



# Educator Sexual Misconduct: A Policy and Audit Guide for Protecting Children

Families have a right to expect that their children will be cared for in an environment that is safe from sexual misconduct. It is disturbing and tragic when educators betray this trust with children.

United Educators developed this guide to assist educational organizations in establishing a comprehensive risk management program to protect children from sexual misconduct. This guide covers prevention strategies, responses to allegations and incidents, and special issues.



# Contents

- Introduction ..... 5**
- How to Use This Guide..... 6**
- Summary of United Educators’ Guidelines..... 7**
- Prevention of Sexual Misconduct..... 9**
  - 1. Child Protection Team .....9
  - 2. Selection and Placement ..... 10
  - 3. Code of Conduct ..... 17
  - 4. Training and Education..... 21
  - 5. Supervision ..... 24
  - 6. Access and Program Policies..... 26
- Response to Allegations and Incidents ..... 28**
  - 7. Reporting..... 28
  - 8. Investigations..... 30
  - 9. Discipline and Dismissal..... 33
  - 10. Crisis Response and Communications ..... 34
- Special Issues for Non-Employed Staff ..... 34**
  - 11. Contractors..... 34
  - 12. Volunteers ..... 35
  - 13. Student Educators ..... 37
- Conclusion..... 39**

|   |           |
|---|-----------|
| <b>Appendix A: Terminology .....</b>                      | <b>40</b> |
| <b>Appendix B: Audit Guide .....</b>                      | <b>41</b> |
| <b>Appendix C: Legal and Professional Standards .....</b> | <b>48</b> |
| 1. Criminal Laws .....                                    | 48        |
| 2. Civil Liability.....                                   | 48        |
| 3. Professional Standards.....                            | 49        |
| <b>Acknowledgment .....</b>                               | <b>49</b> |

# Introduction

Childhood is a precious time of growth and learning. Countless hours are spent in schools, day care, camps, youth clubs, and other organizations. Families have a right to expect that their children will be cared for in an environment that is safe from **sexual misconduct**. It is disturbing and tragic when educators betray this trust with children.

Children face a far greater risk of being sexually abused by someone they know, such as a teacher or camp counselor, than by a stranger. Research indicates that at least one in 10 students between kindergarten and 12th grade will experience sexual misconduct by an educator.

Educator sexual misconduct harms children in many ways. Child survivors often report difficulty with family and interpersonal relationships. Alcohol and other substance abuse, eating disorders, depression and anxiety, and self-injurious behaviors are not uncommon. The misconduct may also interfere with students' learning and educational accomplishments.

United Educators developed this guide to assist educational organizations in establishing a comprehensive risk management program to protect children from sexual misconduct. The guide covers prevention strategies, responses to allegations and incidents, and special issues. The following appendices are included:

- **Appendix A**, "Terminology," contains definitions to certain terms that are used throughout this guide. Definitions of each term will appear at least once in the margins of the guidelines and again in the appendix.
- **Appendix B**, "Audit Guide," contains a checklist of items to consider under each of the topical issues relating to prevention, response, and special issues.
- **Appendix C**, "Legal and Professional Standards," generally describes applicable criminal laws, civil liability, and professional licensing.

This guide addresses sexual misconduct committed by **educators**. In this guide we are using the term broadly to mean adults and older adolescents who serve in paid and unpaid positions as employees, volunteers, contractors, and student educators. It does not address peer sexual misconduct involving children who are enrolled in educational programs. For the latter subject, please consult United Educators' publications on student-to-student or peer sexual misconduct.

Nothing in this guide should be construed as providing legal advice. State laws vary on such matters as staff screening, child abuse and neglect, professional responsibilities, and sexual harassment training. UE strongly encourages its member institutions to consult with legal counsel when developing child protection programs.

## Sexual Misconduct

Any act of sexual abuse, exploitation, harassment, or molestation of a child committed by an adult or older adolescent. The behavior may violate school or organizational policies, civil laws, criminal laws, or professional standards.

## Educator

A person who holds a paid or unpaid position with a school. Educators provide services directly or indirectly to children who are enrolled as students or otherwise participate in the organization's classes, programs, or activities. An educator may be a school official, volunteer, or student educator.

## School

Any public, private, or independent institution or organization where children under age 18 receive instruction or are supervised by adults or older adolescents. The term includes child care centers, preschools, primary and secondary schools, colleges, universities, after school and youth programs, camps, events, and activities operated for academic, athletic, recreational, or other purposes.

# How to Use This Guide

This guide describes a comprehensive risk management program to protect students from educator sexual misconduct. A **school** can use the entire guide to develop a full-scale program or focus on particular segments to enhance an existing program. Consider the following steps:

1. **Establish a child protection team.** All schools need a team of educators who will take primary responsibility for protecting children. The team oversees policy development and monitors incidents of educator misconduct. Appoint a senior-level administrator to serve as a child protection officer to ensure follow-up action.
2. **Identify children's activities.** Start the review process by identifying all classes, programs, and events in which children are enrolled or participating. Include both on-campus and off-campus activities. Identify all such activities that the school directly or indirectly operates, sponsors, endorses, affiliates with, or provides under a contractual relationship.
3. **Review existing policies and procedures.** Collect and review existing policies and procedures including manuals, training materials, forms, and other documents pertaining to educator sexual misconduct. Review contracts with persons and groups that serve children. To help identify school policies, procedures, and applicable laws, interview key persons within the school administration, such as the principal, general counsel, Title IX coordinator, nurse, guidance counselor, and security or resource officer.
4. **Meet with all stakeholders.** Convene meetings with interested persons and groups. Such meetings may include board members, teachers, coaches, health and mental health professionals, social workers, and parents. Provide a forum for discussing perspectives and concerns relating to educator sexual misconduct. Solicit suggestions and keep these stakeholders apprised of the school's child protection efforts.
5. **Improve policies and programs.** Implement changes to policies, procedures, and training to protect children. If required, seek approval from the principal, executive director, legal counsel, or governing board. Inform and train educators on the program changes.

# Summary of United Educators' Guidelines

United Educators recommends that each member institution adopt a comprehensive risk management program that consists of written policies, procedures, and training programs to protect children from educator sexual misconduct. Key elements of the risk management program are described below.

## Prevention of Sexual Misconduct

1. **Child protection team.** Designate a team of persons that is responsible for implementing the school's policies and procedures and ensuring training on child protection and safety issues, including educator sexual misconduct. Appoint a senior-level professional to be the team leader and designate that person to serve as a child protection officer or in a similarly titled position.
2. **Selection and placement.** Implement policies pertaining to the screening and placement of all educators. Use written applications, reference checks, and personal interviews for all positions. Employ more extensive screening methods (such as criminal history and other background checks) as required by law or recommended for positions having regular or unsupervised contact with children.
3. **Code of conduct.** Enforce behavioral rules and guidelines pertaining to educators in their interactions with children, managing child behavior, personal behavior, and computer including internet use.
4. **Training and education.** Conduct training programs for educators on the prevention and response to sexual misconduct. Educate and disseminate information to children, parents, and other family members on the warning signs of sexual misconduct, suspicious behavior by educators, and ways to keep children safe.
5. **Supervision.** Ensure that adequate supervision is provided to all educators and children. Supervision should consist of observations, evaluations, and training of educators on codes of conduct.
6. **Access and program policies.** Establish policies on how access is granted to children as well as on programs such as baby-sitting, tutoring, and mentoring of children.

## Response to Allegations and Incidents

7. **Reporting.** Develop policies on internal school reporting of educator **code of conduct** violations, and on reporting to government authorities of potential criminal law violations.
8. **Investigations.** Establish policies on how the school will investigate allegations or incidents involving educator code of conduct violations, including sexual

misconduct with children. The policies should address interaction with the child and his or her family, the accused educator, and the conduct and conclusion of an investigation.

9. **Discipline and dismissal.** State the range of disciplinary consequences and procedures for taking corrective and adverse actions when educators have engaged in code of conduct violations with children, including sexual misconduct.
10. **Crisis response and communications.** Develop a plan for handling allegations and incidents of educator sexual misconduct. Address the school's communications with the child, the child's family, the accused educator, law enforcement, social services agencies, and the media.

### Special Issues for Non-Employed Staff

11. **Contractors.** Use written contracts with persons and companies that provide services for children as part of an affiliation, sponsorship, or referral arrangement with the school. Address issues such as contract termination, general liability insurance, and indemnification. Require the contractor to have risk management practices that are comparable to the school's practices for similar positions.
12. **Volunteers.** Implement risk management policies for volunteers that are comparable to those provided to school employees in similar positions. Pay close attention to screening, codes of conduct, and supervision of volunteers.
13. **Student educators.** Use affiliation agreements that describe the responsibilities of the school, the **student educator**, and the educational institution in which the student is enrolled. Implement risk management policies that are comparable to those applicable to school employees in similar positions.

### Code of Conduct

The school's guidelines and rules for educators that establish the limits of personal behavior and appropriate interactions with children.

# Prevention of Sexual Misconduct

While educator sexual misconduct is widespread, it can be prevented through careful management practices and awareness of the problem. Preventive measures include the use of child protection teams, selection and placement procedures, codes of conduct, training and education programs, supervision, and limiting access to children.

## 1. Child Protection Team

A school's efforts to prevent and respond to educator sexual misconduct should be continuous. Each school should establish a "child protection team" or similarly titled committee that has responsibility in these areas. Designate a child protection officer to coordinate the committee's work and ensure follow-up action.

### 1.1. Team Composition and Responsibilities

Appoint **school officials** to serve on the child protection team (CPT). Good candidates are the principal or head of school, nurse, guidance counselor, and school resource officer. Include the school's Title IX coordinator if it has one. Organizations other than schools may appoint professionals with comparable responsibilities.

Multi-site schools or school districts should establish a system-wide CPT. Appoint the superintendent (or designee) and a representative of each school-based CPT to the systemwide team. Add or consult with experts, such as the school's attorney, as needed.

Assign CPTs responsibilities such as the following:

- Develop and conduct in-service or other training for school employees once a year.
- Collaborate with the community CPT or other child protection agencies.
- Review any changes in applicable laws, including reporting requirements.
- Review the effectiveness of school policies and procedures and propose changes as needed.
- Provide education and information for parents and children.
- Coordinate counseling and other support services for children and families after a report of sexual misconduct is made.
- Monitor educator sexual misconduct and other child abuse or neglect cases, including cases that have been reported to law enforcement or child protection agencies.
- Coordinate with the school's crisis response team when there are allegations of educator sexual misconduct.

### Student Educator

An minor or adult who is supervising children or otherwise performing services for a school to fulfill the requirements of a clinical or academic program.

### School Official

A board member, manager, employee, or representative of a school.

## 1.2. Child Protection Officer

Appoint a senior-level professional to serve as the school's child protection officer or in a similarly titled position. The position duties relating to educator sexual misconduct may include the following:

- Maintain applicable school policies and propose revisions, as necessary.
- Provide guidance to school officials, employees, and others on school policies and laws.
- Receive reports and maintain documentation of complaints, allegations, and findings.
- Report suspected child abuse or neglect to governmental authorities.
- Conduct training for educators, parents, and children.
- Conduct or assist in conducting school investigations.
- Recommend corrective and adverse actions for educators.
- Serve on a school crisis response team for sexual misconduct cases.
- Serve as a liaison to child victims and their families.
- Serve as a campus or public spokesperson for sexual misconduct cases.

## 2. Selection and Placement

Schools should exercise great care to ensure that suitable people are selected and placed in positions having access to children.

### 2.1. Screening in General

**Legal requirements.** Laws in many states impose rigorous screening requirements (including background and reference checks) for adults who work with children in both paid and unpaid positions. Verify applicable requirements when developing screening requirements and procedures.

**Screening levels.** Unless prohibited by agreement, schools may conduct more extensive screening than the minimum required by law. Screening levels should increase commensurately with the level of access that the **applicant** will have with children. More extensive screening is recommended for educators who work with children who have disabilities or emotional problems, are juvenile offenders, or have other potential vulnerabilities. Be prepared to explain the rationale for more extensive screening for particular positions.

**Screening limitations.** All screening methods have limitations. Be aware that criminal history checks vary greatly by the type of records checked. Federal and state laws define “publicly accessible” records differently and may limit the use of criminal history information for employment or student enrollment purposes. In addition, juvenile records are typically not accessible.

**Foreign nationals and recent immigrants.** Determine whether criminal history and other background checks are available in the countries where the applicant has previously lived. If not available, implement other screening methods.

**Multiple methods.** Using more than one screening method, and cross-referencing the information received, can help uncover discrepancies in applicants' backgrounds.

**Qualified personnel.** School personnel or contractors that conduct background checks and other types of screening have access to highly confidential information. Ensure that such personnel are knowledgeable about applicable legal requirements as well as school policies and procedures.

## 2.2. Written Application

**Standardize forms.** If possible, develop standardized written applications for paid and unpaid school positions. The application should facilitate self-disclosure by the applicant and background checks.

**Criminal convictions and other sensitive information.** In addition to questions about prior education and work experience, include questions about the following, if permitted by law:

- Prior criminal convictions
- Pending criminal charges
- Disciplinary action by professional licensing organizations
- Removal from any paid or unpaid position arising from allegations of misconduct
- Information to assist in background checks, such as Social Security number and places of residence

**False or misleading information.** State that false or misleading information supplied by the applicant may result in one or more of the following: discipline, termination, criminal charges, or license revocation.

**Supplemental responses.** Inform applicants that they will be required to provide additional information if any of their original answers appears incomplete or inaccurate at any time while they are serving in the staff or volunteer position.

**Written authorization.** Obtain written authorization to contact any persons or organizations listed on the application to verify and release information relating to the applicant. The authorization should cover any other specified screening, including criminal background checks.

## 2.3. Screening Methods

**Basic screening.** In addition to a written application, the following are basic methods of screening for new educators. State and federal laws may impose different requirements.

### Applicant

A person who seeks a paid or unpaid position as an educator working for or with a school.

Obtain written authorization to contact any persons or organizations listed on the application to verify and release information relating to the applicant.

- Face-to-face interviews
- Employment and personal reference checks
- Confirmation of high school diploma and postsecondary degrees
- Confirmation of professional licenses

**Additional screening.** If the educator will have regular or unsupervised contact with children, the following additional screening is recommended and may be required by law:

- Additional reference checks pertaining to applicant’s paid or volunteer activities with children
- Verification of Social Security information
- Verification of residence history for past seven years
- Federal, state, and county criminal history record checks in all jurisdictions where the applicant has lived during the past seven years
- Fingerprint checks, if permitted by state law
- Sex offender registry check
- Internet search of the applicant’s name and other identifying information on such commonly used web browsers as Google and Yahoo

**Other options.** Consider other screening methods for educators having frequent contact with children or when there are “red flags” or reasons to more extensively screen particular applicants:

- Child or dependent adult abuse registry check
- Motor vehicle record check
- Professional disciplinary board background check
- Alcohol or drug testing
- Psychological testing
- Mental illness or psychiatric history check
- Visit to applicant’s home

## 2.4. Reference Checking

**Policy and procedure.** Adopt a reference checking policy for all applicants. Follow the same procedure for reference checks regardless of whether the position is paid or unpaid. Check with the reference by telephone unless the person asks you to provide a written statement or wants to answer the questions in writing.

**Authorization and release.** Use the application to provide notice of the school’s background check requirements, including contacting references. Make the applicant’s employment or placement conditional upon the satisfactory completion of such screening. Require the applicant to waive any legal action arising from the

checking or giving of references. When checking references, provide a copy of the applicant's written authorization and release if requested.

**Suitable references.** Employers, schools, and volunteer or charitable organizations are acceptable. Do not seek references from family members. If the applicant does not list suitable references, ask for additional references that are relevant to the position.

**Personnel records.** Ask for permission to obtain a copy of the applicant's personnel record from the current or prior employer, provided that state or local law permits access to the file.

**Questions.** Attempt to ask the same questions of all applicants for a particular position. Ask references to confirm information provided by the applicant, such as employment and residence history. Use open-ended questions to probe the applicant's suitability to work with children, such as the following:

- How would you describe the applicant's personal characteristics, such as maturity, decisiveness, and assertiveness?
- Have you observed the applicant working with children? What were your impressions?
- Do you have any concerns about having the applicant work directly with or supervising children?
- To your knowledge, has it ever been alleged that the applicant engaged in improper conduct with children?
- Are you aware of any conditions or problems that may interfere with the applicant's ability to serve in the paid or unpaid position?
- Should the school contact anyone else before placing the applicant in the position?

Make the applicant's employment or placement conditional upon the satisfactory completion of such screening.

**Documentation.** Create a written record of reference checks. Include written notes from interviews to document both the questions asked and the answers given.

## 2.5. Reference Giving

**Adopt a policy on giving references regarding current and former educators in paid and unpaid positions.**

**Centralize process.** Centralize the giving of references in one or more school officers. For example, a human resources director may provide employee references; a school dean, student educator references; and the director of procurement, contractor references.

**Authorization and release.** Obtain a written authorization and release from the subject of the reference request before responding to the request.

**Factual and accurate responses.** Train the designated school officer to provide factual and accurate responses to reference requests and stick to facts without personal speculation or opinions. A safe practice is only to release information that can

be factually supported in the personnel or volunteer file of the educator. Such information may include the dates of service, salary, disciplinary actions (cause for action and sanction imposed), and performance reviews.

**Investigations and gag orders.** Refuse to provide any current or former educator who is accused of sexual misconduct with positive or misleading references before concluding the school’s investigation. In termination and separation agreements with educators who are accused of sexual misconduct, refuse to include “gag orders” (that is, provisions forbidding school officials from providing accurate information in response to future reference checks).

**Immunity.** State law may grant immunity to schools that provide reference information in good faith about current or former educators. Check with legal counsel to determine if such a law exists, and if not, consider proposing or supporting lobbying efforts to enact such legislation.

## 2.6. Criminal History and Other Background Checks

**Address the following points in the school’s policy and procedures governing criminal history and other background checks:**

**Applicants.** Determine which paid and unpaid positions require criminal history and other background checks under applicable laws. Consider implementing criminal history and other background checks for all positions that entail regular or unsupervised access to children, even if not legally required.

**Current staff.** Determine the legal requirements for conducting periodic criminal history and other background checks. Even if not legally required, consider implementing periodic checks (for example, every two to three years) for all staff, contractors, and volunteers who have regular or unsupervised access to children. Direct educators to notify the school if they are arrested or convicted of any offense after their employment or placement begins.

**Scope of records searched.** Decide on the scope of records to be searched, such as jurisdiction (county, state, and federal), criminal arrests, charges, or convictions as well as court orders relating to trespass, child abuse, and civil disobedience or restraint.

**Fair credit reporting laws.** Determine whether the federal Fair Credit Reporting Act (FCRA) and state credit reporting laws apply to the school’s background checks. If so, ensure that the checks comply with legal requirements pertaining to applicant authorization, record confidentiality and retention, notification of results, and evaluation of potentially adverse information.

**Search firm credentials.** Ensure that persons or firms conducting background checks are trained and knowledgeable on applicable law and procedures. Verify the contractors’ years in business, methods of conducting checks, public and other databases searched,

Consider implementing criminal history and other background checks for all positions that entail regular or unsupervised access to children, even if not legally required.

quality control procedures, compliance with FCRA and other laws, and handling of communications with adversely affected applicants. Do not select a background checking firm based on price alone.

## 2.7. Sex Offender Registries

All 50 states have laws requiring registration by persons who are adjudicated as a sexual predator or convicted of crimes against minors or other sexually violent offenses. The U.S. Department of Justice maintains a national sex offender registry which links to the state registries. The state registries vary in the types of crime information collected and what is public information. Searching the federal or state sex offender registries is free and should be used as a screening tool for educators.

## 2.8. Personal Interviews

Conduct a personal interview before placing any educator in a position having access to children.

**Questions.** Ask questions such as the following:

- Why are you interested in working with children?
- How would you describe yourself?
- Why do you enjoy working with children?
- What about this position appeals to you?
- Tell me about your childhood. What are some of your happiest and saddest memories?
- What are the strengths and weaknesses that you will bring to the position?

In addition, ask questions that explore the applicant's sense of personal boundaries with older and younger children. Ask how the applicant would respond in situations involving potential sexual misconduct or abuse of children. Determine if the applicant understands how to supervise children properly and interact with families.

**Discuss child safety.** Use the interview to discuss the school's policies on child safety. Emphasize that the school has zero tolerance for sexual misconduct and monitors adherence to educator codes of conduct. State that all allegations of sexual misconduct are investigated and taken seriously.

## 2.9. Red Flags

Require additional screening whenever so-called red flags—that is, unexplained or suspicious circumstances—arise regarding an applicant. Examples include:

- Unexplained gaps in the applicant's personal or employment history
- Unstable employment or residence history; frequent changes of residence or transfers

Conduct a personal interview before placing any educator in a position having access to children.

- Failure to list contact information for supervisors at previous jobs or volunteer positions
- Other incomplete or inaccurate information provided in the application process
- Excessive interest in developing one-on-one relationships with children
- Difficulty in maintaining meaningful adult relationships or low self-esteem

Do not place an applicant unless he or she demonstrates the ability to work safely with children.

## **2.10. Disqualification Criteria**

Describe the criteria for disqualifying an applicant due to adverse information. Consult with legal counsel regarding applicable laws.

Automatic disqualification may be based on criteria such as the following: failure to complete the screening process; past history of sexual misconduct with children; conviction for any crime involving children in which the underlying facts demonstrated misconduct or abuse; history of violence against any person; and termination for cause from a paid or unpaid position caused by misconduct with a child.

Discretionary disqualification may occur after evaluation by a committee of qualified professionals. The following criteria may be examined:

- Relationship between the prior misconduct and type of services the applicant will provide
- Applicant's employment or volunteer history before and after the misconduct
- Applicant's efforts and success at rehabilitation
- Circumstances or factors indicating the misconduct is likely to be repeated
- Nature, severity, number, and consequences of misconduct incidents disclosed
- Circumstances surrounding each incident, including contributing societal or environmental conditions
- Age of applicant at time of the incident
- Amount of time elapsed since the incident occurred

## **2.11. Screening Before Placement**

Complete all screening procedures before hiring or placing the applicant in a position having contact with children. If the applicant starts the work before the screening is complete, implement the following safeguards:

- Prohibit the educator from being alone with a child. Ensure that a supervisor or other educator is present at all times pending the completion of screening.

- Document the school’s explicit right to terminate the educator if the screening reveals adverse or incorrect information.

## 2.12. Documentation

It is essential to keep documentation of the applicant screening process. Establish a policy and procedures to ensure retention of the position application, authorizations, reference checks, background checks, and personal interview notes. Verify with legal counsel the length of time that such records must be kept.

In addition, retain the educator’s acknowledgment of school policies as a prerequisite to placement and continued service. Such records include the following:

- Signed code of conduct
- Acknowledgment of having read the handbook on personnel or volunteer policies, including specific documentation that child safety policies were understood
- Statement of training completion
- Supervisors’ documentation of meetings, evaluations, and warnings

## 2.13. Probationary Periods

Institute probationary periods for all newly placed educators who work with children. Notify the educator in writing that continuation in the position is contingent upon meeting performance expectations and the receipt of satisfactory reference and background checks, as applicable. Set probationary periods of at least three to six months for positions involving regular contact with children.

During the probationary period, observe the educator’s interactions with children. Maintain documentation to show whether the educator is in compliance with child safety rules. The following are warning signs indicating the educator is not suitable for the position:

- Using discipline more severe than warranted or in violation of policy
- Excessive need for control of situations involving children
- Difficulty controlling anger and impatience
- An inability to accept children’s limitations
- Use of harsh or improper language
- An inordinate interest in being alone with a particular child
- Excessive physical touching and holding of children

Establish a policy and procedures to ensure retention of the position application, authorizations, reference checks, background checks, and personal interview notes.

## 3. Code of Conduct

A school that lacks clear behavioral guidelines for educators risks the potential mistreatment of children. A code of conduct establishes the limits of personal behavior and describes appropriate interactions with children.

### 3.1. Implementation

Educators need to know what is expected of them. Train staff with an explanation and examples of behavior that are prohibited. Enforce the conduct rules consistently.

Keep documentation of staff attendance at training sessions. Require all staff to sign the code of conduct along with an acknowledgment that any violation may result in discipline up to and including termination.

### 3.2. Reporting and Investigation

**Reporting.** Require all educators to notify designated school officials if they have reasonable grounds to believe that they or another staff member violated the code of conduct. Advise educators that it is best to make the report, even if they are unsure the conduct code was violated. The report is made to the educator's supervisor or another designated school official (such as a child protection officer). If there is a reasonable basis to suspect child abuse, neglect, or other criminal violation, then the report shall also be made to governmental authorities.

**Right to investigate.** Inform educators in writing—for example, in staff and volunteer handbooks—that the school has the right to investigate educator compliance with the codes of conduct even if no report has been made.

**Notice of criminal proceedings.** Require educators to notify the school if they are arrested, charged, or convicted of any criminal violation during their period of service. Require contractors to report such information pertaining to any staff who work with school children.

### 3.3. Interactions with Children

**Alone with a child.** Discourage or prohibit educators from being alone with a single child. If privacy is required, have them meet in places observable by other educators or parents, such as offices with windows or outdoor locations.

**Bathrooms and locker rooms.** For children who are age six or older, assign educators to monitor bathrooms and locker rooms of their same gender, wherever possible. Require at least two educators to be present if necessary to assist a child with activities such as diapering, putting on bathing suits, and taking showers.

**After hours and off-site activities.** Prohibit educators from scheduling meetings or practices with children after regular school hours or established times for athletic and co-curricular activities. Discourage or prohibit educators from meeting with children outside of school-sponsored or approved programs. Any exceptions should require parental authorization and advance written approval from the head school official. Ensure that more than one educator is present during any activities that take place after regular school hours or off school grounds.

**Use of educators' homes.** Prohibit educators from inviting children to their homes or being alone with them in their homes except for any school-sponsored functions approved in advance by the head school official.

**Personal vehicles.** Establish a policy regarding educators' use of their personal vehicles for school purposes. If possible, use school vehicles to transport children and require that more than one adult be present. If personal vehicles are used to transport children, implement measures such as verification of the educator's good driving record, proof of automobile insurance, driver training, and permission and consent forms signed by the children's parents.

**Friendships.** Discourage educators from developing personal friendships or sharing any private or intimate information with children in the program. Educators should act in a manner consistent with their role or position with the school.

**Gifts.** Prohibit educators from making or receiving excessive gifts to children and their families. Define what is "excessive." For example, many schools prohibit gifts in excess of \$10 to \$25.

**School trips.** Require that at least two chaperones (preferably a male and female) accompany students during trips away from school.

**Sexual activities.** Prohibit educators from engaging in any sexual activity with children who are under 18 years of age. Most schools extend this prohibition to any student enrolled in a primary or secondary school or to any student who is supervised by the educator. The rule applies even if the child or student appears to consent or welcome the sexual activities or relationship. Notify educators that violations of this rule will be cause for immediate dismissal and will result in a report to law enforcement or child protective services.

### **3.4. Managing Child Behavior**

**Age appropriateness.** Address how educators should respond to child behavioral issues in an age-appropriate manner. Responses may include redirection, positive reinforcement, and encouragement.

**Physical restraint.** Allow an educator to physically restrain a child only in predetermined situations, such as when necessary to protect a child or other children from harm. Document all incidents of physical restraint and disclose to parents.

**Touching.** Establish guidelines for the physical touching of children. For example, touching may be allowed only when it is open and not secretive and conducted in response to the child's needs, not that of the adult; with the child's permission (that is, resistance from the child should be respected); and for a purpose that is consistent with the institution's mission and culture, or for a clear educational or developmental purpose. Inform educators that they must respect children's rights not to be touched or looked at in ways that make them feel uncomfortable.

**Restrictions.** Restrict touching of students in areas that would not be covered by a typical bathing suit. In other words, a child’s breasts, buttocks, and groin area should not be touched, except for purposes such as diapering or health emergencies.

### 3.5. Personal Behavior

**Positive role model.** Encourage educators to be positive role models for children by maintaining an attitude of loyalty, patience, courtesy, and maturity. Staff should act in a caring, honest, respectful, and responsible manner that is consistent with the mission of the institution.

**Clothing.** Instruct educators to wear clothing that is neat in appearance and appropriate to their position as teacher, coach, or other leader.

**Nondiscrimination.** Require staff to treat all children equally and with respect regardless of sex, race, religion, national origin, economic status, disability, and other factors, as consistent with law and the mission of the school.

**Physical and psychological conditions.** State that educators are expected to be free of conditions that may adversely affect a child’s physical or mental health. Encourage staff to seek professional treatment for physical and psychological conditions.

**Language.** Prohibit the use of profanity or sexually suggestive language.

**Alcohol and drugs.** Prohibit educators from using, possessing, or being under the influence of alcohol or illegal drugs while on duty or responsible for children’s welfare. Schools should expressly reserve the right to request alcohol or drug screenings if there is reason to believe an educator is under the influence of alcohol or a controlled substance.

**Weapons and explosive devices.** Prohibit staff from possessing or using any type of weapon or explosive device while in the presence of children.

**Displays of affection.** Direct staff to refrain from exhibiting intimate displays of affection toward any other person while on duty.

**Off-duty conduct.** Reserve the right to discipline or terminate an educator for engaging in sexual misconduct with a student or other minor while off duty or away from school grounds.

### 3.6. Computers and Internet

**School computers and on-duty use.** Establish restrictions on educators’ use of personal computers while on duty as well as school computers and other technology. The restrictions should apply to internet chat rooms, gaming networks, blogs, and social networking websites, unless such use has a clear educational purpose and is consistent with the school’s mission. Notify educators of the school’s right to monitor school computers with or without cause if they believe that an educator has used the equipment improperly.

Encourage educators  
to be positive role  
models for children  
by maintaining an  
attitude of loyalty,  
patience, courtesy, and  
maturity.

**Sexual content.** Prohibit educators from accessing pornographic sites and sending electronic messages with sexual overtones or other inappropriate content. Such restrictions should apply to computers and other technology belonging to the school as well as to the educators' use of personal or other equipment while on duty.

**Communications with children.** Discourage staff from communicating via email, text messages, or other methods with children at any time except when there is a clear educational purpose and the communication is consistent with the mission of the school.

## 4. Training and Education

A school has an obligation to set boundaries for acceptable behavior by educators, students, and parents. Training and educational programs are an effective way to disseminate information on school policies and deter misconduct.

### 4.1. Educator Training

**Frequency and format.** It is recommended that schools train all paid and unpaid staff on educator sexual misconduct. Ideally, the training would occur before or as soon as possible after new staff begin working with children. The training may last from two hours to all day depending on the educator's level of responsibility and frequency of contact with children. In addition, consider an annual training requirement for all educators to reinforce school policies and provide program updates.

For training to be most effective, consider various formats including guest speakers, in-house presenters, online courses, videos, and discussion groups. Document staff attendance, topics covered, and staff acknowledgments that they have received and understand school handbooks and policies.

**Training topics.** All educators need to understand the following:

- (n) **Prevalence.** Include the frequency and consequences of sexual misconduct involving educators and children. Describe school, professional license, and criminal law sanctions.
- (o) **Warning signs in children.** Describe how sexual misconduct occurs in educational environments and the types of activities to watch out for. Behavioral signs for child victims include:
  - Inappropriate knowledge of sexual acts
  - Sexual language that is not age appropriate
  - Sexual play or sexually explicit drawings
  - Age inappropriate behavior including seductive or masturbatory actions
  - Unexplained late arrivals and absences from school
  - Wearing two or more sets of clothing at the same time and inappropriate dress for weather conditions

Document staff attendance, topics covered, and staff acknowledgments that they have received and understand school handbooks and policies.

- Overt changes in signs of affection
  - Child behavior that is “too perfect,” withdrawal or depression, unexplained anger and rebellion, self-mutilating behavior, and eating disorders
  - Significant personality or behavior changes
- (p) **Strategies used by educators.** Cover the strategies used by educators who engage in sexual misconduct with children, such as:
- Gaining access to children through schools and youth organizations.
  - Selecting children who have low self-esteem, are weak academically, and come from troubled families.
  - Indoctrinating children through a system of rewards and recognition. Children may be blackmailed through the use of alcohol, drugs, or pornography to place them in compromising situations.
  - Seeking opportunities to be alone with children, going on overnight trips, or having the child change clothing.
- (q) **Inappropriate educator behavior.** Alert educators to inappropriate behavior with children, such as:
- Close personal interactions with students such as touching, embracing, and sharing intimate moments
  - Special one-on-one relationships with particular students
  - Private interactions with students without other persons present
  - Student relationships that are best described as “socializing”
  - Joke telling that includes promiscuous material or remarks
  - Flirtatious behavior with students
  - Secrets between the educator and student
- (r) **School policies.** Describe the key components of school policies to deter child sexual misconduct. Cover the following areas generally with all educators and more intensively with supervisors:
- Hiring and screening requirements
  - Training requirements on educator sexual misconduct for newly appointed staff and at annual in-service review
  - Responsibility to model caring and respectful behaviors
  - Code of conduct and other program rules applicable to supervision of children
  - Child sexual abuse reporting procedures
  - Investigations of child abuse allegations and potential disciplinary consequences
  - Crisis response procedures

## 4.2. Education for Children

**Rationale.** Like adults, children need to understand the boundaries of acceptable behavior as they interact with their peers, older children, and adults. Educational programs should focus on how children can protect themselves and ways to respond to situations that make them uncomfortable.

**Format and frequency.** Consider requiring that topics on sexual misconduct be incorporated into the curricula and be addressed at least annually. Address the topics in an age- and developmentally appropriate manner, increasing with complexity and nuance at each grade level. In-house teachers, counselors, and outside speakers can all be effective presenters. Videos, discussion groups, and role-playing exercises may also be beneficial, depending on the age group.

**How to stay safe.** Teach children safety tips, such as the following:

- Know their name, address, telephone number, and parents' names.
- Check with their parent, teacher, or other trusted adult before getting into a car, even with someone they know.
- Check with their parent or other trusted adult before accepting something from anyone, even someone they know.
- Do not play outside alone.
- Always take a friend along and tell a parent or trusted adult where they are going.
- Say no if someone tries to touch them in a way that makes them feel scared, uncomfortable, or confused.
- Never have a romantic relationship with an adult.
- Tell parents, the supervisor, or other trusted adult if they feel scared, uncomfortable, or confused.
- Tell their parent or a trusted adult if they learn or suspect that another child has a secret or romantic relationship with an educator.

## 4.3. Parent Education

**Rationale.** Parents and family members are natural allies with the school when it comes to keeping children safe from sexual misconduct.

**Outreach.** Implement the following methods to reach out to parents and provide relevant information:

- Conduct a parent orientation to describe the school's policies and procedures pertaining to staff screening, codes of conduct, supervision, and child protection measures.
- Require that staff and supervisors communicate regularly with parents regarding their child's health, behavior, and any concerns.

..... Educational programs should focus on how children can protect themselves and ways to respond to situations that make them uncomfortable.

- Where possible, maintain an open-door policy that encourages parents to drop by and observe or interact in the program with their children.
- Educate parents about age-appropriate behavior and discipline through newsletters, conferences, and modeling interactive skills.
- Sponsor guest speakers who demonstrate how to teach personal safety to children.
- Ask parents to evaluate the school annually. Include questions about the effectiveness of child protection measures.

**Safety tips.** Disseminate information on how parents can talk to their children and take other steps to prevent sexual misconduct. Encourage parents to:

- Monitor their children’s relationships with educators. Provide examples of how to ask about their child’s activities in a nonthreatening way.
- Supervise their child’s use of computers including the internet, chat rooms, instant messages, websites visited, webcams, and email. Locate the computer in a “family room” rather than a child’s bedroom.
- Supervise their child’s use of cell phones by looking at billing statements and examining to whom their child is talking and how often. Ask about any phone numbers they cannot identify.
- Adopt rules for children’s use of computers and the internet. Children should not, without parental permission, do the following: Give out personal information, passwords, photographs or video clips; send any threatening or disrespectful email or instant messages; respond to messages with a sexual or violent content; or meet someone they know only online.
- Check references from trusted persons (family, friends, and neighbors) before using baby sitters. Ask their children about the baby-sitting experience and drop in unexpectedly to see how things are going.
- Report any observations or concerns about educators who are not complying with the school’s code of conduct or safety procedures.

**Child’s Disclosure of Sexual Misconduct.** Advise parents on how to talk with their child who is disclosing possible sexual misconduct or inappropriate behavior involving an educator.

## 5. Supervision

Schools must ensure that adequate supervision is provided to all educators and children. Supervisors need to have the ability, training, and time to perform these functions.

### 5.1. In General

General supervisory responsibilities include: instituting child and educator sign-in and sign-out procedures; monitoring when family members pick up and drop off children; ensuring adequate staff-to-child ratios; and overseeing staff performance of

Parents and family members are natural allies with the school when it comes to keeping children safe from sexual misconduct.

duties and program facilities. Make periodic unannounced visits into classes, other program sites, playgrounds, locker rooms, bathrooms, and pool areas.

## 5.2. Observations and Evaluations

Require supervisors to document specific observations of educators' activities and relationships with children. Watch educators most closely during their probationary periods or first few months of work. If needed, give more instruction to educators who are culturally different from the student, such as foreign nationals or recent immigrants.

Continue to monitor all educators regardless of their lengths of service. Give informal feedback to staff based on observations. A supervisor is obliged to halt any activity with a child that appears suspicious. Conduct regular check-ins and meetings to give feedback concerning the educator's job performance as well as adherence to child safety practices and policies. Document any unusual behavior of educators or children, or both. Write down what happened, when, where, and by whom, and have others verify the observations if possible.

Conduct written evaluations of all educators. The depth of the evaluation will vary with the specific duties. The focus should be on the performance of assigned duties and areas needing improvement. Identify any additional training needed by the educator.

## 5.3. Focus Areas

Institute supervisory policies pertaining to the following:

**Staff-to-child ratios.** Meet or exceed the minimum requirements under state law for staff-child ratios at school and co-curricular activities. To determine if the ratios are adequate, consider the children's ages, activity risk, and any needed accommodations for disabilities. If the activity is mixed gender, male and female staff should be available.

**One educator, one child.** Acknowledge the importance of educators' relationships with children, but establish and enforce a policy that makes all one-on-one contact interruptible and observable. For example, require that private conferences be held in offices with windows, classrooms with open doors, and other visible places on school grounds.

**Private staff areas.** Prohibit children from entering private staff areas such as staff bathrooms, lounges, storage closets, maintenance areas, residences, hotel rooms, or other living areas on overnight trips.

**Open door policy.** Consider adopting a policy whereby parents are encouraged to visit and observe their children at the school or program at any time. Parents and all other visitors must comply with visitor sign-in and nametag procedures.

**Overnight travel.** Require that at least two chaperones (preferably a male and female) accompany children on trips. For overnight lodging on school-sponsored trips, children should be paired up with children of the same gender and in a similar age group, with adult supervisors in separate but nearby rooms. Require signed consent from parents or guardians for overnight and other off-site events.

**Restrooms and locker rooms.** Staff supervision of children's restrooms will vary depending on the children's ages and the safety of the facility. Teach children the rules for using restrooms at school and at off-site facilities.

- **On-site restrooms.** Assign qualified staff as needed to assist young children who are not potty trained with such tasks as zipping, buttoning, buckling, cleaning up, wiping, and the like. For children through age six, the staff may stand at the bathroom door while giving privacy to the children who are using the toilets. If an educator assists a young child in the restroom, the doors to the bathroom stall or restroom (as appropriate) should remain open.
- **Separate facilities.** Provide separate locker room, shower, and restroom facilities for educators and students. If separate facilities are not available, schedule separate usage times for educators and students.
- **Off-site restrooms.** For restrooms away from the school, make sure that suspicious or unknown persons are not present before allowing children to use the facilities. Generally, educators should stand in the doorway, and a child should not be in the restroom alone.

## 6. Access and Program Policies

School policies should address how access is granted to children as well as affiliated programs such as baby-sitting, tutoring, and mentoring of children.

### 6.1. Release of Children

**Authorized persons.** Prohibit educators from releasing children to anyone other than the authorized parent, legal guardian, or other person who has been given advance written authorization by the parent or legal guardian. Require educators to check identification if they do not know the person who is picking up a child. Further, do not release a child to any person who is visibly intoxicated, appears to be under the influence of alcohol or controlled substances, or otherwise constitutes a danger to the child.

**Late pickup of children.** Inform parents of the importance of picking up their child during the school's hours of operation. State that it is not the school's responsibility to transport children home on behalf of parents or other authorized persons who are delayed. Give parents the supervisor's contact information and calling instructions if there is any likelihood of a late pickup. Require that parents provide an alternative person whom a supervisor may contact in case the parent does not pick up the child in a timely manner.

Acknowledge the importance of educators' relationships with children, but establish and enforce a policy that makes all one-on-one contact interruptible and observable.

**Contacting authorities.** Establish procedures for the school’s supervisor or other staff member to contact the child protective services agency when necessary to take temporary custody of a child.

## 6.2. Facility Access

**Limit entry.** Limit the number of entry points to the facilities and outdoor areas where children are present. Lock doors to rooms, closets, and other areas when they are not being used.

**Landscape, fences, and lighting.** Prune trees and shrubbery in areas where children play. Provide adequate fencing around outside play areas to prevent persons from entering or lifting a child over the fence. Install and maintain lighting in hallways, walkways, and parking lots.

**Visitors.** Require all visitors, including parents and family members, to check in and out at the school entrance, sign the guest log, and wear a nametag. Escort the guest to the classroom or school area being visited. Assign an educator to supervise the guest’s visit to the school. Prohibit guests or non-authorized persons from wandering through the facility. Make exceptions to the visitor sign-in and supervision procedures only for special events such as open houses, PTA meetings, and athletic competitions.

## 6.3. Baby-Sitting

Decide whether educators are permitted to baby-sit for parents of children enrolled in the school program. If allowed, require educators to notify the designated school official before conducting the baby-sitting services. Require both the educator and the child’s parents or guardians to sign a release acknowledging that the school makes no representations regarding the suitability of particular baby sitters or the operation of any such services. Consult legal counsel in drafting the release. While playing no part in the baby-sitting service, schools may refer parents to sources on how to select a baby sitter, including reference and background checks.

## 6.4. Tutoring and Mentoring

If the school offers tutoring or mentoring programs, consider the background of tutors and safety measures to protect children. For all applicants, implement screening procedures including background checks that are comparable to those for teachers. Assign a supervisor who is responsible for overseeing the tutor’s or mentor’s interactions with children.

Train the tutor or mentor on his or her roles and responsibilities as well as awareness and prevention of sexual misconduct. Cover basic information about site safety, accident and emergency procedures, transportation policies, guidelines for bringing health issues to the supervisor’s attention, and other pertinent information. Require

Prohibit educators from releasing children to anyone other than the authorized parent, legal guardian, or other person who has been given advance written authorization by the parent or legal guardian.

the tutor or mentor to sign a code of conduct covering his or her personal behavior and interactions with children.

Require that parents sign an enrollment form that grants permission for their child to participate in the program. A separate permission form must be signed for each participating sibling. Provide a program booklet to describe how the program operates.

The safest practice is to require that all tutoring and mentoring activities take place during regular school hours at a designated location that is observable by educators at all times. More intensive screening and supervision is necessary if the tutoring or mentoring takes place away from the school facility. If tutoring or mentoring is allowed in the child's home, establish a rule that the parents or guardian be present at all times. In addition, require that the tutoring or mentoring take place in an open area (not a bedroom) that is fully observable.

Require all visitors, including parents and family members, to check in and out at the school entrance, sign the guest log, and wear a nametag.

## Response to Allegations and Incidents

### 7. Reporting

Clear policies on the reporting of suspicious behavior are essential to any child protection program. Educators should understand their obligations to report possible misconduct or illegal behavior both to school officials and government authorities. The policy should also address reporting by children, parents, and others with information regarding the alleged misconduct. Early reporting of relatively minor incidents can help prevent more serious wrongdoing from occurring in the future.

#### 7.1. Policy Statement

Develop a written statement of the school's policy to prevent, investigate, and respond to suspected allegations of sexual misconduct. Explain that educator sexual misconduct may violate school policy, professional licensing or ethics rules, or criminal laws. Advise educators of their obligation to report both suspected code of conduct violations and sexual abuse or neglect involving children. Explain that a report must be made regardless of whether the alleged offender is an educator, parent, family member, or someone else.

#### 7.2. Internal Reporting Procedures

Advise educators of the school's internal procedures for receiving reports of all types of suspicious conduct, including sexual misconduct. Typically, the policy should direct educators to consult with their supervisor or another school official if they have questions or wish to share information. Address the following in regard to reports of sexual misconduct:

- The information to be elicited regarding the alleged misconduct. Consider creating an incident or complaint reporting form to facilitate reporting. The

form should seek the date of the incident or incidents; the names and ages of the children involved; a description of what happened; actions or statements by the children; actions or statements by the alleged offender; statement as to how and whether the incident was resolved; a list of witnesses and their contact information; and name of person to whom the report is submitted.

- For child abuse or neglect, who at the school will make the report to police, child protective services, or other government authorities, and how such a report will be made.
- The protocol for confidentiality, including extent to which information in the report or any subsequent investigation will be shared with the affected child, the child’s family, the person who makes the report, the alleged offender, and any other persons.
- A description of the school’s procedures for following up and investigating reports of educator sexual misconduct.
- The school official who is responsible for monitoring and receiving feedback from the government agency once a report is filed.
- Record keeping in the files of the reporter, the educator who is suspected of misconduct, and the affected child.

### 7.3. Reporting to Government Authorities

In addition to internal reporting procedures, schools should advise educators of state law requirements on mandatory reporting of suspected child abuse, neglect, and other criminal law violations involving children. The following points may be addressed:

- Explain the standard under which educators are required to file reports of suspected violations or illegal activity. For example, many state laws require reporting to governmental authorities if the educator “suspects” or “has reasonable cause to believe” that a child has been abused or neglected. State that an educator should not wait for conclusive proof of educator misconduct before making a report.
- Provide the current contact information for the law enforcement or child protective services agencies that receive reports of suspected child abuse and neglect under state law.
- Identify the school positions that are considered “mandatory reporters” of child abuse, neglect, and other criminal violations involving children under state law. Such positions often include teachers, principals, administrators, school nurses, social workers, and guidance counselors.
- Explain that while an educator may follow internal procedures for reporting suspected misconduct to school authorities, mandatory reporters remain legally responsible for ensuring that government authorities are notified.

Develop a written statement of the school’s policy to prevent, investigate, and respond to suspected allegations of sexual misconduct.

- Explain that the failure of mandatory reporters to make reports of known or suspected child abuse, neglect, or other criminal law violations involving children may subject them to criminal penalties and civil liability.

## 8. Investigations

A school’s policy on sexual misconduct must be supported by clear guidelines on how incidents and allegations are investigated. Properly conducted investigations resolve the allegations in a fair and prompt manner while protecting the rights of the child, his or her family, and accused educators. Improperly conducted investigations reflect poorly on the school and may result in unreliable findings.

### 8.1. In General

**Duty to investigate.** State that the school will investigate any potentially credible report or information pertaining to sexual misconduct by an educator. This includes formal or informal complaints, observations of child abuse or suspicious behavior, and rumors or anonymous reports of abuse or misconduct. State that the school has a right to investigate alleged sexual misconduct even if no complaint or report has been filed.

**Nonretaliation.** Prohibit any person from retaliating against the child who is the target of sexual misconduct, his or her parents or family members, and any other person who has submitted a report, complaint, or supporting information. State that retaliation will lead to discipline up to and including dismissal, even if the underlying report or charge of misconduct is unfounded.

**Failure to cooperate.** Some school policies state that the failure to answer questions or cooperate in the investigation may subject an educator to adverse action, including termination. Consult with legal counsel on the advisability of such a policy and its application in particular cases.

**Noncriminal terminology.** Avoid using criminal law terminology in school policies. For example, school policies can refer to information gathered rather than evidence and the accused educator rather than defendant. It is the responsibility of law enforcement and child protective services to investigate potential criminal violations, not that of the school.

### 8.2. Interaction with Child and Family

When an allegation of sexual misconduct involving a child is made, the designated school official should immediately notify the child’s parents or legal guardian. An exception may be made when the parent, guardian, or other family member is suspected of engaging in the misconduct. In this latter situation, consult with the appropriate government officials to obtain advice on whether and how to make the notification.

In addition to internal reporting procedures, schools should advise educators of state law requirements on mandatory reporting of suspected child abuse, neglect, and other criminal law violations involving children.

Ask the affected child and his or her parents, legal guardian, or attorney what protective action, if any, they are seeking while the investigation is proceeding. Implement these measures if prudent and lawful. Offer counseling services or information on where they are available.

Seek protective custody through the local or state child protective services agency if the school has information that a parent, guardian, or other legally responsible person is endangering the child's life, health, or safety.

### **8.3. Interaction with Accused Educator**

Work with the educator who is accused of sexual misconduct, or legal counsel as applicable, to determine the time and manner in which the school's interview will be conducted. Explain to the educator or legal counsel, as appropriate, the consequences of failing to be interviewed or otherwise cooperating in the investigation.

The school must decide the educator's status as an employee, student, contractor, or volunteer during the investigation. If a change in status is warranted, options include a suspension with or without pay, temporary transfer, or removal of duties having access to children until the investigation is complete.

If a credible allegation of sexual misconduct has been made, it is advisable to remove the accused educator from any responsibilities that include contact with children. An educator should not remain in active duty or have access to children during the investigation if the child or any witness is reasonably threatened by the educator's presence. Err on the side of protecting children when making these determinations.

### **8.4. Conducting the Investigation**

**Planning.** Notify and consult with government authorities regarding the timing and conduct of the school investigation. Consult state laws, employment agreements, and collective bargaining agreements, as applicable, when determining the rights and status of the accused educator during the investigation.

**Selecting an investigator.** Select a school employee or attorney to lead the investigation of alleged sexual misconduct. The minimum qualifications and experience of the investigator will depend on the nature and seriousness of the alleged misconduct. The investigator should be knowledgeable about proper techniques and procedures for interviewing witnesses, maintaining documentation, fact-finding, and other aspects of the investigative process.

Consider appointing an independent investigator from outside the school if the alleged misconduct was committed by a high-level school official or if the impartiality of the investigator has been questioned. Because of the need for objectivity, the investigator should not be someone who is close to the involved child, his or her family, or the accused educator.

When an allegation of sexual misconduct involving a child is made, the designated school official should immediately notify the child's parents or legal guardian.

**Confidentiality.** During all interviews with witnesses, state that the allegations of sexual misconduct and information gathered during the investigation are to remain confidential except as otherwise authorized by designated school officials. Request that school employees and others with knowledge of the matter refrain from discussing it with persons other than designated officials who are conducting the investigation.

While attempting to maintain confidentiality, do not promise to the child, the child's family, the accused educator, or any other party that information learned in the investigation will remain confidential. Explain that the school has an obligation to investigate reports of sexual misconduct to protect children, regardless of whether the witness wishes to cooperate.

Make every effort to keep confidential the identity of the child who was the target of sexual misconduct. Share the identity of the child within the school and to cooperating agencies on a strict need-to-know basis. Many news organizations have a policy of not releasing the identity of children under age 18 who are defendants or victims in alleged crimes or sexual misconduct.

**Interviewing witnesses.** The investigator who conducts interviews should be sensitive to the potential state of mind of the child, the accused, and other witnesses. In sexual misconduct cases, consider appointing interviewers who are the same gender as the person being interviewed, unless the interviewee requests otherwise.

Develop an interviewing plan that takes into account the nature of the complaint or report and the number and availability of witnesses. Seek to interview the child who was the target of misconduct as soon as possible while his or her memory is fresh. This interview is often conducted before the accused is informed of the allegations. Next, interview other witnesses who have knowledge concerning the allegations. Typically, the accused is interviewed after all other witness interviews are conducted. Conduct interviews in a private room, with each witness being interviewed individually.

Unless the child's parents or guardians are targets of the investigation, do not interview a child under age 18 without notification and parental consent. Otherwise, give parents and their attorney or designee the opportunity to be present during the interview. If parents or others are present, consult with them beforehand about their role. Ask them not to lead the child into giving certain statements.

## 8.5. Concluding the Investigation

Seek to complete investigations as soon as possible after the complaint or allegation is made. Many investigations involving no witnesses other than the child and accused educator can be completed within one or two days. Do not terminate an investigation of sexual misconduct if the accused educator resigns his or her position.

Write a report summarizing the information gathered and provide a statement of the investigation's results. The findings should state whether the complaint or charge was

substantiated in full or in part, or not substantiated. Include a recommendation as to whether the educator should be disciplined or dismissed under the applicable school conduct code. State whether the matter is being referred to local law enforcement for criminal investigation and prosecution.

In most cases, it is desirable that the decision on corrective or adverse action involving an educator be made by a senior school official (for example, head of the school or principal) who did not participate in the investigation. The decision should be based on information in the investigative report.

If an educator has been suspended or removed from the school pending the investigation, reinstate him or her only after all allegations have been cleared to the satisfaction of the school official who is ultimately responsible for the matter.

## 9. Discipline and Dismissal

### 9.1 Procedure

Scrupulously follow the school's policies in imposing discipline or dismissal of any educators. Be sure to comply with all statutory and constitutional safeguards. Consult with school officials and legal counsel regarding applicable policies and laws.

Record the finding of a conduct violation in the employee's personnel file. For contractors, student educators, and volunteers, record the finding in the appropriate personnel and management files. Ensure that the record reflects the reasons that discipline was imposed or not imposed in each case.

### 9.2 Range of Sanctions

In nearly all cases, sexual misconduct with a child is grounds for immediate termination from the educator's paid or unpaid position. If the educator holds a professional license, report the offense to state licensing authorities. Do not agree to expunge or keep confidential the school's findings that an educator engaged in sexual misconduct with a child.

For other code of conduct violations, the school's policy should provide for a range of sanctions, including oral and written warnings, suspension, loss of pay, or probation. Corrective actions may also be appropriate, such as directing the educator to attend training programs or transferring the educator to positions that do not involve regular or unsupervised contact with children. A school official should meet with the accused educator and discuss the corrective action.

Factors to consider in deciding the appropriate level of discipline based on the offense include the harm or potential harm to children, educators, and the school community; the overall record of the responsible educator; and any corrective steps taken to remedy the misconduct.

Make every effort to keep confidential the identity of the child who was the target of sexual misconduct.

## 10. Crisis Response and Communications

### 10.1 Plan

Do not terminate an investigation of sexual misconduct if the accused educator resigns his or her position.

Schools should plan for how they will handle allegations of sexual misconduct by an educator. If the school has a child protection team, that team may be assigned responsibility for crisis response and communications. As needed, additional expertise may be added, such as the school’s attorney and communications director.

The school’s plan for allegations of sexual misconduct should encompass dealing with the local child protective services agency, law enforcement, prosecuting and defense attorneys, and the media. Provide training to ensure that team members understand their assigned roles. Conduct a tabletop exercise with a scenario involving educator sexual misconduct.

### 10.2 Communications

Typically, the school’s communications director or other designee is the primary spokesperson for media and public inquiries in sexual misconduct cases. The spokesperson must be aware of applicable laws, school policies, and the information that may be released to the media regarding the child and accused educator. The spokesperson should also assist other school officials, such as the superintendent or principal, in preparing their public statements regarding the matter.

Appoint a school official (such as a member of the child protection team) to serve as the “liaison” with the child’s family. The liaison initiates contact with the family and handles other communications, such as notifying family members of the progress and outcome of the investigation. The liaison offers assistance to the child and his or her family as needed.

## Special Issues for Non-Employed Staff

### 11. Contractors

#### 11.1 General Contract Terms

Schools commonly hire persons and companies to provide specialized services on a contract basis. Generally, schools seek to work with independent contractors who hire and supervise the work of their own employees, subject to school oversight and contract requirements. A written contract is necessary to clarify the rights and responsibilities of the school, the contractor, and the contractor’s employees. Key provisions in such agreements include the following:

- **Contract termination and penalties.** Specify the contractual consequences if a contractor or its educator has been charged with or is found to be in violation of school policies governing interactions with children.

- **General liability insurance.** Require that contractors carry general liability insurance coverage for acts of molestation committed by their employees. The insurance carrier should have a rating of A- or better with A.M. Best. Examine the insurance policies to verify coverage, with particular attention to the limits and any conditions that apply to sexual molestation claims.
- **Indemnification.** Require the contractor to hold harmless and indemnify the school, including its officers, employees, and board members, from any alleged acts of sexual misconduct committed by the contractor's employees, officers, agents, and volunteers.

## 11.2 Child Protection

While contracting helps schools transfer some responsibilities and risk, schools retain important functions. A top concern is to ensure that the contractor has its own comprehensive program to protect children from sexual misconduct. As addressed elsewhere in this guide, review the following areas of compliance:

- **Staff screening and qualifications.** The contractor follows established screening (including background checks) and qualifications criteria for its educators who will have contact with children. The criteria must be no less stringent than those in place for school employees in comparable positions.
- **Codes of conduct and supervision.** Confirm the contractor's responsibility to supervise its own educators. State whether the school's codes of conduct, child supervision guidelines, and other program policies apply to the contractor's staff.
- **Training and education.** Ensure that the contractor's paid and unpaid staff members receive training and education on sexual misconduct prevention as well as applicable school policies. The training and education should be comparable to that provided to school employees in similar positions.
- **Reporting educator misconduct.** Establish the contractor's reporting obligation to the school as well as to government authorities in case of code of conduct, licensing, or criminal violations.
- **Investigations.** Clarify the respective roles and responsibilities of the contractor and the school to follow up on allegations or incidents of educator sexual misconduct.
- **Crisis response and communications.** Clarify the roles and responsibilities of the contractor and the school to handle high-profile incidents and allegations of educator sexual misconduct. Determine who serves as the communications spokesperson and the liaison for the child and his or her family, as applicable.

## 12. Volunteers

Volunteers fill important roles in schools, working as tutors, classroom assistants, playground monitors, and chaperones. Good volunteer management conveys many important benefits to schools. A program aimed at improved screening, training, and supervision of volunteers can deter participation by persons with inappropriate

motives. Further, volunteer management makes every adult working closely with children a guardian of their safety.

### **12.1. Screening and Placement**

Good risk management practices include closely examining the background and suitability of all adults working with children, including volunteers. A formal application, reference and other background checks, and an interview with school staff can provide insight into potential volunteers and help schools choose those best suited to working with children. Volunteer applications should request much of the same information as employment applications. A rigorous screening process alone may serve as a deterrent to some people with illicit motives.

### **12.2. Supervision**

Schools need to establish clear expectations about volunteer conduct and performance and convey that information to volunteer supervisors and coordinators. Schools should clearly identify who is supervising each volunteer. Consider appointing a coordinator to oversee all volunteer activities. Alternatively, individual volunteers report to a staff member according to the type of work he or she performs. Sometimes, a volunteer reports to both a volunteer coordinator and a direct supervisor.

Ensure that staff members who are supervising volunteers have the ability, training, and time to perform these functions. Supervision of a volunteer is comparable to supervision of a paid employee. The supervisors need to be ready to handle typical managerial duties (such as dealing with tardiness, absenteeism, or inappropriate dress). Supervisors need to establish clear guidance on how volunteers should discharge their responsibilities.

Supervisors should also provide evaluations to highlight the volunteer's contributions or document any concerns. The evaluation can be as simple as a brief note in the volunteer's file every six months. In conjunction with the evaluation, supervisors should confirm that the volunteer's demographic information (address, telephone numbers, and so forth) provided in the application remains the same.

### **12.3. Training**

It is important to train volunteers to recognize signs of educator sexual misconduct so that they are alert to suspicious circumstances. Require volunteers to report suspected misconduct by any paid or unpaid educator to their supervisor or the school's child protection officer. Offer training programs that are comparable to those provided to employees who have similar access and responsibilities with children.

## 12.4. Liability Insurance

When establishing a program for volunteers, the school should consult its insurance broker who has knowledge and experience with educational institutions. Many general liability policies and educators' legal liability policies (covering errors and omissions) include volunteers under the definition of an *insured*. Verify that insurance coverage is in place before allowing volunteers to perform services at or in connection with the school.

## 13. Student Educators

Colleges and universities as well as some primary and secondary schools offer internship, externship, practicum, and community service programs whereby students are assigned to work directly or indirectly with children. These “student educators” may receive pay and academic credit for their participation. These programs are usually beneficial for all involved. However, it is important to set forth how the relationship will work between the student, the institution in which the student is enrolled (“the enrolling institution”) and the school where he or she is placed to work with children.

### 13.1 Affiliation Agreement—General Provisions

Develop an affiliation agreement to describe the respective rights and responsibilities of the parties. The following are provisions to include in the affiliation agreement between the enrolling institution, the placement school, and the student educator as appropriate:

- **Objectives and responsibilities.** Define the student educator's goals, duties, and responsibilities. Identify who is responsible for orienting student educators to the school's operating policies, procedures, and facilities. As applicable, state that the student educator is not an employee, agent, or representative of the enrolling institution or placement school.
- **Removal and dismissal.** State the grounds—academic, behavioral, or health related, for example—on which a student educator may be removed or dismissed from the placement. Ensure that the grounds for removal are not unlawful, such as whistle-blowing, reporting sexual harassment, or complaining about a failure to receive a reasonable accommodation under the Americans with Disabilities Act.
- **Indemnification and limitation of liability.** A key issue is whether the enrolling institution and the placement school will agree to accept potential liability for tort and other legal claims that third parties may bring based on the activities of a student educator. Enrolling institutions often resist providing indemnification when the student educator is participating under the direct supervision of the placement school. If indemnification is offered, it is often narrowly drafted to cover only the negligence of the student educator or institution employees and not the negligence of the placement school. Further, either party may seek to limit its liability to a specified maximum monetary amount or to exclude

Schools need to establish clear expectations about volunteer conduct and performance and convey that information to volunteer supervisors and coordinators.

coverage for attorney's fees, costs, and damages for emotional distress or pain and suffering. State law and insurance issues may also limit the ability of the enrolling institution and placement school to indemnify each other. Consult with legal counsel for further guidance.

- **Liability insurance.** When establishing a program for student educators, the enrolling institution and the placement school should consult their respective insurance brokers who have knowledge and experience with academic institutions. Various questions should be asked, including whether the student educator falls under the definition of an *insured* under the applicable general liability policies. Typically, student educators are not considered an insured unless additional liability coverage is purchased for internship, externship, practicum, or community service programs. In examining coverage, pay particular attention to the monetary limits and any conditions that apply to sexual molestation claims. Coverage should be also included for acts or omissions by students while engaged in program activities at the enrolling institution and school sites. Finally, it is important to note whether student educators in professional degree programs are required to obtain their own professional liability insurance coverage.

### 13.2 Screening and Supervision

Address the following issues and implement child protection measures such as the following:

- **Written application and disclosure.** Require the student educator to submit a written application for the placement. Seek written representations that student educators are not ineligible for the school placement based on factors such as prior criminal convictions, a history of substance abuse, or a record of having committed a sexual offense. Require that student educators (and their parents, as applicable) make these representations directly through a disclosure form.
- **Screening.** Verify whether state and federal laws require that reference and background checks (including criminal history checks) be conducted on student educators. Clarify whether the enrolling institution or the school placement site will perform the screening functions. If a student has responsibilities and assignments that are substantially like those of school employees, the school should require that the student undergo the same background checks.
- **Code of conduct.** Include the code of conduct for student educators that describes permitted and prohibited interactions with children. For example, it is important to address such issues as: whether the student educator may be alone with a child; the visibility of classroom or meeting spaces; the limited purposes for touching a child; prohibitions on transporting children and meeting them away from the internship site or during off-duty hours; and mandatory reporting of suspected child abuse.

- **Supervision and evaluation.** Set forth the extent to which the school placement site or enrolling institution or both will provide supervision to the student educator. Personnel at the placement site usually provides most of the direct supervision and evaluation of the student unless faculty members with the enrolling institution are located at the school facilities.

## Conclusion

Schools have a fundamental responsibility to protect children. The adoption of a comprehensive risk management program is necessary to prevent sexual misconduct by educators, respond to allegations and incidents, and address special issues pertaining to contractors, volunteers, and student educators. Working together, the entire school community can do its part to keep children safe.

# Appendix A: Terminology

The following terms have specific uses in this guide. For ease of reference, we list them here:

|                          |  |
|--------------------------|--|
| <b>Applicant</b>         | A person who seeks a paid or unpaid position as an educator working for or with a school.  |
| <b>Code of conduct</b>   | The school's guidelines and rules for educators that establish the limits of personal behavior and appropriate interactions with children.   |
| <b>Educator</b>          | A person who holds a paid or unpaid position with a school. Educators provide services directly or indirectly to children who are enrolled as students or otherwise participate in the organization's classes, programs, or activities. An educator may be a school official, volunteer, or student educator. Some educators are appointed and work directly for the school. Others work for a separate private or public entity that provides services under contract, or through a formal or informal affiliation, sponsorship, or referral arrangement with the school. |
| <b>School</b>            | Any public, private, or independent institution or organization where children under age 18 receive instruction or are supervised by adults or older adolescents. The term includes child care centers, preschools, primary and secondary schools, colleges, universities, after school and youth programs, camps, events, and activities operated for academic, athletic, recreational, or other purposes.  |
| <b>School official</b>   | A board member, manager, employee, or representative of a school.  |
| <b>Sexual misconduct</b> | Any act of sexual abuse, exploitation, harassment, or molestation of a child committed by an adult or older adolescent. The behavior may violate school or organizational policies, civil laws, criminal laws, or professional standards.  |
| <b>Student educator</b>  | A minor or adult who is supervising children or otherwise performing services for a school to fulfill the requirements of a clinical or academic program.  |

# Appendix B: Audit Guide

| Item  | Y/N | Action Steps | Completion Date |
|---|-----|--------------|-----------------|
| <b>Prevention of Sexual Misconduct</b>  |     |              |                 |
| <b>1. Child Protection Team</b>   |     |              |                 |
| <p><b>1.1. Team composition and responsibilities.</b> Designate a team to implement the school's policies and ensure training on child protection and safety issues, including educator sexual misconduct.</p>  |     |              |                 |
| <p><b>1.2. Child protection officer.</b> Appoint a senior-level professional to have primary responsibility for child protection.</p>   |     |              |                 |
| <b>2. Selection and Placement</b>   |     |              |                 |
| <p><b>2.1. Screening in general.</b> Adopt screening and placement procedures for all paid and unpaid positions.</p>  |     |              |                 |
| <p><b>2.2. Written application.</b> Develop standardized written applications to facilitate applicant disclosure and background checks.</p>   |     |              |                 |
| <p><b>2.3. Screening methods.</b> Complete basic screening for all applicants including face-to-face interviews and reference checks. Conduct additional screening (such as criminal records, fingerprint, and sex offender registry checks) if the educator will have regular or unsupervised contact with children.</p> |     |              |                 |
| <p><b>2.4. Reference checking.</b> Adopt a reference checking policy for all applicants. Obtain the applicant's authorization and release. Ask the reference questions to probe the applicant's suitability to work with children.</p>  |     |              |                 |
| <p><b>2.5. Reference giving.</b> Adopt a policy on giving references regarding current and former educators. Obtain an authorization and release from the subject educator. Train the designated school officer to provide factual and accurate responses to reference requests.</p>                                      |     |              |                 |
| <p><b>2.6. Criminal history and other background checks.</b> Have knowledgeable staff or contractors conduct criminal history checks in accordance with written school policies and fair credit reporting laws, as applicable.</p>  |     |              |                 |
| <p><b>2.7. Sex offender registries.</b> Use federal or state registries as a screening tool for educators.</p>  |     |              |                 |
| <p><b>2.8. Personal interviews.</b> Conduct a personal interview before placing any educator in a position having access to children.</p>   |     |              |                 |
| <p><b>2.9. Red flags.</b> Require additional screening whenever unexplained or suspicious circumstances arise concerning an applicant.</p>  |     |              |                 |

| Item   | Y/N | Action Steps | Completion Date |
|--|-----|--------------|-----------------|
| 2.10. <b>Disqualification criteria.</b> Describe the criteria for disqualifying an applicant due to adverse information.   |     |              |                 |
| 2.11. <b>Screening before placement.</b> Complete screening procedures before hiring or placing applicants in positions having contact with children.  |     |              |                 |
| 2.12. <b>Documentation.</b> Establish a policy and procedures to ensure documentation and retention of applicant screening records.  |     |              |                 |
| 2.13. <b>Probationary periods.</b> Institute probationary periods for newly placed educators who work with children.   |     |              |                 |
| <b>3. Code of Conduct</b>  |     |              |                 |
| 3.1. <b>Implementation.</b> Provide training on the code of conduct pertaining to children. Require educators to sign and acknowledge that violations may result in discipline including termination.  |     |              |                 |
| 3.2. <b>Reporting and investigation.</b> Require educators to notify the school if they have reasonable grounds to believe that they or another educator has violated the code of conduct. Provide notice that the school has a right to investigate educator compliance even if no report is made.  |     |              |                 |
| 3.3. <b>Interactions with children.</b> Specify permissible and prohibited interactions with children. Areas to cover include being alone with children, bathroom and locker room supervision, after-hours and off-site activities, use of the educator’s home, personal vehicles, friendships, gifts, school trips, and sexual activities.  |     |              |                 |
| 3.4. <b>Managing child behavior.</b> Provide guidelines on child behavioral management, physical restraint, and touching.  |     |              |                 |
| 3.5. <b>Personal behavior.</b> Establish rules for personal behavior of educators, addressing such issues as clothing, nondiscrimination, physical and psychological conditions, language, alcohol and drug use, weapons and explosive devices, displays of affection, and off-duty conduct.   |     |              |                 |
| 3.6. <b>Computers and internet.</b> Establish restrictions on educators’ use of personal computers while on duty as well as school computers and other technology. Prohibit educators from accessing pornographic sites or sending electronic or text messages with sexual overtones or other inappropriate content. Discourage electronic communications with children unless there is a clear educational purpose. |     |              |                 |

| Item                             | Y/N   | Action Steps | Completion Date |
|----------------------------------|---|--------------|-----------------|
| <b>4. Training and Education</b> |   |              |                 |
|                                  | <p><b>4.1. Educator training.</b> Train all paid and unpaid staff on educator sexual misconduct. Cover topics such as the prevalence of sexual misconduct, warning signs in children, strategies used by educators who abuse children, inappropriate educator behavior, and applicable school policies.</p> |              |                 |
|                                  | <p><b>4.2. Education for children.</b> Educate children on the boundaries of acceptable behavior as they interact with their peers, older children, and adults. Focus on how children can protect themselves and respond to situations that make them uncomfortable.</p>                                    |              |                 |
|                                  | <p><b>4.3. Parent education.</b> Implement outreach methods to provide relevant information to parents on sexual misconduct prevention, safety tips, and applicable school policies.</p>  |              |                 |
| <b>5. Supervision</b>            |   |              |                 |
|                                  | <p><b>5.1. In general.</b> Implement supervisory responsibilities, such as child and educator sign-in and sign-out procedures, child pickup and drop-off procedures, adequate staff-to-child ratios, and periodic unannounced visits to facilities where children are present.</p>                          |              |                 |
|                                  | <p><b>5.2. Observations and evaluations.</b> Ensure that supervisors conduct observations and written evaluations of all educators, including activities and relationships with children.</p>   |              |                 |
|                                  | <p><b>5.3. Focus areas.</b> Institute supervisory policies pertaining to staff-to-child ratios, one-on-one situations, private staff areas, "open door" policies for parents, overnight travel, restrooms, and locker rooms.</p>  |              |                 |

| Item   | Y/N  | Action Steps | Completion Date |
|--|--|--------------|-----------------|
| <b>6. Access and Program Policies</b>        |  |              |                 |
| 6.1.   | <b>Release of children.</b> Institute a policy on release of children to authorized persons, late pickup of children, and notification to the child protective services agency when necessary.   |              |                 |
| 6.2.   | <b>Facility access.</b> Limit entry points; lock doors to areas not in use; examine landscape, fences, and lighting; and institute a visitor check-in policy.  |              |                 |
| 6.3.   | <b>Baby-sitting.</b> Establish a policy on whether educators may offer baby-sitting services to parents of children enrolled in the program. If permitted, require a parent or guardian to sign a release form and the educator to notify a designated school official.      |              |                 |
| 6.4.   | <b>Tutoring and mentoring.</b> If the school offers tutoring or mentoring programs for children, implement safeguards pertaining to applicant screening, training, and regulation of activities.   |              |                 |
| <b>Response to Allegations and Incidents</b> |  |              |                 |
| <b>7. Reporting</b>                          |  |              |                 |
| 7.1.   | <b>Policy statement.</b> Develop a written statement on the school's policy to prevent, investigate, and respond to educator sexual misconduct. Advise educators of their obligation to report suspicious behavior to school officials, or governmental authorities or both. |              |                 |
| 7.2.   | <b>Internal reporting procedures.</b> Advise educators of the school's internal procedures for receiving and responding to reports of educator sexual misconduct.  |              |                 |
| 7.3.   | <b>Reporting to government authorities.</b> Advise educators of state laws on reporting suspected abuse, neglect, and other misconduct involving children.   |              |                 |

| Item  | Y/N | Action Steps | Completion Date |
|---|-----|--------------|-----------------|
| <b>8. Investigations</b>  |     |              |                 |
| <p><b>8.1. In general.</b> Institute a policy that states the school's duty to investigate any potentially credible reports of educator sexual misconduct. Include provisions prohibiting retaliation against the child, family, and witnesses. State the consequences for failing to cooperate with the school investigation. Avoid using criminal law terminology in school policies.</p> |     |              |                 |
| <p><b>8.2. Interaction with child and family.</b> Address the school's notification of the child's parents or guardian of sexual misconduct allegations, obtaining counseling services and when to seek protective custody of a child.</p>  |     |              |                 |
| <p><b>8.3. Interaction with accused educator.</b> Address the steps for working with the accused educator, or legal counsel, on conducting an interview and determining the educator's status during the investigation.</p>   |     |              |                 |
| <p><b>8.4. Conducting the investigation.</b> Provide the school's procedure for conducting the investigation, including planning, selecting an investigator, confidentiality, and interviewing witnesses.</p>   |     |              |                 |
| <p><b>8.5. Concluding the investigation.</b> Provide guidelines on the timeliness of completing the investigation, the investigative report, and the recommendation or decision on corrective or adverse action.</p>  |     |              |                 |
| <b>9. Discipline and Dismissal</b>  |     |              |                 |
| <p><b>9.1. Procedure.</b> Follow school policies and comply with statutory and constitutional safeguards in imposing discipline or dismissal of any educator. Record the violation and sanction in the appropriate personnel and management files.</p>  |     |              |                 |
| <p><b>9.2. Range of sanctions.</b> State the range of disciplinary consequences for educator code of conduct violations. Sexual misconduct should be grounds for immediate termination of the educator from the position.</p>   |     |              |                 |

| Item  | Y/N  | Action Steps | Completion Date |  |
|---|--|--------------|-----------------|--|
| <b>10. Crisis Response and Communications</b> |  |              |                 |  |
|   | <p><b>10.1. Plan.</b> Develop a plan for handling allegations and incidents of educator sexual misconduct. Assign responsibilities to the school's child protection team or others as appropriate. Provide training and conduct a tabletop exercise.</p>   |              |                 |  |
|   | <p><b>10.2. Communications.</b> Appoint a primary spokesperson for media and public inquiries and a liaison with the child's family. Address the communications aspects of interaction with child protective services, law enforcement, prosecution and defense attorneys, and the media.</p>  |              |                 |  |
| <b>Special Issues for Non-Employed Staff</b>  |  |              |                 |  |
| <b>11. Contractors</b>                        |  |              |                 |  |
|   | <p><b>11.1. General contract terms.</b> Develop written contracts with persons and companies that provide services for children as part of an affiliation, sponsorship, or referral arrangement. Include clauses pertaining to termination, general liability insurance, and indemnification.</p>                                      |              |                 |  |
|   | <p><b>11.2. Child protection.</b> Implement risk management policies for contractors that are comparable to policies for school employees in similar positions. Address staff screening and qualifications, codes of conduct, training and education, supervision, reporting, investigations, crisis response, and communications.</p> |              |                 |  |
| <b>12. Volunteers</b>                         |  |              |                 |  |
|   | <p><b>12.1. Screening and placement.</b> Implement screening procedures, including a formal application, reference and other background checks, and an interview prior to placement with children.</p>   |              |                 |  |
|   | <p><b>12.2. Supervision.</b> Provide appropriate supervision, including a volunteer coordinator, direct supervisor or both. Ensure that supervisors are trained to perform managerial duties and evaluate volunteers.</p>  |              |                 |  |
|   | <p><b>12.3. Training.</b> Offer programs on educator sexual misconduct prevention and reporting. Training programs should be comparable to those provided to employees with similar access and responsibilities with children.</p>   |              |                 |  |
|   | <p><b>12.4. Liability insurance.</b> Verify that general liability and educators' legal liability policies (covering errors and omissions) are in place and cover volunteers who work with children.</p>   |              |                 |  |

| Item  | Y/N | Action Steps | Completion Date |
|---|-----|--------------|-----------------|
| <b>13. Student Educators</b>  |     |              |                 |
| <b>13.1. Affiliation agreements—general provisions.</b> Address internship, externship, practicum, and community service programs where students are assigned to work with children. Set forth provisions on the rights and responsibilities of the parties, removal and dismissal of the student, indemnification, limitation of liability, and liability insurance. |     |              |                 |
| <b>13.2. Screening and supervision.</b> Institute written applications, screening procedures, a code of conduct, supervision and evaluation procedures pertaining to student educators.   |     |              |                 |

# Appendix C: Legal and Professional Standards

Sexual misconduct involving children is prohibited under state and federal criminal laws and may constitute a basis for civil liability or loss of a professional license. Following are some of the commonly applicable legal and professional standards.

## 1. Criminal Laws

**Child sexual abuse.** Parents, relatives, and other adults and older adolescents who serve in the role as a caretaker of children (including educators) are subject to state laws prohibiting child sexual abuse. What constitutes a crime may depend on the age of the offender, the age of the child, the type of conduct, and other factors. Prohibited behavior may include such acts as oral, genital, or anal penetration (rape); contact or interaction that is used to satisfy the offender's sexual needs and desires; and verbally enticing language, fondling, masturbating, or exposure of the offender's sexual organs.

**Educator sexual abuse.** Many states have adopted laws that specifically prohibit persons who work in an educational capacity from sexually abusing children.

**Mandatory reporting.** Each state has laws requiring the reporting of suspected child abuse and neglect. Most states identify specific professionals as “mandated reporters”; these often include social workers, medical and mental health professionals, teachers, and child-care providers. Concerned citizens can call statewide hotlines, local child protective services, or law enforcement agencies to share their concerns.

**Statutory rape.** One type of sexual misconduct is commonly referred to as “statutory rape.” Under these laws, children below a stated age are deemed incapable of consenting to sexual intercourse or other specified behavior. The age of consent ranges from as young as 14 to as old as 18, with most states defining it as age 16 or 17.

**Other sex crimes.** Numerous other state and federal laws are designed to punish offenders for sex crimes involving children. Examples of such laws include sexual assault (involving the threat or actual use of force), indecent exposure, child pornography, kidnapping, and the transportation of children with the intent to engage in sexual activity.

## 2. Civil Liability

**Negligence.** A common form of civil liability in sexual misconduct cases arises from the tort action of negligence. Generally, a school or educators are “negligent” if they breach a duty of care to act as a “reasonable person” would for the protection of children. The duty of care can arise from educator selection and placement, supervision, reporting and investigation of alleged misconduct, giving references, and other responsibilities.

**Constitutional violations.** A federal statute, 42 U.S.C. Section 1983, allows for civil actions against public school districts and other governmental entities based on the alleged violation of an established constitutional right. In general, courts have concluded that a Section 1983 claim will not be sustained unless the injured party shows that a school district was recklessly indifferent or grossly negligent in connection with child sexual misconduct.

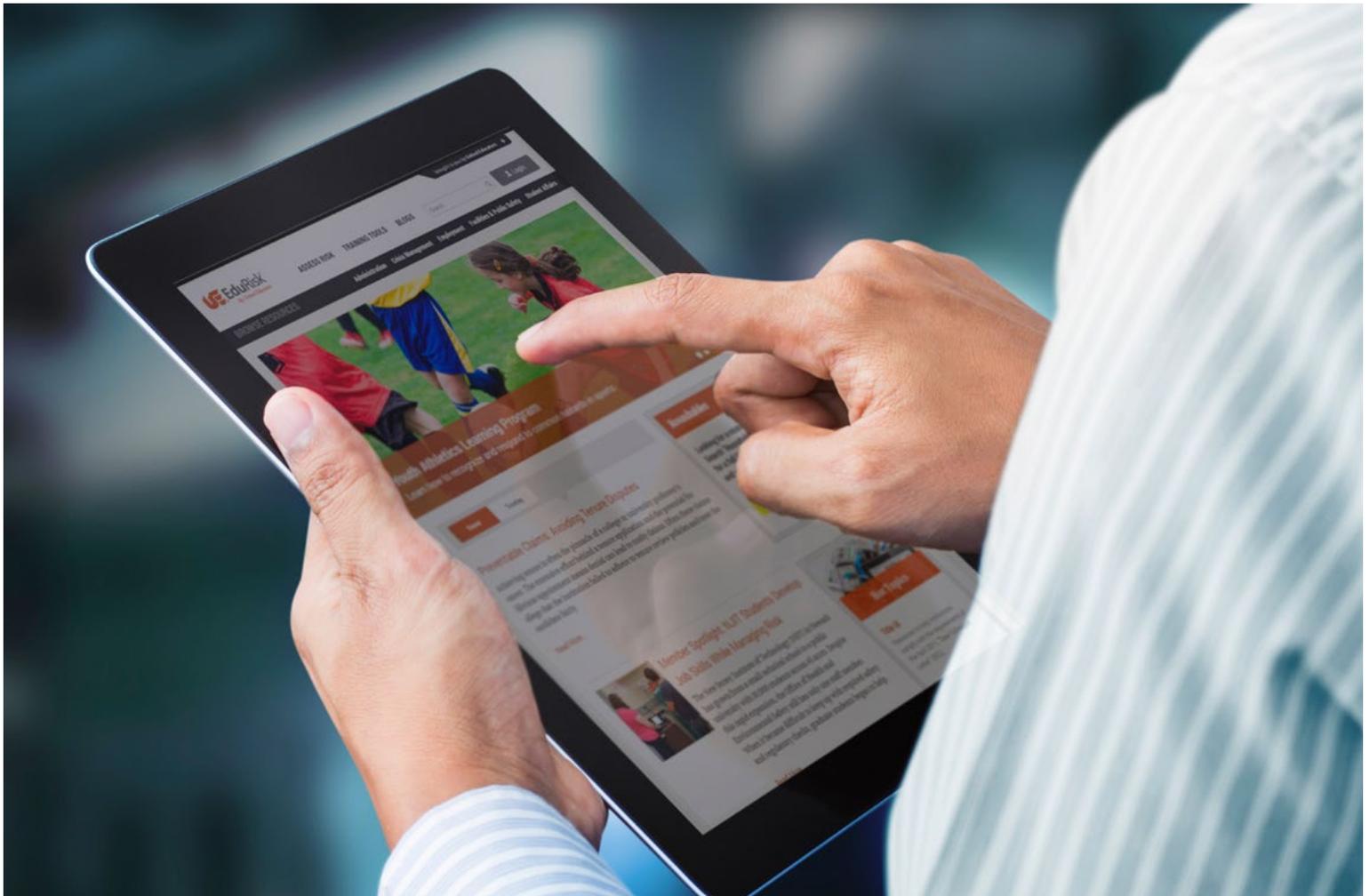
**Title IX of the Education Amendments of 1972.** Title IX prohibits discrimination on the basis of sex in any school that receives federal funds. Students may seek damages from schools for sexual misconduct by school employees, including harassment and assault. The Office for Civil Rights in the U.S. Department of Education enforces Title IX and publishes guidelines to help schools recognize and respond to sexual misconduct of students in educational programs.

### **3. Professional Standards**

**Licensing of teachers, counselors, and others.** Most states have codes of professional conduct that govern the licensure of teachers, guidance counselors, and other positions in schools. Many states define the misconduct generally, such as conduct that is “immoral” or “unbecoming” for the particular profession. Sanctions imposed by professional licensing boards include suspension or license revocation for misconduct involving children.

## **Acknowledgment**

“Educator Sexual Misconduct: A Policy and Audit Guide for Protecting Children” was written by Karen-Ann Broe, Senior Claims Counsel at United Educators.



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