

Top Ten Things You Need to Know About Sexual Contact Among Very Young Students


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Background

The Barbie Doll Case

- Two kindergarten girls
 - Nap time
 - Vaginal penetration with Barbie doll
 - Went to jury trial
 - District prevailed
 - But took a huge toll on the teacher and principal
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The Kissing Game Case

- Kindergarten boy and girl
- During recess kids would go to restroom
- Teacher couldn't see that boy went in with girl
- Kissing game involved oral sex – boy's mouth on girl's breasts, vaginal area, and anus
- After report, boy went on to act in a sexual way toward two other students – slapped girl on bottom and was caught on playground with hands in girl's underwear
- District settled

Top 10



- 1. Don't assume youngsters aren't capable of such conduct.**
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- Students may themselves be victims of sexual contact.
- Students may be acting out something they have seen in various media, e.g., movies, TV, magazine.
- Remember a young student cannot consent.
 - Not saying no doesn't change things.

2. Labels matter.

- In kissing game case, mom was incensed that the district labeled its investigation as one into inappropriate touching.

- She wanted it labeled as sexual assault investigation.


- Safe, and possibly more accurate, to label all as sexual harassment investigation.

3. Separate students on first report.


- Their young age doesn't make it more appropriate to leave them together.
- Don't wait until you have talked to them.
- Definitely don't wait until after you have fully investigated
- In smaller districts, make a plan to separate them even within same class.
- Document the efforts to separate.
 - Especially important if they are not successful.
 - Helps defend against deliberate indifference claims.

4. Handle parents carefully.



- There are no legal requirements about notifying parents.
 - Policy or Operating Procedures may control.
 - Earlier is better, but let law enforcement weigh in.
 - Parent reactions may be due to student behavior revealing issues outside of school.
 - FERPA applies so be mindful of sharing info about other students.
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**5. Investigate immediately,
following grievance process for
Title IX sexual harassment
complaints.**



- If victim doesn't want to file formal complaint this is a time when Title IX Coordinator should do it.
- Don't short circuit the process.

6. Make CPS Report.

- Doesn't matter that it is student-student.
- New Standard of "reasonable belief"
- Can't delegate to others.
- Whoever knows about it can get on a call together.


7. Call Law Enforcement.

- Even though you have called CPS, parents will expect call to law enforcement.
- Call even if you know they are too young to be criminally responsible.
- Let law enforcement be the one to tell you that and document it.

8. If allegations are sustained, move the perpetrator.


- May be limited with discipline, e.g.:
 - if under six can't send to DAEP;
 - below third grade can't get OSS unless conduct that contains the elements of a sexual assault
- But have options to move campuses if available
- At a minimum change classrooms
- If unable to change classrooms, make a plan for separation
- Document all efforts to separate

9. Stay away agreements may be difficult to enforce.


- Young children still want to be friends.
 - Picture the playground.
 - Should still use them, but just may not be as effective as when used with older students.
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10. No gag orders.





No longer allowed under Title IX.



That may change but be aware of perception.

Contact Us



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