

Social Services of founded complaints of child abuse and neglect.

In 2006, the General Assembly expanded background check certifications to include employees of contractors employed by public schools who have direct contact with students.

Section 5414 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, required a national study of sexual abuse in schools. The study, *Educator Misconduct: A Synthesis of Existing Literature*, was conducted by Charol Shakeshaft of Hofstra University (now the chairman of the Department of Educational Leadership at Virginia Commonwealth University) and published in 2004 by the U.S Department of Education (USED).

Foremost among Shakeshaft's recommendations for the prevention of sexual misconduct is the development of specific district-level policies prohibiting sexual misconduct and inappropriate relationships between educators and students — including consensual relationships. Shakeshaft stated that local policies should describe prohibited behaviors to eliminate ambiguity about what types of actions are unacceptable.

The 2004 USED report also recommended mandatory training for educators and administrators about the prevention and detection of misconduct. Shakeshaft noted that sexual abuse prevention training for educators and other school employees — whether pre-professional or in-service — rarely includes training on the prevention and recognition of educator sexual misconduct. Rather, programs focus on recognizing and responding to abuse and neglect occurring outside the school.

Of the 169 actions taken by the Board of Education against licenses since 2000, 120 were in response to misconduct involving minors. In many of these cases, school divisions filed petitions only after receiving an inquiry from VDOE about a case in which a license holder had been convicted but no licensure action had been initiated by the division.

The 2008 General Assembly — with the support of the Board of Education — approved HB 1439 and SB 241, which amended Standard 7 of the Standards of Quality by adding language requiring school boards to develop policies and procedures to address complaints of sexual abuse of students by school board employees.

HB 1439 and SB 241 require local school boards to notify the Board of Education within 10 days if a licensed employee is dismissed or resigns due to a criminal conviction or founded child abuse or neglect charge.

In addition, HB 1439 and SB 241 require:

- Court clerks to notify the Superintendent of Public Instruction when a person licensed by the Board of Education is convicted of a felony drug crime or a felony sex crime involving a child victim; and
- Local social services departments to notify the state superintendent of license holders who have exhausted appeals after being identified as the subject of a founded case of abuse.

The 2008 General Assembly also erected additional barriers to employment and access to school buildings by offenders:

- HB 1242 prohibits the employment of anyone whose job would require direct contact with students if the applicant is the subject of a founded case of physical or sexual abuse of a child. Additionally, the bill requires the dismissal of a teacher who, while employed by a local school board, becomes the subject of a founded case of physical or sexual abuse of a child and has exhausted all available appeals.
- HB 567 prohibits any adult convicted of a sexually violent offense from entering and being present upon any property he knows or has reason to know is a public or private elementary or secondary school or child day care property during school hours and during school-related and school-sponsored activities. Previously, the prohibition only applied during school hours.

Summary of Major Elements

Mandatory background checks can keep offenders out of the system and reporting requirements increase the likelihood that convictions and founded cases of abuse are followed by timely licensure actions. But these measures focus on entry and exit points and do not provide a means for evaluating the conduct of current employees and volunteers.

Division-level policies are critical in the *prevention* of misconduct. Well-designed local policies — with specific consequences for willful violations — also can play a role in preventing individuals who have been dismissed — but not prosecuted — for misconduct from moving to a new school division and engaging in further misconduct with students.

Adherence to specific rules governing communication, physical contact, and socializing with students also can protect teachers and other school board employees from false accusations and rumors.

Under the state constitution and state law, local school boards are responsible for the development of policies governing the conduct of their employees. The model policies and best practices described in *Guidelines for the Prevention of Sexual Misconduct and Abuse in Virginia Public Schools* are designed to assist school boards in crafting effective local policies to prevent abuse and meet their responsibilities under HB 1439 and SB 241 to develop policies and procedures to address complaints of sexual abuse of a student by a teacher or other school board employee.

The guidance and best practices contained in *Guidelines for the Prevention of Sexual Misconduct and Abuse in Virginia Public Schools* address factors contributing to actual cases of misconduct in the commonwealth's public schools and include elements and practices common to successful youth protection programs. These elements are:

- A statement of purpose and philosophy addressing the shared responsibility of school divisions, school employees, volunteers, students, parents and others for the prevention and reporting of sexual misconduct and abuse;
- Clear and reasonable policies governing communication between students and school board employees — including electronic communication — that promote transparency, accessibility and professionalism;
- Clear and reasonable policies governing physical contact between students and school board employees and volunteers in settings and circumstances common to public schools;

- Clear and reasonable policies governing permissible and unacceptable social interactions and relationships between students and school board employees and volunteers;
- Training of school personnel and volunteers and the dissemination of sexual misconduct and abuse prevention policies to school board employees, volunteers, students, and parents;
- Clear procedures for the reporting of suspected sexual misconduct and abuse; and
- Consequences for school personnel and volunteers who violate sexual misconduct and abuse prevention policies.

School boards that adopt and implement local policies aligned with the guidance document will meet their obligation under HB 1439 and SB 241 and create learning environments with clear rules that emphasize awareness, transparency, and prevention.

In developing *Guidelines for the Prevention of Sexual Misconduct and Abuse in Virginia Public Schools*, the Division of Policy and Communications studied policies adopted by school boards and legislatures in several states, youth protection policies adopted by private and parochial school systems, policies adopted by national youth-service organizations, and reports and studies on the issue of sexual misconduct in school settings.

- Boy Scouts of America, *Guide to Safe Scouting, Chapter 1: Youth Protection and Adult Leadership*, 2007
- Carr, Nora, *How to avoid committing social media gaffes: 11 strategies for keeping your staff out of hot water in today's new media world*. E-school News. Accessed October 5, 2010: <http://www.eschoolnews.com/2010/10/05/how-to-avoid-committing-social-media-gaffes/>
- Catholic Diocese of Arlington, *Policy on the Protection of Children/Young People and Prevention of Sexual Misconduct and/or Child Abuse*, 2003
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- Community High School District 128 (Vernon Hills, Illinois), *Expectations for Communicating Electronically with Students*, 2010
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- Louisiana Revised Statutes 17:81(Q) and 3996 (B)(21), as amended by HB 570 (2009): *AN ACT ... to require the governing authority of a public elementary or secondary school to formulate, develop, adopt, and implement policies, procedures, and practices applicable to school employees relative to electronic communications by an employee at a school to a student enrolled at that school; to provide policy guidelines and requirements; to provide limitations and exceptions; to provide that the occurrence of certain electronic communications be reported by*

the school employee; to provide for immunity from civil liability; to provide an effective date; and to provide for related matters. 2009

- Manatee County School District (Florida), *Computer Systems Acceptable Use Policy*, 2010
- North Carolina Board of Education, *Code of Ethics for North Carolina Educators*, 1998
- Ontario College of Teachers, *Professional Advisory: Professional Misconduct Related to Sexual Abuse and Sexual Misconduct*, 2002
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- Shakeshaft, Charol, *Educator Sexual Misconduct: A Synthesis of Existing Literature*, United States Department of Education, 2004
- Texas State Board for Educator Certification, *Code of Ethics and Standard Practices for Texas Educators*, 1998
- Utah Administrative Code, Rule R277-515, *Utah Educator Standards*, Utah State Board of Education, 2010
- Utah State Office of Education, *A Review of Professional Conduct in Utah's Public Schools*, 2010

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board of Education accept for first review the proposed *Guidelines for the Prevention of Sexual Misconduct and Abuse in the Public Schools* and authorize a 30-day period of public comment.

Impact on Resources: The impact on resources is expected to be minimal.

Timetable for Further Review/Action: Following a 30-day public comment period, final approval will be requested at the January 13, 2011, Board meeting.

**Proposed Guidelines for the
Prevention of Sexual Misconduct
& Abuse in Virginia Public Schools**

**Virginia Board of Education
November 18, 2010**

Introduction

The 2008 General Assembly adopted legislation (HB 1439 and SB 241) amending Standard 7 of the Standards of Quality to require school boards to adopt policies addressing sexual abuse of students by teachers and other school board employees:

§ 22.1-253.13:7. Standard 7. School board policies.

- A. Each local school board shall develop policies and procedures to address complaints of sexual abuse of a student by a teacher or other school board employee.

The Virginia Board of Education developed *Guidelines for the Prevention of Sexual Misconduct and Abuse in Virginia Public Schools* to help school divisions meet their obligation under the law and create and implement policies and procedures that establish clear and reasonable boundaries for interactions between students and teachers, other school board employees, and adult volunteers.

The model policies and best practices in the document draw from policies and legislation approved by school boards and legislatures in other states and policies and best practices implemented by private and parochial schools and national youth-service organizations.

Elements of Sexual-Abuse Prevention Policy

School board policies on the prevention of sexual abuse of students by division employees and volunteers should contain these basic elements:

1. Statement of purpose and philosophy addressing the shared responsibility of the school board, school divisions employees, volunteers, students, parents and others for the prevention and reporting of sexual misconduct and abuse;
2. Clear and reasonable rules governing communication — including electronic communication — between students and school board employees;
3. Clear and reasonable rules governing physical contact between students and school board employees and volunteers;
4. Clear and reasonable rules governing social interactions and relationships between students and school board employees and volunteers;
5. Requirement for training of school personnel and volunteers and the dissemination of sexual misconduct and abuse prevention policies to school board employees, volunteers, students, and parents;
6. Procedures for the reporting of suspected sexual misconduct and abuse;
7. Consequences for school personnel and volunteers who violate sexual misconduct and abuse prevention policies; and
8. Applicability to teachers and other employees of virtual school programs and other vendors providing instructional services to students.

Statement of purpose and philosophy

Responsibility for protecting students from sexual misconduct and abuse is shared by the division superintendent, the school board, teachers and other school board employees, school volunteers, state agencies, law enforcement, and parents. By following school board policy on the prevention of sexual misconduct and abuse, teachers, principals, and other educators and employees provide a safe and healthy environment for teaching and learning.

Statements describing the purpose and philosophy of a school board policy on the prevention of sexual misconduct and abuse should define the protection of students as a division priority and express the obligation of all employees to observe boundaries governing interaction and communication with

students. The school board demonstrates its commitment to protecting students from sexual misconduct and abuse through:

1. Strict compliance with all state laws and regulations related to the screening of prospective employees for the conviction of barrier crimes and founded cases of child abuse and neglect;
2. The development, effective implementation — including training — and enforcement of clear and reasonable policies governing the interaction of students and school board employees and volunteers;
3. The establishment of channels for reporting by students and parents of suspected misconduct and abuse, and the prompt notification of law enforcement when criminal activity is alleged or suspected;
4. Disclosure of formal reprimands and dismissals for violating school board policies on sexual misconduct and abuse prevention to school divisions seeking references; and
5. Strict compliance with all state laws and regulations related to reporting to the Virginia Department of Education of resignations and dismissals of licensed employees related to convictions of barrier crimes and founded cases of abuse.

In its statement of purpose and philosophy, the school board should also express how adherence to division policies governing student-employee interactions can protect employees from false accusations and accusations based on misunderstandings.

Communication between school division employees and students

School board policies should recognize the importance of communication in learning and instruction while placing reasonable restrictions on content and settings. Teachers and other employees can protect themselves from misunderstandings and false accusations by adhering to the division's rules on communicating with students.

Model policy for in-person communications with students

- Conversations with students should focus on matters related to instruction and school activities. School board employees and volunteers should not initiate discussions about their private lives or the intimate details of the private lives of unrelated students.
- Conversation by school board employees and volunteers with students that could be interpreted as flirtatious, romantic or sexual is prohibited.
- The sharing of sexually explicit or obscene jokes and verbal “kidding” of a sexual nature between school board employees, volunteers and students is prohibited.
- Private, one-on-one conversations with students should take place within the potential view, but out of the earshot of other adults — such as in a classroom with the hallway door open. This policy also applies to conversations between volunteers and unrelated students.
- School board employees may not conduct an ongoing series of one-on-one meetings with a student without the knowledge of the principal and without written permission of a parent or guardian.
- The school board's policy on in-person communications with students also applies to teachers and other employees of virtual school programs and other vendors providing instructional services to students.

Digital technology provides multiple means for teachers and other school division employees to communicate with students. The division policy should establish acceptable channels for electronic communications with students while prohibiting interactions unrelated to instruction or not specifically authorized by school board policy. In short, electronic communications with students should be transparent, accessible to supervisors, and professional in content and tone.

Model policy for electronic communications with students

- Teachers and other school board employees must restrict electronic communications with students to accounts, systems and platforms provided by the school division.
- Teachers and other employees may not use personal wireless communications devices to “text” students and are prohibited from interacting with students through online social-networking sites. Teachers and other school board employees must decline or disregard invitations from students to interact through texting and social-networking sites.
- Teachers and other school board employees may not knowingly engage in online gaming with students.
- School board policy on electronic communications with students also applies to teachers and other employees of virtual school programs and other vendors providing instructional services to students.

Best Practice: Developments in personal digital communications and social networking are reviewed annually by division technology staff and school board policies are revised as needed.

Best Practice: Information about school board policies on in-person and electronic communication between employees and students is included in student and parent handbooks and posted on the school division Web site.

Physical contact

Physical contact between school board employees and students should be public, nonsexual, and appropriate to the circumstances. School employees and volunteers should avoid adult-minor physical contact when alone with an unrelated student.

Model policy for physical contact with students

- Physical contact between an adult and student that is expected and appropriate in preschool and in the early elementary grades — such as a spontaneous hug between a teacher and a child at the end of the day — is not appropriate with older children.
- Physical contact meant to encourage or reassure students, such as a hand on the shoulder or a pat on the back, should be brief and unambiguous in meaning.
- School board policy on physical contact with students also applies to teachers and other employees of virtual school programs and other vendors providing instructional services to students.

Best Practice: Information about the school board’s policy on physical contact between employees and students is included in student and parent handbooks and posted on the school division Web site.

Social Interaction with Students

It is natural for friendships to develop between students and teachers and other school employees. Rules governing social interactions with students allow for healthy relationships between students and educators while eliminating opportunities for misunderstandings and misconduct.

Model policy for on-site and off-site social interaction with students

- School employees and volunteers should avoid situations in which they are alone with an unrelated student and not observable by other adults or students.
- All off-site, school-related activities involving school board employees and students must be approved by an authorized administrator and be supervised by a least two unrelated adults.
- Adult chaperones for off-site, school-related activities must be at least 21 years of age.

- Written parental permission must be secured for all off-site, school-related activities.
- The giving of expensive gifts or gifts of a personal nature, such as jewelry and clothing, to unrelated students by teachers, volunteers and other school board employees is prohibited. School board employees and volunteers may not accept such gifts from individual students.
- School board employees shall not grant special privileges, rewards, or opportunities to a specific child beyond those customarily provided as incentives to promote and recognize achievement.
- School board employees are prohibited from hosting or participating in private social gatherings and parties with students during which alcohol and/or other drugs are consumed.
- School board employees and adult volunteers shall not share pornographic or sexually explicit materials with students.
- Romantic or sexual relationships between school employees or volunteers and students are prohibited, regardless of the age of the student or the proximity in age of the employee or volunteer and student.
- School board policy on social interaction with students also applies to teachers and other employees of virtual school programs and other vendors providing instructional services to students.

Best Practice: Information about the school board’s policy on social interaction between employees and students is included in student and parent handbooks and posted on the school division Web site.

Training and dissemination of school board policy

It is the responsibility of the school board to provide training on the prevention of sexual misconduct and abuse to all employees and volunteers. Training may be provided by a qualified vendor or other organization, provided that the content is substantially aligned with school board policy. Training may be provided as a workshop or online with a means of confirming participation and completion.

All school board employees and school volunteers should be provided with a copy of the school board’s policy for the prevention of sexual misconduct and abuse at the beginning of the school year. A link to the policy also should be posted on the homepage of the school division Web site.

Contracts with virtual school programs and other vendors providing instructional services to students should include a requirement that employees follow school board policy on the prevention of sexual misconduct and abuse.

Best Practice: Principals appoint — in consultation with faculty and parents — school committees with responsibility for increasing awareness of state laws and school board policies. Divisions provide training to school committees in order for committees to oversee training of building-level employees and volunteers.

Reporting suspected misconduct and/or abuse

The school board’s policy on the prevention of sexual misconduct should include clear channels for reporting suspect misconduct for employees and volunteers and for students and parents.

The *Code of Virginia* (§ 63.2-1509) requires school board employees to report all cases of suspected abuse to local or state social services agencies or the principal or his or her designee. The *Code* (§ 22.1-291.3) also requires school boards (and administrators of private and parochial schools) to post a notice reminding teachers and other employees of their responsibility to report suspected abuse. This notice must include the Virginia Department of Social Services' toll-free child-abuse-and-neglect hotline.

All school board employees and volunteers should be aware of location of the notice required by § 22.1-291.3 and understand their legal obligation to report abuse or neglect.

The school board policies on the prevention of sexual misconduct should include these statutory reporting requirements and obligate employees and volunteers who observe, or are told of, misconduct — as defined by the local policy — to notify the principal or his or her designee promptly.

School board policies also should reference the statutory requirement (§ 22.1-313) that school divisions to notify the superintendent of public instruction within 10 business days when employees are dismissed or resign because of a conviction of a barrier offense or a founded case of child abuse.

Model policy for reporting suspected abuse and misconduct

- The principal of each school shall ensure that all building-level employees and adult volunteers are aware of their legal obligation to report suspected abuse to local or state social service agencies or the principal or his or her designee and that the notice required by § 22.1-291.3 is posted in a manner that complies with the law.
- The principal of each school shall ensure that all building-level employees and adult volunteers are aware of their obligation under the school board’s policy on the prevention of sexual misconduct to report misconduct to the principal or his or her designee.
- School board employees and adult volunteers who observe or otherwise become aware of sexual misconduct by another employee or adult volunteer must notify the principal or his or her designee promptly.
- The superintendent shall also designate an administrator within the division central office to receive reports of sexual misconduct.
- When a licensed employee is dismissed or resigns because of a conviction of a barrier offense or founded case of child abuse, the superintendent shall notify the superintendent of public instruction within 10 business days and provide the school board with documentation of the notification.

Best Practice: Instructions for reporting misconduct are included in student and parent handbooks and posted on the school division Web site.

Consequences for violations of school board policy

In determining consequences for violations of school board sexual abuse prevention policies, administrators must evaluate the willfulness of the conduct and nature of the conduct or communication. School board employees and volunteers have an obligation to report violations of the division’s policies for preventing sexual misconduct to the principal or his or her designee.

Model policy for violations of school board policy on sexual misconduct and abuse

- Violations involving sexual relations with a student, regardless of the age of the student or the proximity in age of the student and employee or volunteer; sexual abuse of a student; or communication with a student of a sexual or romantic nature; shall result in dismissal, prompt notification of law enforcement and social services if required by state law, and in the case of an employee or volunteer licensed by the Board of Education, the initiation of a complaint against the license.
- The response to violations involving willful conduct, or conduct or communication of a sexual or romantic nature not involving actual sexual relations or abuse, may include a formal reprimand, suspension, dismissal or other personnel action deemed necessary to prevent sexual abuse and protect the health, welfare, discipline or morale of students, and if warranted in the

case of an employee or volunteer licensed by the Board of Education, the initiation of a complaint against the license.

- The response to violations determined to have been inadvertent, and/or not involving conduct or communication of an abusive, sexual or romantic nature, may include counseling and training, and in cases involving multiple violations, a formal reprimand or other action deemed warranted to prevent future violations of school board policy.

References

In developing *Guidelines for the Prevention of Sexual Misconduct and Abuse in Virginia Public Schools*, the Division of Policy and Communications studied policies adopted by school boards and legislatures in several states, youth protection policies adopted by private and parochial school systems, policies adopted by national youth-service organizations, and reports and studies on the issue of sexual misconduct in school settings.

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