

CALIFORNIA SEXUAL ABUSE LITIGATION & RELATED ISSUES

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AB 218—CHANGING OF LANDSCAPE FOR SEXUAL ABUSE CASES

- SIGNIFICANTLY ALTERED THE LANDSCAPE FOR SCHOOL DISTRICT DEFENDANTS.
- THIS LEGISLATION PRIMARILY FOCUSED ON ENABLING SURVIVORS OF SEXUAL ABUSE TO SEEK JUSTICE LONG AFTER THE INCIDENT.
- THIS PRESENTS UNIQUE CHALLENGES AND IMPLICATIONS FOR SCHOOL DISTRICTS

AB218—STATUTE OF LIMITATIONS

- EXTENDS STATUTE OF LIMITATIONS FOR FILING LAWSUITS RELATED TO CHILDHOOD SEXUAL ABUSE.
- PREVIOUSLY, CHILDHOOD SEXUAL ABUSE VICTIMS HAVE UNTIL THEIR 26TH BIRTHDAY OR THREE (3) YEARS FROM DISCOVERY OF ABUSE TO FILE A LAWSUIT.
- WITH AB218, THE WINDOW IS NOW OPEN UNTIL THE AGE OF 40 YEARS OLD OR FIVE (5) YEARS FROM THE DISCOVERY OF ABUSE, WHICHEVER IS LATER.

AB218—AFFECTS ON SCHOOL DISTRICTS SUNSET PROVISION

- THIS LAW INCLUDES A THREE-YEAR WINDOW (FROM JANUARY 1, 2020 TO DECEMBER 31, 2022) DURING WHICH VICTIMS CAN FILE CLAIMS REGARDLESS OF HOW MUCH TIME HAS PASSED SINCE THE ALLEGED ABUSE.
- THIS REVIVAL PERIOD HAS LED TO A SURGE OF LAWSUITS.
- DISTRICTS HAVE FACED LEGAL CHALLENGES STEMMING FROM ALLEGATIONS DATING BACK DECADES.

PREPARING FOR LEGAL DEFENSE

- DISTRICTS ARE FORCED TO REVISIT DECADES OLD POLICIES AND RECORDS.
- BEST EFFORTS MUST BE MADE TO UNDERSTAND THE DOCUMENTATION, WITNESS ACCOUNTS.
- EVIDENCE PLAYS A KEY ROLE IN DEFENDING AGAINST ALLEGATIONS OF HISTORICAL ABUSE.
- GIVEN THE EXTENDED TIMELINE, GATHERING AND PRESERVING EVIDENCE BECOMES VERY CHALLENGING.
- OLD RECORDS, CORRESPONDENCE, AND EVEN TESTIMONIES FROM INDIVIDUALS WHO CAN ATTEST TO THE CHARACTER OF THE PERPETRATOR CAN BE HELPFUL IN DEVELOPING A DEFENSE.

FOCUS ON PERPETRATOR'S CULPABILITY DEFENSE STRATEGIES

- EVALUATION OF WHETHER THE ALLEGATIONS OF SEXUAL ABUSE HAVE MERIT.
- DEFENSE STRATEGIES RE UNIFIED DEFENSE WITH PERPETRATOR'S COUNSEL OR IF REASONABLY BELIEVE THE SEXUAL ABUSE OCCURRED, THEN SEPARATE DEFENSE STRATEGY.
- APPORTIONMENT OF FAULT—IN CASES INVOLVING MULTIPLE DEFENDANTS APPORTIONMENT OF FAULT CAN BE A KEY DEFENSE STRATEGY: ALLOCATING DAMAGES TO THE DEGREE EACH PARTY IS RESPONSIBLE.
- DEVELOPMENT OF FACTS TO SUPPORT HIGH PERCENTAGE OF PERPETRATOR'S LIABILITY (IF EVIDENCE APPEARS TO SUPPORT THAT THE SEXUAL ABUSE OCCURRED); EVIDENCE THE PERPETRATOR WAS TRAINED AND RECOGNIZED SEXUAL ABUSE WAS PROHIBITED.
- NOTE THAT TREND HAS BEEN TO FIND DISTRICTS A HIGHER PERCENTAGE OF LIABILITY THAN PERPETRATORS.

DEFENSE STRATEGIES

- PLAINTIFF'S CREDIBILITY MAY BE CHALLENGED THROUGH CROSS-EXAMINATION.
- PLAINTIFF'S BACKGROUND AND HISTORY DEVELOPED POTENTIALLY THROUGH WITNESS.
- PLAINTIFF'S POTENTIAL BIAS OR MOTIVE.
- DAMAGES—ESTABLISHING THE EXTENT OF DAMAGES BY WAY OF PSYCHOLOGICAL EXPERTS.
- TREBLE DAMAGES ARE PROHIBITED AGAINST PUBLIC ENTITIES. (SEE GOV. CODE SEC. 818.)

BACKGROUND INVESTIGATIONS

- PATTERNS OF BEHAVIOR—HISTORY OF FRAUDULENT ACTIVITIES SUSPICIOUS CLAIMS, CIVIL LITIGATION PATTERN, OR CRIMINAL RECORDS RELEVANT TO SUBJECT'S CREDIBILITY.
- OVERLAPPING CLAIMS—MULTIPLE CLAIMS FILED WITH DIFFERENT INSURANCE COMPANIES FOR THE SAME CLAIM.
- INDIVIDUAL'S HISTORY—MAY UNCOVER POTENTIAL MOTIVATIONS BEHIND CURRENT BEHAVIORS.
- MEDIA AND OLD NEWSPAPER ARTICLES

SOCIAL MEDIA INVESTIGATION

- CAPTURE ONLINE INFORMATION OVER TIME—EVEN DECADES.
- SOCIAL MEDIA POSTS CAN REVEAL INCONSISTENCIES BETWEEN REPORTED INJURIES AND CIRCUMSTANCES AND PLAINTIFF'S ACTUAL ACTIVITIES.
- INVESTIGATIONS INTO PROFILES OF FAMILY MEMBERS AND FRIENDS.
- IMPORTANT CONSIDERATION ON SOCIAL MEDIA INVESTIGATION—NO “FRIENDING” SHOULD EVER OCCUR DUE TO RULE 2-100 “CONTACTING A REPRESENTED PARTY.”
- IF YOU DO ATTEMPT TO “FRIEND” A PLAINTIFF THERE COULD BE SERIOUS LEGAL REPERCUSSIONS OR MAKE YOURSELF A WITNESS.

SUB-ROSA/SURVEILLANCE

- OBSERVE AND REPORT—OBTAIN A “DAY IN THE LIFE” VIEW TO SHOW THEIR MOST AUTHENTIC SELF
- REVEAL BEHAVIORS THAT CONTRADICT CLAIMS OF FINANCIAL HARDSHIP, EMOTIONAL DISTRESS OR INABILITY TO PERFORM CERTAIN ACTIVITIES.
- CAVEAT: HAVE TO HAVE SENSITIVITY RE WHEN AND HOW TO USE SUB-ROSA SURVEILLANCE

AFFIRMATIVE DEFENSES

- CONTRIBUTORY NEGLIGENCE (CAUTIONARY TALE)—PLAINTIFF'S ACTIONS CONTRIBUTED TO THE HARM THEY SUFFERED, REDUCING THE SCHOOL DISTRICT'S LIABILITY.
- ASSUMPTION OF RISK (CAUTIONARY TALE)—PLAINTIFF KNEW OR SHOULD HAVE KNOWN OF THE RISKS INVOLVED AND VOLUNTARILY ASSUMED THEM.
- LACK OF NOTICE—THE DISTRICT DID NOT HAVE ANY PRIOR NOTICE OF THE ALLEGED ABUSE.
 - THE DISTRICT KNEW OR SHOULD HAVE KNOWN *SEE C.A. v WILLIAM S. HART UNION HIGH SCHOOL DISTRICT*, 53 CAL.4TH 861 (2012)

EMPHASIZING SAFETY PROTOCOLS

- DEMONSTRATING PROACTIVE MEASURES—PRESENTING EVIDENCE OF POLICIES, PROCEDURES AND PROGRAMS AIMED AT PREVENTING AND ADDRESSING ABUSE.
- HIGHLIGHTING TRAINING AND EDUCATION—PRESENTING EVIDENCE OF TRAINING AND EDUCATION PROVIDED TO STAFF ON RECOGNIZING AND REPORTING ABUSE, AND RESPONDING ACCORDINGLY.
- EMPHASIZING REPORTING SYSTEM—PRESENTING EVIDENCE OF A REPORTING SYSTEM (AND ITS EFFECTIVENESS).

MITIGATION AND PREVENTATIVE MEASURES

- EARLY INTERVENTION AND PREVENTION.
- PROACTIVE MEASURES TO PREVENT CHILDHOOD SEXUAL ABUSE.
- IMPLEMENTING ROBUST POLICES AND TRAINING PROGRAMS THAT HELP REDUCE THE RISK OF FUTURE CLAIMS.
- MAINTAINING COMPREHENSIVE RECORDS OF POLICIES, PROCEDURES, AND TRAINING RELATED TO CHILD SAFETY CAN DEMONSTRATE DUE DILIGENCE AND COMPLIANCE.
- CAVEAT: BE CAREFUL NOT TO SET TOO HIGH OF A STANDARD IN YOUR POLICES, PROCEDURES AND TRAINING, THAT COULD BE USED AGAINST THE DISTRICT. RECOMMEND CONSULTING WITH HUMAN RESOURCES AND OTHER KNOWLEDGEABLE SOURCES.
- THE DISTRICT MAY PROVIDE ADDITIONAL TRAINING AND AWARENESS PROGRAMS FOR STAFF AND STUDENTS ON ISSUES RELATED TO HARASSMENT, DISCRIMINATION AND ABUSE.

PROFESSIONAL BOUNDARIES

- SCHOOLS TO REQUIRE HIGH STANDARDS OF BEHAVIOR AND PROFESSIONALISM WITH CLEAR BOUNDARIES BETWEEN STAFF AND STUDENTS.
- “BOUNDARIES” MEAN ACCEPTABLE PROFESSIONAL BEHAVIOR BY EMPLOYEES WHILE INTERACTING WITH STUDENTS.
- A VIOLATION OF THESE BOUNDARIES MAY BE DEEMED AN ABUSER OF POWER AND BETRAYAL OF PUBLIC TRUST.

UNACCEPTABLE BEHAVIORS

- SOME ACTIVITIES MAY SEEM INNOCENT FROM AN EMPLOYER'S PERSPECTIVE, BUT MAY BE PERCEIVED AS INAPPROPRIATE OR UNPROFESSIONAL FROM A STUDENT'S OR PARENT'S PERSPECTIVE:
 - FLIRTATION
 - SEXUAL INSINUATION
- EMPLOYEES MUST UNDERSTAND RESPONSIBILITIES FOR ENSURING THAT EMPLOYEES DO NOT CROSS THE BOUNDARIES.

APPROPRIATE BEHAVIOR AND PREVENTATIVE MEASURES

- COMMENTS ABOUT PHYSICAL ATTRIBUTES.
- EXCESSIVE ATTENTION TOWARD A PARTICULAR STUDENT.
- COMMUNICATIONS (E-MAILS, TEXTS, DMS, SOCIAL MEDIA, LETTERS) WITH STUDENTS OR PARENTS IF IN VIOLATION OF SCHOOL POLICIES AND SCHOOL'S SOCIAL MEDIA POLICES.
- USING PROFANITY WITH OR TOWARDS A STUDENT.
- INVOLVING STUDENTS IN NON-EDUCATIONAL OR NON-SCHOOL RELATED ISSUES.
- UNFIT FOR SERVICE (INABILITY TO APPROPRIATELY INSTRUCT OR ASSOCIATE WITH STUDENTS).

APPROPRIATE BEHAVIOR AND PREVENTATIVE MEASURES (CONT.)

- OBTAINING WRITTEN PARENTAL CONSENT FOR AFTER-SCHOOL ACTIVITIES OR OFF CAMPUS (TUTORIALS).
- OBTAINING FORMAL APPROVALS (SCHOOL AND PARENTS) TO TAKE STUDENTS OFF SCHOOL PROPERTY (FIELD TRIPS, COMPETITIONS).
- MAINTAINING REASONABLE SPACE BETWEEN THE EMPLOYEE AND THE STUDENTS
- EMPLOYEE SHOULD STOPPING OR CORRECT STUDENTS THAT BEGIN TO ASK ABOUT THE EMPLOYEE'S PERSONAL LIFE, ETC.
- SEEKING ADVISE FROM SENIOR STAFF IF EMPLOYEE FINDS HIMSELF/HERSELF IN A DIFFICULT SITUATION RELATED TO BOUNDARIES.
- INFORMING HR OR SUPERINTENDENT ABOUT SITUATIONS THAT HAVE A POTENTIAL TO BECOME MORE SEVERE.

APPROPRIATE BEHAVIOR AND PREVENTATIVE MEASURES (CONT.)

- MAKING NOTES ABOUT AN INCIDENT THAT COULD EVOLVE INTO A MORE SERIOUS SITUATION LATER.
- RECOGNIZING THE RESPONSIBILITY TO STOP UNACCEPTABLE BEHAVIOR OF STUDENTS AND/OR COWORKERS.
- ASKING ANOTHER ADULT TO BE PRESENT IF AN EMPLOYEE WILL BE ALONE WITH ANY STUDENT.
- GIVING STUDENTS PRAISE AND RECOGNITION WITHOUT TOUCHING THEM IN QUESTIONABLE AREAS (GIVING APPROPRIATE PATS ON THE UPPER BACK, HIGH FIVES, AND HANDSHAKES).
- KEEPING PROFESSIONAL CONDUCT A HIGH PRIORITY DURING ALL MOMENTS OF STUDENT CONTACT.

CHILD ABUSE AND NEGLECT REPORTING

- CALIFORNIA PENAL CODE SECTION 11166 REQUIRES THAT ANY MANDATED REPORTER WHO HAS KNOWLEDGE OF, OR OBSERVES, A CHILD IN HIS OR HER PROFESSIONAL CAPACITY OR WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT WHOM **HE OR SHE KNOWS OR REASONABLY SUSPECTS** HAS BEEN THE VICTIM OF CHILD ABUSE TO REPORT THE KNOWN OR SUSPECTED INSTANCE OF CHILD ABUSE TO A CHILD PROTECTIVE AGENCY IMMEDIATELY, OR AS SOON AS PRACTICALLY POSSIBLE, BY TELEPHONE AND TO PREPARE AND SEND A WRITTEN REPORT THEREOF WITHIN THIRTY-SIX (36) HOURS OF RECEIVING THE INFORMATION CONCERNING THE INCIDENT.
 - EMPLOYEES MAY, BUT ARE NOT REQUIRED TO, REPORT INCIDENTS TO HR OR AN ADMINISTRATOR.
 - REPORTING THE INCIDENT TO HR OR AN ADMINISTRATOR DOES NOT RELIEVE THE EMPLOYEE OF THE RESPONSIBILITY TO IMMEDIATELY REPORT THE INCIDENT TO THE APPROPRIATE CHILD PROTECTIVE AGENCY.

LEGISLATION TO LIMIT GENERAL (NON-ECONOMIC DAMAGES)

- LEGISLATION TO SET LIMITATION IN CIVIL LITIGATION TO THE AMOUNT OF GENERAL (NON-ECONOMIC) DAMAGES THAT CAN BE RECOVERED AGAINST PUBLIC ENTITIES.
- POTENTIAL LEGISLATIVE MODELS FROM OTHER JURISDICTIONS.
- TYPE OF CASES THAT WOULD BE INCLUDED IN THE LIMITATION OF GENERAL DAMAGES.
- RECENT TRENDS IN VERDICTS AND SETTLEMENTS THAT HAVE PLACED SUBSTANTIAL MONETARY BURDENS ON DISTRICTS AND PUBLIC ENTITIES.

MICRA AS A POTENTIAL MODEL

- MEDICAL INJURY COMPENSATION REFORM ACT (1975)
- CRISES IN MEDICAL COMMUNITY WITH EXCESSIVELY HIGH VERDICTS AND SETTLEMENT RESULTING IN MEDICAL COMMUNITY LOBBYING THE LEGISLATURE FOR A GENERAL DAMAGE CAP.
- UPDATED IN MAY OF 2022 (AB 35)
 - NON-DEATH CASES, THE CAP FOR GENERAL DAMAGES IS \$390,000 (AND WILL INCREASE \$40,000 EVERY YEAR THROUGH 2033 UNTIL IT REACHES \$750,000).
 - WRONGFUL DEATH CASES, THE CAP IS \$550,000 (AND WILL INCREASE \$50,000 EVERY YEAR THROUGH 2033 UNTIL IT REACHES \$1,000,000).
- POTENTIAL ACTION BY DISTRICTS, JPAs, INSURANCE CARRIERS, PTAs, AND OTHER INTERESTED PARTIES TO OBTAIN LEGISLATION LIMITING GENERAL DAMAGES.

THANK YOU.