



The Safety of Our Children— An Essential Investment

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Outline

What Body of Law Is Emerging from School Litigation

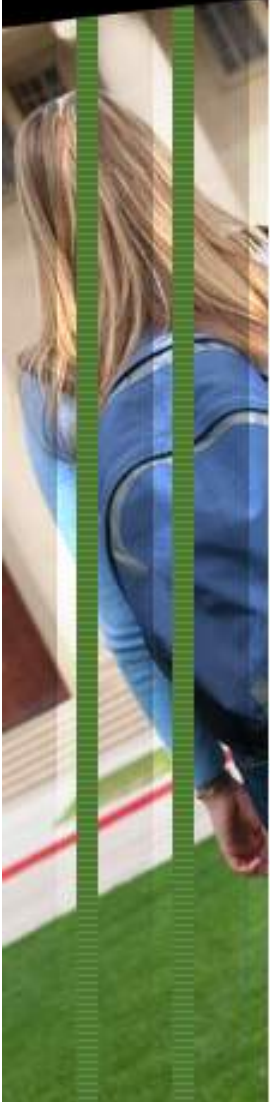
1. Litigation trends
2. Litigation related legislation
3. Proactively addressing school districts' most expensive litigation risk
4. Legislative action agenda



Litigation Trends



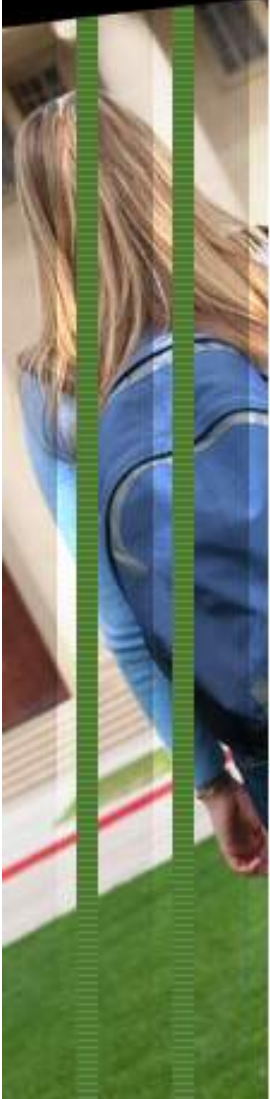
The Kinds of School Cases We Most Frequently See in Litigation

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1. Sexual molestation (Mary Kay Letourneau)
 2. Employment discrimination & retaliation (King)
 3. Serious sports injuries (TBI, quadriplegia)
 4. Student-to-student harassment and bullying
 5. First amendment school paper cases (Puyallup, Everett, Seattle)
 6. Disparate impact discrimination cases are expected to come based on student performance

The Biggest Area of Future Risk for Schools in Litigation

Sexual misconduct against students by
school employees

- Frequency of such cases:
 - 1990 (rare)
 - 2000 (beginning)
 - 2010 (common)
 - Predicted by 2020 (more common)

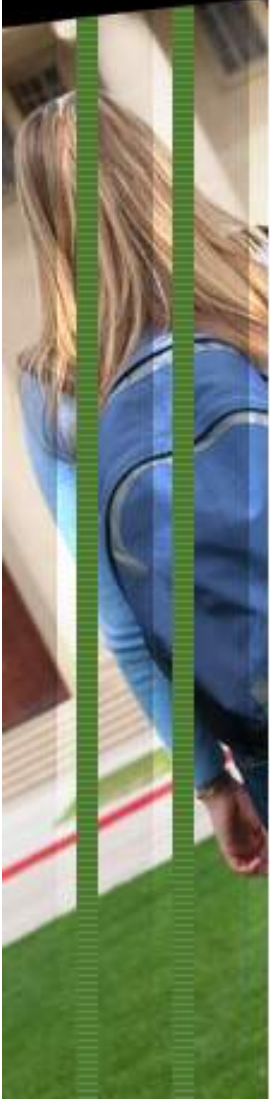


Sexual Misconduct Litigation is Particularly Problematic

1. Large verdicts and settlements
2. In effect, no statute of limitations
3. Catholic cases show there is money in it
4. Sympathy and shock factors
5. Multiple victims
6. Victims are coming out of the closet
7. Potential future impact on school districts' **General Fund** due to inadequate insurance coverage

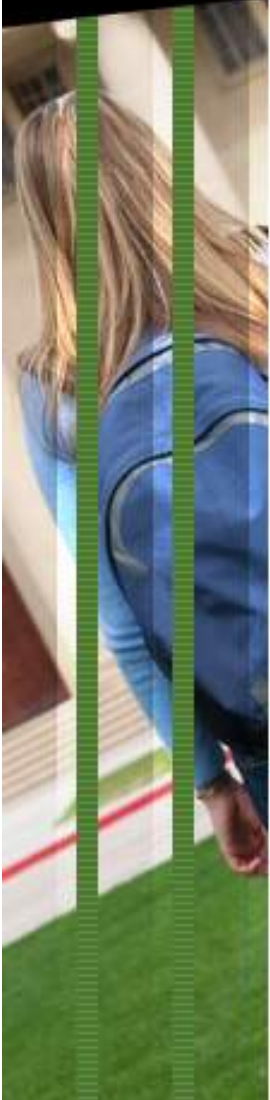
2004 U.S. Dept. of Ed. Study by Charol Shakeshaft, Ph.D.

- Report was ordered by Congress
- Examined previous studies and surveys of teacher sexual misconduct with students
- Estimated 9% of students are sexually harassed by school employees during their K-12 time in school



How Big is the Problem

- In Washington, 25 school employees per year since 2007 make headlines for sexual misconduct with students
- Nationally: www.badbadteachers.com



Many Molesters Abuse an Extremely Large Number of Children



232 convicted
child molesters




55,250 attempted molestations
38,727 completed molestations

How The Statute of Limitations Makes The Problem Bigger:

- Half the states have statutes of limitations which cut off lawsuits
- Half the states, including Washington, do not:
 - Three years from the time you know the damage which has happened to you because of the molestation
 - Which may be never

How Insurance Issues Threaten the General Fund

- Sexual abuse and harassment exclusions
- Lost insurance policies 40 years later
- What your policy covered in 1970 may not be sufficient for what a jury determines in 2010
- These cases are expensive



Predictions on Legislation that will Lead to Litigation

Recent Legislation

- The Zack Lystedt Law (concussion training & management)
 - Make sure training, policies, and protocol are up to date
- This law will lead to litigation for school districts which have not updated their policies and training.

Lystedt Clean Up Legislation Needed

1. Does it apply to intramurals, PE, open gym, and elementary school?
2. The contradictory immunity needs to be fixed.
3. Define “Youth Programs.”
4. Require coaches to be trained.
5. Are school districts supposed to monitor training of health care professionals?

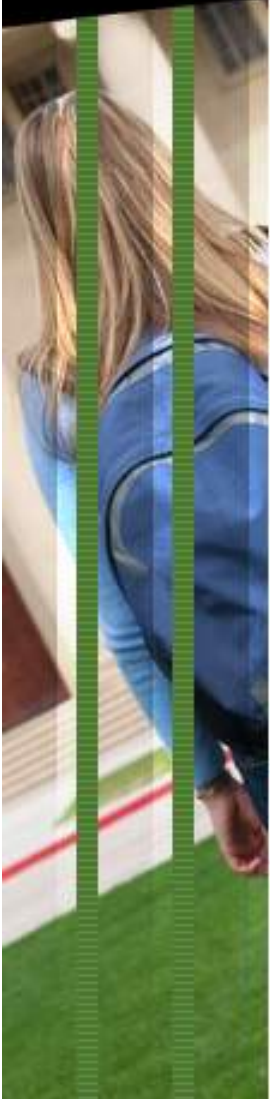


Expect Disparate Impact Race Discrimination Lawsuits

- **HB 3026**: new civil rights claim against school districts under RCW chp. 28A
- ***Race to the Top***- (requiring assignment of experienced teachers to poor performing schools)
- An expressed priority of the OCR
(Using civil rights laws to improve student performance)
- Expect lawsuits based on inadequate assignment of resources to lower socio-economic schools

New Technological Harassment Tools Which Will Lead to Litigation

- Sexting
- Cyberbullying
- Cyberstalking
- Cybergrooming



To Prevent Cyber-Harassment Lawsuits

- Schools need to be proactive
- **Policies:** Review and strengthen acceptable use policies
- Review and strength Student Rights and Responsibilities (Annual Notice)
- **Training:** Train staff, students, newsletters to parents
- **Enforcement:** To discipline at school, must be able to articulate a connection between the conduct and school



Proactively Addressing Sexual Abuse in the Schools

Solving the Problem in Schools

1. Sex molesters are “grabbers” or “groomers”
 2. In schools, 99% are “groomers”
 3. Grooming is done via “inappropriate boundary invasions”
 4. Prohibit such boundary invasions and you eliminate sexual grooming opportunities
- ***Requires:*** policies, training, enforcement



Legislative Agenda



- ✓ Require boundary invasion policies (done)
- 1. Boundary invasion WAC or RCW
- 2. Sexual misconduct leave without pay
- 3. Sexual misconduct statute of ultimate repose
- 4. Bar collective bargaining agreement language which cleanses employee files
- 5. Allow schools to assign experienced teachers where they are needed
- 6. No open forum liability for schools
- 7. Tort reform and general damages cap



$$\frac{dx}{\sqrt{\frac{1}{x^3} + \sqrt[6]{x}}} = \frac{dx}{\sqrt{\frac{1}{x^3} + \sqrt[6]{x^2}}} = \left[\begin{array}{l} \sqrt[6]{x} = E \\ x = E^6 \\ dx = 6E^5 dt \end{array} \right] = \frac{6t^5}{t^3 + t^2} dt =$$

$$\frac{6t}{t^2 + 1} \left(\frac{t^3 + 1}{t^2 + 1} - \frac{1}{t^2 + 1} \right) dt = 6 \left(t^2 - t + \frac{1}{t^2 + 1} - \frac{1}{t^2 + 1} \right) dt$$

$$6 \left[\frac{t^3}{3} - \frac{t^2}{2} + \frac{1}{2} \ln |E+1| \right] + C =$$

$$= \left[\frac{(\sqrt[6]{x})^3}{2} + \sqrt[6]{x} \cdot \ln |\sqrt[6]{x} + 1| \right] + C$$

Conclusion