

Maintaining SAFE SCHOOLS

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Develop multifaceted approach for addressing student mental health needs

School districts continue to contend with gun violence, bullying, and cyberbullying, and the continued impact on the school community — especially in connection to students' mental health and emotional needs.

"I believe that school safety and mental health intertwine. Because of COVID and racial tension, children are under a lot of stress," said Lawrence J. Altman, adjunct professor at Avila University School of Business and School of Education in Kansas City, Mo., and former special education lead attorney, compliance officer, and Title IX coordinator for Kansas City Public Schools. "I believe that schools should think about mental health screening for all students," he said. "With school shootings on the rise, schools will see the impact of the bystander effect upon their students," said Altman.

Altman shares strategies education leaders can use to address mental health concerns in their districts, such as paying close attention to red flags in students' social media posts. Additionally, he offers ways district leaders can find new solutions to old problems.

Consider the legal implications of ignoring warning signs. "In order to improve school safety, districts need to recognize they might have ongoing issues with students and address those issues in a timely manner," said Altman. Oftentimes districts ignore red flags, like questionable social media posts, until it is too late, he said. "Not addressing these issues can lead to legal violations too, such as violations of IDEA child find and 504 more generally."

Strengthen staff training on proper responses. This may include active shooter trainings, trainings on community dangers, and trainings in crisis and evacuation plans.

"According to the Secret Service, every act of school violence they investigated could have been prevented," said Altman. "The Secret Service provides a sample plan to use. As the Secret Service said, prevention requires leadership and common sense. The Secret Service suggests the creation of a threat assessment process as a means for helping schools identify students who might be a risk of engaging in violent actions," he added. Use this Secret Service guide as a staff training resource.

Address bullying and other campus violence. "Shooters might either be a victim of bullying or committed prior acts of bullying that

(See **MULTIFACETED** on page 3)

Does creating safety plan adequately address kindergartner's sexual harassment?

An Illinois kindergartner's mother reported to the school principal in November that a male classmate sexually assaulted the child on three occasions. The school developed a safety plan, pursuant to which staff would supervise the classmate throughout the day and the two children would be kept separated.

The morning after the principal informed her of plan, the kindergartner's mother told the principal she had observed the male classmate not being supervised. For the next few weeks, the parent and kindergartner reported to the school that the classmate and other students verbally harassed the kindergartner daily. The harassment allegedly continued until the end of the semester, but the district did not respond nor otherwise investigate. According to the parent, the kindergartner and classmate were also placed near each other in a Christmas program.

The parent sued the district, claiming its response to the harassment violated Title IX. When a district knows of objectively offensive peer sexual harassment, it may become liable under Title IX if its response is clearly unreasonable in light of the known circumstances.

The district asked the court to dismiss the case for failure to state a claim.

Was the Illinois district's response clearly unreasonable?

A. No. The district created a safety plan that was reasonably designed to prevent further harassment.

B. Yes. It failed to implement the safety plan or respond to further harassment reports.

C. Yes. To show it responded reasonably, the district should have implemented whatever remedy

the parent requested.

How the court ruled: **B.**

The district failed to follow through with its own safety plan or institute any other corrective measures, even after the harassment continued. *Moore v. Freeport Cmty. Unit Sch. Dist. No. 145*, 121 LRP 37535 (N.D. Ill. 11/08/21).

First, the court rejected the district's argument that its response could not have been unreasonable given that it created a safety plan. The claim, the court observed, was not there was no plan, but that the district failed to implement it.

Next, according to the allegations, the parent sent her daughter back to school after the school assured her a safety plan was in place, the court stated. The parent's contentions that the district then allowed the harassment to continue by failing to implement the plan were sufficient to allege the district's response was clearly unreasonable, the court held.

The court denied the district's dismissal request.

A is incorrect. A district cannot escape Title IX liability simply by enacting a safety plan. Here, the parent's complaint centered on the district's failure to implement the plan, despite the sexual assaults and ongoing harassment.

C is incorrect. The standard does not require a district to act reasonably. The district merely has to show that its response was "not clearly unreasonable." Also, a district isn't required to implement a particular remedy requested by a parent to meet that standard.

Editor's note: This feature is not intended as instructional material or to replace legal advice. ■

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MULTIFACETED (continued from page 1)

the school might have dismissed or did little to prevent it reoccurring,” said Altman.” Districts need to pay closer attention to isolated incidents that might signal mental health issues in students, and not treat them as separate. A series of isolated incidents will eventually make up the big picture, which can only be noticed if staff is really paying attention, said Altman.

Don’t ignore the bystander effect. The bystander effect occurs when a group of people watch a bullying incident, and no one responds. Bystanders might then develop trauma of their own, said Altman. “After the recent shooting at a high school in Michigan, four dead and [seven] wounded, the Michigan school as with the Parkland school will now see the impact upon their students because of the bystander effect,” said Altman. Educating children on what to do if they witness a bullying incident is key. For instance, educators can start emphasizing the importance of anti-bullying from a young age, so that when

children see it, they know it’s not right and need to speak up.

Consider external services as resources. “There are many other services that can help school districts mitigate financial costs when dealing with school safety issues,” Altman said. “In past positions in the field of education, I’ve witnessed many families having a hard time making ends meet. We reached out to hospitals for help with mental health issues, and they came through,” he added. “Our respective teams met to help us develop policies, protocols and procedures to address mental health issues for our students and provided mental health services to them at little or no cost,” said Altman. Another example is a professor at Washington University who recently helped guide the school district with suggested solutions for pressing high school problems. She did not charge the school district for her time and effort, said Altman. “Districts should take steps to identify these types of services in their communities and reach out, sometimes they just need to ask for help.” ■

School resource officers serve, follow protocol during pandemic

School resource officers generally have three main roles in schools, according to the National Association of School Resource Officers. Serving as educator or guest lecturer, informal counselor or mentor, and law enforcement officer, the SRO should perform duties in a manner consistent with the health and safety procedures of the school district in which he works.

In Seminole County (Fla.) Public Schools, SROs from seven local law enforcement agencies have functioned normally during the COVID-19 pandemic, following district rules and guidelines that include physical distancing as feasible.

“While on-campus, [SROs] wear masks or face-coverings, just like our school staff,” said Michael Lawrence, the district’s communications officer. “They are serving in the same capacity at our campuses as they would during a normal school year without COVID-19.”

Lawrence said school staff is required to wear a protective face covering while indoors on property owned, leased, or operated by the district, including riding in buses and other approved transportation provided by the district.

Florida districts must follow guidelines provided by the Florida Department of Health, the Florida Department of Education, and the Governor’s Office, Lawrence added, noting that there are limitations

as to what school districts can do and enforce as a result.

Measures to address schoolwide health

SROs should assist school administration in providing secure and orderly environments, and they can collaborate with teachers, school personnel, and parents as a proactive, community-oriented means of policing and crime prevention. The officers can be integral in helping implement student support activities under the ESEA.

Title IV, Part A of the ESEA authorizes funds to develop, implement, and evaluate comprehensive programs and activities that foster safe, healthy, supportive, and drug-free environments that support student academic achievement. 20 USC 7118 and 20 USC 7281(a). This includes addressing COVID-19.

Seminole County has taken additional steps to ensure the health and safety of students and reduce the spread of COVID-19:

- ☑ Consult with experts.
- ☑ Identify needs.
- ☑ Plan mitigation efforts.
- ☑ Procure equipment and services.
- ☑ Schedule maintenance plans.

Facilities Services Director Kim Dove said school leaders in Seminole County worked with a mechan-

ical engineering consultant in conjunction with guidance from the American Society of Heating, Refrigerating and Air-Conditioning Engineers on re-opening schools.

The district increased the quality of ventilation with high-efficiency filters and ultraviolet lights in air handlers in select areas of high respiratory output, and it provides HEPA air scrubbers for dining rooms and other select spaces. The district

also extended HVAC operational occupied run times to provide increased air changes in buildings throughout the day.

“HVAC run time schedules were adjusted districtwide to 18 hours per day to ensure that the spaces are appropriately ventilated for all occupants including support staff members,” said Dove. “These measures will likely stay in-place for the foreseeable future.” ■

Cybersecurity increasingly more than an IT problem as attacks grow in scope, frequency

“Cybersecurity is everyone’s problem — not just an IT problem,” said attorney Adam Griffin, a partner with Adams and Reese LLP. He will present four sessions about cybersecurity at the Future of Education Technology Conference.

Local educational agencies manage more student data than ever. LEAs are also more exposed to expensive ransom attacks that may shut down schools for days. Cyberattacks can lead to FERPA violations and identity theft, in which students, employees, or both are victims.

Since 2018, schools in most states and U.S. territories have reported cyberattacks on their systems, the federal Cybersecurity and Infrastructure Security Agency said in an October report to Congress. Last year, cyber incidents increased at least 18 percent to 408 public reports, the agency said. Ransomware attacks are also becoming more severe, affecting more students, demanding higher payments, and causing schools to cancel classes.

“There is an idea out there that cybersecurity is firewalls and anti-malware software,” he said. “Those are important components, sure. My view, and the message I want to spread, is cybersecurity is a people problem.”

Solutions need to start with the school board and flow down through the superintendent, through teachers and staff members in every department, and, finally, to students. The board needs to dedicate resources, Griffin said.

“Some school districts are slower to implement security measures than the corporate world because they lack resources,” he said.

“Most often, attacks happen because one employee clicked one link in one email,” Griffin said. “Nobody wants to be the person who has shut down the district for three days.”

He suggests multiple steps to add layers of cybersecurity to reduce risks:

- **Train computer users to increase awareness.** “The No. 1 thing districts can do is user training and awareness,” Griffin said.

He recommends email phishing exercises in which internal IT system administrators send users emails with plausible, phony links. Then, system administrators can see who clicked on those links and target those employees, or students, for additional training.

- **Establish multifactor authentication for employees.** Cybersecurity insurance policies are driving changes because many will no longer write policies without two-factor authentication, Griffin said. Insurance companies are tightening restrictions and raising premiums because they need to reduce risks after paying large claims for ransomware attacks.

- **Train everyone.** “Students are an especially challenging section of the puzzle of cybersecurity,” Griffin said. “People think kids know all about technology and are hyperaware.” They are not. Because they are children, they do not think ahead. Not only should digital citizenship be part of their education, students should also learn about cybersecurity and the potential consequences, including legal and reputational consequences.

- **Segment networks.** “From a technical standpoint, we recommend students be cordoned off from the network,” Griffin said. School district networks should be set up so that students connect to one network for learning and teachers connect to another segment to enter grades and other data. Administrators might even have separate access to another network.

- **Expand student access as they progress.** Student access to the learning network may expand by grade level. For example, first graders do not need email. Their iPads are easier to lock down than Chromebooks, which can be controlled more easily than more powerful computers. Students need to be educated about cybersecurity risks before they are tech-savvy enough to bypass filters and parental controls on their computers, Griffin said.

Attackers can be relentless. They only have to succeed once, whereas cybersecurity operators have to succeed all the time, Griffin said. ■

Empower students to keep themselves, peers safe with self-defense classes

A misconception is that teaching self-defense in schools will prompt fights between students. But two physical education teachers who run self-defense courses in their schools during the school day see it differently.

"Most self-defense is mental and emotional and empowers students to do everything they can to prevent violence," said Linda Carlson, a physical education teacher and R.A.D. Systems instructor and trainer at Oak Park and River Forest (Ill.) High School.

Kathy Brophy, a physical education teacher at Wellesley (Mass.) High School who teaches Power Up self-defense courses to students, agrees. "It's not necessarily just about self-defense," Brophy said. "It's about raising awareness in yourself and believing in yourself."

Districts and schools can integrate self-defense classes into their physical education curricula to ensure students can recognize and react appropriately in risky situations to keep themselves and those they care about safe while also building self-awareness and confidence. Brophy and Carlson shared components of their programs that others may want to adopt.

Cultivate relationships. Students may be more likely to buy into lessons if class starts off with fun activities that allow them to get to know each other and determine how much they are willing to share about themselves with others, Brophy said. Having students discuss their boundaries while partner dancing may be more comfortable, for example, than jumping into discussions about limits unexpectedly or immediately learning physical self-defense moves.

Discuss boundaries. Asking students to read books about issues they face as teenagers, such as challenges with depression, dating abuse, self-harm, anxiety, racial or gender identity, self-care, and not fitting in, and discussing them as a class can also build their understanding of boundaries and what is and isn't healthy and safe for them, Brophy said. Talk about how they can set boundaries in their lives and be aware of their surroundings and of how others make them feel, Carlson said. Ensure students understand the issue of victim-blaming and why they shouldn't feel ashamed for anything that has occurred in the past.

Also, teach students about barriers to reporting their concerns and how they can help others without forgetting to take care of themselves. "We know teenagers tend to tell their friends things before they tell an adult," she noted. "If a student drops something heavy like this on a friend, the friend needs to know how to report to an adult and take care of himself."

Address gender stereotypes. Examine gender roles and stereotypes with students and talk about how femininity and masculinity may play out in power differentials in relationships. Ask them to think about what "emotionally strong" and "physically strong" mean, Carlson said. "We talk about how terms attached to identity can be harmful if we don't unpack what they mean," she said.

Highlight protective strategies. Have students grade relationships in their lives using a rubric and discuss what they want out of these relationships, Carlson said. Help them learn about sexual harassment, sexual assault, consent, and coercion using role-play and engaging in other activities. Also involve students in identifying strategies to prevent harm of themselves and others, including being direct, distracting, delegating, or delaying. While a student may not feel comfortable directly telling a peer to stop, for example, he may be able to distract the peer by lying and saying the police are coming. "They get really creative at coming up with a lie," she said.

Practice skills. Once students understand boundaries and can recognize unsafe situations, they can learn physical self-defense skills to use when necessary to stay safe, Carlson said. Students in her program learn to focus on vulnerable areas using striking pads or their bodies while wearing protective suits and learn how to strike as many times as necessary to pull away and run.

At the same time, ensure students understand when it may be riskier to fight, Carlson said. For example, if someone tries to steal their car, they may be better off letting it go. But if a baby sibling is in the car, they may need to fight to protect him. "Every scenario is different," she said. "They should want to avoid confrontation when they can but need to have the basic skills to get away and get help when they need them."

Offer a refresher. Students may benefit from having the option to attend another course as they approach high school graduation to ensure they are ready for what may come next, Carlson said. Her school offers a more intensive self-defense course to juniors and seniors.

"Students delve more deeply into things," she said. "They spend more time on college scenarios."

Don't force students to participate. Recognize that what is discussed in the classes or portrayed in the physical exercises may trigger some students, Carlson said. Make sure they know they can grab a pass and go to a counselor or take a walk if necessary.

"This is all about empowering students," she said. "If we're not empowering students, we should not be teaching this, period." ■

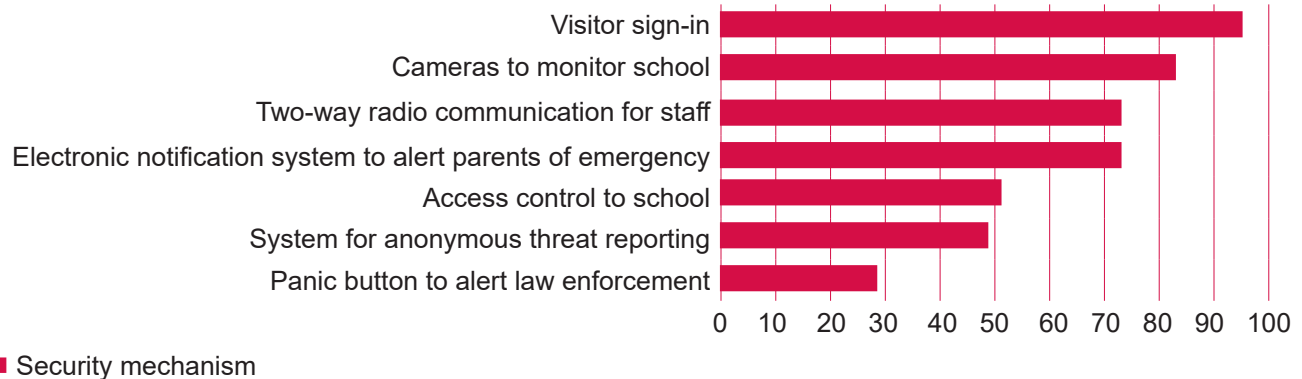
Does your school security stack up?

Most schools have electronic notification systems to alert parents of emergencies, but few have panic button installations to alert law enforcement, according to data compiled by the U.S. Government Accountability Office. Having mechanisms in place to ensure student safety can be a top concern for parents of students with disabilities.

GAO's *Students' Experiences with Bullying, Hate Speech, Hate Crimes, and Victimization in Schools*

analyzed the latest available data from the U.S. Education Department's biennial surveys of schools and students, ages 12 to 18, for SY 2014-15, SY 2016-17, and SY 2018-19. It revealed that about 29 percent of schools from SY 2017-18 survey data use panic buttons to alert law enforcement, while 72 percent have a system for electronic notifications to parents. The chart below depicts the implementation rate of common security mechanisms in schools nationwide.

Estimated Percentage of Security Mechanisms Most Commonly Used to Maintain Safety in K-12 Public Schools, SY 2017-18



Source: U.S. Government Accountability Office (2021) ■

GAO report lists recording, reporting discipline problems as common SRO activities

When taking inventory of the role of law enforcement on campus, schools may take note that recording or reporting discipline problems is one of the most common activities in which school resource officers participate, according to the U.S. Government Accountability Office. GAO's report *Students' Experiences with Bullying, Hate Speech, Hate Crimes, and Victimization in Schools*

analyzed the latest available data from the U.S. Education Department's biennial surveys of schools and students, ages 12 to 18, for SY 2014-15, SY 2016-17, and SY 2018-19. It revealed that in SY 2017-18, about 84 percent of SROs reported that security enforcement as their most common activity at K-12 public schools, while 61 percent reported recording or reporting discipline problems. Here are the most common SRO activities from the study.

Estimated Percentage of School Resource Officers' (SRO) Most Common Activities, SY 2017-18

SRO activity	Percentage
Security enforcement and patrol	84
Solving school problems	77
Providing legal definitions	67
Recording or reporting discipline problems	61
Prevention training	56
Participate in discipline	51
Teaching law-related courses	31

Source: U.S. Government Accountability Office (2021) ■

Suspension over response to bullying increases child's risk of self-harm

Case name: *Spruill v. School Dist. of Philadelphia*, 79 IDELR 276 (E.D. Pa. 2021).

Ruling: A Pennsylvania district will have to defend allegations that it created a dangerous environment for an 11-year-old boy with anxiety, depression, and other disabilities when it repeatedly punished him for his response to peer bullying despite knowing he was at significant risk for self-harm. The U.S. District Court, Eastern District of Pennsylvania denied the district's motion to dismiss the parent's 14th Amendment claim.

What it means: Districts must be careful in how they respond to disruptive or violent behavior that an IDEA-eligible student exhibits in response to peer bullying. If the district punishes the student without addressing the bullying that provoked his response, it may inadvertently send a message that it tolerates peer harassment. This district suspended the student multiple times despite having evaluative data that he became disruptive or violent when provoked by his peers' verbal and physical bullying. Had the district addressed the bullying outright, it might have prevented the creation of environment that allegedly prompted the student to take his own life.

Summary: Allegations that a Pennsylvania district repeatedly suspended an 11-year-old boy with anxiety and depression over his reaction to peer bullying while allowing the bullying to continue were sufficient to support a 14th Amendment claim arising out of the student's suicide. Determining the parent sufficiently pleaded a state-created danger, the District Court denied the district's motion to dismiss. Chief U.S. District Judge Juan R. Sanchez explained that districts generally do not have a duty to protect students from constitutional violations by third parties. However, an exception exists when the district affirmatively places the student in a situation that is likely to cause harm. The judge held that the parent met that pleading standard. According to the parent, the judge observed, the student's IDEA evaluation revealed that he became disruptive and violent when provoked by bullies. Moreover, the parent alleged that the district was aware of the ongoing verbal and physical harassment and knew the student was at significant risk for self-harm. "Instead of taking action against the students who were harassing and bullying [the student], however, the School District is alleged to have further emboldened and empowered those students by punishing and suspending [the student]," the judge wrote. Judge Sanchez also denied the district's motion to dismiss the parent's Title IX claim against the district. Although the parent insisted she meant to seek relief under Title II of the ADA, the judge held

that she pleaded a viable sex discrimination claim by alleging that the district failed to address bullying that was based on gender stereotypes. ■

SRO's use of force in arresting teen exposes principal to 1983 claims

Case name: *J.M. v. Parlier Unified Sch. Dist.*, 121 LRP 37840 (E.D. Cal. 11/10/21).

Ruling: Finding no evidence that a principal violated the constitutional rights of a high schooler with ADHD and learning disabilities who was arrested by a school resource officer, the U.S. District Court, Eastern District of California dismissed the teen's claims against the principal, who was present during the arrest, in his individual capacity. It also dismissed the teen's state law claims.

What it means: Usually, the scope of an SRO's authority and responsibilities is governed by a memorandum of understanding. Even if a district has limited power to negotiate the terms of an MOU due to state or local requirements, it can always take measures to ensure its SROs have the knowledge necessary to appropriately manage disability-related behaviors. Here, the district should have trained the SRO to use de-escalation strategies and positive interventions to address students' defiant or disruptive behaviors. This training would have enabled the SRO to obtain the teen's cooperation without force and would have prevented the teen's civil claims against the principal.

Summary: The fact that a principal was present when an SRO allegedly used excessive force to take a high schooler's cellphone and handcuff him did not necessarily render the principal liable for the SRO's conduct. Because there was no evidence that the principal had the ability to direct and supervise the SRO, the District Court dismissed the teen's constitutional claims against the principal. Senior U.S. District Judge Anthony W. Ishii explained that under 42 USC 1983, a supervisor is liable for his employees' constitutional violations only if: 1) he was personally involved in the constitutional deprivation; or 2) there is a sufficient causal connection between the supervisor's wrongful conduct and the constitutional deprivation. Here, the court noted, the student was sent to the principal's office due to disruptive behaviors. When the SRO arrived to the office, he allegedly unjustifiably yelled at the student to hang up his phone, violently threw the phone, and handcuffed the student. Although the teen alleged that the principal tacitly approved the SRO's conduct and failed to intervene, the court opined that those claims failed because there was no evidence that the principal was the SRO's supervisor. The court acknowledged that under case precedent, SROs may be considered school

officials when evaluating the constitutionality of a search or detention of a student. However, it highlighted that the SRO was also a police officer and an employee of the city, and he had a duty to address potential crimes on campus. Because a school official could not instruct the SRO to disregard criminal conduct on campus, the court reasoned, it was unlikely that the principal could supervise or direct the SRO's actions in their entirety. It dismissed the teen's claims but granted him leave to amend his complaint. ■

Girls' description boosts claims of ride-along driver's abuse

Case name: *W.H. v. Olympia Sch. Dist.*, 121 LRP 37846 (W.D. Wash. 11/10/21).

Ruling: The U.S. District Court, Western District of Washington granted in part and denied in part a motion for judgment on a discrimination complaint filed on behalf of two girls who were sexually abused by a bus driver. The court held that the parents established three of the four factors for articulating a claim under the Washington Law Against Discrimination. However, the court declined to grant judgment with respect to the fourth factor, concluding that whether the girls' protected classification motivated the abuse was a question of fact for a jury.

What it means: Districts that allow employees to go on "ride-alongs" on school buses during their free time should reconsider that policy or revise it to ensure that student passengers, particularly young ones, remain safe. Districts can become liable under state

and federal law if that individual harms a student. This bus driver frequently went on ride-alongs with other drivers—an activity which he used to groom and sexually harass and abuse students. Had the district eliminated or revised its policy based on potential safety issues, it might have avoided claims that the employee sexually abused two students.

Summary: The parents of two young girls who were sexually abused by a bus driver while he was on "ride-alongs" with other bus drivers established a viable state law discrimination claim against a Washington district. One of the student's statements that the abuse made her feel sad, disgusted, and angry, helped establish that the long-past abuse was subjectively discriminatory. To establish a viable claim, the court explained, the parents had to show, for each student, that: 1) the student belongs to a protected class; 2) the defendant's establishment is a place of public accommodation; 3) the defendant discriminated when it didn't treat the student in a manner comparable to the treatment it provides persons outside that class; and 4) the student's protected status was a substantial factor that caused the discrimination. First, the court found the students, as females, were members of a protected class. Second, the court held that a school bus is a place of public accommodation. Third, the court found that the parents showed the students, from both an objective and subjective standard, suffered discrimination. Concerning the fourth factor, the court opined, there was little room for doubt that the girls' gender motivated the abuse, given the driver's statement that he was targeting young girls because he was attracted to them. ■

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