

LIFE DYNAMICS INCORPORATED

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DATE: June 20, 2002
TO: Office of the Superintendent
FROM: Ed Zielinski, General Counsel, Life Dynamics Incorporated
RE: School District Exposure to Criminal Prosecution and/or Civil Litigation

NOTICE

As General Counsel for Life Dynamics Incorporated, I am compelled to educate you about your school district's potential liability should it:

- **be in violation of state mandated child abuse reporting statutes;**
- **provide referrals to family planning service providers;**
- **allow family planning service providers to have access to your students; or**
- **operate a school-based health clinic.**

I do not propose to give you legal advice on this matter, but I believe it would be in your district's best interest to review this letter with and seek the advice of competent legal counsel.

Life Dynamics recently completed a nationwide study regarding the level of compliance with state laws which mandate the reporting of suspected child sexual abuse and/or statutory rape. The results of this effort show conclusively that the overwhelming majority of America's family planning service providers are openly and willfully violating these laws. Our research and undercover investigation has revealed that this practice is institutional and occurring in every state in the country.

We have also discovered that the number of victims created by this situation is immense, and that the impact on them can be devastating. To address that issue, we are now in the very earliest stages of implementing a national litigation strategy to seek compensation in the civil court system for the parents and children whose lives have been affected by this illegal activity. We are also providing information to state child protection agencies and law enforcement personnel who are responsible for compelling compliance with these statutes and pursuing criminal prosecution against those who violate them.

As part of this project we submitted a Freedom of Information Act (FOIA) request to every school district in the United States in order to evaluate their level of compliance with these same mandatory reporting statutes. What we found is that a significant number of school districts may also be either deliberately or unwittingly operating in violation of these laws.

Another result of this FOIA mailing was that we were contacted by administrative personnel and legal counsel representing many of these school districts. Often we were asked to provide an opinion as to

steps school districts could take to insulate themselves from civil liability related to claims for negligent referral. Others asked what steps the school district could take to insure compliance with these statutes in order to prevent employees (teachers, nurses, counselors, administrators, board members, etc.) from being criminally prosecuted. Whenever we agreed to offer such an opinion, we did so with the caveat that if the person to whom we were speaking was not an attorney, they should refer their questions to their school district's local counsel. In summary, our suggestions were that every school district should:

- establish a protocol to insure that the district is complying with state laws regarding the reporting of suspected sexual activity by underage children;

NOTE: For an underage girl to seek birth control information or paraphernalia, treatment for a sexually transmitted disease, a pregnancy test, an abortion, or abortion referral is evidence of sexual activity. Knowledge of this by someone who is a mandated reporter compels that person to file a report with the state for an investigation into whether or not she is the victim of child abuse. For the mandated reporter, his or her only duty is to report the incident not investigate it, ignore it, make assumptions or draw conclusions. Even in circumstances where a mandated reporter has a reasonable belief – or actual knowledge – that (a) the girl's sexual partner is also a minor or that (b) the girl's parents already know about the situation, a report to the state is still legally required. **Only the state is allowed to determine whether or not a child's sexual activity is illegal.**

- review with its attorneys the practices and written policies of any organization with which it is affiliated to insure that they comply with state laws regarding the reporting of suspected sexual activity by underage children-this includes any organization which the school district allows to provide students with information and/or materials regarding sex education in which future contact with said organization is suggested or could be a reasonable possibility;
- verify that the above organization will – and has the ability to – insure or indemnify the district in the event of a claim for damages that arise from a referral from the district to the organization;
- monitor the practices of agents, servants, employees, or contractors associated with school-based clinics or other district-wide programs to verify their compliance with these state mandated reporting requirements; and
- review with its attorneys the joint liability of school districts for damages inflicted upon girls, and the families of girls, who have been referred to agencies which provide family planning services — these services include sex education curricula, presentations and/or materials or the provision of any of the following: abortion, abortion referrals, pregnancy testing, birth control information or paraphernalia, and/or treatment for sexually transmitted diseases.

Our review of applicable state laws indicates that by allowing family planning service providers into the school district to give presentations, conduct sex education classes, leave materials, or accept referrals from district agents, servants, employees, or contractors, liability may be attenuated to the district for the conduct of the provider. If a girl is injured, killed, or sexually assaulted while under the care of a family planning service provider to which she was referred by the school, she, her parents, or both may charge the district with negligently referring the girl to that provider. In some states a finding of such negligence

could result in an award of actual and punitive damages against joint tortfeasors. This liability may arise from the district tacitly endorsing the provider's services and the children accepting that endorsement and subsequently relying upon it. The school district may be held jointly or perhaps severably liable for injuries or damages the girl or her parents suffer if the family planning service provider:

- fails to report to the state a reasonable suspicion that an underage child is sexually active;
- encourages an underage child to conceal her sexual activity from other mandated reporters and/or coaches her in the methodology for doing so;
- falsifies official documents related to the sexual activity of an underage child;
- seeks to circumvent parental involvement statutes where applicable;
- suggests to an underage child that she cross state lines, or assists an underage child in crossing state lines, in order to conceal her sexual activity from her parents and/or authorities or to procure an abortion or birth control; or
- provides an underage student with a referral to any individual, clinic, or other organization which results in the child being injured, killed, or sexually assaulted.

By virtue of your district's responsibility to the students and parents you serve, a legal duty is created to protect them from harm. If your district through its relationship with a family planning services provider, or its operation of a school-based clinic fails in this responsibility, the district may be held liable for the damages that result. Moreover, if a school policy causes an agent, servant, employee, or contractor of the district to engage in conduct which subsequently exposes them to either civil or criminal prosecution, that person may also have a cause of action against the district.

Finally, as you consider these matters you may also want to determine the financial cost to your school district for insuring itself around the risk which arises from an affiliation with a family planning services provider. This is especially relevant in circumstances where this agency operates independently of the school district and is not under its direct supervision or control.

For more information about Life Dynamics Incorporated visit our Web site, LifeDynamics.com. We also have a separate Web site dedicated to this particular issue called ChildPredators.com.

Sincerely,

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