

Legal Matters

Part 2... Preventing Sex Abuse in Schools by Enforcing Professional Boundaries

by Michael A. Patterson, J.D., LL.M. and Donald F. Austin, M.A.T., J.D.

Patterson Buchanan Fobes & Leitch, Inc., P.S.

This is the second of the three articles addressing the problems of sexual abuse in schools and discussing how to prevent sexual abuse by employees. One of the most effective things schools can do to prevent sexual misconduct against students is to enforce professional boundaries between staff and students. This article defines professional boundaries and tells why they are important. The bottom line is that ignoring professional boundaries without bona fide educational, health, or safety reasons is "risk behavior" which could be sexual grooming. Administrators and staff should understand that such "risk behaviors" do not belong in the schools and that when they occur, they should be reported and dealt with.

School districts are advised to have a professional boundaries board policy and procedure in place such as WSSDA's model policy and procedure 5253. Staff should be trained in their duties of maintaining professional boundaries and reporting to administration situations where they observe other employees ignoring professional boundaries.

Definitions

"Inappropriate" in conjunction with "inappropriate boundary invasions" means conduct which under the totality of the circumstances does not have valid and bona fide educational, health, or safety reasons.

"Boundary invasions" Boundary invasions are situations where the educator does not respect the student's personal physical and psychological boundaries.

Professionalism is the Best Protection

The bedrock principle of professional relationships with students in education is that educators should establish good relationships with students in order to educate students, educators should not rely upon students to meet their own social needs. When educators rely on students to meet the educator's social needs, the relationship is no longer a strictly professional relationship. Nor is it a true friendship since, by the nature of the educator-student relationship, it is not an equal or even relationship.

It is common knowledge in education that a sound and trusting relationship with students is often necessary to advance educational goals. The key in striking the balance is for the educator to consider whether s/he is attempting to have personal needs met through the relationship, or to have a peer-to-peer or "special relationship" with a student. If the relationship is becoming too close, the educator is the adult and should maintain professional boundaries.

Part 2...Preventing Sex Abuse in Schools by Enforcing Professional Boundaries (cont.)

Kinds of Sexual Misconduct by Educators

Basically, sexual misconduct by educators is of two kinds—predatory and opportunistic. The child predator deliberately grooms a student to engage in sexual behavior. The opportunist may not consciously begin with predatory motivation in mind, but allows himself/herself to develop a special relationship with a student which results in situations where the educator's professionalism is compromised. At some point the relationship then becomes predatory. Both situations arise out of ignoring the basic principle of professional relationships with students and nurturing a "special relationship" with a particular student where the adult is getting his/her social needs met through the student. There is nothing wrong with a student feeling special; there is something wrong with the adult using the student to meet the adult's social needs.

In predatory situations, the boundary invasions become increasingly invasive, with the student becoming used to the invasions and allowing increasing invasions to occur. Not all boundary invasions are inappropriate (i.e., helping a 1st grader with a toileting accident, a wrestling coach teaching holds, or grabbing a child by the arm to prevent him from running in front of a truck), and not all inappropriate boundary invasions result in sexual misconduct with students. However, inappropriate boundary invasions are something which other adults may become aware of. Since inappropriate boundary invasions are usually the only clue whereby other adults can detect that an educator-student relationship may be headed in the wrong direction, it is important for educators to avoid inappropriate boundary invasions and for administration to address them with the educator when they occur.

Whether boundary invasion behaviors have "questionable educational benefit" can be reasonably determined by examining the relationship established by the educator with the student to see whether that relationship moved from being professional to becoming personal.

How Sexual Grooming Works

Sexual grooming is the process by which most serious sexual misconduct against children occurs in education. The adult befriends the child, creating a connection with the child, a special relationship, lowering the child's natural inhibitions in order to eventually take advantage of the child sexually. In education, sexual abusers often target students who are passive or needy and then engage in personal **boundary invasion behaviors** which become increasingly invasive of the child's boundaries. The child gets used to the boundary invasions, and their increasing intrusiveness, accepting them as normal. Eventually, when the student's inhibitions are down, sexual misconduct may occur. Commonly, the child may even blame him/herself for what happened.

The Student Victim Profile

Students who become victims are often in special need of adult attention, and at first find the special relationship with the educator something grounding and centering. They end up trusting the educator, feeling that they are personal "friends" with the educator, allowing the boundary invasions because they are "friends," and when something inappropriate happens, may end up blaming themselves.

Part 2...Preventing Sex Abuse in Schools by Enforcing Professional Boundaries (cont.)

What About Small Communities?

Sometimes educators have relationships with students outside of school which have nothing to do with school but begin at church, Boy Scouts, Little League, Young Life, or having a neighbor's kid mow the lawn or baby sit. This can be especially true in small communities. Regardless of contacts outside of school, it is still inappropriate for the educator to engage in a peer-to-peer relationship with a student even if the personal relationship is outside of school with non-relatives. Parents of the student and administration should be aware of such situations. Transparency is key to such relationships. The relationship should not be a peer-peer relationship.

Principles Which Are the Key to How Educators Can Stop Sexual Grooming and Thereby Sexual Molestation

1. Social science experts inform us that sexual molesters victimize children either by "grabbing" or "grooming" children. (E.g., Carla van Dam, Ph.D., *Identifying Child Molesters* (2001).)
2. These experts also inform us that most educators who sexually molest students accomplish their molestations through the sexual grooming process.
3. Sexual grooming of students begins with, and is accomplished by, a process of increasingly invasive inappropriate boundary invasions.
4. Therefore, if we stop inappropriate boundary invasions, we will prevent most molestations by educators.

"Inappropriate boundary invasion" behaviors include, but are not limited to:

Taking an Undue Interest in a Particular Student

1. Having a "special" friend or a "special relationship" with a particular student.
2. Favoring certain students by giving them special privileges.
3. Favoring certain students, by inviting them to come to the classroom at non-class times.
4. Getting a student out of class to visit the teacher during the teacher's prep period.
5. Engaging in peer-like behavior with students.

Part 2...Preventing Sex Abuse in Schools by Enforcing Professional Boundaries (cont.)

Using Poor Judgment in Relation to a Particular Student

6. Allowing the student to get away with inappropriate behavior.
7. Being alone with the student behind closed doors at school.
8. Giving gifts or money to the student.
9. Being overly "touchy" with certain students.
10. Touching students for no educational, health, or safety reason.
11. Giving students rides in the educator's personal vehicle, especially alone.
12. Frequent electronic communication or phone contacts with a particular student.

Becoming Involved in the Student's Private Life

13. Talking to the student about the educational practitioner's personal problems.
14. Talking to the student about the student's personal problems to the extent that the adult becomes a confidant of the student when it is not the adult's role to do so.
15. Initiating or extending contact with students beyond the school day.
16. Taking a particular student on outings, especially personal outings, away from protective adults.
17. Using e-mail, text-messaging, instant messaging, or social networking to discuss personal topics or interests with students.

Not Respecting Normal Boundaries

18. Invading the student's physical privacy (E.g., walking in on the student in the bathroom).
19. Inviting students to the educator's home.
20. Visiting the student's home.
21. Asking the student to keep certain things secret from his/her parents.

Part 2...Preventing Sex Abuse in Schools by Enforcing Professional Boundaries (cont.)

Sexually Related Conduct

22. Engaging in sex talk with students (sexual innuendo, sexual banter, or sexual jokes).
23. Talking with a student about sexual topics that are not related to a specific curriculum.
24. Showing pornography to the student.
25. Hugging, kissing, or other affectionate physical contact with a student.


Staff Member Duties

The staff member's role in preventing sexual abuse of students is two-fold: first, to avoid engaging in behaviors which could be mistaken for boundary invasion or grooming behaviors; and second, to report situations where such behaviors by other employees take place.

1. Do not engage in inappropriate boundary invasion behaviors described above or behaviors like them. Keep your interactions with students on a professional level. Refer students who need emotional or other support to appropriately trained staff such as counselors or school psychologists. Staff can be caring while maintaining an appropriate level of professional decorum.
2. Report the Boundary Invasion: If a staff member observes any adult engaging in the behaviors described above with students, or other behaviors which raise concerns, the staff member must:
 - a. Inform the principal or the appropriate person at the District Office at the earliest opportunity. Do not wait or mull things over or attempt to determine for yourself whether the behavior you have observed has a plausible, innocent explanation. You may not be aware of or understand the entire situation, and allowing the conduct to continue could be bad for both the staff member and students.
 - b. Do not confront or discuss the matter with the adult. Do not inform that person of your concern, unless it is a situation where immediate intervention is necessary to protect a child.
 - c. Maintain confidentiality. Failure to do so may impede official investigations, foster untrue rumors or violate privacy. You owe a legal duty of confidentiality to students on matters which a reasonable person would want to remain confidential. Therefore, you should not tell your concerns to anyone other than the appropriate administrator, Child Protective Services, or the police. If approached by anyone other than the appropriate administrator, CPS, the police or parent of the child, or a person conducting an official investigation on behalf of the District, you should not discuss the matter unless otherwise permitted in writing by the administrator in charge of the matter.
 - d. Document who you notified, as well as where and when and what you reported for your own records.

Part 2...Preventing Sex Abuse in Schools by Enforcing Professional Boundaries (cont.)

Conclusion

When there is no educational, health, or safety reason for a school employee to engage in boundary invasions with a student, the behavior is a “risk behavior” and either could be sexual grooming or could lead to sexual grooming. There is usually no reason to condone employees taking such risks with children. School employees should report such conduct to administration so that administration can determine whether there is cause for concern and help the employee understand professional boundaries. 



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.



Don Austin is a school law attorney with 25 years' experience working inside of school districts, 16 as an English teacher and 9 as in-house counsel for Ventura Unified School District in California (17,500 students). He is admitted to practice law in Washington, Idaho, and California and has represented school districts in federal and state court trials and appeals, as well as in special education and personnel administrative hearings. He has investigated and litigated more than 100 child sex abuse and professional boundaries cases. He has taught School Law at California Lutheran University, California State University at Northridge, and Seattle Pacific University. Don is currently a Principal with Patterson Buchanan Fobes & Leitch, Inc. P.S.