

Legal Matters

Part 3... School Response to Student Sex Abuse Allegations

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When a school district receives notice of possible sex abuse of a student, it is important to respond proactively, immediately, and with professional guidance. There are two kinds of situations where this may arise, first in student-to-student harassment, and second in employee-to-student abuse. In the first situation, WSSDA's Board Policy 3207 and 3207P should be followed. It is recommended that WSRMP and legal counsel be contacted immediately to guide the school through the process.

This article focuses on the second category of abuse, employee-to-student abuse. Typically, a parent calls or somehow site administration finds out about suspected abuse and reports to the Superintendent or HR. Once that initial report is made, best practices for responding to the allegations are as follows.

Within the First Hours after Notice is Received

1. Tell site administration to hold off doing anything other than seeing to it that the student/victim is protected. The employee may soon be placed on administrative leave, but law enforcement needs to be contacted since they may want to talk with the employee first. Do not inform the employee that there is something brewing until the employee is placed on paid administrative leave.
2. Mandatory reporting and discussion with law enforcement has either occurred or occurs. (E.g., RCW 26.44.030.) Many County Sexual Abuse Reporting Protocols require schools to contact both law enforcement and Child Protective Services. Law enforcement should be contacted quickly. Keep notes of these conversations.
 - Inform law enforcement that the employee will be placed on administrative leave by the end of the day. They may want to speak with the employee first.
 - Also let law enforcement know you need to report to the parent. They may ask you to hold off to allow them to make the contact.
3. Contact WSRMP. WSRMP can be instrumental in navigating these troubling and difficult waters. Timely reporting of the loss is critical for coverage.
4. Contact legal counsel. WSRMP may authorize counsel from their legal panel.

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5. Contact the parent of the victim child to inform the parent of what is alleged to have occurred to their child. This of course assumes that the parents were not the ones to report the matter to the school, though follow up contact is also important to offer possible counseling and discuss plans for protecting the child in school. Law enforcement may require that the school district allow them to contact the parents first.

Agenda---First Day Conference Call or Meeting with Legal Counsel

In a conference call or meeting with the Superintendent, the site administrator who received the first report, WSRMP representative, and attorney, the following should be considered:

1. The attorney can prepare an attorney-client privileged email to the Superintendent which can be forwarded to the board advising of the situation and the action plan. The board should be asked to forward media inquiries to the spokesperson for the District. An executive session board meeting should be arranged to discuss a potential claim with the board so that the wisdom of having one spokesperson can be discussed with them.
2. Confirm that law enforcement and CPS have been contacted and that this is documented.
3. Review discipline and just cause sections of the collective bargaining agreement (CBA) to see if there are special requirements which must be met. Some CBA discipline sections require notice to the employee within a short period of time in ways that any law enforcement detective investigating the matter would have problems with. If there are such provisions, discuss with law enforcement what should be done and fully cooperate with law enforcement.
4. Very likely if an employee is the alleged perpetrator, that person will be placed on paid administrative leave pending the outcome of the police and district investigations.
 - If law enforcement is called in, regardless of whether the perpetrator is a student or adult, do not inform the perpetrator of the allegations unless law enforcement allows. They often want to make the first contact.
 - Lock employees out of the school computer system.
 - If employees need to retrieve articles from their desk, escort and supervise as they may attempt to remove evidence.
 - Prepare a paid administrative leave letter which includes specific directives requiring: confidentiality, avoiding retaliation, and no contact or interacting with the alleged victim, parents, or other students regarding the matter¹. No contact also means phoning, texting, tweeting, facebooking or other social media, as well.

¹ This letter would not prohibit the employee from talking with union representatives, attorneys, a therapist or doctor, priest or minister, etc.

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Plan the Investigation(s)

1. Who will investigate? An outside investigator who is trained or experienced in such investigations is essential. The investigator must also be fair, objective, and without preconceived judgments concerning the case. Potential legal action could include a termination proceeding against the employee, and OCR investigation, and/or a lawsuit filed by the parents and student. The person conducting the investigation may end up being a witness in such proceedings. OCR's April 4, 2011 Dear Colleague Letter requires that the person conducting the investigation be trained and/or experienced in such investigations.
2. What kind of investigation(s) will there be? In addition to the law enforcement investigation, there may end up being a Title IX/BP 3207 investigation, a personnel investigation, and an insurance investigation.
3. Schools should accept that the Title IX and personnel investigations may become public record, though student information would be redacted if a Public Records Act request is made for the report.
4. Additional planning:
 - a. Identify which people (witnesses) will likely have the most information.
 - 1) Employees or volunteers working around and near the situation.
 - 2) Other students (interviewed pursuant to Board Policy, with parent permission and the parent present if the parent desires).

These people can usually be interviewed even before law enforcement has completed its investigation.
 - b. Identify documentation to be reviewed before interviewing witnesses.
 - 1) Personnel records
 - 2) Student records
5. When will the investigation begin? Begin your investigation promptly, though consistent with any restrictions imposed by law enforcement such as not talking with the alleged victim or perpetrator until law enforcement has completed those interviews. There is a strong sense of urgency of finding out what people know before the rumor mill pollutes memory or memories fade. Interviews can usually begin with employees working in proximity with the accused, as well as student witnesses. Always ask permission to have an outside person interview students and give parents of student witnesses the option of sitting in on their child's interview. Sometimes those parents have unexpected and useful information too.

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- a. Who will be present for interviews of witnesses, and in what roles? The investigator and likely one school administrator would participate.
- b. What kind of reporting is legally required? Title IX will require reporting². Board policy may also require an investigation and report to the parents³. If an outside person is conducting the investigation, a full report would be most useful. This is particularly true because, under Washington's child sex abuse statute of limitations (RCW 4.16.340.), a claim might not be filed until decades later.
- c. Are there Harassment, Intimidation, and Bullying (HIB) board policy timelines to meet? Even in employee-to-student abuse situations, BP 3207 and 3207P has timelines which school people should attempt to meet, or extend as allowed in 3208P.
- d. Does the student victim have an existing IEP or 504 plan? Alert Sped Director.
- e. Should the student victim have a 504 plan moving forward?
- f. Notify school teachers and counselors on a need-to-know basis to watch for signs of HIB, retaliation, poor attendance, failing grades or other struggles post-abuse and report to administration.

Victim's Parent Contact

Parents have a right to know promptly anything that affects the wellbeing of their children. Contact should be made with the victim's parent the first day, as soon as practicable and consistent with any law enforcement request. Parents left in a vacuum of information will often seek to express their anger on Facebook or other social media. Even if the victim's parent was the one to bring the matter to the school district's attention, such contact should be made later in the same day to share with the parent what is being done. After that contact, confirm in writing what was discussed, including that the school district is taking measures to protect the student and asking that any retaliation or problems be reported immediately to the district. This letter often includes an offer to pay for counseling up to a specific dollar amount, should the parents wish.

Report Retention

In recent years, because of flexible statutes of limitations, our law firm has defended child sex abuse cases where the abuse occurred in the 1930s. The victims were in their 80s and 90s and no other witnesses were alive. With that kind of situation in mind, it is paramount to retain child sex abuse investigation reports and documentation relating to what the school district did about the situation so that if a claim is made decades from now, the school can show what was learned about the abuse allegations close to the time they were made, and what was done in response to those allegations.

² OCR's April 4, 2011 DCL.

³ E.g., Washington State School Directors Association Model Board Policy 3207 and 3207P concerning Harassment, Intimidation and Bullying of students.

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Conclusion

When allegations of sex abuse against an employee are made, school people must act quickly to protect the student and follow-up with regular welfare checks of the student in school. School people must also involve law enforcement and CPS immediately but also conduct their own investigation(s). All of this can be best accomplished with guidance from an attorney and claims person who have been down this path before.



Mr. Patterson is the Sr. Principal and President at Patterson Buchanan. He has significant civil trial and appellate experience, having tried more than 100 cases to verdict in both federal and state courts, and having argued over two dozen cases in federal and state appellate courts. Mr. Patterson is a nationally recognized trial attorney, with expertise in sexual misconduct litigation and best practices issues. Very few civil litigators match his trial experience. Mr. Patterson concentrates his practice on high stakes, high profile litigation and has represented scores of school districts. He won the Mary Kay Letourneau case for the Highline School District. Mr. Patterson is also a nationally recognized speaker for a wide variety of litigation. He has published extensively and frequently gives presentations to national, statewide, and local audiences on a wide variety of sex abuse, litigation, employment, and public entity topics.



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