

1 A PRIMER ON BOUNDARY INVASIONS, GROOMING AND EDUCATOR SEXUAL MISCONDUCT

2 © Jerry J. Moberg,

3 DISCLAIMER: This paper is not intended to provide any reader with specific legal advice. If you have  
4 specific legal questions you should contact your legal advisor. Each situation is unique and requires  
5 the careful analysis of an experience attorney.

6 I. INTRODUCTION

7 Educator sexual misconduct<sup>1</sup> of children in our schools by staff and other students is an  
8 emerging problem. We are presently poorly equipped to fight the battle of ridding our schools of sexual  
9 abuse. Most abusers groom their victims with seemingly innocent boundary invasions that  
10 progressively evolve in to more serious forms of sexual abuse. School officials are poorly trained on  
11 indentifying boundary invasions and the current practices do not permit school officials to take effective  
12 action for boundary invasions. The school community must learn to recognize boundary invasions and  
13 they must report them. School Administrators must take appropriate action regarding complaints of  
14 boundary invasion. The only way to effectively prevent sexual abuse in our schools is to effectively  
15 deal with boundary invasions.

16 II. BACKGROUND

17 Reports of sexual misconduct of students in the school setting are more and more prevalent. It is  
18 unclear if the increased reporting reflects an actual increase in the incidents of abuse or is simply the  
19 result of shining a brighter light on the subject. Either way, the incidence of sexual abuse of students is  
20 a serious concern for every educational organization. In 2004 the United States Department of  
21 Education commissioned one of the few studies on sexual abuse in education.<sup>2</sup> The report was  
22 authored by Carol Shakeshaft, then a professor at Hofstra University.<sup>3</sup> According to her survey of the  
23 literature nationwide and worldwide, Shakeshaft concludes that nearly 10% of the student population  
24 reported unwanted sexual misconduct by educators. This unwanted misconduct occurred most often  
with teachers and coaches (15%-18%) but also involved bus drivers, teacher's aides and other school  
employees. 57.2% of the offenders were males and 42.8% were females. 18%-28% of the incidents  
involved same-sex misconduct. Teachers whose job description includes time with individual students,  
such as music teachers or coaches, are more likely to sexually abuse than other teachers<sup>4</sup>. If these  
percentages are accurate, more than 4.5 million students have suffered some form of educator sexual  
at some point during their K-12 education.

22 <sup>1</sup> This is the term used in the study commissioned by the U.S. Department of Education, *infra*.

23 <sup>2</sup> U.S. Department of Education, Office of the Under Secretary, *Educator Sexual Misconduct: A*  
*Synthesis of Existing Literature*, Washington, D.C., 2004.

24 <sup>3</sup> The study is a review of existing research on the subject and does not involve any independent  
research by the author.

<sup>4</sup> *Id.*

\\legal-exchange\redirect\jerrymoberg\Desktop\BoundaryInv1.docm

1 Not surprisingly, the most common victims of educator misconduct are students that are easily  
2 controlled by the offender. A majority of the victims are “vulnerable students” including students  
3 estranged from their parents and students considered “at risk”,

4 The Shakeshaft report does not clearly define the most likely offenders. She does note that:

5 Sexual abuse of students occurs within the context of schools, where students are taught to  
6 trust teachers. Schools are also a place where teachers are more often believed than are  
7 students and in which there is a power and status differential that privileges teachers and  
8 other educators (Shakeshaft and Cohen, 1994). While we know very little about the  
9 contexts in which students are sexually abused by adults in schools, newspaper data and  
10 interview studies suggest that—like sexual predators anywhere—sexual abusers in schools  
11 use various strategies to trap students. They lie to them, isolate them, make them feel  
12 complicit, and manipulate them into sexual contact. Often teachers target vulnerable or  
13 marginal students who are grateful for the attention. And, students that adults regard as  
14 marginal are also unlikely to be accepted as credible complainants against a celebrated  
15 teacher (Shakeshaft and Cohan, 1994).

16 In elementary schools, the abuser is often one of the people that students most like and  
17 that parents most trust. The abusers of children younger than seventh grade have different  
18 patterns than those who abuse older children (Shakeshaft, 2003). The educators who  
19 target elementary school children are often professionally accomplished and even  
20 celebrated. Particularly compared to their non-abusing counterparts, they hold a  
21 disproportionate number of awards. It is common to find that educators who have been  
22 sexually abusing children are also the same educators who display on their walls a  
23 community “Excellence in Teaching” award or a “Teacher of the Year” certificate. This  
24 popularity confounds district officials and community members and prompts them to ignore  
allegations on the belief that “outstanding teachers” cannot be abusers (Shakeshaft and  
Cohan, 1994).

In a majority of the cases the abuser “groomed” the student. Robins (2000) describes the  
process of grooming, where an abuser selects a student, gives the student attention and rewards,  
provides the student with support and understanding, all the while slowly increasing the amount of  
touch or other sexual behavior. The purpose of grooming is to test the child’s ability to maintain  
secrecy, to desensitize the child through progressive sexual behaviors, to provide the child with  
experiences that are valuable and that the child won’t want to lose, to learn information that will  
discredit the child, and to gain approval from parents (Robins, 2000). Grooming allows the abuser to  
test the student’s silence at each step. It also serves to implicate the student, resulting in children  
believing that they are responsible for their own abuse because, “I never said stop.”

Grooming often takes place in the context of providing a child with extras like additional help  
learning a musical instrument, advisement on a science project, or opportunities for camping and  
outdoor activity. These opportunities not only create a special relationship with students, they are also  
ones for which parents are usually appreciative.

Although not every instance of educator sexual misconduct includes a grooming phase,  
because grooming precedes sexual engagement, grooming has the added benefit to the abuser of  
being a way in which to test a child’s compliance. Any complaint can be discredited because it does  
not yet constitute identifiable sexual misconduct. Grooming patterns must be better understood if

1 educator sexual misconduct is to be prevented or detected. Identifying boundary invasions early is the  
2 most effective tool in identifying grooming behavior.

3 Secrecy is an integral part of the offenders' success. Students are often persuaded to keep quiet  
4 by implied threats or reliance on the student's loyalty (if you tell I will lose my job). A student's own  
5 shame or fear of discovery are also factors in secrecy. "Because children often get something positive  
6 in the transaction—attention, gifts, physical pleasure, and feelings of belonging or attractiveness—they  
7 can be made to feel responsible. Offenders use this to their advantage."<sup>5</sup> Students are often reluctant  
8 to report misconduct because of the power differential between the educator and the student. These  
9 reports are too often ignored or minimized reinforcing the student's decision to keep the relationship  
10 secret.

### 11 III. REPORTING MISCONDUCT

12 Generally, misconduct comes to the attention of school officials in five ways: formal complaints,  
13 informal complaints, observed abuse, observed suspicious behaviors, or rumors and/or anonymous  
14 reports.<sup>6</sup>

15 Formal and informal complaints are most likely to originate from students or their parents,  
16 friends sometime report the abuse. Seldom is the abuse reported by a teacher, even if the child has  
17 told the teacher. Several studies estimate that only about 6 percent of all children report sexual abuse  
18 by an adult to someone who can do something about it. According to Shakeshaft most students told a  
19 friend (69.7 percent), followed by someone else (44.9 percent), then a parent (31.8 percent), a teacher  
20 (14.6 percent), or another school employee (14.1 percent).

21 While formal reports might not be made in school, informal information is passed on through  
22 rumor, innuendo, and jokes. Often it is a friend of the student or a parent of a friend who brings the  
23 issue to school authorities. When students do report, they almost always report incidents of contact  
24 sexual abuse—touching, kissing, hugging, or forced intercourse. Verbal and visual abuse are rarely  
reported to school official's.<sup>7</sup> Of the cases that come to a superintendent's attention, nearly 90 percent  
are contact sexual misconduct.<sup>8</sup> When alleged misconduct is reported, the majority of complaints are  
ignored or disbelieved.<sup>9</sup> Other students note this lack of response and conclude that teachers (or  
coaches or administrators) cannot be stopped. If the school will not act, what can a mere student do?

### IV. BOUNDARY INVASIONS DEFINED

Boundary invasions are actions that invade the personal space of a student in some  
inappropriate manner. A boundary invasion generally occurs when an educator takes steps to  
"personalize" the relationship. Not all boundary invasions are grooming behavior. It is important to

---

<sup>5</sup> Id

<sup>6</sup> Shoop (2004)

<sup>7</sup> Shakeshaft (2003)

<sup>8</sup> Shakeshaft and Cohan, 1994

<sup>9</sup> Id.

\\legal-exchange\redirect\jerryoberg\Desktop\BoundaryInv1.docm

1 determine the intent of the educator. All sexual grooming involves boundary invasions but not all  
2 boundary invasions involve sexual grooming. Therefore, it is important to deal with boundary invasions  
3 immediately to determine if they are "innocent" i.e. not involving sexual grooming or "suspect" because  
they may involve sexual grooming.

4 For example, a teacher may have a student's personal cell phone number. This is a boundary  
5 invasion. Normally, personal cell phone numbers are not given out to teachers. The teacher may have  
6 a perfectly good reason to have the number because she is the students coach or has some other  
7 legitimate need to contact the student on her cell phone. Currently, school districts do not have policies  
or practices in place to even find out if teachers have the personal cell phone numbers of students let  
alone to take any action with the teachers if they do. Boundary invasions must be addressed at the  
earliest stage of seemingly innocent conduct to effectively protect students.

- 8  The following is an illustrative but certainly not exhaustive list of potential boundary invasions in  
the school setting, from least serious to most Students' personal cell phone numbers
- 9  Talking informally with students outside of class
- 10  Joking, kidding and teasing students in or out of class
- 11  Emailing a student on matters that do not strictly concern classroom work or educationally  
related issues
- 12  Sending text messages to a student
- 13  Having pictures of students on a teacher's cell phone
- 14  Giving a student a personal card; i.e. a birthday card
- 15  Joining or having a student join a Facebook page or other social networking program
- 16  Meeting with a student outside of class time
- 17  Giving a student a ride in the teacher's personal vehicle
- 18  Being alone with a student in the classroom
- 19  Inviting a student to babysit for the teacher
- 20  Inviting students to a teacher's home
- 21  Taking a student out to lunch or dinner, with or without other students
- 22  Flirting
- 23  Physical contact with a student such as hugging, putting an arm around a student or wrestling  
with a student
- 24  Talking to a student about his or her personal life
- Sharing a teacher's personal life experiences with a student
- Giving a student a gift
- Dancing with a student
- Being alone with a student off campus
- Staying overnight with a student
- Taking a student on vacation with the teacher and family

- 1         Showing or watching movies with sexual content with students
- 2         Furnishing alcohol to students
- 3         Sending a student flowers

4            Educational employees and administrators must be trained to identify boundary invasions and  
5            potential grooming behavior. Educators must not accept these boundary invasions as harmless or  
6            curios acts and must report them. Administrators should take these reports seriously and adequately  
7            investigate them to ensure that grooming is not taking place. The District should have a strict “no  
8            tolerance” policy regarding boundary invasions.

9            V.        STRATEGIES TO DETECT AND PREVENT MISCONDUCT

10           a.        **Develop district and school level policies.**

11           All school districts need written policies prohibiting educator sexual misconduct and  
12           inappropriate educator-student relationships to include consensual relationships between staff and  
13           students. These policies need to identify and deal with boundary invasions. The behaviors prohibited  
14           should be described in the policy so that there is no ambiguity about what types of actions are  
15           unacceptable. In addition to making clear the prohibitions against adult-to-student sex, the group  
16           United Educators (2004) has suggested that policies should include reference to:

- 17           • Descriptions of educationally appropriate touching.
- 18           • Limitations on closed-door and after-hours activities with only one student.
- 19           • Investigatory rights without formal complaint.
- 20           • Required reporting by other teachers and employees.
- 21           • Required reports of any criminal investigation or conviction during period of  
22           employment.
- 23           • Required chaperones, at least one male and one female, for off-site trips.
- 24           • Deadlines for reporting allegations with the option for waiving the time limit.

25           In addition, we recommend that polices include the following:

- 26           • Definition of Boundary invasion
- 27           • Completion of a disclosure form each year listing any boundary invasions
- 28           • Procedures to report boundary invasions
- 29           • Procedures to investigate Boundary invasion
- 30           • Disciplinary consequences for Boundary Invasion

31           Once boundary invasions are properly defined the District must then adopt reasonable policies  
32           for their detection and discipline. It is sometimes difficult to adopt appropriate policies because of the  
33           present defiant stance taken by many school employee unions related to looking into the “private’ life of  
34

1 a school employee. In addition, the present existing laws and regulations in Washington governing  
2 school employee discipline do not give the District any real authority to take action on boundary  
3 invasion.<sup>10</sup> The District should work with the unions in the negotiations process to get their support on  
4 investigating and acting on boundary invasions.<sup>11</sup> The policy should broadly define boundary invasions  
5 and the need to investigate them. It should generally describe appropriate disciplinary action that the  
6 District might take for boundary invasions. A specimen policy is attached as Exhibit A.

7 In addition, the District should provide each employee with a form to sign each year that  
8 identifies specific boundary invasions and asks the employee to acknowledge any boundary invasions.  
9 For example, the form might ask, "During the past year have you stored home phone or personal cell  
10 phone numbers of any students in your personal phone? " If the answer is yes then the employee  
11 should explain his answer. A series of these questions will give the District important information about  
12 the educator/student relationship and help decide if further investigation is necessary.

13 **b. Hiring practices.**

14 Hiring practices should be reviewed for all staff, including substitute teachers, volunteers and  
15 classified staff as well as the mainstream teachers. A common form should be used for all applications  
16 which includes questions on work history, identification that will facilitate background checks, and all  
17 information on criminal history. The form should include a statement that incomplete or false information  
18 can result in termination. Interviewers should be trained to identify red flags in applicant backgrounds.

19 **c. Screen employees.**

20 Screening applicants requires multiple methods that include references, background checks,  
21 license information, and application information. Prior to making an employment offer, personnel  
22 information from the current employer should be reviewed. Background checks with fingerprint  
23 screens should be completed for all current and new employees. Where collective bargaining  
24 agreements prohibit screening of current employees, steps should be taken to change these  
restrictions. While screening will not identify the majority of educators who have or will sexually abuse,  
it signals seriousness on the part of the district. To make background screens more effective, those  
who hire should check for gaps in employment, inquire into reasons for movement between schools or  
districts, contact school personnel in previous sites reaching beyond those listed as references, ask  
direct questions, and search DWI offenses.

**d. Assign an information officer and centralize information.**

<sup>10</sup> A bill was filed with the legislature in the 2007 Session but failed to make its way out of committee.  
The bill as written was ineffective in addressing boundary invasions in any event. SHB 3101

<sup>11</sup> To the extent that the policy intrudes on the terms and conditions of employment it would have to be  
negotiated with the union. However, the District has a general management right to adopt a policy  
regarding boundary invasions.

\\legal-exchange\redirect\jerry.moberg\Desktop\Boundary\Inv1.docm

1           Appoint an information officer singularly responsible for obtaining and managing reports of  
2 educator sexual misconduct. One reason that educator sexual misconduct continues is that in most  
3 schools and school districts there is no one person to whom all rumors, allegations, or complaints are  
4 channeled. As a result, patterns of behavior are often not detected.

4           **e. Report all allegations**

5           The majority of allegations of educator sexual misconduct are not reported to the police by the  
6 school districts. District policy should require that the allegation be reported to both the police and child  
7 protection agencies. The District should establish policies that make it clear when reporting is not  
8 required. Except for those designated instances, all other allegation of sexual misconduct should be  
9 reported by the information officer or other designated person.

10           In addition, for those boundary invasions that do not rise to the level of neglect or abuse, the  
11 district should have a clear reporting policy. This policy should identify the kinds of boundary invasions  
12 that should be reported and should make reporting mandatory.

13           **f. Develop thorough investigative practices.**

14           In our view, the District should not normally investigate allegations of educator sexual  
15 misconduct. Often the District is too close to the issue, lacks experienced investigators, and is under  
16 political pressure from unions and staff that compromise its ability to fully investigate these allegations.  
17 The District should establish a relationship with a competent outside agency to immediately investigate  
18 allegations of misconduct. The District should ensure that investigations are completed within 48 hours  
19 and reports are timely presented to school authorities. If the matter is referred to the police the  
20 District's investigator should co-operate with the police so that both investigations can be completed in  
21 a timely fashion. The District should have clear policies ensuring that an investigation will not terminate  
22 if employee resigns.

23           However, for reports of boundary invasions, the district can investigate them to determine if  
24 they might be grooming behaviors. If the district suspects that they are grooming behaviors then the  
investigation should be referred to an outside source.

19           **g. Educate employees.**

20           Training for educators and other staff about educator sexual misconduct is important. Training  
21 outlines the behaviors that are not acceptable so that everyone—both those who abuse and those who  
22 do not abuse—are working from the same set of expectations. Training should include information  
23 about boundary invasions and grooming. The training should educate employees about unacceptable  
24 behavior and to stress their ethical duty to report boundary invasions and other misconduct.

23           **h. Educate students.**

1 Like staff, students need to understand the boundaries that educators should not cross. This  
2 is important both for students who might be targeted and for students who observe such behaviors.  
3 Both sets of students need to know that such behavior is prohibited and that there is a person to whom  
4 they can and should report such incidents. Materials and programs that have been developed to  
5 protect students from sexual abuse rarely include examples of predators who are educators. Students  
6 need to know that educators might cross boundaries and what to do if this happens.

## 5 VI. CONCLUSIONS

6 We need to be more vigilant in recognizing the signs of grooming behavior. By focusing on boundary  
7 invasions District's are more likely to discover grooming behavior and hopefully avoid or minimize the  
8 harm to sexual misconduct to students. We can no longer afford to wait until sexual misconduct occurs  
9 before we act. Districts must become pro-active and involve the entire education community in the  
10 process.