



In This Issue

Regular Features

[Editor's Note](#)

[President's Message](#)

FAQ

[What are the submission guidelines for the Forum?](#)

Featured Articles

[Treatment Considerations for Offenders Who Access Child Sexual Exploitation Materials](#)

[Understanding Title IX: How Federal Policy Shapes Schools' Responses to Children with Problematic Sexual Behavior](#)

["I'll change if you guys change." Adapting systems to maximize treatment readiness among men who sexually offend.](#)

Students' Voice

[The Rate of Sexual Offence Convictions in the General Population](#)

Book Reviews

[Trauma informed care. Transforming treatment for people who have sexually abused.](#)

ATSA News

[Call for ATSA Board Nominations](#)

[5th Annual ATSA Student Clinical Case and Data Blitz](#)

Understanding Title IX: How Federal Policy Shapes Schools' Responses to Children with Problematic Sexual Behavior

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With increasing frequency, stories about a young child involved in sexual behavior with a schoolmate are reported in the national media. Such stories draw attention to the challenges that schools face when determining appropriate responses for sexual behavior among schoolmates. Unfortunately, many stories highlight punitive responses often made by schools. For example, from a New York Times article:

It started as schoolyard roughhousing during recess, with one boy's hand allegedly touching the upper thigh, or perhaps the groin, of another. There were no reported witnesses, and it remains unclear if anyone complained, but the principal immediately suspended the student, placing the incident on the boy's record as a case of 'sexual assault.' The children involved were first graders – the purported assailant just 6. (James, 2012)

A range of sexual behavior from typical to problematic occur among children within school settings (Kaesler, DiSalvo, & Mogalia, 2000). Therefore, behavioral health providers and other professionals who work with children who have engaged in sexual behavior, be it typical or problematic, will likely need to interface with local elementary and middle schools regarding student behavior. Yet to communicate most effectively, providers and other professionals must be aware of public policies that may directly or indirectly influence how the school responds to instances of sexual behavior, particularly problematic sexual behavior (PSB).

Of particular relevance to schools' responses to PSB is Title IX of the Education Amendments of 1972. Title IX is a "federal civil rights law that prohibits discrimination on the basis of sex in federally funded education programs and activities" (U.S. Dept. of Education, Office of Civil Rights, n.d.). Within schools, Title IX directly influences policies regarding sexual harassment, and, more recently, cyberbullying. This article is designed as a primer regarding elementary and middle school policy (i.e., for children ages 3 to approximately 14 years old) on topics of student sexual behavior. As such, we will first discuss the definitions of typical and

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problematic sexual behavior and then briefly review Title IX's implications for sexual harassment and cyberbullying policies, as well as the ways in which these policies may influence how schools respond to children with PSB.

Definitions of Sexual Behavior

Sexual behaviors in children occur on a continuum, ranging from typical to concerning to problematic. Typical sexual behaviors are those behaviors involving sexual body parts (i.e., genitals, anus, buttocks, or breasts) that are expected for the child's developmental period and are not considered harmful. For example, it is typical for young children to periodically "moon" others or to "play doctor" and for older children to engage in kissing behaviors with a mutually agreeable peer. Although such behaviors are typical and do not generally require professional interventions, these behaviors would still be thought of as inappropriate and unacceptable if they occurred in the school setting. Alternatively, PSB involves the same body parts listed above in a manner that is developmentally inappropriate or potentially harmful to the child or others (Chaffin et al., 2006). PSB may involve physical actions among students (e.g., showing or touching private parts), as well as written messages, drawn pictures, spoken words (i.e., sexual language), or electronic and online sexual messages or pictures. Although the term sexual is used, the intentions and motivations for these behaviors may or may not be related to sexual gratification or stimulation (which is rare for young children). In many cases, PSB is related to curiosity, anxiety, imitation, attention-seeking, interest, or self-soothing (Chaffin et al., 2006; Silovsky & Bonner, 2003).

In elementary schools, both typical and problematic behaviors occur in the presence of adults (see Kaeser et al., 2000). As children age, however, sexual behaviors tend to become more covert, reducing in the presence of direct adult supervision and are more likely to occur in hallways, classrooms, locker rooms, at lunch, and outside of school (e.g., bus stops, walking to school; Espelage, Hong, Rinehart, & Doshi, 2016). Middle schoolers (i.e., 12 to 14 year olds) are at particular risk for engaging in problematic and illegal sexual behavior given their developmental period of emerging puberty, sexual curiosity, and greater applicability of sexual offense laws (Browning, Leventhal, & Brooks-Gunn, 2005; Finkelhor, Ormrod, & Chaffin, 2009). School professionals are therefore often uniquely situated to witness typical (but inappropriate for the school setting) and problematic sexual behaviors and, therefore may be best suited to prevent and intervene at the first sign of PSB. Furthermore, teachers or other school professionals may be the first person a child tells if someone has engaged in PSB with them. Thus, school personnel have the potential for preventing and providing early interventions to address PSB and promoting healthy relationships.

Despite this opportunity, schools often do not have reasonable policies in place to intervene, protect the child impacted, address PSB, and promote positive student relationships. Whether typical or problematic, schools typically exhibit a wide range of responses, from no response and ignoring harmful sexual behavior (e.g., Camp, 2017; Travis, 2017) to providing overly punitive and harsh responses for sexual behaviors (e.g., Ahuja, 2006; Stein, 2003). It is therefore important that treatment providers understand the policies and parameters designed to guide school practices in order to best advocate for the students, as the situation warrants.

Title IX & Sexual Harassment

In 1999, a landmark U.S. Supreme Court case expanded Title IX from focusing solely on sexual discrimination to specifically mandating that schools respond to sexual harassment. The case, *Davis v. Monroe County Board of Education* (1999), involved a fifth-grade boy who had engaged in unwanted sexual behavior (e.g., trying to touch breasts and genitals of another student, making sexual comments) toward several other female classmates. The school failed to respond and intervene for a period of months, despite knowing of the problem and witnessing some of the incidents. The school was subsequently sued under Title IX by one of the victim's families and was found monetarily liable for failing to protect the students from sexual harassment. The case changed the landscape of school policy. All schools that receive any federal funding are now required to have specific written policy on managing sexual harassment, adopt and publicize grievance procedures, and have a Title IX coordinator. In addition, schools must address sexual behaviors that happen not only on school grounds but also behaviors that occur at school events or other locations where the school has authority over the children in question (e.g., school bus, field trips; Lungwitz, 2010).

For providers and other professionals working with children who exhibit sexual behaviors, it is important to note that PSB and sexual harassment have significant overlap, with a few key distinctions, in the school setting. Student sexual harassment is defined as “conduct that is so severe, pervasive, and objectively offensive that it undermines and detracts from the victim’s educational experience and effectively denies the victim equal access to the school’s resources and educational opportunities” (Davis, 1999). In other words, sexual harassment involves interpersonal acts of sexual behavior that occur between a student and another person, and such behavior causes harm or interferes with the other student’s ability to learn. Sexual harassment may involve an older student forcing a younger student to engage in a sexual act, repeated name calling regarding a student’s sexual orientation to the point that the student experiences academic underachievement due to fear of attending class, or a student on a school bus touching another student’s genitals without consent. In general, all instances of sexual harassment would be considered to be PSB. Yet, some youth with PSB may engage in behaviors that would not be officially considered sexual harassment. A student privately watching pornography on a tablet on the school bus; a child repeatedly touching his own genitals during class; or even two 8-year-olds engaging in mutually agreed upon, spontaneous oral-genital contact would all be considered PSB but would not meet the definition of sexual harassment. Although inappropriate and requiring adult intervention, these behaviors on their own do not fall under the purview of Title IX.

Title IX & Cyberbullying

In more recent years, the coverage of Title IX has been further expanded to also cover instances of bullying in schools. Notably, in 2010, the U.S. Department of Education’s Office for Civil Rights (OCR) issued a Guidance document to further clarify schools’ responsibilities when managing bullying behaviors (Ali, 2010). OCR noted that, although schools may already have clearly articulated anti-bullying policies, it is also possible that bullying behaviors could fall under one of several federal antidiscrimination laws, including Title IX. In such instances, the school’s response must also take into consideration Title IX requirements. The OCR guidance document further clarifies that bullying “may take many forms, including verbal acts and name-calling; graphic and written statements, which may include *use of cell phones or the Internet* [emphasis added]; or other conduct that may be physically threatening, harmful or humiliating” (p. 2, OCR, 2010). Taken together, the Guidance document indicates that Title IX also covers instances of ‘cyberbullying,’ which has previously been defined in the scientific literature as “willful and repeated harm inflicted through the use of computers, cell phones, and other electronic devices” (p. 1, Hinduja & Patchin, 2008).

Although the intersection between PSB and general cyberbullying may not be readily apparent, cyberbullying behaviors that also meet Title IX sexual harassment guidelines would be considered PSB. For instance, a child who forwards on a nude or sexually explicit image or video of a fellow student may be PSB. In addition, a child who engages in sexually harassing behavior online or via electronic messages would also be exhibiting PSB; this could include using sexual language online to defame another individual by calling her sexual epithets (e.g., “slut,” “tramp”). Such behavior would warrant a school response based on Title IX guidelines.

Title IX: School Response

OCR is the federal agency tasked with ensuring schools’ compliance to Title IX and is responsible for resolving complaints of sexual harassment. Those working for or considering partnering with schools should become familiar with OCR publications and guidance on student-on-student sexual harassment, for example see the Revised Sexual Harassment Guidance (U.S. Department of Education, 2001) and Questions and Answers on Title IX and Sexual Violence (U.S. Department of Education, 2014). The outcome of policy reform has led to increased awareness of student sexual conduct, such that schools are now more likely to respond to acts of PSB and sexual harassment based on liability concerns. In regards to school’s response to student sexual harassment, OCR (2001) provided the following guidelines:

[The school] should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. Appropriate steps should be taken to end the harassment. For example, school personnel may need to counsel, warn, or take disciplinary action against the harasser, based on the severity of the harassment or any record of prior incidents or both. A series of escalating consequences may be necessary if the initial steps are

ineffective in stopping the harassment. In some cases, it may be appropriate to further separate the harassed student and the harasser, e.g., by changing housing arrangements or directing the harasser to have no further contact with the harassed student. Responsive measures of this type should be designed to minimize, as much as possible, the burden on the student who was harassed. (p. 16)

Despite such guidance, however, many schools have implemented policies that immediately remove students from the educational environment. Such actions are prompt and allow swift disciplinary action in order to avoid legal ramifications and protect students. However, these reactions, such as the one described at the beginning of this article, are unlikely to reduce the likelihood of future PSB in children and may further perpetuate problems for students. Removing a child from a stable, socially supportive learning environment does little to educate him or her about appropriate behaviors and may result in a loss of educational achievement, thereby limiting future long-term outcomes. Moreover, many alternative actions may be taken to meet schools' responsibility under Title IX to best serve all students and their families. For example, schools could develop specific safety plans for the student, which may include temporarily removing the child with PSB from the classroom to ensure safety, shifting classroom schedules so the child with PSB has limited access to previous targets of harassment, or increasing supervision of the student in high-risk situations. We understand that schools frequently have limited resources, so it may be useful for providers working with children with PSB to help educate about PSB and assist in creating realistic safety plans that help maintain the child with PSB in a school setting while meeting the needs of the child who experienced the harassment.

With regard to the schools' response to cyberbullying, it can be more difficult for schools to know where their responsibilities lie. Many cyberbullying behaviors occur outside of academic settings and on devices not owned or managed by schools. In these instances, schools face the "challenging task of addressing problematic online behaviors committed by students while simultaneously protecting themselves from civil liability by not overstepping their authority" (p. 71, Hinduja & Patchin, 2011). However, it is important to remember that schools are responsible not only for behaviors that occur on their premises but also for behaviors that occur at school-sanctioned events or situations in which the school has authority. In these situations, federal policy mandates a school's response, which would continue to fall under the guidance provided by OCR and discussed previously.

In addition, a more recent circuit court held that a school could discipline a student for off-campus cyberbullying if the behavior "would foreseeably create a risk of substantial disruption within the school environment" (Kowalski, 2011). In the case, an adolescent created a website specifically targeting another youth at her school, calling the other student a "slut" and spreading rumors about her sexual health. The website creator then invited other students from her school to post and comment on the site. These actions created significant academic impairment for the target of the website, who subsequently complained to the school about the harassment. The school intervened and punished the student who created the site with a 10-day out of school suspension and a 90-day social suspension. The student and her family subsequently sued the school, contending that the school overstepped their authority and violated her first amendment and due process rights, as the website had been developed outside of school activities. However, the court upheld the school's punishment, stating that the student's behavior caused a significant, foreseeable disruption at school. As such, schools may have a larger purview for punishing electronic and online sexual behaviors than originally believed, specifically if the sexual behaviors meet the definition of cyberbullying. Notably, the court's ruling did not address therapeutic and educational interventions that could have been put in place to address the impact of the student's behavior and prevent further incidents.

Conclusions

Cases of student-on-student sexual misconduct have been reported across the country, many involving young children in elementary and middle schools (Associated Press, 2018; James, 2011; Lemoine, 2015; Teasley, 2010; Thomas, 2017). Topics involving sexuality and sexual behavior, particularly involving children, are sensitive and deserve attention. When a child engages in PSB at school that is disruptive to another student, federal policy mandates a response. The specific approach, however, is left to the school's discretion. Treatment providers and other professionals who work with children exhibiting sexual behavior in

schools will likely need to interact with school professionals in order to best communicate appropriate responses and advocate for their clients. Such advocacy and collaboration may include facilitating an in-school safety plan to decrease the likelihood of repeated PSB (e.g., scheduled bathroom time), developing appropriate consequences for inappropriate behavior (e.g., classroom removal, loss of privileges), training school personnel to respond in a therapeutically oriented manner (e.g., utilizing therapy-based problem-solving techniques in the classroom), and integrating educational programs that support positive peer relationships (e.g., as recommended in some recent statewide policy reform; Oklahoma HB 2734, 2018; also as outlined in a Canadian resource guide for educators; British Columbia Ministry of Education, 1999). Additionally, collaboration may assist with caregiver-school communication to ensure a unified plan across all settings. We hope this brief primer assists readers with understanding the federal Title IX policy and the manner in which the policy influences schools' responses to PSB. We encourage members of ATSA to continue to develop their understanding of Title IX's implications and implementation in their own communities. Advocating for appropriate school responses can best ensure that the victim, the youth with PSB, and all parties receive the right treatment and education to reduce the negative impact, prevent further incidents of PSB, and promote healthy relationships.

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