

PRINCIPAL

A Publication of the National
Association of Secondary
School Principals

LEADERSHIP

JANUARY 2018

NASSP'S 2018 NATIONAL PRINCIPAL OF THE YEAR

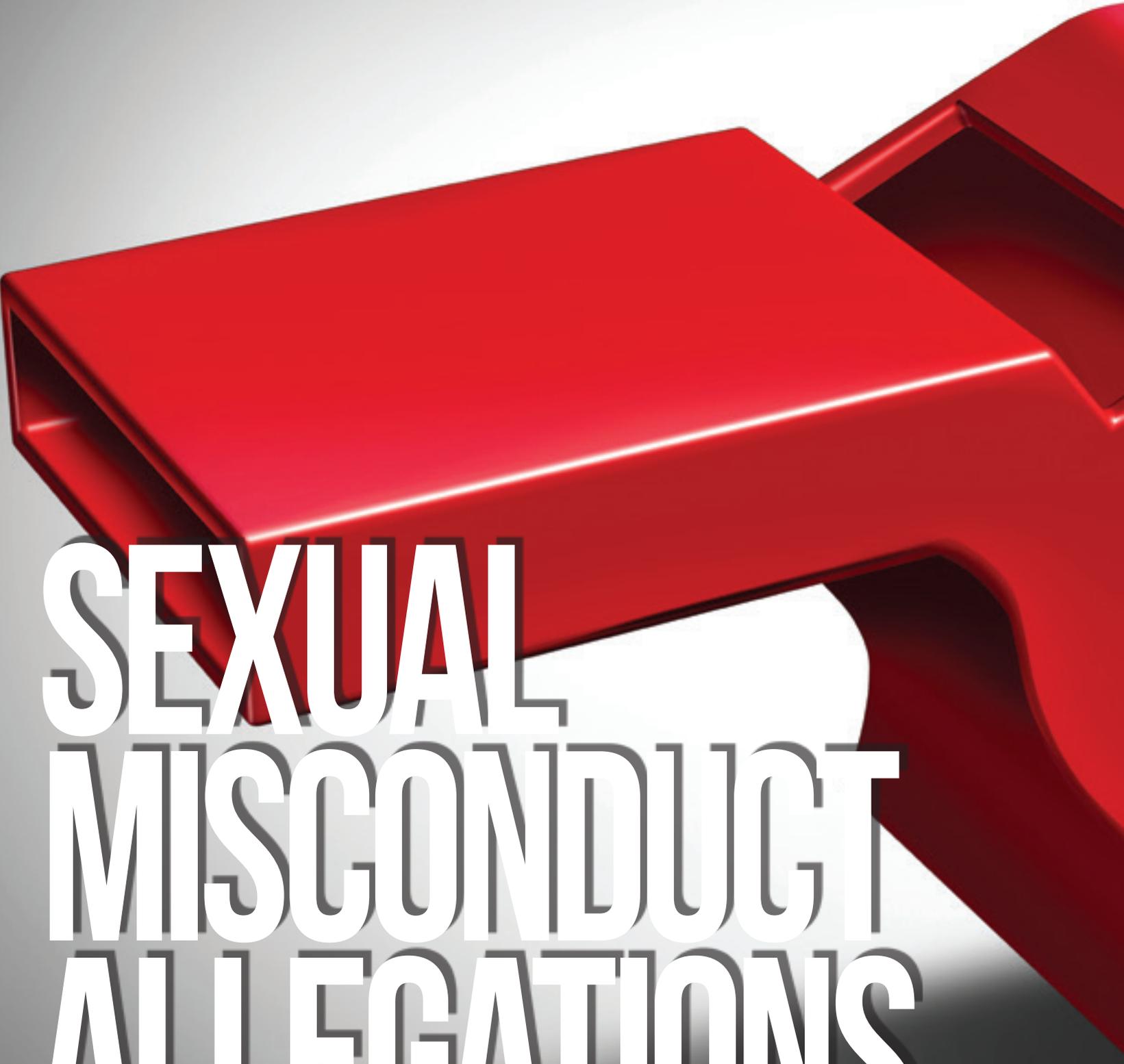
Akil Ross

32

Yoga in Schools
Positioned for Success
38

Culture Change
Simple Works Best
44

Rethinking Education
The Life Skills Solution
48



SEXUAL MISCONDUCT ALLEGATIONS

HOW TO RESPOND WHEN CRISIS STRIKES



Know the five must-ask questions before navigating issues

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Imagine receiving a phone call or letter from a current student or alumna reporting that a teacher or student had engaged in sexual misconduct. You know that a prompt, thorough, and thoughtful response is necessary, but how do you navigate the many issues that will arise?

Misconduct allegations can vary widely in severity and scope—from a sexually suggestive comment by a teacher in class, to an ongoing sexual relationship between a teacher and a student, to a student-on-student sexual assault—and the appropriate response often depends on the nature of the allegations. If the misconduct involves current faculty or students, your first action will likely need to be immediate steps to stop the misconduct and/or protect students by removing the alleged offender from the campus pending additional information. Once you have addressed any immediate safety concerns, other strategic considerations should guide your response.

Consider the following five questions when facing a potential crisis involving allegations of sexual misconduct at your school. Your goals should include protecting students and faculty, uncovering the truth, minimizing the occurrence or recurrence of misconduct, and maintaining the community's trust of the school's leadership.

1. When Is an “In-House” Investigation Sufficient?

The decision to conduct an “in-house” investigation or to engage an outside investigator often depends on how sensitive or “high profile” the matter is. If the allegations are relatively simple—a teacher made an inappropriate comment in class or a student sent a sexual text to another student—you likely do not need an external investigation. Often, a school administrator can conduct whatever limited inquiries may be needed, and the allegations can be resolved through the school’s normal disciplinary channels. However, if the allegation is more significant—for example, inappropriate touching by a teacher or sexual assault by a student—consideration of engaging outside investigators becomes more critical.

Questions to consider include:

- **How severe is the alleged conduct?** The seriousness of sexual assault or inappropriate relationships often points toward bringing in an external investigator with expertise in these areas who can conduct a thorough investigation.
- **Does the school have the specific expertise and resources to conduct an extensive investigation?** Part of that expertise includes utilizing a trauma-informed approach with victims and witnesses. Sexual misconduct investigations differ from academic misconduct or other disciplinary investigations in both the expertise and available personnel resources required. Schools should not assume they have the resources needed simply because they handle other disciplinary matters.
- **Is the alleged perpetrator a person of particular prominence in your school community?** If the person(s) involved are long-standing or beloved teachers or administrators, or a very popular student, you may want an external investigation to ensure it is unbiased and impartial. Even if you believe someone within the school could investigate in a neutral manner, it is important to consider how the investigation will be perceived by the school and broader communities.

2. What Is the Scope of the Investigation?

While there have been many recent media reports of large-scale investigations that have examined conduct that spanned decades, not every report of misconduct requires such an exhaustive investigation. If the allegation is of a single incident, involves a limited number of people, or is the first of its kind, an investigation limited to that specific incident may be sufficient. If, however, the allegation includes claims of longstanding misconduct, systemic ignorance about, or acceptance of, sexual harassment or bullying, or is one of a number of complaints that the institution has received, then a broader investigation is usually warranted.

The decision to conduct an “in-house” investigation or to engage an outside investigator often depends on how sensitive or “high profile” the matter is.

You should start with the particular allegation and try to determine what happened, how it happened, and who knew about it. Your investigation may end there. Or, it may lead you to uncover systemic issues such as a pattern of “looking the other way” when certain students or faculty—particularly those of wealth, stature, or popularity—act inappropriately. While schools are often wary of launching a broader investigation, institutions should not put blinders on and ignore where the investigation may lead. Initial allegations often expand and can point to systemic concerns (whether in the past or still in existence) that warrant a broader response.

3. How Do You Craft an Effective Letter to the Community?

When a school receives a report of sexual misconduct, particularly one that may become public through the media or create rumors around the school, the institution must consider how best to communicate with its community. It is important to respond quickly to allay concerns, while taking care not to jump to conclusions. The substance of a community letter will depend on the nature of the allegations—if the alleged conduct is likely an isolated incident, then a brief letter informing the community of the school’s anticipated approach to the problem may be all that is needed.

If, however, you believe there could be a larger issue and wish to seek community feedback to conduct a broader investigation, consider providing more details about the intended investigation and encouraging current and former students, teachers, and parents to contact the investigator if they have potentially relevant information. Your community letter should identify a contact person or a hotline number that community members can use. You also may want to address how anonymous information will be handled, and whether communications with the investigator will be



confidential so that community members will understand how their information will be used if they choose to participate.

It is important that the letter reflect your school's culture. Be sure the letter is specific enough to solicit helpful feedback and is drafted in a way that it will not seem accusatory or alarming to the community. While the letter should provide enough information to encourage others with potentially relevant information to come forward, it should not identify potential perpetrators in a way that could lead to accusations of defamation against the school.

4. How and When Do You Report the Findings?

School leadership should take into account both the allegations involved and the community's expectations and culture when deciding what, when, and how to communicate the investigation's findings. While some communities may expect a detailed report of the investigation process and findings, in other cases a report simply noting that the allegations have been handled may be sufficient. If it is a single incident of misconduct or a minor issue that is unlikely to have garnered the interest of the community, then the report may not need to be detailed or public. However, if the issue is systemic, or one that has received significant attention, then more information likely will need to be provided to the community. Carefully consider who will be named in the report as perpetrators (victims are rarely named unless they have otherwise already made themselves known to the community), who should receive the report, and how it will be communicated.

5. How Do You Demonstrate That You've Addressed the Problem?

The proper response to the problem will, of course, depend on the nature of the problem itself. Misconduct involving a particular student or teacher may be handled by discipline or termination/expulsion without further action. If, however, the allegations or investigation suggest more systemic issues—such as a culture that condones or

is “willfully ignorant of” misconduct—then think more broadly about remedial measures. Review your school's policies and procedures regarding sexual misconduct to make sure they are appropriate and user-friendly. If changes are needed, involve appropriate members of the community in decision making about those changes. Consider whether you should provide additional training, discussions, or other activities for faculty or students to address the issues you have uncovered.

Most important, make sure you communicate frequently about the process the school is undertaking and any changes you are making; this will build trust and buy-in from your community. While investigating and disclosing sexual misconduct can be a difficult and painful process, if it is handled correctly, a school can emerge from such a crisis stronger than ever. 🚩

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Editor's note: On September 22, 2017, the U.S. Department of Education (ED) withdrew two key guidance documents from the Obama era regarding investigation and resolution of sexual misconduct complaints received by schools governed by Title IX and issued interim guidance. The interim guidance gives institutions more latitude in designing their investigation and adjudication processes, including which standard of evidence to use. Though “interim,” the guidance suggests that ED will seek a more streamlined and deferential (to the institution) approach to new regulations following a public notice-and-comment rule-making process.