



Investigating Inappropriate Relationships Between Students and Educators

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Agenda

- Reporting abuse (internal and external)
- What to do with the accused employee
- Mechanics of an investigation
- Pitfalls
- Spinoff investigations
- Discontinuing an investigation
- Professional development ideas
- Policy takeaways

Reporting Requirements

- Internal reporting requirements
 - Could depend on state law
 - All employees should be told:
 - What to report;
 - How to report;
 - When to report; and
 - To whom to report.

- External reporting requirements
 - Know if your state has reporting requirements for:
 - child protective services
 - law enforcement
 - state department of education (licensure)

Example: Mississippi

- If any employee is accused of fondling or having sexual involvement with any child under the age of 18, the superintendent and principal shall “timely notify” the district attorney, the state department of education, the department of human services, “provided that such accusation is reported to the principal and to the school superintendent and that there is a reasonable basis to believe that such accusation is true.”

- Penalties for failure to report.

Immunity for Reporting

- Approximately 36 states provide immunity not only for the initial report of abuse or neglect, but also for many of the actions that a reporter may take following the filing of a report.
- Approximately 26 States provide immunity to a reporter for assisting with or participating in an investigation of allegations of maltreatment.

Limits to Immunity: Timeliness

Alaska Stat. § 47.17.050

- Except as provided below, a person who, in good faith, makes a report under the reporting laws, permits an interview, or participates in judicial proceedings related to submission of reports is immune from civil or criminal liability that might otherwise be incurred or imposed for making the report or permitting the interview, except that a person who knowingly makes an untimely report is **not immune from civil or criminal liability based on the delay in making the report**. A person accused of committing the child abuse or neglect is not immune from civil or criminal liability for the child abuse or neglect as a result of reporting the child abuse or neglect.

Pre-emption by Other Agencies

- Pre-emption v. parallel investigations
- Does reporting to law enforcement end the school district's responsibility to continue investigating?
 - preserving evidence
 - continuing to report "new" information

What about the accused employee?

- Know whether your state has a statute dealing with accused employees.
 - Alabama: Place employee on paid administrative leave while charge is "adjudicated."
- Paid administrative leave?
 - But for how long?
- Can you terminate for "being under investigation"?
- Are there other grounds for termination?

Who will investigate?

- Building level v. central office?
 - Avoiding conflicts of interest
- Legal staff?
- Human resources?
- SRO or imbedded law enforcement?

Mechanics of an investigation

- Teams of two
- Outline of questions
- One person questions; the other takes notes
- Order of witnesses
- Interviewing alleged perpetrator?
 - Garrity warning

Mechanics of an investigation

- Keep notes as written; do not re-type
- To record or not to record?
- Examining cell phones and records

Mechanics of an investigation

- Tip: Prepare for shifting accounts from all witnesses, especially the alleged victim.

Pitfalls

- Paralysis by analysis
- Concerns about reputation
- Non-stereotypical perpetrators
- Off-campus conduct (e.g., online communications)
- Parental consent / pushback
- Accused and victim are family friends
- Age of consent issues
- The accused is ours; the student is not
- One parent does not want the other to know

Spinoff investigations may develop.

- Supervisors of alleged perpetrators might have failed to take appropriate action.

Spinoff litigation may develop.

- From the alleged victim
- From the fired or disciplined accused employee
- From a fired or disciplined supervisor
- From the licensure agency

Discontinuing an Investigation

- Decisions to discontinue investigating could subject administrators to licensure suspension, criminal proceedings, and civil litigation.
- Reasons for not going forward should be carefully documented.

Professional Development Ideas

- For all employees, training on:
 - District policies and state laws regarding communicating with students
 - Prohibitions against inappropriate relationships
 - The signs and symptoms of inappropriate relationships
 - Responsibilities and processes for reporting potential sexual misconduct (internally and externally)

Professional Development Ideas

- For those investigating, additional training on conducting investigations.

Policy Review

- Establish or review district policies regarding communications with students.
- Prohibiting one-on-one communications is best.

Policy Review

- Query: Is training enough? Or does your District need specific written policies?
- Or do specific policies have implications for any sovereign immunity your district might enjoy?

Practice Tip:

- At all times, analyze the issue through the standards of potential liability:
 - Your state's tort scheme
 - Federal statutes (Title IX and § 1983)
 - actual notice
 - deliberate indifference



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