

## DEAL SWIFTLY WITH SEXUAL MISCONDUCT\*

by Cheryl Thorpe Maimona

Imagine your worst nightmare as a school administrator: A former student, now in her mid-twenties, stops by your office. With your door closed, and the woman in tears, she describes a sexual relationship she had nearly a decade ago with one of the district's most popular teachers. She explains that in the maturity of adulthood and with children of her own she can no longer live with the knowledge that this teacher could still be preying on female students. When she leaves, you sit in stunned silence in your office. What should you do?

### Liability Exposure

Boards of education and their employees can be legally liable in connection with allegations of sexual abuse by current or former students against school employees. Claims have been filed against boards of education and administrators under Section 1983 of the Civil Rights Act of 1964 (Stoneking v. Bradford Area School District, 882 F.2d 720 (3rd Cir. 1989)) and Doe v. Taylor Independent School District, 15 F.3d 443 (5th Cir. 1994)). The courts have held that liability under Section 1983 occurs when administrators act with deliberate or reckless indifference to known or reasonably discoverable sexual abuse of students.

For example, a high school principal receives a complaint of sexual misconduct involving a high school teacher with a student. Instead of beginning an investigation into the complaint, he or she merely puts the complaint in a file and takes no further action.

In this situation, the principal could be liable for not intervening to protect the student. Also, the failure of administrators to document allegations of sexual misconduct in evaluations may be further evidence of indifference to allegations of sexual misconduct.

Claims have also been filed against boards of education and administrators under Title IX of the Education Amendments of 1972, which prohibits sex discrimination in connection with federally funded education programs. The basis for liability has been discrimination against female students who are victims of sexual misconduct because of the actions or inactions of school officials.

The U.S. Supreme Court has held that boards of education can be liable under Title IX for monetary damages if school officials were aware of an employee's sexual misconduct with a student and failed to take affirmative steps to prohibit the employee's conduct (Franklin v. Gwinnett County, 503 U.S. 60, 112 S.Ct. 1028, 117 L.E.d. 2d 208 (1992)) and Patricia H. v. Berkeley Unified School Dist., 830 F.Supp. 1288 (N.D. Cal. 1993)).

A claim against a board of education or its administrators may also be filed in state court on the theories of negligence in hiring and supervision (Doe v. Jefferson Area Local School Dist. (1994), 97, Ohio App. 3d 11).  
Reporting Child Abuse and Filing Criminal Charges

It is a felony offense for sexual conduct to occur between a teacher, administrator or coach and a student (Ohio Revised Code 2907.03). This criminal prohibition applies to sexual conduct involving students of any age, including student over the age of 16.

ORC 2151.421 requires all school employees to report known or suspected child abuse. Failure to report suspected child abuse is a criminal offense (ORC 2151.99). The report must be made to children services or to the county or municipal police officer. Most boards of education policy manuals contain a detailed procedure that conforms with the law. The report is not subject to disclosure under the Public Records Act and the statute provides for non-liability from criminal actions for good faith reporting.

Law enforcement agencies may conduct an investigation, depending upon the amount of time that has passed since the sexual misconduct occurred. Usually a six-year statute of limitations is applicable. After conducting an investigation, law enforcement officials will determine if criminal charges need to be filed.

Schools and criminal investigations need to be coordinated. Because the victim will need to testify at a possible employee discipline hearing, an interview with the victim should be part of the school's investigation, even if he or she has been interviewed by the police.

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### Investigation Allegations

According to an article in the March 1995 Phi Delta Kappan, "Sexual Abuse of Students by School Personnel," research indicates that most victims of sexual misconduct by school employees are female students, and likely wrongdoers are popular male high school teachers or teachers having access to students outside the classroom, such as coaches and band directors. However, allegations of sexual misconduct against female teachers are appearing more frequently.

One study has concluded that investigations of allegations of sexual misconduct tended to be done internally and not very thoroughly. Often, the teacher's claim that the allegations are untrue or that the behavior has been misunderstood by the student has ended the investigation.

Here are some guidelines your district can follow for investigating allegations of sexual misconduct:

- Allow only a trained professional, such as someone from children services, a law enforcement agency or the board's legal counsel, to conduct the investigation.
- Begin the investigation with an interview of the victim(s). Don't begin the investigation with a statement from the employee then end it if there is a denial by the employee.
- Expect the victim to have questions about the procedure for employee discipline, revocation of certification and possible criminal charges.
- Expect concerns from the victim about keeping his identity confidential and having to testify in the presence of the alleged wrongdoer.
- Be sure to review applicable collective bargaining agreements for any requirements that apply to the investigation such as giving the employee notice of an ongoing investigation or informing the employee of the allegations made by a victim.

### Dealing with Victims and Families

In dealing with victims and families, there will undoubtedly be a certain amount of emotion, especially during the investigation process and case preparation.

Expect that most victims will be committed to removing the wrongdoer from education forever. Make sure that someone is available to answer their questions and explain the hearing process.

### Employee Terminations

After notice of allegations of sexual misconduct, the superintendent can remove the employee from assigned duties. The employee is still entitled to receive pay and benefits until the board of education begins action to terminate the employee. The teacher termination statute permits the board of education to suspend a teacher without pay if, in its judgment, the character of the charge warrants suspension without pay (ORC 3319.16).

Because of the nature of allegations of sexual misconduct, the range of options for discipline may be limited. If the allegations are true, the only viable option may be termination.

Resignation as an option to termination is usually a good result for a board of education. An employee's resignation achieves the result of ending the employment relationship without the victim having to testify. Additionally, it saves the expense of a termination case and avoids negative publicity for the district.

Acceptance of a resignation from an employee accused of sexual wrongdoing may become a difficult decision for a board of education if the public's perception is that the employee is not being adequately punished for the wrongdoing.

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### **Dealing with the Media**

Use news releases to inform the public of an employee investigation. This may result in more victims coming forward.

Issue news releases when the teacher is removed from teaching duties and when the board of education begins proceedings to terminate the teacher contract.

News releases can inform the public about the case should the alleged wrongdoer choose to make public statements denying the allegations. Do not let the alleged wrongdoer's denial be the only public statements about the case.

Also, use news releases to inform the public about the status of the legal proceedings.

### **Teacher Certificate Revocation Proceedings**

Should your district have allegations of sexual misconduct made against a teacher, serious consideration should be given to initiating procedures with the Ohio Department of Education to revoke the teacher's certificate.

There are two types of the certificate revocation cases: criminal conviction cases and non-conviction cases. If the teacher has been convicted of a sex offense, the teacher's certificate is automatically suspended and the procedure for revocation of the teacher's certificate is followed. If there has been no criminal conviction, the revocation procedure is followed and evidence of the allegations of misconduct will be heard by a referee.

Today, boards of education and school administrators do not have the option to ignore teacher/student sexual involvement. Child abuse reporting requirements and liability exposure are two important reasons not to ignore the problem. However, the most important motivation for squarely facing such a problem is the harm that teachers guilty of sexual child abuse bring to their child victims and to the reputation of the school community.

Contrary to the conventional wisdom believed by many school officials, it is good politics to expose such wrongdoers and eliminate them from having access to future victims. It also puts other potential abusers on notice that sexual child abuse in schools will not be tolerated and undoubtedly deters teachers with a propensity to engage in such activities from choosing a path that will, if exposed, destroy their careers.

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