

RECOGNIZING AND REPORTING SEXUAL MISCONDUCT UNDER THE EDUCATOR DISCIPLINE ACT



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SEXUAL MISCONDUCT represents a catastrophic failure of protection and the most serious breach of an educator's fiduciary duty to students. The problem of sexual misconduct is not one that can or should be addressed only after an incident has occurred. The devastation caused by sexual misconduct highlights the importance of prevention. You can help prevent sexual misconduct by recognizing patterns of behavior that are common among those who engage in sexual misconduct and by intervening or getting help when they occur. The Professional Standards and Practices Commission (PSPC) has developed this brochure to help you understand sexual misconduct, identify possible warning signs, recognize your responsibilities under the Educator Discipline Act ("Act") when sexual misconduct is suspected and develop prevention strategies.

Our knowledge of sexual misconduct is still evolving. Unfortunately, there are few empirical studies addressing the topic. In 2004, Dr. Charol Shakeshaft, a leading expert in the field of educator sexual misconduct, authored a report for the U.S. Department of Education that reviewed existing empirical studies of educator sexual misconduct, practice-based publications describing first and third person accounts of incidents of educator sexual misconduct and reports of educator sexual misconduct from newspapers and other media sources. The report, entitled "Educator Sexual Misconduct: A Synthesis of Existing Literature", describes the prevalence of educator sexual misconduct, characteristics of targets of sexual misconduct and of offenders and patterns of sexual misconduct. The

information in this brochure is drawn from the existing literature, including Dr. Shakeshaft's report, as well as cases of sexual misconduct brought before the PSPC.

WHAT IS SEXUAL MISCONDUCT?

Sexual misconduct in the context of a school environment is a broad term encompassing any behavior on the part of an educator intended to establish an inappropriate relationship with a child or student, ranging from inappropriate comments or jokes to sexual intercourse.

It is important not to confuse sexual misconduct with sexual abuse. While the definition of sexual misconduct covers all forms of sexual contact and what is commonly referred to as sexual abuse, it also includes the larger set of inappropriate, unacceptable and unprofessional behaviors that may lead to sexual contact. In addition, while sexual misconduct may involve criminal behavior, the term also captures conduct that, although not illegal, is designed to groom the student for future sexual contact.

The Act defines sexual misconduct as: *“any act, including, but not limited to, any verbal, nonverbal, written or electronic communication or physical activity, directed toward or with a child or a student regardless of the age of the child or student that is designed to establish a romantic or sexual relationship with the child or student. Such prohibited acts include, but are not limited to, the following: (1) sexual or romantic invitations; (2) dating or soliciting dates; (3) engaging in sexualized or romantic dialogue; (4) making sexually suggestive comments; (5) self-disclosure or physical exposure of a sexual, romantic or erotic nature; or (6)*

any sexual, indecent, romantic or erotic contact with the child or student.”

“**Sexual abuse or exploitation**” is defined in the Child Protective Services Law and is an extreme form of sexual misconduct. It includes any physical, verbal, or visual sexual behavior between an educator and a child or student, as well as a number of sex-related crimes committed against a child. See 23 Pa.C.S.A. § 6303.

WHAT ABOUT CONSENT:

Consent is an agreement between two equals. The student-teacher relationship is not an equal relationship. The educator always has power over the student by virtue of his or her position. Therefore, consent is never a defense or a mitigating factor in cases involving educator sexual misconduct **regardless of the age of the student.**

WHAT ARE SOME EXAMPLES OF SEXUAL MISCONDUCT?

From the case files of the PSPC...

A former female teacher, 36, had a romantic relationship with a seventh-grade male student. The relationship involved kissing, touching and exchanging love letters. The boy testified that he thought he was in love with the teacher and that she said she loved him too. **Sanction:**
Surrender

A former assistant principal, 46, admitted to having sex with a 16-year-old female student. The assistant principal drove the girl to area hotels for sex at least ten times. The two had sex for the first time just one-and-a-half weeks after the assistant principal began working at the high school. **Sanction:** Revocation.

A social studies teacher attempted to foster a sexual relationship with a 16 year-old female student by telling her that she was the most attractive girl in the school, by arranging private meetings with the student, physically embracing her and offering to help her improve her grades. **Sanction:** Revocation.

You can read these and other cases decided by the PSPC on our website: www.pspc.education.pa.gov

HOW DO I RECOGNIZE SEXUAL MISCONDUCT?

There are a number of warning signs or “red flags” that can indicate sexual misconduct. While the presence of any of these warning signs does not equal proof that an educator is engaged in sexual misconduct, if you suspect sexual misconduct by seeing these indicators trust your instincts regardless of any justification or rationalization the educator claims.

Behavior indicators in students might include:

- Inappropriate sexual behavior or knowledge, particularly in younger children
- Late arrivals to class or excessive absences
- Changes in Personality
- Increased time with one adult
- Referring to a teacher as a “friend”

- Difficulty paying attention
- Unexplained disciplinary or academic issues
- Depression or anxiety
- Self-injury (cutting, burning)
- Drug and alcohol abuse

Behaviors of adults who engage in sexual misconduct might include:

- Spending more time with children than other adults
- Close personal relationships with students
- Singling students out for special attention or privileges
- Time alone with students
- Time in private spaces with students
- Flirtatious behavior with students
- Off-color remarks in class
- Being too permissive with students and allowing misbehavior
- Engaging in peer-like behavior with students
- Giving gifts to students
- Oversharing personal information with students
- Touching, tickling, hugging, kissing, wrestling or holding students even if they resist
- Exchanging personal notes, texts, e-mails, or other communications with students

Rumors and Reputation:

Rumors are an important source of information on educator sexual misconduct. All rumors should be investigated. An educator's reputation amongst students can also be a warning sign of sexual misconduct. According to author Mary Jo McGrath, young people often instinctively recognize boundary violations and often nickname the employee engaged in such violations as "creepy" or a "pervert." You should avoid the temptation to dismiss such labels as gossip.

WHO IS INVOLVED IN SEXUAL MISCONDUCT?

The Targets

The imbalance of power inherent in the student-teacher relationship leaves students vulnerable to exploitation. Although any student can be a victim of sexual misconduct, some students are more vulnerable than others. Most at-risk are students who:

- are estranged from their parents;
- are unsure of themselves;
- are engaged in risky behavior or have parents who are engaged in such behavior;
- are socially marginalized;
- have special needs;
- have experienced prior physical or sexual abuse; and/or
- are experiencing emotional, social or academic stressors.

The Offenders

While offenders share patterns of behavior, there is no single profile of an offender. Offenders are:

- male and female;
- all ages;
- employed in a variety of education job categories; and
- often well-liked and considered excellent educators.

In addition, while some offenders are serial perpetrators who seek out opportunities to groom, abuse and sexually exploit multiple students, others have boundary and judgment issues and are more likely to be exploiters of any sexual situation, whether children or adult. A review of the existing literature and the PSPC's case files reveals that many offenders are emotionally arrested or immature. They may suffer from self-esteem issues and often have an inordinate need to feel loved and admired. Some are monogamous and believe they are "in love" with the student. According to Dr. Shakeshaft, these offenders view teenagers as sexual partners capable of consent and their misconduct as an affair. They refuse to acknowledge the power differential that exists between them and their students. Additionally, research suggests that employees whose roles involve spending one-on-one time with individual students are more likely than other employees to engage in sexual misconduct.

Regardless of the offender's motivations, the student's well-being is no longer the top priority and the offender's primary concern is meeting his or her own needs at the expense of the student's. The harm to students, schools and the profession is the same whenever an educator becomes involved in an inappropriate relationship with a student. In all cases, the educator is exploiting a student over whom the educator has power by virtue of his or her position and to whom he or she owes a duty of care.

AM I REQUIRED TO REPORT SEXUAL MISCONDUCT?

YES!

If you are a **chief school administrator**, the Educator Discipline Act requires you to report all allegations of sexual misconduct and sexual abuse or exploitation to PDE *whether or not they have been investigated or substantiated*. That means:

- every report, rumor or suspicion must be reported;
- you have 15 calendar days from the date you learn about the allegations to make a written report using the mandatory report form available on the PSPC's website:
www.pspc.education.pa.gov;
- you may also be required to make a report to ChildLine or to law enforcement; and
- you may not avoid your reporting responsibilities by entering into an agreement with the educator.

If you are an **educator**, the Educator Discipline Act requires you to report knowledge of any action, inaction or conduct by another educator that constitutes sexual abuse or exploitation or sexual misconduct. The Act further requires that:

- the report must be made (1) to your immediate supervisor; (2) to the chief school administrator; and (3) in writing to PDE using the mandatory report form available on the PSPC’s website: www.pspc.education.pa.gov;
- you have 15 calendar days from the date you learn about the conduct to make a report; and
- you may also be required to make a report to ChildLine or to law enforcement.

Sexual misconduct can happen in any school, including yours. Take all allegations seriously, even if they involve someone you feel sure would not harm a child or student. Even if the allegations are difficult to believe, make sure the child or student feels supported and do not let your personal doubts prevent you from reporting.

The failure of a chief school administrator or an educator to comply with these mandatory reporting requirements is grounds for discipline, up to and including revocation of the administrator’s or educator’s certification and/or employment eligibility.

POPULAR MYTHS ABOUT SEXUAL MISCONDUCT

“The great enemy of the truth is very often not the lie - deliberate, contrived and dishonest - but the myth - persistent, persuasive and unrealistic.” (JFK)

Myth: Sexual misconduct isn’t really as common as news reports make it seem.

Fact: The stark reality is that nearly one in every ten students nationwide will be subject to sexual misconduct by a school employee sometime between kindergarten and 12th grade. (U.S. Dept. of Educ., 2004). Every year in Pennsylvania, cases involving sexual misconduct account for approximately half of all disciplinary actions imposed against educators.

Myth: False allegations of sexual misconduct are common.

Fact: There are no systematic studies of false accusations of educator sexual misconduct, but studies of child sexual abuse in general indicate that false allegations are not common. In one study, Dr. Shakeshaft examined 225 cases of educator sexual misconduct and found that all of the accused educators had admitted to engaging in the actions reported. Some students lie about being victims of sexual misconduct, but many more never report at all. Several studies estimate that 94 percent of children who are victimized inside or outside of school never report to someone who can do something about it. (U.S. Dept. of Educ., 2004).

Myth: Victims of sexual misconduct act like victims.

Fact: Many people expect victims of sexual misconduct to behave in a particular way, such as being emotional or angry. In reality, victims may exhibit a range of reactions, which may change over time. There is no “normal” reaction. Many victims suffer long-lasting emotional, educational and developmental or health effects, while others recover rather quickly. Students who are targeted may not even see themselves as victims. Offenders often couch what they are doing as

love, both romantic and parental, so some students do not identify what is happening as abuse. This can be particularly true for marginalized and at-risk youth. Teenagers often feel like adults and believe that they can make mature decisions about sex and other intimate behaviors. However, according to the National Institute of Mental Health, the parts of the brain that are involved in controlling impulses and planning ahead--the hallmarks of adult behavior--do not mature until the early 20s. Some teachers take advantage of this adolescent naiveté. It is often not until the student is older that he or she recognizes the inappropriateness of the teacher's behavior.

Myth: If an alleged victim delays in reporting or recants, he or she is lying.

Fact: Many of us assume that students who are targeted will understand what happened, identify their experience and report as soon as they have a chance. In reality, it is common for students to downplay what happened or to be confused about it. It is also common for students to not want to report. In fact, only about five to six percent of child sexual abuse both inside and outside of school is ever reported. (U.S. Dept. of Educ., 2004). Students may not report or may delay reporting because they fear others' reactions, getting in trouble or not being believed. They may also feel guilty or blame themselves for their own abuse, or they may not know *how* to tell. A victim may recant the allegations because he or she has mixed feelings about the offender and about what has happened as a result of the disclosure. Some victims may feel pressured by the offender, family members, or peers to recant the allegations, particularly when the offender is a respected authority figure. Other victims

may recant because they feel that they are not being believed or because they want to avoid further stressful involvement in legal proceedings.

Myth: A trusted colleague would never engage in something as heinous as sexual misconduct.

Fact: *“[Offenders] Do Not Wear an Ugly Mask. They Wear A Shield of Trust.”* (Patty Rase Hopson).

It is important to set aside any preconceived notions that you might have regarding who engages in sexual misconduct. Most offenders do not fit the stereotype of an abuser that many of us have. They do not appear to be “monsters.” They cannot be picked out of a crowd. The truth is that they look like the rest of us. From all outward appearances, they are often the last people anyone would suspect. Consider the following two examples:

In March 2014, Christopher Bacca, 2012 “teacher of the year” at Windy Hill Elementary in Jacksonville, Fl., pleaded guilty to charges of sexual battery and lewd and lascivious conduct with a minor after being accused of showering with a male student and molesting the student in his home. He’s serving a 40-year sentence.

Keavin Keith, 30, who was teacher of the year at the Mathematics, Science and Arts Academy-West in Plaquemine, La., admitted to police that he had sexual relationships with three students and fathered a child with the first victim when she was 15 years old.

HOW CAN SCHOOLS PREVENT SEXUAL MISCONDUCT?

Schools have a unique role in creating a climate within their schools that fosters ethical conduct and practice and may be the most important component in any program of sexual misconduct prevention. The following prevention strategies are designed to help schools prevent and respond to sexual misconduct.

S.T.O.P.

S = SAFE ENVIRONMENT

Create a safe environment for students with:

- Sound hiring practices, including internal controls for rigorous screening of all applicants regardless of whether the position requires certification;
- Clear written policies regarding misconduct in general, sexual misconduct, use of technology, student-teacher boundaries and reporting misconduct;
- Limitations and clear guidelines on one-to-one interactions, including closed-door and after-hours activities with only one student;
- Absolute adherence to mandatory and ethical reporting requirements; and
- Zero tolerance for misconduct

T = TRAINING

Educate staff, students and parents through:

- Inclusion of professional ethics in the induction program;
- A strong mentoring program;
- Regular and ongoing training for all staff on appropriate student-teacher boundaries, acceptable and unacceptable behaviors, role model expectations, recognizing sexual misconduct and reporting duties, and the state and federal laws that govern their conduct;
- Collaboration with teacher associations on upholding standards; and
- Age-appropriate training for students and parents about what constitutes sexual misconduct, appropriate student-teacher boundaries and how to report inappropriate behaviors.

O = Observe

- Know the warning signs of sexual misconduct and observe what's going on in your school;
- Communicate openly with colleagues and immediately address any concerns you have regarding a colleague's behavior; and
- Assist students in identifying inappropriate behavior and encourage students to report inappropriate behavior to you and other trusted adults.

P = Plan

Have a plan that includes:

- Investigative protocols that provide for prompt and fair investigation of complaints, securing evidence of misconduct and coordination with law enforcement, child protective services, PDE and other appropriate entities;
- Training for administrators on investigating misconduct;
- Investigation of all complaints and ensuring that the investigation continues even if the employee resigns;
- Recording all allegations and outcomes in the employee's personnel file and never agreeing to expunge information;
- Refusal to enter into confidentiality agreements with educators who are accused of misconduct;
- Refusal to provide recommendations for employees who separate from employment under a cloud of allegations;
- Providing a supportive environment for students who report sexual misconduct, including therapeutic and healing interventions; and
- Creating an environment where employees feel comfortable raising ethical dilemmas and questions about appropriate boundaries.

A MESSAGE TO EDUCATORS FROM TWO SURVIVORS OF EDUCATOR SEXUAL MISCONDUCT

R.F. was targeted by her band teacher beginning when she was 15-years-old. Unfortunately, over the course of two years there were numerous warning signs that were missed by other adults. Here's her message for you:

“The primary responsibility of the teacher is looking after students and paying attention and then also allowing enough safe spaces for students to have an

alternative where they don't feel like the only person who cares about them is the same person who is responsible for their mistreatment....In terms of trying to prevent it happening to someone else, I think just sort of paying attention. The fact that the same teacher would walk me to class pretty much every day to the point where other teachers were noticing and commenting on it was probably one thing, and then also the amount of time that I spent with him. He was always writing me passes out of class if we had a substitute teacher, we weren't doing anything particularly interesting in class or even just spending a lot of time after school with him for rehearsals and preparing for rehearsals, or sometimes he would ask me to stay after to help set up for a concert. The amount of time that I spent with him outside of just academic time was enough that I think other people probably could have noticed. And also there were these couple of times where other teachers pretty much just about walked into things or scenarios were a little strange, like the one teacher who walked into the gym and the door was locked and the lights were off and then I answered the door and he was also there. Things that were just a little bit weird, or like practicing scales in a locked closet, practicing scales in a locker room, things that are easily explained away if people are willing to believe the explanation and they trust the person who is explaining it enough, which they did with him...I don't necessarily feel let down that somebody didn't intervene or didn't notice some of these things or say something, and I certainly don't blame the people who probably could have seen something. But you know, at the same time, because they didn't, I think that the relationship went on way longer than maybe it necessarily should have or would have, and I think any amount of time that I would have gotten back sooner would have been a really good thing. The longer it went

the more of my life and my value he took for his own. And had somebody intervened sooner, things could be a lot different.”

E.N. was sexually assaulted by her driver’s education teacher during a driving lesson. After E.N. reported the assault, the teacher was arrested and charged. During the criminal proceedings, staff members raised money for the teacher’s defense and students wore t-shirts in support of the teacher. A subsequent investigation by PDE revealed that the teacher had engaged in inappropriate conduct with female students over a span of approximately 30 years. Here’s what she wants you to know:

“Through the investigation it came to light that there were several incidents where the driver ed. teacher acted inappropriately with female students, and it was brought to the attention of the administration and they failed to do anything about it. I wish that they would have taken those things seriously and acted on it and not just kind of pulled the rug over what happened. Everything that I went through was preventable. If you hear a rumor, you just can’t assume it’s a rumor and it’s not up for you to decide whether it’s true or not. Your job as an educator and a teacher is to protect the students, and if you hear something you should say something. It’s not up to a school teacher or a district to decide whether they believe a student or not. Their job is to protect the student. You can’t take someone else’s well-being lightly. Especially when you’re in a position of authority. You’re choosing to be an educator. You’re choosing to work on a daily basis with kids, so you need to always be thinking about what’s best for the child, not what’s best for you or your administration or your school district. So I think if this were to ever happen to

someone else, it's really important to create an environment where you allow the victim to disclose what happened with no judgment. You can never prepare for a situation like that, but you have to allow them to feel like they can talk and they're not being judged and your only priority is to make sure they're safe, that they're being taken care of and that they feel like they can exist in the environment that they have to. So I think it's important to make students aware of what's appropriate versus what's not, but it's also really important to create an environment where they feel they can come forward and feel safe and not feel like they're going to be ridiculed and made fun of and just feel unsafe. Why would anyone want to come forward and talk about what happened if they're going to be treated and ridiculed the way I was? It's just really important to think about what you can do and what impact you can make to create a safe environment."

FINAL WORDS

Remember the duty to create and maintain a safe environment for students is not limited to educators. The prevention and reporting of sexual misconduct by educators is the responsibility of all stakeholders in the education community. Every teacher, every administrator, every staff member, every parent plays an important role in maintaining the integrity of the profession.

It is the duty of all school employees to safeguard the well-being of students from dangers both inside and outside of school and to intervene when they suspect misconduct. Such intervention may involve confronting a colleague who may be crossing boundaries, reporting

to a supervisor or filing a formal report. The entire school community needs to understand how to prevent, respond to, and recover from misconduct, particularly sexual misconduct. In order to prevent sexual misconduct, it is important for all school employees to demonstrate appropriate behavior and to recognize and report suspicious behavior before an incident occurs. It is also important for employees to respond with respect, dignity, and care when a student discloses an experience of sexual misconduct, and to take appropriate and immediate action.

The devastation following sexual misconduct demands that all members of the school community be vigilant in recognizing and reporting sexual misconduct.

Keeping students safe is our shared number one responsibility.

FOR MORE INFORMATION, PLEASE
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You may also wish to review the 2004 U.S.
Department of Education report "Educator Sexual
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<https://www2.ed.gov/rschstat/research/pubs/misconductreview/report.pdf>