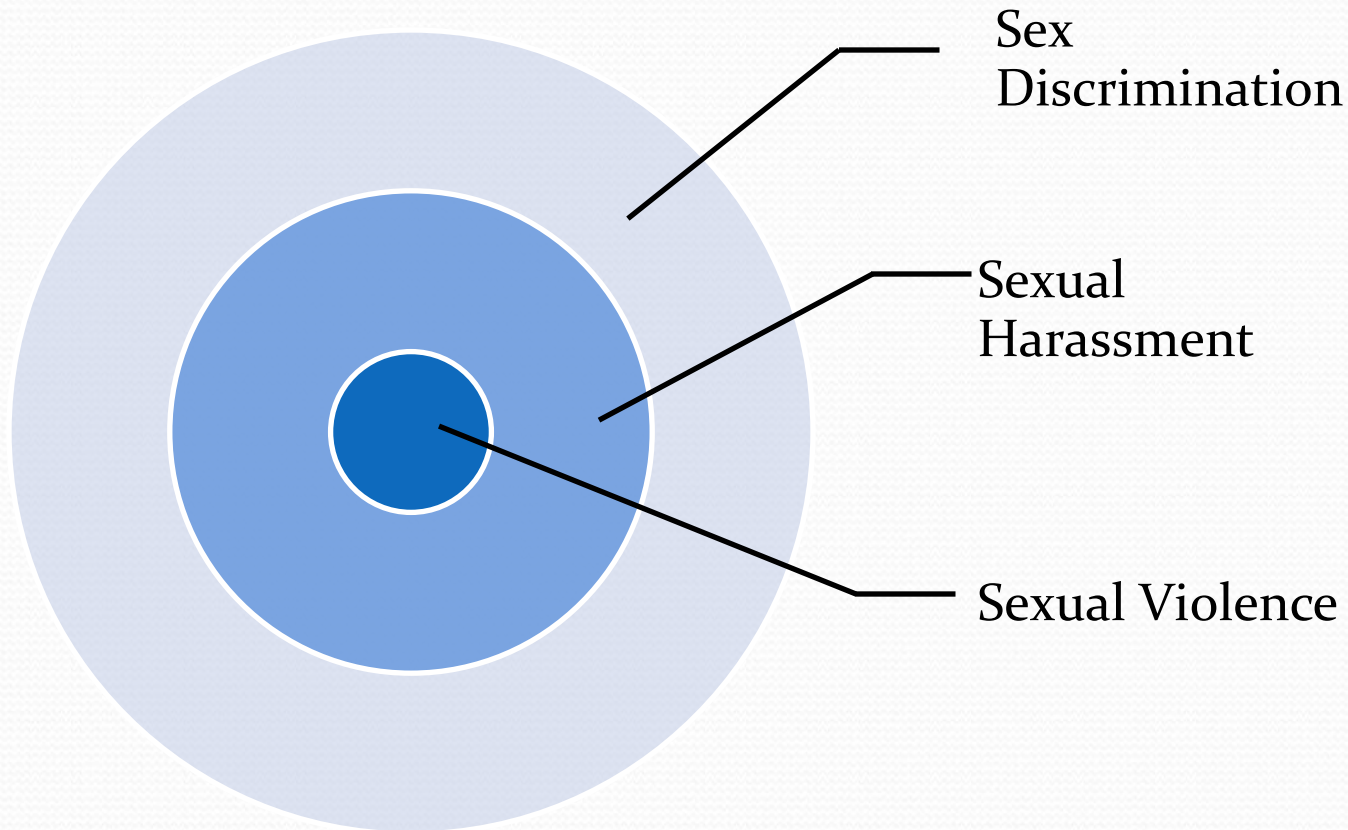
Legal Duties Under Federal Law

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 subject to discrimination under any education program or activity receiving federal financial assistance.**”

Title IX of the Education Amendments of 1972,
20 U.S.C. § 1681, *et seq.*

Legal Duties Under Federal Law Title IX



Legal Duties Under Federal Law

Title IX

“[F]unding recipients are properly held liable in damages only where they are **deliberately indifferent** to **sexual harassment**, of which they have **actual knowledge**, that is so **severe, pervasive**, and objectively offensive that it can be said to deprive the victims of **access to the educational opportunities or benefits** provided by the school.”

Davis v. Monroe County Board of Education,
526 U.S. 629, 650 (1999)(emphasis added)

Legal Duties Under Federal Law Title IX

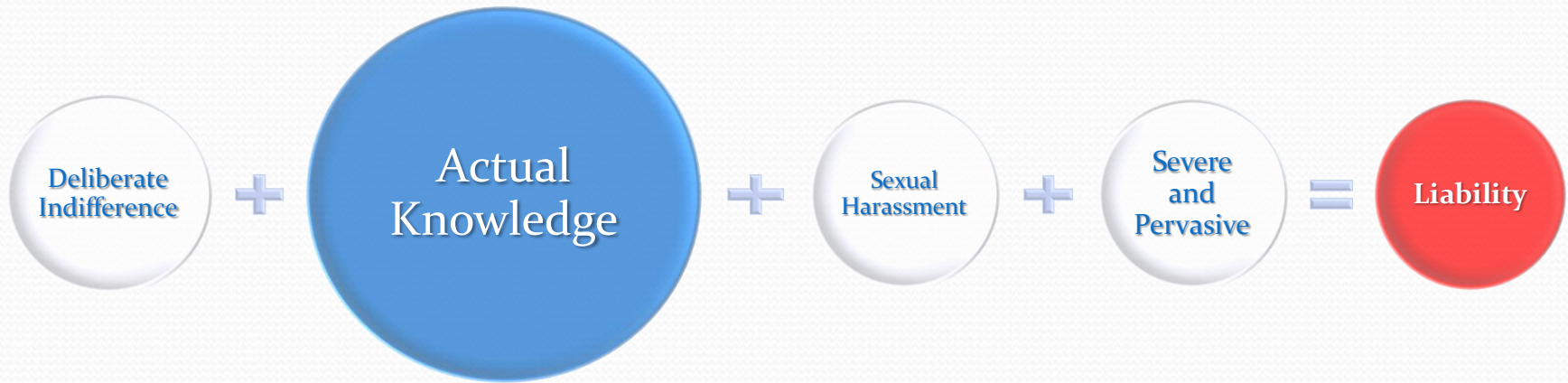


Legal Duties Under Federal Law Title IX



- ✓ Response or lack of response that is clearly unreasonable under the circumstances
- ✓ Failure to act affirmatively in response to sexual harassment
 - ✓ Ineffective or inadequate actions

Legal Duties Under Federal Law Title IX



- ✓ Principal or other administrators
- ✓ Supervising teachers and counselors
- ✓ Employee with authority to respond to complaint

Legal Duties Under Federal Law

Title IX



- ✓ Unwanted touching, grabbing, kissing
 - ✓ Verbal teasing, threats, and abuse
- ✓ Standing too close or blocking someone's path
 - ✓ Showing or writing inappropriate things
 - ✓ Obscene gestures or suggestive movements

Legal Duties Under Federal Law Title IX



- ✓ The harassment physically deprives the student of access to school resources
- ✓ The harassment undermines and detracts from victim's educational experience

Legal Duties Under Federal Law

No Child Left Behind

In order for states to receive funds under No Child Left Behind, districts must:

Have a plan in place that promotes school safety.

Track incidents of violence and crime on campus (which includes teen dating violence) and suspensions and expulsions.

Offer parents of students who attend a persistently dangerous public school or who become victims of a violent criminal offense the option to transfer their child to another school.

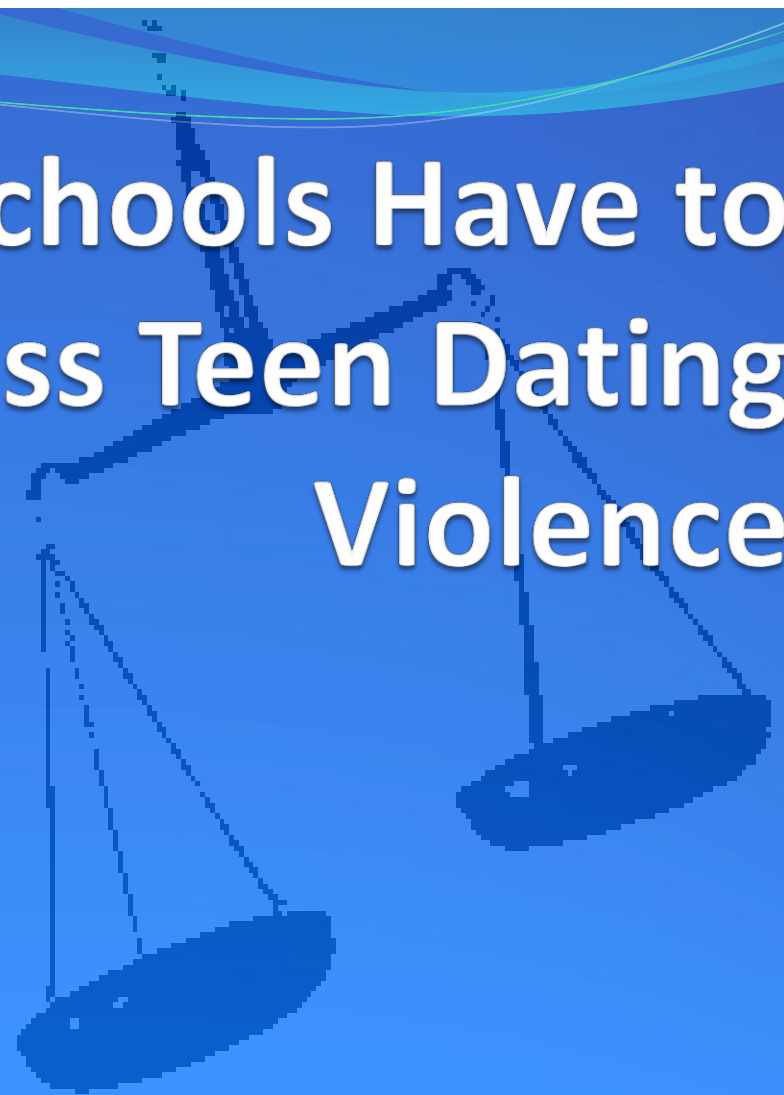
Legal Duties Under Federal Law

Duty to Train Employees on Sexual Harassment Policies

Federal courts have held that school districts have a legal duty to train employees when:

- The need for training is obvious, and
- It is highly foreseeable that a student's constitutional rights will be violated if the district fails to conduct such training.

State Duties Schools Have to Address Teen Dating Violence



Legal Duties Under California Law

California Constitution

“All 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.**”

California Constitution, Art. I, Section 28(c)

Legal Duties Under California Law

- Provide safe schools
- Combat sexual harassment
- Respond to hate violence
- Foster a discrimination-free environment
- Protect students
- Report child abuse
- Supervise students
- Discipline offenders
- Create safety plans

Legal Duties Under California Law

Duty to Report Child Abuse

School
Personnel
Must Report
Child Abuse

(most are
mandated
reporters)



Child Abuse that is
NOT a “mutual affray”
between minors

- Teen dating violence may be child abuse
- Look for:
 - Past or current dating relationship
 - Dominant aggressor
 - Cycles of power and control



Report to
Police

Cal. State Educ. Code § 5122.36

- (a) If the governing board of a school district requires a course in health education for graduation from high school, the governing board of the school district **shall include instruction in sexual harassment and violence**, including, but not limited to, information on the affirmative consent standard, as defined in paragraph (1) of subdivision (a) of Section 67386.
- (b) If the governing board of a school district provides instruction pursuant to subdivision (a), the governing board of the school district shall ensure teachers **consult information related to sexual harassment and violence in the Health Framework for California Public Schools** when delivering health instruction.

State Liability

Cal. Educ. Code § 33544

(a) ... After January 1, 2016, the commission **shall consider including** comprehensive information for grades 9 to 12, inclusive, on sexual harassment and violence that includes, but is not limited to, all of the following:

- (1) Information on different forms of sexual harassment and violence, including instances that occur among peers and in a dating relationship; a discussion of prevention strategies; how pupils report sexual harassment and violence; and potential resources victims can access.
- (2) Discussion of the affirmative consent standard, and skills pupils use to establish boundaries in peer and dating relationships.
- (3) Discussion of legal aspects of sexual harassment and violence under state and federal law.

State Liability

Cal. Educ. Code § 33544

(b) **If the commission includes** comprehensive information on sexual harassment and violence in the health framework, **the commission shall comply** with both of the following:

- (1) Ensure information included in the framework is **research based and appropriate for pupils of all races, genders, sexual orientations, gender identities, and ethnic and cultural backgrounds**. This may include, but shall not be limited to, reviewing other states' curricula.
- (2) **Consult with secondary health teachers and experts** in sexual harassment and violence curriculum.



Schools' Duty to Supervise

Under California's Negligence Law

Duty to Supervise Under California Law

“It is the **duty of the school authorities** to supervise **at all times** the conduct of the **children on the school grounds** and to **enforce those rules and regulations necessary to their protection.**”

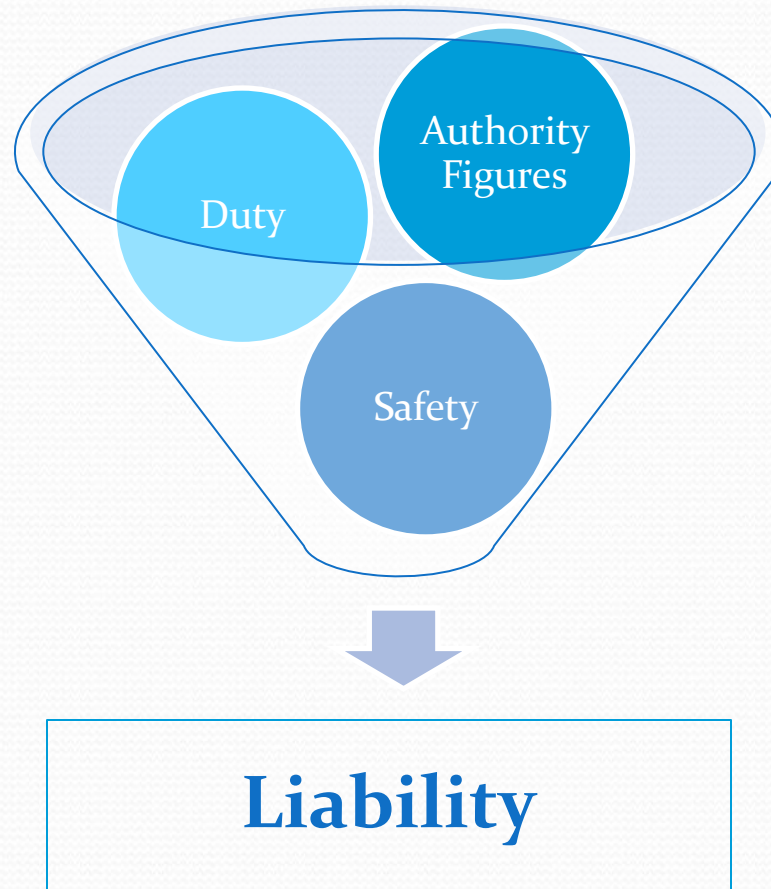
Taylor v. Oakland Scavenger Co., 17 Cal. 2d 594, 600 (1941)

Duty to Supervise Under California Law

“A public entity is **liable** for injury **proximately caused by** an **act or omission** of an **employee** of the public entity **within the scope of his employment** if the act or omission would [] have given rise to a **cause of action against that employee** or his personal representative.”

Cal. Gov. Code § 815.2

Duty to Supervise Under California Law



A faint, stylized image of a pair of scales of justice is centered in the background. The scales are rendered in a dark blue color, matching the background. The pans are slightly tilted, and the central beam is visible. The background is a gradient of blue, with lighter shades at the top and darker shades at the bottom.

Schools' Duty to Discipline Perpetrators

Under California Law

Duty to Discipline Perpetrators

- Students **must be expelled** for some types of teen dating violence-related assaults, such as committing or attempting to commit sexual assault or sexual battery, or brandishing a knife at another person
- Students **may be expelled** for sexual harassment where the accused's presence at school "causes a danger to persons or property or **threatens to disrupt the instructional process.**"

Duty to Discipline Perpetrators –

Due Process Procedures for Suspension

- In cases of **suspension**, the accused has **minimal procedural due process rights** that are satisfied with an informal meeting with the principal, the accused and his or her parents. Furthermore, **the accused is not entitled to know the identities of his accusers, especially when the case involves sexual misconduct**
- “In connection with a suspension of 10 days or less, [due process requires] that the student be given oral or written notice of the charges against him [or her] and, if [the student]denies them, an **explanation of the evidence the authorities have and an opportunity to present the [student’ s] side of the story.** ”

Granowitz v. Redlands Unified Sch. Dist., 105 Cal. App. 4th 349, 354-55

Duty to Discipline Perpetrators – Due Process Procedures for Expulsion

- In cases of **expulsion** there **must be a hearing prior to the expulsion**. The accused is given more procedural rights than in a suspension proceeding - the accused may question witnesses, review evidence and be represented by an attorney.

Students May Obtain a Restraining Order

A minor who is 12 years of age or older may obtain a temporary restraining order without a guardian.

Obtain an emergency restraining order from the police at any time. The emergency TRO lasts 5 days.

File for an order of protection with the court.

Judge can grant an order for up to 5 years, which is then renewable.



Model Teen Dating Violence Policies

www.cwlc.org

Why Schools Should Implement a Teen Dating Violence Policy

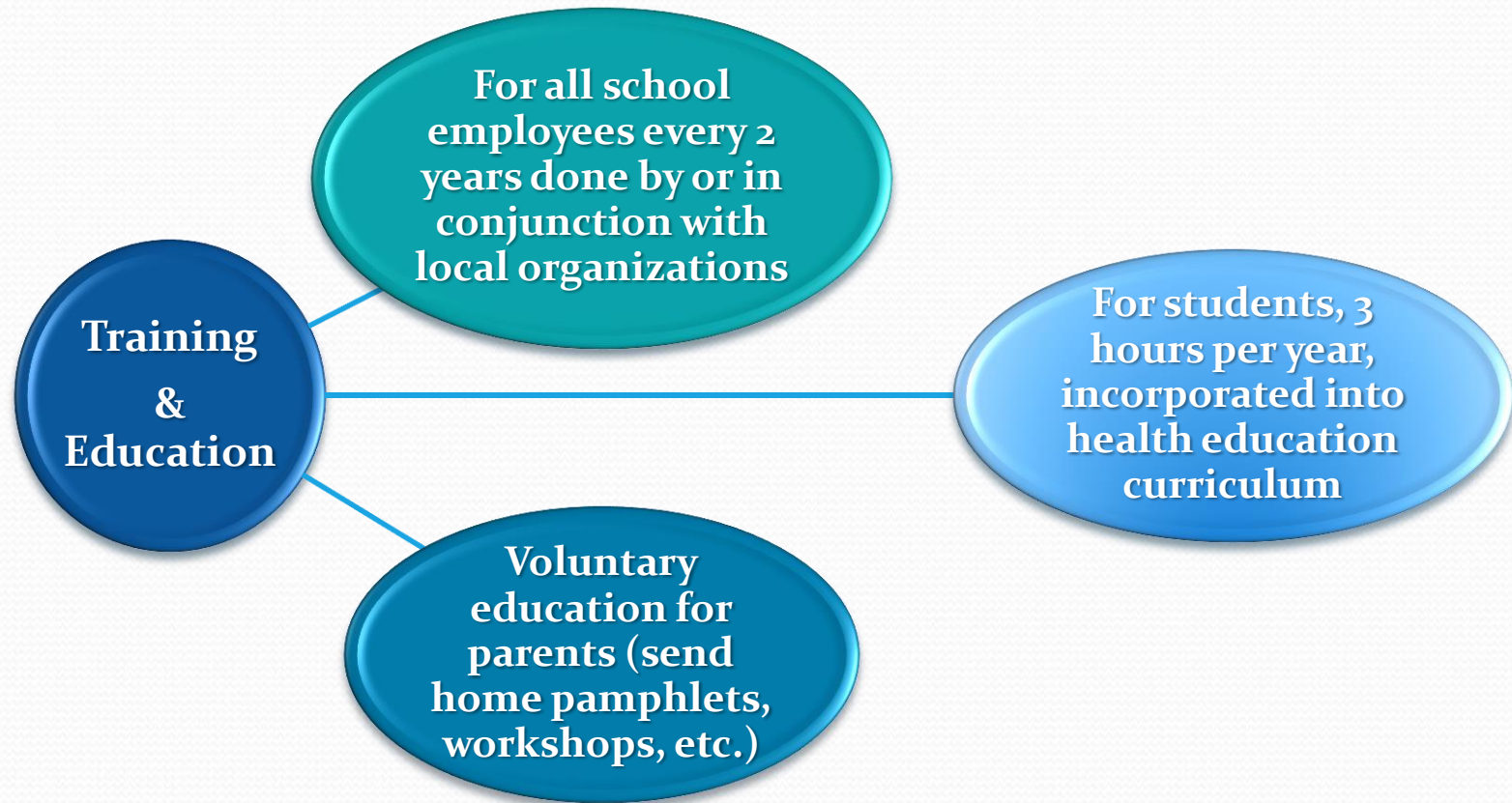
- ✓ Creates clear expectations for community members
- ✓ Ensures that students, staff, parents and faculty are aware of community standards
- ✓ Creates clear procedures for handling teen dating violence

Model Teen Dating Violence Policy

Victim's Bill of Rights

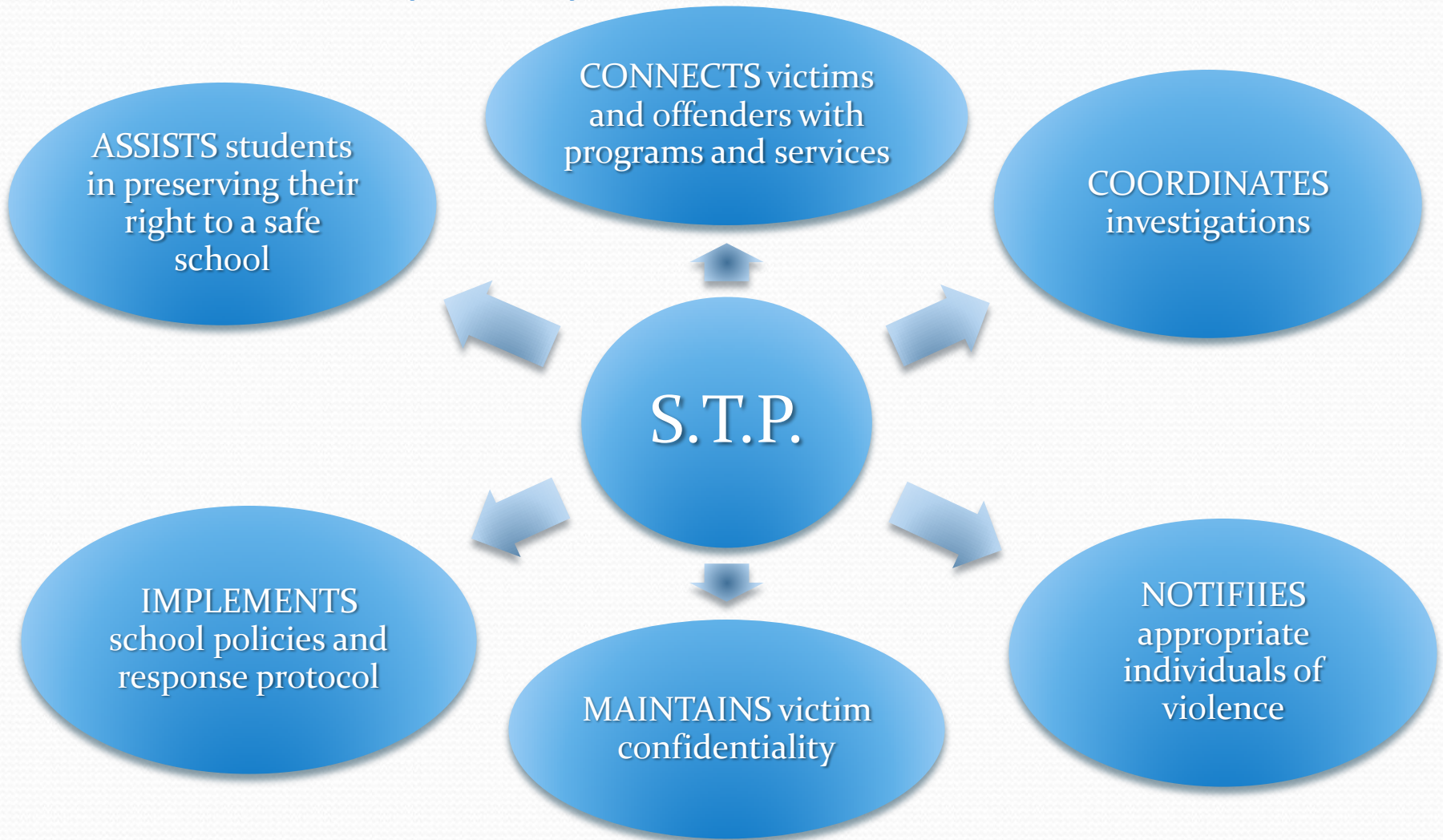
- ✓ Right to be treated with respect and dignity
- ✓ Right to be informed of his/her options with regard to notifying law enforcement authorities, and to be assisted in notifying such authorities
- ✓ Right to not have parents/guardians notified, if such notification would endanger the survivor/victim
- ✓ Right to be free from pressure not to report incidents to civil or criminal authorities
- ✓ Right to have any violence committed against him/her investigated by the proper civil and criminal authorities
- ✓ Right to transfer from school
- ✓ Right to referrals for services
- ✓ Right to be free from violence at school
- ✓ Right to have a support person present during investigation
- ✓ Right to full and prompt cooperation from school personnel in obtaining and securing evidence necessary for any potential criminal proceedings
- ✓ Right to be informed of any disciplinary actions taken against the offender
- ✓ 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
- ✓ Right to be free from sex discrimination and sexual harassment

Model Teen Dating Violence Policy Training and Education



Model Teen Dating Violence Policy

Specially Trained Personnel



Model Teen Dating Violence Policy Complaint Protocol

Complaint filed with S.T.P.



S.T.P. meets separately with
victim, offender and any witness



S.T.P. conducts an investigation



S.T.P. submits written report to
administrators



Administrators determine
discipline for offender

Model Teen Dating Violence Policy Documentation Protocol

All complaints must be documented.



Protect confidentiality by keeping files separate from academic records.



Documentation includes:

Initial
complaint,
facts, and
evidence

Referrals for
services

Disciplinary
actions taken

Accommodations

Follow-
up/status
report

Model Teen Dating Violence Policy

Possible Responses to Offenses

Suspension/Expulsion

A single act of dating abuse on school campus are grounds for long term suspension or expulsion

Notification of Parent/Guardian

Notify unless it is not in the best interest or impairs the safety of the victim

Reasonable Accommodations

Victim must be informed of his or her right to reasonable accommodations

Reasonable Supervision

Must be provided by the district

Enforcing Restraining Orders

School must report violations to law enforcement

Stay Away Contracts

Private agreements separate from court ordered protective orders; offender agrees to stay away from the victim

Model Teen Dating Violence Policy

Confidentiality

Information concerning a student's status as a victim of dating or sexual violence will be kept confidential



Except to the extent allowed by law:

- Mandatory Child Abuse Reporting
- Student's knowing, voluntary, and written waiver of confidentiality

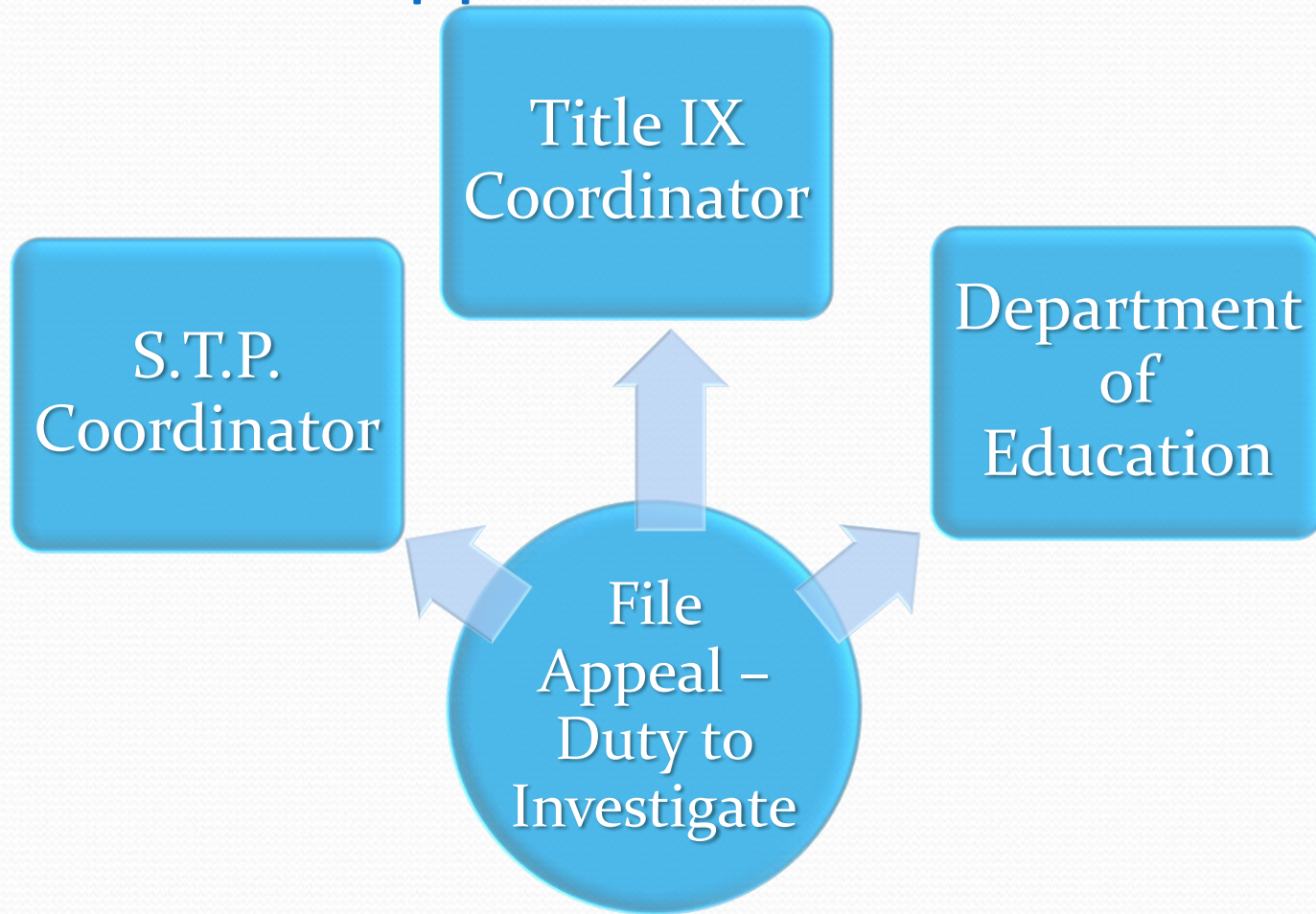


Inform students of privileged conversations and the scope of privileged conversations

Model Teen Dating Violence Policy



Model Teen Dating Policy Appeals Process



Model Teen Dating Violence Policy

Data Tracking

The District should track data on teen dating violence, including:

**Gender
of the
parties**

**Location
of the
incident**

**Type of
assault**

**Whether
services were
recommended
to the victim**

**Whether
weapons
were
used**

**Whether
disciplinary
actions
were taken**

**Number
and type of
witnesses**

Model Teen Dating Violence Policy

Notice of Policy

Notice of the Teen Dating Violence Policy:

- Annual letter to parents
- Posting of notices
- Inclusion of policy in student, parent, and employee handbooks

National Resources

- National Hotline on Dating Violence
1-800-799-SAFE, Toll-Free, English/Spanish
- National Sexual Assault Hotline: 1-800-656-HOPE
- GLBT National Youth Talkline: 1-800-246-7743
- Teen Help Website: <http://teenlineonline.org/teens/>
- Peace Over Violence - www.peaceoverviolence.org
 - Break the Cycle - www.breakthecycle.org
 - Love is Not Abuse – www.loveisnotabuse.com

California Resources

- Teen Abuse Hotline: 1-877-923-0700
Toll-Free, English/Spanish
- California Youth Crisis Line: 1-800-843-5200
Toll-Free, English/Spanish, parents or youth
- California Women's Law Center: 323-951-1041