

SCHOOL ADMINISTRATOR'S GUIDE TO PREVENTING SEXUAL ABUSE & MISCONDUCT

A compilation of industry best practices, management strategies, forms, templates & resources



PRISM

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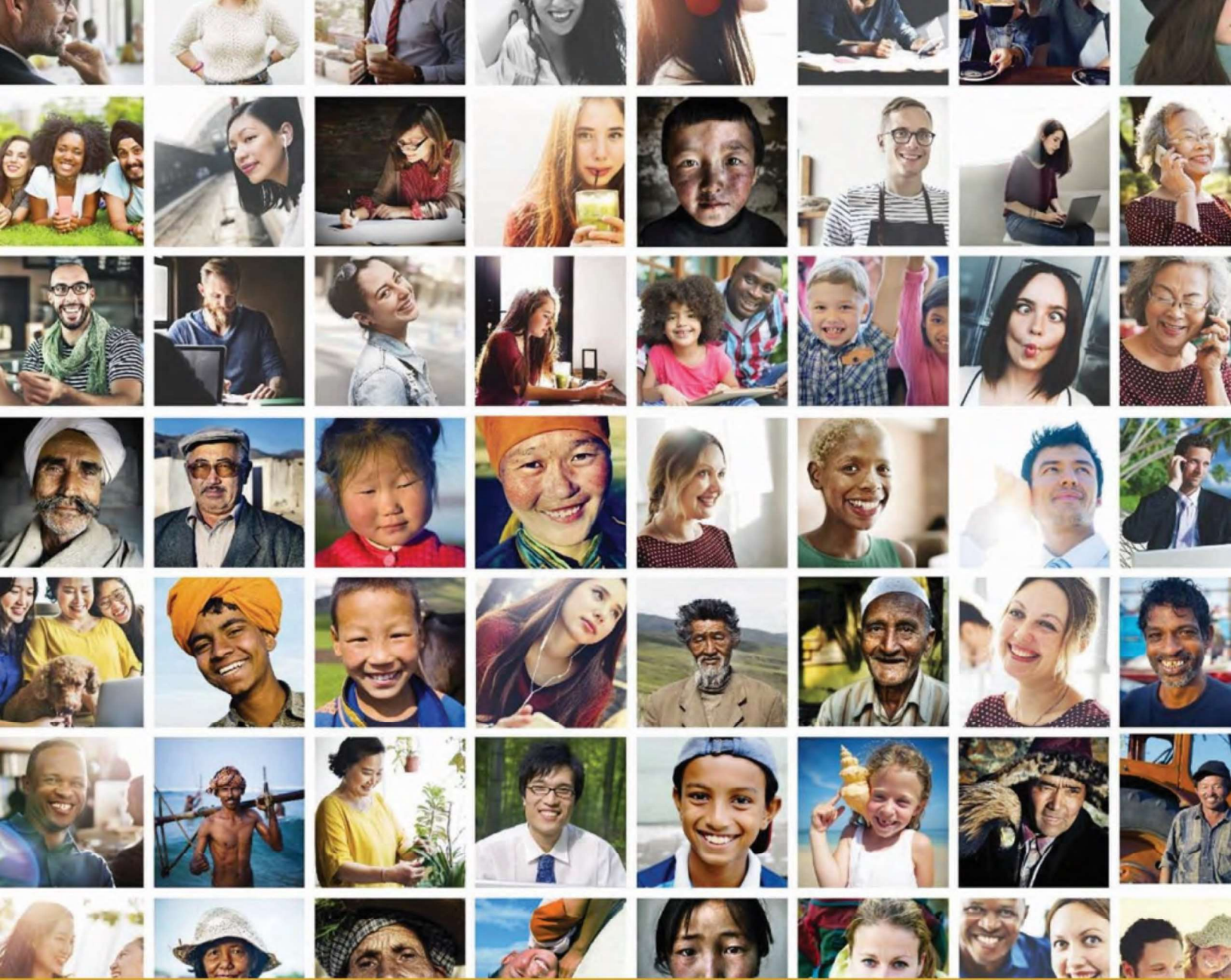
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Foreword

It is no secret that Sexual Assault and Misconduct (SAM) has deeply impacted both school districts and students. In addition to the significant human toll, claims arising from these incidents cost districts millions of dollars each year. As such, prevention of sexual assault and misconduct against students continues to be one of the most critical areas of focus for school districts. Educators are entrusted with a litany of responsibilities, from educating students to ensuring their safety, while remaining under the school district's watchful eye. Yet each year, many students fall victim to unacceptable behaviors with sexual implications, ranging from grooming and inappropriate touching, to physical and sexual abuse at the hands of school district staff and volunteers.

In an effort to prevent Sexual Assault and Misconduct, school districts have a duty to create an unwelcome environment for would-be perpetrators and to take the necessary precautions to prevent students from being victimized. In this manual, you will find quick and easy reference to operational best practices and guidance that can be implemented to support a school district's goal of preventing incidents of sexual assault and misconduct.

For additional information or questions on any of the guidance provided in this manual, please contact PRISM Risk Control riskcontrol@csac-eia.org.



CHAPTER 1: APPLICANT SCREENING BEST PRACTICES

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1.1 Screening Best Practices Overview

Research shows that 6% of adults in America are sexually attracted to children.¹ These individuals will want to work or volunteer where they will have repeated access to children and teens, resulting in a significant challenge for school districts that are responsible for the safety of the students they serve.

In order to create a safe environment, it's crucial for school districts to adopt a broad view of the applicant screening process that includes not only screening-in qualified job applicants, but also screening-out individuals who present a high risk of sexual abuse and misconduct with students.

But even school districts that have acknowledged the need to screen-out high-risk individuals often have a false sense of security that a criminal background check will suffice when it comes to keeping students safe. However, Dr. Gene Abel's research in the late 1980s found that there is only a 3 percent chance of an offender getting caught for a sexual offense. Robin Sax, former Los Angeles Deputy District Attorney, said in her 2009 book, "Dr. Abel's statistic hasn't changed significantly over the past twenty eight years."² This is because only 14 percent of sexual assaults are reported to authorities³ and only a small percentage of those cases have sufficient evidence to go to trial and result in a conviction. This leaves a large population of child molesters who have never been convicted and therefore, would pass a criminal background check. And yet a 2014 report from the GAO (*Government Accountability Office*) says that "Background checks were the primary tool states used to prevent sexual abuse and misconduct by school personnel."⁴

It is important to understand that criminal background checks simply aren't enough, and that they need to be just one part of a school district's overall screening and supervision process. In fact, since there is such a high risk of inadvertently hiring a child molester who may pose a grave risk to students, it is recommended school districts include stakeholders from their risk management department in the development and regular review of their applicant screening process to ensure the school district is proactively identifying vulnerabilities and taking action to mitigate them.

¹ Abel, Gene G., and Nora Harlow. 2001. *The Stop Child Molestation Book: What Ordinary People Can Do In Their Everyday Lives To Save Three Million Children*. Xlibris Corporation.

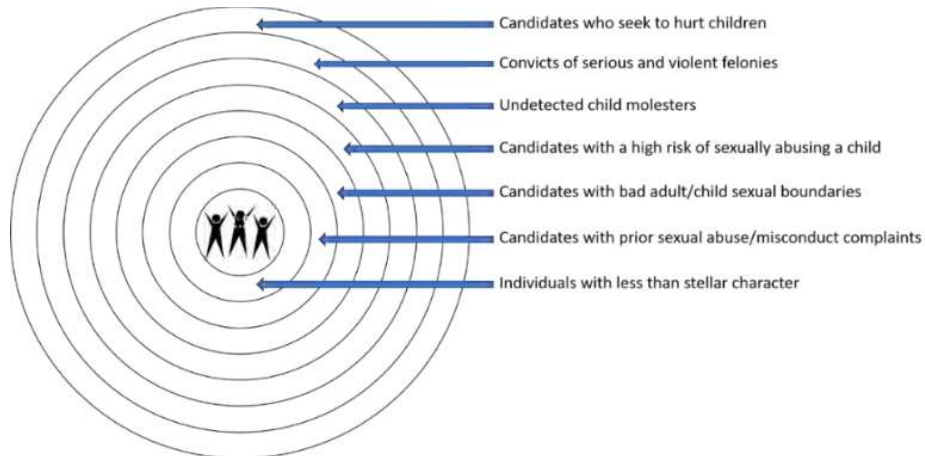
² Robin Sax, *Predators and Child Molesters: What Every Parent Needs to Know to Keep Kids Safe: A Sex Crimes DA Answers 100 of the Most Asked Questions* (Amherst: Prometheus Books, 2009), 25.

³ Dean G. Kilpatrick, Benjamin E. Saunders, and Daniel W. Smith, *Youth Victimization: Prevalence and Implication*, U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (2003): ii.

⁴ "Child Welfare: Federal Agencies Can Better Support State Efforts to Prevent and Respond to Sexual Abuse by School Personnel," Report to the Ranking Member, Committee on Education and the Workforce, House of Representatives, United States Government Accountability Office (2014): 16. Italics added for clarity.

To develop the level of attention and understanding needed to screen-out high-risk individuals, school districts are encouraged to focus first on the categories of individuals who present a high risk of sexual abuse and misconduct. This strategic view will help school districts better identify, evaluate, and implement the protective screening practices that are most effective in screening-out each category of high-risk individuals.

The following visual depicts concentric circles of high-risk individuals surrounding students, with the highest levels of risk toward the outside. School districts should implement practices that strategically remove the circles of risk to the best of their ability.



School districts should determine how they will protect students from each category of high-risk individuals separately. Adopting the following associated strategic safety objectives that apply to each category of risk will help school districts stay focused on the direct correlation between the applicant screening process and a safe environment for students.

Strategic Safety Objectives

- Deter candidates who seek to hurt students from applying
- Stop individuals convicted of serious or violent felonies or crimes against minors from being hired
- Detect, through appropriate and lawful processes, previously undetected child molesters and remove them from consideration
- Foresee candidates who have a high risk to sexually abuse child in the future
- Screen-out candidates who fail to recognize adult/child sexual boundaries
- Screen-in as many protective candidates as possible
- Uncover candidates with a history of sexual abuse indictments or sexual misconduct complaints

- Discern unbecoming traits in candidates such as bad boundaries, poor judgment, or dishonesty

Now that this framework of strategic safety objectives has been laid out the following direction will provide specific screening practices that can help school districts meet each of these objectives and address how to implement them in a lawfully acceptable manner.

1.2 Publicize the School District’s Protective Screening Practices

Related Objective

- Deter candidates who seek to hurt students from applying

As long as individuals who have sexually abused a child in the past or have a propensity to abuse a child in the future are applying for positions in the school district, there is a risk of placing students in harm’s way.

When implemented, the protective screening practices set forth in this chapter will significantly increase a school district’s ability to identify and screen-out high-risk individuals. These practices will also allow school districts to quickly detect, intercede, and report behaviors that pose a risk to students. This is not an environment that deters individuals who want to sexualize minors. In fact, this type of environment would likely discourage such high-risk individuals from even applying for fear of being detected.

Therefore, it is recommended school districts publicize their applicant screening process on their websites in full detail, highlighting all protective screening practices that have been adopted. It is also recommended that these protective screening practices be discussed during the interview process to further deter any high-risk individuals who might not have fully read the website or who decided to apply anyway.

A public representation of the school district’s protective screening practices in the early stages of the applicant screening process will reflect the school district’s commitment to protecting students by not just incorporating legally required background checks, but also by incorporating other protective practices that further serve to deter predators who are seeking access to students in order to abuse.

TOOL TIP:
A sample website job posting that can be modified to reflect your school district’s adopted application process and protective screening practices has been provided as [Appendix A](#).

1.3 Background Checks

The term “background check” is most often equated to a criminal background check, but there are a variety of checks into the history of a candidate that are important and serve

very distinct purposes. In this section, each type of background check will be addressed to distinguish the differences and identify which strategic safety objectives they support. Best practices in background checks include:

- Social security number trace
- Sex offender registry check including:
 - State
 - National
- Verification of application and resume information including:
 - Certification history
 - Employment history
- Reference checks from prior employers
- Industry database checks including:
 - National Educator Certification Clearinghouse
 - State Licensing Agencies
 - Internal School District Ineligibility File
- On-line Profile Review
 - Social Media Check
 - Professional Networking Check
 - News Outlet Check
- Criminal background checks that are:
 - Fingerprint-based
 - National
 - Recurring
 - Completed before employment or service
- County criminal record check
- Federal court criminal record check

Social Security Number Trace

Related Objectives

- Stop individuals convicted of serious or violent felonies or crimes against minors from being hired
- Uncover candidates with a history of sexual abuse charges or sexual misconduct complaints
- Discern unbecoming traits in candidates such as bad boundaries, poor judgement, or dishonesty

Some steps in the background check process are based on social security number, or name and date of birth. If a candidate provides an invalid or stolen social security number, or does not provide all previous names they have used, the results of a school district's background check for that applicant may be inaccurate or even invalid.

So, after a school district has confirmed an applicant meets the basic job requirements on paper, background screening should begin, starting with a social security number trace through one of the three credit reporting agencies - Equifax, Experian, or Trans Union. When an individual completes a credit application, their name, address, and social security number are stored in a separate database, which is then used for social security number trace requests. This is not a credit check.

The trace results will allow the school district to:

1. Verify the social security number is associated with the name the candidate has provided
2. Establish all names previously associated with that candidate's social security number
3. Establish all addresses previously associated with that candidate's social security number
4. Detect any discrepancies that require further investigation

It is important for school districts to identify any discrepancies and review them with the candidate for clarification and determine if the candidate was fraudulent in the information they provided or omitted. Further, the school district should pay closer attention to determine if there is any derogatory background information the candidate was purposely trying to conceal.

It is advisable to do social security number traces for all candidates uniformly and only rely upon lawful information that is received from the traces. In any case where the school district is restricted from doing a fingerprint-based criminal background check, it is essential to do social security number trace. The results will provide the necessary name and address information to support a thorough county and federal court criminal record check process.

Sex Offender Registry Check

Related Objective

- Stop individuals convicted of serious or violent felonies or crimes against minors from being hired

Background check best practices includes checking applicable state and national sex offender registries. Checking the national registry should catch all convictions, regardless

of which state a sex offense was committed in. However, because inclusion in the national system is based on state reporting, there can be a lag time and potential accidental omissions. School districts are also encouraged to check the state sex offender registries for each state where a candidate has lived, worked, or gone to school, as well as the national registry.

The list of states to check should be determined by the addresses provided on the candidate's application, as well as any additional addresses returned in the candidate's social security number trace. Likewise, the national and state sex offender registry checks should be run on the candidate's current name, any previous names disclosed on the application, as well as additional names returned in the candidate's social security number trace.

School districts are encouraged to run all applicable sex offender registry checks as early in the criminal background check process as possible because many crimes that require registration as a sex offender are violent or serious crimes that fall under California Education Code (Ed Code) 45122.1(a) or 44830.1(a) which forbid the hiring or employing of individuals convicted of these crimes and require the California Commission on Teacher Credentialing (CTC) to revoke credentials.⁵

Running these checks early in the background check process but not before extending a conditional job offer, will allow individuals who are not eligible to work for the school district to be screened-out early, rather than waiting until the end of the process when the school district receives the results of a Department of Justice (DOJ) criminal background check.

- The national sex offender registry can be accessed at <https://www.nsopw.gov/>
- The California sex offender registry can be accessed at <https://www.meganslaw.ca.gov/>
- All other state sex offender registries can be found via an internet search for "sex offender registry" and the name of the state

Note: According to a U.S. Department of Justice survey of state criminal history information systems,⁶ as of December 31, 2010, only 65,800 of California's 123,800 registered sex offenders are visible on the publicly available state registry. So, like other steps in the criminal background check process, do not develop a false sense of security but instead look at sex offender registry checks as one element of a thorough and comprehensive background check process.

⁵ California Ed Code §§ 45122.1(a), 44830.1(a), 44346.1, and 44424 as well as California Penal Code 290 to 290.024, 667.5 and 1192.7.

⁶ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Survey of State Criminal History Information Systems 2010, November 2011, accessed October 11, 2019, <https://www.ncjrs.gov/pdffiles1/bjs/grants/237253.pdf>.

Verification of Application and Resume Information

Related Objective

- Discern unbecoming traits in candidates such as bad boundaries, poor judgment, or dishonesty

According to HireRight's 2017 Benchmark Survey, candidates regularly embellish their resumes, even at the highest seniority levels. In fact, 85% of the nearly 4,000 human resources, recruiting, security, and management respondents uncovered a lie or misrepresentation on a candidate's resume or job application during the screening process – up from 66% five years ago and 77% said screening uncovered an issue with a candidate's background that would not have been caught otherwise.⁷ In another study, ADP found that 46% of education, employment, and/or credential checks revealed discrepancies between what the source reported and the applicant provided."⁸

Since it is possible for candidates to misrepresent the truth, school districts should take the verification of application and resume information seriously. School districts should invest the resources required to effectively investigate all academic history, certification history, and employment history to identify any discrepancies.

Certification History Verification

It is the school district's responsibility to ensure that all employees hired into positions that require credentials, certificates or permits, hold valid applicable licensing. School districts can verify the current status of a California license through the CTC website using the applicant's social security number and date of birth or CTC document number.⁹ Be sure to verify the name on the certification with the candidate's name to ensure that the correct record has been accessed.

In addition to ensuring candidates currently hold valid California credentials required to meet the specified job requirements, school districts should look at license history to identify any suspensions and revocations along with the reasons for those adverse actions against a candidate's credentials. This input is crucial to making an informed and safe hiring selection. It is also recommended that screeners review all documents, as well

⁷ HireRight, 10th Annual HireRight Benchmark Survey Finds 48 Percent of Employers Do Not Rescreen Employees, Despite Prevalence of Organizational Risk, April 19, 2017, accessed September 4, 2019, <https://www.hireright.com/news/press-release/10th-annual-hireright-benchmark-survey-finds-48-percent-of-employers-do-not>.

⁸ Accu-Screen, Inc., ADP, The Society of Human Resource Managers

⁹ Commission on Teacher Credentialing, accessed September 5, 2019,

https://educator.ctc.ca.gov/esales_enu/start.swe?SWECmd=GotoView&SWEView=CTC+Search+View+Web&SWERF=1&SWEHo=educator.ctc.ca.gov&SWEBU=1

as any adverse and commission actions on the CTC website to get a complete history of all credentials issued, expired, suspended, and/or revoked by the CTC.

Problematic results may then be confirmed or clarified with the candidate and further investigation may be done as necessary to ensure all pertinent information is taken into consideration in the hiring decision.

Employment History Verification

Verifying employment should not be confused with checking references. They are different processes with different intentions. Though the two processes may be done in combination, they have been separated in this guide to ensure the distinct purpose of each process is clear and fulfilled independently.

Verifying employment includes contacting previous employers to validate that the information provided by the applicant is accurate including the employer, position held, dates employed, job description, responsibilities, income, status (i.e. permanent, probationary, temporary, substitute, emergency, intern, student teacher, etc.), and any specific achievements provided by the candidate, such as teacher of the year or their students' standardized test scores.

Similar to academic history, applicants lie about employment history as well, with 29% of resumes misrepresenting employment dates, 33% providing inaccurate job descriptions, and 40% documenting exaggerated salary levels.¹⁰ So, it is important that school districts verify details regarding all employment provided by applicants on their application and resume. The process of verifying employment includes validating the truth and discovering any misrepresentation of the candidate's employment history.

When contacting previous employers, it is important to know that the contact information provided on the application may be fraudulent. Believe it or not, another survey found that 29% of employers reported that they have caught a fake reference on a candidate's application.¹¹ So, it is best for screeners to locate the employer's phone number instead of relying on the information provided by the applicant – this is called “going through the front door.” Screeners should then ask for the reference name provided on the application to verify employment information, or better yet ask for human resources so that the screener has an independent contact. This allows screener to use the reference provided by the candidate to learn more about their performance rather than spending time verifying data.

¹⁰ Statistic Brain Research Institute, Resume False Statistics, April 2, 2017, accessed September 4, 2019, <https://www.statisticbrain.com/resume-falsification-statistics/>

¹¹ CareerBuilders, Nearly Three-in-Ten Employers Have Caught a Fake Reference on a Job Application, November 12, 2012, accessed August 28, 2019, <http://press.careerbuilder.com/2012-11-29-Nearly-Three-in-Ten-Employers-Have-Caught-a-Fake-Reference-on-a-Job-Application>

School districts are encouraged to do academic, certification, and employment verifications before the interview process begins. This allows screeners to make school district interviewers aware of any discrepancies or red flags so they can ask the questions necessary to gain further information and clarification from the candidate.

1.4 In-House or Outsource Background Checks

Conducting a thorough and comprehensive background check on all candidates is time consuming and requires employees who have an in-depth knowledge of how to navigate credit bureaus, sex offender registries, academic institutions, the CTC, human resources departments, references, industry databases, social, professional and news profiles, the DOJ/FBI county courts, federal courts, and sexual risk screening. Not to mention, that they must do all of that in compliance with all federal, state, and local anti-discrimination laws. While it is doable, it does require a concerted investment in training staff who are dedicated to background checks to do it quickly and accurately.

School districts may also consider using a third-party company to conduct their background checks. Companies who offer these services are typically referred to as a consumer reporting agency (CRA) and have highly trained staff dedicated to doing nothing but background checks. They have strict policies and practices to ensure the information returned to their clients are compliant with all federal, state, and local statutes. When school districts choose to run background checks through a company in the business of compiling background information such as CRAs, they must comply with the Fair Credit Reporting Act (FCRA) in addition to federal, state, and local anti-discrimination laws.

1.5 Background Check Return on Investment

When contemplating the steps set forth in this guide that represent a thorough and comprehensive background check, the question arises - Is it worth it? The answer is a resounding yes!

While there is a significant investment of time required to do an effective background check, the cost of not doing one is more substantial. To start with, according to Society of Human Resource Management (SHRM), the average cost of hiring an employee is \$4,129¹² and school districts would have to bear the burden of that cost to hire a replacement for a new hire that turned out not to be fully qualified. Of course, the real risk and return on investment lies in the possibility of a school district inadvertently hiring a candidate that poses a risk of sexual abuse or misconduct with students.

¹² Society of Human Resource Management, Average Cost-per-Hire for Companies Is \$4,129, SHRM Survey Finds, August 3, 2016, accessed 10/13/19, <https://www.shrm.org/about-shrm/press-room/press-releases/pages/human-capital-benchmarking-report.aspx>.

So, the real question is not... can we afford to invest in effective background checks, but instead, can we afford not to?

1.6 Reference Checks

Related Objectives

- Uncover candidates with a history of sexual abuse indictments or sexual misconduct complaints
- Discern unbecoming traits in candidates such as bad boundaries, poor judgment, or dishonesty

Reference checks are another vital part of the applicant screening process which serve to provide insight about a candidate's past job performance and potentially uncover past complaints of misconduct. This is important so an informed decision can be made about whether the candidate is a good fit for the job and the school district.

According to a 2012 CareerBuilder's survey, 80% of employers contact references as part of their background screening process. In fact, 16% of them contact references before the interview process.¹³ Since the safety of students is at risk, school districts should ensure they are part of the 80%, checking references for all viable candidates. School districts are also encouraged to be part of the 16% of employers that choose to check references before the interview process begins. This information prepares school district interviewers to discuss any job performance concerns or misconduct complaints that arise with the candidate during the interview.

Garner Insight from Application References

A thorough reference check process includes the screener talking with former supervisors and colleagues that were provided on the application about the candidate's skills, qualifications, success in meeting job expectations, as well as how the candidate got along with students, parents, administrators, and colleagues. The screener should be prepared to use a variety of questions, similar to questions used in a candidate interview, such as open-ended questions, probing questions, as well as character and boundary focused questions, to obtain the information needed.

TOOL TIP:
A list of sample interview questions has been provided for reference as Appendix B.

It is recommended school districts request applicants to provide at least three references, including their most recent supervisor and at least one colleague,

¹³ CareerBuilders, Nearly Three-in-Ten Employers Have Caught a Fake Reference on a Job Application, November 12, 2012, accessed August 28, 2019, <http://press.careerbuilder.com/2012-11-29-Nearly-Three-in-Ten-Employers-Have-Caught-a-Fake-Reference-on-a-Job-Application>

as well as an additional reference of their choice. This provides a good cross section of input, including how it is to supervise the applicant, as well as work alongside the applicant. These are likely very different perspectives.

Elicit Insight from Independent References

If a candidate is smart, they will select and provide references who they know will say good things about them. They may have even coached the references about the kind of information they think the prospective school district wants to hear. So, while it is important to contact these references, it is best practice, and therefore recommended that school districts also contact independent “back-door” references.^{14 15 16 17} Another previous supervisor or colleague who is not expecting a call will be more likely to provide candid feedback. Screeners can leverage their existing relationships in the industry or business networking platforms, such as LinkedIn, to identify possible contacts who have worked directly with the candidate and could provide valid and valuable information on the candidate’s qualifications and fit for the job.

Uncover Past Complaints of Misconduct

Screeners should also ask direct questions that help uncover any history of misconduct, especially complaints of sexual misconduct toward students, as well as whether the candidate is eligible for rehire. Here are some examples:

- Why did the candidate leave your organization?
- Did the candidate’s conduct ever require disciplinary measures? If so, what was the conduct in question?
- Were there ever any substantiated accusations of sexual misconduct made against the candidate?
- Is the candidate eligible for rehire? If not, why not?
- If you had the chance, would you recommend rehiring the candidate?

When asking these probing questions, be direct and then wait for the answer. There is often as much learned by what a reference does not say as there is from what they do say. Listen for hesitations, as well as vague, ambiguous, or evasive answers. Don’t be

¹⁴ “Child Welfare: Federal Agencies Can Better Support State Efforts to Prevent and Respond to Sexual Abuse by School Personnel,” Report to the Ranking Member, Committee on Education and the Workforce, House of Representatives, United States Government Accountability Office (2014): 19.

¹⁵ Charol Shakeshaft, *Educator Sexual Misconduct: A Synthesis of Existing Literature*, U.S. Department of Education, Office of the Under Secretary (2004): 48.

¹⁶ Robin Sax, *Predators and Child Molesters: What Every Parent Needs to Know to Keep Kids Safe: A Sex Crimes DA Answers 100 of the Most Asked Questions* (Amherst: Prometheus Books, 2009), 70.

¹⁷ Charol Shakeshaft, “Know the Warning Signs of Educator Sexual Misconduct,” *Kappan Magazine* (February 2013): 11.

afraid to ask follow-up or clarifying questions to understand why the reference is responding the way they are.

Passing the Trash

A study conducted by the GAO in 2010 specifically looked at select cases in public and private schools that hired or retained individuals with histories of sexual misconduct. The GAO found that one of the key factors that contributed to the hiring of individuals with histories of misconduct was that “school officials allowed teachers who had engaged in sexual misconduct toward students to resign rather than face disciplinary action, often providing subsequent employers with positive references.”¹⁸

If a reference gives vague and ambiguous responses to direct questions about misconduct, it is possible the reference may have signed a confidentiality agreement. The 2010 GAO report referenced a discussion with a school district superintendent stating, “The superintendent told us that sometimes the terms of a ‘letter of separation’ can prevent a principal from disclosing information which a representative from human resources could disclose.”¹⁹ So, if a screener senses the reference is hiding information, we recommend asking the same probing questions of someone in the human resources department of the same employer.

Such letters of separation and confidentiality agreements were recognized nationwide as such a significant risk to student safety, the federal government enacted a law intended to prevent school employees who have engaged in sexual misconduct with students from being passed from one school district to another, a practice known as “passing the trash.” Section 8038, entitled “Prohibition on Aiding and Abetting Sexual Abuse,” is now part of the Every Student Succeeds Act (ESSA) which went into effect on July 1, 2016.²⁰

The law states that “A State, State educational agency, or local educational agency in the case of a local educational agency that receives Federal funds under this Act shall have laws, regulations, or policies that prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, or has probable cause to believe, that such school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law.”

¹⁸ “K-12 Education: Selected Cases of Public and Private Schools That Hired and Retained Individuals with Histories of Sexual Misconduct,” Report to the Chairman, Committee on Education and Labor, House of Representatives, United States Government Accountability Office, (2010): 8, 25.

¹⁹ “K-12 Education: Selected Cases of Public and Private Schools That Hired and Retained Individuals with Histories of Sexual Misconduct,” Report to the Chairman, Committee on Education and Labor, House of Representatives, United States Government Accountability Office, (2010): 8, 25.

²⁰ Every Student Succeeds Act, December 10, 2015, accessed October 13, 2019, <https://www.govinfo.gov/content/pkg/PLAW-114publ95/pdf/PLAW-114publ95.pdf>.

This restriction does not apply if the information giving rise to probable cause has been properly reported to law enforcement and any other authority required by law, including under Title IX, and the matter has been officially closed by the authorities due to insufficient evidence, the employee has been acquitted or otherwise exonerated, or the case remains open with no charges yet filed.

By insisting on talking with references and asking direct probing questions about past sexual misconduct complaints against a candidate, school districts force references to 1) answer honestly, 2) evade answering these direct questions which is a red flag, or 3) break the law. On the other hand, if a reference from a previous school district is only willing to provide routine transmission of administrative and personnel files, it may be a red flag.

Remember that some candidates provide fraudulent references, so it is highly recommended that screeners look up and call the main phone number for the employer when contacting references as is recommended when verifying employment.

Confidentiality

References are much more likely to provide honest input if they know the discussion is confidential. School districts are encouraged to include a confidentiality clause on their applicant reference check permission request and to tell references up front that their feedback is confidential and cannot be shared with the applicant.

Professional References

Insist on professional references versus personal references. Personal references often find it difficult to be objective and may not have had the opportunity to see the candidate in job related activities. Though this may seem like an obvious practice, there are still candidates who are only willing to provide personal references.

There is an enormous amount of valuable insight that can be gathered through the reference check process. School districts are encouraged to take the process seriously and keep it from becoming a rote activity to be checked off the list.

1.7 Industry Database Checks

Related Objectives

- Stop individuals convicted of serious or violent felonies or crimes against minors from being hired
- Uncover candidates with a history of sexual abuse charges or sexual misconduct complaints

National Educator Certification Clearinghouse

The CTC certification verification process is only for California licensing and does not include any out-of-state certification history or adverse actions. So, in order to view all potential past licensing concerns, school districts need to review certification history nationwide, and they should not assume that the CTC thoroughly checked licensing in other states prior to issuing a license in California.

While there is currently no government provided single interface that directly accesses all state licensing agencies, the National Association of State Directors of Teacher Education and Certification (NASDTEC)²¹ provides a clearinghouse for information regarding individuals who have had their educator credentials annulled, denied, suspended, revoked or otherwise invalidated. The database is populated by individual state licensing agencies and is accessible by all NASDTEC Associate Members.

Sexual misconduct complaints do not always result in criminal charges or convictions and therefore, would never appear on a criminal background check. However, these complaints may result in an adverse action being taken against an educator's credentials, which is crucial input necessary to make an informed and safe hiring selection. School districts are encouraged to become NASDTEC members and run a national clearinghouse check as a standard part of all background checks. It is possible for individuals who have had adverse action taken against their credentials to apply for non-certificated positions; therefore, school districts should run the check on all candidates, regardless of certification requirements.

In addition, misconduct cases often take an extended time to be adjudicated, and it is not unusual for a school professional to secure employment in another school district or even another state during an on-going investigation. To assist school district notification of changes in credentials, NASDTEC also provides their members a monthly report of credential status changes which can be crossed checked against existing school district employees.

²¹ NASDTEC membership information is available at <https://www.nasdtec.net/page/Associates>.

State Licensing Agencies

The NASDTEC clearinghouse is dependent on timely input from state agencies. If a school district has reason to believe a candidate has a history of adverse actions against their credentials which does not appear in the NASDTEC clearinghouse, the school district is encouraged to contact the appropriate state department of education to further their investigation.

TOOL TIP:
A list of state websites that provide credential information has been provided for reference as [Appendix C](#).

Most states provide on-line public access to verify and review credentials of public-school educators. Some states provide more detailed disciplinary action either integrated into the credential search or via separate access. A few states do not provide any on-line access so school districts will need to contact the applicable state department of education directly with a verbal inquiry.

Internal School District Ineligibility Check

School districts are encouraged to keep a centralized database of all employees or candidates who have been flagged as ineligible to work for the school district, along with the reason. This database should then be checked for all new candidates to determine if there are any previously identify concerns that are still valid and should be taken into consideration in the current screening process.

This internal search will save the school district time in the screening process and ensure that a previously detected problem is not inadvertently overlooked.

1.8 On-Line Profile Review

Related Objectives

- Stop individuals convicted of serious or violent felonies or crimes against minors from being hired
- Discern unbecoming traits in candidates such as bad boundaries, poor judgment, or dishonesty

There is no doubt that we live in a digital age and things that used to be private are now shared for the world to see. Most adults have some type of social media presence and many may also have a presence on professional networking sites. In addition, there are a wide array of news outlets that post breaking news stories which are easily accessed through an internet search, regardless of where the news outlet is, or where the story unfolded.

According to the 2016 Society of Human Resource Management study, “43% of organizations said they use social media or online search engines to screen candidates, an increase from 2013. Forty-four percent of HR professionals agreed that a job candidate’s public social media profile can provide information about work-related performance.” In addition, the survey found that “36% of organizations have disqualified a job candidate in the past year because of concerning information (e.g., illegal activity, discrepancy with application) found on a public social media profile or through an online search.”²²

A candidate’s on-line profile can provide valuable input about a candidate’s character, personal and professional associations, academic and employment history, and even criminal behavior that could impact their eligibility to work for the school district.

There are, however, some legal exposures for school districts that choose to use on-line profile reviews as part of their applicant screening process, including accusations of discrimination based on the individual’s status in a protected class, or association with an individual in a protected class, decisions based on false information, wrong identity, or legal off-duty activities, and privacy issues. But some would argue there are also legal exposures for school districts that choose not to use on-line profile reviews as part of their applicant screening process because if a problem with an employee does arise, and indications of that issue were apparent and easily accessible through an on-line search, the school district may be subject to lawsuits claiming negligent hiring practices.

It is important for school districts to consider all legal aspects and to engage legal counsel in evaluating and preparing a fair and defensible on-line profile screening process. The process should be documented, screeners should be thoroughly trained on the process, and the process should be followed fairly and consistently for all candidates being evaluated. Employment Screening Resources has published a white paper called “Ten Potential Dangers When Using Social Media Background Checks” that can serve as a good starting point for discussion of potential legal concerns and how to develop a screening process that benefits and protects the school district²³.

School districts are encouraged to invest the time to do an on-line profile review as an additional source of verification and input. Start with a simple internet search of the candidate’s name and some other specific data such as the town, school, or school district in which the candidate works. This additional data will help streamline the search to ensure the information returned is associated with your specific candidate which is crucial.

²² Society of Human Resource Management, SHRM Survey Findings: Using Social Media for Talent Acquisition- Recruitment and Screening, January 7, 2016, accessed September 30, 2019, <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/Documents/SHRM-Social-Media-Recruiting-Screening-2015.pdf>.

²³ Employment Screening Resources, Whitepaper: Ten Potential Dangers When Using Social Media Background Checks, accessed October 3, 2019, <https://www.esrcheck.com/Tools-Resources/Whitepaper-Library/Social-Media-Background-Checks/index.php>.

Social Media Check

From the initial search results, look at associated social media platforms such as Facebook®, Twitter®, Google®, YouTube® and any others that come up. If the candidate's profile is public the screener can browse through the history of each platform to get an overall sense of the candidate's social resume and whether their on-line behavior is appropriate and in line with the school district's basic code of conduct and values. Remember, if they are hired, students will likely see their on-line profile! If their profiles are set to private, the screener will have little visibility unless a connection request is made. However, candidates are often eager to connect with prospective employers as it is often a sign that the employer is interested.

It is essential that the screener uses the information viewed in the profile to validate that the profile being viewed, is indeed that of the candidate being screened.

It is also important to remember that information gleaned through an on-line profile review is subject to all federal and state anti-discrimination laws and should be handled accordingly. The purpose of the review is to uncover if there are any discrepancies with the information provided on the candidate's application and resume and if there is any concerning information or behavior that would impact the candidate's fitness to do the job.

Professional Networking Check

LinkedIn is by far the most popular professional networking platform and is a great source of historical information about candidates. While the social media sites provide visibility to a candidate's overall social resume, LinkedIn provides visibility to a candidate's professional resume including academic, employment, and certification history as well as other professionals and professional associations they are connected to.

School district screeners are encouraged to intentionally look for candidates' LinkedIn accounts and review them thoroughly, especially through the lens of verification of application and resume information.

LinkedIn is also a great source of contacts who are previous employers and colleagues of the candidate and who may potentially be able to provide performance input beyond the references provided by the candidate. Mutual connections between the screener and the candidate can be an excellent source of input.

News Check

While all news about a candidate will provide valuable insight, bad news travels fast and a simple search of the candidate's name and other distinguishing data can quickly identify concerning behavior, even criminal behavior. It is common for the media to break a news

story of sexual misconduct of an educator long before any criminal or licensing records have been updated and become available to a screener. Though the percentage of candidates who will have derogatory articles written about them is low, a quick on-line search will uncover criminal and potentially concerning behavior of a candidate who is being investigated for improprieties in real-time. Media coverage can also be a valuable source of information for past improprieties that never resulted in a conviction or adverse action against a candidate's credentials.

Not all information found on-line is accurate therefore school districts are encouraged to review concerning information received through an on-line profile review with the candidate to get their input and clarification.

1.9 Criminal Background Checks

Related Objective

- Stop individuals convicted of serious or violent felonies or crimes against minors from being hired

It is essential for school districts and licensing authorities to be aware of convictions and arrests pending adjudication so they can protect the students they serve and adhere to all laws that prohibit employing or licensing individuals who have been convicted of specific crimes. School districts may be found legally liable if they fail to do so.

In the 2010 GAO study previously referenced that specifically looked at select cases in public and private schools that hired or retained individuals with histories of sexual misconduct, the GAO found that one of the key factors that contributed to the hiring of individuals with histories of misconduct, was that "schools did not perform pre-employment criminal history checks; even if schools did perform these checks, they may have been inadequate in that they were not national, fingerprint-based, or recurring."²⁴

Based on the 2010 GAO report and other studies, many child sexual abuse prevention experts would agree that as a best practice criminal background checks should be:

1. Fingerprint-based
2. National in scope
3. Recurring
4. Completed before employment

²⁴ "K-12 Education: Selected Cases of Public and Private Schools That Hired and Retained Individuals with Histories of Sexual Misconduct," Report to the Chairman, Committee on Education and Labor, House of Representatives, United States Government Accountability Office, (2010): Abstract.

And thus, fingerprint-based criminal background checks have become the “gold standard” in many states including California. The DOJ state provided fingerprint process is often used by school districts as the only source to investigate the past criminal behavior of candidates and therefore, the only source used to determine if a candidate’s criminal history poses a risk to the students they serve.

Background check experts who see the results of criminal background checks everyday warn employers about the risks of using a fingerprint-based criminal background check as the only source of information to determine criminal risk.^{25 26 27} They understand the value of national, recurring, fingerprint-based background checks, but they also see significant limitations that most employers and even child sexual abuse prevention experts may not be aware of. These limitations may put students at significant risk if a fingerprint-based criminal background check is relied on as the only source of investigation.

Details of each of the best practices cited by child sexual abuse prevention advocates have been provided to help school districts to understand their value as well as the limitations of fingerprint-based criminal background checks that may put students at risk. It is important for school districts to understand these limitations and not just assume the state required process is enough for limiting risk and school district liability.

Value of Fingerprint-Based Criminal Background Checks as a Best Practice

Fingerprint-Based – Fingerprint-based criminal background checks are important because fingerprints are unique to an individual and thus can be confirmed through a matching process – initially automated but often followed by manual expert comparison. If there is a match with an existing set of prints available in the state or national database, the process can detect candidates who have provided a false name, or who are using a fraudulent social security number.

The DOJ is required by law to maintain a statewide criminal record repository for the State of California.²⁸ Sheriff, police, probation departments, school district attorney offices, and courts submit arrest and disposition information to the DOJ repository, which is based upon fingerprint submissions.

²⁵ National Center for Safety Initiatives, California Live Scan – A Dangerously Flawed System, accessed October 7, 2019, <https://solutions.ncsifsafe.com/california-parks-and-recreation-agencies-and-background-checks>.

²⁶ Sterling, Fingerprints vs. Name-Based Background Checks: And the Winner Is..., May 10, 2016, accessed October 7, 2019, <https://www.sterlingcheck.com/blog/2016/05/fingerprints-vs-name-based-background-checks-and-the-winner-is/>.

²⁷ Employers Investigative Services, Top 6 Problems Using Livescan, July 21, 2015, accessed October 7, 2019, <http://www.eischecks.com/blog/date/2015-07>.

²⁸ Penal Code 11105

A DOJ criminal background check is the standard mechanism for criminal background checks of school district employees and educator licensing in the State of California. Requests for DOJ criminal background checks must be authorized by law - some are mandatory such as for all school district classified employees,²⁹ while others are permissive such as for some school volunteers.³⁰

The DOJ directs school districts and the Commission on Teacher Credentialing (CTC) to submit criminal background check requests for California residents through the Live Scan automated process but also provides a manual fingerprint card process for non-residents. For full details on the DOJ criminal background check process, visit the California DOJ website.³¹

School districts should request a DOJ statewide criminal records check in all cases directed by law and permitted by law. This will help school districts stop individuals convicted of serious or violent felonies or crimes against minors from being hired.

National in Scope – A national search for criminal convictions is important because all crimes, regardless of location, should be considered in the school district’s applicant evaluation process to ensure a safe environment for students. In fact, in some circumstances, crimes committed in another state legally disqualify an applicant for employment or licensing in California. For example, the California Education Code requires that the CTC deny any application based on commission of a crime in another state when the underlying offense would require registration as a sex offender under California law³². Other sections of the Ed Code such as 44830.1 preclude school districts from hiring or retaining certificated individuals, for any violent or serious offense in another state, which if committed in California, would have been punishable as a violent or serious felony.³³

The Request for Live Scan Service form, BCIA 8016A,³⁴ has an option to request that a copy of an individual’s fingerprints be sent to the FBI to be run against a national criminal history database, which is compiled by input from individual states and federal agencies. However, access to this level of service must be authorized by statute and is dictated by applicant type.³⁵ In situations where the FBI level of service is permitted, the school district representative must check the FBI check box on the form to authorize the DOJ to send a copy of the fingerprints to the FBI and for the school district to receive the results.

²⁹ California Ed Code § 45125 (a)(1)

³⁰ California Ed Code § 45125 (l)

³¹ California Office of Attorney General, State of California Department of Justice, Fingerprint Background Checks, accessed August 9, 2019, <https://oag.ca.gov/fingerprints>.

³² California Ed Code § 44346(b)(2)(B)

³³ California Ed Code § 44830.1

³⁴ California Office of Attorney General, Background Checks, Form BCIA 8016A, accessed August 17, 2019, https://oag.ca.gov/sites/all/files/agweb/pdfs/fingerprints/forms/BCIA_8016A.pdf

³⁵ California Office of Attorney General, Background Checks, Instructions for Form BCIA 8016A, accessed August 27, 2019, https://oag.ca.gov/sites/all/files/agweb/pdfs/fingerprints/forms/BCIA_8016_8016A_instructions.pdf

In some circumstances, the Education Code provides specific guidance that requires a national search. As an example, Ed Code 45125 requires school districts to request an FBI national database search for classified employees who have lived in California for less than one year immediately preceding their application or between one year and seven years when the DOJ has ascertained that the person was convicted of a sex offense of a minor or a drug offense associated with a minor.³⁶ In other cases, the law does not specifically require an FBI national database search but it does permit it, as is the case with Ed Code 44340 or 44341, which allows the CTC to require all individuals who seek to obtain credentials, certificates, permits, and waivers from them receive fingerprint clearance from both the DOJ and the FBI.^{37 38}

School districts should request an FBI national criminal history database search through the DOJ in all cases directed by law and permitted by law. This will help school districts stop convicts of serious or violent felonies or crimes against minors in other states from being hired.

Recurring – Criminal history can change in a day. Therefore, it is important for school district representatives to know when existing employees have new arrests or the disposition of a previously reported case changes.^{39 40} Of course, this is important for the protection of students, but the Education Code requires school districts to place some employees on leave and precludes others from being retained if they are convicted of specified crimes.⁴¹ There are also similar statutes that require the CTC to revoke credentials based on convictions after credentials are issued.⁴² It would be impossible to adhere to these statutes without viewing changes in criminal history is essential for school districts and the CTC to stay legally compliant.

The DOJ provides an option for school districts to receive notice of new arrests reported since the initial background check was completed. In fact, the Education Code requires school districts to request “subsequent arrest service” from the DOJ⁴³ which can in turn be forwarded to the FBI for notification of such changes in the national criminal history database, if applicable.

³⁶ California Ed Code § 45125 (b)(3)

³⁷ California Commission on Teacher Credentialing, Fingerprint Information, accessed August 17, 2019, <https://www.ctc.ca.gov/credentials/fee-and-fingerprint>.

³⁸ California Ed Code §§ 44340 and 44341

³⁹ Kenneth V. Lanning and Park Dietz, “Acquaintance Molestation and Youth-Serving Organizations,” *J Interpers Violence* (May 2014): 14, doi: 10.1177/0886260514532360.

⁴⁰ Janet Saul and Natalie C. Audage, “Preventing Child Sexual Abuse Within Youth-serving Organizations: Getting Started on Policies and Procedures,” U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (2007): 7.

⁴¹ California Ed Code §§ 45122.1, 44830.1 and 44940

⁴² California Ed Code § 44424(a)

⁴³ California Ed Code §§ 44830.1(i) and 45125(j)

In order to receive subsequent arrest service from the DOJ, school districts must “contract” with the DOJ by completing form BCIA 8049⁴⁴ pursuant to Penal Code 11105.2. By doing so, the school district agrees to immediately notify the DOJ (by completing form BCIA 8302⁴⁵) when it no longer has a legitimate interest in an individual and to return any subsequent arrest notification received from the DOJ for any person unknown to the school district.⁴⁶ This includes notifying them of employees who leave the school district, as well as candidates who had background checks but were never hired. If a school district fails to notify the DOJ when subsequent arrest notification is no longer needed on an individual, they may be denied future subsequent notification service, which would be a great detriment to the protection of the students they serve.⁴⁷ So, it is crucial for school districts to establish processes that ensure the DOJ is properly notified in a timely manner. School districts should contract with the DOJ for subsequent arrest service.

Completed Before Employment - Best practices dictate that all permissible criminal background checks should be submitted, and results received prior to employment.⁴⁸ This is not only a best practice, it is also inherent in Education Code language that says no person convicted of specified crimes shall be employed by a school district.⁴⁹ In order to fulfill such legal requirements, criminal background check results must be received prior to employment. In some cases, the Education Code specifically states that a school district must wait for the DOJ to complete its check of the state criminal history file.⁵⁰

School districts should ensure criminal background checks are completed before employment in all cases permitted by law. California school districts are required by law to use the fingerprint-based criminal background check process provided by the DOJ. But is it enough to protect students?

TOOL TIP:
Additional details on the limitations of fingerprint-based criminal background checks has been provided for reference as Appendix D.

⁴⁴ California Office of Attorney General, Background Checks, Form BCIA 8046, accessed August 18, 2019, <https://oag.ca.gov/sites/all/files/agweb/pdfs/fingerprints/forms/subarr.pdf>

⁴⁵ California Office of Attorney General, Background Checks, Form BCIA 8302, accessed August 18, 2019, <https://oag.ca.gov/sites/all/files/agweb/pdfs/fingerprints/forms/nli.pdf>

⁴⁶ California Penal Code 11105.2

⁴⁷ California Penal Code 11105.2(g)

⁴⁸ “K-12 Education: Selected Cases of Public and Private Schools That Hired and Retained Individuals with Histories of Sexual Misconduct,” Report to the Chairman, Committee on Education and Labor, House of Representatives, United States Government Accountability Office, (2010): 8, 25.

⁴⁹ California Ed Code §§ 45112.1, 45123, 44830.1, and 44836

⁵⁰ California Ed Code § 45125(c)

1.10 County Court Criminal Record Check

Related Objective

- Stop individuals convicted of serious or violent felonies and crimes against minors from being hired

As mentioned earlier, it is recommended that school districts run county court criminal record checks for all locations where a candidate has lived, worked, or gone to school because county courts provide the most accurate and current source of criminal record information since most crimes are adjudicated in the county courts. This recommendation does not replace any legal requirement for school districts to do a DOJ criminal background check. It is recommended that school districts run county court criminal record checks in addition to a DOJ background check.

Focusing county court criminal record checks on where a candidate has spent most of their time is important. Therefore, it is recommended school districts use application and resume information, the social security number trace results, as well as state and national fingerprint-based criminal background check results as “pointers” to determine where the candidate has lived, worked, gone to school, or been caught in criminal behaviors and run the background checks in those counties.

While fingerprint-based checks have become the gold standard in criminal background checks, the value of name-based county court record checks are increasing because they are the most current and accurate source of information. As an example, a recent article by TNLT, noted that FINRA, a regulatory agency for the financial industry, passed a rule in 2015 requiring name-based checks.⁵¹

1.11 Federal Court Criminal Record Check

Related Objective

- Stop individuals convicted of serious or violent felonies and crimes against minors from being hired

EEOC Guidelines – Information about federal crimes such as interstate drug trafficking, financial fraud, bank robbery, and crimes against the government may be found online in

⁵¹ Talent Management & HR, *Fingerprint vs. Name-Based: Which Background Screening Solution Is Best for Employers?*, authored by Angela Preston, June 20, 2016, accessed October 10, 2019, <https://www.tnlt.com/fingerprint-vs-name-based-which-background-screening-solution-is-best-for-employers/>.

federal court records by searching the federal courts' Public Access to Court Electronic Records or Case Management/Electronic Case Files.⁵²

1.12 Sexual Risk Screening

Related Objectives

- Detect previously undetected child molesters and remove them from consideration
- Screen-out candidates who have a high risk to sexually abuse a child in the future
- Screen-out candidates who fail to recognize adult/child sexual boundaries and screen-in as many protective candidates as possible

Using criminal background checks to identify individuals who have been convicted of serious or violent crimes, especially crimes against children is required by law and critical to the protection of students the school district serves. However, most child sexual abuse goes undisclosed and therefore unreported. So, there is rarely an opportunity for an investigation, let alone a conviction. One study reported looking at 3,700,000 background checks and finding only 0.2% that could be identify as a sexual offender.⁵³

So, it is essential for school district interviewers to effectively interrogate candidates to reveal those who have perpetrated and not been convicted, as well as those who have a high risk of sexually abusing a child in the future. In addition, school districts should make every effort to surround students with adults who recognize healthy and appropriate adult/child sexual boundaries so they can be active participants in the protection of students.

However, the reality is that most school district interviewers are not trained to ask probing sexual boundary questions, nor to interpret candidates' responses to effectively determine risk. Therefore school districts are encouraged to implement a pre-hire screening tool to ask the difficult questions and interpret the resulting patterns to reveal high-risk individuals.

TOOL TIP:
An in-depth overview of appropriate adult/child boundaries can be located in Chapter 2.

⁵² U.S. Equal Employment Opportunity Commission, Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, April 25, 2012, accessed April 29, 2020, https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm#sdendnote21anc

⁵³ ChoicePoint on data from 3,700,000 background checks, *The Importance of Background Screening for Nonprofits: An Updated Briefing*, April, 2008.

1.13 Compliance with Federal, State and Local Anti-Discrimination Laws

A healthy society strives to create an environment that provides individuals convicted of a crime a means to support themselves after incarceration while ensuring the safety of employers, co-workers, and the populations they serve, especially vulnerable populations such as children. There are federal, state, and local laws that define what employers can and cannot do in an effort to strike this balance.

Therefore, school districts have a responsibility to protect their students, as well as the rights of criminals as set forth in these laws. School districts must be able to defend their actions and rationale for hiring or choosing not to hire a candidate with a criminal background against potential discrimination and negligent hiring complaints. To be consistent and fair, school districts should have a written policy that defines when in the process they will request criminal history information and how specific criminal behavior is used to evaluate a candidate's fitness for the job. Since there is such a vast array of criminal behavior, as well as many different positions candidates are applying for within the school district, blanket policies will not suffice. School districts must look at the specific facts associated with an individual candidate to determine if their past criminal behavior poses an unacceptable risk to students and the school district.

TOOL TIP:
There are various key components of federal, state, and local laws that school districts should understand to ensure their screening policy and practice is effective and defensible. A detailed list of these key components has been provided for reference as [Appendix E](#).

1.14 Interviews

As a school district looks at their interview practices, it is important to remember the broad view of the applicant screening process, which includes not only screening-in qualified job applicants, but also screening-out individuals who present a high risk of sexual abuse and misconduct with students. Interviews provide a unique opportunity to identify candidates who lack healthy boundaries, sound judgment, or who are misrepresenting the truth.

Thus far, this guide has been focused on the collection and evaluation of a variety of data elements about an applicant that is gathered through the background check process. Interviews add the human element to the analysis. Interviews provide school districts a chance to:

1. Experience applicants' personal communication skills
2. Clarify application and background information and discern discrepancies
3. Engage candidates in dialog about character and boundaries
4. Receive independent feedback from multiple interviewers

Interviewers should be trained and prepared to ask questions that bring to light needed information. When determining what questions to ask, it is important to remember that all questions must be job-related in order to comply with anti-discrimination labor laws. The questions asked should be necessary to ascertain the candidate's qualifications, skills, or overall fitness to do the job.

Personal Communication Skills

The school district wants to hire employees who are comfortable interacting with a variety of people and who have good verbal communications skills in addition to the right training and experience. Interviews are a great opportunity to assess those communication skills and to get to know potential candidates. This will allow the school district to choose not only the most qualified candidate but one who will be a good fit for the school district and the students. Interviews are a key element in the screening-in process. But from a student safety perspective, interviews are also a key element used to screen-out individuals who pose a potential risk to students. Open-ended questions and prompts are an effective way to learn about a candidate's ability to be articulate. This type of question also allows interviewers to direct the conversation to specific areas of interest.

TOOL TIP:
A sample list of open-ended questions has been provided for reference as [Appendix B](#).

Clarify Information

Related Objective

- Discern unbecoming traits in candidates such as bad boundaries, poor judgment, or dishonesty

Criminal background checks and sexual risk screening should be done after candidates have been interviewed and a conditional offer of employment has been extended. But we encourage other background check processes to be completed before candidates are interviewed including:

- Education confirmation
- Credential validation
- Industry database checks
- Reference checks
- Social media review

This ensures that the candidates who are referred into the interview process either have been verified to meet the minimum requirements or results that need further clarification have been flagged for interviewers. School district interviewers should be

provided with the results of these reviews including any specific details that screeners were unable to confirm, discrepancies that arose, or concerns that were raised. This allows interviewers to ask targeted questions to gather any additional information necessary to alleviate flagged items or validate concerns. Items that need clarification should be divvied up among interviewers.

In order to effectively protect students, interviewers must be actively on the lookout for candidates who are misrepresenting themselves. One of the best ways to do that is to ask candidates to talk about their education, credentials, and past employment; and compare what they say to the information provided on their application, in their resume, and what was found in the background check process. Don't be afraid to ask direct questions. All discrepancies should be documented.

Character and Boundary Questions

Related Objective

- Discern unbecoming traits in candidates such as bad boundaries, poor judgment, or dishonesty

There is a tendency for school districts to focus only on what candidates have done, instead of also assessing who they have become. Although the right education and experience are essential, the interview process is about getting to know the person behind the credentials. As such, we encourage school districts to incorporate questions that provide the opportunity for dialogue about candidates' character, boundaries, and their ability to make the right choices when faced with challenging situations

Character Focused Questions

When developing character focused questions, draw ideas from the six pillars of character from the Josephson Institute Center for Youth Ethics⁵⁴ – trustworthiness, respect, responsibility, fairness, caring and citizenship. Again, the questions should always be job-related so ask questions that highlight the important character traits required when working in an environment that serves students.

TOOL TIP:
A sample list of character focused questions has been provided for reference as Appendix B.

Boundary Focused Questions

As mentioned in the section on Sexual Risk Screening, it is essential that candidates are interrogated to reveal undetected abusers, as well as individuals with a high risk of sexually abusing a child in the future. But most school district interviewers are not trained

⁵⁴ "The Six Pillars of Character," Josephson Institute, accessed December 11, 2011, <http://josephsoninstitute.org/sixpillars.html>.

to ask probing sexual boundary questions, nor to interpret candidates' responses to effectively determine risk. It would most likely be extremely uncomfortable for both parties and bear little insight.

However, school district interviewers can be very effective at probing for candidates' general boundaries, risky behaviors, and their experience working in a school district that sets and enforces healthy staff/student boundaries.

Situational Scenarios

It is recommend to include situational scenarios as part of the interview process. This technique consists of the interviewer presenting a candidate with a hypothetical situation and asking the candidate how they would respond given the situation described. The approach provides an additional opportunity to learn about a candidate's view on boundaries and how they will potentially handle difficult real-life situations. The response inherently relies on the candidate's experience, knowledge, skills, training, and own behavioral boundaries in determining their response.

Follow-Up Questions

Regardless of the type of questions an interviewer is asking, there will likely be times when they will need to ask follow-up questions to gather more information. This is common if the candidate's responses are vague or ambiguous or if the interviewer simply doesn't fully understand what the candidate is saying. Questions that start with "why" may make a candidate defensive. Therefore interviewers are encouraged to ask questions that prompt personal reflection which typically start with "do you" or "are you." Another option to help garner specific information is to ask "what" or "how" questions.

When interviewers create dialog with candidates about boundaries, it is important to respond to apparent boundary concerns in a "nonjudgmental, nonthreatening and receptive manner," as recommended by prominent researchers, Kenneth Lanning and Park Dietz.⁵⁵ This will put your candidate at ease, allowing you to more fully engage in conversation and understand their rationalization for lack of boundaries.

According to Lanning and Dietz, "offenders will generally try to conceal their sexual interests and behavior from anyone they believe will not accept their rationalizations for

TOOL TIP:
A sample list of questions interviewers can choose from to engage a candidate in a discussion regarding boundaries has been provided for reference as [Appendix B](#).

TOOL TIP:
A sample list of situational scenarios has been provided for reference as [Appendix B](#).

TOOL TIP:
A sample list of follow-up questions has been provided for reference as [Appendix B](#).

⁵⁵ Kenneth V. Lanning and Park Dietz, "Acquaintance Molestation and Youth-Serving Organizations," *J Interpers Violence* (May 2014): 9, doi:10.1177/0886260514532360.

it, but often disclose, at least in part, their sexual interests—or at least their excessive interest in other people’s children—to those they believe will accept their rationalizations.”⁵⁶

As interviewers talk with candidates about boundaries, it is important to also listen for indicators that they may lack empathy for other people’s needs and feelings, especially children. This may become particularly apparent as a candidate is rationalizing bad boundaries. In *Identifying Child Molesters*, Carla van Dam says, “Watch out for the charmer who has no empathy.” She goes on to reference lack of empathy as a “common thread in a study of over 300 interviewed sex molesters.”⁵⁷

It is important that interviewers recognize these indicators and closely observe a candidate’s body language and demeanor when discussing boundaries. While evaluation of a candidate should not be solely based on body language and demeanor, interviewers should respect their intuition. Author, Gavin de Becker, refers to it as *The Gift of Fear*. He says, “Intuition is always right in at least two important ways; it is always in response to something; it always has your best interest at heart.”⁵⁸

Receive Independent Feedback

Qualified candidates should be interviewed by at least two people, preferably three. All interviewing panels should use the same interviewers for all candidates for a particular position. This provides an opportunity to gather input on a broader set of discussion points, receive feedback on concerns from multiple people, and have another set of eyes looking to be sure your evaluation is complete, and that nothing has been overlooked.

It’s not uncommon for a first interviewer to ask another member of the team to interview a candidate. Typically the request comes with a narrative that may highlight the positive qualities of the candidate that have caused them to move the candidate on to a second interview and/or a list of concerns that the manager would like the second interviewer to explore further. On the surface, this sounds like a valuable introduction and strategy, but it immediately focuses the second interview on the topics that have already been explored and the concerns that have already been surfaced, leaving the second interviewer to consciously or perhaps unconsciously gather additional data points to justify or rationalize the conclusion of the first interviewer. Looking at the flip side, this process stifles the natural critical thinking process of the second interviewer who is then unable to provide valuable independent input on this candidate.

⁵⁶ Kenneth V. Lanning and Park Dietz, “Acquaintance Molestation and Youth-Serving Organizations,” *J Interpers Violence* (May 2014): 9, doi:10.1177/0886260514532360.

⁵⁷ Carla van Dam, *Identifying Child Molesters: Preventing Child Sexual Abuse by Recognizing the Patterns of the Offender* (Binghamton: The Haworth Maltreatment and Trauma Press, 2001), 168.

⁵⁸ Goodreads, <http://www.goodreads.com/quotes/23182-intuition-is-always-right-in-at-least-two-important-ways>.

In order to create an environment that promotes independent input, it is recommended school districts use a structured process to gather feedback which includes the following four elements:

- Keep feedback private
- Provide feedback in writing
- Prompt for specific feedback
- Compile and discuss feedback

Keep Feedback Private – Interviewers’ feedback regarding candidates should be kept private until all interviews have been completed. This allows each interview to start from a clean slate and the interviewers to come to independent conclusions regarding the qualifications of each candidate and red flags about the candidate’s passion and interest in working with students

Provide Feedback in Writing – Initial feedback should be provided in writing. This ensures that each interviewer has a chance to completely formulate their own opinion, alleviating the natural tendency to agree with others which is especially common when feedback is only verbal.

Prompt for Specific Feedback – It is beneficial to provide a standardized feedback form, or format, to prompt interviewers for specific categories of feedback regarding education, skills, credentials, experience, boundaries, and the interviewer’s observation of the candidate’s behavior. If an interviewer knows they will be asked for feedback in each of these areas, they are more likely to actively evaluate each category. This is especially important when gathering feedback on any concerns an interviewer may have had. Knowing they will be asked, causes interviewers to pay attention to their intuition, which increases their chance of discerning the underlying source of concern.

Compile and Discuss Feedback – Compile, share, and compare written feedback after all interviews are completed. Then discuss the feedback as a team, creating open communication and an opportunity for interviewers to elaborate on their feedback as needed. By compiling independent feedback, school districts will get a clearer overall understanding of the strengths, weaknesses, and red flags of each candidate. This step-by-step approach will create a strong foundation for divergent thinking within the school district’s applicant screening process. It can be adjusted as necessary to the needs of the school district while keeping these four key elements in mind.

Interviews Summary

Interviews are an important part of the applicant screening process where school district and school administrators have a chance to interact with qualified applicants and get a glimpse of their communication skills, clarify background information, and ask probing questions to discern if a candidate has any unbecoming traits such as bad boundaries, poor

judgment, or dishonesty. The interview process may result in red flags that require further investigation or consideration in the evaluation process. Some of these red flags may have been apparent going into the interviews based on background check information and were left unresolved at the end of the interview process. Or they may have been raised during the interview process. Either way, it is essential that human resources personnel follow every red flag through to resolution before making a hiring decision and offer of employment.

1.15 Red Flags

As school districts move applicants through the screening process, there are red flags that may become apparent during each phase. It is important to take the time to thoroughly investigate each red flag before making a final hiring decision. Some red flags may be simple misunderstandings and resolved through clarification. Others may not be able to be explained away or it may become apparent during the clarification process that the candidate is trying to cover something up or justify their behavior which at the core is inappropriate or lacks good judgment. If a candidate has several red flags, especially if detected by multiple interviewers, this should be cause for concern and the risk they may present should be taken into consideration when making a final hiring decision.

TOOL TIP:
A sample list of red flags that may appear during each phase of the screening process has been provided for reference as [Appendix F](#).

1.16 Conclusion

Remember, research shows that 6% of adults in America are sexually attracted to children⁵⁹, and these individuals will want to work or volunteer where they will have repeated access to children and teens, resulting in a significant challenge for school districts that are responsible for the safety of the students they serve.

In 2019, Governor Gavin Newsom signed Assembly Bill 218 into law. This bill expanded the definition of childhood sexual abuse, which would instead be referred to as childhood sexual assault. This bill also increased the time limit for commencing an action for recovery of damages suffered as a result of childhood sexual assault to 22 years from the date the plaintiff attains the age of majority, or within 5 years of the date the plaintiff discovers or reasonably should have discovered that the psychological injury or illness occurring after the age of majority was caused by sexual assault, whichever is later. This bill also provides for the recovery of up to treble damages against certain defendants in these actions and would revive time-lapsed claims in certain circumstances.

⁵⁹ Abel, Gene G., and Nora Harlow. 2001. *The Stop Child Molestation Book: What Ordinary People Can Do In Their Everyday Lives To Save Three Million Children*. Xlibris Corporation.

Now is the time for all California school districts to review their existing applicant screening process through a new lens – a lens that focuses not just on screening-in qualified applicants, but a lens that is laser focused on screening-out applicants that present a potential risk of sexual abuse and misconduct to the students they serve.



CHAPTER 2: STAFF/STUDENT BOUNDARY POLICY

By:
Eric Lucero
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A boundary policy not only creates an inhospitable environment for would-be perpetrators, but also establishes a defensive posture for the school district's legal team. Applicable to staff, coaches, volunteers, chaperones, and contractors a boundary policy sets behavioral expectations for everyone working with students in your school district. A boundary policy clearly defines both acceptable and unacceptable behavior for school adults while interacting with a school district student.

School districts should implement a boundary policy for the following reasons:

1. To proactively prevent sexual abuse and misconduct (SAM) claims and reduce award settlements.
2. Protect the reputation of school district staff by prohibiting behaviors that could be falsely reported as a technique used by child molesters known as grooming.
3. Eliminate opportunities for "situational offenders" who do not strategize how to abuse minors.
4. To protect the reputation of school district employees and volunteers by preventing interactions that could be misinterpreted as red flag child abuse behavior, triggering a mandatory report to law enforcement agencies as required by the Child Abuse and Neglect Reporting Act (CANRA).
5. Create a foothold to administer employer disciplinary action for legal but inappropriate conduct.

Sexual abuse and misconduct (SAM) typically begins with the grooming process. Grooming is defined as befriending and establishing an emotional connection with a child, and sometimes the family, to lower the child's inhibitions with the objective of sexual abuse or misconduct. An understanding of the motivating factors of SAM offenders can help to understand how a boundary policy deters the grooming process.

A behavioral analysis conducted by the FBI⁶⁰ identifies three types of SAM offenders. The first type fits the stereotypical offender that most people envision when thinking about sexual abuse offenders. **Preferential offenders** are sexually wired to prefer minors, and often have been abused themselves. These offenders experience the same physical attraction toward a minor as adults feel toward other adults. As such, they court, or groom, minors in similar ways that a normal adult would use to pursue a peer, all of which are explicitly prohibited in a boundary policy.

Indiscriminate offenders have sociopathic tendencies and lack a moral compass to guide their actions. As the name implies, offenders of this type are capable of indiscriminate sexual abuse of not only minors, but adults, and seniors alike. A boundary policy protects students and give school districts a legal standing to dismiss an

⁶⁰ Lanning, K. (1992). *Child Molesters: A Behavioral Analysis*.

indiscriminate offender for a boundary violation instead of waiting until a crime has been committed.

Not all sexual abuse offenders are pedophiles or sociopaths, however. **Situational offenders** often do not strategize how to abuse minors and typically do not have a true sexual preference for children. Instead, this type of offender engages in sexual abuse or misconduct when certain motivating factors align with a situational opportunity.

According to the same FBI behavioral analysis⁶¹, there are several motivating factors for situational offenders who may be struggling with job loss, divorce, illness, grief, or another life issue that is causing feelings of stress or depression. For some, it is more about control and desecration of another human being than it is about sex. Other situational offenders may be considered a social outcast due to communication barriers or physical differences that make forming intimate relationships with their peers difficult. One or all of these factors have been shown to influence situational offenders to commit sexual abuse or misconduct.

2.1 What to Include in a Boundary Policy

A boundary policy defines emotional and physical boundaries to be maintained at all times unless necessary in an emergency or to serve a legitimate purpose related to instruction, counseling, student health, or student or staff safety.

The following type of boundaries should be included in a boundary policy:

1. Romantic or sexual relationship boundaries
2. Digital media boundaries
3. Gift boundaries
4. On-campus boundaries
5. Off-campus boundaries
6. Off-duty boundaries

Romantic or Sexual Relationship Boundaries

Romantic, sexual relationships, and anything that could be perceived as “grooming” are strictly prohibited. Every year new claims are reported involving adults and students claiming their relationship is consensual. It is important that school adults clearly understand that engaging, or attempting to engage, in a romantic or sexual relationship with a student will result in mandatory reporting to law enforcement per the Child Abuse and Neglect Reporting Act, in addition to appropriate employer disciplinary action following a Title IX compliant investigation.

⁶¹ Lanning, K. (1992). *Child Molesters: A Behavioral Analysis*.

Prohibited romantic or sexual relationship behaviors involving students include, but is not limited to:

- Sexual physical contact
- Romantic flirtation, propositions, or sexual remarks
- Sexual slurs, leering, epithets, sexual or derogatory comments
- Personal comments about a student’s body
- Sexual jokes, banter, innuendo, notes, stories, drawings, gestures or pictures
- Spreading sexual or romantic rumors
- Touching a student’s body or clothes in a sexual or intimate way or in a manner that is not age appropriate
- Restricting a student’s freedom of movement in a sexually intimidating or provocative manner
- Displaying or transmitting sexual objects, pornography, pictures, or depictions to a student
- Any type of conduct that would be considered harassment under Board Policy

Digital Media Boundaries

Digital media boundaries do not have to be overly restrictive. Yes, there will be no “friending” or “following” of students’ on social media platforms, but this does not eliminate the use of social media all together. The key is to make interactions between students and school adults transparent, accessible, and professional or T.A.P.⁶².

Transparent	<ul style="list-style-type: none"> • Send messages to groups of students • Do not send emails to individual students • Create a log of communications with students
Accessible to supervisors and parents	<ul style="list-style-type: none"> • Make class-related social media and internet sites available to supervisors and parents • Have teachers explain policies for class-related sites and communications, indicating that inappropriate language, content, and tone will be handled appropriately

⁶² U.S. Department of Education Office of Safe and Healthy Students Readiness and Emergency Management for Schools (REMS) Technical Assistance (TA) Center, *A Training Guide for Administrators and Educators on Addressing Adult Sexual Misconduct in the School Setting*, accessed May 4, 2020, <https://rems.ed.gov/docs/ASMTTrainingGuide.pdf>


<p>Professional in content and tone</p>	<ul style="list-style-type: none"> • Treat online interactions the same as you would in-person interactions. • Do not say or do anything online that is not permissible in the classroom. • Do not discuss nonacademic matters or problems including personal relationships, sexual activities, or use of alcohol/drugs with students. • Refer students with social or emotional challenges to the school's counseling team.
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Gift Boundaries

Gifts, including loans, are a universal way to show interest and can strengthen bonds between people, but when a school adult singles out a student, or even their parent(s) or guardians it creates an unconscious reciprocity in the receiver and is, at best, unprofessional. Gifting to students or parents is a type of grooming behavior that must not be allowed.

On-Campus Boundaries

Certain conduct can create an appearance of impropriety and must be stopped to avoid false allegations which could result in a mandatory report to legal authorities per CANRA. A boundary policy should specify behaviors that are both acceptable and unacceptable. If there are exceptions, they must be spelled out in your policy. For example, certain aides and school personnel are required to touch students in sensitive areas to change soiled clothing. Unless necessary in an emergency or to serve a legitimate purpose related to instruction, counseling, student health, or student safety, the following boundaries must be maintained at all times:

<p>Green Light Conduct</p> 	<p>These behaviors are acceptable:</p> <ul style="list-style-type: none"> • Humorous or friendly comments • Compliments that are not overly personal • Talking and interacting with all students in a consistent manner in plain sight of all • Keeping door ajar and windows uncovered, if alone with a student (includes diapering) • Making personal contact only in a safe-touch area such as the shoulder, upper back, arms, head and hands • Educating students and parents about the school district's policy on the school adult boundary policy • Side hugs
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Red Light Conduct



These behaviors are either unlawful or could be misconstrued as grooming and must be stopped if currently practiced:

- Touching students frequently
- Commenting on students' bodies in an overtly sexual manner
- Being alone in a room with a student with the door closed, with or without covered windows
- Talking about student sexuality
- Meeting students during off-hours and/or away from the campus
- Lap sitting for students beyond second grade
- Singling out students for favors or gifts
- Giving overly personal cards, notes, email or yearbook inscriptions
- Teasing that references gender or contains sexual innuendo, regardless of intention
- Frontal hugs, extended hugs, or any type of unwelcomed hugs
- Wrestling, roughhousing, or tickling
- Touching legs or lower part of back
- Private texting or messaging
- Disclosing private or overly personal information
- Expecting students to be emotionally supportive
- Demanding students to reveal private information
- Cursing or telling inappropriate jokes
- Talking negative about other adults in the student's life, including parents
- Allowing or encouraging students to look at pornography
- Allowing or encouraging a child to drink alcohol, smoke cigarettes, or use drugs

Off-Campus Boundaries

The following boundaries apply to field trips, excursions, scholastic activities, clubs or anytime school adults are supervising or chaperoning student's off-campus:

- When off-campus, all on-site boundaries still apply
- Written authorization is required for any off-campus activities or visitations

- Do not offer student transportation unless approved by principal and there is more than one student or another school adult is present
- For overnight trips, school adults are prohibited from sleeping in the same room with students unless another school adult is present. If co-ed, there must be male and female chaperones.
- No alcohol, drug, tobacco or nicotine use while off-campus.

Off-Duty Boundaries

The following boundaries⁶³ apply specifically to certificated, classified, and administrative personnel when not acting in their official capacity as a school district employee:

- All on and off-site boundaries apply
- No babysitting by staff or by students (for staff)
- No tutoring
- No visitations with students or parents/guardians unless approved by the principal or the designee

Maintaining Boundaries

In the unfortunate scenario of having to testify at a deposition, the school districts defense will consist of what can be proved via documentation and recordkeeping. As new legislation has significantly extended the statute of limitations documentation becomes even more important as school districts may need to defend claims twenty to forty years into the future. To maintain your boundary policy and take a defensive posture against these costly claims, document the following action items:

1. Conduct training for all existing and newly hired employees. It is recommended to bundle this together with mandatory reporter training. Appropriate disciplinary action should be taken for non-compliance.
2. Conduct inspections to enforce the policy. Think of a boundary policy like a fence surrounding the campus. It needs periodic inspection to verify the fence remains in-tact or identify repairs that are warranted. The inspection and any verbal, corrective, or disciplinary action should be documented. The principal or the school district's Title IX coordinator are the ideal inspectors to conduct these targeted, proactive inspections. As student-to-student

TOOL TIP:
See [Chapter 6](#) for more information on training.

TOOL TIP:
For additional information on inspections, see [Chapter 3](#).

⁶³ Cranley, D. (2015). *8 Ways to Create Their Fate*.

claims are also a frequency driver for school districts, consider combining these inspections. Regular workplace safety inspections should also inspect for boundary violations.

3. Enact an anonymous reporting mechanism allowing students, parents, school adults, or school district employees to report boundary violations. After investigating be sure to document your findings and any corrective action taken.
4. Utilize safety software, for monitoring student and staff emails. Programs such as these can not only monitor for key words associated with sexual abuse and misconduct, but it can also be used to identify instances of bullying or suicidal ideology. Most school districts already reserve the right to do so in their existing acceptable use agreements for school district provided equipment.
5. Per Ed Code 44050⁶⁴, provide a written copy of the boundary policy to parents and guardians of each enrolled student at the beginning of each school year. It must also be posted to the school's website.
6. Discuss the boundary policy with students in an age appropriate manner.

TOOL TIP:
Additional guidance and recommendations on documentation that should be retained by your school district can be found in [Chapter 7](#).

⁶⁴ California Ed Code § 44050



CHAPTER 3: MANAGEMENT STRATEGIES FOR PRINCIPALS AND SUPERVISORS

By:

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PRISM

3.1 Suspected Teacher/School District Employee Interactions with Students

It's often said that a good predictor of future bad behavior is past bad behavior. This can certainly hold true when it comes to the suspicion of sexual misconduct between a teacher or school district employee and a student because a review of national cases suggests plenty of "red flag warnings" were ignored. This could include prior concerns by co-workers, complaints by parents, partial investigations (ended because the suspected teacher or school district employee resigned at the end of the school term, quit abruptly mid-year, or moved away), or full HR or police investigations that were unable to prove what was alleged.

Many sexual predators who work in K-12 environments have a tendency to choose the same types of student-victims. This preference for a certain typology – similarities in the gender, age, race, physical attributes of the child – may have appeared even ten years ago in the employee's work record. While this information is not always easy to legally or ethically obtain, the existence of past-suspected incidents involving the employee's particular "type" may be common knowledge among longtime school district administrators, principals, or employees (who may have worked with the employee in the past and promoted to management, VP, or principal positions). School district employees ignore these past warning signs at the peril of our students, parents, and plaintiff's attorneys, who will certainly dig deep to discover what was known or at least suspected, in the past.

Part of this avoidance of potential or actual warning signs may come from what could be called "academic naïveté," meaning people working in the K-12 school environment feel uncomfortable thinking or accusing one of their colleagues of sexual misconduct with a student, even if the collection of incidents and allegations becomes substantial. Other school district employees on campus or in the school district offices may say, "Mr. X is a great teacher! The kids all love him! He would never put his career at risk like that." Or, "Mrs. Y is happily married! She would never do those things with one of her male students. Besides, look how much time she spends on campus. Last year she was voted Teacher of the Year because of her dedication." Or, "Coach Z is one of the best coaches our gymnastics team has ever had! He was once a national champion! Look how much of his free time he gives up on the weekends to take his girls to competitions and training camps."

In these instances, where the school district employees sexual behaviors come to the surface and are proven in court (including when these perpetrators take a guilty plea to avoid a trial), many of their colleagues are shocked, angered, and embarrassed that they missed what seemed like clear warning signs of potentially problematic behavior and conduct around one or more students. These perpetrators violated the boundaries of their students and they made their colleagues question their own instincts and judgment. Too often, the concerns of principals, supervisors, and co-workers only come out after an

arrest has been made, for a series of sexual behaviors that have been going on for months. “I knew it! I suspected something all along!” becomes the cry, but it often comes too late to save the student from being victimized or the school district from being embarrassed or sued.

This may be because of a natural human condition many people share. These four behaviors often allow them to overlook what may seem obvious to people observing from outside their work culture and work environment:

Minimize – We make important behavioral problems smaller, as in, “I only saw Mr. X hug her a few times. I didn’t think it was that big of a deal.”

Rationalize – Our eyes deceive us and we turn something important into something less important: “I saw Coach Z sitting with her in the coffee shop on Saturday morning, but I thought he was just helping her with her homework so she could stay on the team.”

Deny – Our eyes simply deceive us and we can’t admit that what we saw or heard is even possible. “I know Mrs. Y really well. I’ve been to her home and met her husband and kids. There is no way that she could have been having sex with several members of the lacrosse team. Why would she need to do that? I would have known about it if she was.”

Blame – We manage to turn the predator teacher into the victim, not the student. “I can’t believe our janitor would have been in possession of child pornography involving one of our students. It’s just not possible, but if it was, he was probably under a lot of stress. I heard he was having some home problems.”

The presence of one or all of these “behavioral blind spots” can allow bosses and co-workers to overlook important warning signs. We don’t ruin people’s careers, trash their reputations, or jeopardize their freedom based only on intuitive feelings, bad vibes, unchecked rumors or gossip, or a stray remark by a colleague that doesn’t like them. But we should also pay careful attention to warning signs that a reasonable person would admit are valid and require further investigation.

3.2 Information Gathering

The Need for Observation and Inspection

School district administrators, managers or supervisors watching employees do their work may seem like spying on them or micro-managing them, but it is a useful tool to put **content** (rumors, allegations, suspicions, concerns) into **context** (who, what, when, where, how, and why these issues can either be explained away as incorrect or further explored as possible criminal sexual behavior).

Look for every opportunity to observe a school district employees as they work, on campus, in the office, and in the classroom. Make unannounced spot checks during field trips or during after-school sports or social functions. Observe how employees interact with co-workers, peers, or bosses, versus how he or she interacts with students. Do their behaviors fit the context of the situation or they seem out of character for a normal school district employee's suggested scope of work? Do your colleagues who have seen similar workplace or classroom behaviors share your same concerns that the employee's behavior needs more study? Do you hear or see that the school district employee acts a certain way in class when you are there to monitor him or her versus when you are not in the room? Are you seeing behaviors that would lead you as a reasonable supervisor (not a clinician, or an attorney, or a police officer, but just a regular boss) to think the employee's behavior around certain students is problematic? Don't just rely on gut feelings, but don't ignore them either.

Reviewing Current and Past Performance Evaluations

School districts can use performance evaluations as a tool for considering the employee's past work performance and work behavior, but not the only tool. There are problems with most performance evaluations, with the form itself, the evaluation method, and the limitations or fears of the rating supervisor. Sometimes the form is poorly designed and does not capture important information. Sometimes the form does not allow the rater to document specific behavioral concerns, only work performance deficiencies. More likely, some supervisors filling out the evaluation may see it as a waste of time, or they have been criticized by their bosses or HR for being too lenient or too harsh in the past, so every employee gets the same middle-of-the-road rating and behavioral problems are overlooked or not noted. None of this can be useful when trying to get an accurate sense of the employee's work time with the school district.

With those concerns about the limitations of a typical performance evaluation in mind, it's still useful to review these documents for as far back in the employee's work history as you can go. (Get support and advice from your HR representatives for this.) Look for patterns where the employee has been coached, counseled, warned, or disciplined for behavioral boundaries with certain students.

3.3 One Pre-Disciplinary Tool

Building Better Boundaries through Coaching

Coaching can be defined as a series of structured conversations to address a school districts employee's performance and/or behavior problems. The goal is to discuss the employee's deficiencies early enough for him or her to make the necessary changes. This can include keep on doing what works because it's good for the employee and the school district; start doing different things on the road to making immediate positive changes;

and perhaps most importantly, stop doing certain activities or behaviors that are detrimental to his or her continued employment.

In other words, coaching meetings can be used for certain school district employees who may be engaging in at-risk behaviors with students and stop a serious problem before it occurs. It may be necessary for the employee’s supervisor, principal, or senior administrator to directly warn an employee who has problems respecting the necessary adult-child boundaries. For these crucial and difficult conversations, it’s critical to use specific examples of problematic behaviors, not just generalities. It can help to point to specific policies in the school districts HR manual, employee handbook, MOUs, or other legal documents that point to specific prohibitions about student contact and interactions. The goal, of course, is to put the school district employee on notice that his or her behavior has been observed and must change. The career they save could be their own.

TOOL TIP:
Examples of at-risk behaviors are noted in Chapter 2.

3.4 Taking Corrective Actions

Progressive Discipline and Terminations

The concept of “progressive discipline” has grown more complex as school districts have seen many recent changes in California labor laws. HR-related policies for employees in California school districts are driven by labor union agreements, MOUs, and even individual employment agreements. As such, school district administrators, managers or supervisors should consult with their school district’s HR Department and/or their school district’s legal counsel for the most current advice as to what constitutes coaching meetings versus discipline meetings; follow the legal guidelines for coaching or disciplinary meetings with unrepresented versus represented employees; and balance the rights of the employees with the needs to protect all students and for administrators, managers, and supervisors to correct problematic work performance or work behaviors that the employee must take ownership, stop, or change.

In its most basic form, progressive discipline means exactly that: the consequences worsen if the employee doesn’t comply with policies or direct requests to stop doing certain things, or to change his or her approaches to do his or her job. We can start by defining this approach along a spectrum: a boss has one or more casual conversations with an employee about an issue; these shift into one or more coaching conversations, where the boss attempts to communicate the issue(s), clarify them with the employee (so there is mutual understanding that they need to stop, improve, or change) and then get the employee’s commitment to change. These conversations are and should be all **pre-disciplinary** in nature.

The “discipline” part of progressive discipline then escalates to an oral warning (usually that number is limited to one); one to two written warnings (depending on the context and

severity of the issue); then a suspension with or without pay (which type is usually spelled out in the labor union agreements, contracts, and MOUs); a punitive transfer out of the classroom or off campus; a demotion; a reduction in work hours or a pay cut (often used for part-time school district employees); and finally a termination.

The notice of termination and subsequent process, of course, will usually trigger a Skelly hearing. Some school district employees under the suspicion of a police investigation for their behavior may choose to resign in advance of being fired, not request a Skelly hearing, or fail to show for a scheduled one.

For cases where a school district administrator, manager or supervisor suspects a school district employee of improper sexual behavior with a student, the seriousness of the situation must fit the nature of the proposed discipline. Suspensions with pay are the most common, because even a school district employee suspected of these behaviors is entitled to certain personal and professional legal rights. School districts suspend employees with pay pending the results of the HR or police investigation so as not to cause them economic harm while their behavior in the case is still not confirmed. This also keeps the school district from having to provide back pay should the results of the investigation fully clear the employee.

This issue is widely misunderstood by both the media and the public, both who may question why an employee is being “rewarded” with a paycheck after he or she is accused of a serious sex crime. It can help to address this particular misconception in press releases or public statements from the school district by saying, “Under our personnel policies, all employees accused of misconduct are suspended with pay until the outcome of the investigation. At that point, we will make personnel decisions as to our next steps.”

Even the use of coaching meetings, as described in the section above, gets more complicated if school district employees believe they are entitled to a union representative because they think the discussion is related to discipline or will lead to discipline. Many employees are often confused about whether a coaching meeting will lead to discipline and if they can have a union rep for a simple discussion about performance or behavior. Even employees who are not members of a labor union or an employee association see themselves as eligible for a so-called “Weingarten rep” in any meetings with their bosses. This is not a right a non-union employee gets.

TOOL TIP:
For additional guidance on addressing the media and the public refer to [Chapter 5](#).

If a “Weingarten Meeting” is defined as one where, “An employee may be represented by the union at an investigatory interview with his or her supervisor when the employee reasonably believes that the interview may lead to a disciplinary action,” then the question becomes what is “an investigatory interview” and what is a “coaching conversation”? Administrators, managers, or supervisors at a school district should have the right to have as many coaching conversations as they deem necessary with their employees about

making changes in their performance or behavior. The key is in the language that is used in these meetings.

If the substance of any coaching discussion a school district administrator, manager or supervisor has with a school district employee in a union or employee association will ultimately end with you saying, “If you don’t make the changes we just discussed it will mean you could or will use your job” then that qualifies as a meeting the employee should have had his or her rep in the room.

If the end of the meeting with a school district employee will end with an oral warning (and that the next step will be a written warning or a suspension), a written warning, or any other discipline more serious than that, then that qualifies as a Weingarten meeting and the employees is entitled to a rep. (School district administrator, managers and supervisors should discuss with legal counsel whether an oral warning to an employee will trigger a Weingarten meeting; it’s a gray area in some states.)

One way to have a series of coaching meetings that will ultimately culminate in a prior-notice Weingarten meeting is to use an approach called a “Personal Accountability Meeting” (PAM). With this concept, the administrator, manager, or supervisor will use a last and final coaching meeting to say to the employee, “If you don’t make the changes in your work performance or work behavior that we have been discussing over these last sessions, the next meeting about these same issues will be a discipline meeting and you will have the right to union representation at that meeting.”

The purpose of the PAM is not to threaten the employee in any way, only to signal to him or her that the need to change is imminent and if this is not done in a demonstrable or measurable way, then the next step is to move to a disciplinary meeting. If the subsequent discipline meetings do not bring about the required changes or, as in the case of sexual misconduct with a student that gets proven during the investigation (or the subject-employee admits to the behavior to HR or the school district investigators or confesses to the police), then the movement to immediate termination is clear.

The school district’s Human Resource department (with advice from their in-house or outside legal counsel) is usually ultimately responsible for determining the level and severity of employee discipline in a serious sexual assault allegation. Those representatives often have experience running these high-stress meetings, along with the school district superintendent and perhaps the legal counsel in the room as well. Emotions can run high in these meetings, because the employee suspected of sexual behavior with a student may feel trapped, angry, embarrassed, spiteful, fearful, hopeless (or even suicidal), or try to make counter accusations, rationalizations, or excuses for the behavior.

It’s important for all school district representatives to remain professional and do their jobs effectively and fairly. In reality, most HR-related meetings that lead to discipline and then

suspension or termination should not be long drawn-out conversations about blame or how the organization and its members are disappointed with the employee. Stick to the facts, the issues at hand, what is known or what has been proven, follow the HR and union-related policies that the employee may be entitled to, deliver the news, and end the meeting. Post-meeting efforts should be focused on protecting the student-victim(s), providing accurate, timely, and reasonable information to the media and the public, and continuing to support the efforts of the police and the school district’s legal and HR team.

3.5 Assessing the Campus Culture

All organizations have a work culture, based most often on what the senior leadership models or allows. The culture at an Austin, Texas startup website company is different from a New York Wall Street bank; the culture at a fast-food restaurant is certainly different from a fine-dining establishment. Work culture can be defined as to how people treat each other – formally or informally; the dress code – more formal or more casual; the language people use to address each other – formal or informal, even from the executives down to the frontline employees. How school district employees communicate with each other is part of the work culture, like the way staff meetings are ran – structured, with agendas a rules of order versus casual group discussions.

The culture at a rural high school may differ widely than at an urban high school, but even schools that are only a few miles apart can have widely different cultures. K-12 schools can have different cultures, strong on academics and discipline in one; more focused on fun and giving students and staff more freedom in another. Among the school employees, the races, genders, ages, educational and work histories, social interactions, and political beliefs of the staff are different from campus to campus. Newly arriving employees either adapt to the work culture or chafe under it.

As it pertains to teachers or school district staff engaging in illegal sexual behavior with a student, these hard questions need to be asked and answered: Has our work culture allowed this to happen? Do we have the right kinds of work rules and behavioral policies in place? Did we enforce them in a timely manner? Did we miss obvious warning signs, that in retrospect, we should have seen sooner? Did we have management and HR oversight and supervisory diligence in place to stop this problem before it turned into a highly publicized event, with police involvement, media coverage, and angry parents?

3.6 The Value of Rumors and Gossip

Using rumors and gossip as the basis to start an investigation into the behavior of an employee around one or more students is actually paradoxical: school district administrators, managers or supervisors don’t ever want to make false accusations based on idle chatter, but rumors or gossip that gets confirmed by more than one source often turns out to be true. The adage, “Where there’s smoke, there’s fire” is not enough to

discipline or terminate an employee, of course, but what is discussed or heard around campus or the office should not be ignored completely either.

Look for stories of incidents or behaviors, currently, or in the past, that have made other school district administrators, supervisors, co-workers, or even parents suspicious. Use confidential interviews with eyewitnesses (as opposed to just with “ear-witnesses,” who only heard things) to verify events, dates, times, and places, that can lend validity and credence to your own suspicions. Gather all sources of information, eliminate what is clearly not true, consider the motives of the people bringing you the information and their overt or covert reasons for doing so, and make the decision to go forward with an internal or externally-driven investigation or not.

3.7 Behavioral Warning Signs

There are four types of possibilities for sexual contact between a school district employee and a student: a male employee engaging in a sexual relationship with a female student; a female employee engaging in a sexual relationship with a male student; a male or female employee engaging in a sexual relationship with a same-sex student; or a male or female employee engaging in a sexual relationship with both same-sex and opposite-sex students (or as one researcher calls them, “try-sexuals,” as in “they will try sex with anyone who appeals to them”).

Too many people are still under the mistaken impression that the predators who sexually assault children do it by “snatching them off the street and driving away with them in their van.” The statistical reality, of course, is far different. The majority of children who are sexually assaulted know their assailant, as either a direct family member; a stepparent, stepbrother, or stepsister; someone who is in their home (babysitter, nanny, caregiver to another adult); or in the environment they frequent (school, daycare center, church). The bold attacker from the street certainly exists, but like the woman who steals a newborn from the Neonatal Unit at a hospital, those cases are certainly much rarer.

As such, since the student in a coercive sexual relationship (remember that minors cannot give their consent) know their perpetrator, the concept of familiarity moving toward sexual abuse is a gradual one. The term “gradualism” is coined by researchers who study child sexual abuse and clinicians who treat this population in custodial or other settings. It means that the predator works through a careful process that may take weeks or months, before any actual physical sexual contact takes place with their intended target.

Forensic psychiatrist Dr. Michael Welner has worked on nationally known cases of child sexual assault. His research indicates six steps used by sexual predators to move from simply being familiar to the victim to their ultimate goal of manipulation and sexual dominance.⁶⁵

⁶⁵ Oprah.com, Child Sexual Abuse: 6 Stages of Grooming, October 18, 2010, accessed May 1, 2020, <http://www.oprah.com/oprahshow/child-sexual-abuse-6-stages-of-grooming/all>

“Grooming is the process by which an offender draws a victim into a sexual relationship and maintains that relationship in secrecy. The shrouding of the relationship is an essential feature of grooming. The grooming sex offender works to separate the victim from peers, typically by engendering in the child a sense that they are special to the child and giving a kind of love that the child needs. Different law enforcement officers and academics have proposed models of the ‘stages’ of grooming. Since there are a variety of these models, it’s best to think of the grooming by sex offenders as a gradual, calculated process that ensnares children into a world in which they are ultimately a willing part of the sex abuse.

TOOL TIP:
Additional information on the grooming process outlined in Dr. Michael Welner’s research has been provided for reference as [Appendix G](#).

3.8 The Paradox of Female Teachers Preying On Male Students

When it comes to sexual behavior with a male student, female teachers use the same techniques of gradualism, grooming, flirting, and targeting as their male counterparts. Female teachers who use sex to seek out their targets specifically look for vulnerabilities in the male student: poor or missing family relationships, the need for attention from an interested female, early sexual interest, and early physical development via male puberty. So when these cases erupt in the local media, a question arises: Is there more institutional denial on school campuses and from administrators and school districts as to the possibility of a female teacher engaging in sex with her student? Do we expect it to happen more often with male teachers and therefore ignore the possibilities of a female teacher doing these same things?

Motive, in cases where a teacher establishes a sexual relationship with a student, is both internal and not easily understood. For male teachers, the motive for these behaviors is often believed to be because of sexual desire, power, the need for predation, dominance, a [midlife](#) crisis, immaturity, arrested development, or even a pedophilia paraphilia, as with any other adult with a true sexual [attraction](#) to children, regardless of their job titles.

But for female teachers, other motives may come into play: the desire to “care for” a male child from a broken home, which then de-evolves into sex; a need to feel attractive, wanted, and sexually desired by a young man, who may not have the capacity to understand or give real love, but certainly has the [testosterone](#) to provide sex; or even as revenge against a husband who is no longer emotionally supportive or attracted to them. Are any of these valid reasons? Of course not. All teachers are warned from the day they enter their degree programs and from the moment they are hired, (and during in-service training classes and staff development days) to follow the appropriate, age-old, and ethical warning: Do not have a physical relationship with a student.

For those scoffers who doubt there is any real harm to a male student who had a sexual fling with one of his instructors, consider the real possibilities of an unwanted [pregnancy](#), eighteen years of child support payments, sexually transmitted diseases, and lifelong

feelings of [shame](#) as the teenager matures and realizes what he did was wrong too. Since jail penalties differ widely in severity from state to state, the biggest damage to the female teacher is more often about killing her [career](#) and the shame factor from peers, colleagues, family, and strangers who recognize her name from the police blotter. (Some of these cases show up on tabloid TV shows and related pop culture magazines.)

When the classroom crosses over to the bedroom, the people who surround female teachers who become sexual predators—other teachers, school administrators, counselors, therapists, and the police—have a duty to act. [Gender](#) is not the issue and same-sex [sexual orientation](#) is not the issue; bad boundaries, harmful behavior, unethical conduct, and illegal sex acts with minors are the issues. The double standard - as to how we may perceive, investigate, and prosecute these cases differently involving male predators versus female predators - needs to stop.



**CHAPTER 4: SECTION I OF
SEXUAL MISCONDUCT INVESTIGATIONS
“CONDUCTING INVESTIGATIONS OF
TITLE IX COMPLAINTS”**

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Title IX of The Education Amendments Act of 1972 is a federal civil rights law passed as part of the Education Amendments of 1972. This law protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance. It provides:

“No person in the United States shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”

Title IX is a relatively short statute, Supreme Court decisions and guidance from the U.S. Department of Education have given it a broad scope covering sexual harassment and sexual violence. Under Title IX, schools are legally required to respond and remedy hostile educational environments and failure to do so is a violation that means a school could risk losing its federal funding. To understand the specific requirements of Title IX, schools receiving federal funding (including private K-12 schools and the majority of universities) must look to guidance materials from the U.S. Department of Education.

The U.S. Department of Education has, from time to time, provided guidance regarding the obligations schools have to address campus sexual violence. While guidance documents are not law, they describe to schools how the Department will review and enforce Title IX complaints.

On May 9, 2020, the U.S. Department of Education released new Title IX regulation (“the Final Rule”) that addresses sexual harassment, procedures for investigation and resolution of complaints, and certain due process requirements for both complainants and accused individuals. Key provisions of the new regulations and Final Rule that impact the timing, scope, and procedures for investigating Title IX complaints include the following:

- Protects K-12 students by requiring elementary and secondary schools to respond promptly when *any* school employee has received notice of sexual harassment. **[this impacts a timely and thorough investigation]**
- Holds colleges responsible for off-campus sexual harassment at houses owned or under the control of school-sanctioned fraternities and sororities **[this impacts the identification of potential witnesses and documentary evidence relevant to a thorough investigation].**
- Upholds all students' right to written notice of allegations, the right to an advisor, and the right to submit, cross-examine, and challenge evidence at a live hearing **[this impacts procedural requirements for investigation and post-investigation proceedings]**
- Shields survivors from having to come face-to-face with the accused during a hearing and from answering questions posed personally by the accused **[this**

impacts procedural requirements for investigation and post-investigation proceedings]

- Requires schools to select one of two standards of evidence, the preponderance of the evidence standard or the clear and convincing evidence standard – and to apply the selected standard evenly to proceedings for all students and employees, including faculty
- Provides "rape shield" protections and ensures survivors are not required to divulge any medical, psychological, or similar privileged records **[this impacts the scope and content of the investigation]**
- Gives schools flexibility to use technology to conduct Title IX investigations and hearings remotely **[this impacts the scope, timing, and quality of the investigation procedures and documentation]**
- Protects students and faculty by prohibiting schools from using Title IX in a manner that deprives students and faculty of rights guaranteed by the First Amendment **[impacts the potential scope of the investigation]**

Under Title IX, schools must disseminate a notice of nondiscrimination. This notice does not *have* to specify that sexual harassment and sexual violence are likewise prohibited, but the U.S. Department of Education(ED) recommends that schools do, since a notice that makes it unclear may qualify as a violation of Title IX. This notice is likely available in a student handbook or code of conduct in elementary and secondary schools and in an Annual Security Report (ASR) in higher education institutions.

This notice prohibiting sex discrimination must be widely distributed, available, and easily accessible to the school community each year. ED recommends schools:

- Publish this policy online and have it available in print across campus so that school members may understand its purpose and utility
- Include enough detail in the policy so that members of the community know that sexual harassment and sexual violence are prohibited forms of sex discrimination.

With respect to sexual abuse, sexual violence, other sexual misconduct, or sexual harassment, Title IX specifies broad obligations for addressing and resolving incidents on campus that are reported or are the subject of a complaint. Educational institutions must do the following:

1. Address sexual misconduct or sexual harassment that is severe, persistent, and pervasive. The Final Rule uses the definition severe and pervasive and objectively offensive conduct, rather than the U.S. Supreme Court's Title VII workplace standards of severe or pervasive conduct creating a hostile work environment (which is subjective for workplace harassment).

The Final Rule defines sexual harassment to include sexual assault, dating violence, domestic violence, and stalking, as unlawful discrimination on the basis of sex. The Rule also defines sexual harassment broadly to include any of the three types of misconduct on the basis of sex, all of which jeopardize the equal access to education that Title IX is designed to protect: “any instance of quid pro quo harassment by a school’s employee; any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; any instance of sexual assault (as defined in the Clery Act).

1. Conduct a fair and impartial investigation in a timely manner. The Final Rule contains a number of very specific procedural requirements to assure due process for all parties, as addressed below;
2. Investigations must be led by a person free of actual or reasonably perceived conflicts of interest or bias; and
3. Schools must designate a Title IX Coordinator. The Final Rule expands a school’s obligations to ensure the educational community knows how to report to the title IX Coordinator. Schools must prominently display on their websites the required contact information for the Title IX Coordinator.
4. The Final Rule specifies that schools must respond promptly to Title IX sexual harassment in a manner that is not deliberately indifferent, which means a response that is clearly not unreasonable in light of the known circumstances.

4.1 Title IX Phases of an Investigation of Sexual Misconduct

The formal investigation process is broken down into five phases, they are:

- Notification of Investigation
- Information Gathering
- Information Review
- Report Writing, Analysis and Determination of Facts and Policy
- Notification of the Outcome of Investigation

TOOL TIP:
An in-depth description of each phase of the investigation process has been provided for reference as [Appendix I](#).

4.2 Title IX Investigation Basics

Response and Investigation Must be Prompt

School districts and County Offices of Education are required to act promptly when receiving a complaint of sex discrimination, sexual harassment, or sexual violence in order to remedy any hostile educational environment created by such behaviors. The guidance documents have not provided details on the length of time they consider to be “prompt,” but specify that the educational institution should make an effort to conduct a fair, impartial investigation in a “timely manner” to determine what occurred and then take appropriate steps to resolve the situation.

Some courts have interpreted this “timely manner” to be a completed investigation in about 60 days. If the length of an investigation has impeded the victim’s access to an education and further created a hostile environment, he or she may have grounds for an Office of Civil Rights complaint.

A simultaneous law enforcement investigation does not remove the district or COE’s responsibility to resolve a complaint under Title IX. While a district or district site may delay its response to accommodate a police investigation, districts that delay the Title IX complaint process unreasonably are in violation of Title IX.

For situations where a district or COE learns of harassment or sexual violence other than through a formal complaint (i.e. observations, “red flags” reports by other district teachers or staff, reports by student bystanders, etc.), a variety of factors will determine whether there are reasonable grounds for the district to investigate. If other sources, such as a witness to the incident, an anonymous letter or phone call, or the media, report the harassment, the district should respond in the same manner described above if it is reasonable for the district to conduct an investigation and the district can confirm the allegations. Considerations relevant to this determination may include, but are not limited to, the: (1) source and nature of the information; (2) seriousness of the alleged incident; (3) specificity of the information; (4) objectivity and credibility of the source that made the report; (5) ability to identify the alleged victims; and (6) cooperation from the alleged victims in pursuing the matter. If the allegations are confirmed, then a district has a responsibility to respond and investigate timely.

The time can be extended based on absences of witnesses or the need to accommodate individuals with disabilities. Note: this gives the district greater flexibility to delay an investigation in deference to a law enforcement investigation than it did with prior guidance.

Investigation Must be Equitable and Impartial

The internal Title IX grievance procedure adopted by the district, COE, or college, should require the district’s investigative process be “prompt and equitable,” meaning it must not

only be a timely response to discrimination, but must also provide both parties equal rights during the investigation process.

Under Title IX, both the accuser and accused have equal rights, such as the right to: (1) have an adviser of choice present during the process (this includes an attorney if allowed at all by districts); (2) present evidence or have witnesses speak on their behalf; (3) have timely access to information that will be used at the hearing; (4) be present at pre-hearing meetings that provide an opportunity to present their testimony; (5) receive the final hearing decision in writing at the same time as the other party without being required to sign a non-disclosure agreement; and (6) have the right to appeal a final decision.

The investigator must treat complainants and respondents equitably by designing remedies that (1) “restore or preserve access to” a complainant’s education program or activity “where a finding of responsibility against the respondent has been made,” and (2) afford “due process protections for the respondent before any disciplinary sanctions are imposed.”

Note: The Final Rule sets forth a number of new and very specific requirements for providing due process to all parties in all aspects of the complaint process – the grievance policy/procedure, the investigation, the hearing, and the post-hearing appeal. In addition to the changes specified on page one of this chapter, any provisions, rules, or practices other than those required by the Final Rule that a school adopts as part of its grievance process for handling formal complaints, must apply equally to both parties.

Title IX Coordinator/Investigator

Title IX requires every educational institution receiving federal funding to have a Title IX Coordinator. The contact information (name/title, office address, telephone number, email address) of the Coordinator should be available both in the district’s nondiscrimination notice and annual security report. Both victims and third parties should contact the Coordinator to report incidents of sex discrimination, sexual harassment, or sexual violence.

Roles of the Title IX Coordinator: (1) to ensure districts are compliant with Title IX; (2) to coordinate the investigation and disciplinary process; and (3) to look for patterns or systematic problems with compliance to ensure districts fulfill all their federal obligations. The Coordinator should not have any real or perceived biases or conflicts of interest. The Coordinator may not have any other job responsibility that creates a conflict of interest with their responsibilities under Title IX. For example, the Title IX coordinator may not also sit on a disciplinary board or serve as legal counsel. Schools should ensure that institutional interests do not interfere with the impartiality of the investigation.

The Title IX coordinator should also (1) coordinate recordkeeping; (2) monitor incidents to help identify students or employees who have multiple complaints filed against them or

who have been repeated targets; and (3) address any patterns or systemic problems that arise, including making district officials aware of these patterns or systemic problems as appropriate.

Informing of Reporting Options

Schools must provide notification of reporting options. Schools must notify victims of their right to report to police and facilitate that process if desired by the victim. Victims also have the right *not* to report to the police.

Schools are required to adopt and publish a grievance procedure outlining the complaint, investigation, and disciplinary process for addressing sex discrimination, sexual harassment, and sexual violence occurring within educational programs. This process should address discrimination perpetrated by students, employees, or third parties. Additionally, district security and/or law enforcement personnel must notify victims of their rights to use the district's grievance procedure in addition to being able to file a criminal complaint.

Standard of Evidence/Burden of Proof

The appropriate standard of evidence is a “preponderance of the evidence.” This standard of evidence means that a hearing must determine whether a complaint of sex discrimination is “more likely than not” to have occurred or 51% likely to have occurred. This standard applies for all complaints of sex discrimination, including sexual harassment and violence. This is because Title IX outlines standards for district disciplinary processes, not criminal complaints, which require the highest standard of evidence, “beyond a reasonable doubt.”

The Final Rule allows districts to use the “clear and convincing” evidence standard, but only if all other forms of campus misconduct investigations utilize this standard. The guidance allows districts to shift the threshold that officials use to decide if an assault happened from the "preponderance of evidence" standard set under the Obama administration to a "clear and convincing evidence" standard, which is a higher bar. Some critics of the Obama guidance had argued that the lower burden of proof threatened the due process rights of the accused.

Under the Final Rule, schools will be held responsible for addressing a complaint if they have "actual knowledge" that an offense occurred, a higher bar than under the old guidance, which said they were required to intervene if they "reasonably" should have known about a violation. Schools will be faulted if they are "deliberately indifferent" to know sexual harassment.

The investigation must objectively evaluate “all relevant evidence – including both inculpatory and exculpatory evidence,” and must provide that “credibility determinations

may not be based on a person’s status as a complainant, respondent, or witness.” The investigator must presume that the respondent is not responsible for the alleged conduct “until a determination regarding responsibility is made at the conclusion of the grievance process.”

Significantly, the district “must apply either the preponderance of the evidence standard or the clear and convincing evidence standard.” However, in every investigation conducted under the district’s grievance procedures, the burden is on the district—not on the parties—to gather sufficient evidence to reach a fair, impartial determination as to whether sexual misconduct has occurred and, if so, whether a hostile environment has been created that must be redressed.

Writing the Investigative Report

Reports should be objective and well written and should not contain typographical errors. Investigators generally find that they are better able to proof-read the report if they have set it aside for a day or two once the draft is complete. A thorough investigative report should contain the following sections: (1) Scope and manner of investigation; (2) Summary of the allegations; (3) The response to the allegations; (4) Summary of the evidence, including witness interviews; (5) Credibility determinations; (6) Findings of fact; and (7) Legal conclusion

The “scope and manner of the investigation” is a brief summary of the policies and procedures governing the investigation, as well as the steps the investigator took in gathering information. The investigator may set forth a list of people interviewed and a summary of the documents reviewed. The investigator may discuss any procedural issues that arose, as well as any interviews or evidence the investigator chose not to obtain or was unable to obtain (and why).

The “summary of the allegations” is either a verbatim recitation of the complaint, or a summary of the complaint in the investigator’s own words. Since most written complaints filed with districts generally do not contain each and every factual allegation, it is usually helpful for the investigator to summarize the allegations in full and attach the written complaint as an exhibit.

The “response to the allegations” is a summary of the respondent’s version of the events. If the allegations are numerous, it is helpful to set forth each allegation followed by the respondent’s response. Again, the tone of this section should be neutral and objective.

The most important sections of the report are those that set forth the investigator’s credibility determinations and analyze the factual issues in dispute. In writing the credibility section, the investigator should carefully describe the factors that weigh in favor of – and against – the witness’s credibility, and should set forth his or her determinations.

As stated above, the question is not whether the person is “lying,” but whether the person’s statements are credible based on all of the evidence.

In the “findings” section of the report, the investigator should apply a four-step process: (1) define the issue; (2) identify the relevant policy or law; (3) set forth the evidence that weighs in favor of the complainant’s allegations, as well as that which detracts from it, and; (4) make a finding by explaining why the evidence supporting or refuting the allegation is more persuasive. The “findings” section should state the standard of proof the investigator is applying.

The report should contain a “legal conclusions” section only if required by law or policy. For example, in discrimination investigations for community colleges, the investigator must draw a conclusion as to whether there is probable cause of discrimination.

The most effective investigative reports are those that use short, clear sentences.

The report should discuss all material evidence, whether or not it supports the investigator’s conclusions. The report should make findings on all material factual disputes. A factual dispute that does not relate closely to the essential aspects of the complaint may be left unresolved at the discretion of the investigator (although such “minor” disputes often relate to credibility and should, therefore, be addressed). The report should include references to exhibit numbers.

Relevant exhibits should be attached to the report.

Informal Resolution of Complaint

After a Title IX complaint has been opened for investigation, a district MAY facilitate an informal resolution of the complaint if all parties voluntarily agree to participate in an informal resolution that does not involve a full investigation and adjudication, after receiving a full disclosure of the allegations and their options for formal resolution. The district must also determine that the particular Title IX complaint is appropriate for such a process. Mediation may be a manner of informal resolution.

Student Request for Confidentiality

The district should take all reasonable steps to investigate and respond to the complaint in a manner consistent with a request for confidentiality from a student. If a student insists that his or her name not be disclosed to the harasser, the district’s ability to respond may be limited. The district also must consider its responsibility to provide a safe and nondiscriminatory environment for all students. Thus, the district must weigh the confidentiality request against the following factors: (1) seriousness of the alleged harassment; (2) age of the harassed student; (3) other complaints that the same individual

has harassed others; and (4) if there are state or local laws that require the district to report the incident to the police.

Relation to Criminal Investigation

Because Title IX investigations will not result in the incarceration of individuals, "the same procedural protections and legal standards are not required" in Title IX investigations as are compelled in criminal proceedings. Even if a criminal investigation of student-on-student sexual violence is ongoing, a district must conduct its own Title IX investigation. Indeed, the conclusion of a criminal investigation without charges "does not affect a district's Title IX obligations."

Because legal standards for criminal investigations are different, police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve the district of its duty to respond promptly and effectively.

Other Particulars of the Final Rule

In a departure from past administrative practice, in which the Education Dept. considered "constructive notice" (i.e., known or should have known) to trigger a district's responsibilities in cases of student-on-student harassment, and did not impose a notice requirement in certain cases of harassment by a teacher or employee, the new proposal would establish that a district has a duty to respond to allegations of sexual harassment only when it has "actual knowledge." Actual knowledge is defined as notice of harassment (or allegation of harassment) to a district's Title IX Coordinator or official with authority to institute corrective measures.

In contrast to past guidance from the Education Dept., the mere ability or obligation to report by a district employee does not qualify them as one who possesses authority to institute corrective measures. The proposal explains that this threshold for triggering a district's obligations is intended to align the administrative standard imposed by ED with that articulated by the Supreme Court in Gebser and Davis in the context of private litigation seeking money damages.

Schools are only compelled to respond only to sexual harassment that occurs within a district's "education program or activity." This contrasts with past guidance which provided that districts sometimes will be responsible to respond to harassment that occurs "outside a district's education program or activity."

1. The investigation should be conducted in an age appropriate manner

The Education Department has expressed its desire to ensure districts have the "flexibility to employ age-appropriate methods, exercise common sense and good judgment, and take into account the needs of the parties involved" in determining

how to respond to sexual harassment. Along those same lines, the Department “believes that teachers and local district leaders with unique knowledge of the district culture and student body are best positioned to make disciplinary decisions; thus, unless the recipient’s response to sexual harassment is clearly unreasonable in light of known circumstances, the Department will not second guess such decisions.”

2. Allowing rights to be exercised by the parent(s) or guardian(s) instead of or in addition to the student

The new regulations grant elementary and secondary districts “the discretion to look to state law and local educational practice in determining whether the rights of the party shall be exercised by the parent(s) or guardian(s) instead of or in addition to” the accused student.

A “complainant” is defined under the Final Rule as “an individual who is alleged to be the victim of conduct that could constitute sexual harassment.” This clarifies that any third party as well as the complainant may report sexual harassment or misconduct. While parents and guardians do not become complainants, the Final Rule expressly recognizes the legal rights of parents and guardians to act on behalf of parties (complainant or respondent) including by filing formal complaints in Title IX matters.

If the parent or guardian of a minor student at an elementary or secondary district files a complaint on behalf of the student, and state law and local educational practice recognize the parent or guardian as the appropriate person to exercise that student’s legal rights, the student would be a “complainant,” even though the action of filing the complaint was taken by the parent or guardian instead of the student.

3. Removing a respondent from the district during the investigation

The Final Rule confirms that nothing precludes a district “from removing a respondent from the recipient’s education program or activity on an emergency basis” so long as the district “undertakes an individualized safety and risk analysis, determines that an immediate threat to the health or safety of students or employees justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.” However, the regulations also caution that a district considering the removal of a respondent must “follow the requirements of the IDEA, Section 504 and Title II of the ADA.”

4. More elaboration on investigations

The Final Rule specifies requirements that districts and COEs must include in their investigatory processes and procedures. These requirements contain significant changes to prior Title IX regulations. . . Among other things, the requirements include: (1) placing “the burden of proof and the burden of gathering evidence” on the district; (2) prohibiting a district from restricting the “ability of either party to discuss the allegations” or “to gather and present relevant evidence;” and (3) notice requirements for any participants in the investigation.

The regulations also require districts to provide participants with “the opportunity to be accompanied . . . by the advisor of their choice.” The Department noted that the right to have an advisor, “who may be an attorney,” is “important at the elementary and secondary education level to ensure that both parties are treated equitably.”

5. Live hearing

The Final Rule specifies the conduct of the hearing. It permits—but does not require—elementary and secondary districts to conduct “a live hearing.” The Department reasoned that “[b]ecause most parties and many witnesses are minors in the elementary and secondary district context, sensitivities associated with age and developmental ability may outweigh the benefits of cross-examination at a live hearing.”

Regardless of a district’s decision to implement a live hearing component, the regulations impose an affirmative obligation for “the decision-maker” to ask each party and any witnesses any relevant questions and follow-up questions, including those questions challenging credibility of witnesses that a party wants asked of any party or witnesses. Similarly, “[i]f no hearing is held, the decision-maker must afford each party the opportunity to submit written questions, provide each party with the answers, and allow for additional, limited follow-up questions from each party.” An investigation “must exclude evidence of the complainant’s sexual behavior or predisposition, unless such evidence about the complainant’s sexual behavior is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the evidence concerns specific incidents of the complainant’s sexual behavior with respect to the respondent and is offered to prove consent.”

6. Major concerns about how the new regulations (in the Final Rule) affect K-12 districts have been reflected in the public comments

One of the major changes in the Final Rule involves who in a district must be told about an allegation of sexual misconduct to trigger an investigation. For K-12, only

notification to a district's Title IX coordinator or a teacher would constitute sufficient notification of student-on-student harassment. Importantly, education advocates say, that doesn't include other district personnel like special education aides, coaches, or other adults with whom a student may have a closer relationship. Long-standing federal guidance has required districts to intervene when any employee knows about misconduct.

A coalition of civil rights groups, including major teachers' unions commented: "Such a rule is particularly unworkable for students who are non-verbal, students with physical or intellectual disabilities, and English Language Learners, who often have closer relationships with their teacher aides, members of their [special education] team, district psychologists, and other district employees who are not their teachers or the Title IX coordinator."

For harassment of students by district employees, only notification to a district's Title IX coordinator would constitute sufficient notification under the proposed rule to trigger an investigation. The department says that means "every student has a clearly designated option for reporting sexual harassment to trigger their district's response obligations." These standards, however, appear to conflict with many state laws that require nearly all district employees to report any suspicions of child abuse. Therefore, district personnel could be required under state law to report an incident to child protective services but not otherwise undertake any kind of investigation or provide remedies at the district level.

There is a concern that the new rules would discourage students from reporting sexual harassment and prioritize protecting districts over protecting reporting students because of the assertion that there should be a "consistent standard" between private litigation and administrative enforcement. This creates an unworkable and impractical standard that will confuse K-12 district administrators and end up harming both reporting and responding students. The definition of harassment improperly prevents districts from providing a safe learning environment. The proposed rule defines sexual harassment as "unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the [district's] education program or activity" and requires that districts dismiss complaints of harassment that do not meet this standard. Schools would be required to ignore the student's Title IX complaint if the harassment has not yet advanced to a point that it is actively harming a student's education, even if it involved harassment of a minor student by a teacher or other district employee. Moreover, the proposed rules offer no guidance as to what "severe" and "objectively offensive" harassment looks like in elementary, middle, or high district.

The definition limits districts' responsibility to only the most extreme forms of in-person, physical, and ongoing sexual harassment. It does not encompass the

breadth of experiences that K-12 students face: dating violence, stalking, cyber harassment, bullying, and hazing, all of which can deny a student equal educational opportunity on the basis of sex. Students could be forced to endure repeated and escalating levels of abuse, from a student, district staff, or teacher, before their districts would be required to investigate and remedy the harassment. If districts rebuff students who report sexual harassment, the students are much less likely to report a second time when the harassment worsens.

7. Deliberate indifference

For both peer-on-peer and teacher-on-student Title IX sexual harassment claims, plaintiffs face a high hurdle to avoid summary judgment because deliberate indifference is difficult to establish. To establish deliberate indifference, a plaintiff must show that the district's response to the harassment "was clearly unreasonable in light of known circumstances" and "at a minimum, 'cause[d] [students] to undergo' harassment or 'make them liable or vulnerable' to it." The analysis of whether a district was deliberately indifferent "appears to have the following three stages: (1) Did the district investigate properly? (2) If it did investigate, did it implement remediation? (3) If it did remediate, was it effective?"

8. A few additional notes on Title IX investigations

If the complaint presented more than a single allegation of misconduct, a decision should be reached separately as to each allegation of misconduct.

The decision-maker(s) must offer each party the same meaningful access to any information that will be used during informal and formal disciplinary meetings and hearings, including the investigation report.

The parties should have the opportunity to respond to the report in writing in advance of the decision of responsibility and/or at a live hearing to decide responsibility.

If a district chooses to allow appeals from its decisions regarding responsibility and/or disciplinary sanctions, the district may choose to allow appeal (i) solely by the responding party; or (ii) by both parties, in which case any appeal procedures must be equally available to both parties.



**CHAPTER 4: SECTION II OF SEXUAL
MISCONDUCT INVESTIGATIONS - “CONDUCTING
INVESTIGATIONS IN SCHOOL DISTRICTS AND
COUNTY OFFICES OF EDUCATION”**

By:
Patricia Eyres, Managing Partner
Principal, Eyres Law Group



4.3 What Triggers a Duty for a K-12 District or County Offices to Conduct an Investigation?

There are a variety of incidents that are typically the subject of a complaint. Complaints may be formal or informal, and they can be verbal or in written form. The most common are student or parent complaints of improper touching, unwelcome physical interactions by an administrator, guidance counselor, teacher, or classified staff member. The complaint may also allege verbal banter, repetitive calls, texts, or email sent by a school district employee to a student, including sexually explicit photos, sexting, or even videos. Often, these complaints allege that there are fears for the safety of the student(s) and are raised by parents or school district staff. Complaints by parents or students may involve any the following categories, individually or in combination:

- Physical: Unwelcome, intrusive touching of a sexual nature, which is often identified as molestation;
- Communicative: Intimate verbal or written communications, including sexting words or pictures and unwelcome sexual teasing;
- Coercive Encounters: Requiring sexual favors in exchange for some other reward or goal such as a higher grade;
- Power Imbalance Relationships: Intimate sexual relationships with a student or former student under the age of 18, even if allegedly consensual (the student may “welcome” the relationship but cannot legally “consent.”)

Internal sources at the School district or COE are also a common source of reports of improper behaviors that trigger the duty to conduct an immediate investigation. School District employees at all levels are well aware of their obligations as mandated reporters of suspected child abuse or neglect. They may raise concerns internally or report to the school principal, an administrator, or directly to the School district office. These types of reports include a wide variety of conduct that are based on either personal observations or discussion between staff members.

Specific examples include reports that need to be investigated include: students older than second grade sitting on a staff member's lap, having their hand held or their back rubbed; personal space boundaries violations to students of any age; hugging, hand holding, kissing students of any age; classroom conduct with sexual comments, jokes, innuendo, teasing, gestures or pictures. More severe reported sexual misconduct includes participating in pornographic photography or video production; sexting, or observations off campus that raise serious concerns about improper “relationships” of an intimate or sexual nature between adults who are employed by the School district and students or minors.

When reports by staff are brought to the attention of administrators without a formal complaint by a parent or student themselves, misperceptions about the extent and effect

of educator sexual abuse may result in required investigations being delayed or not conducted at all. Misunderstanding of the law often leads administrators and educators to conclude that sexual activity with a student isn't misconduct if it's "consensual." Students under 18 cannot consent to any form of sexual intimacy. The California Penal Code 261.5 PC, a "statutory rape" takes place when any person engages in sexual intercourse with a person under the age of eighteen (18). The crime is also commonly referred to as "unlawful sex with a minor"...or as "unlawful sexual intercourse". The offense of statutory rape is a "wobbler," which means that...depending on the circumstances...it may be charged as either a misdemeanor or a felony. The age difference between the defendant and the minor is one of the major factors determining how the crime is tried. If the defendant is 21 or older and the minor is under the age of 16. The penalties are likely to be most severe and can include up to four (4) years in state prison.

If the report or complaint does not come from students, parents or staff, the school district's first notice may be notification by law enforcement (via police report or subpoena) or a demand letter from legal counsel retained by parents or child. Lastly, the first notice the school district may have are questions from media outlets or community members. In these situations, the school district should conduct its own investigation and it is generally best to engage outside counsel to conduct an independent investigation and to assure that the attorney client privilege is preserved, to make early assessments of strategies for protecting the interests of the school district in various forums involving law enforcement of CPS investigations, potential criminal or civil proceedings, and the media.

Immediate Steps after Receiving Report or Complaint

Open communications with all affected. Report the information immediately to District Office and follow district policies and procedures. One of the first steps is to determine reporting requirements (law enforcement, CPS or law enforcement. Although the administrator may not have all the facts at that point, it is prudent to err on the side of mandatory reporting.

TOOL TIP:
The mandated reporter form and instructions for completing the form are provided as Appendix H.⁶⁶

Determine if investigation is to be conduct with or without law enforcement. In most situations, it is best practice to have parallel investigations so that the school district's investigation does not negatively impact the law enforcement agency's evidence gathering. Likewise, the school district's investigation will often have additional necessary components, such as an immediate determination of an accused employee (teacher or staff) placement on administrative leave and ultimate disciplinary action.

⁶⁶ California Department of Justice Office of the Attorney General, Suspected Child Abuse Report, FORM BCIA 8572, accessed May 04, 2020, https://oag.ca.gov/sites/all/files/agweb/pdfs/childabuse/ss_8572.pdf

Immediately determine what evidence must be preserved, which may include but is not limited to physical evidence, documentary information or electronic investigation. This is also a significant focus for school district legal counsel, who are best equipped to provide concrete advice on the scope of necessary evidence preservation.

TOOL TIP:
For more information on disciplinary action see Chapter 3.

The next step for the administrator and the school district is to assess who should be leading the investigation. There are benefits to engaging outside counsel who are both independent of the potential witnesses and experienced in conducting fact-based interviews and evidence gathering. If the investigation will initially be conducted internally, determine whether the administrator will lead the inquiry – at least initially to gather the basic facts to flesh out the reported conduct – or be a participant with the primary investigator a school district office employee, the most immediate and critical determination is whether the administrator is likely to be a witness. If so, he or she should recuse themselves from any role on the investigation team to assure the integrity of the investigation.

For workplace investigations, employers may utilize an employee as an investigator or hire an external investigator. The employee investigator is often someone from human resources. In California, external investigators (those who are not employed by the employer) must be licensed private investigators or attorneys acting in their capacity as an attorney (See Business and Professions Code Section 7520 et seq.)

If a criminal investigation by law enforcement or a regulatory investigation by CPS are concurrently pending, the investigator should contact the responsible detective or law enforcement official to make sure there are no objections to the district's plan for investigation.

The school district office should identify who should be notified immediately and promptly report the complaint to all applicable insurers and engage counsel. The district office should determine if the administrator is involved and if so, place the administrator on administrative leave and conduct a thorough investigation. Determine if the school administrator is a witness and remove investigative responsibility (may be a witness). Involve the HR department concerning any administrative leave for the employee[s]. The district should determine the scope of the investigation and monitor it if it is done by the administrator. The school district office should direct all communications with legal counsel and the media or community. The district office should follow all policies and procedures and document all actions thoroughly, with the advice of legal counsel.

The Importance of Confidentiality in Every Investigation

Once a teacher or staff member is put on administrative leave it is natural for all staff to want to know what's going on. **Never disclose the reason for administrative leave and try to dispel rumors.** Maintaining confidentiality from the very beginning is crucial, it is

important to respect the employees' personnel rights and understand that staff members are innocent until proven guilty. Clear guidance should be provided by HR to all staff members regarding whether or not they are allowed to talk to the person being put on leave and, if so, what they are allowed to say.

Nothing is off the record. District policy must specify that it will investigate all credible complaints or reports of inappropriate conduct, grooming, improper interactions or questionable relationships between student and teacher or staff. Although the district and the investigator will endeavor to maintain confidentiality, absolute confidentiality cannot be assured. Therefore, there is no such thing as an "off the record" complaint. Even if an employee requests that a complaint not be investigated, the district's legal obligations require an investigation.

It is essential that the investigator follow prescribed procedures and maintain confidentiality regarding the course and conclusions of any investigation until it is completed. In investigations involving sexual abuse, specific allegations may require special efforts to maintain confidentiality. For example, the investigator may find that the allegations address explicit sexual activities, sexual assault or other allegations which may be extremely upsetting and embarrassing to the complainant and to the alleged abuser should they become generally known. The investigator should also be aware that because this issue is such a sensitive one and because it is possible that the allegations may not be substantiated, any breach of confidentiality may unnecessarily cause harm to the reputation of the accused harasser. However, the district's legal counsel and insurers should be kept involved.

Despite the importance of confidentiality, investigators should make it clear that they can only promise *limited* confidentiality; specifically, that the information will be limited to those who "need to know." An investigator cannot promise complete confidentiality because it may be necessary to disclose information obtained during the investigation in order to complete the investigation and take appropriate action. It is not possible to promise that a complaint can be kept entirely "confidential," or "off the record." If the complaint is of potential violation of law or policy, in the process of investigating it is likely that people will know or assume details about the allegations, including the identity of the person who complained. This is true even when the name of the complainant is kept confidential since allegations are often the subject of a parallel investigation by law enforcement or child protective services, and the complainant's own legal representatives. The target of the investigation (the alleged abuser) will likely consult with union representatives and separate counsel. Other school district staff will then likely be interviewed by multiple parties.

4.4 Basic Structure of an Investigation

Select an Investigator

Should a school district or COE conduct their own investigation or hire outside professionals? Outside investigators might provide more-objective fact-gathering and less opportunity for favoritism or bias, but inside investigators are more familiar with the personalities involved and are more economical, especially for low-level grievances.

There might not be an evidentiary advantage to having outside counsel conduct the investigation, because the school district must disclose information to prove that it conducted an appropriate investigation and reached a reasonable decision. Likewise, the information gathered will likely be used for more than a single purpose. There may be criminal or administrative proceedings, in which the same witnesses will testify and their responses will be compared to assess consistency and credibility. In cases of substantiated sexual misconduct, the information the investigator gathered will support an internal disciplinary action or dismissal, which require robust due process procedures for public school employees. The information gathered and documented contemporaneously may also be needed years later to support the defense of the school district or county office in subsequent civil litigation.

By documenting impressions and legal conclusions separately, outside counsel might carve out such privileged information from disclosure. Be aware that use of an outside investigator triggers the Fair Credit Reporting Act, which requires production of an investigative report to the accused employee when adverse employment action is taken. If the District elects to use an external investigator, use either a law firm or licensed private investigator. All workplace investigations in California must be conducted by either counsel or a licensed investigator under the California Business and Professions Code.

Create and Follow a Plan for Each Investigation

Begin with the key witnesses and issues, based on the nature and severity of the complaint or reported misconduct. As the investigation progresses, revise the plan to account for newly discovered witnesses or issues. Organize and clarify witnesses' knowledge and provide a display of investigation results that might be helpful in forming a conclusion.

Do Not Prejudge

The investigator's opinions about the parties – students or staff – or the level of alleged wrongdoing should not cloud the manner in which the investigation is conducted. Even if the investigation fails to substantiate sexual abuse or other unlawful conduct, it should help the school district address proactive policies and ensure effective education and professional relationships between employees, administrators, students, and families.

Gather facts objectively. An investigator should not make assumptions about events that occurred or direct witnesses toward preconceived conclusions by disclosing too much information or asking leading questions. Conclusions should be formed at the end of an investigation, after all of the evidence has been uncovered. Begin with open-ended questions, then funnel the interview into specific follow-ups. An investigator also should probe vague responses, like a general statement that someone "yelled" at a fellow employee, to obtain descriptive details and examples. In that vein, time estimates frequently are exaggerated. Follow-up questions can help narrow time frames and link them to objective periods, such as holidays or special events.

Be Thorough

An investigation demands more than passive data collection. Investigators should analyze and use the information they gather to re-interview witnesses as necessary and to explore patterns and any corroborating or conflicting evidence. They also should be flexible in order to ensure that investigations are concluded when complete, not when a set time period has passed or a set number of witnesses have been interviewed.

Make a Reasoned Conclusion

A conclusion is mandatory in an investigation, even when corroborating facts are scarce. Conclusions lead to the determination of appropriate remedies, so be mindful incidents that form a pattern of behavior might need to be addressed as a single, larger incident.

Thoroughly Document Every Step in the Investigation Process

Documentation records events contemporaneously, which is useful in refreshing witness recollections and anchoring events to time periods. The school district or COE's ability to produce documentation from a thorough investigation in response to an administrative complaint or a civil lawsuit is key to demonstrating that all steps were taken to immediately address the alleged misconduct, and to take immediate and appropriate action. Finally, documentation carries credibility that is not provided by testimony alone.

Unambiguous, complete, accurate documentation is often invaluable when used in the context of regulatory or judicial proceedings. Additionally, complete records, used as an adjunct to accurate testimony, are important in enhancing a witness's credibility. Effective documentation has several elements. In particular, it should be consistent, understandable, and readable for everyone in the organization.

The Role of the Investigator

The primary responsibility of the investigator is to obtain all of the information pertinent to the complaint and to reduce this information to a form which will allow a conclusion to be drawn. A successful investigator develops a story. It should include what witnesses saw and

heard, as well as other evidence which allows a conclusion to be drawn; in this case, a conclusion regarding whether or not sexual misconduct occurred.

It is important that the investigator act as a neutral fact-finder. Personal opinions of the investigator regarding the facts or circumstances of the complaint or the merit of the allegations should not be communicated to anyone during the investigation. The investigator should always be cognizant of confidentiality and other special considerations which are discussed more fully below. The investigator should remain impartial, but not insensitive.

The specific tasks assigned to an investigator may vary from process to process or from employer to employer. The role, however, remains the same; to seek out and evaluate evidence which will allow a determination as to whether or not sexual misconduct occurred. The nature and extent of your role must be clear.

In many sexual abuse complaint investigations, the information gathered in the course of the investigation may eventually be used in a judicial process, therefore, strict rules of evidence may apply. Often, however, at the agency level the information is merely used to support recommended resolutions. Because of the potential uses of the information, it is critical that prior to conducting an investigation the investigator become aware of the criteria for evaluating evidence in the particular process in which the investigator is involved. Investigators should also be aware of general guidelines in obtaining and evaluating evidence.

The investigator should carefully consider and follow what is expected in this process *prior* to initiating the investigation. Clarifying the process and the investigator's role will assure that everyone has a clear understanding of that role and will eliminate misunderstandings during the process.

Administrator Internal Investigation – Informal Inquiry

Once any sexual misconduct is suspected, the accused teacher or staff member and the victim should be placed on administrative leave pending investigation. The accused must have union or legal representation for interviews. Strong retaliation policies are critical so that every individual participating in the investigation is comfortable reporting suspicious activity. Administrators must maintain an untainted investigation. Compromise in the investigation in any way affects the trust of the students and staff in the fairness of the investigation and could affect the results. This includes informal communications with potential witnesses and unauthorized press interviews.

When the allegations are extremely serious or graphic, best practice is for the administrator to coordinate with the school district office, and in most situations that level of investigation will be conducted by the school district's trained investigators or outside counsel. The informal inquiry by an administrator should be limited to situations where the initial complaint or report is very general or vague and the Administrator's role is

simply to determine whether it can be handled informally or requires a complete investigation.

Always remember that administrators may often be witnesses, to the alleged underlying behaviors (whether they initially realize that or not). It is undesirable to get into the middle of an investigation and then require recusal by the administrator. More significantly, in many situations, there is subsequent litigation against the school district or COE, and the issue of whether the administrative team provided adequate supervision or oversight becomes relevant. In those situations, it is extremely important for the administrator not to have played any role in fact-finding, evidence gathering, or related activities.

Elements of an Effective and Legally Defensible Investigation

The investigation must be conducted by impartial investigator. Impartiality is critical. This does not mean that the investigator must be an individual with no connection to the school district or its personnel. Findings should be based on objective weighing of the evidence collected. It is important for the person conducting the investigation to assess whether they have any biases that would interfere with coming to a fair and impartial finding and, if the investigator cannot be neutral, to find someone else to conduct the investigation. Even if investigators determine they can be neutral and impartial, consider whether the status of the investigator internally will create the perception of bias. A perception of bias by the investigator may discourage parties and witnesses from providing complete information based on their personal knowledge.

- Investigator is a neutral fact-finder;
- The investigation is prompt and thorough;
- All appropriate witnesses are interviewed;
- All relevant facts are uncovered;
- All relevant documentary evidence is gathered;
- All documentary evidence is relevant, reliable, and readily available;
- The investigator is able to draw reasonable conclusions from the relevant information;
- Confidentiality is properly protected to extent possible;
- Results and conclusions communicated to all appropriate parties

TOOL TIP:
Step by step guidance on how to complete an effective and legally defensible investigation has been provided as Appendix J.



CHAPTER 5: MANAGING MEDIA RELATIONS

By:
Dr. Robert May, Principal



A sequence of sudden, unplanned and unexpected events leading to instability in an organization and major unrest amongst the individuals is called a crisis. In most organizations this type of sudden activity causes organization instability. School Districts are no different. To survive, the school district's leadership plays an extremely important role during these events. It's important to show confidence, steadiness, and complete charge of the situation. This chapter will discuss and provide guidance on how to manage emotionally charged events. Such events could be inappropriate or suspected school district employee interactions with students of a sexual nature, active violence on campus as a result of a student, teacher, stranger impacting the campus or teacher discipline.

The school district's leadership must be engaged before, during and after a crisis. The school district's leadership must be skilled in communication, clarifying vision and values, and demonstrate caring always not just during a crisis. The leadership needs to take time to hone their skills and reflect on their effectiveness.

A successful crisis management and media response plan incorporates organizational programs such as emergency response, event recovery, risk management, communications and business continuity, among others. In addition, crisis management and media response are about developing a school districts capability to react flexibly and thus be able to make the prompt and necessary decisions when a crisis happens. All school districts wants to avoid these types of headlines:

"Teacher arrested for inappropriate relationship with teen girl", Teacher Accused of Having Sexual Relationship with Student, 15".

5.1 Control the Message

The school districts plan should be a strategic course that everyone adheres to during the crisis. During the crisis, it is important to be viewed as an honorable and respectful authority whose job is to maintain the wellbeing of the students, parents, and victims. That means, while a situation may be under investigation, the school district must behave without bias, with strong integrity, and compassion to humanize the school district or risk being portrayed in the media as heartless. Too often the media may see the school district as an entity that is heartless and that caused the problem. When public controversy ensues, its's easy to lay blame on the school district that is giving soundbites and quotes.

The solution is **controlling** the message.

5.2 Control the Entity Business Image

Control the message and the school district stands a good chance of controlling the image that others have of the school district. It is important to understand that crisis situations are emotional. Facts can get lost in emotion. Good people will have lapses in judgment and bad things do happen. Responding appropriately when interest in the organization

peaks is imperative. Anticipate what will be asked of the school district. Ensure the school district has an internal media policy. Having a policy in place will help in setting the tone for how the media is viewed, explains the roles of the media, sets parameters and defines responsibility, and defines who will represent the organization. The policy should outline who will be the spokesperson of the school district.

5.3 Responding Appropriately

Early assessment is important. Understanding facts and situations is critical to the success of the message and credibility of the school district. Avoid missteps in the first place. The school district spokesperson should not speak until ready. So many times, organizations get themselves in trouble by speaking quickly out of some sense of urgency resulting in inaccurate information which results in loss of credibility. The school districts spokesperson needs to remember that they are face of the organization. It may be necessary to have a media consultant available to assist in the information preparation. They can help keep the information factual and on point with the themes established based on the situation.

5.4 Knowing What and When to Say Things

The media is seeking a good story and journalists/reporters sometimes, despite the code of ethics, come to an interview with their own biases. They are seeking a story for their audience and editors. In today's modern media, controversy is often the best story. A school district spokesperson will have the facts, the story, and control, if the right thing is done in the media interview. A spokesperson should always listen to the question before responding. Remember the themes of the media information release. It can be easy to get pulled in the wrong direction. Don't get bated! The spokespersons goal is to maintain composure at all costs. If the media finds a weak link, they will exploit it. Do not show irresponsibility or appear as if you trying to cover things up. A media checklist will help in remembering vital tips about dealing with the media.

Having a Crisis Management and Communication (media) Plan will help ensure that appropriate action is taken immediately rather than later. Working together with the media and using your social media channels will help increase the spread of accurate information and mitigate damage to your school district's reputation both online and offline.

TOOL TIP:
A list of tips to assist your school district with communicating with the media has been provided as [Appendix K](#).

Understanding the Media Environment

This is how things go wrong. When tension is created between the journalist/reporter and you, the interviewee, the story changes character. It is the goal of the school districts representative to get the point across, always remain calm but not void of emotion. The

human element is important not to the journalist/reporter but to the parents, family or employees.

There is a clear distinction between being in control and being controlled during a media event. A written statement to convey information is a great tool. Before releasing the written statement ensure it has been vetted and is consistent with the themes established for the situation. This holds true for social media as well.

The Key is to have a framework in place to manage these events from a strategic approach. Management of significant events is complex – resources need to be in place to ensure task or task related needs are achieved. The first twenty to sixty minutes of an incident are the most critical. The policies and procedures that are followed during this initial stage of response to stabilize the event can set the tone for the entire incident. It will determine whether the school district has organized and focused resources on scene, or whether they are fighting from behind the power curve during the entire incident. The following strategic application can be deployed:

- Command – Establish a strong leadership presence
- Contain – Isolate the problem – protecting people, property
- Control – Managing the event, response. Communications and containment
- Coordinate – Ensure goals/objectives are established. Everyone works together
- Communicate - Share information and work toward accomplishing the goals

There needs to be a strong leadership presence in place to ensure the message is consistent. This leadership presence needs to be outlined in the media plan.

These incidents can even be more demanding if we consider the potential that we could have more than one incident occurring at the same time.

Who Should Speak?

The school district will always want the best spokesperson in front of the media, who may or not be a supervisor, principle, superintendent, or elected official. Best PIOs or media spokespeople: have media experience; have many journalism contacts in local and national media; are calm and calming; have a good speaking voice and camera presence; are fast thinkers, good on their feet; are not “slick,” but are polished, empathic, neutral, professional information-providers.

Do what (skilled) politicians do: answer a tough question by bridging over to what you really want to say: “Do you think your teacher used excessive force?”

“On a daily basis, our teachers are faced with certain situations and need to make decisions. Our community knows how hard their jobs are and how they have to make certain decisions, as may have happened in this case.”

Instead of saying, “We can’t comment because it’s a personnel issue,” say “Our Personnel Department is conducting a full investigation, which will give us more clarity at that point.”

“That’s a question we’re still trying to answer at this early part of the incident or investigation. We’ll have more information later once we know.”

“We feel confident in our response to this incident, and we want the public to know we’re actively investigating what occurred, with information and support from . . . or in support of our colleagues at . . .”

TOOL TIP:
A sample checklist that can be used to assist your school district to develop an internal media response has been provided as [Appendix L](#).

Early Assessment of Situation or Event

As discussed above, it is important to understand the situation fully before making comments. Understand the vulnerabilities to the school district, look at the situation as if you were looking down from thirty thousand feet.

Recognize the shortness of their news cycles. Update the story immediately for them. Send over press releases and press kits quickly. They will be on to another story tomorrow. But don’t miss a chance to get them to do another, corrected story on your agency then.

Things to Do/Things to Remember

Press Conferences

Manage the batting order. Stop thanking everyone! Offer help from your IT people with their audio, lighting, and camera setups. Provide press releases with the names of the speakers, key officials, and contact information. Keep your face and tone neutral, friendly, professional, and polite. Never lose your cool. Be patient with stupid, obvious, long-winded, and compound questions. Know they will always ask one more after it’s over. Use your substitute “No Comment” phrases as necessary.

Print Interviews - Newspapers, Magazines, Blogs

Usually done by phone. Ask them to record you so you have some hope they will quote you accurately. If not, speak slowly, provide one sound bite at a time, and take breaks in between your ideas. Don’t assume they can take fast or accurate notes. Stick to your themes. Use bridging and your “no comment” protocols. Ask about their deadlines and be prompt in getting back to them. E-mail over a press kit, either right before or right after. Send a thank-you e-mail when they capture your words correctly and write a true and favorable story.

Radio Appearances

E-mail some questions to the producer in advance if you can. (Spell out your name phonetically if it's unusual). Have a message in mind. Prepare for the length: 30-second sound bite to one-hour long form. Talk in complete sentences; give them short sound bites, not long speeches. In-studio: test your mic, give short bites of information, be quiet and "on the record" in the studio. Phone-in: use a landline, get an inside callback number, no background noise. Try not to do it from your car or with a speaker phone. Be careful answering compound questions; break them up or come back to the second.

Radio – Live

Live or delayed broadcasts can be challenging. Remember, identify yourself, convey your talking point, express sincerely and politely, be respectful.

TV Appearances – Field

Give your business card and a press kit to the talent and/or the camera person. Help them choose a good location – low noise, good light and background. Discuss the questions they will ask in advance of the shoot. Help them co-develop a theme for the story. If you get tongue-tied, it's okay to ask them to reshoot it and answer the question again (once, probably). Know your 20 minutes will get edited down to 20 seconds.

TV Appearances – In Studio

Dress carefully: no vibrating checks, big plaids, or bright blues or greens (matches the Chromakey screens they use); no loose jewelry. Check hair, makeup, and outfit one last time. Sit on your suit coat. Give everyone on the production staff your business card (so they spell your name right in the Chyron captions and crawls). Keep your head and your hands still. Always keep your face neutral (you never know when the camera is on you). No side chats. Remember your bridging responses to provocative questions.

Skype Appearances

Prepare the room lighting, camera view, and audio well in advance. Avoid the nose hair/double-chin view. Set the look behind the camera – no distractions, movement, glare, inappropriate photos, posters, or people goofing off. Be ready to repeat your message more than once as they may have bad lighting or audio on their side. Sit still and keep your hands down; Skype often has refresh rate issues. Wait for the interviewer to ask each question before you start to answer.

Always know where the landmines are. Keep in mind the potential liability to the School District. Have a clear understanding of the exposures as a result of the event. Need for skilled leadership is critical to the success of media management. Don't be pressured into

making a comment before you are ready. The School District should work as quickly as possible to provide accurate information to the media through a spokesperson, written releases, or news briefing.

It will be helpful to the media to post the school districts media guidelines on the school's web site. It should identify a key contact person along with a phone number and email. Let the media know the School District strictly enforces and follows student privacy preferences and release of student information as outlined in FERPA guidelines (Family Educational Rights and Privacy Act).



CHAPTER 6: TRAINING

By:
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6.1 Sexual Abuse and Misconduct Prevention Training

When we think of school district employee training for the prevention of sexual abuse and misconduct, many school districts look to child abuse and mandated reporter training. While child abuse mandated reporter training⁶⁷ is required to be provided to school district employees within six weeks of hire, and then annually after that within the first six weeks of the school year, it is not the only training school districts should be providing.

Child abuse mandated reporter training is designed to cover all forms of abuse; therefore, only a small percentage of the training is designated to sexual abuse and misconduct. Furthermore, child abuse mandated reporter training is intended to teach school district employees how to recognize and report abuse after it has occurred. It is the goal of the school district to prevent sexual abuse and misconduct before it occurs. Therefore including additional training for school district employees to recognize signs of grooming or inappropriate student/adult boundaries is recommended.

Sexual abuse and misconduct prevention training shouldn't end with school district employees. Training to recognize the signs of grooming or inappropriate student/adult boundaries should be extended to parents, guardians, volunteers, chaperones, and contractors (school adults). School districts are also encouraged to provide age-appropriate sexual abuse and misconduct prevention training to students. There are instances in which a school district employee may not be the first person to recognize inappropriate interactions between a school district employee and a student, however without sufficient prevention training; the actions may be considered acceptable.

When preparing a sexual abuse and misconduct prevention training, consider tailoring training to include, at a minimum, the following learning objectives for each group:

School District Employees

- Working definition of sexual abuse and misconduct
- Explanation of the school district's boundary policy and/or code of conduct
- Explanation of how Child Abuse and Neglect Reporting Act (CANRA) works in conjunction with the school district's policies and the role of mandated reporters
- Warning signs of sexual abuse and misconduct
- Consequences of failing to report a suspected incident and protections for those that report in good faith
- Policies and procedures involving: transportation, off-site and on-site boundaries, digital media boundaries and toileting
- Appropriate and inappropriate school adult behaviors that fall into gray areas (behavior that is questionable but not criminal). Including interactions in person and online

TOOL TIP:
See [Chapter 2](#) for additional information on boundaries)

⁶⁷ California Ed Code § 44691

- Explanation of potential targets of sexual abuse and misconduct and how to address at-risk students
- Scenarios that require school district to determine appropriate actions such as reporting an incident to termination of employees
- Discuss steps taken to reduce the risk of sexual abuse and misconduct
- Identify the school Title IX coordinator, their role and how to reach them

TOOL TIP:
See [Chapter 3](#) for management strategies.

Parents/Guardians

- Working definition of sexual abuse and misconduct
- Overview of school districts boundary policy and/or code of conduct, to include:
 - The steps for reporting incidents
 - How to reach the Title IX coordinator and their role
 - Title IX investigation procedures
 - How parents are notified of the results of an investigation
- Specific examples of the school district’s efforts to prevent incidents of sexual abuse and misconduct
- How the school district monitors interactions between school district employees and students and what interactions are acceptable
- Age-appropriate talking points for discussing inappropriate adult behaviors, privacy, personal boundaries, and online safety with their children
- Tips for online safety
- Overview of student training

TOOL TIP:
See [Chapter 4](#) additional information on Title IX.

Students

- Working definition of sexual abuse and misconduct
- Age-appropriate version of the school district’s boundary policy and/or code of conduct
- Where and how to report suspected sexual abuse and misconduct
- Common patterns of behaviors of perpetrators including forms of grooming that may occur electronically
- Meaningful examples of sexual abuse and misconduct to include scenarios
- Appropriate and inappropriate school adult behaviors that fall into gray areas (behavior that is questionable but not criminal). Include:
 - A description of as many behaviors as possible
 - Real life examples of sexual abuse and misconduct (local or national media source)
 - Scenarios that require students to determine appropriate actions such as reporting an incident to halting inappropriate behavior
 - An opportunity for students to work through coached scenarios

- Details about safeguards in place to protect students from retaliation for reporting
- Discuss the potential repercussions and potential punishment for intentionally making a false claim

Volunteers/Contractors

- Working definition of sexual abuse and misconduct
- Overview of school district's boundary policy and/or code of conduct
- Meaningful examples of sexual abuse and misconduct to include scenarios
- How to report suspected case of sexual abuse and misconduct
- Policies and procedures involving: transportation, off-site and on-site boundaries, digital media boundaries and toileting
- Appropriate and inappropriate school adult behaviors that fall into gray areas (behavior that is questionable but not criminal). Including interactions in person and online

TOOL TIP:
For guidance on developing a Staff/Student Boundary Policy, see Chapter 2.

When you provide sexual abuse and misconduct prevention training to school adults, they can identify unacceptable behaviors that precede sexual abuse and misconduct. However, the prevention of sexual abuse and misconduct often only occurs when a school adult is empowered to identify and interrupt those unacceptable behaviors. One way school districts can ensure school adults will be empowered to apply their knowledge is to create a formal staff/student boundary policy. School district staff/student boundary policies provide a mechanism for objective decision making and transform the confusion about inappropriate behaviors into concrete expectations for every school adult to abide.



CHAPTER 7: DOCUMENTATION AND RECORDKEEPING

By:

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PRISM

7.1 Introduction

Given the serious nature of childhood sexual assault and its effects, there is a significant probability that legal claims will arise out of incidents of the same. As such, a school district must be prepared to address and respond to such claims. Documenting the steps a school district took to prevent, respond to, and remedy alleged incidents of childhood sexual assault are important for curtailing a school district's potential liability exposure. This Chapter focuses on what school districts should document, how to document properly, the maintenance of such documentation, and how long to retain such documentation.

Of central concern to school districts is how long the documentation must be retained. Notably, a recent change in the law affects this analysis. On October 13, 2019, California Governor, Gavin Newsom, signed into law Assembly Bill 218 which, in relevant part, extends the statute of limitations for initiating a lawsuit regarding alleged childhood sexual assault from “until the alleged victim reaches the age of 26” to “until the alleged victim reaches the age of 40.” Code of Civil Procedure section 340.1⁶⁸ now affords potential plaintiffs alleging a claim for damages resulting from childhood sexual assault, the ability to file a lawsuit “within 22 years of the date the plaintiff attains the age of majority or within five years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual assault, whichever period expires later . . .”,⁶⁹ whether the suit is directly against the alleged aggressor or based upon other theories of liability against a local agency, including a school district. Code of Civil Procedure section 340.1 also states that a potential plaintiff is barred from initiating a lawsuit arising from an incident of childhood sexual assault against a local agency, including a school district, after the plaintiff turns 40, unless the local agency knew or had reason to know of the childhood sexual assault and failed to take action, in which case the limitations period is extended.⁷⁰ Finally, as of January 1, 2019, a local entity is prohibited from adopting a local policy under Government Code section 935 that would make claims for childhood sexual assault subject to the six month or one year claim presentation requirements under the California Government Claims Act (“Act”).⁷¹ The effect of these statutes is that school districts can be sued, without prior warning, for events that took place far in the past.⁷²

⁶⁸ C.C.P. § 340.1 was revised as of October 13, 2019 pursuant to California Assembly Bill 218.

⁶⁹ C.C.P. § 340.1, subd. (a).

⁷⁰ C.C.P. § 340.1, subd. (c).

⁷¹ Gov. Code § 905, subd. (m).

⁷² Note, currently pending before the California Court of Appeal, Fifth Appellate District, is *Big Oak Flat-Groveland Unified School District v. Superior Court*, Case No. F074265, in which the Court of Appeal will determine whether a local entity could subject claims of childhood sexual assault to a six month or one year claim filing period under a local policy adopted pursuant to Government Code section 935, *before January 1, 2019*. The outcome of this case will necessarily effect the applicable statute of limitations for childhood sexual assault claims which arose before January 1, 2019, for those school districts with an appropriate policy in place during that time period.

As such, the extended statute of limitations for initiating childhood sexual assault lawsuits against school districts under Code of Civil Procedure section 340.1 necessarily impacts the decision of and options for school districts regarding the retention period for documentation relevant to a district's defenses against wrongdoing in such lawsuits.

7.2 Potential Legal Claims Arising Out of Incidents of Childhood Sexual Assault

An incident of childhood sexual assault that took place in, or has a nexus to, the educational environment has criminal, civil, and administrative implications for school districts. The following is a summary of potential judicial and administrative legal claims that may arise from an alleged incident of childhood sexual assault that took place in, or has a nexus to, the educational environment.

Criminal Lawsuits

A school district cannot be criminally liable for an incident of childhood sexual assault by one of its employees.⁷³ However, because of a school district's unique proximity to the daily lives of its employees and students, a school district is often an important actor with regard to gathering and providing helpful evidence relevant to criminal proceedings arising out of an incident of childhood sexual assault. For example, and without limitation, a school district may be asked to provide information regarding its receipt of an allegation of childhood sexual assault and its administrative investigation into that allegation. Also, law enforcement authorities may call upon school district employees to testify as witnesses in a legal proceeding about their knowledge of the alleged childhood sexual assault and its effect on the alleged victim.

Civil Lawsuits

More commonly, school districts are sued in civil court, by an alleged victim, for claims of negligence relating to the childhood sexual assault including, but not limited to, negligent hiring, negligent retention, and negligent supervision.⁷⁴ In some cases, an alleged victim may also sue a school district for failing to report the incident, failing to address the incident, and/or trying to cover up their knowledge of the incident. The basic legal theory in these cases is that a school district has a legal duty to ensure the safety of its students

⁷³ See, e.g., *Alma W. v. Oakland Unified School Dist.* (1981) 123 Cal.App.3d 133 (holding that an act of rape by school district employee was not attributable to the employing school district because it was neither a required nor incidental duty of the school employee, nor was it a reasonably foreseeable consequence of the educational enterprise).

⁷⁴ See *Minor v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861 (holding that a public school district may be vicariously liable for the negligence of administrators or supervisors in hiring, supervising and retaining a school employee who sexually harasses and abuses a student); see also Ed Code §§ 44830.1, 45122.1, 45123, 45124, 45125 and 45125.01, which generally prohibit school districts from employing individuals convicted of sex crimes.

and staff and that as a result of the school district's action or inaction the incident of childhood sexual assault occurred. In order to be successful on a claim of negligence against a school district, a plaintiff must prove four things: (1) the school district owed a legal duty to the plaintiff; (2) the school district breached its legal duty; (3) because of the breach the plaintiff incurred harm; and (4) the plaintiff actually incurred harm.⁷⁵ "Legal duty" means conforming to a certain standard of care for the protection of others against unreasonable risks.

School districts may also be sued by the individual accused of committing the childhood sexual assault for claims such as defamation or wrongful termination. A defamation claim might arise if the individual accused of childhood sexual assault perceives that the allegation is untrue and was made in bad faith. In order to prevail on such a claim, the accused must prove: (1) an intentional publication of a statement of fact, (2) that is false, (3) that is unprivileged, (4) that has a natural tendency to injure or which causes "special damage", and (5) it was the school district's fault in publishing the statement amounted to at least negligence.⁷⁶

A claim of wrongful termination might arise where a school district terminates an employee as a result of an allegation of childhood sexual assault asserted against the employee. In order to prevail on such a claim, the employee must prove: (1) an employer-employee relationship, (2) the employer terminated the plaintiff's employment, (3) the termination was substantially motivated by an unlawful reason/violation of public policy, and (4) the discharge caused the plaintiff harm.⁷⁷

Administrative Proceedings

Underlying claims of childhood sexual assault also have implications for school districts in terms of administrative proceedings, relevant examples of which are discussed below.

Disciplinary Proceedings

Where an allegation of childhood sexual assault is substantiated against a school district employee, and the school district wishes to terminate the employee as a result, the school district must follow its applicable dismissal processes. For certificated employees, the relevant dismissal processes are found in Education Code sections 44932 through 44958; applicable board policies and administrative regulations, which can include California School Board Association ("CSBA") model board policy and administrative regulation 4117.4; and/or in a collective bargaining agreement ("CBA") negotiated with the exclusive representative of the school district's certificated employees.

⁷⁵ *Budd v. Nixen* (1971) 6 Cal.3d 195, 200.

⁷⁶ *Jackson v. Mayweather* (2017) 10 Cal.App.5th 1240, 1259.

⁷⁷ *Yau v. Allen* (2014) 229 Cal.App.4th 144, 154.

For classified employees, the relevant dismissal processes are found in Education Code sections 45116, 45122.1, 45123, and 45124; applicable board policies and administrative regulations, which can include CSBA model board policies and administrative regulations 4217.4 and 4218; and/or in a CBA negotiated with the exclusive representative of the school district’s classified employees.

For management, supervisory and confidential employees, the relevant dismissal processes are most often found in an employee’s employment contract, or applicable board policies and administrative regulations, which can include CSBA model board policy and administrative regulation 4317.4.

Similarly, in the event an allegation of childhood sexual assault is substantiated against a student and the school district wishes to expel the student as a result, the school district must follow applicable expulsion procedures. Such procedures are found in Education Code sections 48900 et seq. and applicable board policies and administrative regulations, which can include CSBA model board policy and administrative regulations 5144.1.

Sexual Harassment Complaint and Uniform Complaint Procedures

Allegations of childhood sexual assault can trigger a contemporaneous sexual harassment/discrimination complaint filed in accordance with a school district’s adopted uniform complaint procedures (“UCP”) and/or a district’s sexual harassment complaint procedures.⁷⁸ Such policies and procedures are required to be adopted via school district board policies, which can include CSBA model board policies and administrative regulations 1312.3 (UCP), 5145.3 (non-discrimination, harassment, intimidation and bullying), and 5145.7 (sexual harassment). As part of the procedures, the school district must conduct an investigation into the complaint. Under the UCP, the complainant may appeal the school district’s findings to the California Department of Education (“CDE”).

OCR Investigation and/or Compliance Audit

As discussed in Chapter 4, under Title IX of the Education Amendments Act of 1972 (20 U.S.C. §§ 1681 et seq.) (“Title IX”), school districts have specific legal obligations when it comes to investigating and remedying allegations of childhood sexual assault.⁷⁹ A failure to conduct a complete and thorough investigation into an allegation of childhood sexual assault, in compliance with its legal obligations, could trigger an audit by the Office of Civil Rights of United States Department of Education (“DOE OCR”) or the Office of Civil Rights of the United States Department of Justice (“DOJ OCR”). Additionally, an alleged victim may file a complaint with OCR if he or she believes the school district did not properly investigate or address his or her complaint of childhood sexual assault.

⁷⁸ See Ed Code §§ 200, 212.5, 220, 234.1; Cal. Code Regs., tit. 5, § 4600 et seq.

⁷⁹ This is typically done in accordance with the school district’s adopted uniform complaint procedures.

7.3 Hiring Decisions

Why Document a School District’s Hiring Decisions?

As discussed in Chapter 1, school districts are generally prohibited from employing individuals convicted of sexual assault unless the individual provides proof of rehabilitation or that the conviction has been overturned.⁸⁰ A thorough application and vetting process serves as a gatekeeping function to weed out individuals who have a known propensity to engage in acts of sexual assault, i.e., they have previously engaged in such conduct. In the litigation context, documenting a thorough application and vetting process can help a school district demonstrate that it made an appropriate and reasonable hiring decision based on the information known at the time of hire.

What and How to Document?

Application Process Documentation Generally

An application and vetting process is likely to generate the following documents (herein collectively referred to as “application file”):

- application form;
- resume;
- cover letter;
- list of references;
- criminal history reports; and
- interview notes.

Most relevant here are criminal background checks and interview notes.

Criminal History Reports

School districts are statutorily required to conduct criminal background checks for all applicants and must do so in accordance with the applicable Education Code provisions.⁸¹ While there is no legal requirement that a school district maintain a criminal history report of an employment applicant, maintaining the criminal history report may allow a school district, if challenged, the ability to demonstrate that a criminal background check was conducted and that the criminal history report supports the school district’s hiring decision.

⁸⁰ See California Ed Code §§ 44830.1, 45122.1, 45123, 45124, 45125 and 45125.01. Note, California’s restrictions on when an employer can consider an applicant’s criminal history in the hiring process does not apply to school districts. (See Gov. Code § 12952, subd. (d)(1) and (4).)

⁸¹ See California Ed Code §§ 44830.1, 45122.1, 45123, 45124, 45125 and 45125.01. Note, California’s restrictions on when an employer can consider an applicant’s criminal history in the hiring process does not apply to school district. (See Gov. Code § 12952, subd. (d)(1) and (4).)

Ultimately, it is up to the school district to decide whether it wishes to keep such reports. Regardless of the school district's practice, consistency is key, i.e., either keep them for everyone or don't keep them for everyone.

If a school district decides not to maintain copies of criminal history reports, it should implement, and consistently follow, a practice of documenting that a criminal history report was obtained and reviewed, when it was obtained and reviewed, and the conclusion reached by the district as a result of that process (e.g., no reported criminal misconduct by the applicant).

Interview Notes

Many school districts have a practice of taking notes while interviewing job applicants. Doing so can help decision makers evaluate the qualifications of applicants at the time of the hiring decision. However, interviewers must be cautious about what they document. Interviewers should never memorialize their thoughts or comments about an applicant's protected status, i.e., gender, race, disability, national origin, criminal history, etc. By way of example, in the context of childhood sexual assault, memorializing a thought to the effect of "looks like a sex offender," might later support a claim of discrimination or failure to hire. Such written notes are therefore strongly discouraged.

Where a school district engages in the practice of taking notes during interviews of job applicants, the following practices are recommended:

- create and use a standard candidate evaluation form to be used by interviewers;
- the evaluation form should encourage rating the candidate using a number scale;
- interview notes should only contain a factual record of what the applicant stated in the interview;
- interview notes should not contain contents or information unrelated to the questions posed to the applicant; and
- interview notes should not contain comments evidencing the interviewer's own speculation, conclusions, or biases.

Where to Maintain Subject Documents

Upon hire, the employee's application file can be placed in the employee's official personnel file.⁸² School districts should maintain official personnel files in the human resources department at the school district's main office. Districts should maintain official personnel files in a locked cabinet, or if stored electronically, under password protection.

⁸² Cal. Code Regs., tit. 5, § 16023, subd. (c)(1)(A).

Access to such files should exist only for those district officials and staff which have a “need to know” related to official district business.

Note, if a school district engages in the practice of retaining notes created during an interview of an applicant, those notes should not be kept in the employee’s official personnel file.⁸³ Rather, they should be kept in a separate working file. We recommend, working files be kept by the school district’s human resources department; however, they may also be kept by the school site principal. Similar to an employee’s official personnel file, districts should maintain any “working files” in a locked cabinet, or if stored electronically, under password protection. Again, access to such files should exist only for those district officials and staff which have a “need to know” related to official district business.

For How Long Should Such Documents be Maintained

Official personnel files are required by law to be retained for at least three years after an employee’s separation from employment.⁸⁴ Depending upon the circumstances, however, and especially if litigation is anticipated, districts may need to retain such records for a longer period of time. If a school district is uncertain whether it is permitted to cease retaining a given employee’s official personnel file, the district should contact its legal counsel.

There is no legal authority dictating how long “working files” must be kept. To maintain consistency, a recommended best practice is to retain the “working file” for at least three years after an employee’s separation from employment. However, depending upon the circumstances, and especially if litigation is anticipated, a school district may need to retain such records for a longer period of time. If a school district is uncertain whether it is permitted to cease retaining working files regarding a given employee, the district should contact its legal counsel.

7.4 Prevention of Childhood Sexual Assault

Why Document?

There is no fool proof way to prevent childhood sexual assault. Even where a school district takes every reasonable precaution, childhood sexual assault may still occur. However, documenting the proactive steps taken by a school district to prevent childhood sexual assault is central to bolstering a defense to a negligence claim.

⁸³ Lab. Code § 1198.5, subd. (h)(3)(A).

⁸⁴ Lab. Code § 1198.5, subd. (c)(1).

What and How to Document?

Board Policies and Administrative Regulations

Board policies and administrative regulations are a helpful way to articulate clear standards and expectations of conduct, and the repercussions for failure to adhere to them. Chapter 3 discusses several recommended codes of conduct in depth. It is a good practice for school districts to regularly review their board policies and administrative regulations to ensure they are up to date and legally compliant.

In the context of legal claims, school districts may rely upon the existence of applicable board policies and administrative regulations as evidence to show that the district provided notice of its behavior expectations and that engaging in sexual misconduct, such as childhood sexual assault, constitutes a failure to meet those behavior expectations.

Employee Trainings

As discussed in Chapter 6, school districts should consider providing employees and students training on the topic of childhood sexual assault. Doing so can be used as evidence to defend against claims of negligence, to support disciplinary charges against an employee, and to demonstrate compliance with a school district's Title IX obligations. Where trainings are provided, use of attendance sheets are recommended. The attendance sheet should include the following information:

- date of the training session;
- title of the training session;
- location of the training session; and
- names/ signatures of attendees.

Maintenance of records regarding trainings should include the attendance sheet/record noted above, along with copies of the materials covered and/or distributed for the training.

Where to Maintain Subject Documents?

Board Policies and Administrative Regulations

Board policies and administrative regulations should be readily accessible to all members of the school community. Best practice is to post them on the school district's website. They can also be kept in hard copy at the district office. As noted below, if policies and regulations are changed over time, school districts should maintain a record of the changes made.

Employee Trainings

School districts should retain the attendance sheets and training materials in accordance with its record retention policy. Such documents need not be retained in individual employee personnel files. Rather, they should be kept separately, either in hard copy or electronically, by the school district's human resources department.

For How Long Should the Documents be Maintained?

There is no legal authority on point as to how long the above identified documents should be kept by a school district. The governing board of the school district and the superintendent shall coordinate to determine how long such documents shall be kept.⁸⁵ However, because a claim for liability against a school district based upon alleged childhood sexual assault may be asserted several years after the occurrence of the underlying incident, school districts should maintain copies of policies and regulations and subject training documentation for up to 35 years, and longer if desired, based upon the ability of a victim of childhood sexual assault to file a lawsuit by age 40, and even later if the school district sued “knew or had reason to know, or was otherwise on notice, of any misconduct that creates a risk of childhood sexual assault by an employee, volunteer, representative, or agent, or the person or entity failed to take reasonable steps or to implement reasonable safeguards to avoid acts of childhood sexual assault.”⁸⁶

A 35-year retention period would account for a potential plaintiff incurring harm in kindergarten, and filing a claim within twenty-two years of reaching majority age, i.e., age 40. Out of an abundance of caution, districts may determine it is best to retain the subject records for 40 years.

Importantly, this recommendation only applies to board policies, administrative regulations, and trainings on the topic of childhood sexual assault, not to all board policies, administrative regulations, and trainings.

Further, a retention period of this length inherently comes with logistical issues as various school district employees are sure to come and go within a time span of 35-40 years. As such, a best practice is to properly label and store files related to allegations of childhood sexual assault. If a school district has questions regarding this retention period, it should contact its legal counsel.

⁸⁵ See Cal. Code Regs., tit. 5, §§ 16022–16024.

⁸⁶ Code of Civil Procedure § 340.1(a) and (c).

7.5 Allegations of Childhood Sexual Assault

Why Document?

There are many different ways in which a school district can be put on notice of allegations of childhood sexual assault. In an ideal scenario, a formal written complaint is submitted to a school site administrator, district office administrator, or Title IX Coordinator.⁸⁷ However, this is not always the case. Frequently, either the victim or a concerned individual (“reporting party”) verbally reports the alleged childhood sexual assault to a school district employee; a school district employee personally observes signs of childhood sexual assault; or a school district employee is privy to one or more conversations that trigger a reasonable suspicion of childhood sexual assault. Documenting that a complaint or notice of grounds for a complaint was received and the details of what was reported is crucial to establishing compliance with a school district’s Title IX and mandated reporter obligations.

What and How to Document?

Written Complaints

Many school districts have designated complaint forms. School districts should encourage use of a complaint form and make it readily available to all members of the school community. At minimum, a complaint form should include:

- Name of the alleged victim/reporting party;
- Phone and email address for the alleged victim/reporting party;
- Name of the individual accused of engaging in the childhood sexual assault;
- Date the written complaint was received by the school district;
- Name of individual receiving the complaint;
- Date(s) of the alleged incident(s) of childhood sexual assault;
- A brief summary of what happened in each instance (the more detail the better);
- Names of witnesses, if any; and
- Remedy sought by the victim/reporting party.

Even absent use of a district’s formal complaint form, school districts may receive written complaints which do not include all of the above characteristics. Such written complaints are no less important, and must be addressed the same as complaints submitted through a formal district form.

⁸⁷ A Title IX Coordinator is an employee of a school district who is responsible for receiving and in taking complaints alleging Title IX violations, including childhood sexual assault. (34 C.F.R. § 106.8.)

Verbal Complaints

As a matter of best practices, a school district employee who is the initial recipient of a verbal allegation of childhood sexual assault, should, within a reasonable time (best practice is the same day), write down the information received, sign it, date it, and provide it to the district's Title IX Coordinator, school site administrator, and/or district level administrator, as appropriate under the circumstances. Best practice is for the memorialization of information to include the following:

- identity of the alleged victim/reporting party;
- identity of the individual being accused;
- any witnesses named by the alleged victim/reporting party;
- date, time, and location of Incident; and details of what occurred.

Personal Observations

Identical to receiving a verbal complaint of childhood sexual assault, a school district employee who personally observes conduct by another that provides actual notice or triggers a reasonable suspicion of childhood sexual assault, should at the very least verbally report the conduct to the Title IX Coordinator, school site administrator, and/or district level administrator, as appropriate under the circumstances. As a matter of best practices, an employee who personally observes conduct giving rise to a reasonable suspicion of childhood sexual assault should, within a reasonable time (best practice is the same day), write down the employee's observations and provide it to the Title IX Coordinator, school site administrator, and/or district level administrator, as appropriate under the circumstances. The written statement should be signed and dated by the observing party.

Mandated Reports

In addition to documenting a complaint of childhood sexual assault for internal use by a school district, all school district employees are mandatory reporters and therefore have a legal obligation to report actual knowledge or reasonable suspicion of childhood sexual assault to the appropriate authorities.⁸⁸

Making a mandated report is a two-step process. First, as soon as practically possible (best practice is the same day), the mandatory reporter must telephonically report the incident. To do so, mandatory reporters must call one of the following agencies:

- A Police or Sheriff's Department (not including a school district police department or school security department);

⁸⁸ See the Child Abuse and Neglect Reporting Act ("CANRA"), Penal Code §§ 11164 et seq.

- A County Probation Department, if designated by the county to receive childhood sexual assault reports; or
- A County Welfare Department/County Child Protective Services (“CPS”).

School districts are encouraged to have the phone numbers for such agencies readily available to their employees.

Within thirty-six (36) hours of the initial phone call, a mandatory reporter must also file a written report with local law enforcement or CPS. School districts are encouraged to have the form readily available to their employees.

TOOL TIP:
A copy of the form for making such a report is attached as Appendix H.

Importantly, reporting the alleged incident to an “employer, supervisor, school principal, school counselor, coworker, or other person” does not constitute making a mandated report.⁸⁹

Failure to make a CPS report where a mandatory reporter has actual knowledge or reasonable suspicion of childhood sexual assault, is a misdemeanor punishable by jail time or a fine.⁹⁰ However, mandated reporters have absolute immunity from civil and criminal liability for making required reports, unless the mandated reporter knew the report was false or made the report with reckless disregard for the truth. Accordingly, it is better to report and be wrong than to not report and have the alleged victim be subject to further harm.

There is no legal authority requiring a school district to keep a copy of mandated reports filed by its employees. Rather, legal authority seemingly places the burden on the agency receiving the mandated report, i.e., CPS or local law enforcement, to maintain that record.⁹¹ The instructions on the California Department of Justice’s Suspected Child Abuse Report Form direct the mandatory reporter to “retain a copy for your records and submit copies to the designated agency.” Accordingly, while it is within the mandated reporter’s discretion as to whether he/she wishes to retain a copy of the mandated report, maintenance of such record by the reporting employee is highly recommended.

Where to Maintain Subject Documents?

Since the mandated reporter, not the school district, is responsible for keeping a copy of the mandated report and is the one who would be ultimately liable for not making the report, it is within the discretion of the mandated reporter as to where to keep the report. Assuming the mandated reporter keeps a copy of the report, the report should be

⁸⁹ Pen. Code § 11166, subd. (i)(3).

⁹⁰ Pen. Code § 11166, subd. (c).

⁹¹ Pen. Code §§ 11165.9 and 11170.

maintained in a secure location. If kept in hard copy, storage in a locked cabinet is best. If kept electronically, then storage via a password protected file is best.

For How Long Should the Documents be Maintained?

There is no legal authority regarding how long to retain a complaint of childhood sexual assault or related records. The same goes for the maintenance of a mandatory reporter's reports.

Pursuant to the above discussion, however, a potential plaintiff is able to file a civil lawsuit in some cases up to age 40, and in other cases at an even later date. As such, a mandatory reporter should maintain copies of mandatory reports alleging childhood sexual assault for up to 35 years, and longer if desired.

A 35-year retention period would account for a potential plaintiff incurring harm in kindergarten, and filing a claim within twenty-two years of reaching majority age, i.e., age 40. Out of an abundance of caution, districts may determine it is best to retain the subject records for 40 years.

Further, a retention period of this length inherently comes with logistical issues as various school district employees are sure to come and go within a time span of 35-40 years. As such, a best practice is to properly label and store files related to allegations of childhood sexual assault. If a school district has questions regarding this retention period, it should contact its legal counsel.

7.6 Internal Investigations into Complaints of Childhood Sexual Assault

Why Document?

Documenting a timely and thorough response to an allegation of childhood sexual assault can go a long way in defending criminal, civil, and administrative claims arising out of incidents of the same. Evidence gathered by a school district can be used to prosecute or defend against a criminal charge; demonstrate that a school district acted appropriately under the circumstances; and support disciplinary charges against employees and/or students.

What and How to Document?

Investigation Documentation Generally

There is no legal authority regarding what documents must be included in an investigation file. However, a school district should retain enough documentation to establish it conducted a complete, thorough investigation and arrived at sound findings. Best practice is to retain all documents acquired, reviewed, relied on, and generated during an

investigation. More specifically, at minimum, an internal investigation file should include a copy of the following documents:

- Written complaint or memorialization of verbal complaint/personal observations;
- Notice to parties of investigation;
- All documents received from the parties and/or witnesses during the investigation;
- All documents gathered or discovered by the investigator during the investigation through file review, research, or electronic searches;
- All documents relevant to the integrity of the investigation, such as communications with witnesses showing efforts to conduct a timely investigation, communications that demonstrate the investigator's impartiality, or communications that demonstrate efforts made to gather all relevant documents;
- Final Investigation Report/Executive Summary;
- Notices of investigation findings to parties; and
- Appeal(s) of investigation findings.

Interview Notes

A common question regarding the contents of an investigation file is whether an investigator must include witness interview notes in the investigation file. In short, there is no legal authority requiring an investigator to retain his/her witness interview notes. However, there are pros and cons to the practice of destroying witness interview notes.

The practice of destroying witness interview notes is only as good as the information and analysis contained in the investigation report. If the information memorialized in the witness interview notes is adequately captured in the investigation report, i.e., the investigation report includes a summary of witness testimony as well as solid analysis supporting the findings, then the absence of investigation witness interview notes is less likely to be raised or made an issue by the CDE on a uniform complaint appeal, in relation to an OCR investigation, and/or in any potential litigation that follows an internal investigation. On the other hand, if the investigation report is not thorough or complete, then the absence of witness interview notes may be raised as a concern by CDE, OCR, or a court. It is up to the individual school district to determine whether it wants to engage in the practice of destroying witness interview notes or keep them. Importantly, a school district should be consistent in its practice—either keep all interview notes or delete all interview notes.

If a school district engages in the practice of retaining interview notes in its investigation files, the following are recommended best practices:

- interview notes should only contain a factual record of what the witness stated in the interview;
- interview notes should not contain contents or information unrelated to the investigation or questions posed to the witness; and
- interview notes should not contain comments evidencing the investigator’s own speculation, conclusions, or biases.

Internal Drafts of Investigation Report/Executive Summary

Another common question is whether internal drafts of an investigation report/executive summary should be retained in the investigation file. “Internal drafts” are defined as the changes, edits, revisions, and comments made to one or more versions of the investigation report/executive summary before it is finalized. There is no legal authority requiring an investigator to retain internal drafts of an investigation report/executive summary. Since internal drafts likely do not reflect an investigation report author’s best work or a complete analysis, there is a strong argument that internal drafts are not relevant and therefore should be destroyed. A common practice is to destroy internal drafts after the investigation report/executive summary is finalized.

Coordination with Safety Department and/or Law Enforcement

Some school districts have their own police, safety and/or security department. Others have contracts with local law enforcement agencies to utilize school resource officers at individual school sites. Given the criminal implications of childhood sexual assault claims and to the extent possible, school districts should coordinate their internal investigations with these entities. All documents generated by a school district’s safety department, including but not limited to incident reports and witness statements, should be retained and maintained in the school district’s internal investigation file.

Documents generated by local law enforcement, including school resource officers, such as arrest reports or crime/incident reports, belong to law enforcement and are typically only disclosed through a Public Records Act request, a subpoena, or proper litigation discovery request.

Where Should an Internal Investigation File be Maintained?

An internal investigation file must be kept separate and apart from a personnel file or a student record.⁹² Internal investigation files regarding claims of childhood sexual assault should be retained and maintained by the school district’s Title IX Coordinator in his/her office. If internal investigation files are kept electronically, they should be password protected. If internal investigation files are kept in hard copy, they should be kept in a

⁹² Lab. Code § 1198.5, subd. (h)(1).

locked file cabinet. If there is a transition of individuals holding the Title IX Coordinator position, the outgoing Title IX Coordinator should train the incoming Title IX Coordinator on how internal investigation files are retained and maintained.

Who Should Have Access to Internal Investigation Files?

Internal investigation files should only be accessed by those district officials and staff with a proper district-business related “need to know.” Title IX Coordinators, school site administrators, and cabinet level administrators may have occasion to need to know about the contents of an internal investigation file. Of course, if the allegation of childhood sexual assault is against one of these individuals then the accused should be prohibited from having access to the investigation file. It may be prudent to document the chain of custody of the investigation file in the event there is claim that the investigation file has been altered.

How Long Should an Investigation File be Maintained?

Internal investigation files should be retained for at least as long as the statute of limitation for potential legal claims. As discussed above, a victim of childhood sexual assault has until age 40 to file a lawsuit alleging negligence arising out of an incident of childhood sexual assault, and even later if the defendant sued “knew or had reason to know, or was otherwise on notice, of any misconduct that creates a risk of childhood sexual assault by an employee, volunteer, representative, or agent, or the person or entity failed to take reasonable steps or to implement reasonable safeguards to avoid acts of childhood sexual assault.”⁹³ Accordingly, best practice is to retain the investigation file for at least 35 years.

A 35-year retention period would account for a potential plaintiff incurring harm in kindergarten, and filing a claim within twenty-two years of reaching majority age, i.e., age 40. Out of an abundance of caution, districts may determine it is best to retain the subject records for 40 years.

Importantly, this recommendation only applies to board policies, administrative regulations, and trainings on the topic of childhood sexual assault, not to all board policies, administrative regulations, and trainings.

Further, a retention period of this length inherently comes with logistical issues as various school district employees are sure to come and go within a time span of 35-40 years. As such, a best practice is to properly label and store files related to allegations of childhood sexual assault. If a school district has questions regarding this retention period, it should contact its legal counsel.

⁹³ Code of Civ. Proc. § 340.1, subd. (c).

7.7 Remedial/Corrective Action

Why Document?

Under Title IX, a school district must take remedial or corrective action where allegations of childhood sexual assault are sustained. Such action may include, but is not limited to, discipline of the responsible individual; revising protocol for reporting and processing complaints to encourage reporting and ensure that no complaints fall through the cracks; and providing additional training to employees and students. Documenting remedial/corrective action can help demonstrate that the school district acted reasonably under the circumstances.

What and How to Document?

Discipline

All discipline arising out of substantiated allegations of childhood sexual assault must be documented in accordance with Education Code, board policy, and administrative regulations. At minimum, the disciplinary charges must include the following information:

- the conduct forming the basis for the discipline;
- the laws, policies, and/or regulations that the discipline violates; and
- notice to the employee that he/she has an opportunity to respond.

Change in Protocols

Where board policies, administrative regulations, or other school district protocols or procedures are changed to cultivate more streamlined practices, the school district should maintain a copy of the old document in addition to the new document.

Trainings

Where trainings are provided, use of attendance sheets are recommended. The attendance sheet should include the following information:

- date of the training session;
- title of the training session;
- location of the training session; and
- names/signatures of attendees.

Maintenance of records regarding trainings should include the attendance sheet/record noted above, along with copies of the trainings materials covered and/or distributed for the training.

Where Should the Documents be Maintained?

Discipline

After an employee has received notice of the disciplinary documents and had an opportunity to respond to them, the disciplinary documents may be placed in the employee's official personnel file.

Change in Protocols

Old copies of board policies, administrative regulations, or other protocols should be maintained in the school district's human resources department. Current copies of board

policies, administrative regulations, and other protocols should be readily accessible to the public. Best practice is to publish them on the school district's website.

Trainings

The attendance sheets and training materials should be retained by the school district in accordance with its record retention policy. Such documents need not be retained in individual employee personnel files. Rather, they should be kept separately either in hard copy or electronically by the school district's human resources department.

For How Long Should the Documents be Maintained?

Discipline

Official personnel files are required by law to be retained for at least three years after separation from employment.⁹⁴

Change in Protocols and Trainings

There is no legal authority on point as to how long the above identified documents should be kept by a school district. The governing board of the school district and the superintendent shall coordinate to determine how long such documents shall be kept.⁹⁵ For the reasons stated above, best practice is to retain change in protocols and trainings for at least 35 years.

A 35-year retention period would account for a potential plaintiff incurring harm in kindergarten, and filing a claim within twenty-two years of reaching majority age, i.e., age 40. Out of an abundance of caution, districts may determine it is best to retain the subject records for 40 years.

Importantly, this recommendation only applies to board policies, administrative regulations, and trainings on the topic of childhood sexual assault, not to all board policies, administrative regulations, and trainings.

Further, a retention period of this length inherently comes with logistical issues as various school district employees are sure to come and go within a time span of 35-40 years. As such, a best practice is to properly label and store files related to allegations of childhood sexual assault. If a school district has questions regarding this retention period, it should contact its legal counsel.

⁹⁴ Lab. Code § 1198.5, subd. (c)(1).

⁹⁵ See Cal. Code Regs., tit. 5, §§ 16022–16024.

Forms and Templates - Appendix A

SAMPLE APPLICATION PROCESS



SAMPLE APPLICATION PROCESS

Thank you for your interest in a (insert type i.e. certificated or classified) position. The school district adheres to the following application process for all applicants:

1. Complete an online application for the desired position.
2. Include the following documents as attachments to your application:
 - Letter of interest
 - Current resume
 - One letter of reference from current or most recent principal/supervisor (on letterhead, signed & dated within one year)
 - Official transcripts of all college work completed with degree posted (original documents required)
 - Copy of CBEST passage or Verification of Basic Skills Requirement
 - Copies of your credentials/certificates, including CTC document number and issue and expiration date
3. Link your online application to an open position to ensure your completed application materials can be seen by screening committees.
4. Human Resources will verify all application information for candidates who meet the basic job requirements, including educational history, employment history, and credential/certification history.
5. A screening committee comprised of principals and department chairs, will screen completed and validated application materials and select candidates to interview for specific positions; they will notify Human Resources of selected candidates.
6. Once all rounds of interviews have been conducted, Human Resources will notify all applicants not selected for an interview.
7. Candidates are contacted by Human Resources and interviewed by school district principals and supervisors.
8. Candidates are requested to teach a demonstration lesson for a school district team in their own classroom if currently teaching or in one of our classrooms.
9. Human Resources will conduct a complete professional reference check and a thorough background check.
10. Human Resources will contact selected candidates with a conditional employment offer to discuss salary, placement, benefits, and general employment terms.
11. All offers of employment will be contingent upon:
 - a. Clearing a U.S. Department of Justice criminal background check undertaken through Live Scan fingerprinting process
 - b. Completion of the school district's on-line child sexual abuse prevention training
 - c. Acceptance of the school district's Staff-Student Professional Boundary Policy

12. The Board of Education must approve all teacher hires

* Note - This application process should be uniformly enforced for all candidates.

A public representation of the school district's protective screening practices in the early stages of the applicant screening process will reflect the school district's commitment to protecting students by not just incorporating legally required background checks, but also by incorporating other protective practices that further serve to deter predators who are seeking access to students in order to abuse.

Forms and Templates - Appendix B

SAMPLE INTERVIEW QUESTIONS



SAMPLE INTERVIEW QUESTIONS

Example Open-ended Questions

- Describe your biggest challenge while getting your education.
- Tell me about your most rewarding work experience.
- Why did you leave your last position?
- What are you looking for in your next position?
- Why do you want to work for our school district?
- Tell me about your relationship with your previous supervisor; how was it positive and how could it have been improved?
- What about working with kindergarteners interests you?

Examples of Ways to Clarify Missing Information, Discrepancies, and Concerns

- On your application you listed USC for a Master of Music, but your transcripts do not show the coursework was completed. Would you please clarify the discrepancy?
- During our screening process we saw that your credentials were revoked three years ago and then reinstated. Tell me about the details surrounding the revocation and reinstatement and how that experience was for you?
- How do you think your references would describe your strengths and weaknesses? How would your colleagues describe you?
- How do you see social media influencing the educator-student relationship? What are the benefits and challenges?

Example Character Focused Questions

- Tell me about a time when you were faced with having to make a choice between doing the right thing and taking the easy or comfortable way out?
- Respect is earned. How would your colleagues say you have earned their respect?
- What standards do you use when setting a good example for the students in your care?
- Describe a time when you effectively modeled fairness in your interactions with students?
- Give me an example of a time when you didn't think before you spoke, and it hurt someone else. When did you realize the impact and what did you do about it?

Example Boundary Related Questions

General Boundaries

- How do you build trust and rapport with students?
- What kind of relationship do you like to foster with the parents of the students in your class?
- Explain how your experience will help you manage students' behavior?
- What kind of tangible and intangible rewards do you use to promote good behavior?
- How do you engage student helpers in your work?
- What is your philosophy on "respect for authority?"

Risky Behaviors

- What would you do if you saw an adult on campus who was not wearing an employee ID or visitor's badge?
- How do you arrange for students to take make-up tests?
- Do you find movies to be an effective way to teach students? How often do you use movies?
- Under what circumstances might you have a need to pull a student out of another class?
- How do you feel about allowing students to have lunch in your classroom or sitting with them in the student area during lunch?
- What would you do if a colleague's classroom windows were covered with posters?
- Do you ever ask students to help with projects before or after school? If so, what kind of projects do they work on?
- Do you ever take photographs of students in your classroom or elsewhere on campus? What types of assignments or projects do you use the photographs for?
- How would you handle it if a student is being flirtatious with you or being overly touchy?
- Have you ever had to give a student a ride in your personal vehicle? What were the circumstances?
- Do you ever participate with students outside of school activities such as providing tutoring or babysitting or going to birthday parties?
- If you found yourself in a one-on-one situation with a student, what would you do?
- If you're active on social media, how do you manage to keep your relationship with students professional?

- Have you ever observed inappropriate sexual boundaries between students? What did you do?

Past Boundary Experience

- Did any of your previous school districts have specific boundaries in place to minimize the risk of child sexual abuse and misconduct? What were they?
- How did the boundaries impact the staff's ability to serve students? How did they impact you personally?
- Have you ever suspected a student in your care was being sexually abused by a colleague? What did you do?
- What personal boundaries do you have that help protect students and mitigate your risk of being falsely accused of sexual abuse or misconduct?
- Tell me about any formal or informal training you have had specific to preventing child sexual abuse.
- Give me a specific example of a time when you had to conform to a policy that you didn't agree with.

Sample Scenarios

- You're on a weekend getaway with your family and you run into a counselor from your school and one of your high-school students walking hand-in-hand through the lobby of the hotel. You are not in a supervisory position. What would you do? What would you say?
- You overhear a group of students in the hallway talking about how a teacher bought a cellphone for a seventh-grade female student as a graduation present and to keep in touch over the summer. What, if anything, would you do?
- You are the principal of an elementary school that has a no sugar on campus policy. A parent calls and complains that the janitor has been given her special needs son candy daily and telling him not to tell. How would you respond to the parent? How would you handle it with the janitor?

Example Follow-up Questions

- Are you able to articulate for me the impact your decision had on the students?
- Do you see a connection between those two situations? I'd like to know more.
- What challenges did you face and how did you overcome them?
- I'm not sure I understand. Would you tell me more about the specific steps you took?

- Would you tell me more about what led you to that decision?
- You shared that you...I'd also like to know...
- I'm not sure what you mean. Can you give me some examples?
- What is the most important thing you learned through that experience?

Forms and Templates - Appendix C

CREDENTIAL VERIFICATION BY STATE



LIST OF STATE WEBSITES FOR CREDENTIAL VERIFICATION

- Alabama (credentials) - <https://tcert.alsde.edu/Portal/Public/Pages/SearchCerts.aspx>
- Alaska (credentials) - <http://education.alaska.gov/TeacherCertification/CertificationsSearch.cfm>
- Arizona (credentials) - <https://oacis.azed.gov/PublicOACIS/NormalPages/Educators.aspx>
- Arkansas (credentials) - <https://adeaels.arkansas.gov/AelsWeb/Search.aspx>
- California (credentials) - https://educator.ctc.ca.gov/esales_enu/start.swe?SWECmd=GotoView&SWEView=CTC+Search+View+Web
- Colorado (credentials) - <https://www.colorado.gov/cde/licensing/Lookup/LicenseLookup.aspx>
- Connecticut (credentials) - <http://sdeportal.ct.gov/CECSFOI/FOILookup.aspx>
- District of Columbia (credentials & disciplinary) - <http://osse.dc.gov/>
- Delaware (credentials) - https://deeds.doe.k12.de.us/public/deeds_pc_findeducator.aspx
- Florida (credentials) - <https://flcertify.fl DOE.org/datamart/searchByNameFLDOE.do>
- Florida (disciplinary) - <http://www.myfloridateacher.com/discipline/summary.aspx>
- Georgia (credentials) - <http://www.gapsc.com/Certification/Lookup.aspx>
- Hawaii (credentials) - <https://htsb.ehawaii.gov/htsb-renewals/public-search.html?p1=0>
- Hawaii (disciplinary) - <https://hawaiiiteacherstandardsboard.org/content/disciplinary-actions/>
- Idaho (credentials) - <http://www.sde.idaho.gov/contact.html>
- Illinois (credentials) - <http://webprod.isbe.net/ELISInquiry/NormalPages/Educators.aspx>
- Indiana (credentials) - <https://licenselookup.doe.in.gov>
- Iowa (credentials) - <https://boee.force.com/LicenseSearchPage>
- Iowa (disciplinary) - <https://www.iowaonline.state.ia.us/ppd/SearchBoardOrders.aspx>
- Kansas (credentials) - <https://appspublic.ksde.org/TLL/SearchLicense.aspx/SearchLicense.aspx>
- Kentucky (credentials) - <https://wd.kyepsb.net/EPsB.WebApps/KECI>
- Louisiana (credentials) - <https://www.teachlouisiana.net/teachers.aspx?PageID=416>
- Maine (credentials & disciplinary – verbal only) - <http://www.maine.gov/doe/contact/index.shtml>
- Maryland (credentials & disciplinary – verbal only) - <http://www.marylandpublicschools.org>

- Massachusetts (credentials & disciplinary – verbal only) - <http://www.doe.mass.edu/contact>
- Michigan (credentials) - <https://mdoe.state.mi.us/MOECS/PublicCredentialSearch.aspx>
- Minnesota (credentials) - <http://w20.education.state.mn.us/LicenseLookup/educator>
- Mississippi (credentials) - <https://elms.mde.k12.ms.us/Public/PublicEducatorSearch.aspx>
- Missouri (credentials) - <https://apps.dese.mo.gov/HQT/CredentialListerChecker.aspx>
- Montana (credentials) - <https://apps3.opi.mt.gov/MSEIS/NormalPages/Educators.aspx>
- Nebraska (credentials) - https://dc2.education.ne.gov/tc_lookup
- Nevada (credentials) - http://www.doe.nv.gov/Educator_Licensure/Educator_License_Inquiry/
- New Hampshire (credentials) - <http://my.doe.nh.gov/profiles/educators/search.aspx>
- New Jersey (credentials) - https://www20.state.nj.us/DOE_TCIS_ASC/pages/appStatusSearch.jsp
- New Mexico (credentials) - <https://webnew.ped.state.nm.us/bureaus/licensure/on-license-look-up/>
- New York (credentials) - <http://eservices.nysed.gov/teach/certhelp/CpPersonSearchExternal.do>
- North Carolina (credentials) - <http://stateboard.ncpublicschools.gov/legal-affairs/disciplinary-process/revoked-license>
- North Carolina (disciplinary) - <http://stateboard.ncpublicschools.gov/legal-affairs/disciplinary-process/revoked-license>
- North Dakota (credentials) - <https://secure.apps.nd.gov/dpi/ndteach/schoolstaff/publicSearch.aspx>
- Ohio (credentials) - <https://coreprodint.ode.state.oh.us/core2.3/ode.core.EducatorProfile.UI/EducatorSearch.aspx>
- Oklahoma (credentials) - <https://sdeweb01.sde.ok.gov/OECS/EducatorSearch/>
- Oregon (credentials) - <https://apps.oregon.gov/TSPC/eLicense/Search/PublicSearch>
- Oregon (disciplinary) - http://www.tspc.state.or.us/SanctionList/Discipline_List.html
- Pennsylvania (credentials) - <http://www.teachercertification.pa.gov/Screens/wfSearchEducators.aspx>
- Pennsylvania (disciplinary) - <http://www.education.pa.gov/Teachers%20-%20Administrators/Certifications/Pages/Certificate-Actions.aspx#.Vp5ofFQo6po>
- Rhode Island (credentials) - <http://ecert.ride.ri.gov/public>

- South Carolina (credentials) - <https://ed.sc.gov/educators/teaching-in-south-carolina/current-south-carolina-teachers/view-licensure-status/>
- South Carolina (disciplinary) - <http://ed.sc.gov/policy/state-board-of-education/additional-resources/state-board-of-education-orders-of-disciplinary-action/>
- South Dakota (credentials) - <https://apps.sd.gov/DE69EducatorLicensure/Teacher411/educator-search>
- Tennessee (credentials) - <https://tdoe.tncompass.org/Public/Search>
- Texas (credentials) - <https://secure.sbec.state.tx.us/sbeonline/virtcert.asp>
- Texas (disciplinary) - http://tea.texas.gov/Texas_Educators/Investigations/Disciplinary_Actions_Taken_against_Texas_Educators/
- Utah (credentials) - <https://cactus.schools.utah.gov/PersonSearch>
- Vermont (credentials) - <https://alis.edlicensing.vermont.gov/Protected/ADM/EducatorSearchMember.aspx?&TotalParameters=5&LikePopup=N&URL=Protected/LIC/DOE/EducatorView.aspx>
- Vermont (disciplinary) - <https://education.vermont.gov/documents/list-of-educator-disciplinary-actions>
- Virginia (credentials) - <https://p1pe.doe.virginia.gov/tinfo>
- Washington (credentials – verbal only) - <http://www.k12.wa.us/AboutUs/ContactUs.aspx>
- Washington (disciplinary) - <http://www.k12.wa.us/ProfPractices/investigations/DisciplinaryAction.aspx>
- West Virginia (credentials) - <https://wweis.k12.wv.us/certcheck/>
- Wisconsin (credentials) - <https://elo.wieducatorlicensing.org/datamart/searchByNameWIDPI.do>
- Wyoming (credentials) - <http://edu.wyoming.gov/inside-the-wde/contact>

Forms and Templates - Appendix D

LIMITATIONS OF FINGERPRINT-BASED CRIMINAL BACKGROUND CHECKS



LIMITATIONS OF FINGERPRINT-BASED CRIMINAL BACKGROUND CHECKS

Fingerprint-based criminal background checks have significant limitations that would indicate it may not be sufficient to truly protect students, mitigate risk, and limit school district liability for negligent hiring practices. In many cases, the DOJ fingerprint process has left school districts with a false sense of security. It is crucial for every school district to understand the limitations of the DOJ fingerprint process, how to use it to their advantage, and how to supplement the DOJ fingerprint process in order to compensate for its shortcomings. We have detailed some of the more significant limitations below.

Fingerprints Alone Do Not Validate Identity

Fingerprints do not validate a candidate's identity unless their fingerprints are already in the statewide criminal records. A candidate's fingerprints would already be in the system if they were previously fingerprinted during a criminal proceeding or if they have gone through a previous fingerprint-based background check in California. They would not appear in the California DOJ system if they were fingerprinted in another state. A candidate's fingerprints would already be in the FBI national criminal history database if they were previously fingerprinted in any state and those records submitted to the FBI.

If a candidate's prints are not already in the system, a new DOJ fingerprint-based criminal background check will simply create a first set of prints to be used for future comparison. A Live Scan operator will also enter other identifying information into the record including full name, date of birth, physical description, social security number, and driver's license number which will serve to further validate identity in future comparisons.

This lack of identity validation is one of the reasons why it is recommended school districts do a social security number trace which confirms identity through the combination of the candidate's name, birth date, and social security number that were used in prior credit activity.

Results are Limited to Crimes Committed in California

The standard DOJ request checks the statewide criminal record repository which only includes crimes committed in the state of California. In order to gain visibility to crimes committed in other states, school districts should select the FBI level of service on the DOJ Request for Live Scan Service form (BCIA 8016). This broadens the scope of the criminal background check to look at crimes committed nationwide.

No Notification of Subsequent Arrests in Standard DOJ Request

As mentioned in the section regarding the best practice of running recurring criminal background checks, the DOJ provides an option for school districts to receive notice of

new arrests reported subsequent to an initial candidate background check and the Education Code requires school districts to request that “subsequent arrest service” from the DOJ. However, this subsequent arrest service from the DOJ is not included by default.

School districts must proactively contract with the DOJ to be eligible to receive these notifications by completing form BCIA 8049⁹⁶ and then ensure that all future Request for Live Scan Service forms (BCIA 8016A⁹⁷) indicate the request for subsequent arrest service.

So, the option is available within the DOJ fingerprint process, but school district screening personnel must know that it is not automatic, and they must select the option to ensure future notifications are received.

Fingerprint Quality Impacts Ability to Match

At their core, fingerprint-based criminal background checks seek to match the fingerprints of a candidate with the fingerprints of criminals. While all Live Scan fingerprint capture locations have staff members who are trained in the collection of quality fingerprints and they have the luxury of identifying when prints do not meet quality standards based on dehydration, injury, etc., not all criminal prints were collected in such a controlled environment.

Law enforcement may be hurried, the arrestee may be uncooperative for a variety of reasons, and if they can’t get a quality print, law enforcement will not likely attempt to fix the problem and re-try to capture quality prints later. They will simply capture what they can and move on to the next arrestee. So even if the prints captured through the Live Scan process are of high quality, the prints they are being compared to may not be. This can result in an inability to accurately match the prints, even if a candidate has had past criminal arrests or convictions.

Inaccuracies in the California DOJ Statewide Criminal Record Repository

The accuracy of the DOJ statewide criminal record repository is dependent on all pertinent state agencies to report accurate arrest and disposition information in a timely manner. Studies have shown over many years that there is a significant latency in reporting by these agencies bringing into question the reliance on the DOJ fingerprint process as the single source of information on criminal history for candidates.

⁹⁶ California Office of Attorney General, Background Checks, Form BCIA 8046, accessed August 18, 2019, <https://oag.ca.gov/sites/all/files/agweb/pdfs/fingerprints/forms/subarr.pdf>

⁹⁷ California Office of Attorney General, Background Checks, Form BCIA 8016A, accessed August 17, 2019, https://oag.ca.gov/sites/all/files/agweb/pdfs/fingerprints/forms/BCIA_8016A.pdf

According to a U.S. Department of Justice survey of state criminal history information systems,⁹⁸ as of December 31, 2010:

- California has 108 federally recognized tribes, but they do not submit arrest fingerprints to the state repository (Note: California has significantly more tribes than other states. New Mexico is next in line of states with tribes that do not report arrest with 20 tribes.)
- 33% of all California dispositions received could not be linked to a specific arrest record
- California had 10,641,300 individual offenders in the state criminal history file
 - Only 57% of all arrests had final dispositions recorded
 - Only 11% of the arrests within the past 5 years had final dispositions recorded
 - Only 42% of felony charges had final dispositions recorded
- The average number of days between receipt of final felony court disposition and entry of data into the criminal history database in California is 55 days
- California had 30,000 unprocessed or partially processed court disposition forms at the time of the survey

The first two statistics reveal that basic arrest records are inaccurate and incomplete. The remaining statistics give us a view into the lack of timeliness of case disposition changes. The DOJ fingerprint process precludes them from releasing arrest records without final dispositions unless they confirm that are still being adjudicated. So, the significant delay in updates then delays background check results while the DOJ investigates the current disposition of open cases. If the DOJ cannot verify the disposition of a valid arrest, they may not include it on a background check report.

Overall these statistics indicate that the database that school districts have come to rely on to determine the criminal history and therefore the safety and fitness of candidates is outdated and therefore inaccurate. Of course, this is only a look at crimes committed in California. If case information is not being entered into the statewide criminal record repository on a timely basis, it is certainly not making its way to the FBI national criminal history database in a timely manner either. And many other states have similar issues regarding the accuracy and timeliness of their data submissions so it the statistics also raise concern about the accuracy of the FBI national criminal history database.

⁹⁸ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Survey of State Criminal History Information Systems 2010, November 2011, accessed October 11, 2019, <https://www.ncjrs.gov/pdffiles1/bjs/grants/237253.pdf>.

Inaccuracies in the FBI National Criminal History Database

With regards to the FBI national criminal history database, according to a 2004 GAO report, “Concerns have been raised that, after arrests are made by some local or state law enforcement agencies, periods of up to 6 months may elapse before the criminal fingerprints are submitted for entry”.⁹⁹ Late updates can include initial arrest information and/or disposition updates after arrest. Significant efforts have been made to improve the timeliness of updates, including the establishment of the National Criminal History Improvement Program but the problem still exists.

Looking again at the U.S. Department of Justice survey of state criminal history information systems,¹⁰⁰ as of December 31, 2010:

- Twelve states indicated that, at the time of the survey, they had backlogs in entering arrest data into their criminal history databases
- A total of nearly 216,000 unprocessed or partially processed fingerprint cards for automated fingerprint identification system (AFIS) databases were reported by 7 states
- A total of nearly 1.8 million unprocessed or partially processed court disposition forms are reported by 18 states, ranging from 100 in Kentucky to 761,462 in Utah
- Based on responses from 36 jurisdictions, the length of time between occurrence of the final felony court disposition and its receipt by the repository ranges from less than 1 day in Delaware and New York to 555 days in Kansas
- Based on responses from 41 jurisdictions, the number of days between the receipt of a final felony court disposition and its entry into the criminal history database ranges from less than 1 day in Delaware, Hawaii, and New York, to 665 days in Kansas
- Some states elect not to forward disposition information on second and subsequent arrests to the FBI
- Of 13,159,800 final case dispositions received in 2010, only 5,384,400 of them were sent to the FBI

As mentioned in the previous section on inaccuracies in the California DOJ statewide criminal record repository, delays in state updates to their internal systems inevitably roll

⁹⁹ Government Accountability Office, Law Enforcement: Information on Timeliness of Criminal Fingerprint Submissions to the FBI, GAO-04-260, January 27, 2004, accessed October 10, 2019, <https://www.govinfo.gov/content/pkg/GAOREPORTS-GAO-04-260/html/GAOREPORTS-GAO-04-260.htm>.

¹⁰⁰ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Survey of State Criminal History Information Systems 2010, November 2011, accessed October 11, 2019, <https://www.ncjrs.gov/pdffiles1/bjs/grants/237253.pdf>.

up to untimely submission of updates to the FBI national criminal history database, compounding the inaccuracies of the FBI database for every state and territory they rely on for data. So, even if school districts rely on the DOJ fingerprint process with an FBI level check, they are not receiving accurate and timely information to effectively determine the safety and fitness of candidates.

It is essential for school districts supplement the legally required DOJ fingerprint process with additional criminal background check processes that overcome the inherent shortcomings of fingerprint-based criminal background checks.

Note: According to the U.S. Department of Justice survey mentioned earlier, California subsequent arrest service from the DOJ only notifies school districts of arrests that have been added to a candidate's record subsequent to the original background check. The notifications do not include changes in disposition such as changes from arrest to convicted or convicted to expunged. This lack of future notification should be taken into consideration when school districts are evaluating adverse action based on arrests that are still being adjudicated.

Does Not Check California Sex Offender Registry

The standard DOJ fingerprint request checks the statewide criminal record repository which includes only crimes committed in the state of California. It does not check the California Sex Offender Registry, known as Megan's Law, because the criminal record repository includes convictions that would require sex offender registration. However, this means that a standard DOJ check will not return results for a registered sex offender who was convicted in another state and now lives, works, or goes to school in California, even though the offender is required to report their new location to local law enforcement who then notifies the California Department of Justice that is responsible for updating Megan's Law.

If the school district has selected the FBI level of service on the DOJ Request for Live Scan Service form (BCIA 8016), then the results should include the sexual offenses that a candidate committed in other states but if this option is not selected, a standard DOJ fingerprint-based criminal background check would not identify registered sex offenders convicted in other states.

Whichever selection is made, the DOJ and FBI databases are only as good as their input and as we detailed in previous sections, there are significant latency issues that impact both sources of criminal background information. Therefore, it is recommended that school districts check the California and national sex offender registries for all candidates to ensure all publicly available information is taken into consideration in the hiring decision.

Does Not Include Substantiated Cases of Child Abuse

Reports of all types of child abuse including physical abuse, sexual abuse, mental/emotional abuse, and/or severe neglect of a child are stored in the Child Abuse Central Index (CACI) which is administered by the California Attorney General as designated by statute in the Child Abuse and Neglect Reporting Act (CANRA). Reports of child abuse that have been investigated and substantiated by law enforcement or Child Protective Services (CPS) are forwarded to the CACI which keeps a cumulative record of abuse involving the same suspects and/or victims. Just because a case of child abuse is substantiated, it does not necessarily mean there is sufficient evidence for a school district attorney to press charges, make an arrest, and secure a conviction.

The CACI is available to aid law enforcement in investigations and prosecutions and to social welfare agencies to help screen applicants for licensing or employment in child-care facilities and foster homes, as well as to screen prospective foster and adoptive parents. Unfortunately, this valuable criminal history information is not included in the DOJ fingerprint-based criminal background check nor do school districts have direct access

Does Not Include Arrests unless they are Still Being Adjudicated

Since an arrest does not prove that criminal conduct occurred, the DOJ fingerprint-based criminal background check does not return such results unless the arrest is still being adjudicated. However, the U.S. Equal Employment Opportunity Commission (EEOC) provided guidance does allow for an employer to consider the underlying conduct of an arrest in determining if a candidate is fit for the job but school districts never have the opportunity to make this individual assessment to determine the level of risk a candidate may pose and if student safety may be compromised by hiring a candidate with an arrest record. School districts would only have access to these arrest records if they ran a county court criminal record check themselves (not using a third-party). However, accessing and using arrest records would make it more difficult for a school district to defend a Title VII violation complaint.

Forms and Templates - Appendix E

KEY COMPONENTS OF FEDERAL, STATE AND LOCAL LAWS FOR CANDIDATE SCREENING BEST PRACTICES



KEY COMPONENTS OF FEDERAL, STATE AND LOCAL LAWS FOR CANDIDATE SCREENING BEST PRACTICES

Equal Employment Opportunity Commission (EEOC)

The EEOC enforces federal laws prohibiting employment discrimination based on race, color, religion, sex, or national origin. In 2012, the EEOC updated their Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 in an effort to eliminate unlawful discrimination in employment screening, hiring, and retention.

According to the EEOC, all adverse actions against a candidate because of criminal history must be “job related and consistent with business necessity.” As such, the EEOC provides the following best practices for employers who are considering criminal record information when making employment decision.¹⁰¹¹⁰²

EEOC Recommended Best Practices

General

- Eliminate policies or practices that exclude people from employment based on any criminal record.
- Train managers, hiring officials, and decision makers about Title VII and its prohibition on employment discrimination.

Developing a Policy

- Develop a narrowly tailored written policy and procedure for screening applicants and employees for criminal conduct.
- Identify essential job requirements and the actual circumstances under which the jobs are performed.
- Determine the specific offenses that may demonstrate unfitness for performing such jobs.
 - Identify the criminal offenses based on all available evidence.
- Determine the duration of exclusions for criminal conduct based on all available evidence.
 - Include an individualized assessment.
- Record the justification for the policy and procedures.

¹⁰¹

¹⁰² U.S. Equal Employment Opportunity Commission, EEOC Enforcement Guidance, Number 915.002, April 25, 2012, accessed October 5, 2019, https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

- Note and keep a record of consultations and research considered in crafting the policy and procedures.
- Train managers, hiring officials, and decision makers on how to implement the policy and procedures consistent with Title VII.

Questions about Criminal Records

- When asking questions about criminal records, limit inquiries to records for which exclusion would be job related for the position in question and consistent with business necessity.

Confidentiality

- Keep information about applicants' and employees' criminal records confidential. Only use it for the purpose for which it was intended.

Federal, State, and Local Statutes May Conflict with General EEOC Guidance

There are some federal statutes that govern the employment of individuals with specific convictions in certain industries or positions. According to EEOC guidance, Title VII does not preempt these federally imposed restrictions

But unlike federal statutes, according to EEOC guidelines, state and local statutes that restrict employment of individuals with records of certain criminal conduct, “are preempted by Title VII if they “purport to require or permit the doing of any act which would be an unlawful employment practice” under Title VII. Therefore, if an employer's exclusionary policy or practice is not job related and consistent with business necessity, the fact that it was adopted to comply with a state or local law or regulation does not shield the employer from Title VII liability.”¹⁰³

In the case of California school districts, the Education Code forbids hiring and/or employing individuals with specific criminal histories as detailed in sections 45122.1(a), 45123, and 45122.1(g) for classified positions, and sections 44830.1(a), 44836(a)(1), 44836(b)(1), 44940(a), and 44940(d)(1) for certificated positions. Ed Code sections 44940(a) and 44940(d)(1) also require school districts to place certificated employees on a mandatory compulsory leave upon notification of charges for specified crimes.

These Education Code restrictions have presumably been enacted by the state because they are job related and consistent with business necessity. However, school districts have a responsibility to evaluate the Education Code restrictions to ensure they indeed

¹⁰³ U.S. Equal Employment Opportunity Commission, EEOC Enforcement Guidance, Number 915.002, April 25, 2012, accessed October 5, 2019, https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

are job related and consistent with business necessity for the particular position to which the candidate has applied. School districts should document their analysis and be able to defend it in the unfortunate circumstance that an anti-discrimination complaint is brought against them.

School districts should have a separate and distinct policy and practice to determine if crimes beyond the ones specifically addressed in the Education Code are job related and consistent with business necessity for the position the candidate is seeking; and, therefore should preclude individuals who have been convicted of these crimes from being hired for position they are being considered for.

Although Title VII does not require individualized assessment in all circumstances, the use of a screen that does not include individualized assessment is more likely to violate Title VII.)” We recommend school districts review the EEOC guidelines for specific recommended steps for individual assessments.

Arrest vs. Conviction Records

The EEOC guidance distinguishes between appropriate use of arrest and conviction records. Since an arrest does not prove that criminal conduct occurred, excluding a candidate from further consideration based solely on an arrest record would not be job related and consistent with business necessity. However, the guidance does allow for an employer to consider the underlying conduct of the arrest in determining if a candidate is fit for the job.

On the other hand, a criminal conviction would be sufficient evidence that a candidate committed the crime in question and therefore may be considered in determining a candidate’s fitness. However, there may be reasons why an employer should not rely on the conviction record alone when making an employment decision and school districts are obligated by anti-discrimination laws to do an individual assessment before considering an adverse action based on criminal history.

Disparate Treatment and Disparate Impact

Disparate treatment and disparate impact can result in violations of Title VII. Disparate treatment is when an employer treats criminal history information differently for different candidates based on their race or national origin. As mentioned earlier, it is important for school districts to have a written policy about when to ask about criminal history and how to apply the results of a criminal background check in a fair and consistent manner for all candidates. If a school district fails to do so, it can result in a Title VII violation and leave the school district vulnerable to legal action.

Because arrest and incarceration rates are particularly high for some Title VII-protected groups, an employer may also be found in violation of Title VII if the employer’s neutral

policy, that applies all aspects of a criminal background check fairly and consistently to all candidates, has a disproportionate impact on one of these Title VII- protected groups. As an example, nationally, African Americans and Hispanics are arrested in numbers disproportionate to their representation in the general population. In 2010, 28% of all arrests were of African Americans¹⁰⁴ even though African Americans only comprised approximately 14% of the general population.¹⁰⁵ In addition, 1 in 87 working-aged white men is in prison or jail, compared with 1 in 36 Hispanic men and 1 in 12 African American men.¹⁰⁶ The result of a neutral policy having a disproportionate impact on a Title VII-protected group is called disparate impact. School districts can limit their liability in this area by ensuring that their policy and practice can be proven to be job related and consistent with business necessity.

To establish that a criminal conduct exclusion that has a disparate impact is job related and consistent with business necessity under Title VII, the employer needs to show that the policy operates to effectively link specific criminal conduct, and its dangers, with the risks inherent in the duties of a particular position.

This section includes an overview of just some of the pertinent topics included in the EEOC guidelines. It is recommended that school districts thoroughly understand all aspects of the guidelines and work with legal counsel to ensure their policies and practices adhere to all standards set forth.

California Fair Chance Act (AB 1008)

School districts are required to adhere to all provisions of the California Fair Chance Act as well as the EEOC Guidelines. The California Fair Chance Act is a law that prohibits employers with five or more employees from asking about criminal conviction history before making a job offer. This type of law is generally referred to as a “Ban the Box” law. The California Department of Fair Employment and Housing, summarizes the law as follow:¹⁰⁷

The law generally prohibits employers from:

¹⁰⁴ U.S. Department of Justice, Federal Bureau of Investigation, Crime in the United States (2010), Table 43a, 2011, accessed October 5, 2019, <https://ucr.fbi.gov/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/table-43/10tbl43a.xls>.

¹⁰⁵ U.S. Census Bureau, 2010 Census Briefs, The Black Population: 2010, issued September 2011, accessed October 5, 2019, <https://www.census.gov/prod/cen2010/briefs/c2010br-06.pdf>.

¹⁰⁶ The Pew Charitable Trusts, Collateral Costs: Incarceration’s Effect on Economic Mobility, 2010, accessed October 5, 2019, https://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2010/collateralcosts1pdf.pdf.

¹⁰⁷ California Department of Fair Employment and Housing, California Fair Chance Act (AB 1008) – “Ban the Box” Frequently Asked Questions, accessed October 13, 2019, <https://www.dfeh.ca.gov/resources/frequently-asked-questions/criminalhistoryinfoinemploymentfaqs/>.

- Including on a job application any questions about conviction history before a conditional job offer has been made.
- Asking about or considering criminal history before a conditional job offer has been made.
- Considering information about arrests not followed by conviction, participation in pretrial or post-trial diversion programs, or convictions that have been sealed, dismissed, expunged, or statutorily eradicated.

Arrests vs. Convictions under the Fair Chance Act

- Arrests do not necessarily result in convictions and the mere existence of an arrest does not establish that criminal conduct has occurred.
- Conduct a fact based analysis to determine if an exclusionary policy is job related and consistent with business necessity, which would justify an adverse decision. If the arrest is recent and there is compelling evidence that the applicant committed the crime, that might lead to the employer being justified to consider the arrest.
- An arrest alone may not be used to deny an employment opportunity, but an employer may make an employment decision based on the conduct underlying the arrest if the conduct makes the individual unfit for the position in question.

Withdrawing the Conditional Offer of Employment for Disqualifying Background Information

After extending a job offer, employers are allowed to conduct a criminal background check. However, an employer can't just take back the job offer – unlike the EEOC guidelines, the California Fair Chance Act imposes very specific notice and timing requirements with which the employer must comply. This includes an individualized assessment of the conviction reported through the background check. The individual assessment focuses on whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job. The individual assessment must, therefore, consider the nature and gravity of the conviction, the time that has passed since the conviction, and the nature of the job for which the candidate is being considered.

If the school district identifies disqualifying criminal convictions that are appropriate to withdraw the conditional job offer, it must do so in writing, provide a copy of the conviction history report they relied on, and give the candidate at least five business days to respond.

- Requires an employer who makes a preliminary decision to deny employment **based on that individualized assessment** to provide the applicant written notification of the decision. Requires the notification to contain specified

information. Grants an applicant 5 business days to respond to that notification before the employer may make a final decision.

- If the applicant notifies the employer in writing that he or she disputes the accuracy of the conviction history and is obtaining evidence to support that assertion, the bill would grant the applicant an additional 5 business days to respond to the notice.
- Requires employer to consider information submitted by the applicant before making a final decision. The bill requires an employer who has made a final decision to deny employment to the applicant to notify the applicant in writing of specified topics. The bill exempts specified positions of employment.

This section includes an overview of just some of the pertinent topics included in the Fair Chance Act. We recommend that school districts thoroughly understand all aspects and work with legal counsel to ensure their policies and practices adhere to all standards set forth.

Local Anti-Discrimination Ordinances

In addition to the federal EEOC guidance and the California Fair Chance Act requirements, school districts are required to adhere to all local ordinances. For example The City and County of San Francisco employers are required to comply with the Fair Chance Ordinance (FCO)¹⁰⁸ and applicable state laws.

¹⁰⁸ City and County of San Francisco, Office of Labor Standards Enforcement, Fair Chance Ordinance, accessed October 13, 2019, <https://sfgov.org/olse/fair-chance-ordinance-fco> .

Forms and Templates - Appendix F

RED FLAGS



RED FLAGS

The following are examples of circumstances an interviewer may encounter that would potentially raise a red flag during the applicant screening process.

Application

- Questions have been left unanswered especially criminal history
- Affirmative answers to questions regarding criminal background or accusations of sexual misconduct
- Gaps in employment
- No dates listed on educational history
- Incomplete transcripts provided
- Certification documents missing the CTC document number or issue and expiration dates
- Frequent moves within the community or even a single school district
- Multiple moves across different states
- Job changes midway through the school year
- Credentials that have been suspended or revoked
- References that do not include direct supervisors
- Providing only personal references instead of professional references
- References that are not aligned with employment history—important references missing

Interviews

- Multiple interviewers who found the same red flags
- Multiple interviewers who found as series of different red flags
- Shows lack of character: honesty, respect, responsibility, fairness
- Shows inappropriate boundaries with students, parents, or colleagues
- Has no understanding of the need for boundaries
- Considers boundaries to be an inhibitor to building good relationships with students
- Provides inappropriate responses to situational scenarios
- Overemphasis on building relationships with parents
- Lacks good judgment in discipline methods and/or rewards
- Seems to want to be “friends” with students
- Has an unhealthy view of use of authority over students
- Apparent fixation on working with a particular age range or gender
- Spends lunches or break time with students rather than adult colleagues
- Inappropriate motives for working with kids
- Shows a concerning response to your child sexual abuse prevention program. This could be a negative response, or it could be an overly enthusiastic response.

Lanning and Dietz call out candidates who offer evidence of good character including “conducting child-sex-abuse prevention programs” and “offers to assist law enforcement.”¹⁰⁹

Reference Checks

- Only able to provide written references, no one willing to talk with you
- References provide less than satisfactory feedback
- References have a very different impression of the candidate than the candidate has of him/herself
- Reference job responsibilities or start/end dates do not agree with information provided on the application
- References are not willing to recommend a candidate for rehire
- References respond to difficult questions with hesitation, ambiguity, or avoidance
- References are overly negative or overly positive
- Candidate seems too good to be true

Background Checks

- Background check turns up criminal history not disclosed on the application
- Criminal background check report includes violent or serious crimes or crimes against children
- Candidate unable to provide a government ID and/or social security card for verification
- Candidate refuses to provide fingerprints
- Candidate shows up on the sex offender registry
- Candidate shows up with a suspension or revocation of credentials on from CTC
- Candidate shows up with a suspension or revocation of credentials on NASDTEC
- Candidate has been previously dismissed or disqualified for employment by your school district
- Candidate has previously violated your district boundary policy
- Inappropriate information is found about the candidate via a social media search
- Candidate refuses to agree to recurring background checks
- Candidate pushes for employment to start before the results of their criminal background check is received

As you review the possible red flags, you are looking for a pattern of behavior that would indicate increased risk for students.

¹⁰⁹ Kenneth V. Lanning and Park Dietz, “Acquaintance Molestation and Youth-Serving Organizations,” *J Interpers Violence* (May 2014): 15, doi:10.1177/0886260514532360.

Forms and Templates - Appendix G

SIX STAGES OF GROOMING



DR. MICHAEL WELNER, 6 STAGES OF GROOMING

Stage 1: Targeting the Victim

The offender targets a victim by sizing up the child's vulnerability—emotional neediness, isolation and lower self-confidence. Children with less parental oversight are more desirable prey.

Stage 2: Gaining the Victim's Trust

The sex offender gains trust by watching and gathering information about the child, getting to know his needs and how to fill them. In this regard, sex offenders mix effortlessly with responsible caretakers because they generate warm and calibrated attention. Only more awkward and overly personal attention, or a gooey intrusiveness, provokes the suspicion of parents. Otherwise, a more suave sex offender is better disciplined for how to push and poke, without revealing themselves. Think of the grooming sex offender on the prowl as akin to a spy – and just as stealth.

Stage 3: Filling a Need

Once the sex offender begins to fill the child's needs, that adult may assume noticeably more importance in the child's life and may become idealized. Gifts, extra attention, affection may distinguish one adult in particular and should raise concern and greater vigilance to be accountable for that adult

Stage 4: Isolating the Child

The grooming sex offender uses the developing special relationship with the child to create situations in which they are alone together. This isolation further reinforces a special connection. Babysitting, tutoring, coaching and special trips all enable this isolation.

A special relationship can be even more reinforced when an offender cultivates a sense in the child that he is loved or appreciated in a way that others, not even parents, provide. Parents may unwittingly feed into this through their own appreciation for the unique relationship.

Stage 5: Sexualizing the Relationship

At a stage of sufficient emotional dependence and trust, the offender progressively sexualizes the relationship. Desensitization occurs through talking, pictures, even creating situations (like going swimming) in which both offender and victim are naked. At that point, the adult exploits a child's natural curiosity, using feelings of stimulation to advance the sexuality of the relationship.

When teaching a child, the grooming sex offender has the opportunity to shape the child's sexual preferences and can manipulate what a child finds exciting and extend the relationship in this way. The child comes to see himself as a more sexual being and to define the relationship with the offender in more sexual and special terms.

Stage 6: Maintaining Control

Once the sex abuse is occurring, offenders commonly use secrecy and blame to maintain the child's continued participation and silence—particularly because the sexual activity may cause the child to withdraw from the relationship.

Children in these entangled relationships—and at this point they are entangled—confront threats to blame them, to end the relationship and to end the emotional and material needs they associate with the relationship, whether it be the dirt bikes the child gets to ride, the coaching one receives, special outings or other gifts. The child may feel that the loss of the relationship and the consequences of exposing it will humiliate and render them even more unwanted.

Forms and Templates - Appendix H

SUSPECTED CHILD ABUSE REPORTING FORM AND INSTRUCTIONS





SUSPECTED CHILD ABUSE REPORT (Pursuant to Penal Code section 11166)

To Be Completed by Mandated Child Abuse Reporters
PLEASE PRINT OR TYPE

CASE NAME: _____

CASE NUMBER: _____

A. REPORTING PARTY	NAME OF MANDATED REPORTER			TITLE			MANDATED REPORTER CATEGORY				
	REPORTER'S BUSINESS/AGENCY NAME AND ADDRESS						DID MANDATED REPORTER WITNESS THE INCIDENT?				
	Street		City		Zip		<input type="checkbox"/> YES <input type="checkbox"/> NO				
REPORTER'S TELEPHONE (DAYTIME)			SIGNATURE				TODAY'S DATE				
B. REPORT NOTIFICATION	<input type="checkbox"/> LAW ENFORCEMENT			<input type="checkbox"/> COUNTY PROBATION			AGENCY				
	<input type="checkbox"/> COUNTY WELFARE / CPS (Child Protective Services)										
	ADDRESS						DATE/TIME OF PHONE CALL				
Street		City		Zip							
OFFICIAL CONTACTED - NAME AND TITLE						TELEPHONE					
C. VICTIM One report per victim	NAME (LAST, FIRST, MIDDLE)				BIRTHDATE OR APPROX. AGE		SEX	ETHNICITY			
	ADDRESS						TELEPHONE				
	Street		City		Zip						
	PRESENT LOCATION OF VICTIM				SCHOOL		CLASS		GRADE		
	PHYSICALLY DISABLED?	DEVELOPMENTALLY DISABLED?		OTHER DISABILITY (SPECIFY)				PRIMARY LANGUAGE SPOKEN IN HOME			
	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO									
	IN FOSTER CARE?	IF VICTIM WAS IN OUT-OF-HOME CARE AT TIME OF INCIDENT, CHECK TYPE OF CARE:						TYPE OF ABUSE (CHECK ONE OR MORE):			
<input type="checkbox"/> YES	<input type="checkbox"/> DAY CARE	<input type="checkbox"/> CHILD CARE CENTER	<input type="checkbox"/> FOSTER FAMILY HOME			<input type="checkbox"/> PHYSICAL	<input type="checkbox"/> MENTAL				
<input type="checkbox"/> NO	<input type="checkbox"/> FAMILY FRIEND	<input type="checkbox"/> GROUP HOME OR INSTITUTION		<input type="checkbox"/> RELATIVE'S HOME		<input type="checkbox"/> SEXUAL	<input type="checkbox"/> NEGLECT				
<input type="checkbox"/> NO	<input type="checkbox"/> OTHER (SPECIFY)										
RELATIONSHIP TO SUSPECT				PHOTOS TAKEN?		DID THE INCIDENT RESULT IN THIS VICTIM'S DEATH?					
				<input type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK					
D. INVOLVED PARTIES	VICTIM'S SIBLINGS	NAME		BIRTHDATE	SEX	ETHNICITY	NAME		BIRTHDATE	SEX	ETHNICITY
	1. _____	3. _____									
	2. _____	4. _____									
	VICTIM'S PARENTS/GUARDIANS	NAME (LAST, FIRST, MIDDLE)				BIRTHDATE OR APPROX. AGE		SEX	ETHNICITY		
ADDRESS		Street		City		Zip		HOME PHONE		BUSINESS PHONE	
PARENTS/GUARDIANS	NAME (LAST, FIRST, MIDDLE)				BIRTHDATE OR APPROX. AGE		SEX	ETHNICITY			
ADDRESS		Street		City		Zip		HOME PHONE		BUSINESS PHONE	
SUSPECT	SUSPECT'S NAME (LAST, FIRST, MIDDLE)				BIRTHDATE OR APPROX. AGE		SEX	ETHNICITY			
	ADDRESS						TELEPHONE				
	Street		City		Zip						
OTHER RELEVANT INFORMATION											
E. INCIDENT INFORMATION	IF NECESSARY, ATTACH EXTRA SHEET(S) OR OTHER FORM(S) AND CHECK THIS BOX <input type="checkbox"/> IF MULTIPLE VICTIMS, INDICATE NUMBER: _____										
	DATE/TIME OF INCIDENT				PLACE OF INCIDENT						
	NARRATIVE DESCRIPTION (What victim(s) said/what the mandated reporter observed/what person accompanying the victim(s) said/similar or past incident's involving the victim(s) or suspect)										

DO NOT submit a copy of this form to the Department of Justice (DOJ). The investigating agency is required under Penal Code section 11169 to submit to DOJ a Child Abuse or Severe Neglect Indexing Form BCIA 8583 if (1) an active investigation was conducted and (2) the incident was determined to be substantiated.



SUSPECTED CHILD ABUSE REPORT (Pursuant to Penal Code section 11166)

DEFINITIONS AND GENERAL INSTRUCTIONS FOR COMPLETION OF FORM BCIA 8572

All Penal Code (PC) references are located in Article 2.5 of the California PC. This article is known as the Child Abuse and Neglect Reporting Act (CANRA). The provisions of CANRA may be viewed at: <http://leginfo.legislature.ca.gov/faces/codes.xhtml> (specify "Penal Code" and search for sections 11164-11174.3). A mandated reporter must complete and submit form BCIA 8572 even if some of the requested information is not known. (PC section 11167(a).)

I. MANDATED CHILD ABUSE REPORTERS

Mandated child abuse reporters include all those individuals and entities listed in PC section 11165.7.

II. TO WHOM REPORTS ARE TO BE MADE ("DESIGNATED AGENCIES")

Reports of suspected child abuse or neglect shall be made by mandated reporters to any police department or sheriff's department (not including a school district police or security department), the county probation department (if designated by the county to receive mandated reports), or the county welfare department. (PC section 11165.9.)

III. REPORTING RESPONSIBILITIES

Any mandated reporter who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment, whom he or she knows or reasonably suspects has been the victim of child abuse or neglect shall report such suspected incident of abuse or neglect to a designated agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof **within 36 hours** of receiving the information concerning the incident. (PC section 11166(a).)

No mandated reporter who reports a suspected incident of child abuse or neglect shall be held civilly or criminally liable for any report required or authorized by CANRA. Any other person reporting a known or suspected incident of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by CANRA unless it can be proven the report was false and the person knew it was false or made the report with reckless disregard of its truth or falsity. (PC section 11172(a).)

IV. INSTRUCTIONS

SECTION A – REPORTING PARTY: Enter the mandated reporter's name, title, category (from PC section 11165.7), business/agency name and address, daytime telephone number, and today's date. Check yes/no whether the mandated reporter witnessed the incident. The signature area is for either the mandated reporter or, if the report is telephoned in by the mandated reporter, the person taking the telephoned report.

IV. INSTRUCTIONS (continued)

SECTION B – REPORT NOTIFICATION: Complete the name and address of the designated agency notified, the date/time of the phone call, and the name, title, and telephone number of the official contacted.

SECTION C – VICTIM (One Report per Victim): Enter the victim's name, birthdate or approximate age, sex, ethnicity, address, telephone number, present location, and, where applicable, enter the school, class (indicate the teacher's name or room number), and grade. List the primary language spoken in the victim's home. Check the appropriate yes/no box to indicate whether the victim may have a developmental disability or physical disability and specify any other apparent disability. Check the appropriate yes/no box to indicate whether the victim is in foster care, and check the appropriate box to indicate the type of care if the victim was in out-of-home care. Check the appropriate box to indicate the type of abuse. List the victim's relationship to the suspect. Check the appropriate yes/no box to indicate whether photos of the injuries were taken. Check the appropriate box to indicate whether the incident resulted in the victim's death.

SECTION D – INVOLVED PARTIES: Enter the requested information for Victim's Siblings, Victim's Parents/Guardians, and Suspect. Attach extra sheet(s) if needed (provide the requested information for each individual on the attached sheet(s)).

SECTION E – INCIDENT INFORMATION: If multiple victims, indicate the number and submit a form for each victim. Enter date/time and place of the incident. Provide a narrative of the incident. Attach extra sheet(s) if needed.

V. DISTRIBUTION

Reporting Party: After completing form BCIA 8572, retain a copy for your records and submit copies to the designated agency.

Designated Agency: **Within 36 hours** of receipt of form BCIA 8572, the initial designated agency will send a copy of the completed form to the district attorney and any additional designated agencies in compliance with PC sections 11166(j) and 11166(k).

ETHNICITY CODES

1 Alaskan Native	6 Caribbean	11 Guamanian	16 Korean	22 Polynesian	27 White-Armenian
2 American Indian	7 Central American	12 Hawaiian	17 Laotian	23 Samoan	28 White-Central American
3 Asian Indian	8 Chinese	13 Hispanic	18 Mexican	24 South American	29 White-European
4 Black	9 Ethiopian	14 Hmong	19 Other Asian	25 Vietnamese	30 White-Middle Eastern
5 Cambodian	10 Filipino	15 Japanese	21 Other Pacific Islander	26 White	31 White-Romanian

Forms and Templates - Appendix I

FIVE PHASES OF A TITLE IX INVESTIGATION OF SEXUAL MISCONDUCT



PRISM

FIVE PHASES OF A TITLE IX INVESTIGATION OF SEXUAL MISCONDUCT

Phase 1: Notification of Investigation

The Title IX Office sends formal written communication to both the Complainant and the Respondent. The communication includes information about the investigation process including (1) the allegations to be investigated; (2) the alleged date and time they occurred; (3) the identities of the parties involved; (4) the policy and sections of the policy against which the allegations are assessed; (5) the name of the investigator; (6) the rights the Complainant and Respondent have throughout the investigation process; (7) notification of their rights against retaliation; and (8) any other information that is pertinent to the investigation of that particular case.

The Final Rule requires a school to investigate sexual harassment allegations in any formal complaint, which can be filed by a complainant, or signed by a Title IX Coordinator. The Final Rule also affirms that a complainant's wishes with respect to whether the school investigates should be respected, unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.

Phase 2: Information Gathering

The investigator gathers information related to the allegations. Such information may include; (1) documents; (2) electronic materials (e.g., texts, social media posts, emails, phone logs); (3) video and audio recordings; and (4) interviews with the Complainant, the Respondent, and witnesses.

During this phase of the process, the Complainant and Respondent are each provided an opportunity to provide information to the investigator to review, to interview with the investigator and to provide the names of witnesses for the investigator to interview.

Under the terms of the Final Rule, the burden of gathering evidence and burden of proof must remain on the schools, not on the parties. Schools must provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence. Schools must not restrict the ability of the parties to discuss the allegations or gather evidence.

Phase 3: Information Review

At the close of the information gathering phase, both the Complainant and the Respondent will each be provided an opportunity to review and respond to the information that the investigator has gathered and will use to determine what happened. Pursuant to the Final Rule, schools must send written notice of any investigative interviews, meetings, or hearings. Schools must send the parties, and their advisors, evidence directly related

to the allegations, in electronic format or hard copy, with at least ten (10) days for the parties to inspect, review, and respond to the evidence.

The Final Rule protects the privacy of a party's medical, psychological, and similar treatment records by stating that schools cannot access or use such records unless the school obtains the party's voluntary written consent to do so.

Phase 4: Report Writing, Analysis and Determination of Facts and Policy

After the Complainant and Respondent have been given an opportunity to review and respond to the information gathered by the investigator, the investigator reviews, weighs and analyzes the information using the "preponderance of evidence" standard. This means the investigator reviews the information to determine whether it was "more likely than not" that the alleged conduct occurred.

After the investigator reviews and analyzes the information, the investigator writes a formal investigation report. The report contains the following: (1) the allegations that were investigated; (2) the applicable policy against which the allegations were reviewed; (3) the individuals contacted and interviewed; (4) a list of the documents and materials gathered, reviewed and analyzed; (5) a summary of the statements of the individuals interviewed; (6) an analysis of the statements and information gathered and reviewed; (7) the investigator's conclusions and determinations about what happened and whether the allegations have been substantiated; (8) recommended discipline or consequences; (8) any sanctions being suggested; and (8) information regarding the appeals process and the recipient's procedures and permissible bases for the complainant and respondent to appeal.

Under the procedures required by the Final Rule, schools must send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least (10) days for the parties to respond.

To protect the privacy of everyone who participates in investigations, the investigation reports do not contain the names and titles of individuals participating in the investigation process. (A separate interview list should be maintained in the Title IX office.)

Phase 5: Notification of the Outcome of Investigation

After the investigator completes the written report, the Title IX Office sends formal written communication to both the Complainant and the Respondent. The communication includes information about the outcome of the investigation. The notice of outcome is accompanied by a redacted version of the investigation report. When appropriate, such as when the investigator determines that university policy has been violated, the notice of outcome letter will also include information regarding next steps in the Title IX process.

The Final Rule specifies additional procedural due process requirements to assure a fair outcome for all parties. This includes the following: Schools may, in their discretion, dismiss a formal complaint or allegations if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein, if the respondent is no longer enrolled or employed by the school, or if specific circumstances prevent the school from gathering sufficient evidence to reach a determination.

The Final Rule requires schools to give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal.

Forms and Templates - Appendix J

STEPS TO A LEGALLY DEFENSIBLE INVESTIGATION OF SEXUAL MISCONDUCT



PRISM

STEPS TO A LEGALLY DEFENSIBLE INVESTIGATION OF SEXUAL MISCONDUCT

Step 1: Determine the Scope of the Investigation

Contact the complainant or the individual making the report to verify the basic facts. Focus on the basics of who, what, when, and where.

- **What occurred?** Were there physical encounters? Were there verbal communications, and if so, was it in person or by telephone? Were there communications by text or Internet? Confirm the basis for the report/complaint and a basic description of each incident.
- **Who was directly involved?** Does it relate to student(s), teacher(s), classified staff member(s)? Are there co-workers or other district employees directly involved? Other family members of either party?
- **Who were independent witnesses?** Are there other students with personal knowledge from their own encounters or observations? Are there employees of the district with personal knowledge from their own encounters, observations, or communications? The investigator should take a broad approach to identifying potential witnesses, even if it appears that their involvement or knowledge may be “second hand” or tangential. Then, use the thorough interview process to seek and evaluate only competent information based on personal knowledge, observation, or participation.
- **When did the incident(s) take place?** Was it a single incident or did it occur over time? Was it persistent or pervasive? Which individual(s) were direct participants in the encounter(s)? Did other individuals who weren’t directly involved witness the events? Did any participant inform other? Request additional information, including potential witness names, position in the district or COE, and contact information? Was it during school hours?
- **Where did each incident(s) take place?** Was it on school grounds? Was it off-site; and if so, was it a home or other location? Where did independent witnesses obtain their information?
- **What documentary evidence exists?** The investigator should seek to identify with each witness the nature, scope, and description of any documentary evidence. This may take the form of written communications, emails, texts, digital photos or videos, or postings on social media such as Instagram, Snapchat and Facebook. What are they, when were they created or generated, and who currently has custody or access?

- **Where is documentary evidence housed or accessible?** Who has custody of identified documentary evidence? Where is it housed and does the District or COE have direct access in its own network systems or onsite? Can it be authenticated as genuine, accurate and credible? **NOTE: an internal district or COE investigator will be well served to obtain legal guidance on both how to authenticate the document and specific steps that are legally required to meet legal requirements to preserve the documentary evidence that is in hard copy or electronic format**
- **Who has custody of, or access to the relevant documentary materials?** Does a witness or party have custody of, or access to the documentary materials? Again, authentication, chain of custody, and proper evidence preservation requirements should be addressed with legal counsel.
- **How did the conduct impact each individual?** How were students or parents affected? How were co-workers (certificated or classified) affected? How were independent witnesses affected? Always explore how the events affected the alleged abuser as well.

After identifying the nature of the allegations, the investigator's role is to gather enough evidence to make a reasonably reliable judgment on the question of whether or not sexual harassment occurred. In practice, it is impossible to assemble all evidence that is technically relevant. The investigator should be aware of time and resource constraints in order to focus on obtaining that information which is most likely to lead to a reliable conclusion within those constraints.

Several general considerations should be kept in mind:

- **Determine key relevant questions and investigate them first.** It may not be necessary to go on to the remaining relevant questions if the overall outcome of the key questions is clear. Do not over-investigate a question for which a clear answer has been obtained. The answer to a relevant question may be clear immediately after the basic evidence is checked. If so, resist the temptation to continue gathering information on that question and go on to another.
- **Conduct complete fact finding of any unclear relevant questions.** If the initial information leaves the answer to a question unclear and it appears additional information may significantly clarify the issue, then additional inquiries should be made and further evidence checked. Always seek out evidence supporting all sides of the issue. The investigator is responsible for checking relevant evidence no matter which side it favors. It is important to avoid the common trap of focusing on evidence which supports only one side of the disputed question. Obtain the most reliable evidence that is reasonably available. If the only evidence that is readily available in

a particular investigation is a type that is considered the least reliable, an investigator must search further for evidence to support the conclusion.

- **Limit the scope of the investigation by identifying facts that are not disputed or have already been completely investigated.** Identify charges which are not relevant to the reported educator misconduct or are not material to this investigation. Isolate the remaining issues which will be the subject of the investigation.
- **Obtain the information personally.** The investigator should not rely solely on information provided by either the complainant or management, but should determine what is necessary evidence and obtain it. Likewise, do not decide a disputed issue on the basis that one party does not provide evidence relevant to the question. The investigator has an obligation to gather the evidence personally and should never make a decision against one party over the other based on a failure to provide evidence. Complainants should provide certain kinds of basic information to which they have ready access, such as the names of possible witnesses, etc. Beyond this basic information, however, the complainant or reporting independent witnesses are not responsible for developing evidence and conducting the investigation.

Step 2: Gather Documentary Materials

Next, gather all potentially relevant documentary materials before conducting detailed interviews.

Potential documentation to obtain:

- personnel files of key parties or witnesses that may be relevant to identify relevant past conduct, as well as interactions between employee witnesses that may bear on credibility;
- desk files, diaries, calendars (hard copy and electronic)
- witness statements that are available from law enforcement or other prior investigations of the same alleged incidents or conduct;
- Relevant texts, voice mail, pictures in hard copy or electronic format, video, or prior complaints by third parties;
- Relevant email, fax, usage logs, social media posts;
- Forensic examination of workstation and network, if any of the allegations involve graphic pictures or video that was uploaded or viewed in any district or COE worksite;

- Police reports or third-party statements that are made available by law enforcement or others parties (which sometimes includes parents).

Investigators should request all relevant documents from each party and witness, even if the investigator already has a copy of the document. Additional copies may have relevant notations. Electronic evidence may have relevant “metadata” which may be subject to a forensic examination and preservation. Thus, all copies should be preserved.

Investigators should be sure to secure evidence promptly, such as computer hard drives or electronic communications. Consult with legal counsel concerning all aspects of evidence preservation, to assure that all relevant information and documentation (particularly digital material) is properly segregated, and preserved in the event it is needed during the investigation or its aftermath, or in connection with future administrative or judicial proceedings.

Identify and segregate documentation that may be relevant. Further searches may be necessary as investigation progresses. The investigator must be very careful to comply with evidence preservation advice and direction from legal counsel) Identify issues or substantive content within the documentary materials which are not disputed or have already been investigated. Identify issues which are not relevant to this investigation. Isolate remaining issues and materials to review and evaluate.

The sources of information utilized in an investigation will vary according to the individual complaint. The investigator should plan carefully in order to assure that all sources of evidence have been exhausted and that all legal privacy and confidentiality requirements have been met. Be cautious about searching employee’s offices or other areas where employees have a reasonable expectation of privacy

Step 3: Conduct Interviews of All Relevant Individuals

Each interview should be conducted separately in order to preserve the integrity of the investigation. Individuals may feel pressure to provide certain information in front of others, which may or may not reflect the accurate facts. Interviews should be conducted in person unless an in-person interview would be impracticable or would cause undue delay. Interviewers need to be able to assess the body language of the interviewee since that may affect the investigator’s credibility determinations. The complainant, the respondent and key witnesses should definitely be interviewed in person. For more tangential witnesses, interviews may be conducted by telephone if the circumstances warrant.

Some investigators tape-record their interviews so they can have a verbatim record of the exchange and free themselves from the task of taking notes during the interview. Investigators who choose to tape record their interviews must have the consent of all parties to the interview. The consent to be taped should be given orally by each individual

present once the tape is running. Other investigators choose not to tape-record interviews because the presence of a tape recorder may impact the willingness of the interviewee to be candid. Tape recorders often make people hesitant to speak freely. Many investigators feel they can build rapport much easier without the presence of a tape recorder. Moreover, the transcription of tape recordings is time-consuming and expensive. Finally, there can be evidentiary issues raised later regarding the authenticity and accuracy of the tape recording, chain of custody and concerns about potential tampering. Whether those issues are raised properly or as a means to attach the integrity of the investigation, it is best practice to consult with legal counsel when making a decision on whether or not to tape record an interview.

The fundamental requirement for an effective investigation is to make the interviewee comfortable and getting the interviewee to talk as much as possible. Thus, investigators typically start with “easy” questions, such as questions about the interviewee’s education and work experience. Investigators use open-ended questions and are not afraid of pauses in the conversation which may encourage the interviewee to speak. Since the goal is to collect information, rather than disseminate it, investigators should be careful of sharing facts with the interviewee and should discuss the process of the investigation, rather than the substance. Investigators should use “who, what, where, why and how” questions and should keep the chronology of the events in mind at all times. It is often tempting to share one’s feelings about the investigation; however, investigators should not succumb to this temptation.

There are specific items that should be communicated to every person interviewed:

- **Introductions and Explanation of the Investigator’s Role.** The investigator’s role is to gather evidence from witnesses who have personal knowledge of the events that are the subject of the complaint or report. The investigator is a neutral fact-finder and will reach conclusions of what occurred. The investigator will gather evidence to make a reasonably reliable judgment on the question of whether or not the events or actions alleged occurred.
- **Brief Nature of the Investigation.** After explaining the investigator’s role, present a general allegation of misconduct. Generally, don’t ask witnesses if they have seen or experienced “sexual harassment.” Ask, instead, if they have observed any “misconduct” or offensive behavior in the workplace or problems between particular individuals. If so, ask them to identify the individuals involved. If they do not identify the complainant or the alleged abuser, be more specific. Bear in mind that the investigator’s goal is to elicit as much information as possible while divulging only what is absolutely necessary. Ask who, what, when, where and how questions. Remind witnesses to focus on what they themselves observed, but if they heard something from a co-worker or someone else, ask them whom, and interview that individual. Use the witnesses to discover the principal parties’ relationship with each

other. Finally, end each interview by emphasizing the importance of confidentiality and the need to discuss the investigation only with authorized personnel.

- **Requesting Facts, Not Subjective Opinions.** They will be asked to tell the investigator what happened to them, or what they personally observed or heard. They are not expected to have an answer to every question and it is perfectly acceptable to say they do not know, or do not recall a particular event or communication. The investigator may then ask questions designed to help “job” their memory, such as showing the witness documents, emails, or other documentary materials. If that causes them to remember something new, they should describe what they recall from their own personal knowledge, but should not guess or speculate.
- **Witness Responsibilities to Cooperate.** Start with describing why the witness is being interviewed. They may be a party (the accuser or the accused), or a direct witness to the events (an employee or co-workers, a teacher or another student). The witness may be the person who reported the alleged improper conduct or sexual abuse, or is a mandated reporter, and their personal knowledge is important. Every witness has an obligation to participate in the process in good faith. Each witness will be asked only for their personal knowledge and recollections.
- **Prohibition Against Retaliation.** This is a topic that the investigator should emphasize several times. Complainants and/or those who cooperate in an investigation must be protected from retaliation. Advise all employees that they will not be retaliated against for telling the truth. Employers should tell complainants and witnesses that retaliation violates the law and their policies, should counsel all parties and witnesses not to retaliate, and should be alert to signs of retaliation. Retaliation can take many forms. In addition to the obvious, such as terminations or demotions, retaliation could take the form of changes in assignments, failing to communicate, being ostracized or the subject of gossip, etc. Retaliation can occur at any time, not only right after an incident is reported or an investigation is started. It is good practice to check back with a complainant after an investigation is completed to ensure that the employee is not experiencing retaliation, no matter whether the allegations were determined to be correct. Have the witness acknowledge understanding of the importance of protections from retaliation and encourage them to inform the investigator or specified other individuals if, during the investigation or its aftermath, they believe they have been subjected to threats of reprisals for their participation or acts of retaliation.
- **Investigation is Confidential to the Extent Possible.** Inform the witness that the content of the questions and their answers, as well as any documentary material they may provide will be confidential; however, there is no guarantee of absolute confidentiality or anonymity. Have the witness acknowledge confidentiality before the interview starts and where appropriate throughout the investigation and

emphasize that this confidentiality extends throughout the investigation and its aftermath, again to the extent possible as there may be administrative or judicial proceedings in that would require disclosure of the facts and information.

The Basics for Interviewing Witnesses

Successful resolution of sexual abuse complaints requires good interviewing skills. It is important to put the complainant(s), the independent witnesses and the accused abuser at ease, so that they are able effectively to respond. The objective for every interview is to obtain reliable, usable information to achieve an informal resolution. The following techniques will assist the investigator in developing a plan for informal resolution of the dispute.

Good interviewing skills require adherence to some basic rules:

- **Plan the interview.** Select the proper time and place, develop a list of questions, decide how to record the interview (notes, tape recorder, etc.) and be mentally prepared. Be prepared for emotional responses, including tears, anger, hostility and stress reactions from both the complainant and the alleged abuser.
- **Conduct the interview in private.** Put the interviewee at ease by emphasizing confidentiality. Avoid an area where distractions may occur. Plan your time in advance so that you are not interrupted. Suggest to the accused abuser that he/she do the same before the interview.
- **Have all available facts at hand during the interview.** This will save time and assure that important issues are not overlooked. Keep the objectives of the interview in mind and be prepared to focus on the information you need to obtain from each individual witness
- **Encourage the interviewee to do most of the talking.** Ask him/her to tell you his/her version in his/her own words, based on personal recollections. If emotional reactions occur, take a break but avoid rescheduling the meeting unless absolutely necessary. Ask questions which are open-ended and will elicit a narrative answer. For example, "what did you do next?" rather than "did you tell her it was unwelcome?" or worse, "why didn't you tell her it was unwelcome?" Avoid injecting your own judgement into the interview to the extent possible. Try to limit the "why didn't you" and "couldn't you" questions in favor of getting the facts in the interviewee's own words.
- **Clarify answers or information before moving on with the interview.** Immediately clarify any response you do not understand. Although the investigator should avoid interrupting a narrative answer, make a note of confusing statements and be sure they are clarified before the interview is concluded. Be sure to listen to

everything the interviewee says. Do not allow yourself to be distracted by thinking about the next question. By concentrating on the complainant's story or the accused abuser's explanations, you will receive information which may require follow-up or may lead to narrowing of the disputed issues. Avoid leading the interviewee to a conclusion. This may be difficult when the complainant is a student, or is emotional or hostile. The same is true for parents, who may have discovered an improper intimate relationship between a teacher and their minor child, or blatantly graphic texts or emails. The investigator should use non-directive questions. Repeating the last part of the witness' sentence as a question will require a response without the individual being led.

- **Interview every potential witness.** As a key part of the investigation, interview all employees or other persons who may have knowledge of the facts on which the sexual abuse or improper conduct on which complaint is based, including the employee who is the alleged abuser. Every individual who is identified by the complainant(s) or other key witnesses should be interviewed. Likewise, interview all individuals who would have been likely to see, hear about the events, had they occurred as described by the complainant. Interview all individuals who had access to any relevant documentary materials that are identified by other knowledgeable witnesses. Basically, every individual who has direct relevant knowledge or can lead the investigator to other relevant witnesses or documentary evidence should have an initial interview.
- **Understand and anticipate that not all individuals will be truthful.** Some will purposely lie, withhold information or provide misleading information. Always watch for signs of deception by noting "facts" which do not make sense or by observing the body language or demeanor of the interviewee. It is useful to explore motives with interviewees. For example, if an interviewee denies a certain allegation that is described in detail, it would be helpful to ask the interviewee why he or she believes the other person would fabricate the allegation. Investigators should always ask the interviewee whether he or she has kept a log or notes concerning the allegations.

Special issues for interviewing the Complainant (Students or Parents)

When interviewing complainants try to obtain the specifics of the charges in their own words. Do not allow them to be vague; it is critical to get explicit details. If the alleged action is verbal misconduct, obtain the actual statements made by the alleged abuser. If the alleged action is physical touching, ascertain where the complainant was touched and in what manner.

Begin the interview by trying to put the person at ease and establishing a level of trust. Then ask the complainant to describe what he/she personally experienced. Encourage him/her to tell the story in his/her own words and as specifically and chronologically as possible. Focus on A detailed and specific *description* of the behavior about which the employee is

complaining, the identity of the alleged abuser, and the date(s), time(s), frequency, locations and circumstances under which the alleged conduct took place -- whether in or out of the actual workplace. The names of *others* who are or have been subjected to the same or similar treatment. The names of *others* to whom the witness has ever talked about the harassment, either within or outside the workplace, and particularly, whether the individual ever made his/her complaints known to a supervisory-level employee.

The complainant may ask to bring someone to the interview. Unless the written procedures address this issue (most do not), this is left to the investigator's discretion. It is probably best to make the complainant comfortable by allowing a support person to be present, provided that person is not expected to be a witness, and provided the support person agrees to maintain the confidentiality of the information. If the complainant is represented by counsel, it is customary to allow counsel to be present; the complainant will likely refuse to participate if counsel's presence is denied. The investigator should warn the complainant's counsel that he or she should not interfere with the interview and should allow the complainant to speak for himself or herself.

It is particularly important in sensitive sexual misconduct investigations, as well as retaliation investigations, that the complainant not be forced to address the allegations directly with the respondent. Forcing the complainant to confront the person he or she is accusing may be considered retaliation.

Interviewing Non-Party Witnesses

The first witnesses interviewed generally should be individuals identified by either the accuser(s) or the accused. If none of the main parties identifies anyone to corroborate his or her testimony, interview co-workers associated with both parties and the direct supervisors of the accused and accuser. When interviewing witnesses, do not reveal the particulars of the allegations or the names of the two principal parties.

After explaining the investigator's role, present a general allegation of misconduct. Generally, don't ask witnesses if they have seen or experienced "sexual harassment." Ask, instead, if they have observed any "misconduct" or offensive behavior in the workplace or problems between particular individuals. If so, ask them to identify the individuals involved. If they do not identify the complainant or the alleged abuser, be more specific. Use the witnesses to discover the principal parties' relationship with each other. Finally, end each interview by emphasizing the importance of confidentiality and the need to discuss the investigation only with authorized personnel.

Interviewing the Target of the Investigation (the alleged abuser or respondent)

In interviewing the alleged abuser/respondent, the interview should keep in mind two goals: gathering information and providing the "accused" a fair opportunity to respond to the allegations. Generally, it is helpful to explore the relationship and past history of the

complainant and respondent. The respondent should be asked to provide relevant documents and a list of witnesses. Again, if the list is long, the respondent should provide specifics as to what each witness would be expected to say. Although a written response typically is not required, it is best practice to ask the respondent if he or she would like to provide a written response to the allegations. The investigator should warn the respondent not to try to speak to the complainant or witnesses regarding the allegation. The investigator also should caution the respondent not to engage in any behaviors that might be perceived as retaliatory.

- **Focus on the alleged abuser’s version of events.** After the explanatory preamble, present the alleged abuser with a general allegation of misconduct. Leave out details of the alleged activity and avoid labelling him/her as an abuser or the conduct as sexual abuse. Get his/her side of the story including any possible motivation the accuser might have for exaggeration or fabrication. Although the primary goal of this interview is to elicit the facts from the accused's point of view, the investigator must be mindful that most reviewing bodies (administrative or judicial) will look at the alleged conduct through the eyes of the complainant. Thus, do not let his/her stated "intentions" with respect to his/her behavior sway you from focusing on the facts.
- **Expressly warn the alleged abuser that retaliation is against district policy and the law.** Reiterate that all parties to the investigation, including witnesses or individuals who the investigatory target may perceive are potential witnesses, are protected by the non-retaliation pledge and that any violation of this policy could result in severe disciplinary action. After the interview, compare the accounts of the complainant and the accused to identify areas of disagreement, then formulate follow-up questions for both parties.
- **Plan the interview.** Inform employee of representation rights. Be prepared for emotional or hostile responses. Conduct the interview in private. Have all available facts at hand. Use relevant documentary materials and records as part of your questioning. Stick to the object of the interview. Avoid extraneous work “issues.”
- **Ask pointed, but not leading questions.** Permit the employee full opportunity to provide narrative explanations. Always ask for any documentary or physical evidence the employee has. Avoid injecting your own judgment or ethical perspectives. Clarify any response you don’t understand.
- **Listen to everything the interviewee says.** Don’t be distracted by thinking about the next question. By concentrating on the story or explanations, you will receive information for follow-up or may lead to narrowing disputed issues.
- **Avoid leading the interviewee to a conclusion.** Use non-directive questions. Repeating the last part of the witness' sentence as a question will require a response without the individual being led. Understand and anticipate that not all

individuals will be truthful. Look for signs of deception: "facts" that don't make sense or unusual body language.

Step 4: Reach Independent Factual Conclusions

Evidence gathered to reach a conclusion should ultimately demonstrate each fact in dispute. For the sexual abuse complaint investigator, the evidence should specifically provide facts to answer the above questions. In evaluating competent evidence which will be both admissible in litigation and will clearly illuminate the complaint at hand, there are several basic rules. Only *relevant* evidence is appropriate to gather and evaluate. Evidence is relevant if it may lead to the production of evidence which tends to prove or disprove facts of consequence to the case. If a piece of evidence has no relevant bearing on the questions at issue, it is not admissible in any later proceeding. The investigator should take careful note of the relevance of each piece of evidence in order to assure that it has a logical bearing on the question.

Statements of persons must be based on their own knowledge. A witness is only allowed to testify to a fact from his/her own knowledge. Expressing an opinion or speculating is not admissible. Witnesses' statements should be detailed and contain facts and neither speculation nor ultimate conclusions. It is the responsibility of the investigator to evaluate the information and reach the factual conclusions based on the facts. The witnesses' statements should be used to provide detailed accounts of the specific conduct and issues directly related to the complaint. Wherever possible, witnesses' statements should be supported by other evidence. If a witness gives important information, the investigator should make every reasonable effort to verify or support this information through other sources of evidence.

Witnesses' statements should be evaluated with regard to the qualifications of the witness to testify. In order to determine if a witness is qualified, the investigator should discover the background facts which enable the witness to provide information concerning the matters in question. Likewise, documents in hard copy or digital format must be authentic (i.e., one which has not been altered, one which is "official," one which is not reconstructed). Although the original of a document is not usually necessary, the copy submitted should appear authentic and reliable. The investigator should never make marks on the document or alter it in any way.

Investigations should reach **factual** conclusions, **not** legal conclusions. Even if the allegation includes overt sexual interactions, unwanted touching, or objectively graphic texts, an investigator should only reach findings about the facts and should not reach a conclusion about whether there was unlawful (or lawful) conduct. In some situations, the district or COE may ask the investigator to determine if a specific internal policy was violated; however, that inquiry and conclusion should be limited to the factual basis for identifying a relevant policy and objective facts reflecting that the policy was (or was not) violated.

There are two types of evidence: direct evidence and circumstantial evidence. Direct evidence is any species of proof in the form of testimony from a witness who actually saw, heard, or sensed in some manner (i.e., an "eye witness") the alleged incident. Direct evidence, if believed, tends to prove the existence of a fact at issue without presumption or inference.

Circumstantial evidence is evidence that is not based on actual observation or personal knowledge of the facts at issue, but rather is based on other facts from which deductions are drawn, indirectly showing the facts sought to be proved. Under the above example, suppose that no eye witness could be found. But several persons did see the secretary go into the manager's office when and where she was allegedly fondled, then saw her immediately afterward in an extremely agitated state and heard her relate what had just happened. Further, witnesses saw the manager and the secretary together in the parking lot and after what appeared to be an animated conversation, saw the secretary leave in a hurried and upset manner. Finally, a complaint had been made on a previous occasion against the same manager, and the employer had been able to document that complaint. While none of this evidence directly supports the facts at issue, it does tend to corroborate the secretary's complaint.

It should be emphasized that even though it is necessary to draw inferences from circumstantial evidence, it is still valid, useful and legitimate evidence. Circumstantial evidence is often given more weight than direct evidence as in the case where eyewitness testimony differs markedly among eyewitnesses to the same event, even though such evidence is considered direct proof. Circumstantial evidence is merely the taking of fact and evaluating whether such facts support reasonable inferences concerning the event under investigation.

It should also be noted that a central problem relating to the use of direct evidence is the credibility of the testifying witness. On the other hand, problems of relevancy arise with the use of circumstantial evidence. It is important that the investigator recognize the problems associated with each type of evidence in order that unreliable or irrelevant evidence is not given weight in the investigation and that such evidence is described as unreliable or irrelevant and why it is so designated in the investigate report.

Reach Conclusions on Credibility

It is common for witness recollections to vary considerably. This is often referred to as a "he said-she said" or a "they said, we saw" situation. Thus, when evaluating inconsistent witness statements, credibility assessments about the strength and veracity of each witness can be critical.

Factors to consider with conflicting versions of relevant events:

- **Inherent plausibility.** Does the story hold together? Is it believable on its face? Does it make sense? Is this the way an event of this type would typically occur?
- **Demeanor.** Did the person seem to be telling the truth or lying? Consider whether the individual has a motive to falsify: Did the person have a reason to lie? Demeanor can be used as a credibility factor, but investigators should apply it with caution and understand the pitfalls of relying on demeanor when making a finding. To the extent possible, your conclusions should be based on an analysis of the objective evidence. Is there direct evidence of exaggeration, fabrication, or concealment by the witness? Is this consistent with a motive to lie?
- **Extent a witness was able to perceive, recollect or communicate about the matter.** Could the witness reasonably perceive the information reported (in terms of where they were, what else was happening, etc. Does it require visual acuity or other sensory perceptions that would be difficult for the witness?
- **Corroboration.** Is there witness testimony (such as testimony by eye-witnesses, people who saw the person soon after the alleged incidents, or people who discussed the incidents with him or her at around the time that they occurred) or physical evidence (such as written documentation) that corroborates the party's testimony?
- **Inconsistent information.** Are there inconsistencies between the witness's factual answers and the answers from other individuals? Does the individual giving statements that are inconsistent in a way that is not easily explained?
- **History of honesty/dishonesty.** Although investigations are not meant to make character judgments about the parties (whether they are a "good person"), if an individual is known to have been dishonest, this can weigh against his/her credibility
- **Manner of testimony or responses.** Is the witness hesitant? Are the answers direct or indirect? Does the witness make eye contact with the investigator? Does the witness use qualifying language that appears to be deliberately vague? When the witness has given direct answers to foundational questions and then reverts to ambiguities, does that suggest embarrassment about the subject matter or evasiveness?
- **Past record.** Is there a history of similar behavior in the past by the alleged abuser? Is prior conduct of the alleged victim relevant (be careful about this – stick to objectively inappropriate or proven false accusations in the past. Investigators should guard against any "assumptions" the complainant is exaggerating, fabrication, or otherwise motivated to lie.

Make Specific Factual Findings

The investigator should reach a specific conclusion on each allegation, and each underlying fact upon which the allegation is based. The statement of facts should be set forth as concisely and precisely as possible. Conclusions on each fact should be stated in clear language in the final or interim report.

Step 5: Prepare the Investigation Report

The report should recite the specific allegations and factual findings, summarize the evidence gathered from witness interviews and review of relevant documentation. The investigation should address any issues that were not investigated due to non-relevancy, any factual matters that could not be determined due to unavailability of witnesses or further forensic investigation of documents. Then, the report should reach conclusions.

- **Describe the scope of the investigation.** Summarize that the investigation was undertaken based on the reports/complaints by employees concerning alleged sexual misconduct allegation. Identify the complaining parties and their job positions or status (if students). Identify the names and job titles of each individual who was interviewed and the date they were interviewed. For those with follow up interviews, list them separately.
- **Identify the key issues addressed.** Set forth each allegation separately and then recite undisputed facts first. Next identify facts in dispute. Be factual and precise.
- **Identify any allegations or key issues that are pending or undetermined.** Describe any issues of allegations that in the professional judgment of the investigator require further investigation, due to unavailable witnesses, press of time to complete the investigation, ongoing parallel investigations by law enforcement, or necessary forensic examination of digital files or other materials.
- **Summarize key witness information.** State the essence of each witness interview, what they saw, what they heard, what role they may have played. The more detailed statements can be maintained separately.
- **Summarize relevant documentary evidence.** State the essence of each category of materials and documents or content within each category. Describe the basis for concluding that the documentary evidence is relevant, reliable, and readily available for review. Reliable requires that it be capable of authentication by the person(s) who generated it. Readily available means that if relevant it should be attached as an exhibit to the report or if a public record (such as a police report), where the original or a certified copy may be obtained. In addition, as noted above, the investigator should take every appropriate step, in consultation with legal counsel, to identify materials that must be preserved indefinitely pending the

outcome of the entire matter, including potential administrative or judicial proceedings. Where appropriate, the report should confirm that evidence preservation has been undertaken.

- **Address credibility findings on disputed facts.** Identify inconsistencies in recollection and set forth the investigator’s conclusions about the credibility and veracity of witnesses. If a witness is credible because of corroborating evidence, specify the facts and reasons for the conclusion. If a witness is determined to have a motive to exaggerate or fabricate, address that as well.
- **Reach conclusions on each separate allegation.** The four basic conclusions that should be addressed for each allegation and factual determination include:
 - Sustained. The investigation established the particular allegation or factual issues is likely true.
 - Not sustained or unsubstantiated. The investigation failed to establish one way or another whether the allegation or factual issue is likely true.
 - Uncorroborated. The investigation established that the allegation cannot be substantiated with corroborating information or documentation.
 - Unfounded. The investigation established the allegation is likely not true.

At a minimum, the investigation report should be well organized and easy to follow. If it is lengthy due to the number of witnesses interviewed or the volume of documentary materials, generate either a detailed Table of Contents or a Topical Index. A topical index should be capable of cross-referencing, so that witness names are included, as well as specific allegations, facts, documents, and related information.

Principles of Effective Documentation in Report Writing

- **Write with accuracy and precision.** Be factual with all memos, letters, and other business communications. Include all details: date, time, location, name of persons involved, witnesses, work environment conditions, and necessary action taken or recommended. If your adversary can take your documents out of context or if your records express opinions on the ultimate facts in dispute yet don’t contain all the relevant data, then your position may suffer during a lawsuit. Avoid speculation, exaggeration, subjective, or relative descriptions that are at best ambiguous. Limit the use of terms such as “frequent,” “excessive,” and “sub-standard,” unless you also give the context. Think about your objective for the communication and how you intend others to read it and act upon it. If someone reading the communication could ask “relative to what standard?” then the writing is non-specific. Use objective facts and examples instead.

- **Avoid legal conclusions.** Don't use legal terms in a non-legal sense. For example, "He was negligent because he didn't read his e-mail," uses a legal term (negligent) in a lay sense. While it might be unprofessional or otherwise bad business not to read e-mail, it isn't "negligent," which is defined in the law as failure to exercise that degree of care and skill necessary to avoid foreseeable risk of harm to a person or property. Other terms to avoid include "defective," "fraudulent," "misleading," or "discriminatory," unless you have both the expertise and the job responsibility to reach those conclusions.
- **Avoid negative connotations that may be misleading.** Avoid slang or shortcuts in terminology. Minimize unnecessary technical jargon by defining the term's meaning in its technical context. Make sure your communications are consistent with the intended recipient's knowledge so that you can defend against a claim that the recipient did not understand the content or requested action. Describe all actions and conclusions objectively, and be honest in assessing the situation (do not rely on second/third party information unless it is specified as such).
- **Eliminate all inflammatory, offensive, or otherwise inappropriate language.** Minimize the use of labels, such as "abuser" or "harasser," without a description of the underlying factual basis for the evaluation. Also, avoid subjective terms when describing people, as those terms may be misleading to a layperson serving as a juror.
- **Close the loop on all significant issues raised in writing.** If someone requests information from you, provide it promptly or notify the person of any foreseeable delays. If an action is requested in writing yet the resolution is not reflected in writing, the courts may later mischaracterize the district's actions.
- **Control copy distribution.** Be sensitive to confidentiality where appropriate. Make sure your employees understand their responsibilities to safeguard proprietary business records, intellectual property, and other company assets from inadvertent disclosure. Also, understand the scope and limitations of attorney-client privileges. Big Tobacco learned the hard way that labeling a document "privileged" doesn't govern whether the document can be safeguarded from production. Privileged exchanges between lawyer and client are limited to those where the client provides facts intended to be a confidential request for legal advice, and the lawyer responds with analysis of those facts. Marketing studies and medical analysis of the addictive powers of nicotine were not privileged, and the courts ultimately sanctioned the companies for trying to rely upon a legal protection that didn't exist.
- **Be consistent in your documentation techniques.** Inconsistency often reflects poorly in later administrative or judicial proceedings, especially in the context of performance appraisals when an employee claims that management singled out him or her for negative action. However, consistent doesn't mean inflexible.

Rather, consistency enhances the district's ability to defend against discrimination claims when the employer can demonstrate that the needs of the particular job consistently required adherence to concrete, well-articulated performance expectations, and that all similarly-situated employees were held to the same standards.

Forms and Templates - Appendix K

TIPS TO COMMUNICATING WITH THE MEDIA



TIPS TO COMMUNICATING WITH THE MEDIA

- **Non-verbal Communication is Communication.** Journalists/reporters and, especially, your constituents will make judgements based on non-verbal cues. Even though you may have to read a press release to the media, you must lock eyes with them and the TV cameras in the room. That means your press release should be read aloud multiple times before you go live with it in a press conference. Even if you have only minutes, read it aloud in front of a mirror and lock eyes with yourself. Postures like crossed arms, fidgeting, never looking up from your press release convey a message that won't be well received by the Media or the public.
- **Convey Compassion.** A Human impact must be valued. It is important to be factual but also empathetic to the community. Public outrage will run amok if the organization is seen as heartless. Tell your factual story but also deliver solid cues of compassion and confidence using non-verbal tactics. The EMPATHY tactic should be employed.
- **E.M.P.A.T.H.Y.** E: make eye contact; M: use facial muscle control (don't roll eyes); P: have a neutral posture; A: actively listen to Media questions; T: timing, don't react or talk-over the Media (this looks like bullying); H: be HUMAN, show some level of appropriate emotion; Y: make your response clear, concise, confident, and competent.
- **Remember the Common Ground.** The media and the School District have common ground. Both gather information don't always reveal how it's obtained, believe they're vital to human welfare, and have an impact on society. Keeping this in mind during a press conference or Media interview allows you to keep composure and remain confident while delivering your factual statement with a human element of compassion.
- **Reverse Role Practice.** Think about the facts and information that are most relevant to deliver that information and then think about what follow-up questions you would have if you were in the Media's shoes. Understand, it's the Media's job to press for details, even if you appear to not have any information. Don't be condescending when you respond that you've already answered that question. The journalist is looking for a deeper answer. Try rephrasing your answer giving the same information. This makes law enforcement look helpful and caring, not arrogant and robotic.
- **You are Always On.** When you leave the podium and the press conference and are walking out of the room, the Media is watching and, if it's being broadcast or streamed on live TV or the web, your non-verbal communication is being watched. Remain composed and confident. If you're wearing a lavalier

microphone...THERE IS NO SUCH THING AS OFF...there is always a chance you are being recorded. Likewise, cellphones can capture anything anytime.

- **Never say “No Comment”.** Deliver honest, information in a calm and, compassionate manner but don’t answer the Media with “No comment”. This will only raise many flags and the Media will press and dig deeper. Instead, if you don’t have the information or can’t release it, say so. You can say, “The investigation is ongoing, so I can’t answer that right now.”
- **Social Media.** During a crisis is one of the most important times to be actively listening and monitoring your social media channels to maintain your online reputation. If you don’t have software platforms to help you do this, you must employ personnel to do the monitoring. Long before the crisis happens, a team of people should be instructed on how to behave, post, and respond during a crisis. You will NOT stop the community from posting and distributing misinformation about a crisis, but you can be the competent, engaged, voice of factual statements broadcast via your social media channels. Remember, the Media will often use information found in your feeds.
- **Social Media Live Coverage.** Use your own social media channels to disseminate information. Facebook Live is an excellent way to get your message to the public and Media. Journalists check websites and social media platforms routinely for information and sources for their stories. This is a good use of social media platforms. Twitter is another live streaming platform that can help quickly disseminate important information, but Facebook is an important tool as well.
- **Consider Creating a Branded Hashtag.** Using a branded hashtag (#) in your social media channel posts and your Press Releases will make it easier to reference all your posts and threads on the incident. These days the Media often streams live via Facebook, Twitter, and YouTube. The community and viewers immediately start searching for more information, you want your information to be part of what they find.

Forms and Templates - Appendix L

SAMPLE INTERNAL MEDIA RESPONSE CHECKLIST



SAMPLE INTERNAL MEDIA RESPONSE CHECKLIST

The following internal checklist is an example that can be used to help in developing a media response and manage the information.

- In the event of a critical incident, the School District’s spokesperson is:
 -
- In the event of a critical incident, the School District’s Control Group (key School District employees) are:
 -
- The optimum Defense Attorney for the School District defense against a civil suit, one to be present during key meetings, press releases preparations, and the interviews of School District personnel involved in the incident is:
 -
- If the critical incident response requires the need for a public relations firm, that firm is:
 -
- The Board members requiring the need for direction concerning exchanges with the media are:
 -
- The School District employee assigned to monitor and provide reports concerning social media activity is:
 -
- The School District’s decision-maker concerning the need to respond to press releases, respond to family members and/or their attorney, and whether to release body camera and dispatch recordings is:
 -
- The School District’s Public Information Officer is:
 -
- The School District’s employee assigned to communicate with the School District Attorney’s office/investigators is:
 -

- The School District’s employee assigned to control and monitor the follow-up investigation is:
 -
- The School District’s social media evidence collection vendor is:
 -
- The School District’s Risk Manager and Attorney who will work with the School District’s Third-Party Claims Administrator (TPA) to authorize defense spending within the School District’s self-insured retention layer are:
 -
- The School District’s Human Resource contact in the event employee discipline is necessary is:
 -
- The School District’s contact person for the self-insured pool’s Litigation Manager/Claims Manager is:
 -
- The School District’s employees/Board members who possess settlement authority for early resolution cases are:
 -
- The party assigned to generate a settlement authority request and present the same is:
 -
- The Risk Manager having the authority to “lock down” an incident scene for the purpose of preserving evidence for future civil litigation purposes is:
 -
- The School District’s mediator preference for early resolution discussions is:
 -
- The School District’s employee responsible for the Police Officer(s) and Police Department’s well-being during the litigation process is:
 -