




AISGW/SAIS/TAIS  
Responding to Student Abuse Concerns

December 2021



# Where are we going?



Quick word on legal advice



Background and basics



Where things go awry & Prevention



Questions

# Assaults – United Educator Data

- More than 30% of assault claims resulted in an insurance loss
  - 58% peer-to-peer sexual assault
  - 42% involved an adult educator – 90% of dollars paid
- 90% of claims perpetrator was a male teacher, coach, or religious leader
- 75% of claims the victims were female



## Sex Abuse in Independent Schools... 2010s

- Unprecedented number of stories
- Spotlight team
- NYT
- Regular letters and investigations
- More and more complex situations as investigations overlap

# Effects of Abuse

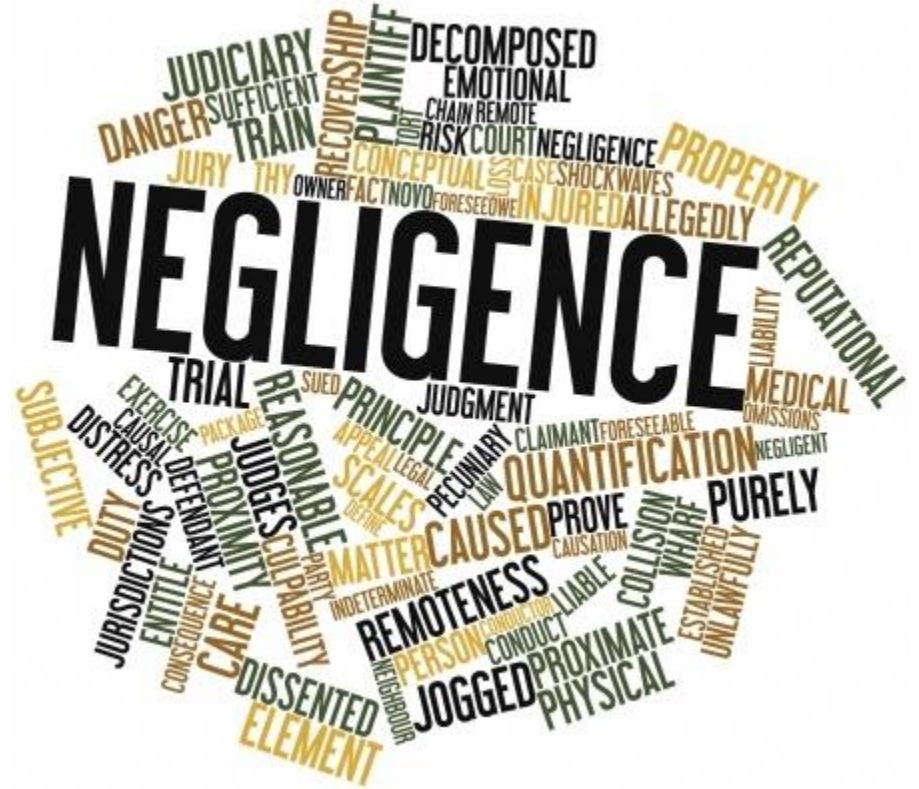


- Guilt, shame, blame
- Low self esteem
- Intimacy/relationship issues
- Depression
- PTSD
- Chemical dependency
- Suicide
- Dissociation
- Fundamental to our obligations to students to keep them safe.

# NAIS/TABS Task Force Report

## Schools: Be Aware of ...

- Negligence Standard
  - Hiring
  - Policies and Procedures for boundaries and follow up
  - Overall review of risks and follow up through implementation and training
- Accreditation Activity
- Communications expectations



# Terminology

- Abuse: Usually a technical term under the law, has a physical component to it
- Misconduct: Covers all kinds of behaviors, including those that may be consensual in the state but violate ethical codes / school codes, but not state law
- Harassment: May or may not have a physical component, but circumstances such that makes continuing to be educated or work a hostile environment difficult or impossible

# Title IX

- If you took PPP money
- Potentially if you are doing the employment tax credits
- If you are using other pockets of federal money
- Need to be aware of federal financial assistance ramifications
- Cases pending on conduct during the time the school accepted the loan
- Cases pending on when that funding is “flushed” from the system
  - Could be required to follow Title IX requirements



# Sexual harassment Title IX

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- An employee of the [school] conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- Unwelcome conduct, determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or
- 'Sexual assault' as defined in 20 U.S.C. 1092(f)(6)(A)(v), 'dating violence' as defined in 34 U.S.C. 12291(a)(10), 'domestic violence' as defined in 34 U.S.C. 12291(a)(8), or 'stalking' as defined in 34 U.S.C. 12291(a)(30)

# Title IX

- Need a Title IX coordinator
- Required to end harassment / violence, prevent its recurrence, and remediate its effects – regardless of whether student complains.
- Failure to do so or demonstrating “deliberate indifference” could result in liability until Title IX both in civil court and with Office of Civil Rights (responsible employee knows of issue and fails to remedy). OCR – tends to be related to pulling federal funding.
- No retaliation against students even if no finding of harassment / violence

# Title IX...

- Title IX Coordinator – should not be athletic director, head of school, or other who may have proximity to issue outcomes. Report directly to senior leadership. Allowed to operate independently
- Anti-discrimination policy (on basis of sex) and grievance procedure
- Conduct training for all staff and students
- Select a qualified investigator (ideally someone outside the school with relevant background)

# Title IX Grievance Procedures

- Notice of procedures and how to file complaint
- Apply to complaints alleging harassment or violence by employees, other students, or third parties
- Definitions of sex discrimination, sexual harassment, other prohibited conduct, and consent
- Promise adequate, reliable, impartial investigation, including opportunity for both parties to provide questions they want asked, answers to questions, etc.
- Designated and prompt timeframes to complete major stages
- Notice to parties of investigation outcome
- Assurance school will take steps to prevent recurrence
- Prohibition of retaliation along with how to report subsequent problems
- Preponderance of the evidence standard (more likely than not occurred) or clear and convincing (significantly greater than 50%)
- Right of both parties to appeal the outcome of investigation

# Overall: For All Schools

- Comprehensive policies and procedures
- Prevention programs
- Training for staff, students, and parents
- Processes to ensure timely reporting that come to one person or group
- Identify support mechanisms to implement (both parties)
- Thorough and coordinated investigations
  - Pre-Identify investigators for different kinds of investigations
  - Ensure that anyone doing investigations from school staff is appropriately selected and trained. Will need to be seen as impartial investigator
- Effective response procedures


# Liability is Usually...

- Negligence standard
  - Duty
  - Breach of Duty
  - Causation
  - Proximate
  - Harm
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- Also fundamental obligation of student safety and a lot of reputation and public trust at risk.



# Let's start there...

- Your daughter, April, is a junior in the high school at which you teach.
- She has told you that her friend Samantha seems to spend a lot of time with the girls' swim coach, Mr. Hayden. Samantha is a swimmer, so this isn't unusual, and you point that out.
- Your daughter rolls her eyes and says "Mom, you know what I mean. They go places, hang out, and stuff." And then she won't say anything else.
- Mr. Hayden graduated from college three years ago and, beyond being swim coach, he serves as a history teacher. You are the chair of the history department and you have been very impressed with his commitment and abilities.
- What do you do? What happens?




# Where to start!

- What are your obligations here?
  - Parental?
  - School?
    - When is a school “on notice”?
    - Knew or should have known
    - Specific complaint process is not required
    - **THIS IS CRUCIAL FOR STAFF TO UNDERSTAND**
- What should happen?
- Who knows what and when?
- How does this unfold at your school?



# Likely Steps...

- Be ready and understand all relevant school policies and processes
  - Following your steps is key.
- Report to head, head to board chair
  - Or other relevant reporting mechanism
- Attorney
- Reporting or not?
  - Staff looks into information, gathers relevant info – quickly (who, what, where, when, how)
  - Rarely as clear as you think it will be
  - Who makes report, and when
  - Document, document, document: When, to whom, what was said.
  - When in doubt, err on side of reporting
- Insurance company notification
- Communications if necessary
  - Both family and the accused faculty member
- Next Steps



# What generally happens?

- There are very few things more urgent or serious than this
- The teacher is often placed on leave with pay until the investigation is complete
  - Student safety is paramount
- Usually start an investigation of some variety
- Often with a third-party investigator, although sometimes initially internally
- The school goes through all emails, texts, etc., that are within the school's control and gives them to the investigator
  - Important to stop all document destruction
- Investigator talks with student, student's friends, Mr. Hayden, and anyone else with relevant information
- What is generally the outcome?



# Notice, Investigation, and Communications

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- While going through process, need to be aware that all actions may be revisited later, documentation is crucial
- Concern about a fair process, not necessarily due process
- Communications, consistently and reasonably equally are important
  - Ongoing support for both sides is vital.
  - Must remain impartial and avoid retaliation
- Notice, preferably in writing where you can, helpful regarding investigation
  - Broad outlines of what is on the table, what is happening next, and by whom
  - Expectations of participation and maintenance of any information (no deleting texts, emails, etc.)
  - Following up if more issues come to light
- Investigation does not require legal counsel to be present
- Some schools allow for someone else to be present.
  - Potted plant rule (both sides)



# And then...

- You reached out to Mr. Hayden, to let him know that this story has made its way to you and to see if you can find out more. He says nothing is going on and Samantha's family pays him to bring her home after practice and make sure that she and her sister are taken care of before her parents get home from their very demanding jobs.
- You talk with Samantha the next time she comes over and she confirms that he does drive her around and also does some babysitting for her parents.
- Your daughter, when pressed a couple of days later says that Samantha told her that she had "made out" with Mr. Hayden.

## Next Steps

- Is there a “legal” requirement to go further?
- Do you?
- What are your policies? (babysitting?)
- What is the cultural North Star?
- If a letter...
- If not a letter...
- What happens with Mr. Hayden
  - Violations of school expectations?
  - Fired?
  - Probation with training?
- If fired... Reference? Settlement?



# What could Mr. Hayden have done?

- Always two and you. The third person could be on the phone, on an email, on a text.
- It could be represented in the communications platform you are using.
- That third set of eyes can be a witness to the propriety of what is happening with a student
- Being alone with a student introduced an aura of confidentiality and intimacy
- School perspective - are these actions a violation of school policies and expectations? If yes, next steps are apparent



# In less egregious situations...

- Peers notice teacher spending a lot of one-on-one time with a student
- Student reports feeling “uncomfortable”
- Peers notice student(s) being singled out by teacher
- Coaching around maintaining boundaries, being sure an “uncomfortable” student has more space, regular check-ins
- If you can’t maintain the boundaries, then you might not be a fit for the school’s culture.
- **Note – this is about maintaining boundaries, being safe, and being aware of circumstances, expectations, and surroundings. Not much room for personal interpretations.**

# Mandated Reporters

- At the start of every year, remind teachers of the school process and expectations around reporting
  - Including who reports and when
  - What supports the school provides in the process.
- What are you reporting?
- To whom?
- When in doubt, report
- Document the interaction
- Much more complex than you think in most cases
  - Age of student at the time v. at the time of reporting
  - Off campus, not related to a school employee / volunteer
  - To just state agency, or police as well
  - Abuse, neglect, sexting
  - What if the parents know and are unconcerned?



Every time  
something  
comes up...

- Look at whether the school has a hole in its practices or policies
- Play it out through the school's policies to see how something worse or "less" bad would play out.
  - What would happen?
  - Would your school be well-situated to follow process?
  - Are the process and expectations clear to staff?

## The story continues...

It is eight years later, and you are now working at another school. You always felt bad about the Mr. Hayden business because he was an amazing teacher for your son and inspired him to become the successful engineer he is today. Nothing conclusive was ever determined and no further allegations were made as far as you know. You just received a voicemail from someone who notes that Mr. Hayden put you down as a reference for him since you were the chair of his department at the school. What happens next?

- Seen as speaking for the school, but this one is pretty much on you (and the person who hires him without speaking to the school)

# References

- School policy?
- On whose behalf do you provide information?
  - Now?
  - Future?
- Notify school?
- Who are the school spokespeople?
- What is the liability?



# Prevention

# Prevention

- Identify team to manage risk
- Team identifies all child activities school engages in, supports, etc., including what kinds of adults might interact with them
- Review all policies and procedures for student interaction, oversight, particularly high risk.
- Meet with stakeholders to identify particular risks, including physical plant.
- Work with outside consultants as needed to make sure policies and approaches are up-to-date and informed
- Table-top exercises
- Improve policies and programs, train/ educate staff, parents, students, and repeat

# Prevention – Special Scenarios

- Those who might meet with students privately or have physical interactions with them
- All volunteers, on campus consultants, trip leaders, other third parties
  - Assistant coaches, extracurricular leaders, camps
- Contracts and insurance
- Background checks
- Supervision

# Online

- Conduct regarding tech communications with students (texting, emails, chat rooms)
- Social media
- Personal computers
- No porn, sexually suggestive communications, etc., while on duty and/or while using school computers, systems, etc.

# Target Students

- Students who are perceived as weaker, loners, less socially tied
- Students with busy parents who need someone to fill in the gaps
  - Where babysitter / tutor policies come into play
- Students who may need / desire that one-on-one time with an adult and respond accordingly.
- School protocols for identifying and tracking these students



## Inappropriate Educator/Volunteer

- Overly close with students, particularly frequent touching
- “Special students”
- Students as social companions
- Conversations that would be inappropriate in front of parents
- Signs of boundary breakdown: jokes, secrets, flirting. Student behavior, with an adult

# Applicant Screening

- Prior convictions
- Pending criminal charges
- Disciplinary action by licensing org
- Removal from any position due to allegations of misconduct
- False or misleading info = discipline or termination
- **Written authorization and waiver for references**

## Reference Questions

- Do you have any concerns about this individual working unsupervised with children?
- Who else should we contact regarding this individual's history working with children?
- Have you seen this person work with children?
- Do you feel this person is mature enough to handle this position?
- This is our Code of Conduct, do you feel this will be difficult for this person to follow?

# Interview Questions

- Why do you want to work with children?
- How would you respond if... (boundary question, colleague question, etc.)
- What about this position appeals to you?
- You have been provided with a copy of our code of conduct, do you think this will affect your teaching style?

## Things schools look for...

- Gaps you cannot fill
- Frequent changes of location, particularly international or from state to state, public to private
- Holes in supervisor contact information
- “Loner” mentality
- History of overly close relationships with individual students

## Older Cases

You have just learned from an English teacher that an alumni of your institution posted a #metoo statement that includes the following: “My sophomore year in high school, my biology teacher pushed me against the wall and kissed me. The administration knew and did nothing.” This allegedly happened 33 years ago.

What happens?

# Older Case

- Who knows what and when?
- Who is involved initially?
  - On the board
  - Within the school
  - Other outside support
- How is communication with the board handled?
- Who are the school spokespeople?
- What is your cultural North Star?

# Older Reported Abuses

- Take report in
- Report / document
- Statutes of limitations?
- Internal documents and knowledge
- Investigation – Third party
- Insurance coverage
- Communications with various communities
- Take steps now to prep for all of above



## Older Reported Abuses

The report notes that this biology teacher not only pushed this alum against the wall and kissed her, but there is substantial circumstantial evidence that strongly suggests he had ongoing sexual relationships with at least two students during his time at the school. One of those alums committed suicide five years ago. The other will not speak with the school. The biology teacher has now passed away. There is disagreement among board members about whether the biology teacher should be named in the report to the community. There is also disagreement from your attorneys about whether the school could be named in a lawsuit related to the suicide of the alum and the disclosed report should be minimal.

- How does this board conversation go?
- Who makes the final decision?

# Live Case

- Report disclosure?
  - Naming perpetrator
  - Where does this play in your vision for the school's culture North Star?
- Concern for liability?
  - What could the liability be?
  - Is the school covered?
  - Does the liability exist anyway?
  - How do communications with that family reflect the school?

## Communications

- Transparency is really what you need to be ready for, while protecting privacy of victims
- Single voice communications
- Letters to community
- One spot for reporting past issues
- Identification of steps school will take in terms of reporting
- Constantly circling back

# Disclosing names

Some schools set a protocol

- The severity of the misconduct, its effect on the former student(s), and/or whether the school was made aware of multiple concerns of misconduct
- Whether there exists an ongoing current risk to students
- Whether the behavior of the faculty member violated the school's expectations
- Whether the allegations could be corroborated

# Speaking with the victims

The head has reached out to the alum, who wants to come in and speak with him, but also with the board chair. Do you set this meeting up? Who else is there? How does that conversation go?

- Listening and taking in
- Next steps the school will take
- Acknowledging her coming forward
- Learning what she may want or need
- Not promising anything

## Next steps

A few more alums came forward about this teacher. You have no way of confirming anything. The alum who originally would not speak with the school has confirmed that they had sex for the first time when she was 16 and they maintained a relationship for the rest of her time in high school. She has been through some therapy, but she could use more. She dropped out of college due to an anxiety disorder that she says was caused by her abusive relationship with this teacher. There is reason to believe that administrators may have known this was happening at the time.

Your lawyers say any claims are outside the statute of limitations, both civil and criminal.

Do you provide reparations or a settlement of any kind?

# Reparations

- Counseling
- Financial
- Public support in statements
- Working with victims on school approaches and policies
- Community statements
- Follow up support, communications

# Board Policy Involvement

- Historically, set around sexual harassment / abuse
- Expectations:
  - Culture & Overall direction
  - Generally not into procedural details
- More complex now
  - Higher profile – Press
  - Greater community expectations
  - Increased numbers of claims / alums and students coming forward
  - More ambiguity



# Steps Schools Consider Right Now

- Tightening of prevention practices & policies
- Training updates
- Tabletop exercises with staff, allowing for tricky ambiguity
- Identification of outside resources
  - Attorneys, PR, counseling services, third party investigators
- Drafts of letters to community

# Resources

- <https://www.ojp.gov/pdffiles1/nij/grants/252484.pdf>
- National Criminal Justice Reference Service
- <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>
- Questions and Answers on the Title IX Regulations (Summer 2021)
- [NAIS / TABS Task Force Report](#)
- [Outside Consultants](#)
- [Curated Resources](#)

