

February 9, 2022

Director of Strategic Collections and Clearance  
Office of the Chief Data Officer  
Office of Policy, Evaluation and Policy Development  
U.S. Department of Education  
400 Maryland Avenue SW  
LBJ, Room 6W201  
Washington, D.C. 20202-8240

**RE: Public Comment on Agency Docket Number: ED-2021-SCC-0158  
Docket Number: 2021-26873**

Dear Director of Strategic Collections and Clearance:

This letter is in reference to the Office of Civil Rights' (OCR) decision<sup>1</sup> to keep data elements on the Civil Rights Data Collection Survey with regard to school employee sexual misconduct - an important national issue facing students. Sexual misconduct of students by school employees can impact their learning and academic achievement and result in life-long emotional, physical, and psychological consequences for victims, families, and their communities.

**Our review and suggestions have been prepared by the nation's leading researchers and experts in school employee sexual misconduct and supported by several national organizations and advocates. Based on our collective experiences, we applaud you for retaining the OCR items for reporting rape and sexual assault of students by school employees. However, we strongly recommend expanding the existing items to more accurately capture the prevalence of school employee sexual misconduct, often a precursor to illegal and reportable sexual offenses.**

Historically, school employee sexual misconduct prevalence data has been very difficult to collect given its sensitive nature, the need for parental consent for student collected data, and lack of funding. The last generalizable student survey collected by any source was conducted in 2000, which estimates that 5.7 Million students in the United States will experience either contact or non-contact sexual misconduct by an adult in their school sometime before they graduate. (DOE/Shakeshaft, 2004). Neither the Department of Education, the Department of Justice, nor the National Association of State Directors of Teacher Education and Certification collect data specific enough to track how often sexual misconduct of students by K-12 school employees occurs.

The annual Civil Rights Data Collection Survey<sup>2</sup> historically has also not collected information regarding sexual misconduct in schools. The survey was updated in 2020-21 after extensive

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<sup>1</sup> <https://www2.ed.gov/about/offices/list/ocr/docs/2020-21-crdc-qa.pdf>

<sup>2</sup> <https://www2.ed.gov/about/offices/list/ocr/docs/2020-21-crdc-school-form.pdf>

public comments, to include questions regarding sexual assaults by staff members, but does not include other types of sexual misconduct (see pages 82-88). Continuing to keep these items is important because they are the ONLY nationally collected data on sexual assault and rapes by school staff of students that is gathered by the OCR. Without data regarding how often school employee sexual misconduct occurs, legislators are ill-equipped to create and provide effective regulations and allocate needed resources for prevention, investigations, and response.

**However, the items currently collected (see pages 82-88) have severe limitations for accurately tracking school employee sexual misconduct.** First, school employee sexual misconduct includes more than “assault” or “rape.” There is a continuum of behaviors that occur prior to assaults and rapes which violate professional standards, often signal grooming, and lead to criminal sexual offenses. Sexual misconduct includes ethical boundary violations such as inappropriate comments, texting and social media, showing of pornography, and inappropriate touching that would not rise to “assault” or “rape.” Many states have included expanded sexual misconduct definitions in their state laws. (For example, see Pennsylvania, Missouri and Washington definitions below.) In all of the above listed examples, these types of concerns, complaints, and reports of misconduct would NOT be documented in the proposed OCR survey, yet are still very important to track since these types of behaviors if sustained would likely lead to reporting the school employee to state licensure agencies and loss of employment.

Many victims do not believe they are being “forced” to engage in sexual behavior because they have been groomed by their abuser to believe the behavior is consensual and, thus, may not be reported to school officials. This skews the understanding of the prevalence of prohibited sexual behaviors by school employees toward students. All types of sexual misconduct, including ethical violations, are important to track to understand how often sexual misconduct occurs. Many sexual misconduct incidents that begin with grooming in school can escalate to rape and sexual assault which occur off-school grounds. These would not be captured by the current survey items.

We recommend adjusting the survey items to include all types of misconduct and all location types (both on and off school grounds), and to be mandatory for all schools. Specifically, we suggest the following:

1. Change “rape or attempted rape, and sexual assault” to *“all verbal, visual and physical sexual misconduct”*;
2. Change “at school” to *“on school grounds or off school grounds”* to more accurately capture the total number of misconduct allegations;
3. Define “sexual misconduct” in the survey as: *any act, including, but not limited to, any verbal, nonverbal, written or electronic communication or physical activity, directed toward or with a child or a student regardless of the age of the child or student that is designed to establish a romantic or sexual relationship with the child or student. Such*

*prohibited acts include, but are not limited to, the following: (1) sexual or romantic invitations; (2) dating or soliciting dates; or (3) engaging in sexualized offenses. See attached for example state definitions and examples of boundary violating behaviors.*

4. Change the following “optional” items to mandatory to provide an accurate understanding of the prevalence of this issue. Replace ~~strikeout behaviors~~ with those in the sexual misconduct definition as described in #3 above (also pasted in italics).
  - a. Number of documented incidents of offenses committed by a school staff member that occurred on or off school grounds. ~~Offense categories include: rape or attempted rape, and sexual assault (other than rape).~~ *Offense categories include any act, including, but not limited to, any verbal, nonverbal, written or electronic communication or physical activity, directed toward or with a child or a student regardless of the age of the child or student that is designed to establish a romantic or sexual relationship with the child or student. Such prohibited acts include, but are not limited to, the following: (1) sexual or romantic invitations; (2) dating or soliciting dates; or (3) engaging in sexualized offenses. See attached for example state definitions and examples of boundary crossing behaviors*
  - b. Number of allegations made against a school staff member of offenses that occurred on or off school grounds, which were followed by a determination that the school staff member was responsible for the offense. ~~Offenses categories include: rape or attempted rape, and sexual assault (other than rape).~~ *Offense categories include any act, including, but not limited to, any verbal, nonverbal, written or electronic communication or physical activity, directed toward or with a child or a student regardless of the age of the child or student that is designed to establish a romantic or sexual relationship with the child or student. Such prohibited acts include, but are not limited to, the following: (1) sexual or romantic invitations; (2) dating or soliciting dates; or (3) engaging in sexualized offenses. See attached for example state definitions and examples of boundary crossing behaviors.*
  - c. Number of allegations made against a school staff member of offenses that occurred on or off school grounds, which were followed by a resignation or retirement prior to final discipline or termination. ~~Offenses categories include: rape or attempted rape, and sexual assault (other than rape).~~ *Offense categories include any act, including, but not limited to, any verbal, nonverbal, written or electronic communication or physical activity, directed toward or with a child or a student regardless of the age of the child or student that is designed to establish a romantic or sexual relationship with the child or student. Such prohibited acts include, but are not limited to, the following: (1) sexual or romantic invitations; (2) dating or soliciting dates; or (3) engaging in sexualized offenses. See attached for example state definitions and examples of boundary crossing behaviors.*

- d. Number of allegations made against a school staff member of offenses that occurred on or off school grounds, which were followed by a determination that the school staff member was not responsible for the offense. ~~Offenses categories include: rape or attempted rape, and sexual assault (other than rape).~~ *Offense categories include any act, including, but not limited to, any verbal, nonverbal, written or electronic communication or physical activity, directed toward or with a child or a student regardless of the age of the child or student that is designed to establish a romantic or sexual relationship with the child or student. Such prohibited acts include, but are not limited to, the following: (1) sexual or romantic invitations; (2) dating or soliciting dates; or (3) engaging in sexualized offenses. See attached for example state definitions and examples of boundary crossing behaviors.*
  
- e. Number of allegations made against a school staff member of offenses that occurred on or off school grounds, which had a determination that remained pending. ~~Offenses categories include: rape or attempted rape, and sexual assault (other than rape).~~ *Offense categories include any act, including, but not limited to, any verbal, nonverbal, written or electronic communication or physical activity, directed toward or with a child or a student regardless of the age of the child or student that is designed to establish a romantic or sexual relationship with the child or student. Such prohibited acts include, but are not limited to, the following: (1) sexual or romantic invitations; (2) dating or soliciting dates; or (3) engaging in sexualized offenses. See attached for example state definitions and examples of boundary crossing behaviors.*
  
- f. Number of allegations made against a school staff member of offenses that occurred on or off school grounds, which were followed by a duty reassignment prior to final discipline or termination. ~~Offenses categories include: rape or attempted rape, and sexual assault (other than rape).~~ *Offense categories include any act, including, but not limited to, any verbal, nonverbal, written or electronic communication or physical activity, directed toward or with a child or a student regardless of the age of the child or student that is designed to establish a romantic or sexual relationship with the child or student. Such prohibited acts include, but are not limited to, the following: (1) sexual or romantic invitations; (2) dating or soliciting dates; or (3) engaging in sexualized offenses. (See below, pages 7-9, for examples of state definitions and of boundary-violating behaviors.)*

We would be pleased to schedule a call to discuss these recommendations and answer any questions you may have.

Thank you for considering the collection of these crucial data. Helping to document the extent of sexual misconduct by school employees against students will strengthen the foundation for prevention strategies that can better ensure safe learning environments for our nation's children.

Sincerely,



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## Sample of State Definitions of Sexual Misconduct

<p><b>Pennsylvania</b></p>	<p>"Sexual misconduct." Any act, including, but not limited to, any verbal, nonverbal, written or electronic communication or physical activity, directed toward or with a child or student that is designed to establish a romantic or sexual relationship with the child or student. Such acts include, but are not limited to:</p> <ol style="list-style-type: none"> <li>(1) Sexual or romantic invitation.</li> <li>(2) Dating or soliciting dates.</li> <li>(3) Engaging in sexualized or romantic dialog.</li> <li>(4) Making sexually suggestive comments.</li> <li>(5) Self-disclosure or physical exposure of a sexual, romantic or erotic nature.</li> <li>(6) Any sexual, indecent, romantic or erotic contact with the child or student.</li> </ol>
<p><b>Missouri</b></p>	<p>566.083. Sexual misconduct involving a child, penalty — applicability of section — affirmative defense not allowed, when. — 1. A person commits the offense of sexual misconduct involving a child if such person:</p> <ol style="list-style-type: none"> <li>(1) Knowingly exposes his or her genitals to a child less than fifteen years of age under circumstances in which he or she knows that his or her conduct is likely to cause affront or alarm to the child;</li> <li>(2) Knowingly exposes his or her genitals to a child less than fifteen years of age for the purpose of arousing or gratifying the sexual desire of any person, including the child;</li> <li>(3) Knowingly coerces or induces a child less than fifteen years of age to expose the child's genitals for the purpose of arousing or gratifying the sexual desire of any person, including the child; or</li> <li>(4) Knowingly coerces or induces a child who is known by such person to be less than fifteen years of age to expose the breasts of a female child through the internet or other electronic means for the purpose of arousing or gratifying the sexual desire of any person, including the child.</li> </ol> <p>2. The provisions of this section shall apply regardless of whether the person violates this section in person or via the internet or other electronic means.</p> <p>3. It is not a defense to prosecution for a violation of this section that the other person was a peace officer masquerading as a minor.</p> <p>4. The offense of sexual misconduct involving a child is a class E felony unless the person has previously been found guilty of an offense under this chapter or the person has previously been found guilty of an offense in another jurisdiction which would constitute an offense under this chapter, in which case it is a class D felony.</p>

<b>Washington</b>	<p>WAC 181-87-080 SEXUAL MISCONDUCT WITH STUDENTS</p> <p>Unprofessional conduct includes the commission by an education practitioner of any sexually exploitive act with or to a student including, but not limited to, the following:</p> <p>(1) Any sexual advance, verbal or physical;</p> <p>(2) Sexual intercourse as defined in RCW 9A.44.010;</p> <p>(3) Indecent exposure as defined in RCW 9A.88.010;</p> <p>(4) Sexual contact, i.e., the intentional touching of the sexual or other intimate parts of a student except to the extent necessary and appropriate to attend to the hygienic or health needs of the student;</p> <p>(5) Provided, That the provisions of this section shall not apply if at the time of the sexual conduct the participants are married to each other.</p>
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### **Examples of Boundary Violations**

Excerpted from “*Code of Conduct for Schools: A Child Sexual Abuse Prevention Guide*, MassKids, 2021.

Boundary violations should be interrupted by the person observing the behavior, if they can do so safely. The staff person should inform their supervisor or administrator about the concerning behavior. Examples of possible boundary violations by staff members include, but are not limited to:

- Engaging in rough physical contact or provocative games with students, e.g. horseplay, wrestling, tickling, or in inappropriate touching, e.g. stroking a student’s hair, rubbing their shoulders/back, patting their backside;
- Massaging of a student athlete in sports without another adult staff present.
- Doing things of a personal nature that students can do for themselves, e.g. combing hair, providing bathroom assistance;
- Making sexual comments, jokes, suggestive gestures, or engaging in flirtatious behavior with a student;
- Remarking on a student’s physical attributes or development;
- Showering with students after athletic practices or events;
- Picking up a student, holding a student, or letting a student sit on a staff member’s lap
- Providing alcohol, drugs or tobacco products to a student;
- Taking photos of students or using cell phones, still or video cameras in restrooms, locker rooms or changing rooms;
- Addressing students or permitting students to address staff members with personalized terms of endearment, pet names, or otherwise in an overly familiar manner;

- Delegating to a student a specific task that is the teacher's appropriate role, e.g. taking attendance, thus assigning special status to that student;
- Encouraging students to compete with each other for "teacher's favorite" status;
- Improving grades or test scores as a way to establish a special staff/student relationship;
- Closing or locking doors when meeting with a student or covering classroom and office windows so that interactions with students will not be observable and interruptible;
- Singling out a particular student or students for personal attention and friendship, or for censure or reprimand, beyond the professional staff/student relationship;
- Giving money or gifts to selected students or violating the school's policies on giving and receiving gifts;
- Giving a student a ride in your car or allowing a student to borrow your car;
- Violating student drop-off and pick-up policies;
- Sending students on personal errands unrelated to any educational purpose;
- Soliciting phone, email, text messages or other forms of written or electronic communication from students unrelated to legitimate school business;
- Maintaining personal, non-school related contact with a student outside of school by phone, email, social media, letters, cards or notes;
- Socializing or spending time with students, including but not limited to: going out for beverages, meals, movies, shopping, traveling, and recreational activities outside of school sponsored events, except as participants in organized community activities;
- Inviting or allowing students to visit the staff member's home;
- Visiting a student's home or other locations for non-school-related purposes;
- Violating a student's physical or psychological privacy (e.g., walking in on the student in the bathroom, soliciting information about the student's relationship with a girlfriend or boyfriend);
- Disclosing personal, sexual, family, employment concerns, or other private matters to one or more students;
- Dating a student or engaging in any sexual contact with a student, even if the student has reached the legal age of consent established by State law;
- Engaging in any type of inappropriate physical contact with a student or any other conduct that might be considered sexual harassment under the District's and State's policies.
- Engaging in any other conduct that fails to maintain professional staff/student boundaries or any conduct that may convey the appearance of impropriety.