

Legal Matters

Sexual Misconduct: Ten Things School Districts Need to Consider

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Sexual misconduct by staff and volunteers against students continues to be one of the most significant areas of concern that school districts face. It has been estimated that at least 4.5 million students are subject to sexual misconduct at sometime between kindergarten and high school graduation. Allegations of sexual misconduct can devastate not only the involved students, but entire school communities. Here are ten things that your school district should consider to ensure that you are in the best possible position to prevent, respond, and recover from allegations of sexual misconduct.

1. It is important to regularly review and update your school district's policy, regulation/procedure, and training on recognizing and reporting sexual misconduct to ensure compliance with state law. New mandates can and have been implemented through amendments to what were otherwise unrelated statutes. For example, RCW 28A.320.127 (which mandates school districts have plans for recognition, screening, and response to emotional or behavioral distress in students) was amended in 2016 to include very specific requirements related to recognizing and reporting sexual misconduct. Now school district plans for recognition, screening, and response to emotional or behavioral distress in students must include provisions on how the school district will provide support to students and staff after allegations of sexual abuse; how staff should respond when allegations of are made against a staff member, a volunteer, or a parent, guardian, or family member of a student, including how staff should interact with parents, law enforcement, and child protective services; and how the school district will provide its staff with the mandatory training on the obligation to report sexual misconduct. Additionally, elements of your school district's policy, regulation/procedure and training may need to be updated to reflect issues that were not at the forefront even a few years ago. For example, does your school district have expectations for staff interacting with students via electronic means, including on social media, and are those expectations included in your policy, regulation/procedure and training? If not, consider addressing this area as it is often the case that individuals who are engaging in sexual misconduct are communicating with students using the means that students typically use to communicate with each other, i.e. text messaging and social media platforms.
2. If your school district has updated its policy and regulation/procedure on recognizing and reporting sexual misconduct, it is important to ensure that the revised documents are widely distributed. It is not uncommon to discover that a policy and/or regulation/procedure has been updated, but staff, student, parent, or volunteer handbooks contain out of date information or prior versions. If your handbooks have gone out with a policy and/or regulation/procedure that is out of date, it is important to track how you provided the current and correct version to staff, students, parents, and volunteers as well as to make sure that subsequent printings are updated.
3. It is critical to have systems in place to accurately record employee participation in mandatory training regarding recognizing and reporting sexual misconduct. RCW 28A.400.317 mandates that all school staff

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must receive training regarding their sexual misconduct reporting obligations in orientation training and then every three years thereafter. Confirming that employees have received training consistent with this mandate can be hampered if there is not a centralized system for recording training, if training records are not migrated when technology changes occur, and if the name of the training is not consistent. It is also important to determine how your school district will track and address individual employee compliance. If no one is actively monitoring to ensure that all employees are receiving training every three years, your school district is risking having a significant number of employees who are not in compliance. Not only does this mean that staff may be unprepared to recognize and report sexual misconduct, it could later be used as evidence of negligence by the school district in supervising and training its employees.

4. Once you have confirmed that your school district's policy, regulation/procedure, and training materials related to recognizing and reporting sexual misconduct are current and appropriate, it is key to ensure that the information is being delivered consistently in mandatory trainings. If you have multiple trainers, make sure they are all trained on how to deliver content in the same manner so that there is not significant variability in what is covered. It is recommended to not allow individual trainers to alter or edit your school district's sexual misconduct training materials. This will allow for your school district to ensure that employees are receiving all of the content you intend for them to receive. Having only one set of training materials will also help when your school district gets the inevitable request for all training materials or the training materials that a specific employee or group of employees received after an allegation of sexual misconduct has been made. Also, it is important to make sure that your trainers are receiving the mandatory training themselves at least every three years. Your trainers will be witnesses as to if your school district has done what is required by law and you do not want to have them tripped up by not being in compliance with their own mandatory training requirements.
5. While RCW 28A.400.317 only mandates training regarding reporting sexual misconduct for school employees, many school districts have adopted requirements to provide similar training to volunteers, contractors, and/or students. Training these groups can be valuable in both protecting students and demonstrating that your school district is taking reasonable steps to prevent sexual misconduct. Your school district may want to consider having recognizing and reporting sexual misconduct be a portion of a broader training given to volunteers, contractors, and/or students on sexual harassment prevention, which may be mandated by your school district's nondiscrimination or anti-harassment policies. It is critical that if your school district policy or regulation/procedure mandates training recognizing and reporting sexual misconduct beyond school employees, the training be provided in the manner contemplated, as failure to follow policy or regulation/procedure may also be used as evidence of negligence. Just like with school employees, it is important to have systems are in place to accurately record and track compliance with any school district expectations regarding the frequency of participation in training of groups other than employees.


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6. When a school staff member or volunteer is alleged to have engaged in sexual abuse of a student, the school district must address the allegation consistent with Title IX. The US Department of Education's Office for Civil Rights April 4, 2011 Dear Colleague Letter (<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>) sets out current expectations in this area. This means if an allegation of sexual misconduct is made, your school district will be conducting a sexual harassment/sexual assault Title IX investigation in addition to any law enforcement investigation, personnel investigation, and/or investigation in anticipation of litigation. Title IX investigations cannot be delayed because of a pending criminal investigation, but school districts also do not want to impede or harm criminal investigations. Establishing a protocol with local law enforcement related to communication and conducting parallel investigations in advance can help minimize unnecessary conflicts. Coordination of communication among those leading the various school district investigations is also crucial to ensure that efforts are not being unnecessarily duplicated or that key facts are not missed. However, it is important to remember that there are different purposes and standards at play for each investigation.

Your school district will want to work closely with legal counsel to ensure that all investigation requirements are being timely met. You will also want to follow your legal counsel's guidance on maintaining the attorney-client privilege and attorney-work product protections of investigations done in anticipation of litigation.

7. When an allegation of sexual misconduct by an employee is made, school districts must quickly take steps to meet parental notice requirements. RCW 28A.320.160 requires that "at the first opportunity, but in all cases, within forty-eight hours receiving a report alleging sexual misconduct by a school employee" notice be given to the parents of the student(s) alleged to be the victim, target, or recipient of the sexual misconduct. Your school district will want to give careful consideration as to who will contact parents to provide notice and will also want to make sure that the person selected is prepared to respond to questions, knowing what information can and cannot be shared. It is also important to quickly advise families of the Title IX process. Consider including your school district's Title IX Coordinator in the parent notice process or make sure that the person providing notice shares that the Title IX Coordinator will soon be contacting the parents as well. RCW 28A.320.160 also requires that school districts provide parents with information regarding their rights to request public records regarding school employee discipline annually. It is important to make sure labor unions and associations are aware of this obligation and that it is not something that can be bargained away.
8. Allegations of sexual misconduct can have a profound impact on an entire school community. It is important to recognize when your school district may need to bring in outside expertise to handle certain elements of responding to an allegation of sexual misconduct, including crisis communication support and investigators who have more in-depth training and experience, particularly related to interviewing students. In addition to having a plan for communication with students and parents about an allegation, it is important for school districts to have a plan for how information about an allegation of misconduct will be shared with the coworkers of the accused employee, and to remind employees about their ability to access Employee Assistance Programs as needed.

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9. If an allegation arises, it is critical to ensure that mandatory reporting obligations are met at all levels. This is both a step to ensure student safety and avoid claims that negligence occurred. Often the focus is in ensuring that the initial report of suspected sexual misconduct to school administrators and then that a report to law enforcement is made within forty-eight hours. This is a key obligation to comply with. However, it is also important to be mindful of obligations that arise at the end of an investigation, such as a school district superintendent's obligation to timely lodge professional practices complaints.
10. Implementing interim and remedial efforts once an allegation of sexual misconduct has been made ensures that your school district is meeting your Title IX obligations and may also prevent or minimize future litigation. Interim and remedial efforts can include things like facilitating changes in schools/classes (as requested by the alleged victim), establishing a safety/support plans, outlining what steps will be taken to protecting the alleged victim from retaliation, and providing access to counseling support. Your school district's Title IX officer should review publicly available social media accounts of students to understand what students are sharing about the allegations and to assess what needs to be done to prevent retaliation. It is also important for school district staff to be mindful of their obligations under Section 504 of the Rehabilitation Act. If a victim or alleged victim of sexual misconduct reports that he or she is suffering from a mental health condition that is impacting ability to access education (often anxiety, depression, or post-traumatic stress disorder), it is important to initiate the 504 candidacy for evaluation process. Establishing a positive working relationship with the student and his or her family early can potentially prevent future litigation or minimize future damage claims. The Title IX and/or 504 process can be a vehicle for creating that positive relationship, while also addressing student needs immediately. 



Attorney and Investigator Shannon M. McMinimee has been working with school districts for over a decade. After starting her legal career with Dorsey & Whitney, where her practice focused on litigation and employment law, Shannon joined the General Counsel's Office for the Seattle School District in 2006. While with Seattle, she represented and advised the district on a wide variety of legal issues, including all special education, constitutional, and enrollment matters. She successfully defended the district in numerous high profile suits in King County Superior Court and before the Washington Court of Appeals; handled more than 100 matters before the Office of Administrative Hearings; investigated and responded to more than 50 regulatory complaints by state and federal agencies; and assisted in the defense of the district's student assignment plan before the U.S. Supreme Court.

In March of 2010, Shannon joined Preg, O'Donnell, & Gillett, where she represented school districts of all sizes in special education and in general litigation matters before Superior Courts, the Washington Court of Appeals, and the Washington Supreme Court. In August of 2011, Shannon became the General Counsel of the Tacoma School District, where she led the District's Legal Services, Worker's Compensation, Public Records, and Safety/Security departments. In October of 2016, Shannon formed The Law Office of Shannon M. McMinimee, PLLC to provide accurate and timely independent investigations, investigations in anticipation of litigation, and training for school clients.

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