

Legal Matters

The Problems of Sex Abuse and Schools

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

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

Though sexual abuse of students does not happen often in the schools, when it does occur it causes serious problems for everyone involved, including school districts. This is the first of three articles addressing the problems of sexual abuse, preventing sexual abuse in schools, and school administrative response to sexual abuse if it happens.

A Societal Problem Spilling Over into the Schools

Department of Justice "Facts and Statistics" illustrate that child sex abuse is a serious societal problem:

- Though only about 30% of sexual assault cases nationwide are reported to authorities, 62,939 cases of child sexual abuse were reported in 2012.
- Not all sexually abused children exhibit symptoms.
- In a 2012 maltreatment report, 26% of victims who were sexually abused were between 12-14 years and 34% were younger than 9 years.
- The Center for Disease Control estimates that approximately 1 in 6 boys and 1 in 4 girls are sexually abused before the age of 18.
- 35.8% of sexual assaults occur when the victim is between the ages of 12 and 17.
- 82% of all juvenile victims are female.
- 69% of the teen sexual assaults reported to law enforcement occurred in the residence of the victim, the offender, or another individual.
- Teens 16 to 19 years of age were 3½ times more likely than the general population to be victims of rape, attempted rape, or sexual assault.

Approximately 1 in 5 female high school students report being physically and/or sexually abused by a dating partner.¹

Frequency of Sexual Abuse in Schools

The number of sex offenders in education is statistically miniscule, yet they do disproportionate harm to their victims and the school systems they work within. There are no definitive studies as to how often educators sexually abuse students. The closest any study comes to answering that question is a 2004 study by Dr. Charole Shakeshaft finding that up to 9.6% of students experience some kind of sexually inappropriate talk, conduct, or molestation from educators at some point between kindergarten and graduation from high school.²

¹ See, "Raising Awareness About Sexual Abuse—Facts and Statistics," U.S. Department of Justice Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking;
<https://www.nsopw.gov/en/Education/FactsStatistics?AspxAutoDetectCookieSupport=1#sexualabuse>.

² Charole Shakeshaft, Ph.D., *Educator Sexual Misconduct: A Synthesis of Existing Literature*, prepared for the U.S. Dept. of Education (2004).

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In Washington, the percentage of certificated employees OSPI disciplined in 2006 for sexual misconduct was around .0003%, or 20 that year. After board policies and "professional boundary" trainings became common in Washington State (i.e., BP 5253), the number of teachers being reported to the OSPI's Office of Professional Practices dropped to .00004% by 2014-15, or 4 that year.³ While no peer reviewed study has made a causal connection between Professional Boundary board policies, trainings, and the decrease in sexual misconduct allegations against certificated employees, we are hopeful that an enterprising doctoral candidate will compare states with and without Professional Boundary policies and trainings to help determine what is most effective in protecting children.

Impact on the People

It is common knowledge that sex abuse harms its victims which is partly why jury verdicts in sexual abuse cases are high. How sexual abuse impacts a victim depends on a number of variables, including the age of the victim at the time of the abuse; whether there had been prior abuse or trauma; the severity, extent and nature of the abuse; the duration of the abuse (one-time, over weeks, over months); whether physical violence was involved; whether the abuser asserted control over the victim; how adults reacted to the victim when the abuse became known; family support; school support; as well as whether early therapeutic intervention was available.

As far as the abuser is concerned, s/he faces loss of job, loss of family, loss of reputation, loss of freedom through being imprisoned, and loss of liberty after release with the difficulties in registered sex offenders have in finding employment and housing.

As discussed in next issue's article, these are things that schools are able to prevent through sound Board Policy and Procedure, and training of staff and students.

Jury Verdicts Can Be Staggering

According to insurers nation-wide, jury verdicts in sex abuse cases against schools are now the most expensive variety of claim against school districts. While traumatic brain injury, quadriplegia, or wrongful death cases may result in large verdicts and settlements, sex abuse claims are collectively the most expensive kind of claim against school districts today. Sex abuse claims against schools, churches, and youth organizations are volatile in front of juries. Recent examples include:

- **\$41 million** (Catholic school case, Delaware 2007)
- **\$28 million** (Jehovah's Witnesses case; 9 plaintiffs, Alameda Co. 2012)
- **\$23 million** (1 plaintiff, Los Angeles Unified School District (LAUSD) 2012)
- **\$19.9 million** (1 plaintiff, Boy Scouts case, Portland 2010)
- **\$15.4 million** (Therapist case, Virginia 2012)
- **\$13.5 million** (Jehovah's Witness case, San Diego 2014)

³ Information from the Washington Office of Superintendent of Public Instruction's (OSPI) Office of Professional Practices.

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- **\$12.5 million** (Baptist church case, Florida 2014)
- **\$11.8 million** (Boy Scout case, Connecticut 2014)
- **\$8.7 million** (Catholic priest case, Vermont 2008)
- **\$8.5 million** (Episcopal school, Dallas 2011)
- **\$8 million** (Catholic priest case, Duluth 2015)
- **\$6.9 million** (School case, LAUSD 2012)
- **\$6.5 million** (Catholic school case, Seattle 2010)
- **\$4.5 million** (School bus case, Olympia 2010)
- **\$4.2 million** (LDS case, King County 2009)
- **\$1.5 million** (DHS case, Seattle 2009).

In addition, there have been class action settlements in recent years of **\$110 million** in Fairbanks, Alaska, and **\$200 million** in Portland, Oregon. In 2016, LAUSD settled a case involving 30 students and two abusers for **\$88 million**. In 2013, LAUSD settled 58 claims for **\$30 million**.

Statute of Limitations Problems

Many verdicts and settlements in sex abuse cases involve claims that are decades old. In the last decade, Patterson Buchanan has defended multiple claims arising from sexual abuse occurring in the 1930s, 1940s, and 1950s. Washington's child sex abuse statute of limitations allows sex abuse victims to bring their claims "[w]ithin three years of the time the victim discovered that the act caused the injury for which the claim is brought" (RCW 4.16.340, underlining added.) The Washington Supreme Court has interpreted this "discovery" rule liberally stating, "[t]he Legislature adopted 'findings and intent,' [when enacting RCW 4.16.340] which make clear that its primary concern was to provide a broad avenue of redress for victims of childhood sexual abuse who too often were left without a remedy under previous statutes of limitation." (*CJC v. Corporation of the Catholic Bishop of Yakima*, 138 Wn.2d 699, 712 (1999).) As a result, school districts could end up defending claims from fifty and sixty years ago.

Retain Old Insurance Policies

Do you know where your school district's insurance policies are from fifty and sixty years ago? It is important to retain certificates of insurance and insurance policies indefinitely. You do not want to be in a situation where your school district is defending claims from decades ago but is unable to locate its insurance from that time period or even identify who the insurer was. That would result in having to use general fund money to pay for verdicts, settlements, and the attorneys to defend the old claims. While it is sometimes possible to reconstruct insurance policies based on information that might be available from long-term employees and board minutes, it is best to have the old insurance policies.

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Conclusion

Washington State leads the nation in protecting students from sexual misconduct by school employees. The secret is having Professional Boundaries board policies and procedures, such as WSSDA's BP 5253 and 5253P, and enforcing Professional Boundaries. Next issue we will go into more detail on why Professional Boundaries matter.



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.