

**INVISIBLE VICTIMS:
HOLDING THE EDUCATIONAL SYSTEM LIABLE
FOR TEEN DATING VIOLENCE AT SCHOOL**

CHRISTINE N. CARLSON*

I got to the edge of the school grounds, and he came walking toward me I kept telling him to leave me alone, looking down. When I didn't react to him, he grabbed me by my wrists and dragged me to his car. By this time, everyone was walking by on their way to school. Buses and teachers were driving up. My last hope was to yell for help I started calling, "Help me!" He started slapping me. I kept screaming for help. He grabbed from behind and put his hands over my nose and mouth. I couldn't breathe The last thing I saw was about twenty or twenty-five of my classmates standing within a few yards of me, watching.

—Salina Stone, high school senior¹

Salina's life was saved by her friend, who came running up during the incident to push off Salina's violent boyfriend. He continued smothering her even after she passed out. Although authority figures such as teachers were nearby, school administrators did not get involved until a student went to get a school monitor, who then tried to get the boyfriend to leave.² The boyfriend was eventually charged with disturbing the peace and was advised to leave Salina alone. In recounting her experiences, Salina mentions that even a few years after this incident, her ex-boyfriend continued to harass and stalk her, forcing her mother and her to flee the state and move every few months.³

Sadly, Salina is not alone in her experiences with violent boyfriends and classmates: a study released in August 2001 found that approximately twenty percent of high school girls ages fourteen to eighteen re-

* J.D., Santa Clara University School of Law, 2002. The author currently practices family law in California. She gratefully acknowledges the guidance of June Carbone in revising earlier drafts of this Article. She would also like to thank Santa Clara University School of Law's Center for Social Justice and Public Service for honoring her and this Article with the 2002 Herman Wildman Social Justice Writing Award for the Outstanding Student Essay on a Public Interest and Social Justice Topic.

¹ Salina Stone, *They Said I Was "Young and Immature,"* in *DATING VIOLENCE: YOUNG WOMEN IN DANGER* 28, 31 (Barrie Levy ed., 1991).

² *Id.*

³ *Id.* at 32.

ported experiencing some form of sexual or physical abuse at the hands of a boyfriend, intimate partner, or date,⁴ while other research indicates that nearly thirty percent of high school and college students experience dating violence at some point in their dating years.⁵ Although her story is extreme in that few teens have to move out of state to avoid the harassment inflicted by a former boyfriend or girlfriend, the type and level of violence Salina experienced is not unknown in adolescent dating relationships. The school's failure to act and the subsequent minimization of the problem by other authority figures are also all too common, despite public school's statutory duty to ensure the safety of all its students on school grounds during school hours.⁶

Schools have a unique responsibility to address the issue of dating violence for several reasons. First and foremost, schools force contact between a batterer and a victim in a way that most other environments do not. In a majority of states, students are required to attend school until their sixteenth birthdays and can be considered truant for failure to attend an assigned school on a regular basis.⁷ Furthermore, most students in the public school system have a very limited ability to choose which school they attend, unless they or their families are willing to move to another district or obtain an inter-district transfer. Students attending private schools have equally restricted choices, as parents may be unwilling to remove their child from a "good" (and often expensive) school because of adolescent squabbles.

Second, schools have a duty to provide protection for their students, including safeguarding them from physical harm inflicted by other students. For example, under the California Constitution, students and staff of every elementary and secondary school in California have the "inalienable right to attend campuses which are safe, secure, and peaceful."⁸

⁴ Jay G. Silverman et al., *Dating Violence Against Adolescent Girls and Associated Substance Use, Unhealthy Weight Control, Sexual Risk Behavior, Pregnancy, and Suicidality*, 286 JAMA 572 (2001).

⁵ Barrie Levy, *Introduction to DATING VIOLENCE: YOUNG WOMEN IN DANGER*, *supra* note 1, at 3–4. Dr. Levy is a therapist, consultant, and expert on teenage dating violence.

⁶ See, e.g., CAL. CONST. art. I, § 28(c), which states that California schools have "an obligation to protect pupils from mistreatment by other children." See also *In re Randy G.*, 28 P.3d 239 (Cal. 2001).

⁷ Seven states—Arkansas, Louisiana, Maine, Mississippi, Nevada, Pennsylvania, and Tennessee—require school attendance until the age of seventeen. An additional fourteen states—California, Florida, Hawaii, Kansas, Minnesota, New Mexico, Ohio, Oklahoma, Oregon, Texas, Utah, Virginia, Washington, and Wisconsin—and the District of Columbia require attendance until a student's eighteenth birthday. Some states also have exceptions to their compulsory attendance laws. For example, Arizona requires a student to remain in school until she turns sixteen or finishes the tenth grade, while Montana requires that a student complete the eighth grade and be sixteen or older in order to legally end her formal education. NAT'L CTR. FOR EDUC. STATISTICS, DEP'T OF EDUC., DIG. OF EDUC. STAT. 2001, Ch. 2, Tbl. 151 (May 2001), available at <http://nces.ed.gov/pubs2002/digest2001/tables/dt151.asp>.

⁸ CAL. CONST. art. I, § 28(c).

To meet this constitutional guarantee, school boards are required to establish rules and regulations that govern student conduct and enact disciplinary procedures.⁹ Most, if not all, school boards have already developed comprehensive policies regarding sexual harassment among students. Given that dating violence is a form of sexual harassment, schools are legally compelled to extend their efforts to combat sexual harassment to include student dating violence.

Third, schools have a unique opportunity to affect a teen abuser's behavior to a greater degree than actors in most other settings. Teens are at a critical stage in their emotional and social development; behaviors and attitudes toward relationships learned during these formative years frequently develop into lifelong patterns. Students who learn that adults and the justice system generally overlook, ignore, or minimize the seriousness of teen dating violence are at greater risk for carrying over a propensity for violence against intimates into adulthood.¹⁰ Given their inherent and substantial degree of control over students, as well as their unique role as educators, schools are best-positioned to identify the problem of teen dating violence among students and to address it as part of a comprehensive effort to reduce sexual harassment, teen violence, and bullying behavior generally.¹¹

Fourth, schools and school districts are liable for sexual harassment that occurs on school campuses if the harassment is known to a school authority figure who has the power to stop the harassment but ignores the problem or does not address it sufficiently.¹² As discussed below, dating violence and sexual harassment are almost identical in their definitions and behavior patterns. A school could therefore be civilly liable to a student who experiences dating violence on campus, informs the school of

⁹ CAL. EDUC. CODE § 35291 (Deering 2002).

¹⁰ At least three studies done in the last six years indicate that "younger age is a consistent risk factor for experiencing and perpetrating" domestic and dating violence. Silverman et al., *supra* note 4, at 579. This suggests that early intervention in teen dating violence for both victims and batterers would have an effect on adult dating behavior and may reduce the rates of adult battering.

¹¹ In fact, California law requires that a school district be notified, and in turn notify the principal, counselors, and any appropriate teachers, of any felony committed by a minor involving assault and battery (or other specifically enumerated felonies). The goal is to allow the school officials to "work with the pupil in an appropriate fashion, to avoid [the pupil] being needlessly vulnerable or to protect other persons from needless vulnerability" and to "protect students and staff." CAL. WELF. & INST. CODE § 827(b)(2) (Deering 2002).

¹² *See, e.g., Doe v. Petaluma City Sch. Dist.*, 949 F. Supp. 1415, 1427 (N.D. Cal. 1996) (finding that a student who complained to school officials of constant verbal harassment by peers stated a claim of action by showing the school's response was inadequate); *Franklin v. Gwinnett County Pub. Sch.*, 503 U.S. 60 (1991) (holding that damages under Title IX are available for a student who repeatedly suffered sexual harassment at school by her teacher, including coerced intercourse, and who reported the incidents to the school, which responded by merely beginning an investigation that was closed after the teacher resigned as part of an agreement to drop the charges against him).

the problem, and yet finds that nothing is done to help her or to punish her batterer.

A recognition and understanding that dating violence and domestic violence share the same underlying cause, that the patterns are the same for adults and adolescents, and that violence and abuse toward significant others are learned behaviors that can be "unlearned," gives schools a powerful incentive to combat future domestic violence among adults by preventing it in today's adolescents. Potential liability for schools that ignore dating violence should provide an additional strong incentive to address this issue. Many schools face significant liability for failure to address dating violence among their student populations, not only under federal statutes such as Title IX and 42 U.S.C. § 1983, but often also through common law and state tort law.

Part I of this Article begins with an exploration of the general problem of adolescent violence on school campuses. It then specifically focuses on the problem of dating violence, first analyzing the hidden nature of teen dating violence and then discussing the dynamics of dating abuse as compared to domestic violence. The Part ends with an overview of the societal and legal obstacles facing a teen when dealing with dating violence as a minor.

Part II discusses the special role the school system plays in the life of a minor, including an analysis of the modern school system's power over its students and the applicability of the *in loco parentis* doctrine to the current educational system.

Part III examines the legal aspect of school liability for dating violence by comparing litigation brought under Title IX with lawsuits brought under 42 U.S.C. § 1983, and concludes with both an analysis of common law tort liability and a focus on California statutory tort law as an effective model for other states.

Part IV explores suggested programs that will effectively address dating violence among teens and will satisfy school districts' legal obligation to address the issue.

References throughout this Article, and in fact in most of domestic violence literature, characterize the batterer as male and the victim as female. This accurately reflects the statistics reported by the Bureau of Justice¹³—ninety to ninety-five percent of domestic violence victims are

¹³ The Bureau of Justice Statistics (BJS) compiles the National Crime Victimization Survey (NCVS), which is

the Nation's primary source of information on criminal victimization. Each year, data are obtained from a nationally representative sample of roughly 50,000 households comprising nearly 100,000 persons on the frequency, characteristics and consequences of criminal victimization in the United States. The survey enables BJS to estimate the likelihood of victimization by rape, sexual assault, robbery, assault, theft, household burglary, and motor vehicle theft for the population as a whole as well as for segments of the population such as women, the elderly,

women, whereas only five to ten percent of victims of domestic abuse are men.¹⁴ In deference to the fact that the most comprehensive statistics of reported domestic violence show that it is a crime overwhelmingly perpetuated by men against women, this Article refers to victims as “she” and batterers as “he” for simplicity and consistency, but in no way means to minimize the experiences of battered men.

I. THE PROBLEM OF YOUTH VIOLENCE AND TEEN DATING VIOLENCE

A. School Violence Among Adolescents

Everybody had given me a nickname: Screech, the nerdy character on *Saved by the Bell*. . . . I got stuff thrown at me, I got spit on, I got beat up. Sometimes I fought back, but I wasn't that good at fighting. . . . After a while, [the principal] told me to just start ignoring everybody. But then you can't take it anymore.

—Evan Ramsey, sixteen-year-old convicted of murder for killing a fellow student and the high school principal at Bethel Regional High School in Bethel, Alaska¹⁵

In order to understand dating violence, it is useful to begin with an examination of school violence generally. Shootings on school campuses are extremely rare events that grab the public's attention and temporarily

members of various racial groups, city dwellers, or other groups. The NCVS provides the largest national forum for victims to describe the impact of crime and characteristics of violent offenders.

BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, CRIME AND VICTIMS STATISTICS: BJS CRIMINAL VICTIMIZATION DATA COLLECTIONS, at <http://www.ojp.usdoj.gov/bjs/cvict.htm#ncvs> (last revised Jan. 29, 2003).

¹⁴ BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SELECTED FINDINGS: VIOLENCE BETWEEN INTIMATES, REP. NCJ-149259 (Nov. 1994). Domestic violence and dating violence are notoriously underreported crimes, so this statistic may not in fact be accurate. For instance, the rate of battering by women on men may in fact be higher but is not reflected in the Bureau of Justice Statistics because men are even less willing than women to admit they are victims of domestic or dating violence. Another explanation for the statistic comes from studies suggesting that the rates of domestic violence between men and women are comparable, but that men's violence tends to inflict much more serious injury or death on women than women's violence on men. See PATRICIA TJADEN & NANCY THOMENNES, NAT'L INST. OF JUST. & CTR. FOR DISEASE CONTROL, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY, REP. NCJ-181867 (JULY 2000) (reporting that men make up approximately thirty-six percent of physical assault victims attacked by an intimate partner, but that twice as many women as men were injured as a result of a physical assault by an intimate partner). The statistic also may not necessarily take into account same-sex battering, which is often not reported and until recently has not been addressed by the domestic violence research community.

¹⁵ Richard Jerome, *Disarming the Rage*, PEOPLE, June 4, 2001, at 56.

focus government attention on violence among students. School shootings are the highly visible "tip of the iceberg," revealing a relatively hidden problem of school violence, including teen dating violence. Efforts to document adolescent violence show that many students today experience peer violence as a part of their lives,¹⁶ and that teens and even pre-teens are responding to typical juvenile taunts with increased and deadlier force.¹⁷ These findings explain, in part, why dating violence has gained the level of acceptance it has among adolescents, and underscore the urgency facing schools in dealing with this potentially lethal behavior.

Despite efforts by government agencies and community outreach programs, violence among adolescents and young adults continues to grow. According to the Center for Disease Control's 2001 Youth Risk Behavior Survey (YRBS), 33.2% of high school students nationwide reported being in a physical fight in the preceding twelve months.¹⁸ Of those students, four percent had injuries serious enough to require attention by medical staff.¹⁹ Homicide is the second leading cause of death for youth ages ten to twenty-four;²⁰ motor-vehicle crashes are the first with suicide as the third.²¹

Schools and school campuses are not immune from student violence. The YRBS also reported that 12.5% of high school students nationwide had been in a fight on school grounds in the preceding twelve months, and almost nine percent of students were threatened or injured with a weapon while on school grounds within the preceding year.²² During the 1996-1997 school year, ten percent of public schools reported at least one serious violent crime to law enforcement.²³

As a result, students are increasingly concerned for their safety and are taking more drastic measures to protect themselves from perceived threats and potential harm. Six percent of students surveyed reported carrying a weapon on school grounds within the thirty days prior to being surveyed, and over six percent of students stated they missed at least one day of school because they felt unsafe.²⁴ Another study reported that

¹⁶ *Id.* at 56-57.

¹⁷ *Id.* at 56-61.

¹⁸ Jo Anne Grunbaum et al., CTR. FOR DISEASE CONTROL, *Youth Risk Behavior Surveillance—United States, 2001*, MORBIDITY & MORTALITY WEEKLY REP., 2002:51 (SS-04)1-64, at <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss5104a1.htm> (last visited Mar. 3, 2003).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ NAT'L MENTAL HEALTH ASS'N, *Facts on Violence and Youth* (citing the U.S. Dep'ts of Just. and Educ.), at <http://www.nmha.org/children/prevent/youthvio.cfm> (last visited Mar. 3, 2003).

²⁴ Grunbaum et al., *supra* note 18.

160,000 students skip school each day because of intimidation by their peers.²⁵

In some cases, adolescent threats and intimidation lead to severe retaliation by frustrated and angry students. The 1999 deaths of thirteen students at Columbine High School in Colorado and the March 5, 2001 shooting of fifteen students at Santana High School in Santee, California are high-profile examples of the level of anger and frustration felt by teens. Evan Ramsey, a sixteen-year-old convicted for the shooting deaths of a classmate and his high school principal in Bethel, Alaska, explained that he “felt a sense of power with a gun. It was the only way to get rid of the anger.”²⁶ The motive of the fifteen-year-old shooter at Santana High School was lethal revenge for the torment he had known at the hands of other students, while the two shooters at Columbine appear to have acted out of retaliation for feeling alienated and bullied.²⁷

In the aftermath of these dramatic school shootings, more and more communities are focusing on student and teacher safety in the classroom and on campus. Schools are turning to more drastic measures to ensure the safety of their students and faculty, including hiring security officers to patrol school grounds and placing multi-million-dollar metal detectors at school entrances to detect weapons carried by students.²⁸ The concern over school violence and the ramifications for teachers has even led the National Education Association to offer teachers a homicide-death benefit, which provides \$150,000 in compensation to the families of teachers killed while at school.²⁹

Despite the fact that high-profile shootings have become synonymous with teen violence, the much more common and pervasive problem of teen dating violence on high school campuses has been largely ignored. Both types of violence stem from the same causes—usually frustration, anger, and a desire for control over others; dating violence, however, gets little attention in comparison to the much rarer act of student shooting violence.

²⁵ Jerome, *supra* note 15, at 56.

²⁶ *Id.*

²⁷ *Id.* An interesting parallel may in fact exist between students involved in school shootings and domestic violence victims who kill their partners. Perhaps both groups perceive retaliatory violence as the final—or only—solution to ending the ongoing torment and abuse they suffer. If this is the case, the psychological aspects of both patterns are worth researching, but such a comparison is beyond the scope of this Article.

²⁸ KAREN ZEINERT, *VICTIMS OF TEEN VIOLENCE* 85–86 (Enslow Publishers 1996).

²⁹ *Teachers Offered Extra Homicide Insurance* (July 26, 2001), available at http://abcnews.go.com/sections/us/DailyNews/teacher_insurance010726.html.

B. The Hidden World of Teen Dating Violence

She broke [up] with him because he was beating her. Sometimes he'd get mad at her for no reason.

—Friends of sixteen-year-old Catherine Tran, killed by her boyfriend in 1996 at their high school shortly after she ended their relationship³⁰

Despite the high profile that school shootings and adolescent violence currently occupy, teen dating violence receives very little attention—less attention, in fact, than domestic violence, juvenile crime, or date rape.³¹ Recent research on teen dating violence indicates, however, that approximately one out of five teens are in an abusive relationship,³² and 25.5% of all women, including teens, will experience intimate violence at some point in their lives.³³ Ten percent of intentional injuries to adolescent girls are reported to be the result of dating violence by male partners.³⁴ Recent research also indicates that adolescent women who experience dating violence are at an increased risk for substance abuse, eating disorders, sexual risk behavior, pregnancy, and suicide.³⁵ These facts indicate that dating violence among adolescent girls is “extremely prevalent,”³⁶ but remains a hidden problem that few recognize and even fewer take steps to address.

Teen dating violence has been sporadically studied over the course of the past twenty years, but it is only in the last decade that serious attention has been paid to the problem. It was not until the first studies about dating violence were published in the 1980s that researchers and other members of the domestic violence field recognized that domestic

³⁰ Jeff Leeds & Nicholas Riccardi, *Murder-Suicide Creates Frenzy at High School*, L.A. TIMES, Oct. 23, 1997, at A1.

³¹ Christina Nifong, *Teens Learn to Walk Away from Dating Violence*, CHRISTIAN SCI. MONITOR, Dec. 16, 1996, at 10. Teen dating violence is not mutually exclusive or completely distinguishable from domestic violence, date rape, and juvenile crime; all four are interrelated. Domestic violence is a more generic term that describes violence among couples, usually adults. Dating violence is a subpart of domestic violence that focuses on violence in relationships involving unmarried partners, including teens. Date rape is sexual abuse and a form of dating violence. Domestic violence is a crime in most states, and an increasing number of states are allowing adolescent abuse to come under the definition of domestic violence. Thus, adolescent offenders involved in abusive relationships technically commit a crime every time an abusive episode occurs.

³² Silverman et al., *supra* note 4, at 572.

³³ TJADEN & THOENNES, *supra* note 14, at 9.

³⁴ Silverman et al., *supra* note 4, at 572.

³⁵ *Id.* Silverman notes that it is unclear whether adolescents are subject to high risk behaviors because they are in an abusive relationship, or whether the high risk behaviors expose them to individuals who are more likely to perpetrate violence against partners. *See also* L. K. Hamberger & Bruce Ambuel, *Dating Violence*, 45 PEDIATRIC CLINICS N. AM. 381 (1998).

³⁶ Silverman et al., *supra* note 4, at 578.

violence was not limited to married adults, but also occurred with similar frequency among unmarried adults and teenagers. Despite this recognition, the few studies focusing on dating violence among adolescents were sporadic and limited in scope.³⁷ A study released in August 2001 points out that prior to its publication, “no representative epidemiologic studies of lifetime prevalence of physical and sexual dating violence experienced by adolescents have been conducted to provide a reliable estimate of the scope of the problem.”³⁸

Several reasons exist for the lack of attention paid to dating violence among adolescents. One is the commonly held misperception that dating violence does not really exist among teens, and, even if it does, it is not a serious problem. Unfortunately, the relative lack of research on dating violence contributes to this myth, especially since it stems from circular reasoning: because there is no evidence the problem exists, there is no need to research it, and because no research documents the problem, there is no reason to believe it exists. The results of several studies confirming the seriousness and widespread scope of teen dating violence should help to eradicate this myth, but it will take time to do so.

Others believe that while teen dating violence may in fact exist, it is not a serious problem because, unlike adults, teens do not usually have serious romantic relationships and can easily leave their partners if the relationship becomes abusive. Individuals who adhere to this innocent notion of “puppy love” among teens are probably the ones most likely to advise a young victim to simply break up with her partner. Adults, including a teen’s parents, may minimize the bonding that has occurred between two teens, and may not recognize that teens take their relationships very seriously.³⁹ At least three research studies have indicated that parents themselves may contribute to the problem of teen dating violence by denying or minimizing the problem.⁴⁰

A teen’s unwillingness to discuss dating violence also contributes significantly to a lack of focus on teen dating violence. One explanation for this unwillingness is that teens may not recognize their partner’s behavior as abusive. Teens typically have little dating experience and may not understand that abuse encompasses much more than a black eye, a split lip, or a series of bruises. Moreover, the showering of attention on a victim by an abuser is often flattering and perceived as proof that the abuser loves and cares about the victim.⁴¹ Adolescents also have a strong

³⁷ See *id.* at 572.

³⁸ *Id.*

³⁹ Levy, *supra* note 5, at 5.

⁴⁰ Silverman et al., *supra* note 4, at 572. See also Jay Silverman, *Social Ecology and Entitlements Involved in Battering by Heterosexual College Males: Contributions of Family and Peers*, 12 VIOLENCE & VICTIMS 14 (1997); Walter S. DeKeseredy & Martin D. Schwartz, *Male Peer Support and Woman Abuse: An Expansion of DeKeseredy’s Model*, 13 SOC. SPECTRUM 393 (1993).

⁴¹ Denise Gamache, *Domination and Control: The Social Context of Dating Violence*,

tendency to minimize the abuse, possibly contending that partners do not beat them but instead only slap or tickle them.⁴² The abuser himself often refuses to accept responsibility for his actions while maintaining that any violence inflicted is the result of the victim's "provocative" behavior,⁴³ and that he was within his rights to punish her for his anger.⁴⁴

Another reason why teens do not volunteer information concerning their abusive relationships is the psychological desire for independence. As a result, teens are relatively unlikely to approach their parents with requests for help. This situation is compounded if they have a conflict with or are isolated from their families to the point that they do not expect, ask for, or receive guidance or support from them regarding their relationships.⁴⁵ In a time when a teen is desperate for recognition that she is no longer a child, she is usually unwilling to admit to her parents that she needs help with her relationship. As one eleventh-grader explains, "Parents go overprotective at that point. You work so hard to get your independence. One thing like that could just blow it all, and you'd have to start all over again. If you just leave it and don't tell your parents, you still have your independence."⁴⁶

C. *The Dynamics of Teen Dating Violence*

Verbal abuse always starts first. He starts to totally belittle you: "You're so stupid. Shut up." It gradually builds up. He thinks he can take out all his frustrations on you.

—Rosalind Wiseman, Executive Director of the Empower Program, Bethesda, Maryland⁴⁷

Many definitions of dating violence exist, but for the purposes of this discussion, Dr. Barrie Levy's definition is the most appropriate: teen dating violence is "a pattern of repeated actual or threatened acts that physically, sexually, or verbally abuse a member of an unmarried heterosexual or homosexual couple in which one or both partners is between thirteen and twenty years old."⁴⁸ This definition is ideal because it includes the fact that one or both partners is young and therefore allows for a slightly different relationship dynamic than that found in an adult rela-

in *DATING VIOLENCE: YOUNG WOMEN IN DANGER*, *supra* note 1, at 77–78.

⁴² Marilyn Gardner, *Teaching Teens to Put a Stop to Dating Violence*, *CHRISTIAN SCI. MONITOR*, Mar. 11, 1996, at 12.

⁴³ "Provocative" behavior can include incidents such as talking to another boy, not being home when the batterer calls, or going out with girlfriends.

⁴⁴ Gamache, *supra* note 41, at 77.

⁴⁵ Levy, *supra* note 5, at 5.

⁴⁶ Gamache, *supra* note 41, at 80.

⁴⁷ Gardner, *supra* note 42, at 12.

⁴⁸ Levy, *supra* note 5, at 4.

tionship.⁴⁹ It also acknowledges that no single incident determines an abusive relationship, but is rather a pattern of control and power over the victim by the abuser. Finally, it mentions the legal requirement that the parties involved be romantically involved to some degree, as opposed to simply being strangers, co-workers, fellow students, or neighbors.⁵⁰

Whether in dating violence or domestic violence, an abuser's desire for control and power over his victim is at the heart of the abuse.⁵¹ The Domestic Abuse Intervention Project in Duluth, Minnesota, developed a well-known "Control and Power" wheel to explain how abusers control their victims.⁵² Control can involve many things, including coercion, threats, and intimidation. Generally, control manifests itself through two elements working in tandem against the victim: various kinds of abuse and the cycle of violence.

1. *The Four Forms of Violence*

Violence has been classified into four distinct groups: physical abuse, verbal and emotional abuse, sexual abuse, and destruction of property.⁵³ The key to understanding domestic and dating violence is that although there are four separately recognizable categories, they can and often do overlap. Rarely will a batterer use just one form of violence to control his victim. For example, a batterer might destroy his victim's favorite keepsake (destruction of property) in order to intimidate her and cause her a great deal of grief and anger (emotional abuse). The common thread between all of these forms of abuse is that coercion and control are at the heart of all abusive relationships, no matter what form the violence takes or how often the abuse occurs.

Physical violence is the most obvious and recognizable form of violence between intimates, and ranges from pinching and slapping to punching, kicking, and hitting. The results of physical abuse are also the

⁴⁹ For further discussion of this issue, see *infra* text accompanying notes 80–84.

⁵⁰ A recently enacted California statute defines a "dating relationship" as "frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations." CAL. FAM. CODE § 6210 (Deering 2002). For recent California case law discussing dating relationships, see *Oriola v. Thaler*, 84 Cal. App. 4th 397 (Cal. Ct. App. 2000) (holding that four dates, limited casual encounters, and e-mail correspondence between two individuals does not rise to the level of a dating relationship, and therefore denying the application for a domestic violence restraining order). The controlling factor in *Oriola* seems to be that Appellant advised Respondent at the outset that she was not interested in a romantic relationship.

⁵¹ Clare Dalton, *Domestic Violence, Domestic Torts and Divorce: Constraints and Possibilities*, 31 NEW ENG. L. REV. 319, 333–36 (1997).

⁵² See "Power and Control" wheel diagram, DOMESTIC ABUSE INTERVENTION PROJECT, 206 West Fourth Street, Duluth, MN, 55806.

⁵³ BARRIE LEVY, IN LOVE AND IN DANGER: A TEEN'S GUIDE TO BREAKING FREE OF ABUSIVE RELATIONSHIPS 31–36 (1993). For examples of statutory abuse definitions, see CAL. FAM. CODE §§ 6203 and 6320 (West 1994), as well as CAL. PENAL CODE § 12028.5(a)(1)(D) (West 2000).

most visible. Abuse victims often have bruises and other more serious injuries, such as broken limbs. The degree of physical violence can also make a difference in the injuries sustained by a victim. Hitting with an open hand (a slap) will cause less physical damage than hitting with a closed hand (a fist). The circumstances surrounding the violence are also important. Shoving a person against a wall might not itself cause much physical injury (issues of emotional abuse and intimidation aside), but shoving a person down a flight of stairs is an altogether different matter. Bruises in unusual places and patterns of repeated injuries justified by flimsy excuses are often red flags that the person is experiencing domestic or dating violence.

Emotional abuse is the most hidden, yet often the most detrimental, form of abuse. Victims of emotional abuse suffer through any combination of insults, humiliation, intimidation, and other forms of verbal abuse, resulting in lowered self-esteem, depression, and extreme confusion. In fact, most women begin their relationships with relatively high self-esteem and a feeling of self-worth; self-esteem problems develop only after enduring a constant stream of criticism designed to destroy the victim's independence.⁵⁴ Common forms of emotional abuse include yelling at the victim in private (and sometimes in public), as well as degrading her through name-calling or other verbal epithets. Forms of intimidation, such as smashing objects, displaying weapons, and driving erratically, also effectively control young and adult victims alike.⁵⁵ Batterers frequently utilize isolation tactics as well.⁵⁶ A batterer may call or check on the victim frequently or require her to wear a pager or carry a cell-phone so he knows where she is and what she is doing at all times. A batterer may forbid his girlfriend from going out with friends, or, in extreme cases often involving older men, he may convince his girlfriend to move in with him, granting him more effective control over her.

In some cases, emotional abuse takes an even more serious turn, such as when a batterer levies threats against the victim or her family. Suicide threats are particularly frightening for the victim, especially if the batterer has the means to follow through readily available.⁵⁷ A batterer can also obtain compliance from his victim by threatening to expose her secrets, such as revealing her sexual activity to her parents or friends.⁵⁸

Sexual abuse includes rape, attempted rape, and coercive sex. Rape and attempted rape are generally recognized terms and can be defined somewhat simply as sexual intercourse or attempted intercourse against

⁵⁴ Gamache, *supra* note 41, at 75.

⁵⁵ *Id.* at 77.

⁵⁶ *Id.* at 79.

⁵⁷ *Id.* at 76.

⁵⁸ *Id.*

the victim's will.⁵⁹ Coercive sex usually occurs in situations where the person "consents" to sex in order to get out of a dangerous situation, such as a boyfriend driving his girlfriend to a remote location and telling her that if she does not have sex with him, he will leave her there. She may agree in order to ensure a ride home, but because the sexual activity was not freely consented to by both parties, it could still be construed as rape.⁶⁰

Dating violence can also occur through destruction of pets and property. Slashing tires, ripping apart photographs, hurting or killing a family pet, or destroying personal items terrorizes a victim. These acts send a message to the victim that "she could be next," regardless of whether the batterer actually physically injures his victim during or after these episodes.

Financial control as a form of domestic violence is sometimes manifest in teen dating relationships, as well. The batterer may discourage or forbid his victim from seeking employment or an education, or may make work or school so difficult or frustrating that the victim gives it up entirely. While a batterer in a dating relationship does not usually have this degree of financial control over his victim, some teenage victims have reported that their abusers required them to turn over their paychecks and any other money they received.⁶¹ A few victims have even reported that their boyfriends forced them to steal money from their parents or to engage in illegal acts and turn over any profits they made.⁶²

2. *The Cycle of Violence*

Dr. Lenore Walker's groundbreaking study on domestic violence, published in 1979, first developed and introduced the idea of the cycle of violence. After interviewing hundreds of women hospitalized after altercations with their spouses or significant others, Walker found that although the facts of the stories varied widely, the patterns of violence endured by these women were uncomfortably and surprisingly similar. As a result of her work, she developed the "cycle of violence" to explain the pattern she observed. She categorized the cycle in three stages: the ten-

⁵⁹ In California, for example, rape includes, among other things, any act of sexual intercourse accomplished by means of "force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another." CAL. PENAL CODE § 261(a)(2) (West 1999). This definition can include coercive sex as a form of rape, because the victim's "consent" was obtained by duress. Consent not voluntarily given of the victim's own free will is invalid. CAL. PENAL CODE § 261.6 (West 1999). The issue of consent is likely a moot point in cases of sexual intercourse involving a minor, as a person under the age of eighteen is legally incapable of consenting to sexual intercourse, and any sexual intercourse with a minor is statutory rape. CAL. PENAL CODE § 261.5 (West 1999).

⁶⁰ *Id.*

⁶¹ Gamache, *supra* note 41, at 76.

⁶² *Id.*

sion-building stage, the explosion/battering stage, and the honeymoon or reconciliation stage.⁶³

The tension-building stage is characterized by minor incidents between the batterer and victim.⁶⁴ The batterer often becomes jealous and possessive, while the victim tries to calm him down any way she can.⁶⁵ The victim withdraws more and more from the batterer, the tension escalates between the two, and minor incidents increase.⁶⁶ Finally, the tension will become unbearable, and the battering incident will take place.⁶⁷

The second stage, the actual battering incident, can last anywhere from a few minutes to a day or two, and usually involves physical abuse, sexual abuse, emotional abuse, or some combination of the above.⁶⁸ Battering occurs when the abuser loses control over his behavior.⁶⁹ Often the anger stems from "something she did" and the battering is an attempt to "teach her a lesson."⁷⁰ In some cases, the violence is so severe that battered women seek medical attention at a local emergency room: one study reports that of all patients seeking emergency-room treatment for violence-related injuries, seventeen percent are there for treatment of injuries inflicted by intimates.⁷¹

Reconciliation is welcomed by both people as a respite from the earlier tension and violence. Known as the "honeymoon" stage, this phase of the cycle is characterized by the batterer's remorse and a period of unusual calm.⁷² The batterer often bombards his victim with profuse apologies, presents, flowers, declarations of love, and promises that the abuse will never happen again.⁷³ More often than not, the victim chooses to believe that the batterer is sincere in his vow that the abusive incident

⁶³ LENORE WALKER, *THE BATTERED WOMAN SYNDROME* 95-96 (Springer Publishing Company 1984). Ms. Walker's work has been criticized in recent years, but the groundwork she laid in the 1970s and 1980s is still an integral part of domestic violence research today.

⁶⁴ LEVY, *supra* note 53, at 45-46.

⁶⁵ *Id.* at 46. *See also* WALKER, *supra* note 63, at 95.

⁶⁶ WALKER, *supra* note 63, at 96.

⁶⁷ Sometimes the victim will "pick a fight" because she knows the battering is inevitable and simply wants to get it over with. The victim does not do this because she enjoys the battering, but rather, because it is a way to have some control over when the violence will occur and the situation diffused.

⁶⁸ WALKER, *supra* note 63, at 96.

⁶⁹ LEVY, *supra* note 53, at 47.

⁷⁰ *Id.* at 46.

⁷¹ MICHAEL R. RAND, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, VIOLENCE-RELATED INJURIES TREATED IN HOSPITAL EMERGENCY DEPARTMENTS I, REP. 156921 (Aug. 1997), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/vrithed.pdf>. Another study reports that fifty-four percent of women seeking treatment in emergency rooms have been threatened or injured by an intimate partner at some point in their lives, while twenty-four percent reported being injured by their current partners at some point in the past. *See* Abbott et al., *Domestic Violence Against Women: Incidence and Prevalence in an Emergency Department Population*, 273 JAMA 1763, 1765 (June 1995).

⁷² LEVY, *supra* note 53, at 47; WALKER, *supra* note 63, at 96.

⁷³ WALKER, *supra* note 63, at 96.

was truly the last one, and that he will change his behavior. This third phase provides positive reinforcement to the victim for remaining in the relationship, often resulting in her return to her batterer, and frequently triggering the next cycle of violence as the tension begins to rebuild.⁷⁴

Two facts are worth noting about the effect of long-term battering on the cycle of violence. First, the period of time between cycles tends to diminish over time.⁷⁵ As the battering continues in a relationship, violent episodes that used to be months apart can occur weeks or even days apart.⁷⁶ Second, as the battering continues, it tends to escalate in severity.⁷⁷ Abuse that starts out as slaps can increase to punches and kicks and, at times, ends in death. For instance, eighty-eight percent of domestic violence fatalities in Florida had a documented history of physical abuse.⁷⁸ An equally alarming statistic reports that twenty percent of female homicide victims nationwide are between the ages of fifteen and twenty-four, and that investigation into these victims' dating relationships typically revealed patterns of control and physical abuse by their partners that escalated over time.⁷⁹

The pattern described above is the same for teens and adults. However, the cycle could prove to be even more dangerous for young women because of the exaggerated and rigid gender stereotypes teens tend to follow, as well as the often prevalent belief among young men that a boyfriend is entitled to control his girlfriend's behavior through any means available.⁸⁰ This macho ideal is frequently supported and encouraged by the male's peers.⁸¹ Meanwhile, the young woman's peers may not be supportive of her decision to leave the relationship or talk to an adult about what is happening. Having a boyfriend (especially a popular one) is a status symbol among middle school and high school students, and adults are often perceived as not understanding teen social dynamics. A young woman may thus be less likely to understand that what is happening to her is wrong. Because of her lack of dating experience, she may often dismiss the violence as isolated, one-time incidents and not trust herself to take appropriate actions on her own behalf.⁸² The young man may also have difficulty seeing how something that his peers support and that fits in with what a "man" does could be wrong and against the law, especially

⁷⁴ *Id.*

⁷⁵ LEVY, *supra* note 53, at 45.

⁷⁶ *Id.*

⁷⁷ WALKER, *supra* note 63, at 96.

⁷⁸ FLA. GOVERNOR'S TASK FORCE ON DOMESTIC AND SEXUAL VIOLENCE, FLORIDA MORTALITY REVIEW PROJECT 46-48, tbls. 14-21 (1997).

⁷⁹ Gamache, *supra* note 41, at 75 (citing Ellen Z. Kessner, *Sweetheart Murders: When Teen Boyfriends Turn Into Killers*, REDBOOK, Mar. 1988, at 130).

⁸⁰ *Id.* at 74.

⁸¹ Levy, *supra* note 5, at 5; LEVY, *supra* note 53, at 53.

⁸² Gamache, *supra* note 41, at 74.

when it appears to be so effective in obtaining the desired results.⁸³ Therefore, although the cycle of violence is the same for adults and adolescents, the unique dynamics found among adolescent relationships could lead to more serious consequences for teens overall.⁸⁴

D. Obstacles to Abused Adolescents Obtaining Help

If an adult woman says, "Somebody beat me up," she is going to get a different response 9 times out of 10 (than) if a 15-year-old says, "My boyfriend beat me up."

—Barrie Levy, therapist, consultant, and expert on teenage dating violence⁸⁵

Teenagers in abusive relationships face a number of obstacles in obtaining help. One major obstacle is a general lack of understanding among teens that abuse is wrong and illegal. Teens are just beginning to experience dating relationships and may not initially understand that hitting and violence are not a normal or expected part of a relationship.

Even if a teen did realize that her partner's behavior is not normal and could be considered abusive, she faces other obstacles to getting help. First, teenagers are minors, and therefore do not have standing to seek legal help on their own. In most states, a teen wishing to obtain a restraining order against a batterer must ask an adult (often a parent or neutral guardian) to bring the suit on her behalf. Some states have created narrow exceptions to this rule. California, for example, allows minors over the age of twelve to bring suits on their own for the sole purpose of obtaining restraining orders or responding to charges of domestic or dating violence.⁸⁶ However, the majority of states still require that minors be represented by a guardian, who is either chosen by the minor or appointed by the court during litigation. Because teens tend to reject assistance from adult authorities and instead rely on peers, the fact that a teen must involve an adult in her restraining order suit is frequently a deterrent to seeking legal help in all but the most serious cases.⁸⁷

Second, because legal responsibility for the health and welfare of a minor rests with another adult, few community services are able or willing to assist minors with their legal problems. This creates a gap in avail-

⁸³ *Id.* at 72.

⁸⁴ This may be especially true in cases where a younger woman is dating an older man. *Id.* at 73–74. Because of the inherent inequality of power between these two partners, a young woman may suffer more frequent or more severe dating violence than that seen between partners closer in age.

⁸⁵ Paula Kamen, *Little Being Done About Dating Violence, Researcher Claims*, CHI. TRIB., Nov. 10, 1991, at 5.

⁸⁶ CAL. CIV. PROC. CODE § 372 (Deering 2002).

⁸⁷ Gamache, *supra* note 41, at 74.

able services, especially for teens who have children. For example, very few battered women's shelters will take an unemancipated teen, and youth shelters are not licensed to accept a teen who has a child.⁸⁸ Therefore, unlike adults, teens who feel that they are unsafe in their homes usually do not have the option of leaving and going to a shelter.

If a minor does take the rare step of reporting the batterer to the authorities, be it the police, school officials, or the judiciary, she is not likely to receive much sympathy or assistance. Adults might assume that the teen is overreacting or dramatizing her experiences. Most police departments, if not all, are now trained to deal with domestic violence, but it is likely that significantly fewer police officers have had any training specifically concerning teen dating violence. Given that in a majority of states, domestic violence by definition occurs only between adults who are or have been married or who have a child together,⁸⁹ the police might tell the teen that "they are just kids"⁹⁰ and that the police are unable to do anything to help her under the law.

A teen reluctant to approach the police department might instead seek out the assistance of her school officials, but this may not prove any more successful than contacting the police. One report suggests that "[s]chool officials sometimes ignore the relationship violence in their midst or perceive it as isolated incidents instead of what may be an escalating pattern."⁹¹ This is likely what happened when a principal suspended two students for fighting after he saw a boyfriend knock his girlfriend down, punch her repeatedly, and emerge from the beating with no harm whatsoever while his girlfriend was badly bruised.⁹²

Should a case of dating violence among teens eventually enter the judicial system, it will likely be heard in the county's juvenile court, unless the county specifically allows the case to be heard by a family court

⁸⁸ In 1995, the Northern California chapter of the March of Dimes opened one of the very few shelters for teen mothers in San Francisco, but it closed a few years later. Two other states, Minnesota and Illinois, have made specific efforts to deal with the lack of shelter resources for abused teens. The Harriet Tubman Women's Center in Minnesota provides shelter to parenting teens ages sixteen and older. Illinois changed its licensing requirements for shelters in order to allow them to house abused teens. Stacy L. Brustin, *Legal Responses to Teen Dating Violence*, 29 FAM. L.Q. 331, 354 (1995).

⁸⁹ Kathryn E. Suarez, *Teenage Dating Violence: The Need for Expanded Awareness and Legislation*, 82 CAL. L. REV. 423 (1994). It appears that state legislatures are beginning to take notice of Suarez's arguments. For example, the California Legislature recently enacted AB 2826, which amends California Penal Code section 13700. Prior to amendment, this section's definition of domestic violence included only abuse committed against an adult or an emancipated minor. Effective January 1, 2003, the definition has been extended to include all minors, not just emancipated ones. CAL. PENAL CODE § 13700 (West 2003).

⁹⁰ Levy, *supra* note 5, at 5.

⁹¹ Robin Abcarian, *In Love, In Danger: Teen Victims of Dating Abuse Often Are Too Immature and Insecure to Escape Jealous, Sometimes Violent Boyfriends*, L.A. TIMES, Oct. 13, 1991, at E1, E14.

⁹² Suarez, *supra* note 89, at 465.

judge.⁹³ (If the case involves a minor victim but an accused age eighteen or older, the case will be heard in adult civil court.)⁹⁴ Juvenile court proceedings tend to be more informal than adult hearings, and the judge's (and court's) goal is to rehabilitate the offender rather than punish him for a "crime." This informality poses a potential problem for victims. The judge may not take the abuse seriously, the violence may be seen as a "youthful indiscretion" or "teen/puppy love," or the judge may simply advise the victim to stop seeing the abuser.⁹⁵ In giving such advice, the judge is discounting the seriousness of the crime committed. Even worse, the judicial system's lack of attention to the issue reinforces the notion in young offenders that there is nothing wrong or illegal about hitting a significant other and that the offender will not be punished, even if he continues the abuse.⁹⁶ Patterns of abuse are set early in life, and the longer abusers continue to use violence, the more difficult it is for them to stop.⁹⁷

A teen's status as a minor poses many obstacles to her obtaining help in dealing with and eventually leaving an abusive relationship. Although parents are legal guardians of their children and bear ultimate responsibility for their welfare, school systems bear responsibility for ensuring the safety of students under their care during the school day. The next Part explores the wide discretion educators and school officials enjoy in providing for students' safety while in school.

II. THE SCHOOL SYSTEM

[E]ducation is perhaps the most important function of state and local governments.

—*Brown v. Board of Education*⁹⁸

A. *Modern Educational Laws in the United States*

Because of the sheer complexity involved in analyzing and comparing educational laws from all fifty states and the various territories, California law will be used as a framework in discussing the educational system's liability for dating violence on school campuses.

All states today have some form of compulsory education law. California requires that all students between the ages of six and eighteen at-

⁹³ Sheila Kuehl, *Legal Remedies for Teen Dating Violence*, in *DATING VIOLENCE: YOUNG WOMEN IN DANGER*, *supra* note 1, at 209, 211, 214.

⁹⁴ *Id.* at 211.

⁹⁵ *Id.*

⁹⁶ Many young batterers who come into contact with the law are shocked to learn that hitting their girlfriends is illegal. BARRIE LEVY & PATRICIA OCCHIUZZO GIGGANS, *WHAT PARENTS NEED TO KNOW ABOUT DATING VIOLENCE* 115 (1995).

⁹⁷ *Id.* at 99–100.

⁹⁸ 347 U.S. 483, 493 (1954).

tend a public school.⁹⁹ There are statutory exceptions to this law for students enrolled in approved private schools, students being taught at home by certified and credentialed teachers, children in the entertainment industry, and part-time students over the age of sixteen with work permits.¹⁰⁰

In order to ensure school attendance, all states have also passed truancy laws. As defined in California law, a truant is a student who is required to be in public school but is absent from school without an excuse for more than three days in any given school year.¹⁰¹ If the student is reported truant at least three times, the student is deemed a habitual truant.¹⁰² Truancy officers have the power and ability to take into custody any habitual truant they observe and return the student to school.¹⁰³

B. Student Safety in the Modern School System

Schools have a great deal of power over students, including “broad supervisory and disciplinary powers” that are routinely given to school administrators and teachers.¹⁰⁴ For example, California law grants principals, teachers, and any other certified employee the discretion to exercise “the same degree of physical control over a pupil that a parent would be legally privileged to exercise,” provided that the physical control does not exceed “the amount reasonably necessary to maintain order, protect property, or protect the health and safety of pupils, or to maintain proper and appropriate conditions conducive to learning.”¹⁰⁵ This statute has been interpreted to grant schools broad discretion to enact rules regulating student behavior, but also creates a responsibility to enforce those rules and provide an environment for students (and staff) that is as safe as possible.

One example of this discretion lies in public schools’ and school districts’ ability to enact dress codes regulating what students may wear to class. Many schools have experienced gang violence, where membership in or affiliation with a gang is signified by clothing color or logos. As a result, the California Legislature and the Department of Education jointly encourage districts and schools to adopt uniforms.¹⁰⁶ Most middle

⁹⁹ CAL. EDUC. CODE § 48200 (West 2003). Until 1987, students were only required to attend school until their sixteenth birthday.

¹⁰⁰ CAL. EDUC. CODE §§ 48220, 48222–48225, 48225.5, 48230 (West 2003).

¹⁰¹ CAL. EDUC. CODE § 48260 (West 2003).

¹⁰² CAL. EDUC. CODE § 48262 (West 2003).

¹⁰³ CAL. EDUC. CODE § 48264 (West 2003).

¹⁰⁴ *In re William G.*, 709 P.2d 1287, 1291 (Cal. 1985).

¹⁰⁵ CAL. EDUC. CODE § 44807 (West 2003).

¹⁰⁶ CAL. EDUC. CODE §§ 35183, 35294.1 (West Supp. 2003). Other states have also enacted school uniform regulations, including Florida, Georgia, Indiana, Louisiana, Maryland, New York, Tennessee, Utah, and Virginia. DEP’T OF EDUC., *Manual on School Uniforms*, at <http://www.ed.gov/updates/uniforms.html> (last updated Feb. 29, 1996). In addition, large public school systems across the country have schools with voluntary or mandatory school uniform policies, such as the ones in place in Baltimore, Los Angeles, and Nashville. *Id.*

schools and high schools also have dress codes, if not uniforms, that were developed partly to combat school violence.¹⁰⁷

Schools also have significant discretion in dealing with on-campus and school-related student behavior. A California school can suspend or expel a student for "acts that are enumerated in [Cal. Educ. Code § 48900] and related to school activity or attendance that occur at any time."¹⁰⁸ The enumerated acts range in severity and include possession of tobacco, robbery, attempted or actual sexual assault, and physical injury. The state legislature has determined that some of the enumerated offenses are serious enough that a student can be suspended for the first offense.¹⁰⁹

Besides actually dealing with crimes on campus, California schools are also required to report specifically enumerated crimes, which are then compiled into the California Safe Schools Assessment, an annual report published by the state.¹¹⁰ These crimes include using force or violence against another person; possessing, using, or furnishing any controlled substance; offering, arranging, or negotiating the sale of any controlled substance; committing or attempting to commit robbery or extortion; and committing or attempting to commit a sexual assault.¹¹¹

As discussed above, school districts and schools have the power to crack down on school violence, and many districts have taken serious measures to address certain types of violence. Unfortunately, these methods often do not address teen dating violence, even though dating violence falls within the definition of statutorily punishable behaviors.¹¹²

III. LEGAL IMPLICATIONS FOR SCHOOL DISTRICTS

[P]ublic policy in fact supports imposition of a duty to take reasonable steps to prevent or terminate student-to-student harassment

—*Doe v. Petaluma City School District*¹¹³

¹⁰⁷ DONNA CHAIET, *STAYING SAFE AT SCHOOL* 17 (1995).

¹⁰⁸ CAL. EDUC. CODE § 48900(p) (West Supp. 2003).

¹⁰⁹ CAL. EDUC. CODE § 48900.5 (West 2003).

¹¹⁰ CAL. EDUC. CODE §§ 48916.1(e)(1), 48900.8 (West Supp. 2003).

¹¹¹ CAL. EDUC. CODE § 48900 (West 2003).

¹¹² Part of the reason teen dating violence is not addressed is that some schools feel that it is not a problem on their campuses. One vice principal explained that her particular middle school is very strict on bodily contact between students and that pupils are not permitted to hold hands, hug, or engage in other "intimate" activity. She therefore felt that dating violence was not an issue on her campus and did not feel the need to address it. However, this attitude ignores the fact that dating violence does occur among middle school students and may be taking place among her student population despite the on-campus "no bodily contact" policy. Ignoring potential or actual dating violence puts students at risk both off-campus and while they are in school, no matter how strictly a bodily contact policy is enforced. Confidential Interview with Middle School Vice Principal, in Cambridge, Mass. (July 2001) (on file with author).

¹¹³ 949 F. Supp. 1415, 1427 (N.D. Cal. 1996).

As discussed above, dating violence is a prevalent problem among adolescents, and incidents of abuse can happen anywhere at any time, including at school. Whether or not individual schools and school districts believe that teen dating violence is an issue or cause for concern among their own student body, they face the strong possibility of potential legal liability for failing to address this very real and significant problem.

School districts can be held liable for student dating violence under three different legal theories. A student can claim, under Title IX,¹¹⁴ that she suffered a hostile educational environment due to the abuser's behavior and that the school or district is liable for failure to address the problem. Alternatively, a student can bring a constitutional claim under 42 U.S.C. § 1983, alleging that the school or school district acted under color of law to deprive the victim of her constitutionally protected rights, such as the right to be secure in her person. Finally, under tort liability, a student can claim negligent infliction of emotional distress by the school district or, in the alternative, can allege third-party tort liability.

Of these three options, Title IX offers the best chance of success. Because dating violence is a form of sexual harassment,¹¹⁵ the current case law dealing with sexual harassment in schools is a good tool for student victims of teen dating violence to use. Pursuing a tort liability claim may also be effective, especially considering that many statutes and recent cases support holding schools and school districts responsible for the welfare of the students in their charge.¹¹⁶ However, whether a student can use tort liability successfully depends greatly on each state's com-

¹¹⁴ 20 U.S.C. § 1681 (West 2003).

¹¹⁵ Sexual harassment is usually divided into three categories: physical, verbal, and nonverbal. *BUCHSER MIDDLE SCH., ABOUT SEXUAL HARASSMENT AT SCH. 4-5* (1995). Physical sexual harassment includes "standing in someone's way or standing too close, bumping into someone or brushing against the person on purpose, patting, hugging or kissing [without permission, and] grabbing, touching or pinching [without permission]." *Id.* Verbal sexual harassment involves "threats, insults, comments about a person's body, sexual jokes, suggestions or remarks, sexual stories or rumors, [written] notes . . . , pressure to go out on a date," and so forth. *Id.* Sexual harassment can also be nonverbal and include actions such as "staring at someone's body, [looking at or drawing] sexual pictures or drawings, mimicking or pantomiming in an insulting way, or gestures or looks." *Id.*

These descriptions of sexually harassing behavior are important to consider. The abusive behavior used by batterers often mimics sexually harassing behavior, with similar or identical results. For example, if a teen batterer prevents his girlfriend from leaving her locker to attend class, this would not only be considered physical sexual harassment, but would also fall under physical and emotional abuse. A teen batterer who yells insults and threats at his girlfriend commits verbal sexual harassment, as well as inflicts emotional abuse on the young woman. Even staring at an abused partner might be considered nonverbal sexual harassment and emotional abuse, especially in situations where the stare is meant to convey a specific message or threat.

¹¹⁶ See *infra* Part III.C.1-2 (discussing tort liability and, as an example, one state's common law and statutory dealings with school liability for student-on-student violence).

mon law addressing a school's potential liability for injuries suffered by students at the hands of fellow students.¹¹⁷

While § 1983 offers another vehicle for relief, it is not ideal for two reasons. First, many courts have ruled that Title IX subsumes claims brought under § 1983, and, as a result, any student who brings a claim against the school district under Title IX cannot bring the same claims under § 1983. Second, the two theories of liability under § 1983—the custodial duty rule and the special danger theory—place additional burdens of proof on the plaintiff that are difficult to meet under current case law. The Sections below discuss bringing claims under Title IX, § 1983, and tort liability in more detail.

*A. Extending Liability for Sexual Harassment
Under Title IX To Include Dating Violence*

Dating violence and sexual harassment may appear to be two separate and distinct types of behavior, but they are in fact almost identical. Both dating violence and sexual harassment involve forms of male dominance to control women. When this dominance is not sought, and occurs within a work environment (triggering protection under Title VII) or a school setting (triggering protection under Title IX), it constitutes sexual discrimination because it deprives women of equal access to benefits. Since dating violence is arguably a form of sexual harassment, schools and districts risk sexual discrimination suits by failing to address dating violence among their students.

Title IX provides that, "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"¹¹⁸ Title IX's goals focus more on protecting individuals from discriminatory practices carried out by recipients of federal funding than on compensating victims of discrimination. Title IX's statutory method of enforcement is administrative: federal agencies that distribute educational funding must also establish requirements to implement the non-discrimination mandate, and are empowered to enforce these mandates through any means authorized by law, including the termination of federal funding.¹¹⁹ No statutory mention is made of the possibility of bringing private suits for discrimination under Title IX.

Although both Title IX and Title VII deal with sexual discrimination, only Title VII deals specifically with sexual harassment as a form of sexual discrimination. Title IX does not define sexual harassment or pro-

¹¹⁷ *See id.*

¹¹⁸ 20 U.S.C. § 1681(a) (West 2003).

¹¹⁹ *Id.*

vide guidelines to help determine what actions constitute sexual harassment.¹²⁰ Title VII, however, defines sexual harassment under two separate guidelines. First, pursuant to “hostile working environment” analysis, harassment occurs when a person’s conduct has the “purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.”¹²¹ To rise to the level of sexual harassment, the conduct complained of must be sufficiently severe or pervasive “to alter the conditions of [the victim’s] employment and create an abusive working environment.”¹²² Second, pursuant to quid pro quo analysis, harassment occurs where one person grants or withholds employment benefits in return for sexual favors. It is unclear whether Title VII guidelines and definitions are applicable to Title IX cases.¹²³ If they are, “hostile working environment” analysis is useful, as it is more analogous than quid pro quo analysis to the dynamics involved in Title IX claims based on dating violence.

In recent years, the United States Supreme Court and other federal courts have held that schools can be held liable for student-on-student sexual harassment under Title IX of the Education Amendments Act of 1972. Initially, though, the absence of guidelines defining sexual harassment under Title IX led one court to reject a student’s claim of harassment by a college professor, refusing to adopt Title VII guidelines for use in “an area for which they were not drafted”¹²⁴ It was not until *Cannon v. University of Chicago* that Title IX was ruled enforceable through a judicially implied private right of action.¹²⁵ This ruling opened the door to *Franklin v. Gwinnett County Public Schools*, one of the first student sexual harassment cases to be heard in the Supreme Court, holding that students who suffer sexual harassment at school at the hands of their teachers have a private right of action under Title IX.¹²⁶ *Franklin* also allowed the award of monetary damages in a private right of action, in addition to (or in lieu of) equitable or declaratory relief.¹²⁷ The Court extended the *Franklin* holding in *Davis v. Monroe County Board of Education* by permitting an award of monetary damages from the school board in a case of student-on-student sexual harassment.¹²⁸

¹²⁰ Melanie Hochberg, *Protecting Students Against Peer Sexual Harassment: Congress’s Constitutional Powers to Pass Title IX*, 74 N.Y.U. L. REV. 235, 236 (1999).

¹²¹ *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 65 (1986) (quoting EEOC Guidelines on Discrimination Because of Sex, 29 C.F.R. § 1604.11(a)(3) (1985)).

¹²² *Id.* at 67.

¹²³ At least one court has ruled that Title VII guidelines are not applicable to Title IX cases. See *Bougher v. Univ. of Pittsburgh*, 713 F. Supp. 139 (W.D. Pa. 1989), *aff’d on other grounds*, 882 F.2d 74 (3d Cir. 1989).

¹²⁴ *Bougher*, 713 F. Supp. at 145.

¹²⁵ 441 U.S. 677 (1979).

¹²⁶ 503 U.S. 60 (1992).

¹²⁷ *Id.*

¹²⁸ 526 U.S. 629 (1999) (holding valid a student’s claim for student-on-student harassment against the school board, where a school knew of repeated instances of sexual har-

In order to render a school district liable for student-on-student or teacher-on-student harassment and subsequently recover damages under Title IX, a plaintiff must show three elements. First, a school official who has the authority to institute corrective measures must have actual knowledge of the misconduct alleged by the plaintiff.¹²⁹ Appropriate school officials include principals, vice principals, and school superintendents.¹³⁰ Teachers can also be considered school officials under certain circumstances, especially if they are in a position to control the program or activity under which the harassment occurs.¹³¹ Actual knowledge is a higher standard than that generally employed in Title VII cases, which instead requires only constructive knowledge—the “should have known” standard.¹³² Actual knowledge means that the school must actually know of the complained-of incidents; observing the behavior in question or being told about it by an involved party or a third-party observer is sufficient to constitute actual knowledge.¹³³

Second, the school official must have been deliberately indifferent to the misconduct. Deliberate indifference can include a failure to respond to allegations of sexual harassment,¹³⁴ as well as taking minor steps to deal with the problem knowing that the steps taken will be ineffective¹³⁵ or are unreasonable in light of the circumstances.¹³⁶ Schools can be liable for deliberate indifference because it takes place “under an operation of

assment by a fifth-grade student against another student, including at least one instance of him rubbing his body against hers in a suggestive manner, but took no steps to address the problem despite evidence that this victim was not the only one who complained of the perpetrator's behavior).

¹²⁹ *Id.*

¹³⁰ CAL. EDUC. CODE § 48900 (West 2003).

¹³¹ *See Mennone v. Gordon*, 889 F. Supp. 53 (D. Conn. 1995) (refusing to dismiss a Title IX claim against individual teacher where teacher was present during the incidents in question and did nothing, despite at least one request by victim to intervene).

¹³² In a 1998 employment discrimination case, the Supreme Court stated that “[a]n employer is negligent . . . if it knew or should have known about sexual harassment and failed to stop it. Negligence sets a minimum standard for Title VII liability” *Burlington Indus. v. Ellerth*, 524 U.S. 742, 744 (1998). In cases where a plaintiff can demonstrate a tangible employment detriment as a result of alleged sexual harassment, the lack of constructive knowledge by the defendant is not a defense to liability. *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998).

¹³³ *See Franks v. Kentucky Sch. for the Deaf*, 956 F. Supp. 741 (E.D. Ky. 1996), *aff'd*, 142 F.3d 360 (6th Cir. 1998) (finding student's complaint against school for her rape by a fellow student sufficient basis for a claim, since the plaintiff and other students had a record of prior complaints to school employees of sexual harassment by the assailant).

¹³⁴ *Burrow v. Postville Cmty. Sch. Dist.*, 929 F. Supp. 1193 (N.D. Iowa 1996) (finding a cause of action under Title IX where a student was harassed for over two years by classmates, and where the school took little action despite being contacted by the student's parents and the parents' attorney); *see also Vance v. Spencer County Pub. Sch. Dist.*, 231 F.3d 253 (6th Cir. 2000).

¹³⁵ *Morlock v. W. Cent. Educ. Dist.*, 46 F. Supp. 2d 892 (D. Minn. 1999).

¹³⁶ *Ray v. Antioch Unified Sch. Dist.*, 107 F. Supp. 2d 1165, 1170 (N.D. Cal. 2000) (finding deliberate indifference based on the school district's decision to “[take] no action to curtail the harassing conduct . . . when [the school district] knew or should have known [that a fellow student] presented a specific threat to Plaintiff's safety”).

the [funding] recipient,” and “the recipient retains substantial control over the context in which the harassment occurs.”¹³⁷

Third, the complained-of misconduct that the school official ignored must be so “severe, pervasive, and objectively offensive” that it barred the victim’s access to educational opportunity.¹³⁸ For instance, intentionally inflicted physical injury by one student on another student is an obvious bar to educational opportunity if it has the effect of preventing the victim from attending school or reducing her involvement in school activities. However, less severe forms of harassment can also trigger a sex discrimination claim. In *Davis*, the Court drew a distinction between everyday name-calling and teasing, which does not give rise to damages, and other behavior that rises to the appropriate level for discrimination: “Consider, for example, a case in which male students physically threaten their female peers every day, successfully preventing the female students from using a particular school resource—an athletic field or a computer lab, for instance.”¹³⁹

A school’s deliberate indifference to sexual harassment, resulting in an effective bar to a student’s educational opportunity due to the hostile educational environment, triggers a sex discrimination claim under Title IX.¹⁴⁰ In order to show sex discrimination, the plaintiff must demonstrate by either direct or indirect evidence, however, that the school’s discrimination was intentional.¹⁴¹ In the absence of direct evidence, a court can infer intent to discriminate using the evidence as a whole.¹⁴² For instance, a school’s failure to prevent or stop sexual harassment when it had both actual knowledge of the sexually harassing behavior and the ability to control it could be indirect evidence of the intent to discriminate.¹⁴³ If a plaintiff is unable to show discrimination, then she cannot bring a claim under Title IX and must instead resort to § 1983¹⁴⁴ or a tort remedy against the school district.

¹³⁷ *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 630 (1999).

¹³⁸ *Id.* at 631.

¹³⁹ *Id.* at 650–51.

¹⁴⁰ Sexual harassment rising to a level of sex discrimination does not require that the harassment involve members of the opposite sex. Rather, the inquiry is “whether the harasser treats a member or members of one sex differently from members of the other sex.” *Fredette v. BVP Mgmt. Assocs.*, 112 F.3d 1503, 1505 (11th Cir. 1997) (quoting EEOC Compliance Manual § 615.2(b)(3) (1987)).

¹⁴¹ *Burrow v. Postville Cmty. Sch. Dist.*, 929 F. Supp. 1193 (N.D. Iowa 1996).

¹⁴² *Id.*

¹⁴³ It is important to note that under Title IX, school officials are not vicariously liable for the actions of others; they are liable for their own failure to remedy a known hostile environment. *See Oona v. McCaffrey*, 143 F.3d 473, 477 (9th Cir. 1998).

¹⁴⁴ Federal courts are split over whether litigants may bring a Title IX claim in conjunction with a § 1983 claim. Beth B. Burke, *To Preclude or Not to Preclude?: Section 1983 Claims Surviving Title IX’s Onslaught*, 78 WASH. U. L.Q. 1487, 1489 (2000). Of the five federal circuit courts that have heard sexual harassment claims under both Title IX and § 1983, four courts (namely the Third, Sixth, Seventh, and Tenth Circuits) have ruled that Title IX precludes some or all forms of claims under § 1983. *Id.* at 1504–07. Only the

Title IX is a viable option for imposing liability on a school for campus assaults, provided that the plaintiff is able to meet all the requirements. The plaintiff should be able to demonstrate that she spoke to school officials about her partner's behavior, that the school did nothing in response, and that her partner's behavior intensified to the point where she could no longer attend school safely. Sexual assault and dating violence often involve similar behaviors, such as slapping, punching, and inappropriate touching. If school districts can be liable for deliberate indifference to sexual harassment between classmates, they should also be liable for similar behavior between dating schoolmates that is known and yet ignored.

B. Bringing a Claim Under 42 U.S.C. § 1983

42 U.S.C. § 1983 is the traditional vehicle for bringing constitutional tort actions against the government alleging that a state actor deprived an individual or entity of federally protected rights,¹⁴⁵ including the right not

Eighth Circuit has ruled that Title IX does not preclude either form of claim under § 1983. *Id.* These opinions are often based on Supreme Court precedent stating that a § 1983 claim will only lie where 1) the underlying substantive statute at issue creates enforceable rights; and 2) Congress has not foreclosed private enforcement through § 1983 in the statute itself. *See Oona v. Santa Rosa City Schs.*, 890 F. Supp. 1452 (N.D. Cal. 1995) (finding discriminatory intent in violation of Title IX sufficient to state a claim under § 1983 may manifest itself in active encouragement of peer sexual harassment, tolerance of the harassing behavior of male students, or the failure to adequately deter or punish peer harassment) (citing *Wright v. Roanoke Redev. & Hous. Auth.*, 479 U.S. 418, 423 (1987) (explaining "if there is a state deprivation of a 'right' secured by a federal statute, § 1983 provides a remedial cause of action unless the state actor demonstrates by express provision or other specific evidence from the statute itself that Congress intended to foreclose such private enforcement"). One court held that the implied private right of action found in Title IX is significant evidence that Congress's enactment of Title IX was intended to supplant § 1983 claims, and that therefore a student could not state a § 1983 claim based on a Title IX right. *See Bruneau v. S. Kortright Cent. Sch. Dist.*, 935 F. Supp. 162, 178-79 (N.D.N.Y. 1996) (dismissing a student's § 1983 claim held to be based on a Title IX right, where she and other students were allegedly subjected to verbal and physical sexual harassment by other students, which was characterized by the teacher and other school officials as normal flirting). Another court ruled that the administrative mechanism for enforcement of Title IX, allowing a student to file a complaint with the Department of Education and providing for the possible sanction of a recipient, causing it to lose its federal funding, also indicated Congress's intent to supplant § 1983 claims with Title IX. *See Mennone v. Gordon*, 889 F. Supp. 53 (D. Conn. 1995).

Other courts have come to the opposite conclusion. The Tenth Circuit held that Title IX's lack of a comprehensive enforcement scheme did not indicate Congressional intent to foreclose all possibilities of a § 1983 claim, since the only enforcement mechanism under the statute was a procedure providing for termination of federal funding for schools violating Title IX. *See Seamons v. Snow*, 84 F.3d 1226 (10th Cir. 1996). Another court in Northern California ruled that even if a student could not bring a claim under Title IX, she could enforce a right not to be discriminated against on the basis of sex under § 1983. *Oona*, 890 F. Supp. at 1463.

¹⁴⁵ John B. Roesler, *Public School Liability: Constitutional Tort Claims for Excessive Punishment and Failure to Supervise Students*, in 48 AM. JUR. TRIALS 587, 605 (Richard Kohlman Hughney ed., 1993).

to be subjected or exposed to unreasonable danger¹⁴⁶ and the right to bodily integrity.¹⁴⁷ Section 1983 is not itself a source of substantive rights, but rather serves to vindicate federal rights conferred by the Constitution and other federal statutes,¹⁴⁸ and permits recovery of monetary damages, as well as declaratory or equitable relief.¹⁴⁹

Despite case law allowing recovery under § 1983 for sexual harassment and other violations of bodily integrity, suing one's school under § 1983 is not the best approach for a student seeking to recover for injuries sustained as a result of dating violence. First, this statute applies only to public schools and school districts, given that private schools are generally not "state actors." Therefore, any student wishing to sue a private school for these injuries must do so under tort liability or Title IX.¹⁵⁰ Second, as discussed above,¹⁵¹ courts in many jurisdictions have ruled that a student suing her school district for violations of Title IX may not also assert the same claims under § 1983, as Title IX subsumes § 1983 claims. Third, the two theories of liability under § 1983 pose additional difficulties in bringing a claim.

1. *The State Action Requirement*

Under the Fourteenth Amendment, certain aspects of the Constitution apply to government at all levels, including local and state governments, but do not regulate private conduct. Section 1983 requires that actions be taken under the "color of law" in order for potential liability to attach, and the Supreme Court has held that the "color of law" inquiry is essentially equivalent to inquiring whether there is state action.¹⁵² This inquiry is important because if a school is not a state actor, bringing a

¹⁴⁶ See *Wood v. Ostrander*, 879 F.2d 583 (9th Cir. 1989) (reversing summary judgment in favor of state trooper in § 1983 action brought by a passenger in the vehicle of an arrested driver, and finding the state trooper would not be entitled to qualified immunity if he acted with gross negligence, recklessness, or deliberate indifference to plaintiff's safety by affirmatively placing her in danger, where law at the time established that an officer could be liable under § 1983 when he abandoned passengers of arrested drivers, thereby exposing them to unreasonable danger). In *Wood*, the passenger was allegedly left stranded in a high-crime area by the officer arresting the driver of the car; when she subsequently took a ride from a stranger, she was raped.

¹⁴⁷ See *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443 (5th Cir. 1994) (finding high school principal was not entitled to qualified immunity in § 1983 action by fifteen-year-old student who was sexually molested by teacher, since student had substantive due process right to be free from sexual abuse and violations of her bodily integrity, principal had received notice on many occasions of extensive pattern of inappropriate sexual misconduct by teacher, and principal demonstrated deliberate indifference to offensive acts by failing to take action).

¹⁴⁸ *Baker v. McCollan*, 443 U.S. 137, 140 (1979).

¹⁴⁹ Roesler, *supra* note 145, at 605.

¹⁵⁰ See discussion *infra* Part III.C on tort law, and *supra* Part III.A on Title IX.

¹⁵¹ *Supra* Part III.A.

¹⁵² ERWIN CHEREMINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 393 n.43 (1997).

claim under § 1983 is not an option for a victim suing her school or district. However, since a school district is typically a branch of a local city or county government, both of which are ostensibly subject to the Fourteenth Amendment, school districts and their employees could be considered state actors acting under "color of law" if they take or fail to take specific actions in their official capacities. Additionally, in *Monell v. Department of Social Services*,¹⁵³ the Supreme Court held that school boards can be sued for violating a person's federally protected rights. These rights include the right to privacy and the right to be safe in one's person.

In order to pursue a § 1983 claim, a plaintiff must prove two elements.¹⁵⁴ First, she must show that the conduct complained of was committed by a person acting under color of state law.¹⁵⁵ As discussed above, a "person" for these purposes can include school boards, school officials, or school districts.¹⁵⁶ Second, the plaintiff must show that the conduct complained of deprived the plaintiff of rights secured by the Constitution or other federal statutes. In order to prove these two elements and hold a school liable as a state actor, a victim can assert two theories: the "custodial duty rule" and the "special danger" theory.

2. *The Custodial Duty Rule*

The custodial duty rule is the weaker of the two approaches to imposing liability on school districts, mainly because recent case law has held that schools do not have the requisite "special relationship" with their students that requires assumption of special responsibility for the students' safety and well-being.¹⁵⁷

To prevail under the custodial duty rule, a student must first show that she had a special relationship with the school or school district, and

¹⁵³ 436 U.S. 658 (1978).

¹⁵⁴ *Pagano v. Massapequa Pub. Schs.*, 714 F. Supp. 641, 642-43 (E.D.N.Y. 1989) (citing *Parratt v. Taylor*, 451 U.S. 527, 535 (1981)).

¹⁵⁵ *Respondeat superior* is not considered sufficient grounds for imposing § 1983 liability. *Ybarra v. Reno Thunderbird Mobile Home Vill.*, 723 F.2d 675, 680 (9th Cir. 1984); *Monell*, 436 U.S. at 663 n.7.

¹⁵⁶ *Roesler*, *supra* note 145, at 605-06.

¹⁵⁷ *See Bosley v. Kearney R-1 Sch. Dist.*, 904 F. Supp. 1006 (W.D. Mo. 1995) (holding that the school district had no constitutional duty under the substantive Due Process Clause of the Fourteenth Amendment to protect students after receiving students' complaints, where a grade school student brought a claim for sexual harassment and hostile environment, claiming that although school officials were informed of the harassment perpetrated against her, they did not investigate or take any other action); *Russell v. Fannin County Sch. Dist.*, 784 F. Supp. 1576 (N.D. Ga. 1992) (holding compulsory school attendance did not impose upon the state an affirmative duty to protect a student from physical harm inflicted by another student in the absence of specific knowledge that the student in danger would be injured), *aff'd*, 981 F.2d 1263 (11th Cir. 1992); *D.R. v. Middle Bucks Area Vocational Technical Sch.* 972 F.2d 1364 (3rd Cir. 1992) (finding no special relationship where two female high school students were allegedly molested and sexually abused by fellow male students, and the school did nothing to stop the behavior despite student reports to school officials and teachers observing general misconduct).

then must demonstrate that the school exhibited deliberate indifference to her plight as a victim.¹⁵⁸ The custodial duty rule, developed in *DeShaney v. Winnebago County Department of Social Services*,¹⁵⁹ holds that when “the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being.”¹⁶⁰ The Court adds that “[t]he affirmative duty [of state actors] to protect arises . . . from the limitation which [sic] it has imposed on [a person’s] freedom to act on his own behalf”; that duty subsequently triggers the protection of the Due Process Clause.¹⁶¹ It is firmly settled that this holding applies to persons in a “special relationship” with state actors, such as prison inmates or foster care children within the physical and legal custody of the state.¹⁶² Whether children attending a public school have this “special relationship” with the school is a less settled question.

Some courts have held that students do in fact have the requisite special relationship with their schools. In *Pagano v. Massapequa Public Schools*,¹⁶³ the court held that because students are required to attend school under state truancy laws, they are “owed *some* [constitutional] duty of care” by the school.¹⁶⁴ The *Pagano* court, however, is very much in the minority.¹⁶⁵ The majority of courts faced with this question have held that schools do not have a special relationship with their students that would render them liable for the students’ care, safety, and well-being while at school. One court declined to find a special relationship because it determined that a school is not a student’s primary caretaker.¹⁶⁶ Another court, echoing the reasoning of many jurisdictions, held that compulsory attendance laws do not create a custodial duty on the school

¹⁵⁸ See, e.g., *Morlock v. W. Cent. Educ. Dist.*, 46 F. Supp. 2d 892 (D. Minn. 1999) (finding that a school district’s taking only minor steps to address harassment, with the knowledge that those steps would be ineffective, is enough to demonstrate deliberate indifference).

¹⁵⁹ 489 U.S. 189, 199–200 (1989).

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 200.

¹⁶² Roesler, *supra* note 145, at 605–06.

¹⁶³ 714 F. Supp. 641 (E.D.N.Y. 1989) (finding a grade school student could state a § 1983 claim by alleging he was the target of repeated physical and verbal abuse by other students and that school officials did nothing to prevent the abuse despite having knowledge of at least seventeen incidents).

¹⁶⁴ *Id.* at 643.

¹⁶⁵ There is a jurisdictional split among the federal circuit courts with regard to the ruling in *Pagano*. The court’s ruling may have been influenced by the fact that the plaintiff was in grade school; however, other cases decided differently also involved grade school students. See *Bosley v. Kearney R-1 Sch. Dist.*, 904 F. Supp. 1006 (W.D. Mo. 1995); *Russell v. Fannin County Sch. Dist.*, 784 F. Supp. 1576 (N.D. Ga. 1992), *aff’d*, 981 F.2d 1263 (11th Cir. 1992).

¹⁶⁶ *D.R. v. Middle Bucks Area Vocational Technical Sch.*, 972 F.2d 1364 (3rd Cir. 1992). This “primary caretaker” argument would arguably be void in a case where violence or injury was alleged in a residential boarding school, where students live on campus for most of the term, and where parents are not in a caretaking position.

to protect a student from physical harm inflicted by a fellow student¹⁶⁷ or harm that is self-inflicted.¹⁶⁸

3. *Special Danger Theory*

Because of the "special relationship" hurdle imposed by the custodial duty rule, students are more likely to achieve success under the "special danger" theory of § 1983. The special danger theory does not require evidence of a custodial duty imposed on the school; rather, this theory is usually invoked when a school affirmatively acts to create the plaintiff's danger or to render her more vulnerable to it.¹⁶⁹

In order to bring a claim under the special danger theory, the plaintiff must show that the school officials affirmatively created the victim's peril, increased the risk of harm, or acted to render the victim more vulnerable to harm. In addition, the plaintiff must show that the harm was foreseeable, i.e., that it was not a random act that the school officials could not prevent. This foreseeability of the harm is the premise for liability under a tort concept.¹⁷⁰

A school's failure to address a student's peril can rise to the level of affirmative action and thus render the school liable for student injuries. One court stated:

[I]t is not necessary that the tortfeasor be able to foresee the exact nature and extent of the injuries in the precise manner in which they occur; rather, all that is necessary is that the tortfeasor be able to foresee some injury as likely to result in some manner as a consequence of his negligence.¹⁷¹

Inaction sufficient to trigger liability can include a showing that the school or district had knowledge of a particular peril or threatened harm but failed to prevent or stop the foreseeable risk.¹⁷² Liability can also be

¹⁶⁷ *Russell*, 784 F. Supp. at 1583. See also *Bosley*, 904 F. Supp. at 1018.

¹⁶⁸ See *Wyke v. Polk County Sch. Bd.*, 898 F. Supp. 852 (M.D. Fla. 1995) (granting a directed verdict for the school board, and finding that compulsory school attendance does not create a special relationship between schools and students and therefore the board had no legal obligation to prevent harm, where the mother of student who committed suicide at home sued the school board, claiming that the board's failure to implement policies and procedures, as well as train personnel regarding suicide prevention and intervention, violated her child's due process rights), *aff'd*, 137 F.3d 1292 (11th Cir. 1998).

¹⁶⁹ *D.R.*, 972 F.2d at 1373.

¹⁷⁰ *Roesler*, *supra* note 145, at 636.

¹⁷¹ *Leahy v. Sch. Bd. of Hernando County*, 450 So.2d 883, 886 (Fla. Ct. App. 1984) (holding that a student's facial injuries and shattered teeth sustained while engaged in football practice constituted a foreseeable consequence of a school's failure to provide the student with a football helmet and a mouth guard and to give cautionary statements regarding student contact during practice) (quoting *Goode v. Walt Disney World Co.*, 425 So.2d 1151, 155-56 (Fla. Ct. App. 1982)).

¹⁷² *Russell*, 784 F. Supp. at 1576.

established in cases where the school administration took steps to reduce harm, but those steps were either minimal and ineffective,¹⁷³ or were measures that no reasonable person in the school official's position would have believed to be effective in that particular situation.¹⁷⁴

School districts face clear liability under the special danger theory. The victim does not have the burden of proving that she or the perpetrator enjoyed a special relationship with the school that gave rise to a duty to protect the victim from her abuser. Instead, the victim must demonstrate that the school's inaction or minimal attempts to deal with a student violence problem led to increased risk to her safety.

Because the main crux of a special danger case is foreseeability, a victim of school dating violence needs to show that her injuries were the result of her partner's abuse and that her injuries were foreseeable. Dating violence is a pattern of control involving violence and other forms of abuse, not just a series of isolated incidents. If the victim can demonstrate that the abuse was just one more incident in an on-going pattern of violence with her partner,¹⁷⁵ that she notified the school of prior abuse incidents or at least expressed to them her concerns about her abuser, and that the school took no or minimal steps to deal with her concern, the victim would likely have a strong case for liability against the school district.

C. Third-Party Tort Liability Under Common Law and California Law

1. Common Law

Under common tort law, schools can be held responsible for their failure to protect students from the tortious acts of third parties. Schools and school districts can, therefore, be held civilly liable under a negligence theory of tort liability for student dating violence on school campuses.¹⁷⁶

Under a negligence theory, a court may impose liability on a school if a plaintiff shows either that the school was actually aware of the vio-

¹⁷³ *Morlock v. W. Cent. Educ. Dist.*, 46 F. Supp. 2d 892 (D. Minn. 1999).

¹⁷⁴ *See Vance v. Spencer County Pub. Sch. Dist.*, 231 F.3d 253 (6th Cir. 2000) (finding a school board deliberately indifferent to sexual harassment of a female student after the student was stabbed in the hand and had her clothes almost ripped off by her abusers, where the school official's only response was speaking to the harassing students, which resulted in the student being attacked again in retaliation).

¹⁷⁵ This pattern would be a personal one, where officials recognize the reported incidents to be part of a cycle of violence and indicative of abuse inflicted by one specific person on another specific individual. Schools and school officials would greatly benefit from an understanding of the cycle of violence, as they are in an ideal position to recognize the problem and take steps to intervene.

¹⁷⁶ A plaintiff may also consider pursuing a strict liability or intentional tort claim against a school or district, but the required elements of these torts are not as relevant to a dating violence or sexual harassment case as the standards found in a negligence case. Therefore, for ease of discussion, only a negligence tort action is considered here.

lence or abuse, or that the conduct resulting in injury was foreseeable but the school did nothing or relatively little to control the conduct, despite having the ability and duty to do so.¹⁷⁷ This negligence theory stems, in part, from the legal doctrine of *in loco parentis*, meaning a non-parent who has custody of a minor essentially “stands in” for that child’s parents and therefore has a duty to protect that minor from harm. The Restatement (Second) of Torts § 320 seems to discuss *in loco parentis* specifically when it states, in pertinent part:

One who is required by law to take . . . the custody of another under circumstances such as to deprive the other of his normal power of self-protection or to subject him to association with persons likely to harm him, is under a duty to exercise reasonable care so to control the conduct of third persons as to prevent them from intentionally harming the other . . . if the actor a) knows or has reason to know that he has the ability to control the conduct of the third persons, and b) knows or should know of the necessity and opportunity for exercising such control.

The Official Comment to this rule specifically affirms the rule’s applicability to teachers and other persons in charge of public schools.¹⁷⁸ The Comment also states that the person taking custody not only has the duty to protect the person in custody from third parties, but also must anticipate danger to this person and take reasonable steps to give assistance when the need arises.¹⁷⁹

Dicta in *Davis v. Monroe* points out that state courts often uphold claims alleging that schools have been negligent in failing to protect students from the tortious actions of their peers.¹⁸⁰ This tort rule could easily be applied to cases in which a student has informed the administration that another student has been harassing or hurting her, and the administration took no steps to deal with the situation. Because dating violence is not taken seriously by many high school administrators (perhaps due to a feeling that there is nothing they can do to prevent it or aid the victim), administrations are much more likely to react to a case of “typical” student-on-student violence, such as mutual combat or fights, than to a case of dating violence on campus.¹⁸¹ Furthermore, schools may feel that as

¹⁷⁷ See Allan E. Korpela, Annotation, *Tort Liability of Public Schools and Institutions of Higher Learning for Injuries Caused by Acts of Fellow Students*, 36 A.L.R.3d 330, § 2[a] (1971).

¹⁷⁸ RESTATEMENT (SECOND) OF TORTS § 320 cmt. a (1965).

¹⁷⁹ *Id.* at cmt. d.

¹⁸⁰ 526 U.S. 629, 644 (1999).

¹⁸¹ Kuehl, *supra* note 93, at 213, 219.

long as the students are not engaging in such behavior on school grounds, they may not be held liable and therefore will do nothing to prevent it.¹⁸²

The foreseeability of the harm incurred by the injured student is a central issue in any negligence action against the school. In order to prevail, the student must show not only that her injuries were a foreseeable result of the perpetrator's conduct, but also that the perpetrator's conduct itself was foreseeable. In a dating violence context, the first element will not be as difficult to demonstrate. Scholarly research repeatedly finds that dating violence is a predictable pattern of escalating behaviors as opposed to a series of isolated incidents, and that injuries are foreseeable if the perpetrator's propensity for abuse against his girlfriend remains unchanged.

The second element, requiring the perpetrator's conduct be foreseeable, will be more difficult to prove absent a record of the victim complaining to school officials of her abuser's behavior toward her or a history of school officials noting the perpetrator's behavior toward the victim. Case law has imputed actual or constructive notice of foreseeability to a school when the school knows of prior similar conduct by the student responsible for the complained-of injury.¹⁸³

In addition to demonstrating the foreseeability of harm, a plaintiff must also show that the school failed in its duty to intervene when the injury was inflicted.¹⁸⁴ Options for demonstrating a failure to intervene are discussed above.¹⁸⁵

¹⁸² Note, however, that a school's liability for student injuries can be triggered where a teacher or other school official is aware of violent behavior between students but does nothing to stop it. *See, e.g., Charonnat v. S.F. Unified Sch. Dist.*, 133 P.2d 643 (Cal. Ct. App. 1943) (holding a teacher and school district negligent in their failure to intervene in an altercation, where it was reasonable to anticipate that such an altercation might result in injury to one of the participants); *Dailey v. L.A. Unified Sch. Dist.*, 470 P.2d 360 (Cal. 1970) (holding a school liable for failure to supervise students engaged in "slap fights" during recess).

¹⁸³ *See Malik v. Greater Johnstown Enlarged Sch. Dist.*, 669 N.Y.S.2d 729 (N.Y. App. Div. 1998) (finding that actual or constructive notice to the school or prior similar conduct by the student responsible for injury to another student is generally required to hold the school liable for such injury on a theory of negligent supervision); *see also Gibiser v. La-Salle Ctr.*, 685 N.Y.S.2d 98 (N.Y. App. Div. 1999) (holding that a school that had no actual or constructive notice of prior or similar violent conduct on the part of the student could not be liable for any injuries resulting from altercation involving the student).

¹⁸⁴ In gauging a school's failure to intervene, the crucial inquiry is whether the perpetrator and the victim were under the school's control at the time the injury was inflicted. In all likelihood, a school cannot be held liable for injuries inflicted outside of school hours, such as on a weekend or summer vacation, as it has no legal control over students' behavior at these times. *See CAL. EDUC. CODE* § 44808 (West 2003). However, a failure to address injuries inflicted by a student on another student while the school has legal control over one or both students could very well lead to liability. *See Dailey*, 470 P.2d at 363; *Iverson v. Muroc Unified Sch. Dist.*, 38 Cal. Rptr. 2d 35 (Cal. Ct. App. 1995). *See also Hoyem v. Manhattan Beach City Sch. Dist.*, 585 P.2d 851 (Cal. 1978) (holding that a school can be held liable for student's injury off-campus during school hours if due to negligent supervision).

¹⁸⁵ *Supra* Part III.A.

Because tort law is common law, with general principles applicable to most jurisdictions infused with specific nuances unique to each state, an approach based on tort law may not be the most effective litigation tool for students contemplating liability suits against schools. However, it remains one possible avenue for seeking redress. An example of what could be done in California is detailed below as an example for other jurisdictions.

2. California Tort Law

For decades, California law has imposed on schools and school officials a duty to supervise students in their care on school grounds¹⁸⁶ and “to enforce those rules and regulations necessary to their protection.”¹⁸⁷ Case law has further held that control is not always confined to school grounds and that school districts must use the “degree of care ‘which a person of ordinary prudence, charged with (comparable) duties, would exercise under the same circumstances.’”¹⁸⁸ An injury resulting from a breach of that duty of care could result in school district liability.¹⁸⁹ These California statutes and rulings combine to provide a possible vehicle by which a California victim of teen dating violence may seek recourse against a school or school district, but pursuing a case based on California tort law may not be a desirable option. California law requires an additional standard not found in common law cases, and the California Tort Claims Act protects public agencies (including public schools) from certain kinds of claims by plaintiffs.

As under common law, a California victim of teen dating violence must demonstrate that the injury suffered was foreseeable by the school or school district. California law examines foreseeability under a subjective standard; case law holds that this standard does “not require prior identical or even similar events,”¹⁹⁰ but rather that the facts must be “determined in light of all the circumstances . . . [and] demonstrate defendant’s awareness of the need . . . [for the precaution not taken or that such a precaution] could aid in deterring criminal conduct”¹⁹¹ Courts have already applied similar standards to hold school districts liable for

¹⁸⁶ See *Dailey*, 470 P.2d at 363; *Iverson*, 38 Cal. Rptr. 2d at 41.

¹⁸⁷ *Dailey*, 470 P.2d at 363.

¹⁸⁸ *Hoyem*, 585 P.2d at 854, 857.

¹⁸⁹ *Id.* at 856. *But see* *Brownell v. L.A. Unified Sch. Dist.*, 5 Cal. Rptr. 2d 756 (Cal. Ct. App. 1992) (holding that a school district was not liable in a student’s off-campus gang shooting after satisfying its duty of care by minimizing gang-related problems in the school and not having any advance warning of the attack on the student).

¹⁹⁰ *Frances T. v. Vill. Green Owners Ass’n*, 723 P.2d 573, 579 (Cal. 1986) (holding a condominium association liable to a condo owner for her rape on the premises because the association failed to install sufficient common-area lighting and prevented the plaintiff from installing her own).

¹⁹¹ *Id.*

student injuries incurred both off-campus¹⁹² and on school grounds.¹⁹³ It would therefore be logical to extend such holdings to California schools and districts which are, in fact, aware of the need for precautions regarding a particular student, either because of the abuser's history of actual violent incidents or because of reports of violent threats, but have failed to implement protective measures.

In addition to basic tort law showings, however, a California plaintiff who is an alleged victim of teen dating violence must surmount an additional hurdle by showing that a school's failure to protect her was a "substantial factor" in the cause of her injury.¹⁹⁴ In a dating violence context, this would require a showing that a school's failure to intervene in a dating violence incident or take adequate measures to protect a victim from known threats by an abuser was significant in bringing about or causing her harm. In cases where a plaintiff makes a claim of liability based on the school administration's failure to inform teachers of a student's disciplinary record or past threats against a particular student, the plaintiff has the difficult task of showing that this lack of information was a substantial factor in her injury.¹⁹⁵ This is especially difficult in a teen dating violence context, where a school administration may not take a teen's report of dating violence seriously and might subsequently fail to advise teachers of a particular student's propensity for violence against a particular fellow student.

Public schools also enjoy some measure of protection from these kinds of claims under the California Tort Claims Act,¹⁹⁶ which bars liability against public agencies and their employees except as specifically provided by statute.¹⁹⁷ The Act states that liability generally attaches only in cases where the public entity is "under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular

¹⁹² *Perna v. Conejo Valley Unified Sch. Dist.*, 192 Cal. Rptr. 10 (Cal. Ct. App. 1983) (finding a cause of action was properly stated for injuries to two students struck by a vehicle after school, where the complaint alleged proximate cause imputed to the district because the teacher kept the students after school hours and knew, or should have known, the crossing guard would be gone by the time students got to the intersection on their way home).

¹⁹³ See *Lucas v. Fresno Unified Sch. Dist.*, 14 Cal. App. 4th 866 (Cal. Ct. App. 1993) (district liable for breach of duty to protect a student from injury by a dirt clod thrown by another student); *Dailey v. L.A. Unified Sch. Dist.*, 470 P.2d 360 (Cal. 1970); *Charonnat v. S.F. Unified Sch. Dist.*, 133 P.2d 643 (Cal. Ct. App. 1943).

¹⁹⁴ *Skinner v. Vacaville Unified Sch. Dist.*, 43 Cal. Rptr. 2d 384, 391 (Cal. Ct. App. 1995) (confirming the adoption of the substantial factor test of the RESTATEMENT (SECOND) OF TORTS § 431 (1977), as set out in *Mitchell v. Gonzales*, 819 P.2d 872, 878 (Cal. 1991)).

¹⁹⁵ *Skinner*, 43 Cal. Rptr. 2d at 391 (reversing a jury verdict in favor of a student's claim against a school district for an attack by a fellow student with a long school disciplinary record, reasoning that a physical education teacher's lack of awareness of the attacker's propensity for violence did not establish a breach of duty by the school district in failing to warn the teacher so that she could protect other students).

¹⁹⁶ CAL. GOV'T CODE §§ 810–895.8 (West 2003).

¹⁹⁷ CAL. GOV'T CODE § 815 (West 2003).

kind of injury," that an injury of that kind resulted from the agency's "failure to discharge the duty," and where the public entity fails to establish that it discharged its duty with care.¹⁹⁸ While a teenage victim of dating violence can clearly establish that California schools have a duty to protect their students, she faces difficulty showing that a school did not meet the requisite standard of care as required by the California Tort Claims Act.

Schools face significant and clear liability for failing to address dating violence issues among their students. However, schools and school districts can easily take steps to reduce their liability, including educating students, faculty, staff, and parents on the issue of dating violence. More specific suggestions for dealing with dating violence on school campuses and thereby reducing schools' potential liability are enumerated in the following Part.

IV. WORKING TOWARD A SOLUTION

A. *Middle Schools and High Schools Need To Educate All Students About Dating Violence*

Students should be taught about dating violence, including the signs of an unhealthy relationship and the dynamics of abuse, either as a separate issue or in tandem with education on date rape and other forms of abuse. This education can take place at a school assembly, be part of a special school program devoted to the issue of dating violence, or can be incorporated into an already existent curriculum in classes such as health.

In the late 1980s, one high school in Massachusetts implemented a two-part program geared toward educating students about domestic violence.¹⁹⁹ One part of the program involves a school-wide "Teen Dating Violence Awareness Week," which includes workshops and an assembly for students, an in-service training for teachers and staff, and an information table at Parent Night. The school also implemented a classroom education program for all freshmen in health education classes, during which the students participate in a three-session teen dating violence prevention program.²⁰⁰ These two programs have had a visible impact on the attitudes of students in the high school: there reportedly have been several incidents of students recognizing abuse and confronting it in the

¹⁹⁸ CAL. GOV'T CODE § 815.6 (West 2003). *See also* *Braman v. Cal.*, 33 Cal. Rptr. 2d 608, 610 (Cal. Ct. App. 1994) (articulating the standards a plaintiff must meet before a public agency will be required to confront a rebuttable presumption of negligence, including a showing that the statute violated imposes a mandatory duty on the agency, the statute was designed to prevent or protect against the harm suffered, and a breach of the statute's mandatory duty was a proximate cause of the injury suffered).

¹⁹⁹ Carole Sousa, *The Dating Violence Intervention Project*, in *DATING VIOLENCE: YOUNG WOMEN IN DANGER*, *supra* note 1, at 223.

²⁰⁰ *Id.* at 225.

school hallways,²⁰¹ as well as an increase in students agreeing that violence is not a normal part of dating.²⁰²

One middle school in Santa Clara County, California,²⁰³ requires all sixth and seventh grade students to participate in a year-long course that deals with issues faced by adolescents. These issues include self-esteem, communication, emotions, peer issues, family dynamics, and goal-setting. Dating violence is not specifically included in the curriculum, partly because the school administration does not feel that dating violence is a problem at the school. The course is laudable for its efforts in educating students on important social and emotional issues faced by adolescents, but the administration is doing its students a disservice by not fully preparing them for what they might encounter in the high school dating scene. There is no guarantee that the high school that these students will eventually attend will be as progressive as this middle school in dealing with student social issues, and as such, this middle school should expand its student education program about adolescent issues to include dating violence in the curriculum.

Schools should also consider special programs to reach out to adolescent boys, because identifying battering behavior in young men, addressing it, and delegitimizing it (or even stigmatizing it) could potentially have an effect on the attitudes of young men in dating relationships. However, to be effective, these courses must be viewed as important and legitimate preventative programs by both schools and students, and should be taught as part of a regular curriculum.

B. Anti-Harassment Policies Should Be Expanded To Specifically Include Dating Violence

All schools are required to draft and implement policies dealing with sexual harassment.²⁰⁴ Yet, very little mention is made of dating violence in these policies, despite the fact that sexual harassment and dating violence are very closely related and have many components in common. It would not be difficult or onerous for both middle schools and high schools to expand discussion of sexual harassment in anti-harassment policies to include dating violence.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ Confidential Interview with Middle School Vice Principal, *supra* note 112.

²⁰⁴ CAL. EDUC. CODE § 66281.5(b) (West Supp. 2003).

*C. Schools Should Train Staff and Faculty To Recognize,
Prevent, and Stop Dating Violence*

Because so much liability rests on teachers and staff not taking the appropriate actions in situations resulting in student harm, schools should be especially vigilant in training staff and faculty about dating violence. Creating an understanding among faculty and staff of what behavior constitutes dating violence and educating them to handle situations of dating violence among their students should radically diminish a school's risk of legal liability created by a its failure to act appropriately.

First, staff and faculty should follow the same curriculum as students, including learning about the dynamics of domestic violence and dating violence, identifying the signs and symptoms of teen abuse, and understanding the special considerations and circumstances involved in teen violence. They should also be made aware of community resources that can assist teens escape violent situations.

Second, schools should teach faculty and staff how to handle a violence situation between students. Schools should develop their own policies and procedures for handling student complaints about violence. It is important that school officials take all student claims of violence and abuse seriously. Many teachers and administrators make the common mistake of minimizing the behavior or telling the complaining student that she should not be so sensitive.²⁰⁵ Other teachers ignore the behavior completely, which, in at least one case, led to the teacher being sued personally by a victim of an in-class assault.²⁰⁶ Teachers and other school officials should be aware that for a teen to voice her concerns to an adult is an important and difficult step, and that she should be supported in her decision to come forward and ask for help in a situation she may not think feels right. If the school official thinks she cannot handle the situation, either because she does not have enough information or does not feel comfortable dealing with issues of abuse, she should refer the student to another school official who can provide the teen with the appropriate help. Faculty and staff should continuously encourage open lines of communication with students regarding interpersonal problems between students.

School officials should also take appropriate action with respect to an alleged abuser. If an incident of dating violence occurs on campus during school hours, the perpetrator should be confronted immediately by school officials. Schools can and should consider suspending a student for using force or violence, or causing, attempting to cause, or threatening to cause physical injury to his girlfriend. Such punishment is in direct compliance with California's Education Code and will send a message to

²⁰⁵ Kuehl, *supra* note 93, at 219.

²⁰⁶ *Mennone v. Gordon*, 889 F. Supp. 53 (D. Conn. 1995).

the abuser and other students that dating violence will not be tolerated at school. It may also serve as a “wake-up call” to the perpetrator that his behavior is unacceptable and will be punished as such. Additionally, school discipline will reinforce the appropriate standards of behavior in young men and adults.

Suspension and expulsion should be used in tandem with education or therapy for the perpetrator. A student who finds himself expelled because of his behavior toward his girlfriend may very well retaliate against her for “getting him kicked out of school,” which does not resolve the cause of the problem.²⁰⁷ Schools should consider requiring anger management classes as part of conditional re-admission or probation for any student who finds himself suspended or otherwise disciplined for violence on campus, including incidents of dating violence. These classes should be funded at school or district expense; requiring private funding of anger management classes will almost certainly reduce the level of compliance among students and their families.²⁰⁸

*D. School Districts and School Officials Should Actively Encourage
Community Involvement with the School To Raise Awareness of
Dating Violence*

Many communities have domestic violence shelters, abuse hotlines, and community education projects. These projects often incorporate student education programs, which involve bringing counselors and advocates to visit classrooms and educating students about dating violence.

Promoting Alternatives to Violence through Education (PAVE) is one such program. Based in Denver, this project provides community-based education and support services to youths and their families. This educational program includes topics such as spousal abuse, child abuse, teen dating violence, elder abuse, and gang violence. PAVE also offers a counseling program for violent offenders ages eight through eighteen, which boasts a success rate (number of people who did not commit a violent crime after receiving counseling) of approximately ninety-two percent.²⁰⁹

²⁰⁷ Schools may also wish to advise a dating violence victim that legal help is available, including restraining orders against the perpetrator.

²⁰⁸ As discussed in *infra* Part IV.F, President George W. Bush recently signed into law a bill that allots federal grants to schools for training on domestic violence and dating violence issues. Perhaps some of that funding could be funneled to pay for anger management classes as part of the effort to educate students on dating violence.

²⁰⁹ This number is from an internal survey conducted in May 1995, where only 7.69% of violent offenders ages eight through eighteen who completed counseling committed another offense. Project PAVE, at <http://www.projectpave.org> (last visited Mar. 3, 2003) (survey on file with author). PAVE can also be contacted at 2051 York Street, Denver, Colorado, 80205.

Other options include encouraging the establishment of student-based anti-violence groups in schools, such as Students Against Violence Everywhere (SAVE). SAVE, the product of one mother's crusade to end violence in schools after her daughter was shot and killed in her high school, is dedicated to educating students about the effects and consequences of violence, promoting and teaching about peer mediation and conflict resolution, and spreading a "message of nonviolence to young people and their communities."²¹⁰ Again, these groups can be funded through the individual school's budget or fundraising events held in the school and the community.

Some schools have had enormous success utilizing plays as a form of discussion about dating violence. One such play is "The Yellow Dress," put on by a Massachusetts program dedicated to educating students and parents about dating violence.²¹¹ The play tells of a young woman in an abusive relationship who is killed by her boyfriend after more than a year of violence and control. After the play, students break into groups to discuss the play, decide how to avoid dating violence, and determine how to help friends and family understand the phenomenon.²¹²

E. Schools Should Educate Parents About Dating Violence

Not only should schools teach their students about dating violence, but they should also involve and educate parents. Many parents are unaware that dating violence is a problem among today's youth and may not recognize it as an issue in their own teen's life. Some studies have even indicated that parents play a role in fostering dating violence among teens,²¹³ perhaps by minimizing or ignoring the abuse inflicted by their child on another person, or by blaming their child for the injuries if their child is the victim.

Parents should be given the same information about dating violence as students. Schools already have available several avenues of communication with parents, including Parents' Night, parent-teacher conferences, or mailing home a newsletter or information packet about the dynamics and symptoms of dating violence among teens. Administrators and teachers can also provide parents with information about domestic violence-oriented community resources, such as a local battered women's shelter,

²¹⁰ Students Against Violence Everywhere, at <http://www.mavia.org/save/highschool.html> (last visited Mar. 3, 2003).

²¹¹ "The Yellow Dress" is the brainchild of Deana's Fund, a Woburn, Massachusetts, program established in 1994 after the death of twenty-three-year-old Deana Brisbois. The long history of abuse suffered by Brisbois, culminating in her death, coupled with a strong desire to educate young people about dating violence, prompted Brisbois's family and friends to start Deana's Fund. See <http://www.deanasfund.org> (last visited Mar. 3, 2003).

²¹² Nifong, *supra* note 31, at 11.

²¹³ Silverman et al., *supra* note 4, at 572. See also Silverman, *supra* note 40, at 149; DeKeseredy et al., *supra* note 40, at 396.

a twenty-four-hour crisis line, or an advocacy group, as well as internet links to educational Web sites devoted to domestic and dating violence. Schools and school districts should further promote a cooperative mentality among school community members; parents, teachers, and school administrators should be encouraged to contact each other in cases of suspected dating violence among their students, and work together to combat dating violence in their local schools.

Another option is to heighten parents' awareness through plays or programs brought to the school by outside companies. For example, one such theatre troupe, Minneapolis-based Illusion Theatre, presented a play dealing with teen dating violence to employees at a suburban electronics firm. According to the director of the troupe, many parents asked after the play how they could address this issue with their kids and get their children out of abusive relationships.²¹⁴ This play's significance lies in that it raised parental awareness of the issue and gave suggestions on how to deal with the problem at home. This parental awareness is a crucial component of combating teen dating violence, as any effort to combat dating violence will be reinforced if more than one group or entity is actively fighting it.

F. School Districts Should Seek Federal Funding for Grants Under the No Child Left Behind Act of 2001

The No Child Left Behind Act of 2001²¹⁵ is a reauthorization of the Elementary and Secondary Education Act originally enacted in 1965 and the source of funding for such programs as Head Start.²¹⁶ Among other things, the Act makes grant money available to schools for training administrators, faculty, and staff on domestic violence issues, as well as for developing prevention and intervention strategies for children and teens experiencing or witnessing domestic violence. The Act also provides for "educational programming for students regarding domestic violence," and funds the development and implementation of school policies regarding "appropriate and safe responses to, identification of, and referral procedures for students experiencing or witnessing domestic violence."²¹⁷

This federal funding is exciting progress, not only because the federal government is taking a more active approach in combating domestic violence, but also because this particular grant program is a formal recognition that domestic violence affects not only adults, but children and

²¹⁴ Gardner, *supra* note 42, at 12.

²¹⁵ No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2001).

²¹⁶ U.S. Dep't of Educ., *No Child Left Behind Act of 2001: Reauthorization of the Elementary and Secondary Education Act Legislation and Policies Website*, at <http://www.ed.gov/offices/OESE/esea/index.html> (last modified July 11, 2002) (describing the Act and directing parents to a Web site with more information).

²¹⁷ No Child Left Behind Act §§ 5571(b)(1)(B), 5571(c)(3)(A).

teens as well. In addition to initiating or expanding programs dealing with domestic violence, middle schools and high schools receiving this grant money could easily implement educational programs, intervention policies, and referral procedures for students experiencing dating violence. Such an implementation would more effectively combat the domestic violence problem by not only targeting students who witness domestic violence in their own families, but also by helping the next generation learn that their own relationships do not have to include violence. By teaching students that violence is not an acceptable part of a romantic (or any other) relationship, these programs can have a very real impact on lowering the rates of domestic violence in the coming years.

CONCLUSION

Researchers are beginning to recognize teen dating violence as the prevalent and serious problem that it is among today's adolescents. Schools and school districts need to realize that dating violence is a problem that directly affects the population they are charged with educating, and that ignoring the problem will not make it disappear. Moreover, failing to address the problem in today's schools will only exacerbate dating violence by sending a message to young men and women that dating violence is not a cause for concern and that it is legitimate behavior accepted by society.

A realization that they are subject to liability under various frameworks for not addressing dating violence should provide the necessary motivation for all schools, both public and private, as well as school districts, to begin dealing seriously with the issue. Schools should educate students, staff, and parents on the dynamics of teen dating violence, and include techniques for identifying possible victims of abuse and dealing with victims and batterers alike within the context of the school system. Communities should also be encouraged to participate in the fight against teen dating violence in their local schools and to extend open invitations for assistance should any teen require it.

Teen dating violence is not a problem that will go away by itself, nor is it something that can be fixed overnight. However, if we teach the next generation of adults about the legal, social, and personal ramifications of intimate violence now, and if battering that would otherwise occur is deterred, we will take a significant step to reduce the incidence of domestic violence in tomorrow's adults. It may also reduce battering in today's adults, as teens are made aware that the violence in their families' and friends' lives is not normal and should be stopped.

Schools are in a unique position to assume this responsibility and, in fact, must assume it for the welfare of the next generation. Districts and individual schools are charged with educating their students, and this education should not only include reading, writing, and arithmetic, but

also a social primer for acceptable behavior among peers. Failure to educate students about acceptable social behavior is not only a great disservice to today's young people and tomorrow's adults, but is also a breach of the school's duty to educate and to ensure the welfare and safety of their students. Schools should fight against adolescent dating violence not only because they can be held legally liable for failing to do so, but also because social conscience demands it.