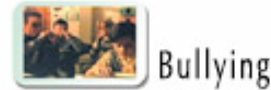


McGrath Newsletter Series

The Bread Crumb Trail:

A Straight Line from Sexual Misconduct to Sexual Abuse in Schools



The Bread Crumb Trail: A Straight Line from Sexual Misconduct to Sexual Abuse in Schools

Broader Examination of Sexual Misconduct Critical to Protecting Nation's School Children

By Mary Jo McGrath, Attorney at Law

More than 4.5 million students endure sexual misconduct by employees of their schools, ranging from inappropriate jokes all the way to forced sex, according to a new report prepared by Charol Shakeshaft, a Hofstra University professor. Dr. Shakeshaft prepared the report to Congress in compliance with No Child Left Behind legislation requiring analysis of sexual abuse in our public schools. (Educator Sexual Misconduct: A Synthesis of Existing Literature, US Department of Education, Charol Shakeshaft, 2004.)

Sexual abuse is defined by federal legislation as involving an act where one knowingly “causes another person to engage in a sexual act by threatening or placing that other person in fear ...or engages in a sexual act with another person if that other person is – (a) incapable of appraising the nature of the conduct; or (b) physically incapable of declining participation in, or communicating unwillingness to engage in that sexual act ...” (18 U.S.C. Section 2242).

Dr. Shakeshaft expanded the scope of her analysis beyond this narrow definition of sexual abuse. She used the broader category of “educator sexual misconduct.”

Sexual misconduct “includes behavior by an educator that is directed at a student and intended to sexually arouse or titillate the educator or the child.” Educator is defined as “any person older than 18 who works with or for a school or other educational or learning organization. This service may be paid or unpaid, professional, classified or volunteer” (Shakeshaft, p.1).

What is of most interest is the extensive flak from many corners that the report drew upon its submission. Michael Pons, a representative of the National Education Association, a union of 2.7 million school employees, said, “Lumping harassment together with serious sexual misconduct does more harm than good by creating unjustified alarm and undermining confidence in public schools.” (Study: One in 10 students encounters sex abuse. Report to Congress is first to take comprehensive look at problem. The Associated Press, June 30, 2004.)

What Ms. Pons’ statement reflects is a lack of awareness of the direct and undeniable connection between behaviors that would be classified as sexual misconduct and their progression into sexual abuse.

As an investigative attorney with over 25 years experience handling employee misconduct and child sexual abuse cases in our nation’s schools and former Chair of the US Department of Education Expert Panel on Safe, Disciplined and Drug-Free Schools, I am an expert on educator sexual misconduct and its link to educator sexual abuse. It is vitally important that educators, parents and school administrators are clear about the connection between the two categories of behavior, not so as to cause “alarm” but rather to give them confidence that they can detect and prevent misconduct and abuse in their schools.

The purpose of this article is to demonstrate that there is indeed a straight line between the two and to provide some basic guidance on the detection and investigation of educator sexual misconduct and abuse in our schools.

Connecting the Dots

Educator sexual misconduct includes the following behaviors when directed toward a student by an adult:

- * Made sexual comments, jokes, gestures, or looks.
- * Showed, gave or left you sexual pictures, photographs, illustrations, messages, or notes.
- * Wrote sexual messages/graffiti about you on bathroom walls, in locker rooms, etc.
- * Spread sexual rumors about you.
- * Said you were gay or a lesbian.
- * Spied on you as you dressed or showered at school.
- * Flashed or “moonied” you.
- * Touched, grabbed, or pinched you in a sexual way.
- * Intentionally brushed up against you in a sexual way.
- * Pulled at your clothing in a sexual way.
- * Pulled off or down your clothing.
- * Blocked your way or cornered you in a sexual way.
- * Forced you to kiss him/her.
- * Forced you to do something sexual, other than kissing.

(American Association of University Women, 2001, *Hostile Hallways*, Washington, D.C.: AAUW Educational Foundation).

Dr. Shakeshaft acknowledges in her report that “there is considerable discussion concerning the appropriate label for these actions.” In defining the scope of her inquiry as “educator sexual misconduct” Dr. Shakeshaft refers to a policy of the Ontario (Canada) College of Teachers, which recommends this term over “educator sexual abuse.”

She quotes: “By referring to ‘sexual abuse’ the emphasis is placed on the victim, and the question of whether the victim did or did not suffer abuse or harm. This is not the appropriate focus. The proper emphasis must not be on the student, but on the teacher, who is solely responsible for his or her professional conduct.” (Brief to Standing Committee on Justice and Social Policy, Re: Bill 101, Student Protection Act. Ontario College of Teachers, Toronto, 2001, p.3.) She further states that “this definition is central to the development of future studies on educator sexual misconduct.”

As an investigative attorney, I felt that it is absolutely critical to include the full range of educator sexual misconduct in any discussion that is serious about protecting students from harm. Why? Because rarely is the sexual abuse itself visible to those in the educational community. But the behaviors listed above often are visible.

Understanding the Psychodynamics

To trace the line between sexual misconduct and sexual abuse, it is necessary to understand the psychodynamics of a typical educator sexual misconduct or abuse investigation

The current target of child sexual abuse is seldom the one to report the abuse. The child may be intimidated, perhaps even physically threatened by the perpetrator, or the child may have a strong bond with the perpetrator who has convinced the child that his/her sexualized behavior is an expression of love. The child may fear the consequences should the sexual behavior be exposed. In some cases, emotional trauma may also trigger the psychological defense mechanism of denial, which blocks the victim’s recognition of the harm he/she has suffered.

Best results are obtained by interviewing the environment of the alleged victim before interviewing the alleged victim. In my experience, many people in the school setting -- from classmates to classified staff to colleagues, administrators, and parents – will observe behavior that points toward a pattern of sexual misconduct and/or abuse without recognizing or reporting the behavior. The investigator’s job is to uncover and follow the “bread crumb trail” by piecing together

information from these sources. The first “crumbs” usually come from witnesses to minor infractions. These infractions, which I call “boundary violations” fall in the sexual misconduct category.

Identifying the Danger

As Dr. Shakeshaft points out, educators who sexually abuse “believe the stereotype of an abuser as an easily identifiable danger to children” (p.22). If sexually abusive adults looked like monsters, matters would be simplified. In fact, sexual abusers don’t come with fangs. Experts profile a typical male offender as a well-liked, deeply religious, heterosexual family man, who has received accolades and awards for excellence in teaching and/or community service. There is no profile for female offenders.

Initially investigators are following up on rumors, a painstaking process of interviewing adults and students in the environment around the situation to determine what each knows. Rumors are vital. They are the tom-toms of a community, and when investigated, they have a strong track record of reliability. However, the investigator can only follow rumors. They have no credibility on their own, and he can’t build a case out of them, but rumors usually point to credible evidence and reliable witnesses. In fact, it is not at all unusual for a child who was abused in prior years – perhaps now an adult -- to break open a case during the interview process.

The investigator must track down every lead given in an interview. Quite often, proof of an abusive incident is uncovered by piecing together information from a number of people who either have been told about it by the victim or who have seen some aspect of it themselves. If every lead is not investigated, the “smoking gun” may be missed and an investigation will come up negative, when in fact abuse has occurred.

This takes skill. The facts may be hard to find unless the investigator understands the thought processes and emotional concerns of all those involved. In addition, investigators must be thoroughly trained in legally sound interview techniques that reveal the truth rather than leading the witness.

Following The Bread Crumb Trail

Interviews should be focused broadly, looking for “boundary violations.” Often, boundary violations serve as a “bread crumb” trail leading to abusive behavior.

Human boundaries create a sense of safety and security. For example, when we stand in a crowded elevator with strangers, most of us stare uncomfortably at the floor indicator, unable to tolerate such close proximity with others. It violates our physical boundaries.

In a school setting, boundary violations often involve marginally inappropriate behavior that may or may not constitute sexual abuse. Young people instinctively recognize these boundary violations and often nickname the employee engaged in such violations a “pervert,” based on their perceived sense of inappropriateness.

Most school employees automatically set clear boundaries for behavior with students. The perpetrating adult, however, will go as far as the child permits. Habitual offenders “troll” for children with a weak sense of boundaries, targeting them for further abuse. They “groom” their victims with gifts and attention and “lull” them into complacency, escalating the level of physical intimacy over time.

Many times, the target of such abuse has had life experiences that have left him or her with a confused sense of personal boundaries. This student is neither able to detect nor deter the inappropriate behavior of the adult. Often the young person targeted by an abusive adult is the one who is hungry for attention, love, and understanding. The student bonds tightly with the adult based on trust and affection. As the situation progresses, the adult takes advantage of that trust and crosses the boundary into various types of sexual misconduct.

Physical contact with a student is not necessarily a boundary violation. An appropriate hug or a pat on the back communicates emotional warmth. Behaviors that signal an employee's lack of respect for a student's sense of appropriateness and safety, however, are clues to a potential underlying problem.

It Didn't Feel Right

As observers, we experience a whole range of reactions when boundaries are violated. Frequently, in the legal cases I handle, a teacher observes the inappropriate behavior of a colleague and goes away with a sense that something didn't "feel right." In one case, a teacher saw a colleague holding a young student in his lap on several occasions for what seemed a little too long and a little too close. The teacher had an uncomfortable feeling about the situation but questioned her own judgment as to whether a problem existed.

A number of times, people I interviewed have told me that they woke up in the middle of the night and could not get back to sleep because they kept thinking about a questionable situation that they had seen or heard. That is the boundary warning system at work.

Often an observer has difficulty putting his or her feelings into words and ends up hesitant to relay the observation to another, particularly a supervisor. Because these incidents are usually not sexual abuse, but rather a clue that something may be amiss, they often go unreported and/or uninvestigated.

Red Flag, Green Flag

In the sexual harassment investigation workshops that I conduct with school administrators, it is not unusual for a participant to burst into tears at the realization that he/she missed an early warning sign of what was later revealed as educator sexual abuse. In hindsight it is all too clear.

Therefore, I train school administrators to identify and classify behavior that they witness on campus or that is reported to them by employees. I use a classification system of green, yellow and red flag behaviors.

Green flag behavior is behavior that has no sexual overtones or undertones to it. It can be: joking, friendly comments or teasing, compliments that are not overly personal in nature and are welcome, or offers of assistance. Usually, these behaviors are not cause for suspicion.

Often what distinguishes behavior as "green flag" versus either "yellow" or "red" has a lot to do with demeanor and non-verbal communication. The same words or actions may be unacceptable when said in a tone of voice that is outside the acceptable range or when the speaker directs his/her gaze at certain body parts rather than maintaining eye contact. The context or setting in which the behavior occurs is also a big factor.

Yellow flag behavior can be described as brushing up against another's boundaries, either physical, emotional and/or social. The observer or recipient of the behavior is left ill at ease and wonders about the person's intentions.

To yellow flag a behavior indicates that the action may have some sexual aspects to it, but that it does not clearly have such overtones. One could say that the behavior has sexual "undertones" instead. This is the type of behavior which may not be entirely suspicious but which sets off an observer's sense that something may be amiss.

The person engaging in the behavior may be unaware of its effect on another and may even have a completely innocent intention. Remember, sexual misconduct and abuse is not determined by the perpetrator's intent but by how it is perceived by the person receiving the attention.

Here are some examples of "yellow flag" behavior:

- * Offering to mentor an employee or student but insisting that the meeting take place in an isolated location after hours.

- * Singling someone out for attention or favors on a regular basis.
- * Frequent effusive compliments directed toward a particular person.
- * Mixing business meetings with extended conversation about individual interests or issues.
- * Teasing in a way that references gender or contains sexual innuendo.

Supervisors should follow up on all yellow flags. A warning or even greater intervention may very well be in order regardless of the intent of the person engaging in the behavior.

A red flag behavior is one that has overtly sexual overtones and that is unwanted by or embarrassing to the receiver. Red flag behaviors are those that signal that something is clearly amiss. They must not be ignored or discounted.

Where There's Smoke

If an investigator follows the trail pointed out by his or her sense of appropriate boundaries, sometimes it leads to a school employee with poor judgment who needs a wake-up call. But unfortunately, all too often an investigator finds sexual abuse. Why?

Most sexual abuse allegations against educators do not result from a single indiscretion in a reckless moment. Almost always there is a continuing course of conduct by an adult who preys on children for sexual gratification.

What About False Accusations?

For those concerned about false accusations, careful reading of Dr. Shakeshaft's report reveals that although the "belief that false accusations are common" is "the prevailing mental model," studies to date indicate that false accusations are actually rare" (p. 36).

As an experienced investigator and professional trainer of sexual harassment and abuse investigators in school districts throughout the United States, I often encounter the fear that this mindset engenders. The truth is that not only are false accusations rare, but that it is possible to conduct a thorough and proper investigation into such allegations without damaging the reputation of the alleged perpetrator. It simply takes training in proper investigation procedures and techniques.

A Duty To Protect

School districts have a duty to protect students from sexual harassment and child sexual abuse. Court decisions have found two bases for the duty to protect. These are:

- (1) School personnel have a duty to protect students from known or reasonably foreseeable harm occurring during or in connection with school activities; and
- (2) School personnel are responsible for properly monitoring and disciplining subordinates such as school teachers over whom they exercise supervisory authority.

In exercising the duty to protect students from educator sexual harassment, misconduct and abuse, school officials have:

A duty to train: providing appropriate training and instruction of all school employees and students with respect to the issues which surround sexual misconduct and sexual abuse. This includes thorough training in how to detect and report such behavior.

A duty to investigate: establishing and implementing appropriate complaint and investigation procedures for employees and students to ensure that each sexual misconduct and/or child sexual abuse complaint receives an immediate, appropriate, adequate and comprehensive response. In addition to the school district investigative team, all school site administrators and classified managers should be thoroughly trained in complaint intake, management and investigation procedures.

A duty to remedy: providing appropriate and adequate remedial steps and follow-through to stop the sexual misconduct and/or child sexual abuse.

A duty to monitor: enabling a school environment free from sexual harassment, misconduct and abuse through continual monitoring and correcting of inappropriate behaviors. This includes establishing a district-level coordinator who received copies of all complaints involving sexual misconduct or sexualized behavior. A regular review of complaints may reveal a pattern of boundary violations that would otherwise remain undetected and uninvestigated.

Fulfilling on these duties entails both ongoing training and development and prompt, professional, consistent action. The best protection from harm includes having clear policies and procedures in place, training all students and employees to recognize and report unwelcome or inappropriate behavior that they experience or observe, and training all classified managers and site administrators in the proper steps to take for the legally fit and educationally sound intake, management, investigation and resolution of sexual harassment and abuse complaints. This includes knowing when to turn the matter over to a better-qualified, impartial investigator.

An Environment of Safety and Respect

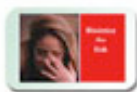
We must provide a school environment where all complaints (including yellow and red flag behaviors observed by others) are taken seriously, acted upon promptly, and responded to fairly and consistently. Students will then feel safe and respected and they will report behavior before it becomes serious. Adults in the setting will follow suit. And potential offenders will know that they cannot get away with sexual misconduct toward students no matter where it falls on the continuum of behavior.

Mary Jo McGrath, Attorney at Law, is president and founder of McGrath Training Systems, a national provider of legally based training for schools. She is an expert on educator sexual misconduct and abuse. She served as Chair of the US Department of Education Expert Panel on Safe, Disciplined and Drug-Free Schools. For more in-depth articles on the psychodynamics of child sexual abuse investigations, early warning signs of child sexual abuse and related topics, go to www.mcgrathinc.com.

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