



# Educator Sexual Misconduct at Independent Schools

# Speakers



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# Road Map

- Trends in the Claims
- Enforcing Appropriate Educator-Student Boundaries
- Solving for Common Reporting Challenges
- 2 Q&A sessions

# Trends in the Claims



# United Educators Claims Study

- Educator-on-student sexual misconduct
- K-12 independent schools
- Claims received from 2011 to 2016
- 45 claims involving more than 60 victims



# Losses

- 40% of the claims studied resulted in losses
- Losses totaled \$6.2 million
- Average claim cost \$343,000



# Definitions in the Study

**Educator** – Employee who provides education-related services

**Sexual assault** – Nonconsensual sexual touching and intercourse

**Sexual harassment** – Unwelcome, nonphysical sexual conduct

**Electronic harassment** – Unwelcome sexual electronic communication

**Boundary crossing** – Crossing commonly held standards of propriety

# Boundary Crossing

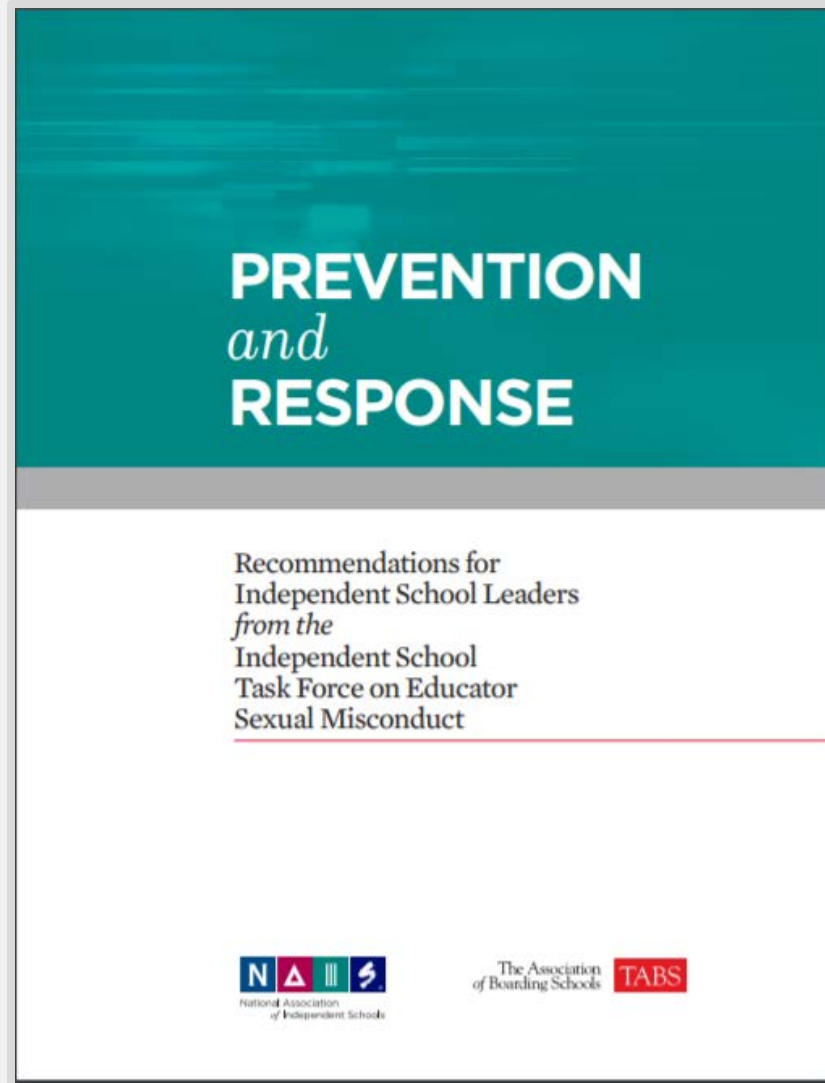
Example:

The longtime gymnastics coach routinely spanked students, tore at holes in their tights, adjusted the straps of their leotards, and removed exterior clothing to expose their leotards.



# Serial Perpetration





<https://www.nais.org/articles/pages/independent-school-task-force-on-educator-sexual-misconduct-report-prevention-response/>



# NAIS-TABS Draft Recommendations

- Published August 2017
- Public comment period through September, then extended to mid-October
- Received close to 100 comments/suggestions from variety of constituencies
- Consulted with attorneys, insurance executives, other state and regional association leaders
- Now live



# NAIS –TABS Recommendations

- Committee structures
- Recommendations on space review, principle of “observable and interruptible,” further contextualized to account for age of student, type of institution, and various practical realities
- The role of the board
- Technology recommendations
- Organization





## Guidelines for Dealing with Educator Sexual Misconduct

Prepared for NAIS by Linda S. Johnson, Esquire<sup>1</sup>

### Introduction

The recent Penn State sexual abuse and reporting scandal has rocked the nation. Everyone is asking the same questions. If the allegations are true, how could a long time coach have engaged in these behaviors? What were young children doing in a college locker room to begin with? Even if no physical interaction occurred and the only events are what the coach has admitted - showering with boys and horsing around in the shower - didn't he know he was crossing the lines of appropriate boundaries with children? How could his supervisors not have known? Did superiors do enough to respond when rumors surfaced? Did co-employees do enough when they observed troublesome behavior? Were the school's leaders made scapegoats to quell the clamor of discontent, or were their terminations justified?

It will take years before the legal system helps to untangle the answers to these questions. In the meantime, across the nation schools and their administrators are asking themselves some of these same questions. Have we done enough to respond to rumors that have surfaced on our campus? Do we fully understand our reporting obligations? Have we complied with them? Do our employees understand their obligations in this area? Overall, have we done enough to proactively and reactively create the safest school environment possible?

Unfortunately, the Penn State story is not a new one. The sad reality is that each year, far too many headlines reflect situations in which school employees take advantage of their positions of trust over children and engage in sexual misconduct.

Teachers and coaches are not the only perpetrators of sexual misconduct in schools. Studies have revealed that bus drivers, principals, counselors, janitors, and other school employees have also engaged in sexual misconduct with students. In the United States, an Associated Press investigation revealed more than 2,500 cases of educator sexual misconduct within a five year period.<sup>2</sup> As reported by *The Washington Post*, "one report by Congress estimated that as many as 4.5 million students, out of roughly 50 million in American schools, are subject to sexual misconduct by an employee of a school sometime between kindergarten and 12<sup>th</sup> grade."<sup>3</sup> Other

<sup>1</sup> Linda S. Johnson is director and co-chair of the Education Law Practice Group and Litigation Department of McLane, Graf, Raulerson & Middleton Professional Association. She can be reached at 603-628-1267 or [linda.johnson@mcclane.com](mailto:linda.johnson@mcclane.com).

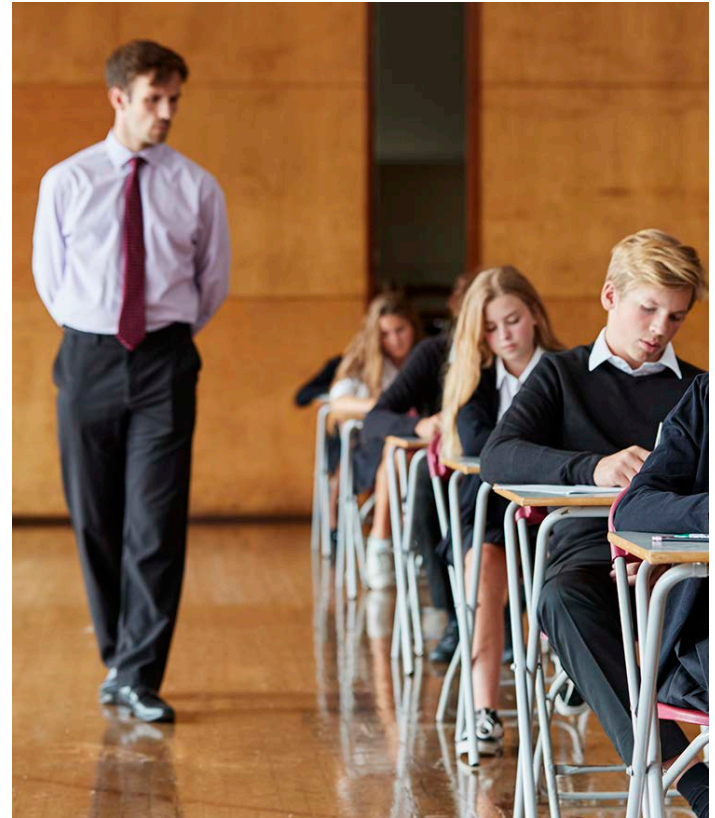
<sup>2</sup> Associated Press, "AP: Sexual Misconduct Plagues U.S. Schools," MSNBC, Oct. 20, 2007, <http://www.msnbc.msn.com/id/21392345>.

<sup>3</sup> *Id.*



# Trends

- *The Boston Globe* focus resulted in increase of past educator misconduct claims coming to light now
- Current employee boundary crossings—greater awareness of expectations of behavior about interactions between adults and students, and reporting obligations



# Enforcing Appropriate Educator-Student Boundaries



# Poll

Does your school's employee code of conduct include prohibited boundary crossing behavior?

- Yes
- No
- I don't know





# Employee Codes of Conduct

A summary of key behavioral expectations and prohibitions relating to adult interactions and conduct with students:

- Key elements of a code
  - Guiding principles and behavioral expectations
  - Prohibited conduct
  - Duty to comply with internal and external reporting obligations
  - Obligation to cooperate with investigations
  - Consequences for violations
  - Affirmation of compliance



# Examples of Prohibited Conduct

- Sexual or romantic relations
- Use of alcohol or drugs
- Harassment or discrimination
- Illegal conduct
- Disparaging colleagues or gossiping



# Enforcement

## Example:

*A tennis coach who grabbed a student's buttocks was warned not to touch students. Several days later, he touched a student again. The school fired the coach.*

# Using the Code in Managing Performance: From Hiring to End of Employment

Incorporating the Code of Conduct into the school's culture by:

1. Including the code in the **initial hiring** paperwork, discussing it with all new employees, and requiring the employee to sign acknowledging it.
2. Having an **annual acknowledgement** form for the code provided at time of re-appointment letter and/or at start of school year, and requiring employees to sign the form.
3. Using the code as part of annual **evaluation process** and part of performance management oversight.
4. Referring to the code during **employee trainings**, such as those on mandatory reporting obligations or other safe school trainings.
5. Using the code as part of employee counseling and holding employees accountable for adherence to the code.

# Making the Right Hire

Asking the right questions on the application form. For example:

- (1) Have you ever been the subject of an abuse, sexual misconduct or boundary crossing investigation by any employer, state licensing agency, law enforcement agency, or child protective services agency (unless the investigation resulted in a finding that the allegations were false)?
- (2) Have you ever been disciplined, non-renewed, asked to resign from employment, resigned from or otherwise separated from employment while allegations of abuse, sexual misconduct or boundary crossing were pending or under investigation or due to adjudication or findings of abuse, sexual misconduct or boundary crossings?

From: Pennsylvania Department of Education, "Commonwealth of Pennsylvania, Sexual Misconduct/Abuse Disclosure Release," online at <https://www.applitrack.com/source4teachers2/onlineapp/1BrowseFile.aspx?id=38>



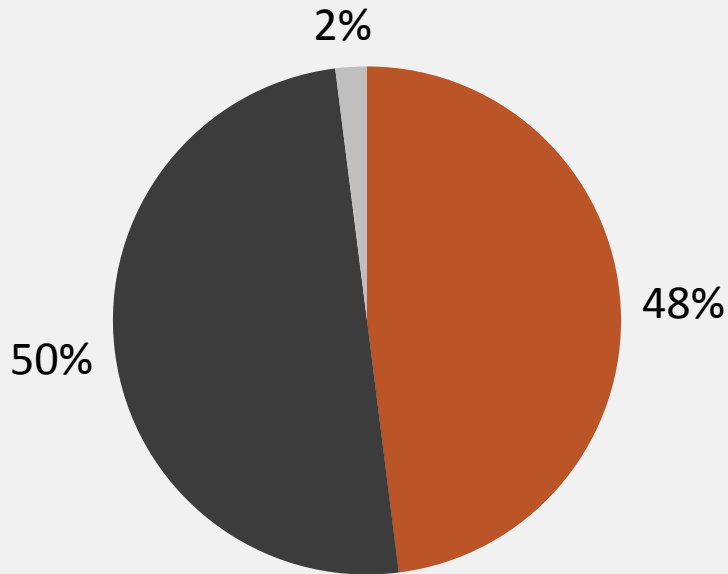
# Reference Checking and Reference Giving

1. Asking the right questions during reference checking, such as: *If I were to hire this person, what guidelines or assistance would they need to optimally perform their job?*
2. Contacting current employer—reference release
3. Google and online searches
4. Reference checking policy: *No employee has the right to provide a reference or recommendation, even a character reference, for another employee or former employee without the approval of the head of school.*

Don't pass the trash.

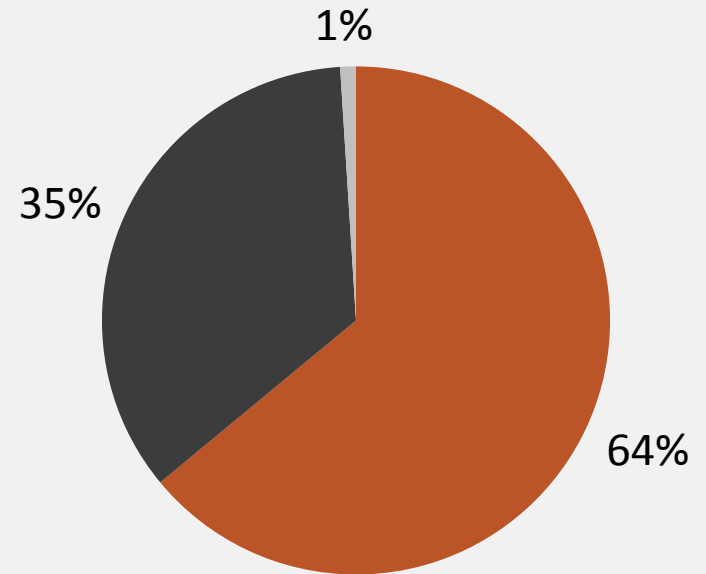
# Prevention/Hiring Risks

Do you have a written process for hiring?



Yes No Don't Know

Do you provide effective interview training for staff?

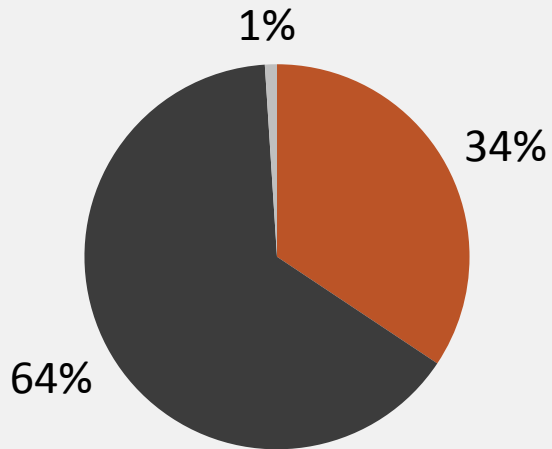


No Yes Don't Know



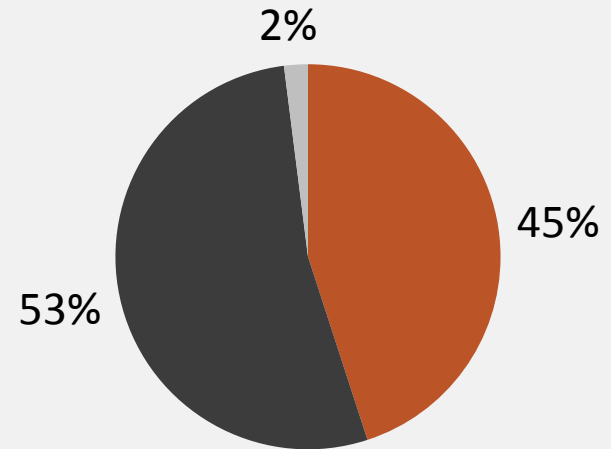
# Prevention/Hiring Risks

Does your school provide reference questions that must be asked of each reference?



Yes No Don't know

Does your school have a policy about who in the school may provide references?



Yes No Don't know





# Reference Waivers

- Can ask for them from applicants
  - Covers the extent of the references being collected and those providing the references
- Can ask for them from former employees
  - Provides an additional “signal” to the collecting school
- Note that some states are moving toward an affirmative obligation to disclose potential harm to children



# Q&A



# Solving for Common Reporting Challenges



# Reporting System

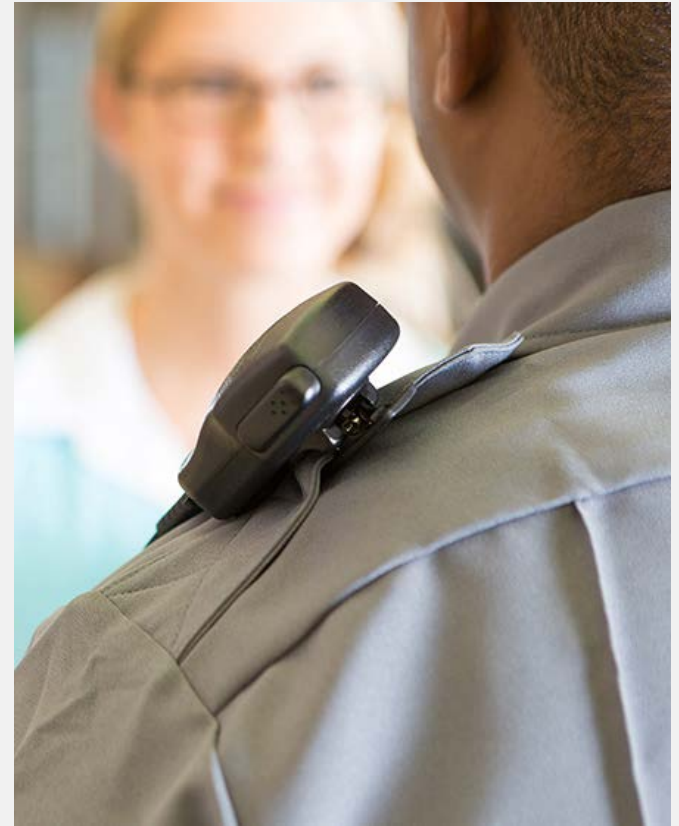
Emphasize internal and external reporting compliance:

- Develop a summary of all school reporting obligations, internal and external
- Provide a flow chart
- Comply with mandatory reporting laws
- Include anonymous reporting options
- Train extensively on school protocols
- Know the school's response to all reporting



# Reporting Procedures

- Adhere to the written procedures
- Review procedures periodically
- Mandate compliance in the code and the handbook
- Educate employees on how to report
- Hold employees accountable for failure to report



# Outside Experts

- Are often necessary for allegations of abuse
- Can include legal counsel, pediatricians, counselors, and crisis management consultants
  - Their training and background are important
- Are not necessarily “independent”
- Should be identified before a crisis

# Past Abuse

Question: *How proactive should a school be to try to learn about past educator sexual misconduct when no specific rumor or allegation has been made?*

- Sending alumni letters
- Conducting self-audits
- Handling reports from prior decades
  - Former students
  - Former educators

# Lessons Learned and Current Practices

- Policies and practices
- Reporting obligations
- Training programs—understanding reporting obligations, boundary awareness, table top exercises, response teams, etc.
- Hiring, performance management and terminations

*Overall—Creating a culture of safety, transparency, and accountability.*



# Q&A





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