



Sexual Misconduct

Sexual misconduct is a concern that has gained increasing attention, from the headlines to the High Court, in the last decade. Commonly defined as unwanted and unwelcome behavior of a sexual nature, the issue of sexual misconduct by teachers, administrators and other employees is an area that warrants the attention of school boards and school officials.

What Types of Behavior Constitute Sexual Misconduct?

The law recognizes two types of sexual misconduct, *quid pro quo* and *hostile environment*.

- *Quid pro quo* (this for that) occurs when a school employee explicitly or implicitly grants a pupil a favor in exchange for sexual gratification. The employee may, as a condition for a pupil's participation in an educational activity or in return for an educational decision, request that the pupil submit to unwelcome sexual advances, grant sexual favors, or agree to engage in other verbal, nonverbal, or physical conduct of a sexual nature.
- *Hostile environment* means unwanted and unwelcome verbal or physical contact of a sexual nature that is sufficiently severe, persistent, or pervasive to limit a pupil's ability to participate in or benefit from an educational program or activity.
- Some specialists classify the behavior in three levels.
- Level I sexual misconduct includes no-contact behavior such as exhibitionism and showing sexual pictures, as well as contact including fondling, touching, kissing, and sexual hugging.
- Level II is no-contact behavior that includes making sexual comments, taunting, and asking pupils about sexual activity.
- Level III is contact behavior that includes all types of sexual or genital contact that society readily recognizes as sexual misconduct.

The U.S. Department of Education's (DOE) Office of Civil Rights offers examples of legitimate nonsexual touching:

- A high school coach hugs a pupil who scored a goal; a kindergarten teacher uses a hug to console a child with a skinned knee. However, a teacher who repeatedly hugs and puts his or her arms around pupils under inappropriate circumstances can create a hostile environment.

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How Can Sexual Misconduct be Recognized?

Many cases of sexual misconduct take place in private, and may be denied even by the victims themselves. However, adult abusers frequently give off warning signs such as:

- Overly affectionate behavior such as prolonged hugging and touching
- Engaging in nonprofessional behavior such as telling sexual jokes and sexual teasing. This type of verbal abuse may be a method of "grooming" victims.
- Seeking to extend their contact with certain pupils beyond the day; abusers have been known to have pupils over for parties and movies, take trips with pupils, and buy them frequent gifts.
- Abusers will typically gain a child's trust, and are often lauded for their dedication in doing extra work with pupils and participating in extracurricular activities

Teachers and administrators should pay attention and take rumors, whispers and oblique complaints, particularly from pupils, seriously. Often other pupils have known of a teacher-pupil relationship but were afraid to come forward out of a misguided loyalty to the pupil.

Socializing with pupils may be an appropriate means of establishing rapport, but it is important to have district wide policies in place that ensure prompt, professional investigation of any complaints or incidents to determine their merit.

How Can Schools Fight Sexual Misconduct?

A first step is to devise a clear sexual-misconduct policy; communicate that policy to all staff, affiliated members, parents and pupils; and strictly enforce it. School boards that do not have policies can look to the policies of other school districts for examples.

Effective policies will include:

- Clarification of the nature of sexual misconduct with simple age-appropriate examples.
- Specific grievance procedures that tell pupils, members, parents, and school employees where to file formal and informal complaints. They will also include provisions for adequate, impartial and timely investigation of complaints, including the opportunity to present evidence and witnesses.
- Provisions to protect the victim's confidentiality and ensure no retaliation. Individuals should be provided notice of the outcome of complaints, and the school should take steps to prevent recurrence of the problem.
- Policies that stipulate adequate procedures for investigating complaints. More than one person should be assigned the responsibility of receiving and screening complaints, in the event that one of those persons is an abuser. Every complaint should be taken seriously and be reduced to writing. Because school administrators are not trained investigators, investigation should be turned over to the police department or professional child-abuse investigators.
- Screening in the employment process. Criminal background checks of applicants are important. Administrators should take the further step by asking each applicant

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and former employer if the applicant has ever been investigated or accused of sexual misconduct.

- The policy should stress the importance of providing counseling for the pupils, who are often marginalized and traumatized.

The policy and the problem of sexual misconduct should be discussed in school assemblies, orientations for new staff and meetings with parents. School personnel should be trained to look for suspicious behavior and be required to report suspected sexual misconduct.

Prevention techniques

There are several guidelines that will enhance the atmosphere of prevention:

- Require teachers or leaders to work in pairs.
- Know and maintain appropriate personal boundaries.
- Have written policies and procedures in place.
- Utilize both background and reference checks for staff and volunteers.

What Can School Districts Do When an Employee Is Suspected of Sexual Misconduct?

The school district's policy must be utilized if it is to have any effect. Reporting, grievance, and investigation procedures must be followed immediately, in every case. Prompt, effective action may also shield the school district from legal liability.

When a staff member is approached by a pupil about an alleged Sexual Misconduct act it is critical that the staff member affirm the person and promise to be supportive.

The following suggestions can help staff respond appropriately.

- Show the person or child that you are listening carefully and want to hear what she or he has to say.
- Avoid the temptation to assess the truthfulness of the disclosure; that is the job of trained professionals.
- Assure the person or child the abuse was not his/her fault; he or she did not cause it, no matter what the abuser may have said or done.
- Reassure the person or child that he or she did the right thing in coming to you.
- Write down what was said so that accurate information can be passed on to those investigating the abuse.

After an alleged case expect and prepare for the following actions to occur:

- Shocked faculty, parents and pupils may rally around the accused.
- Accuser may be subjected to harassment and ridicule.
- Staff members may be distracted from their routines.
- The news media, attorneys, and investigators may contact school officials for information.

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It is advised that the school report the allegations to designated state officials, which is required by law in some form in all states, and turn investigations over to professionals.

Training

Staff training on sexual misconduct, should be performed by a knowledgeable individual inside or outside of the operation, to help staff:

- Understand their responsibilities under the district's sexual misconduct policy
- Learn how to foster an environment of prevention
- Know their responsibilities for reporting and dealing with rumors and allegations of misconduct
- Understand the process that will be followed by the district to investigate sexual misconduct allegations
- Know what to expect from pupils, staff, parents, community, and media after possible allegations are made
- Understand the consequences that could follow

Sexual misconduct in schools is a problem that can devastate pupils, parents, school districts and entire communities. Acknowledging the problem, educating for it, and following common-sense policies can go a long way toward ridding schools of sexual misconduct.

For Additional Information

U.S. DOE: "[Protecting Students from Harassment and Hate Crime: A Guide for Schools](http://www.ed.gov/offices/OCR/archives/Harassment/index.html)"
<http://www.ed.gov/offices/OCR/archives/Harassment/index.html>

U.S. Department of Education's Title IX guidelines:
<http://www.ed.gov/about/offices/list/ocr/publications.html#TitleIX>

U.S. DOE: "Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties"
<http://www.ed.gov/about/offices/list/ocr/docs/sexhar00.html>

Code of Federal Regulations: "[Nondiscrimination On The Basis Of Sex In Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance](http://www.access.gpo.gov/nara/cfr/waisidx_99/34cfr106_99.html)"
http://www.access.gpo.gov/nara/cfr/waisidx_99/34cfr106_99.html

Case Law: [Davis v. Monroe County Board of Education](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=97-843) - Schools and school districts can be held liable for pupil-on-pupil harassment, under [Title IX of the Education Amendments of 1972](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=97-843).
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=97-843>

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