Sexual Harassment in Schools

Administrators Must Break the Casual Approach to Objectionable Behavior

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The only Latin teacher in the high school often touches his students. The entire class once saw him lie on top of a female student on her desk and rub his private organs against her upper arm. The student became upset, began to cry, and left the room in search of the principal.

The teacher later apparently admitted his guilt to the principal, but received no formal punishment. None of the students who witnessed the incident was questioned or interviewed by school authorities or anyone else. Nor were they informed of the consequences for the teacher.

That teacher still teaches the class, and the students who witnessed the incident remain his students. The girl who was involved stayed in the class for a while, but her lingering feelings eventually caused her to drop out. She was not able to finish the course with another teacher since the school had no other Latin teachers.

—Testimony by a 12th grade male high school student in Montana, November 1991

"I started being sexually harassed constantly by a group of guys on my bus. It was horrible. It lasted the whole year and some of eighth grade without anything being done about it. They would grab my breasts, thighs, and other places, and make rude comments and sexual gestures toward me. When I finally yelled at them to stop, hit them, or moved away, the bus driver would yell at me. I felt helpless because my parents worked and couldn't drive me to school. Finally, I got the courage to do something about it; I told my principal what was happening. He was skeptical about the whole thing, and he didn't do much about it.

—Report of a 14-year-old girl from Pennsylvania

A 25-year-old coach and social studies teacher is romantically involved with a 16-year-old student in his world cultures class. Although he appears to treat her impartially in class interactions, there's a rumor that since their involvement she has been getting straight A's, compared to the B's and C's she received before.

The scuttlebutt in the teachers' lounge suggests the teacher's behavior is inappropriate, yet the young woman's parents are flattered such a nice, successful young man has taken up with their daughter.

Consolidated from news accounts

A group of seventh- and eighth-grade girls repeatedly were molested by a male teacher in the school cafeteria during lunch period. He squats down at their lunch table and walks his fingers up the inside of their thighs, saying all the while, "Are you chicken?" He also tickles them, massages their shoulders, and touches the sides of their breasts.

Other adults were present, but everyone liked to describe his behavior as "horseplay" or "teasing." When one girl reported his behavior to her female guidance counselor, she was told, "He wouldn't do that. He's such a friendly religious man."

Not one adult, all of whom were "mandated reporters," ever reported
“Lester the Molester” to the state agency responsible for investigating allegations of child sexual abuse.

Depositions from J.O. v. the Alton, ILL, Community Unit School District

These accounts of sexual harassment and child sexual abuse in schools are not atypical. They are repeated daily across the country in every kind of community, from large urban centers to small rural communities and privileged suburban towns.

These stories are located in the folklore and oral histories of schools that are passed along by students or school personnel. They also come from testimonials from teachers, parents, and students who witness or experience sexual harassment. They can be found in the public record, gleaned from court documents and newspaper accounts of pending lawsuits or complaints.

As a workplace issue, sexual harassment has received wider exposure nationally since the televised Senate hearings involving Clarence Thomas and Anita Hill in fall 1991. That public awakening preceded the U.S. Supreme Court’s 90 decision last February in Franklin v. Gwinnett County (Ga.) Public Schools. This case informed the nation’s educational institutions for the first time that they are liable for compensatory damages under Title IX, the 20-year-old federal law that guarantees an educational environment free from sex discrimination.

Sexual harassment is a form of sex discrimination, and is illegal as defined by Title IX of the Educational Amendments of 1972, Title VII of the Civil Rights Act, the 14th Amendment of the Constitution, and numerous state criminal and civil statutes.

Students and employees are legally protected against sexual harassment, regardless of whether the perpetrator is an employee, a student, or an individual connected to the school district only by being part of an organization with which the school has a contractual agreement.

Some forms of sexual harassment also may be actionable as child abuse, sexual assault, rape, pornography, criminal or civil libel, slander, or defamation of character. Victims, as well as educators or community members acting on the victim’s behalf, may file sexual harassment complaints.

Peer-to-peer sexual harassment is deliberate. Sexual harassment is tolerated as a true-blooded, healthy American phenomenon, a normal stage in adolescent development. Often it is labeled as “flirting” or as “initiation rites” that must be tolerated. “No harm done,” rings the claim. Regardless of how its appearances and existence are rationalized, sexual harassment interferes with the right to receive an equal educational opportunity.

Katy Lyle in the second-floor boys’ bathroom at Minnesota’s Duluth Central High School, where explicit graffiti about her once filled the stall walls. After a four-year legal battle charging the school failed to act to protect her rights, she won a $15,000 settlement in 1991. As a result, Minnesota now has the most progressive legislation in the country concerning sexual harassment in schools.

Criminal Behavior

When the specter or hint of a sexually tinged relationship between a minor and an adult in a school setting emerges, confusion or cover-up is the typical response. Because the sexual harassment has entered a new domain, that of child abuse and criminal felonious behavior, more legally is at stake.

Despite the lack of extensive documented occurrences in public schools, incidents of sexual abuse and sexual harassment happen, and the offenders frequently are clustered in a few particular capacities within the school community.
Proceed Cautiously Upon Complaint

School leaders should consider addressing the following concerns and concerns in professional development sessions. These issues also are applicable during the investigation of a sexual harassment complaint.

- **Document everything.** Record every aspect of the investigation with an appropriate memo to the file prepared contemporaneously with the events.
  - Be diligent in the investigation. Sexual harassment/abuse by a school employee frequently involves multiple incidents and multiple victims over a period of years. Look for a pattern and previous witnesses.
  - Never discourage a student or employee complaint. Do not respond with words such as “it will just be your word against his,” or “Do you see how this makes you look?” or “Do you know what could happen to Mr. X?” Questions should be directed at obtaining trust, not the consequences.
  - Don’t be influenced by the reputation of a complaining student or whether the student may have “invited” the attention. These factors are absolutely irrelevant and will provide no defense for a failure to act upon the requirement to investigate the allegation, or to report it to the proper authorities.
  - Don’t rely on potentially misplaced loyalty to staff who might be accused or implicated in the charges.
  - Don’t necessarily end the inquiry upon the retraction of a student’s or employee’s prior statement. This is an extremely sensitive area, one where students and employees alike are frequently embarrassed and humiliated and well aware of the possible consequences of their allegations. A denial or recanting may be an avoidance mechanism or an effect of retaliation.
  - Little evidence suggests students fabricate allegations of sexual misconduct by school employees or peers for ulterior motives.
  - Under existing law, school administrators can be held personally liable for the sexual harassment/abuse by an employee they supervise. The same applies for giving negligent references to the next employer of this employee when you know of past behavior as a sexual harasser/child abuser.
  - You are not the district attorney nor the school board attorney nor an investigator empowered by a judge. Turn all information over to the school superintendent/school board. But by the same token, if it is your sense the school system is ignoring or not treating seriously your allegations (or those of a minor’s on whose behalf you are acting), it is incumbent upon you to report these allegations to other authorities, such as the child welfare and protection agency of the state or the district/county attorney.

—Nan D. Stein

Roles such as coach, physical education teacher, music teacher, driver education teacher, and extracurricular club adviser often require individual contact with students, often in private settings, and often in a capacity that builds trust and intimacy between an adult and students.

Although these same adults may serve in a dual capacity as classroom teachers, evidence suggests physical sexual harassment from these individuals occurs less frequently when they are in their public classroom roles as opposed to when they are operating in their adjunctive, more private roles.

In cases of alleged child sexual abuse of a minor by a school employee, school officials often bypass the legal requirement to report these allegations to the state agency charged with investigating such allegations. School officials sometimes decide they will conduct the first round of investigation for reasons of expediency and proximity. More likely, their failure or delay to report the allegations may be driven by their desire not to have their dirty laundry in public or to protect the accused, one of their own.

None of these motives, however, exempt educators from the legal requirement to report allegations of inappropriate physical contact between an adult and a student to the proper state authorities, who are empowered to pursue the investigation.

Unfortunately, reports to those state agencies charged with protecting children from child abuse and neglect frequently are dismissed after a required period of investigation. Agencies responsible for child welfare and protection, saddled with constant staff shortages and high case loads, are limited in their authority to remove children from abusive and neglectful homes. Thus, insult is added to injury when there is an attempt to report the alleged occurrence of child sexual abuse in a school setting. Jurisdictional confusion, gaps in policy, and a virtual “no man’s land” exist, thus vitiating many of these allegations of child sexual abuse in schools.

Meanwhile, problems in schools fester, spawning an atmosphere that permits and tolerates, at a minimum, sexual harassment and discrimination, denying students the right to an equal educational opportunity and equal protection under the law.

Other cynical lessons also are taught by such behaviors: schools become unsafe places and students lose confidence in school policies and trust for school officials. These consequences are felt not only by victims and subjects, but also by bystanders.
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whether they are innocent witnesses or deliberate colluders.

Occasionally, sexual harassment is reported to those rare school officials who do indeed believe that such allegations warrant pursuit, but often find themselves "ad-libbing," inventing a system of investigation and adjudication. At other times, these same school officials, frustrated by their institution's inability or unwillingness to pursue these allegations, may turn to state agencies charged with resolving complaints of sex discrimination (agencies such as the state education department or the state's human rights commission). At the very least, an intervention from an outside agency may escalate the situation, and often leads to more litigious remedies than those that might have been applied successfully had they occurred at the school level at an earlier stage of the conflict.

Mobile Molesters
A mobile molester is created when the superintendent or school board works out a backroom deal with a teacher or administrator who has been accused of molestation or improper sexual conduct with a minor.

The arrangement typically includes a voluntary letter of resignation from the accused in return for a letter of reference from the school system. No dismissal proceedings are held, the state education department is not informed, and the accused's teaching certificate remains intact.

Armed with a letter of reference, the mobile molester moves along to another unsuspecting community where the accused is likely to repeat the alleged behaviors again. More than one culprit emerges from such scenarios because the mobile molester is a creation of a duplicitous superintendent and school board who prefer to pass along a harasser rather than proceed with dismissal proceedings.

In such cases, the superintendent and the school board are guilty at the very least of having created a negligent reference, and more likely, of putting more children in harm's way. Such conspiracies of silence and commission must stop, even if it takes prosecution for negligence.

Where To Learn More About Sexual Harassment

Nan D. Stein, a research associate with the Wellesley Center for Research on Women in Wellesley, Mass., recommends school administrators consult with the sex equity staff in their state education agencies when dealing with sexual harassment in school environments.

She also suggests the following resources:
- "It's Not Fun/It's Illegal. The Identification and Prevention of Sexual Harassment to Teen-agers," curriculum produced by Minnesota Department of Education, Minneapolis, Minn., 1988

Simple Remedies
The cases cited at the beginning of this article are simultaneously mundane and extreme. They also indicate the negligence of school authorities who should have known and should have intervened. To rectify such neglect and to educate the entire school community, mandated professional development workshops and seminars are needed. Everyone in the school community, including the custodian, bus driver, classroom teacher, coach, extracurricular adviser, superintendent, and school board member must be trained to recognize sexual harassment, to know about his or her responsibilities to report it to the proper individuals and agencies, and

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