Guidelines for Dealing with Educator Sexual Misconduct

Prepared for NAIS by Linda S. Johnson, Esquire

Introduction

The recent Penn State sexual abuse and reporting scandal has rocked the nation. Everyone is asking the same questions. If the allegations are true, how could a long time coach have engaged in these behaviors? What were young children doing in a college locker room to begin with? Even if no physical interaction occurred and the only events are what the coach has admitted - showering with boys and horsing around in the shower - didn’t he know he was crossing the lines of appropriate boundaries with children? How could his supervisors not have known? Did superiors do enough to respond when rumors surfaced? Did co-employees do enough when they observed troublesome behavior? Were the school’s leaders made scapegoats to quell the clamor of discontent, or were their terminations justified?

It will take years before the legal system helps to untangle the answers to these questions. In the meantime, across the nation schools and their administrators are asking themselves some of these same questions. Have we done enough to respond to rumors that have surfaced on our campus? Do we fully understand our reporting obligations? Have we complied with them? Do our employees understand their obligations in this area? Overall, have we done enough to proactively and reactively create the safest school environment possible?

Unfortunately, the Penn State story is not a new one. The sad reality is that each year, far too many headlines reflect situations in which school employees take advantage of their positions of trust over children and engage in sexual misconduct.

Teachers and coaches are not the only perpetrators of sexual misconduct in schools. Studies have revealed that bus drivers, principals, counselors, janitors, and other school employees have also engaged in sexual misconduct with students. In the United States, an Associated Press investigation revealed more than 2,500 cases of educator sexual misconduct within a five year period. As reported by The Washington Post, “one report by Congress estimated that as many as 4.5 million students, out of roughly 50 million in American schools, are subject to sexual misconduct by an employee of a school sometime between kindergarten and 12th grade.”

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3 Id.
reports indicate that only about ten percent of victimized children will ever report sexual abuse of any kind to a person who can take action to help them.⁴

Any school employee misconduct or sexual abuse involving children destroys trust and negatively impacts an entire school community. What the media stories and notoriety of these situations has made clear is that schools and school employees need clear guidelines to follow regarding what to do when rumors of sexual abuse situations or suspicions arise. As the U.S. Department of Education has pointed out:

Knowing how to respond quickly and efficiently in a crisis is critical to ensuring the safety of our schools and students. The midst of a crisis is not the time to start figuring out who ought to do what. At that moment, everyone involved – from top to bottom – should know the drill and know each other.⁵

The safety and well-being of students is the highest priority of any school. Dealing with educator sexual misconduct involves a full program of risk management that every school must take seriously, including developing written guidelines setting forth expectations of behavior and reporting obligations; training employees about the school’s policies, procedures, and expectations; educating students about where to go for help; responding quickly and appropriately when situations arise; and continuing to re-address the guidelines in future years to ensure that the school is providing the safest environment possible.

The guidelines should cover both proactive steps that schools and employees should take to help prevent situations from occurring, as well as the appropriate and necessary responsive actions that the employees and school should take when situations arise. The following article will explore both these areas. Part I will address what should happen when a school employee learns of a possible incident or incidents of sexual misconduct. Part II provides practical guidelines about what a school can do to proactively take steps to help prevent such misconduct from occurring in the first place.

PART ONE:

WHAT TO DO WHEN SITUATIONS HAPPEN

It typically begins with a rumor…. One minute a school employee may be walking behind a group of students on the way to a school event. The next minute, the school employee overhears one of the students say that a few years ago, a specific teacher was having inappropriate relations with a student. What should the employee do? Who should the employee speak to? How should the school respond? What are the legal ramifications? What if the teacher allegedly involved in the incident is no longer at the

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school? Does that make any difference? Many schools find that this is the opening to the rabbit hole, so we will start our discussion with analysis of this situation.

An Overview

Both the employee who overheard this comment as well as the head of school and school leadership team should already know the answers to these questions. Handbook policies should dictate-- and annual trainings reinforce-- that once a school employee has heard of possible or suspected sexual misconduct by a school employee, even if it is just a rumor and even if the alleged wrongdoer is no longer at the school, the matter should immediately be brought to the attention of the head of school (or another individual within the school leadership, listed in the policy, if the issue involves the head of school).

Once the head of school has gathered the initial facts to understand what is being alleged, he or she should immediately notify the chair of the board of trustees and legal counsel. Sexual misconduct is a serious allegation and the rights of both the victim (student) and the accused employee must be considered. If a school has a crisis response team, the team should set into place the established protocols for evaluating any mandatory reporting obligations and for taking such responsive steps as are necessary to follow-up and address the situation.

The initial goal of the school is to take immediate and appropriate steps to ensure the well-being of any students involved in the abuse and to evaluate mandatory reporting obligations, which often require “immediate” reporting. Overall, the head of school should take prompt and appropriate responsive action to fully address the situation. In addition to taking care of the immediate well-being of the student involved and any mandatory immediate reporting obligations, among the steps the head of school will take include:

1. Conducting such investigation as is necessary to gather the underlying facts, which (as further discussed below) will most often be done in coordination with the police. The police will likely also conduct an investigation as it relates to possible criminal charges.
2. Continuing to monitor and address the well-being and interests of the student victim.
3. Managing communications on many different levels, including
   a. what should be communicated to the involved student and student’s parents or legal guardian,
   b. what, if anything, should be communicated to various members of the school community, such as the student’s advisor, dorm parent, teachers, other students, other faculty and staff, board chair, board members, other families, the local community and local government leadership, and

6 This is so even if the alleged wrongdoer is deceased. Once a school employee and, in turn, head of school or school administration has knowledge of any alleged sexual abuse, including decades old allegations, the school should consider the response guidelines set forth in this article and follow them. This includes following any mandatory reporting obligations set forth under the law of the state in which the school is located.
7 Which is recommended under Part Two of this article.
c. being ready with a prepared media statement in the event the media gets involved.

4. Reviewing all written documents, such as student or employee handbooks, written procedures, and/or employment contract documents to determine what specific policies have been triggered or violated, and to ensure that any contractual rights or procedures are followed;

5. Following up as needed on all fronts, including with the local police, the board chair, legal counsel, student victim and student’s parents, and other members of the school community who may be involved (e.g. student’s advisor, teachers, dorm parent, etc.).

6. Taking whatever disciplinary action (warning, suspension, termination, etc.) that is appropriate to the allegations and school’s findings. Appropriate records should be kept documenting the steps taken by the school.

7. Once all the dust has settled and conclusions reached, it is also recommended that the head of school, the school’s leadership team and legal counsel hold a debriefing session to discuss how the situation was handled and what, if any, changes might be in order to the school’s crisis response guidelines or handbook policies. The school should keep in mind that if such a debriefing session is held without the presence of legal counsel, it could be subject to discovery in any subsequent litigation that might ensue. Presence of, and perhaps having legal counsel prepare and moderate the debriefing session, will likely cloak it with attorney-client privilege, thus shielding it from discovery in any later litigation, as well as adding an additional professional perspective to the discussions.

**Reporting Obligations**

One of the initial questions asked in responding to a crisis of this sort is “what are the ages of the students at the time of the alleged misconduct?” The answer to this question will help determine whether mandatory reporting is necessary. All fifty states have passed some version of a mandatory child abuse and neglect reporting law. Certain professionals, such as teachers and other school personnel, are required under these statutes to report suspected child abuse, however, the extent of knowledge required to trigger the duty to report varies by state. One state may only require “reasonable suspicion,” while another may require a higher knowledge standard, such as “know or suspect.” Once a school determines that an incident of sexual misconduct has taken place, the school will need to follow applicable state law requirements and report the incident to a law enforcement authority or child protection agency as dictated by the law of the state in which the incident occurred. Schools should also be aware that some states require the individual teacher or staff member who suspects abuse to report.

As needed, the head of school should consult with legal counsel to determine the applicable state-specific reporting requirements. However, even if such legally required reporting obligations are already known by the head of school, it would be wise to get legal counsel and the board chair involved early on. Sexual misconduct situations by educators can be emotionally charged and stressful. It is easy to get side-tracked or distracted by the immediate emotions, including your own. Involving the outside, objective viewpoint of legal counsel can be extremely helpful in managing all aspects of the crisis response, including consideration and evaluation of
mandatory reporting obligations. Likewise, informing the chair of the board or the school’s legal
counsel can also provide the school with helpful information, such as the school’s handling of
other crisis situations in the past.

If reporting is mandatory, the school should consult law enforcement authorities or appropriate
state agency immediately. Educators who engage in sexual misconduct with students may be
prosecuted under a variety of criminal statutes, depending upon the ages of the parties involved
and the type of sexual misconduct. Similar to the abuse reporting guidelines, criminal codes are
not uniform and vary by state. Sexual misconduct by an educator may fall into categories
addressing child sexual abuse, sexual assault, anti-stalking, or lewdness, depending upon the
facts of the case. Statutory rape laws across the states prohibit adult-child relationships, but may
define childhood differently. The age of legal consent by a minor may range from age fifteen to
eighteen, depending upon the state.

In addition to general criminal laws prohibiting sexual contact with minors, several states have
adopted laws that specifically address the problem of sexual abuse by educators. For example,
Ohio’s Sexual Battery law and Colorado’s Sexual Assault by One in a Position of Trust protect
children under the age of eighteen from sexual misconduct by adults in a position of trust, such
as educators.

Even when there is no law that mandates the school to report to authorities (such as if the student
was over the age of 18 when the alleged sexual misconduct occurred), an independent school
should still evaluate whether the school should report nonetheless. Consideration should be
given to both what “must” be reported as well as what “should” be reported.

Taking Care of the Student(s)

Taking care of the immediate safety and well-being of the student victim should be of paramount
concern. Is the student in distress? When did this occur? Are other students involved or
impacted? What is required will be determined on a case-by-case basis with the severity of the
allegations an important consideration. Some of the many questions the school should consider
include: whether immediate medical attention is needed; whether a leave of absence is in order;
is ongoing counseling needed and available at the school; should outside mental health
counseling be coordinated; what kinds of accommodations does the student need, such as those
relating to attendance or assignments and test taking; what requests are the parents making; and,
overall, how to assist the student in any reasonable way possible to deal with what has happened.

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8 Educator Sexual Misconduct: A Synthesis of Existing Literature § 8.4 (Washington, DC: U.S. Department of
Education., Policy and Program Studies Service, 2004),
http://www2.ed.gov/rschstat/research/pubs/misconductreview/preface.html
9 OHIO REV. CODE ANN. § 2907.3.
10 COLO. REV. STAT. § 18-3-405.3.
Once immediate safety and well-being concerns have been addressed, the school should conduct such investigation as is necessary to find out what happened and determine how the school should respond. As stated above, it may be necessary to coordinate with the local police. While schools will want to promptly investigate to determine what occurred and take appropriate steps to resolve the situation, the school must also be mindful of whether criminal charges against a current employee are possible, and coordinate as necessary with the local police to ensure that the school’s investigation or responsive actions are not deemed an obstruction of justice or interference with the police investigation. The school’s investigation will also need to be tailored to fit the nature of the allegations, the source of the rumor, the age of the student or students involved, the size and administrative structure of the school, and other factors. Typically, legal counsel will help to direct and plan the school’s investigation. Ideally, any investigation should be conducted by trained personnel. The school should also consider hiring an outside investigator.

Part of the school’s investigation should include a review of the school’s handbook and policies, including review of the school’s disciplinary process or crisis response plan, to ensure that all contractual obligations are being met and procedures followed. The school should also consider if interim remedial actions are necessary. This might include making scheduling changes so as to avoid contact between the involved parties. In many cases, immediately suspending the employee pending the results of the investigation is the appropriate move to make.

The school’s investigation should gather and consider whatever testimony or evidence is needed to assess the situation and make appropriate conclusions. In today’s world of text messaging and online communications, a review of electronic communications may be necessary. Schools should ensure that that technology department immediately stops any ongoing destruction of technological communications to ensure that all such communications can be gathered and reviewed. All parties involved in the investigation, whether it is the witnesses interviewed or school personnel participating in the information gathering (e.g., IT or advisors), should be advised of the obligation to maintain as much confidentiality as possible. And, even if an employee resigns pending the investigation, the school should follow through to conduct such investigation as it can to (1) try to determine what happened so that it can take appropriate responsive action, (2) evaluate how such actions could have occurred at the school, and (3) consider whether any risk management changes should be made such as to handbook policies or school procedures.

Once all testimony and evidence is considered, the response team and head of school must decide what they believe happened and what, if anything, they need to do about it. Among the determinations to be made include:

1. Are the allegations credible?

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11 This article is intended to provide an overview and guidance regarding investigation and reporting guidelines for sexual misconduct in a school setting. It is not legal advice. Schools should consult with their own legal counsel to conduct a fact-specific analysis of their situation if faced with a report of educator sexual misconduct.
2. Is there evidence to support the allegations?
3. Did the alleged action occur?
4. Did the employee violate any of the school’s policies or procedures?
5. If there was misconduct or inappropriate behavior, what is the appropriate remedial action?

Again, depending on the severity of the allegations, disciplinary response could include a warning, suspension, probation, counseling or other training, or termination. If termination is the result, the school should also be sure to address things like requiring that the employee not have contact with the student or student’s family, not come on campus without permission, not talk to other employees about the matter, and maintain confidentiality. Depending on the state, the school may also need to notify a state teacher certification board.

**Communications**

As described in the initial “Overview” of this article, the head of school will need to give careful consideration to managing communications on many different levels including (i) what should be communicated to the involved student and student’s parents or legal guardian, and (ii) what, if anything, should be communicated to various members of the school community, such as the student’s advisor, dorm parent, teachers, other students, other faculty and staff, board chair, board members, other families, the local community and local government leadership. How a school communicates to the relevant constituencies can help to mitigate negative repercussions to the school. This includes possible litigation prevention, loss of confidence in the school’s ability to respond to and handle situations of this kind, and reputational risk.

The school should also consider whether it must or should notify its insurance carrier about the allegations of sexual misconduct. The school should review its policy to determine if, for instance, there is any policy requirement to notify the carrier when an incident of this sort occurs even if there is no threat of litigation. Some carriers’ risk management divisions can also provide helpful guidance and input to the school during the immediate crisis response. If the policy requires reporting at the time the school learns of an incident and such notice is not provided, it could jeopardize coverage should any lawsuit later be brought.

**Media**

In the last several years, accounts of educator sexual misconduct in schools have been highly publicized and widespread. How a school handles a rumor involving sexual misconduct by an educator can mean the difference between a media nightmare and possible lawsuit versus effectively managing a potentially high risk situation in a calm and deliberate manner that appropriately addresses the interests of everyone involved, including the greater school community.

When faced with a rumor of educator sexual misconduct, a school should consider whether to pro-actively develop a proposed media response. If so, a media spokesperson should be identified and the school community should be notified to defer all contacts with the media to
that spokesperson. Very often someone from the media will call a school immediately upon learning of alleged educator sexual misconduct and there may be little time for the independent school to coordinate a response. Therefore, it is imperative to have a plan in place to deal with media outlets, including a pre-prepared media statement, before the media contacts the school.

The following are some basic steps to help guide a school in dealing with the media following a crisis:

1. **Identify a Spokesperson**

   The school should identify a spokesperson who will represent the school, make any official statement and answer media questions through the crisis. A back-up representative should also be identified in the event the primary spokesperson is unavailable. The spokesperson should be articulate, diplomatic and sincere. If that person appears caring and concerned, your school will be perceived as such.

2. **Set up a Communications Team**

   Second, the school should set up a communications team from which all communications concerning the incident will flow. This communications team will likely be comprised of the spokesperson, the school's legal counsel, the school's regular communications or media director, if there is one, and possibly a media or crisis communications consultant. All information about the matter should flow from and to the spokesperson and the communications team. Sometimes legal counsel will advise against any live media interview or news conference and will recommend only a prepared statement for the media. Such a statement is far more appropriate than extemporaneous and sometimes conflicting comments from different school representatives. On some occasions it may also be preferable to have counsel act as the direct communicator with the media or to be present at any news conference or media discussion.

3. **Determine What Should be Communicated to the Media**

   The communications team should determine what will be communicated to the media. The communications team should try to anticipate questions reporters will ask, and determine ahead of time what you will say and what you won't or can't say. While the instinctive reaction is to say "no comment," this can have a negative impact on the school and also result in unnecessarily raising concerns and anxieties of various segments of the school or surrounding communities. Rather, it may be more appropriate for the school (with assistance from legal counsel and its media consultant or media staff person) to develop a prepared statement that can be used for an initial response to the media. For instance, if the media is inquiring about a crime that just occurred at the school, an initial statement might be something like: "The safety and well being of our students and members of our school community are our priority. We are cooperating with the authorities with their investigation, and any comments before the investigation is complete would be premature."

As the investigation continues and more information becomes known, it may be advisable to prepare one or more supplementary statements to be made by the spokesperson for the media.
In communicating any information with the media, the school should keep in mind certain limits of disclosure. This might include, for instance, safeguarding the privacy rights of the students, families or employees involved. In a situation of alleged sexual misconduct involving a student, it is important to consider the impact on the student of any comments that appear in the press. The school should also not volunteer information unless it is a point that the school wanted to make and has not been asked about. The communicator should not speak off the record. In most instances, individual school personnel, other than the spokesperson, should not speak to the media at all. Any statement should be honest, and the school should squelch untrue or inaccurate rumors.

(4) Determine What to Communicate to Students, Students’ Families, and Staff

As stated in the “Communications” section above, the communications team should determine what, if anything, will be communicated directly to other constituencies such as other students, families, and staff during and after the school receives any media attention. Very often, a letter from the head of school or board of trustees can go a long way to educate and inform, and avoid negative feelings or impact on the school, its image, or reputation.

(5) Maintain an Open Mind and a Good Attitude

The last thing to keep in mind is to maintain an open mind and good attitude when dealing with the media. Even if you are limited or restricted by what you can disclose, remain courteous. Your attitude to the media can sometimes influence how your school will be treated or portrayed in the press.

Follow-up

Both during and after the investigation is completed and compliance with any reporting requirements are met, the school should consider if regular meetings with the school response team members or with current students or employees involved in the matter may be appropriate. Such meetings could be held daily, weekly, or monthly, as the situation governs.

Ongoing follow-up with the students or their parents may be necessary to ensure that there is no further negative aftermath to which the school should respond. Finally, once the matter has been fully investigated and responded to, the school should hold a debriefing session of the reporting compliance team, appropriate school administrators, and legal counsel to discuss how the matter was handled. Involving legal counsel can help to cloak the debriefing and self-evaluation meeting with attorney-client privilege so that it cannot be used later against the school as well as providing a legal perspective on the situation.

Each crisis will bring new variables that will require the school to be flexible in its assessment and response. Careful handling of a rumor of educator sexual misconduct and follow-up procedures can help to instill confidence in the school’s overall policies, procedures, culture, and mission.
Twelve Steps to Effective Crisis Response

For those of us who like to work from checklists, the following checklist is a good reference to use when responding to a rumor of sexual misconduct by an educator. It includes the steps discussed in more detail above.

☐ 1. Take care of immediate concerns such as the safety and well-being of the students and others involved.
   ▪ Ask: what are the ages of the student(s) involved?

☐ 2. Contact your supervisor and the head of school or other senior school administrators.

☐ 3. Activate the school's response and reporting law compliance team.
   ▪ Consider whether to contact legal counsel and the chair of the board.

☐ 4. Consider reporting law obligations of the state in which your school is located:
   a. abuse reporting;
   b. other mandatory reporting laws (e.g. hazing, bullying, safe school law, etc.)
   ▪ Consider whether to consult with legal counsel prior to reporting to help develop an overall strategy for responding, and to help monitor the situation on an ongoing basis.

☐ 5. On an ongoing basis, evaluate notification and communication plans (who, what, when and by whom; also consider whether by letter, email or verbal):
   a. Police;
   b. Parents, guardian or custodian of victim;
   c. Parents, guardian or custodian of alleged wrongdoer;
   d. Other members of the school community, such as dorm parent, counselor, advisor, security, other students or parents/guardians, faculty and staff;
   e. Others, such as student therapist, but must have appropriate parental or student authorizations when confidential information will be communicated or where privacy issues are involved.
   f. Insurance carrier: determine if any notice to insurance carrier should be made. Review policy regarding notice obligations.
   g. Consider when and what to tell board of trustees.

*If legal counsel is involved, it is recommended that notification plans be coordinated with input from legal counsel.*

☐ 6. Consider whether it is necessary or beneficial to provide or recommend outside referral source for emotional counseling or other support to student(s), families, employee(s) or others, as may be needed.
7. Evaluate enforcement of school's disciplinary process and procedural policies.
   - Pull and review handbook each time. Consider: (a) policies which may be violated, and (b) discipline policy, i.e. process to be followed.

8. Conduct investigation as needed, make conclusions, and take responsive action if needed.
   - Coordinate with police as needed.
   - Develop outline of proposed questions but be prepared to go off-script.
   - Consider if acts are also criminal and if so, whether student should be questioned or whether parents and/or student should be advised to seek legal counsel first.
   - Decide on appropriate disciplinary or other responsive action needed.

9. Pro-actively develop proposed media response, identify media spokesperson, and advise appropriate individuals to refer all contacts to spokesperson.

10. Follow-up as needed. (Consider if regular meetings with school response team members or with families would be helpful, and whether they should be daily, weekly, etc.)

11. Keep appropriate records of the handling of the matter.

12. Hold a debriefing session of reporting law compliance team, appropriate school administrators and legal counsel following conclusion of situation.
PART TWO:  
PREVENTION STRATEGIES

In the wake of the recent sexual abuse scandal at Penn State, many schools are also asking what they should be doing from a proactive perspective to help prevent sexual misconduct from occurring. Schools should evaluate all policies and procedures to help ensure that they meet the evolving standard of care and best practices regarding student safety. The following sections will address prevention strategies and other practical guidelines to help a school meet these goals.

Hiring

The earliest critical phase in helping a school to ensure that it provides a safe school environment is the hiring process. Schools should be familiar with and comply with any laws in their state that may require criminal background checks. Although most states have laws requiring public school teachers to undergo a criminal background check, not all states’ laws apply to independent schools. Regardless of whether any state law mandates it, all independent schools should conduct a criminal background check on all school employees, as well as adult residents in any school-provided campus housing. Consider, for example, if it became known that a school employee’s spouse was a registered sex offender? Having a policy that requires all adult residents in school housing to undergo a criminal background check would help to prevent such a nightmare from occurring. In addition, even if not required by state law, it is recommended that an independent school conduct a criminal background check on any volunteer or third party contractor who may be in direct, unsupervised contact with students. Consider, for example, bus drivers and other individuals who are employed to drive or otherwise supervise students unattended.

There is guidance from the Equal Employment Opportunity Commission that an employer asking an applicant about a record of arrest has a disparate impact on minorities and is, therefore, discriminatory. However, in the area of school safety, a school may wish to ask whether there are any pending criminal charges against the applicant and ask existing school employees to report any arrests that occur while employed. This way, a school can assess if there is any job-relatedness to the arrest record and pending charge and, if so, whether the hiring or continued employment decision should be impacted by the pending charges.

In addition to criminal background checks, schools should seek references from applicants and contact prior employers or references about the prospective employee. Any “holes” in an individual’s work history should be probed for more information as history has shown that where predators have been fired from previous positions, they often fail to report the employment at all to the next employer. Where the missing employment may be left out for other reasons, it is important for the hiring school to know as much as possible about all previous employment.

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During the interview of the prospective employee, the school should seek to elicit the applicant’s training and understanding of appropriate boundaries.

**Handbook Policies**

Every school should review existing handbook policies as they relate to student safety. Employee handbooks should include sections which apprise employees of any mandatory reporting obligations such as abuse reporting, hazing, or bullying that exist in the state in which the school is located. Even if such state laws are not applicable to independent schools, the independent school should consider what those laws require for public schools and evaluate whether the school should voluntarily adopt similar policies and procedures. What is required by law for public schools could be viewed as establishing a standard of care that is expected of all schools in the state. Student handbooks should also include provisions that inform students of mandatory reporting obligations that the school may have and where the student can go for help in these areas.

Employee handbooks should also include a code of conduct that clearly sets forth an employee’s obligations and responsibilities toward students in maintaining healthy boundaries, including acting as role models of appropriate behavior, setting and maintaining appropriate boundaries with students, examples of inappropriate behavior (such as romantic relationships of any kind with students, or providing alcohol to students, etc.), with whom to speak if the employee observes the behavior of another employee that violates these obligations, and how the school will respond to situations including possible disciplinary consequences.

Handbooks should be used to help educate school employees to have a common understanding of what constitutes sexual misconduct. The United States Department of Education’s *Report on Educator Sexual Misconduct* has defined sexual misconduct as any “behavior of a sexual nature which may constitute professional misconduct.” ¹³ This definition includes any conduct that would amount to sexual abuse of a minor person under state criminal codes, as well as any sexual relationship by an educator with a student, regardless of the student’s age, with a former student under 18, or with a former student (regardless of age) who suffers from a disability that would prevent consent in a relationship. In addition to sexual abuse, the definition of educator sexual misconduct includes any activity directed toward establishing a sexual relationship by the educator, such as sending intimate letters, engaging in sexualized dialogue in-person or through a technological forum, or dating a student. ¹⁴

Effective policies should clarify what kinds of behavior may be considered inappropriate or sexual misconduct with clear guidelines and examples. Schools should seek to implement policies that specify grievance procedures and inform students, parents, and employees where to file complaints. Policies should also include provisions for adequate, impartial, and timely

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¹⁴ *Id.*

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investigation of complaints by the school. School employees should be trained to look for suspicious behavior and required to report suspected sexual misconduct. Policies should seek to educate and offer examples that illustrate types of conduct that are acceptable for school employees. For instance, it may be acceptable for a high school coach to hug a student who scored a goal, or for a kindergarten teacher to use a hug to console a child with a skinned knee. However, it may be a violation of sexual misconduct for a teacher to repeatedly hug or touch students.

**Training**

Schools would be wise to incorporate an annual training on what every employee needs to know about maintaining safe school environments. Frequently, independent schools provide such trainings to faculty only. It would be preferable to have such trainings for all employees including, for instance, maintenance and security, kitchen staff, clerical staff and all categories of employees. Such training should also be a part of every new employee’s orientation. Topics covered should include harassment, bullying, hazing, abuse, and other mandatory reporting obligations, maintaining appropriate boundaries, how the school’s response systems work, disciplinary ramifications and criminal penalties both for bad behavior and for failure to report, and warning signs in children. Schools should provide specialized training to any licensed medical care provider employees about the intersection of legal privileges, reporting obligations, and the school’s policies and procedures.

Students should also receive annual training on safe school environment rights and responsibilities, including where to go for help. Schools should provide leadership training to student leaders, such as team captains, group officers, and dorm proctors to help the school ensure that students know what to do when situations arise.

**Response Team**

It is highly recommended that the head of school create a response team that works with him or her to handle situations such as allegations of sexual misconduct, harassment, hazing, bullying and similar acts of misconduct. The team should be trained regarding such duties as understanding the laws that may apply, the school’s policies and procedures, and handling investigations. This team will be responsible for ensuring that the school responds carefully to situations that occur by following the checklist for responding to a crisis that is provided in Part One of this article.

One of the first people an employee may speak to after overhearing a rumor of sexual misconduct is the employee’s supervisor. All supervisors should be trained to immediately report to the head of school (or an alternate if the head of school is involved in the situation) when any information of this nature is brought to his or her attention. The head of school will, in turn, activate the response team and contact legal counsel and the board chair as needed.

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The school should also consider appointing a coordinator in addition to the head of school who helps to manage all reports of incidents or allegations of educator sexual misconduct. Selecting a contact person or persons that all school personnel may contact to report any rumor, allegation, complaint, or suspicion of sexual misconduct is helpful in ensuring that the school maintains a safe environment for its students and patterns of sexual misconduct are quickly and effectively resolved. Without a specific person to contact, patterns of sexual misconduct may not be reported. Whatever the reporting structure the school decides upon (coordinator, head of school, response team, or all of the above), the school should ensure that handbook policies and live trainings are clear about to whom reports of this nature should be made.

**Ongoing Management of Employee Performance**

As part of an employee’s annual or periodic performance review, schools should assess the employee’s understanding of maintaining appropriate boundaries and following the school’s safe school policies and procedures. If poor behavior is observed, it should not be overlooked, but rather it should be proactively and constructively addressed. Increasingly, the undersigned author is being called upon to conduct one-on-one awareness trainings with employees whose behavior has crossed the lines of appropriate behavior and warrants a warning or other disciplinary action but not termination. These sessions address the behavior that occurred, why the school is concerned about the behavior, the legal risks that are presented by the behavior, and the expectations moving forward, often with a “Do’s and Don’ts” list of behaviors.

Schools should ensure that any issues of employee performance, but especially regarding boundaries concerns, are documented to ensure historical knowledge of transgressions even when supervisors or school leadership may change. And, when unacceptable bad behavior occurs that warrants termination, schools should consult with legal counsel and, if needed, make the decision to terminate. In this regard, a review of the employee contract and employee handbook policies should be done to ensure that they provide adequate flexibility for the head of school to use his or her discretion to make these judgments without fear of a wrongful termination action.

**Setting and Maintaining Appropriate Boundaries**

Overall, it is imperative that all independent school faculty and staff understand and appreciate their duty to provide a safe environment for students. Maintaining healthy relationships and boundaries with students is crucial to protecting students from harm. In addition, taking actions in response to situations that occur, such as an observation of a boundary crossing by another employee, or complying with mandatory reporting obligations is also critical. For that reason, every employee should read and be familiar with the school’s handbooks and policies.

A healthy school environment is enhanced by open and routine discussions about appropriate boundaries. Boundaries may include: physical contact; use of language; type of clothing; time of day and location of interactions; financial interactions; electronic communications; and sharing religious and political beliefs. Inevitably, boundaries may be crossed to meaningfully and

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effectively relate to students. Providing a hug to the student who just scored a winning game point or just got into the college of their choice may be fine. However, it should be clearly understood and communicated to employees that there is some conduct by school employees that will always be deemed a violation of healthy boundaries and appropriate adult behavior. An employee should never engage in romantic or sexual relations with students. Furthermore, actions such as sharing or providing drugs or alcohol to students are also reprehensible. It is the responsibility of school employees to set and maintain appropriate boundaries with students. Your employees should understand that both as the adults and as school employees, they are always presumed to be in a position of power over students and the wishes or behavior of the student will not alter or excuse the adult’s responsibility.

All school employees are expected to act as role models at all times. The interests of the student must always be of primary concern. Therefore, educating and modeling appropriate boundaries is an important part of everyone's job at the school.

Conclusion

Sexual misconduct at any school can devastate students, parents, employees, and the entire school community. Independent schools should be proactive to ensure that they have in place adequate policies and procedures for dealing with educator sexual misconduct. The middle of a crisis is not the time to be figuring it out. When a rumor or concern surfaces, both employees and the school should know what to do, where to go, and how to respond. Through acknowledgement of the problem, education of staff and employees, and implementation of clear policies, independent schools can make great strides against sexual misconduct by educators and help to ensure that they maintain the safest school environment possible.

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Recommended Resources

Predators Among Us: Educator Sexual Misconduct by Debra Wilson, NAIS, February 8, 2005

The Predator Next Door by Debra Wilson, NAIS, November 1, 2011


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“Dear Colleague” Letter regarding the prevention of sexual violence and sexual assault of students, U.S. Department of Education, Office for Civil Rights, April 4, 2011
