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June 11, 2021

Written Comment: Title IX Public Hearing, K-12 Educator Sexual Misconduct Reporting

Educator sexual misconduct is defined as any behavior by any educator aimed at a student and intended to sexually arouse or titillate the educator or the child (Shakeshaft, 2004). While Title IX attempts to protect students from sexual misconduct of educators, it does not go far enough to ensure that the same educator does not victimize future students.

Since each state has the authority to certify educators, and track those educators in the ways the state sees fit, there are significant gaps within the investigation and reporting of these offenders. Often times, educator sexual misconduct, except in the most serious offenses, is not charged in the court of law. Therefore, investigations, discipline and reporting is left up to the individual local school district or state agency to ensure the accused educator is not provided the opportunity to reenter a classroom and continue the misconduct with a different student. The administrative inconsistencies among states, and a limited national database, are the fatal flaws in Title IX, and if not addressed, will continue to allow predators into America's classrooms.

All 50 states, including DC and other territories, have laws that require school personnel to report child sexual abuse (US, GOA, 2014). The sanctions for failing to report vary from nothing, to civil and criminal charges. Few states have laws mandating that certificated educators report educator misconduct to the state agency charged with investigating educator misconduct, therefore creating a significant loophole in ensuring the safety of students. Administrative sanctions for educator sexual misconduct itself vary substantially from state to state, with limited states emphasizing the educator-student relationship specifically.

The State of Arizona, through the efforts of the Arizona Department of Education (ADE) and the Arizona State Board of Education (AZSBE), presents an example of a system and public database to aid in protecting students from certificated educators who have engaged in unprofessional and/or immoral conduct.

In Arizona, cases involving sexual misconduct may range from grooming and sexual harassment to sexual assault, though all behaviors represent important safety concerns to address. Such behaviors associated with sexual misconduct represent 39% of AZSBE's adjudicated cases from 2012-2020. In Arizona, sexual misconduct cases are most often associated with secondary school educators.

Sexual misconduct cases filed with ADE's Investigation Unit are reviewed by AZSBE staff and the Arizona Assistant Attorney General's Office (AG), regardless of any perceived "severity" or "pervasiveness." Since the educator discipline process is administrative in nature, AZSBE and the AG's Office often see sexual misconduct cases that are turned down by the Arizona court system, thus, without the administrative state process, there would be no record and the educator would be free to commit the misconduct in another school or state.

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Allegations, and the investigation, may surface a repeated history of the behavior, one that had been ongoing throughout multiple schools within the state. Such allegations may arise on school property, but more often than not, occur through digital communication or in a private residence. Generally, allegations escalate in behavior as the educator tests the boundaries of the student. Restricting investigations to only on-campus sexual misconduct would not protect students. Currently, the Professional Practices Advisory Committee (PPAC), a subcommittee of AZSBE, provides due process to the accused educator, while reviewing and recommending discipline to AZSBE for the misconduct. Once AZSBE takes action on the recommendation, the board action is reported in the public state and private national databases.

The pathways of which this singular, public state database upholds student safety includes:

- In the hiring and file review process, districts, charters and other hiring agencies, are obligated to search the database for disciplinary actions prior to hiring an educator. Arizona disciplinary actions can include letters of censure, suspensions, surrenders or revocations of certificates. Notes of discipline within the state database directs the hiring agency to examine the public records available on the disciplined educator and determine if the educator or applicant is fit to be in the classroom.
- For Arizona parents, a public state database allows them to be proactive and/or reactive in searching for disciplinary action on educators their students interact with on a daily basis. Additionally, the state database is linked to the reporting documents, so that parents who suspect misconduct can report incidents to the state.

National educator discipline tracking systems were highlighted following a 2016 USA Today analysis on all misconduct records across the United States and other territories. To date, there remains one national, privately owned centralized system for tracking educator discipline. States report, audit and rely on NASDTEC's (National Association of State Directors of Teacher Education and Certification) Educator Identification Clearinghouse to protect their students from inter-state misconduct. The Clearinghouse, a subscription-based resource, is a key tool in ensuring educators who undergo discipline and/or lose their certificates in one state cannot start over with a clean record by moving to another state.

However, only state education agencies, state boards of education and educator preparation providers generally have such access to this tracking system, as these agencies pay a substantial fee to access the database. Local education agencies (LEA) are able to apply to use the Clearinghouse, but only gain entry into NASDTEC with an associate membership. To date, Arizona has one reported LEA with access to the Clearinghouse. The gap must be bridged to make the read-only, redacted information available to all, as the delay in one state reporting to NASDTEC can allow for the another state or LEA to hire a disciplined educator from another state where the educator engaged in misconduct.

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Nationally, we must measure and monitor the range of sanctions facilitated by states on educators' certificates for sexual misconduct. This can support professional development of those in the education profession, including review committees and Boards, and bring everyone to a singular message about the seriousness of sexual misbehavior, which Abboud et. al (2020) identifies as a dilemma. Professional development in the areas of grooming and identifying factors of student sexual abuse can assist in saving students from a lifetime of trauma.

Lastly, not every state has an ethics and standards review committee to take disciplinary action on educators' certificates, nor do states have statewide reporting databases. Furthermore, as states create different pathways for individuals to enter the classroom, it becomes imperative that states create systems to track and report discipline on non-certificated educators. The Arizona Legislature recently passed, and Governor Doug Ducey signed, HB2023, giving AZSBE the authority to investigate and discipline the more than 6,000 non-certified educators within the state.

Title IX was built on the foundation of protecting students from sexual misconduct and abuse from educators, however, there remains significant gaps and loopholes for educators to continue behaviors in other local districts and states if pressure and funding is not provided to create consistent state systems of review, reporting and monitoring of sexual misconduct and immoral conduct of educators. Attesting to Title IX will not protect future students in the classroom. In the past five years, Arizona has built a nonpartisan educator discipline system and thrives to be the national model on ensuring the safety of our classrooms, with the foundational belief that no student should ever be in a worse position for going to school than they were when they were at home. Only through national efforts focused on student safety, such as those being implemented in Arizona, can we further that goal.

Respectfully,

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Citations:

Abboud, M. J., Wu, G., Pedneault, A., Stohr, M.K., & Hemmens, C. (2020) Educator Sexual Misconduct: A Statutory Analysis. *Criminal Justice Policy Review*, 31(1), 133-153. doi:10.1177/0887403418806564

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