Don’t step on my toes – Boundary Investigations

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DISCLAIMER:

This presentation is educational only and does not constitute legal advice. If related legal advice is wanted, you would need to contact me through appropriate District procedures with the specifics of the request.
History Lesson: Anchorage 1989
Satch Carlson was not charged because his victim was 17.

- AS 11.41.436 was amended in 1990.
- An offender commits the crime of sexual abuse in the second degree if being 18 years of age or older, the offender engages in sexual penetration with a person who is 16 or 17 years of age and at least three years younger than the offender, and the offender occupies a position of authority in relation to the victim.
Who was the first person convicted under the new statute? This slide provides a hint.
West Anchorage High School 1995
Should we do an investigation?
Okay. What do you mean conduct an investigation?
First Step: REPORT. REPORT. REPORT.
• (a) The following persons who, in the performance of their occupational duties . . . have reasonable cause to suspect that a child has suffered harm as a result of child abuse or neglect shall immediately report the harm to the nearest [OCS office], if the harm appears to be a result of a suspected sex offense, shall immediately report the harm to the nearest law enforcement agency:

• (2) school teachers and school administrative staff members, including athletic coaches, of public and private schools;

• (g) A person required to report child abuse or neglect under (a) of this section who makes the report to the person's job supervisor or to another individual working for the entity that employs the person is not relieved of the obligation to make a report required under (a) of this section.
Second Step: Notify the District’s Insurance Carrier
Third Step: Administrative Leave with Pay
Administrative Leave with pay is the cheapest insurance that a school district can buy!

Balance between criticism from the public (why are you paying that pervert?) and minimizing risk of potential wrongful termination liability.
Investigations come in all shapes and sizes. The facts should drive the investigation.
Relevant Factors for Investigation

- Nature of Allegations
- Initial Facts
- Perpetrator
- Victim
- Location
- Staff Availability/Skill Set
Can we just wait for the police?
Yes…. but there are problems with waiting on law enforcement

- Timeline is out of your control
  (Employee can be on Investigative Leave for a very long time)
- Police/Troopers have no obligation to provide you with information. Police reports are exempt from the Public Records Act during active investigations.
- Reasonable doubt vs. Preponderance of the Evidence
- Police may decide not to file charges. What do you do then?
School Districts have an independent duty to protect students and are independently liable for failing to do so.
Who conducts the District investigation?

- Magnum PI? No.
- Administration, or
- Independent Investigator
- Attorney/Client Privilege
Investigation 101

- Interview witnesses
- Gather documents
- Pull employee emails
- Conduct Investigatory Conference with Alleged Perpetrator
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<th>Multiple and Overlapping Investigations</th>
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Who reviews the Investigation report?
The Investigation is Complete. What do you do?

1. Nothing?
2. Return to Classroom?
3. Training?
4. Lesser Discipline
5. Non-retention with Administrative Leave
6. Termination?
Questions?