

SAM Litigation Against Schools

Charles Leitch, J.D.

Patterson Buchanan Fobes & Leitch, Inc., P.S.

cpl@pattersonbuchanan.com

This Training...

- Not substitute for legal advice
- Every circumstance different
- Instructional purposes only
- I am not your lawyer **here**
- Best practices and not necessarily *standard of care*



SAM CASES ON THE RISE

Grooming/contacts easier to hide

Parents often not supervise students at home

Schools hard to supervise

Weakening defenses to Districts under law

Statute of limitations not stopping most cases

SAM Case Types

BY STAFF:

- Pedophile
- Serial groomer/toucher
- Staff seeking emotional connection
- Inappropriate communicator

SAM Case Types

BY Students:

- Unsupervised students
- Students with impulsivity control
- Exceeding consent
- Normal sexual development

Typical SAM LOCATIONS



Transportation



Bathroom/Toileting



Transition times



Small staff to student ratios



Isolated Services



Where there is no 1 to 1 supervision or paraeducator supervision (student cases)



Field Trips



Sport or Activities



Off Campus

What is Inappropriate?

A blue 3D figure stands in the center of the slide, appearing to step on several broken, grey, spherical objects. The background is black, and the text is white.

- Impossible to describe in every situation
- Experienced educators “would know inappropriate?”
- Against recognized professional practices?
- Disagreement among peers?

Usually Notice Fracture



Teacher



Security



**School
Counselor**



Custodian



Para

Staff often a liability

- Did they know something and not report it?
- Will they say trained appropriately?
- Will they say supported by the District in their jobs?
- Stopped reporting as a result of prior failures to follow-up?
- Do they even remember?
- Does the District have records to disprove their testimony?

**DUTIES TO
REPORT ARE
MANDATORY**

WHAT GETS IN WAY OF PROTECTING STUDENTS?

- *Reporting makes no difference...*
- *It's none of my business...*
- *We have always allowed that...*
- *Not my job to supervise them...*
- *That's just the way they are...*
- *I just want to get along with everyone...*
- *They would never do that...*
- *I don't want to overreact...*

Legal Claim Types in SAM Lawsuits



State Torts Generally....

- Flow from duty created by a special relationship:
 - Duty to control employees
 - Duty to protect students
- Usually limited by foreseeability
- Breach measured by a “reasonable person” standard
- **Known or should have known...**

WLAD & FLOETING v. Group Health Coop.

- In 2019, Washington Supreme Court held under Washington Law Against Discrimination (WLAD), **employers directly liable for sexual harassment of members of public by employees** even if employer did not participate in discrimination and was not negligent in training/supervising employee
 - Held sexual harassment is form of sex discrimination
 - Explicitly rejected standard where liability would require proof of knowledge about employee's discriminatory conduct

W.H. V. OLYMPIA SD

- In 2020, Washington Supreme Court held **“school districts are subject to strict liability for discrimination by their employees in violation of the WLAD in places of public accommodation under RCW 49.60.215”**
- Includes intentional sexual misconduct, including physical abuse/assault

What is fallout of *Floeting?*

School districts strictly liable for any intentional sexual misconduct of employees with students

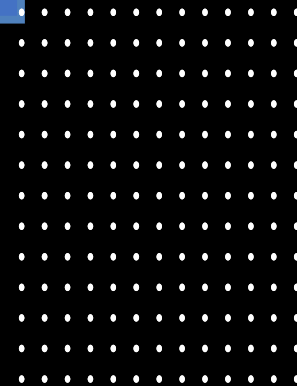
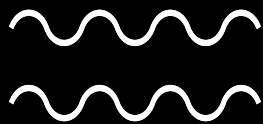
Plaintiffs only need to establish by preponderance of evidence sexual misconduct occurred

Prevailing allows recovery of **attorney fees and costs**

Avoid Strict Liability Under *WLAD*?

- Prove sexual misconduct did not occur
- Prove sexual misconduct occurred off-campus, *i.e.*, not District activity/place
- Applies **retroactively** so cases from decades ago are subject to strict liability

Where strict liability the only issue is damages to Plaintiff





NOTICE TO DISTRICT IS FOCUS OF SAM CASES

Records Issues **ABOUND**

A stack of blue folders is shown, with a magnifying glass focusing on one of the folders in the middle. The background is a dark grey gradient.

- No statute of limitations
- Records hard to find
- District staff move on
- Memories fade
- Good documentation
 - Helps memory
 - Creates institutional knowledge
- BUT Hindsight VERY unfair

When Claims Brought...

- **Significance of Training & Policy**
- Depositions under oath
 - Not remembering not help District
 - Perpetrator will take the 5th
- All records will be used against District:
 - Student and staff records
 - Any email
 - Any writing
 - Trainings
- Best practices will be characterized as standard of care



When Claims Brought...

- Every process/exhibit that creates obligation for follow-up will be employed to show a need for follow-up supervision...
- District needs to have an answer for why **NOTHING/LESS** was done in face of issue
- Obligation to supervise staff **AND** students reasonably...

EVERYONE HATES ABUSERS

**CAN DISTRICT EXPLAIN HOW NOT TO
BLAME?**

**CAN YOU DO IT IN A WAY THAT DOES NOT
MAKE SOMEONE ANGRY?**

