

A person with a backpack is walking away from the camera down a hallway. The hallway has a tiled floor and fluorescent lights on the ceiling. The person is wearing a plaid shirt and dark pants. The overall tone is dark and somber.

Catching the Trash

Holding Teacher Unions, School Districts,
and the U.S. Department of Education
Accountable for the Epidemic of Sexual
Abuse in Public Schools

By Paul Zimmerman



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Key Findings

- Federal data documents an epidemic of sexual abuse in public schools. Between 2010 and 2019, the number of complaints filed with the U.S. Department of Education’s Office for Civil Rights (OCR) alleging sexual violence against K–12 schools more than tripled. The most recently published Civil Rights Data Collection (CRDC)—from 97,632 schools—underscores this unfortunate trend. For 2015–16, the CRDC reported 9,649 incidents of sexual violence; of that number, 394 constituted instances of rape or attempted rape. For 2017–18, the numbers were 13,799 and 685, respectively—an increase of 43 percent and 74 percent.
- The latest CRDC dates from 2017–18, so parents, teachers, and students do not have timely, reliable, and publicly available data about sexual abuse in their schools. Compounding this problem are instances in which a local education agency (LEA), often acting in concert with the local teacher union leaders, conceals sexual abuse by permitting accused employees to resign and move to a new school or district rather than face investigation and possible punishment—a practice called “passing the trash.”
- LEAs and unions use collective bargaining and nondisclosure agreements to conceal the records of abusive employees, and union leaders wield their powerful influence in many state legislatures to stymie legislation that would hold public employees accountable for their sexual misconduct in schools.
- States should penalize public school employees who fail to report sexual abuse committed by colleagues; establish penalties for school district personnel who help employees find jobs in other school systems when they have “probable cause” to believe that these employees have engaged in sexual abuse; and prohibit agreements that conceal records of sexual misconduct by teachers.
- OCR must do more to enforce Title IX in public schools so as to protect students from sexual assault and other abuse, provide support to victims, and investigate abuse allegations fairly and in a timely manner.
- Congress should require LEAs to report and publish annually school-level data on the violent crimes, including sexual assault, occurring in their educational activities and programs. Congress should also mandate financial penalties for an LEA’s failure to report this data.

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Executive Summary

Media reports and academic studies on K–12 school employees sexually abusing students have led to calls from lawmakers and children’s rights groups across the country to expand the public’s ability to scrutinize employee discipline and penalize administrators who look the other way—or, worse, actively help offenders move to different school districts—when such abuse occurs. In spite of these broadly supported pushes for change, most parents, students, and teachers remain in the dark about the prevalence of sexual abuse and other criminal activity in their local public school. Legislative efforts at the state level to prevent school districts from moving sexually abusive teachers from school to school and passing them off on other districts (a practice known as “passing the trash”) have often collapsed under pressure from union leaders.

This report reviews current state and federal policy on preventing sexual abuse in K–12 schools, then offers case studies illustrating how various actors—school and district personnel, teacher unions, and the federal department charged with enforcing laws against sexual assault in public schools—bear responsibility for a systemic failure in preventing, and responding to, sexual assaults in public schools.

State lawmakers must pass reforms that protect students, empower parents, and hold abusers accountable while respecting due process. The U.S. Department of Education must vigorously use any available enforcement authority under federal law, particularly Title IX, to ensure that LEAs comply with their obligations to prohibit the practice of passing the trash and that districts investigate and address sexual abuse in their schools. Congress should also strengthen existing federal legal requirements that prohibit school districts from passing the trash to provide for appropriate penalties when violations occur.

This report further demonstrates the need to improve upon the Civil Rights Data Collection with a federal transparency act that would require, on an annual basis, a detailed picture of violent criminal activity, including sexual assault, in K–12 public schools. An annual public disclosure of such data by schools and school systems would allow parents, students, and teachers to understand and scrutinize safety conditions on campus. The data would also serve as an important starting point for educating federal, state, and local policymakers about the prevalence of sexual abuse and other violent criminal activity on campus and assist in tailoring meaningful policy solutions. For these reasons, the report calls on Congress to require LEAs to publish school-level data each year revealing the frequency of violent and sexual criminal activity on K–12 school property, on school-sponsored transportation, and in school-sponsored educational programs and activities.



Introduction

In 1985, a California public school teacher resigned amid allegations that he had touched children inappropriately. Despite the circumstances of his resignation, the teacher received a letter from the school district promising that it would not provide any “information of a derogatory nature” regarding the teacher to “any one or any agency at any time.” 27 years later, after working in multiple public schools and districts in spite of dozens of complaints about inappropriate touching and other behavior that were effectively discarded by school district personnel throughout his career, the teacher was arrested and sentenced to nine years in prison after groping the 10-year-old daughter of a police officer between the legs.¹

Over the course of 14 years of employment by Chicago Public Schools (CPS), a basketball coach and teacher received multiple warnings, suspensions, and months-long assignments to offices where he did no work but continued to receive a paycheck. CPS took these measures in response to a multitude of complaints, including two allegations that he had attempted to coerce players on his basketball team to have sex with him for money. In 2012, in relation to the second sexual abuse allegation, he resigned prior to his termination, alleging that his lawyer advised him that, in return for doing so, CPS would not inform other districts about his conduct when he applied for coaching positions.²

In 2005, a public school teacher in Wisconsin resigned after signing an agreement, negotiated with the assistance of his local teacher union representative, in which the school district agreed to destroy all records regarding the issue that led to his departure. In 2011, the teacher resigned from a Chicago public school for children with emotional and behavioral issues amid allegations that he invited his students to watch movies with him in bed, taught them how to access pornography on his computer, and stroked the zipper on the pants of one of his students. He later asserted that he received a promise from school personnel that they would “not go into the details” of his resignation if asked by another school district. He resurfaced in Florida public schools and taught there until he was forced to resign once again in 2018.³

These horrid stories and others featured in this report arise from a systemic failure to hold sexually abusive school employees accountable for their behavior. In spite of information from multiple

sources that a teacher sexually assaulted or otherwise abused a student, school administrators or district officials in these cases either chose to allow the abuser to operate in the shadows or quietly transferred that teacher to another school or district to find new victims and restart the cycle of abuse.

The latter practice is called “passing the trash,” and research indicates that it is a shockingly frequent phenomenon in America’s public schools. According to data cited in a 2018 study, a teacher who sexually abuses children is, on average, passed to three school districts and may have as many as 73 victims.⁴ In its 2010 investigation of 15 cases in which schools hired or retained individuals with histories of sexual misconduct, the U.S. Government Accountability Office (GAO) determined that four of the cases involved school officials allowing an employee to resign in order to avoid disciplinary action, leaving the employees with unblemished records and free to find new victims in another school district. In three of those four cases, the officials provided a positive recommendation or reference letter for the former employee.⁵ The ease with which school officials can pass sex abusers to other districts helps to explain the finding of a 2004 study published by the U.S. Department of Education (Department of ED) that approximately 10 percent of students have been subjected to sexual misconduct at the hands of a school employee.⁶

The web of culpability for passing the trash extends beyond LEAs (and the public employee unions that often heavily influence their policies) to state and federal officials who do not obey or enforce federal laws aimed at curtailing this nationwide problem. In addition to federal Title IX obligations to prevent sexual assault and harassment in schools,⁷ in 2015, Congress required state educational agencies (SEAs) to prohibit school personnel from assisting a school employee in obtaining a new job working with children when they know or have “probable cause” to believe that the employee sexually abused a minor or student.⁸ Eight years later, most states have failed to pass such a law.⁹ And some states still do not publish data showing the occurrence of serious crimes on K–12 campuses, leaving parents anxious about the safety of their children’s learning environments and educators uninformed about their personal safety.

This report examines the available research on the prevalence of employee-on-student sexual abuse and the reasons why the practice of passing the trash so frequently occurs. It then reviews policies at the state and federal level that target sexual abuse and passing the trash in K–12 schools and spotlights the roles of three actors—public school administrators and school district officials, teacher unions, and federal officials—in perpetuating a breakdown in accountability. Finally, it proposes measures to overcome bureaucratic inertia and union obstruction at the state and federal levels.

Nearly every teacher works hard to serve his or her community and has the best interests of students at heart. They have nothing to lose and everything to gain from these proposals. Teachers and staff, as well as parents and students, should be aware of sexual assaults and other violent activity that occurs in their schools, and school districts should not knowingly force educators to work in the same building as a sexually abusive or violent individual. That is why the proposals contained in this report aim to wrest control of information about sex abusers from local school bureaucracies and offer it to each school’s community, including teachers.

If school administrators and district officials instead choose to keep their communities in the dark and allow known abusers to move from school to school or district to district, they should be penalized, and their LEAs should suffer financial sanctions, up to and including the loss of federal funding.

Sexual Abuse in K–12 Schools and the State Law and Policy Landscape

Sexual Abuse of Students by Teachers, “Passing the Trash,” and Lack of Data

The social science literature offers many reasons for the prevalence of sexual abuse by public school employees and why school administrators are primed, in a startlingly high number of cases, to look the other way rather than hold abusers accountable. As the 2018 study noted above explains, “Close contact with students, who are often eager to please their teachers, allows offenders to ‘groom’ a student for eventual abuse, by giving special attention and rewards while slowly increasing the amount of touching or other sexual behaviors. In this way, offenders exploit students’ need to please and take advantage of the tremendous power they have over students.”¹⁰

CBAs negotiated between school districts and public employee unions combine with confidentiality agreements to shield sex abusers from appropriate scrutiny by prospective employers.

One factor that works in favor of predatory employees is the “veil of silence” that surrounds the “sensitive topic” of sexual abuse, creating an atmosphere in which they can intensify or repeat the abuse without exposure or consequence.¹¹ Incomplete background checks and the failure to share information between school districts are two major loopholes permitting sex abusers to move undetected from district to district to find new victims and escape unwanted attention.¹²

Collective bargaining agreements (CBAs) are another key contributor to the problem, as they “often allow for scrubbing of personnel files, so no record is left once an offender leaves the system.”¹³ In this way, CBAs negotiated between school districts and public employee unions combine with confidentiality agreements to shield sex abusers from appropriate scrutiny by prospective employers. As the authors of the previously cited 2018 study explain, “Teacher, union, and employee rights agreements can limit the information a prior employer can share about a school employee, but such information sharing can be critical to stopping an offender from being rehired in another district.”¹⁴

The GAO’s 2010 report on sexual abuse sheds light on why administrators resort to passing the trash: “One administrator told us that it could cost up to \$100,000 to fire a teacher, even with ‘a slam dunk case.’ Other officials told us that, depending on the terms of a separation agreement, school administrators may not be able to provide anything less than a positive recommendation for an

employee for fear of potential lawsuits. One expert we spoke with noted that it is often easier and faster for school administrators to remove a problem teacher informally in order to protect the children within their own district, especially when the administrator agrees to provide a positive recommendation to encourage a resignation.”¹⁵

“When the consequences of firing a sex abuser make it more attractive to provide a positive recommendation and move the employee elsewhere, it is no exaggeration to write that the administrators, officials, and unions that run public schools have grossly failed in their responsibilities to families and students.”

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The following sections examine some existing state laws and policies aimed at stopping sexual abuse by employees in K–12 schools and preventing school

personnel from passing known or suspected abusers on to other schools.ⁱ Although each of these laws and policies is valuable, gaps exist that limit their effectiveness, particularly in contrast to stronger laws that void agreements suppressing information about a teacher’s sexual misconduct and that punish personnel who help abusers get new jobs.ⁱⁱ

Background Checks

According to the findings of a study on state policies related to sexual misconduct in schools published by ED in 2022, as of October 2020, all 50 states and the District of Columbia require schools to conduct criminal background checks of prospective employees.¹⁶ Of course, the fact that sex abusers so often remain unreported blunts the ability of school officials to weed them out with such checks. Moreover, even for sex offenders who have been investigated, prosecuted, and convicted, performing a complete national background check entails checking databases in each of the 50 states and then searching federal records.¹⁷

The nongovernmental, nonprofit National Association of State Directors of Teacher Education and Certification (NASDTEC) maintains a database of teachers who have had their licenses suspended or revoked; however, a combination of administrative delays and incomplete reporting has rendered

ⁱ Other state laws and policies aimed at preventing the practice of passing the trash include applicant disclosure requirements, mandated information sharing between school districts, and statewide teacher misconduct databases. Although these measures are no doubt useful in some circumstances, their effectiveness depends on voluntary disclosure of misconduct by school employees and administrators who may have incentives not to be truthful or who are silenced by nondisclosure agreements or CBA provisions negotiated by teacher unions.

ⁱⁱ While this report focuses on sexual abuse committed by school employees against students, it is important to note that much of the law and policy proposed here could be applied to broader issues of school secrecy that put students and teachers in danger. The 2021 case in Loudoun County where a boy (dressed as a girl) sexually assaulted a girl in the women’s restroom is an example. After transferring to another high school, he “snatched an unassuming female out of the hallway, abducted her into an empty classroom, nearly asphyxiated her, and sexually assaulted her.” *Report of the Special Grand Jury on the Investigation of Loudoun County Public Schools*, CL-22-3129 (2022), 4, https://www.loudoun.gov/specialgrandjury?fbclid=IwAR3U3UlxEzy5m7KG_rmn5r5Yehv01c2FR359iKIWQSEPOm6fe2lkrt114-w. After waiting 18 months and only after pressure from the House Education and Workforce Committee, OCR announced that it would investigate whether Loudoun County Public Schools violated Title IX in its handling of this case. Landon Mion, “US Department of Education Launches Probe into Loudoun County Public Schools over Handling of Sexual Assaults,” *FoxNews.com*, April 11, 2023, <https://www.foxnews.com/us/us-department-education-launches-probe-loudoun-county-public-schools-over-handling-sexual-assaults>.

this listing unreliable, as demonstrated in a *USA Today* report revealing that the NASDTEC database was missing over 1,400 cases where teachers had lost their licenses.¹⁸ As the 2022 ED-commissioned report explains, the NASDTEC database “references only certified employees, is a voluntary, paid membership organization, and does not reveal why disciplinary actions were taken against teachers, and therefore, would not disclose an applicant’s history of sexual abuse or misconduct involving a student or minor.”¹⁹

In its 2014 report on school sexual abuse, the GAO listed several reasons school officials say background checks remain ineffective in screening sex abusers. These include inconsistent requirements across states for listing sex offenders in the state registry, lack of access to other states’ systems, and the impossibility of including sexual predators who have either not been caught or who have been allowed to slip away under threat of investigation and discipline.²⁰ Data on the infrequency of discipline against a teacher’s license is limited, but in a 1994 study of 225 cases in which New York teachers admitted to the sexual abuse of a student, researchers found that “none of the abusers was reported to authorities and only 1 percent lost their license to teach.”²¹

Despite these issues limiting the utility of background checks, the 2022 ED-commissioned study found that, in 16 states, such checks are the *only* tool provided under state law and policy to prevent passing the trash from district to district.²²

Mandatory Reporting Laws

Another tool for stopping sexual abuse in schools is a mandatory reporting law, which requires individuals in certain professions or with certain responsibilities (or, in some cases, all individuals) to report suspected abuse to state or local authorities. The authors of the 2018 study on passing the trash note that, even in states that impose sanctions on school employees who fail to report their reasonable suspicions that another employee has abused a student, administrators remain “apprehensive” about reporting suspected abuse due to the potential for unfairly ruining the reputation of the accused, negative reaction among the alleged victim’s family members, and the vulnerability of the school to a lawsuit triggered by the report.²³

“**Research indicates that school employees report a mere five percent of incidents of sexual abuse by their co-workers to law enforcement or child welfare agencies despite the potential legal repercussions for failing to do so.**”

Whatever the reason for the apprehension on the part of school officials to report abuse, research indicates that school employees report a mere five percent of incidents of sexual abuse by their co-workers to law enforcement or child welfare agencies despite the potential legal repercussions for failing to do so.²⁴



The Federal Law and Policy Landscape

Title IX and ESSA Mandate on Passing the Trash

Title IX of the Education Amendments of 1972 (Title IX) provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance”²⁵ The U.S. Supreme Court has held, in a string of cases, that Title IX’s prohibition of discrimination extends to sexual abuse, including sexual assault or harassment of a student by a teacher.²⁶ ED has interpreted the statute for years to require recipients of federal education funds—including public elementary and secondary schools—to address sexual assault and other abuse in their programs.²⁷ In 2020, for the first time in the agency’s history, U.S. Secretary of Education Betsy DeVos published Title IX regulations prohibiting sexual harassment, including sexual assault.²⁸

Despite this legal obligation under Title IX and widespread evidence of teacher-on-student sexual assault in public schools, too many school districts have not taken seriously this responsibility—in part, due to a lack of enforcement by OCR.ⁱⁱⁱ

In 2015, recognizing the shortcomings of the existing enforcement regime, U.S. Senator Pat Toomey of Pennsylvania introduced an amendment to the Every Student Succeeds Act (ESSA) requiring states to pass laws prohibiting school employees from passing the trash.²⁹ The Senate unanimously approved the amendment, 98–0, and ESSA became law later that year.³⁰

ⁱⁱⁱ The New York City Department of Education (NYDOE) is notable in this regard for failing to heed Title IX’s commands to prevent and address sexual assault and harassment and to offer support to individuals who file complaints. In August 2021, NYDOE settled for \$700,000 a lawsuit brought by four female students in New York schools who asserted that school employees ignored their complaints of sexual assault and harassment by classmates in violation of Title IX requirements. The settlement required changes in NYDOE policies, such as facilitating parents’ escalation of sexual abuse complaints when school personnel fail to address them and requiring supportive measures to students who file complaints. Mark Keierleber, “NYC Schools Reaches \$700K Court Settlement with Student Sex Assault Survivors as Biden Administration Rewrites Title IX Rules,” *The 74*, August 25, 2021, <https://www.the74million.org/article/new-york-city-settlement-four-students-sexual-assault/>. The settlement agreement failed to instill a culture of compliance among NYDOE employees, as the New York government recently reported that NYDOE had one of the lowest participation rates by any agency in the city’s mandatory sexual harassment training, with only 62 percent of employees participating in the training compared to an average of 79 percent citywide. Madina Touré, “New York Education Department Got One of Worst Completion Rates for Sexual Harassment Training Course,” *Politico*, March 3, 2023, <https://www.politico.com/news/2023/03/03/doe-sexual-harassment-training-00084962>. NYDOE employees’ lack of awareness of how to handle sexual assault and harassment allegations exemplifies the problems of a school-level lack of compliance with Title IX’s requirements and highlights OCR’s negligible enforcement efforts in the context of K–12 public education.

ESSA’s Section 8546 provides as follows: “A State, State educational agency, or local educational agency . . . shall have laws, regulations, or policies that prohibit any . . . school employee . . . from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, or has probable cause to believe, that such school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law.”³¹

The exemption of “the routine transmission of administrative and personnel files,” combined with school and district policies grounded in CBA provisions that require the scrubbing of personnel files after a certain period, creates an unforeseen but easily exploited loophole.

The law also significantly limits the authority of the U.S. Secretary of Education (Secretary) as follows: “The Secretary shall not have the authority to mandate, direct, or control the specific measures adopted by a State, State educational agency, or local educational agency under this section.”³² And the basic structure of the law—relying on states to pass legislation prohibiting the practice of passing the trash—has led to limitations on its reach and effectiveness. As the 2018 pass the trash study indicates, “Although ESSA mandates that states pass legislation and offers model language for that legislation, it offers no guarantee that states will be held accountable for implementation of the provision.”³³ In fact, the only enforcement mechanism is the “nuclear option” of withholding all of a state’s federal funding under the Elementary and Secondary Education Act (ESEA).

State Failure to Implement the Law

A state law or policy meeting the requirements of Section 8546 and preventing the exploitation of its loophole on “the routine transmission of administrative and personnel files” has two components. First, such a law or policy would penalize a school employee who assists a colleague in securing a job despite knowing, or having probable cause to know, that the colleague engaged in sexual misconduct with a minor or student. Second, it would prohibit any agreement, including a CBA, that results in withholding information about sexual misconduct investigations or findings from a future employer.

The 2022 ED-commissioned study found that, as of October 2020, 20 states have put in place laws or policies to “explicitly prohibit suppressing information regarding school employee sexual misconduct.”³⁴

According to the study, of these 20 states, 11 “prohibit current or former employers from expunging information regarding allegations or other findings of sexual misconduct from employee records.”³⁵ Some states “prohibit the suppression of this type of information through termination/resignation agreements (12 states), severance agreements (9 states), collective bargaining agreements

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Only eight states and the District of Columbia directly prohibit school staff from helping a person obtain a new job if the staff member has probable cause to believe that the person committed sexual misconduct regarding a student.
”

(9 states), or confidentiality or nondisclosure agreements (6 states).”³⁶ Three states prohibit “[s]anitized letters of recommendation for jobs involving children or students” for employees who engaged or allegedly engaged in sexual misconduct.³⁷

Because it chose not “to determine the extent to which each state is complying with Section 8546,”³⁸ the ED-commissioned study does not categorize laws and policies that track the language of the ESSA provision on prohibiting aiding and abetting abusers in obtaining new employment. Research for this report uncovered that only eight states and the District of Columbia directly prohibit school staff from helping a person obtain a new job if the staff member has probable cause to believe that the person committed sexual misconduct regarding a student.³⁹ Only three states—Ohio, Oregon, and Tennessee—have passed laws both prohibiting school staff from helping sexually abusive teachers get new jobs and outlawing confidentiality agreements that would prevent the sharing of information about sexual misconduct with prospective employers.

Respondents to an ED-commissioned study said a stakeholder would not accept prohibitions on relationships between educators and students when the student was of legal age.

The ED-commissioned study offers general information from SEA respondents explaining, perhaps, why so few states have chosen to comply with Section 8546:

Respondents described stakeholder pushback against their efforts to develop laws and policies prohibiting aiding and abetting. For example, respondents in one state reported that some stakeholders argued that “probable cause” is not a criminal offense and therefore should not incur revocation of educator licenses and abrogation of future employment in schools. In a second state, respondents said a stakeholder would not accept prohibitions on relationships between educators and students when the student was of legal age. Another reported challenge was existing privacy laws that prevent districts from disclosing personnel records.⁴⁰

This “stakeholder pushback” echoes the strong union pressures deployed against the common-sense reform efforts described in the case studies below.

ED Refrains from Enforcement Measures

In 2018, Secretary DeVos pressured states to prohibit passing the trash in order to receive ESEA funding, warning in a letter to governors that “[f]ailure to meet [the law’s] requirements may result in the Department taking appropriate enforcement action.”⁴¹ But, as shown above by the low number of states that have passed the law, this letter did not prompt states to take action. In a 2022 letter to the current Secretary Miguel Cardona, Senators Toomey and Joe Manchin of West Virginia pointed out that “[t]he Department of Education . . . has continued to extend ESEA funding to states who have failed to properly safeguard students from sexual predators, which is in violation of” ESSA’s funding requirement.⁴²

In June 2022, along with its release of a study of state laws and policies to prevent sexual misconduct in K–12 schools, ED published a blog post stating that, “to underscore states’ obligations in addressing this critical issue, and to support states’ efforts to meet ESEA’s requirements,” it would publish examples of ways in which states “have designed, implemented, and evaluated their laws, regulations, and policies and practices in this area” and host a webinar “to highlight important practices in the areas of employer disclosure and information-sharing among educational entities.”⁴³ The blog post stated that ED would “monitor” state laws and policies in this area and, in cases of noncompliance with Section 8546, would “stand ready to work with states through training, differentiated technical assistance, and more intensive supports or enforcement actions.”⁴⁴

Despite its glancing nod to “enforcement actions,” this language does not offer confidence that ED plans to serve as anything more than a sounding board for consideration of state policies that are palatable to teacher union leaders.

Data on Criminal Activity in K–12 Schools

Parents, students, and educators suffer from a lack of data reporting on the prevalence of sexual abuse in public schools throughout the country. As the GAO notes in a 2014 report, “[a]lthough several federal agencies collect related data, none collect comprehensive data that would quantify the prevalence of sexual abuse by school personnel.” Although OCR has an electronic database listing sexual assault complaints under Title IX, the data does not reveal whether the alleged sex abuser is a teacher, student, or non-teacher employee. ED, the U.S. Department of Health and Human Services, and the U.S. Department of Justice all collect data from state and local institutions on child abuse, but “none capture[s] the extent of sexual abuse and misconduct perpetrated by public K–12 personnel.”⁴⁵ As we shall see in the case studies below, this failure is compounded by the lack of consistent data reporting requirements—and publication of this data—in the states.^{iv}

^{iv} One piece of federal legislation that would enact a parental notification requirement for certain criminal activity is currently before Congress. On March 24, 2023, the House of Representatives passed the Parents Bill of Rights Act, which includes a requirement for LEAs receiving federal funds to ensure their schools provide parents “timely notification of any violent activity occurring on school grounds or at school-sponsored activities in which one or more individuals suffer injuries” H.R.5 - Parents Bill of Rights Act, 118th Congress (2023–2024), Text, <https://www.congress.gov/bill/118th-congress/house-bill/5/text> (Sec. 104(3)(C)(iii)). At the time of this report’s publication, the Senate had not acted on the bill.



The shortcomings of ED’s current tool to collect school-level data on criminal activity, the Civil Rights Data Collection (CRDC), illustrate the pressing need for another system of reporting. The CRDC is a biennial survey of almost all LEAs and schools in the country through which OCR obtains data for the enforcement of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title IX.⁴⁶ ED publishes the CRDC data on its website.⁴⁷ This data includes information from K–12 schools on documented incidents of criminal and violent activities that occurred at the school, including robbery, physical attacks, rape, and sexual assault.⁴⁸

Specifically for the 2020–21 cycle, the CRDC contained questions listed as optional about the number of documented incidents of sexual crimes committed by students and by staff members and the number of allegations that a staff member committed these offenses “followed by a duty reassignment prior to final discipline or termination.”⁴⁹ OCR has not posted this data as of the date of publication of this report.

There are several reasons why the CRDC falls short of what is needed to inform the public about criminal activity in their schools. First, the CRDC fails to provide timely information on school safety. The data collection ordinarily occurs every two years, and there has been significant lag time between the collection and its disclosure to the public. For instance, OCR released the 2017–18 CRDC in October 2020.⁵⁰

In 2021, ED suggested it would revise the 2021–22 Civil Rights Data Collection to remove all of the questions from the survey that dealt with sexual misconduct by school staff.

Second, the location of CRDC data on a federal agency website makes it likely that very few people—those who are aware of the data’s existence and know how to find it—will actually see it.

Third, OCR’s recent moves relating to the collection of certain data elements on the CRDC raise questions about ED’s commitment to collecting critical data about public schools that causes discomfort to school district bureaucracies

and teacher union leaders. In November 2021, ED issued a notice of the questions that it planned to ask in the 2021–22 data collection, indicating its intent to eliminate all of the questions from the survey that dealt with sexual misconduct by school staff and the disposition of investigations into such conduct—questions that had been added by Secretary DeVos during the prior administration.⁵¹ Approximately a month later, before the end of the 60-day window for public comment and under a torrent of public criticism, ED backtracked and took the rare step of issuing a new notice indicating that it proposed to retain these questions.⁵² The Department provided no explanation for its reversal.⁵³

This incident raises serious concerns about OCR’s long-term reliability in collecting data regarding violent criminal activity in schools. The public has a strong interest in the establishment of a federally mandated, timely, and accessible data reporting tool on such activity that is free from political tampering.

Bureaucratic Roadblocks to Accountability

The section that follows contains stories from three states—Florida, California, and Illinois—revealing the major actors that block accountability for sexually abusive teachers in K–12 schools and fail to take action to counter the practice of passing the trash. In Florida, school administrators failed to stop sexual abusers from preying on new victims despite multiple complaints and clear evidence that they were engaged in inappropriate behavior. In California, following a particularly heinous case of long-running sexual abuse of elementary school students by their teacher, teacher unions blunted reforms that would have most effectively promoted accountability for sexually abusive teachers and their administrative enablers. In Illinois, OCR refuses to use the legal tools at its disposal to force one of the country’s largest school systems to confront an epidemic of sexual abuse that continues despite a landmark settlement in 2018.

Florida—Administrators Fail Their Students and Communities

Hector Manley—“The school did not tell me anything.”

In 2015, Hector Manley joined Parkside Elementary School in Collier County, Florida, as a “non-instructional pre-K assistant.”⁵⁴ Over the course of his four school years at Parkside, his job title would change at least five times,⁵⁵ and he would sexually abuse at least 20 children before his arrest in 2019.⁵⁶

Prior to the arrest, children told investigators that Manley inappropriately touched them at school.⁵⁷ Manley’s arrest report stated that one victim said he touched her under her bra and inside her pants and underwear as many as three times a day.⁵⁸ Another student said Manley responded to her excitement over succeeding at a reading assignment by reaching under her shirt and bra while she stood at his desk.⁵⁹ Another child told investigators that Manley touched her chest in the school cafeteria and at soccer practice,⁶⁰ where he coached a team outside of school.⁶¹ Another child said that Manley had inappropriately touched her when she was in the first grade.⁶² Children accused Manley, a double amputee, of having them sit in his lap while he was in his wheelchair and molesting them in school hallways and in his classroom.⁶³

According to the complaints of lawsuits filed on behalf of the victims, Manley also used the multimedia instant messaging app Snapchat to groom students, reaching out to young girls to talk and exchange pictures.⁶⁴ One student accused Manley of sending her a friend request on the app when she was in the fourth grade and molesting her when she reached the fifth grade.⁶⁵ According to the lawsuits, Parkside’s Youth Relations Deputy reported these communications to school administrators during the 2017–18 school year.⁶⁶ That same year, Manley became a second-grade teacher.⁶⁷

An October 2018 email reveals that Parkside’s principal had a meeting with Manley to express concerns about his teaching performance and to caution him that failing to improve would affect his performance reviews.⁶⁸ During the 2018–19 school year, Manley became a first-grade teacher.⁶⁹

According to later testimony, around December 2018, a child reported to a recess monitor, five tutors, teachers, and administrators that Manley had molested her friend.⁷⁰ No one followed up on

her statement.⁷¹ At about the same time, Manley was assigned to a “pool teacher” position, a job that came with a decrease in salary and no assignment to a classroom.⁷² Between the time of the child’s report and Manley’s arrest in early March, he molested three additional students.⁷³ According to a school district records supervisor, Collier County Public Schools removed Manley from the school in late February 2019 based on allegations against him and fired him after his arrest for molestation in early March.⁷⁴

When they came back from summer break in 2019, students returned to a very different school. The principal and an assistant principal were no longer at Parkside.⁷⁵ 12 out of the 54 certified educators at the school had left, including half of the first- and second-grade teachers.⁷⁶ Most parents remained in the dark about the previous presence of a sex abuser at the school because district policies require notification only of parents of a student who was directly subjected to sexual misconduct.⁷⁷ Parents contacted by reporters covering the Manley case said they did not receive any direct communications about the case from the school or district.⁷⁸ Half of students at Parkside are enrolled in the English language learning program; according to a news report, 96 percent of students live in “economically disadvantaged” homes.⁷⁹ Thus, Parkside parents were hardly in a position to push the school board to give them more information about Manley’s crimes.

One parent expressed, in Spanish, her frustration with the school’s lack of communication regarding Manley and the safety of its students: “It’s not right. . . . They should have informed the parents so that we are aware of what is going on with our kids at the school.” Another parent, who learned

about Manley’s arrest by Facebook post, said in an interview, “The school did not tell me anything.” A third parent explained, “We are a community that does not have a strong economic power. . . . When things happen, we can’t just grab our kids and take them somewhere else.”⁸⁰

We are a community that does not have a strong economic power. . . . When things happen, we can’t just grab our kids and take them somewhere else.

In 2020, parents of victims filed two lawsuits alleging that school and district personnel never properly investigated Manley. The complaints allege that Parkside’s principal and other leadership received notice of accusations against Manley but never vetted

them in accordance with school policy.⁸¹ At the time of this report’s publication, litigation over the matter was still pending.⁸² In February 2022, nearly three years after his arrest, Collier County Public Schools admitted that there was no Title IX investigation file or report on Manley.⁸³

In January 2022, Manley pleaded no contest to 20 counts of lewd and lascivious molestation of a child under 12⁸⁴ and received a 25-year prison sentence.⁸⁵ In a letter read at trial, one of the victims wrote, “You tainted my life. . . . I never thought that a person could hurt another person like that.”⁸⁶

The Hector Manley story illustrates the bureaucratic obstacles to accountability in some local school districts, as well as some administrators’ utter disregard for parents’ rights to know about the dangers their children face at schools. School employees and administrators failed the students of

Parkside Elementary by declining to act on multiple reports of sexual assault by a teacher, leading to several more students facing abuse and lifelong trauma that they never should have experienced. Once retaining Manley (and simply moving him from position to position) no longer seemed possible and he was terminated, administrators kept parents in the dark about the sexual abuse that had occurred and what, if anything, they were doing to prevent its recurrence.

What happened at Parkside Elementary was clearly more than a single teacher's shocking sexual crimes; it was a systemic failure to take action against an abuser and to inform parents of the dangers their children face at their public school.

Jason Edward Meyers—"Jason's Girls"

According to the filings in a lawsuit against Miami-Dade County Public Schools, Jason Edward Meyers began his trail of sexually abusive behavior at least as early as 2004, when he sexually groomed a 17-year-old student in his creative writing class at Dr. Michael M. Krop High School.⁸⁷ Beginning a pattern of sexual abuse of students that would last for over a decade, he used "journal prompts, poetry, and her own sexually-charged writings" to coax her into a sexual relationship.⁸⁸ Around November 2004, according to the complaint, he and the student began engaging in oral sex acts.⁸⁹ In the same time period, a school police officer reported that she observed Meyers "leaning over [the victim] in a 'very personal' and 'intimate fashion' in the school's hallway."⁹⁰ The officer failed to make a report of the incident until after Meyers was arrested in 2016.⁹¹

In 2008, Krop High School's principal received an anonymous email indicating that Meyers was having sex with current and former students at the school.⁹² As jurors in a civil lawsuit against the school district learned much later, the author of the email was a boyfriend of a Krop student who had told him that Meyers had abused her when she was underage.⁹³ Administrators did not place the email or the police report in Meyers' personnel file.⁹⁴ Although the school said later that police investigated the case and closed it "due to a lack of credible evidence," the law enforcement personnel allegedly assigned to the case later said they had no knowledge of it.⁹⁵

In the civil trial, a former student said that he approached Krop's assistant principal with a complaint about Meyers' multiple inappropriate relationships with current and former students during the 2009–10 school year, but the assistant principal "didn't seem to be interested."⁹⁶ The student said he expected the assistant principal to look into his complaint; it never happened.⁹⁷ The school district has denied that the student ever approached the assistant principal and maintained that "there were never any other complaints reported at Krop involving a teacher having inappropriate relations with a student" while Meyers taught there.⁹⁸ This contradicts testimony heard by jurors in the civil lawsuit that the friend of a student notified administrators that the student said Meyers had "sexually exploited" her during a school-sponsored trip to Washington, DC, but that no investigation resulted from the allegations.⁹⁹

In 2011, the school district granted Meyers' request to transfer from Krop to Miami Palmetto Senior High School.¹⁰⁰ The school staff at Palmetto who hired him received information that he was a good teacher but no information on any of the allegations against him for sexual misconduct.¹⁰¹ According to legal filings, his move to the new school apparently had no impact on his practice of grooming female students by giving them special attention, particularly in his capacity as the teacher-adviser at

the school for a national writing competition called the Scholastic Art and Writing Awards.¹⁰²

When one student was 16 to 17 years old, she took Meyers' creative writing class and joined the school's creative writing club, advised by Meyers.¹⁰³ After persuading her to compete in the national writing competition, Meyers described her writing as "good, but boring" and told her she should write more sexually explicit content.¹⁰⁴ After she followed his directions, Meyers told the student that he had been thinking about her and that her writing "turned [him] on."¹⁰⁵

The student alleged in the later lawsuit and in interviews that Meyers then began molesting her. She says that, on an occasion when she met him alone in his classroom, he grabbed her face and kissed her.¹⁰⁶ According to the complaint, at one point, "Meyers forcibly spread [the student's] legs apart, positioned his groin between her thighs, pressed his body against hers, forced his hands underneath [her] clothes, fondled [her] body, and forcibly kissed her."¹⁰⁷ He also instructed her to take nude photos of herself and allow him to see them.¹⁰⁸ The student said the abusive relationship continued for a year.¹⁰⁹

Other students shared similar details about Meyers' sexual abuse as part of the civil lawsuit against the district. One said he groomed her when she was a minor attending Palmetto and attempted to coerce her into having sex with him after she graduated.¹¹⁰ Another student said he repeatedly asked about her sex life, instructed her to write about her sexual experiences, gave her "provocative

clothes" to wear to class, and told her to title a poem that she had written "Come Inside Me."¹¹¹ Another student said that Meyers had sex with her behind the desk in his classroom on several occasions.¹¹²

According to the civil complaint against the district, school district employees received notice that Meyers was engaging in inappropriate conduct with students. He locked his classroom door when he was alone with students and put a poster over the window. The complaint stated

that Meyers' wife, who was also a teacher at Palmetto, confronted him on school grounds during the 2015–16 school year about a relationship with a student.¹¹³ School employees observed that he spent substantial time with a group of female students in his class, escorted them around the premises, and walked them to their cars.¹¹⁴ These students became known among administrators, teachers, and other school employees as "Jason's girls."¹¹⁵

Meyers was arrested in 2016, after one of the students at Palmetto reported to police that Meyers had sexually abused her when she was 17 years old.¹¹⁶ On January 27, 2023, nearly seven years after his arrest, a Miami-Dade jury found Meyers guilty on three counts of sexual abuse of minors.¹¹⁷ On March 20, the judge in the case sentenced him to 20 years in prison.¹¹⁸

Prior to his conviction, one of Meyers' alleged victims filed a federal lawsuit against the Miami-Dade school district, asserting that the district had "failed to promptly and adequately report, investigate, redress and otherwise respond to its notice that Meyers posed a serious danger of sexual abuse

Meyers' trail of abuse shows the willingness with which administrators at Krop and Palmetto High Schools looked the other way rather than engaging in any serious scrutiny of his conduct with students in his class.

and exploitation to female students,” and had violated Title IX’s prohibitions of gender-based discrimination.¹¹⁹ In 2021, the federal jury ordered the Miami-Dade School Board to pay \$6 million to the plaintiff, finding that the district was “deliberately indifferent” to the risk that Meyers posed to students. The district settled a separate lawsuit filed by another reported victim of Meyers’ for \$1.1 million.¹²⁰

Meyers’ trail of abuse shows the willingness with which administrators at Krop and Palmetto High Schools, in the face of multiple complaints and warning signs, looked the other way rather than engaging in any serious scrutiny of his conduct with students in his class. If school administrators had taken the allegations against Meyers seriously and fairly investigated his inappropriate relationships with students as they were required to do under Title IX, they could have stopped him from grooming other students and removed a sex abuser from the school system.

If such administrators are not willing to use their authority to protect children from abuse, rather than teachers from abuse allegations, state and federal officials must use the tools at their disposal, including federal enforcement authority under Title IX, to make them do their jobs.

California—Teacher Unions Deflect Accountability for Sex Abusers

Mark Berndt and the Failures of LAUSD

After 32 years teaching at Miramonte Elementary School in South Los Angeles, Mark Berndt was undone by photos he sent to CVS Pharmacy for processing.¹²¹ In 2010, as she developed the film, the photo lab technician found that it contained images of a child who had been blindfolded and gagged with tape. She alerted law enforcement.¹²² The drugstore employee had started a process—the removal of Berndt from his Miramonte classroom and his subsequent conviction for lewd acts—that no one within the school system would initiate, despite numerous previous complaints and concerns that were ignored by school administrators.

Documents released in later litigation reveal that students, parents, and other teachers at the school were concerned about Berndt’s conduct over the course of his career, including hugging students and wearing a variety of unusual shorts, some revealing and others “baggy.” In the early 1990s, a teacher who had been observing his class reported to the principal that Berndt, wearing loose-fitting shorts, was sitting in a way that revealed his genitalia to students. In a deposition, the teacher recalled that the principal did not seem surprised, saying, “I know, baby. I’ve had several complaints from parents, too, but there’s nothing we can do about it.” The principal denied receiving this report or knowing about Berndt’s past behavior.¹²³

Two former Miramonte students in Berndt’s class reported to the *Los Angeles Times* that, during the 1990–91 school year, Berndt seemed to touch himself while sitting at his desk during class. When one of the girls complained, she and two others were called to the school counselor’s office, where, according to one of the former students, the girls “were told to stop making up stories.”¹²⁴ Other students echoed these accusations, accusing Berndt of putting his hand in his pants and splaying his legs as he sat on steps near the school’s playground.¹²⁵

In 2010, after the photo lab technician tipped off police regarding Berndt’s behavior, detectives seized over 400 photographs from Berndt, including photos of a spoon filled with a milky liquid and the same liquid pictured on cookies¹²⁶ and in or near children’s mouths.¹²⁷ A detective later recovered a spoon from a trash can in Berndt’s classroom that tested positive for traces of semen matching Berndt’s DNA.¹²⁸ In addition to blindfolding students and playing what he referred to as a “tasting game” with his semen, accusations against Berndt included that he gagged students and placed huge Madagascar cockroaches on their faces.¹²⁹

Documents summarized later by a judge in litigation against the school district showed that Berndt may have abused more than 100 victims, including students who said he had molested them.¹³⁰ Students accused Berndt of touching their genitals and breasts, exposing himself, and asking students to touch him.¹³¹

The drugstore employee had started a process—the removal of Berndt from his Miramonte classroom and his subsequent conviction for lewd acts—that no one within the school system would initiate, despite numerous previous complaints and concerns that were ignored by school administrators.

School district personnel say Berndt was removed from his classroom in January 2011 when the police revealed the incriminating photos to them. The district fired Berndt at a board meeting that February, but he appealed his dismissal and then resigned, meaning he continued to collect his lifetime health benefits and \$4,000-a-month state pension.¹³² The Los Angeles Unified School District (LAUSD) also agreed to pay him \$40,000 to drop his appeal. In 2013, Berndt pled no contest to 23 counts of lewd conduct and received a 25-year prison sentence.¹³³ In the following years, LAUSD paid over \$200 million to settle lawsuits related to Berndt’s sexual misconduct.¹³⁴

Bids to Reform LAUSD in the Face of Union Resistance

Following Berndt’s arrest in 2012, LAUSD Superintendent John Deasy shut down the campus of Miramonte Elementary for two days and reopened it with new personnel.¹³⁵ In the next two years, he ordered the removal of over 200 teachers from classrooms and required employees to study abuse reporting rules. The district imposed a zero-tolerance policy for employee misconduct and instituted a review of employee files to scope out overlooked allegations of abuse.¹³⁶

The district sent hundreds of reports containing accusations of misconduct to the California Commission on Teacher Credentialing and resubmitted reports that had already been sent.¹³⁷ Three hundred fifty-nine teachers in the district were suspended after Berndt was arrested, and many teachers were fired or pushed to retire as a result of the review of personnel files.¹³⁸ The district assembled a team of law enforcement officials in early 2014 to investigate sexual abuse allegations.¹³⁹

United Teachers Los Angeles (UTLA) complained that Superintendent Deasy’s reforms and broad crackdowns on abuses overreacted to the Miramonte scandal. The union claimed that the school district was holding educators in “teacher jails” without updating them on the details of their cases and that it was firing others unfairly.¹⁴⁰ School board president Steve Zimmer, identified by the *Los Angeles Times* as a “teachers union ally,” said in the wake of a separate allegation of teacher abuse

that he was “proud of the fact that we’re doing a better job of protecting students, but . . . not proud that the rights of employees suffered in that pendulum swing. . . . This is tough stuff and now we’re attempting to rebalance post-Miramonte.”¹⁴¹

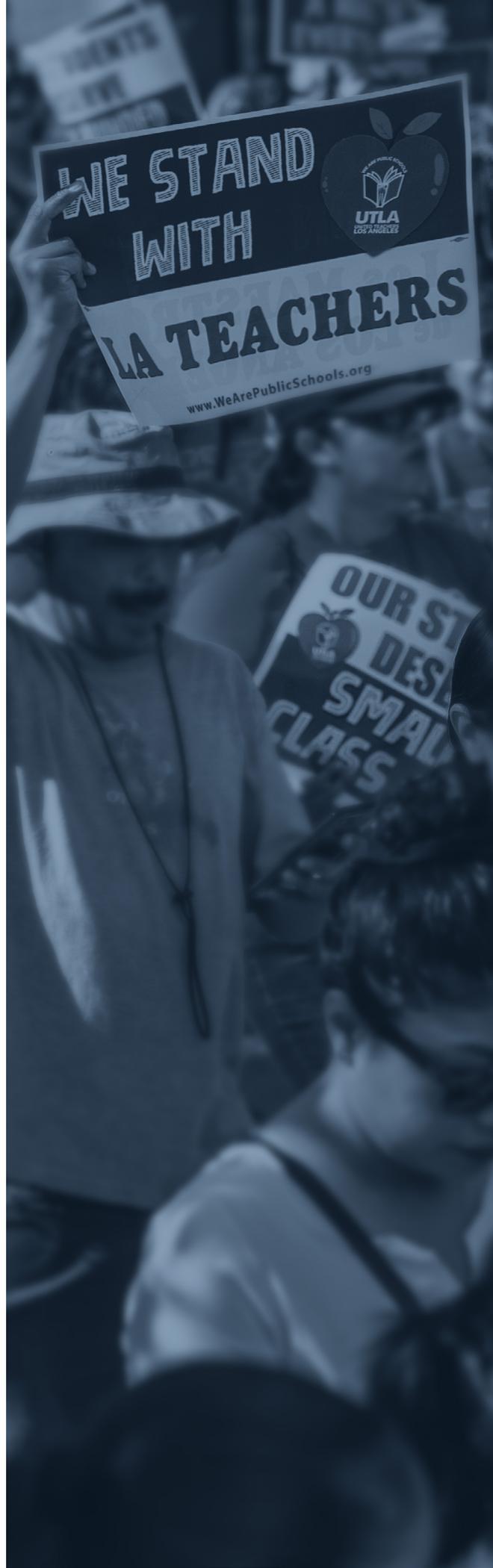
The case also spurred reforms at the state level. Reflecting the response to the payout the LAUSD was forced to give Berndt to resign, state lawmakers passed a law restricting pension benefits for public employees who committed a felony while performing their official duties.¹⁴² In 2014, after years of failed attempts at passing such legislation, the legislature passed and then-Governor Jerry Brown signed into law a bill seeking to hasten the dismissal of public school teachers for egregious misconduct. The new law gave accused teachers 30 days after being fired to request a hearing, to be overseen by an administrative law judge instead of a panel that includes teachers, and required the hearing to begin within 60 days after the request.¹⁴³

The California Teachers Association (CTA) backed the legislation, but the Association of California School Administrators and Superintendent Deasy opposed the bill, arguing that it imposed increased burdens on administrators to prove teacher misconduct and left out important egregious misconduct for which the process could be applied, such as armed robbery and aggravated assault.¹⁴⁴

Obstacles Posed by LAUSD-UTLA Collective Bargaining Agreement

Much of the sprawling, 425-page CBA between the LAUSD and UTLA that, as of this writing, sets out teachers’ rights and obligations in the school district is devoted to expected issues such as salaries, leave, and other topics unrelated to dismissal proceedings for such egregious conduct as sexual abuse of students.¹⁴⁵ As explained below, however, the agreement includes disturbing provisions that prioritize shielding teachers from scrutiny and easing the transfer of accused teachers to other classrooms, even if they might pose a threat to students.

The agreement provides that, in the case that LAUSD





receives written allegations from a member of the public that are “critical of an employee’s performance or character,” LAUSD is not permitted to put this document in the employee’s personnel file, *or even retain it*, unless and until “it is reasonably determined that the allegations have some substance of plausibility.”¹⁴⁶ The agreement contains a vague clause requiring “confidentiality and privacy appropriate to the professional relationship” when administrators discipline a teacher,¹⁴⁷ begging the question of whether, and at what point, parents have a right to know what kind of misconduct is alleged or occurring in their child’s classroom. The contract even covers how administrators conduct themselves in the event an educator must be arrested, instructing them to “request the police to conduct the arrest at a time and place least visible to the students and staff.”¹⁴⁸

The Los Angeles school district’s CBA with the teacher union includes disturbing provisions that prioritize shielding teachers from scrutiny, even if they might pose a threat to students.

The CBA warns that “Temporary Reassignments pending investigation are not to be regarded as an indication of culpability or a punitive action.”¹⁴⁹ The document makes clear that administrators are not obligated to reassign a teacher when concerns arise regarding student and workplace security, but simply states that in the case of such concerns, “a temporary reassignment may be made.”¹⁵⁰ The agreement provides for an arbitrary, aspirational time limit regarding how long an investigation of a reassigned teacher should take, providing that

such an investigation “should be completed as quickly as practicable, with a goal of ninety (90) work days,” while recognizing that such a time limit will often not hold up to the needs of law enforcement agencies or the LAUSD Inspector General.¹⁵¹

If the investigation determines that LAUSD should continue to employ the reassigned employee, the district may transfer the employee to a different school if the previous assignment is “deemed inappropriate.”¹⁵² Of course, this provision offers a green light to administrators to pass abusers from school to school after troubling allegations come to the attention of school personnel.

Finally, the CBA provides a vague statute of limitations shielding employees from some types of discipline based on passage of time, stating that “[a] Notice of Unsatisfactory Service or Act and/or suspension shall not be issued if it is based in whole or part on an event which occurred more than

a reasonable period of time prior to the date that the Notice of Unsatisfactory Service or Act and/or suspension was issued.”¹⁵³ The terms of this provision give everyone—teachers and administrators—permission to avoid accountability.

“Completely Stripped”—California’s Proposed Ban on Passing the Trash

In February 2018, California State Senator Mike Morrell introduced a bill that would have moved the state substantially in the direction of compliance with the federal “don’t pass the trash” provision in ESSA.¹⁵⁴ Entitled the Sex Abuse-Free Education (SAFE) Act, the bill would prohibit California schools from hiring applicants for positions involving direct contact with children if the applicant was previously investigated *and* determined to be responsible for sexual abuse. The SAFE Act required applicants for school jobs in which they would have contact with children to provide information about previous sexual abuse accusations, investigations, and findings. It required California schools to gather information about sexual abuse allegations and investigations from previous employers and authorized the Commission on Teacher Credentialing to revoke the credential of any school administrator who willfully failed to disclose the requested information. The bill also prohibited any CBA or severance agreement from preventing a school’s disclosure of information about sexual abuse or requiring a school to destroy information relating to sexual abuse, unless it is determined that the abuse allegations were false.¹⁵⁵

The SAFE Act was dead in two months.¹⁵⁶

“**Due to CTA’s pressure against the bill, California law does not require school districts to disclose information to prospective employers information about an ex-district employee’s suspected child abuse. California public schools, with an enrollment of nearly six million children, continue to pass the trash.**”

According to the *East Bay Times*, the bill “met a buzz saw of opposition,” namely from the CTA and American Civil Liberties Union.¹⁵⁷ Toni Trigueiro, CTA’s legislative advocate, explained in a letter to the Chair of the California Senate Judiciary Committee that CTA “took an oppose position on Senate Bill 1456 dealing with certificated employees.” According to CTA’s organizational stance against the bill, “employers should be prohibited from asking an applicant to disclose or utilizing as a factor,

information concerning specific juvenile court actions or custodial detentions.” The union also raised the issue of due process: “Our members have serious reservation [*sic*] regarding the impact on employment decisions based on allegations and/or investigations. We strongly support due process procedures as a constitutional right to which all current and prospective employees are entitled.” The CTA encouraged the Senate Judiciary Committee to kill the proposal.¹⁵⁸

The Senate took a more subtle approach. As Terri Miller, president of the nonprofit organization Stop Educator Sexual Abuse, Misconduct and Exploitation (S.E.S.A.M.E.) stated, the bill “got completely stripped.”¹⁵⁹ After determining that proposed amendments to his bill would render it “toothless,”¹⁶⁰ Senator Morrell withdrew it from the Judiciary Committee without further action.¹⁶¹ Due to CTA’s



pressure against the bill, California law does not require school districts to disclose information to prospective employers information about an ex-district employee’s suspected child abuse.¹⁶² California public schools, with an enrollment of nearly six million children, continue to pass the trash.

Illinois (and Beyond)—Biden Administration Erases ED’s Accountability Efforts

DeVos Department Confronts CPS, Launches Title IX Initiative on Sexual Assault

In 2018, after the most comprehensive OCR investigation of sexual violence in a major urban public school system ever,¹⁶³ the DeVos Education Department withheld \$4 million in grant funding from Chicago Public Schools (CPS) due to the school district’s failure to properly investigate and address sexual abuse incidents in its schools.¹⁶⁴ OCR launched the investigation following its receipt of two student complaints against the district, filed under Title IX,¹⁶⁵ and examined 2,800 student-on-student sexual harassment complaints and 280 adult-on-student complaints dating from 2012.¹⁶⁶ Investigators found that CPS had failed to implement the most basic, long-required Title IX requirements, such as appointing a coordinator to handle complaints under the law.¹⁶⁷ They also found that the district had failed to support accusers who had alleged attacks by their peers and neglected its duty to punish adults who had sexually harassed or abused students.¹⁶⁸

In 2019, ED unveiled an agreement with CPS requiring comprehensive reform in the way school district officials dealt with sexual harassment and violence under Title IX.¹⁶⁹ Among other actions under the agreement, CPS agreed to—

- ensure that the district’s Title IX Coordinator reports directly to the CEO of the district, has appropriate authority, and coordinates all Title IX investigations;¹⁷⁰
- ensure information is available on how to report incidents of sex discrimination;¹⁷¹
- document all actions the district takes in response to Title IX complaints;¹⁷²
- require that all final Title IX determinations against staff, faculty, or administrators are noted in the respondent’s personnel file;¹⁷³
- ensure that sex discrimination policies and procedures provide for prompt and equitable resolution of complaints alleging sexual harassment;¹⁷⁴

- notify complainants and parents of steps the district has taken and will take pursuant to the ED agreement and offer the opportunity to meet to discuss the district’s policy overhaul;¹⁷⁵
- invite students and parents to file complaints if they were subject to harassment;¹⁷⁶
- implement a new record-keeping system for complaints, responses, and investigations;¹⁷⁷
- review the conduct of employees who failed to take appropriate action on complaints of sexual harassment and determine what responsive actions must be taken;¹⁷⁸ and
- require reporting to OCR on steps taken to implement the agreement.¹⁷⁹

In February 2020, Secretary DeVos launched a new Title IX initiative to combat sexual assault in public schools, charging OCR leadership with taking an aggressive enforcement posture on the issue. In furtherance of the initiative, OCR would “focus on ensuring that school districts understand how to effectively respond, under Title IX, to complaints of sexual harassment and assault, including sexual acts perpetrated upon students by teachers, school staff, and personnel.” It would also engage in compliance reviews of schools and school districts to ensure that they were properly handling Title IX sexual assault complaints, raise awareness of school and school district obligations under Title IX, and conduct data quality reviews to ensure reliance by OCR and others on accurate information regarding the problem of sexual assault in K–12 schools. As described above, OCR was also directed to include in the CRDC new questions about sexual assault and passing the trash.¹⁸⁰

CPS failed to implement the most basic, long-required Title IX requirements, such as appointing a coordinator to handle complaints under the law.

Ongoing Sexual Abuse and ED’s Failure to Respond

In the midst of the scrutiny resulting from the DeVos Education Department’s investigation of CPS in 2018, the Chicago Board of Education granted its Office of Inspector General (OIG) responsibility for investigating all allegations involving adult-on-student sexual misconduct, resulting in the OIG’s establishment of a Sexual Allegations Unit (SAU) in October 2018.¹⁸¹ In its annual report for fiscal year 2022, the OIG reported that, since its inception, the SAU has opened 1,735 cases as a result of allegations, closed 1,384 of those cases, and substantiated the allegations of sexual misconduct in 302 of those investigations. Prosecuting agencies have filed at least 16 criminal charges against adults affiliated with CPS after the SAU opened an investigation.¹⁸²

The sheer number of these substantiated allegations in CPS is alarming. The most recent federal data demonstrates that sexual abuse in public schools is a national problem. Between 2010 and 2019, the number of complaints OCR received against K–12 schools alleging sexual violence more than tripled.¹⁸³ The most recently published CRDC (taken from 2017–18 from over 97,000 schools) underscores this unfortunate trend. For 2015–16, the CRDC reported 9,649 incidents of sexual violence; of that number, 394 constituted instances of rape or attempted rape. For 2017–18, the numbers were 13,799 and 685, respectively—an increase of 43 percent and 74 percent.¹⁸⁴

“ For 2015–16, the CRDC reported 9,649 incidents of sexual violence; of that number, 394 constituted instances of rape or attempted rape. For 2017–18, the numbers were 13,799 and 685, respectively—an increase of 43 percent and 74 percent.

”

Yet local school districts are failing to investigate the extent of this growing problem and are certainly not giving parents, students, and teachers access to the data they need to understand its prevalence. According to the Chicago Board of Education’s OIG, “The SAU is not only the sole centralized K–12 investigative unit in the country to handle such a broad range of allegations, it is also the only entity that issues public reports on its complaint volume and outcomes,

and summarizes its substantiated findings. As such, reliable statistics from other school districts are simply not available.”¹⁸⁵

Despite its potent authority to force action on this issue, with the single exception of its settlement agreement with CPS in 2019, ED has failed to police this issue as part of its Title IX enforcement power. There is currently no evidence on OCR’s website of any intent to carry out the prior administration’s initiative to combat sexual assault in K–12 schools.¹⁸⁶

The absence of this information is a concern; it appears that, perhaps under pressure from teacher unions, state education agencies, and school districts, the Biden administration has silently delayed or even killed ED’s Title IX initiative announced in 2020. In spite of ED’s groundbreaking settlement agreement with CPS in 2019, and as documented by the Chicago Board of Education’s OIG, students in CPS schools continue to suffer from widespread sexual abuse. Other school districts undoubtedly harbor a similar number of sexual abusers but do not even collect or publish data indicating the prevalence of abuse in their schools. With ED’s preferred hands-off approach to this problem—which prioritizes teacher union and public sector bureaucratic interests over student safety—school districts will be primed to continue their business-as-usual approach of pretending that this problem does not exist rather than taking the politically difficult path of exposing sex abuse in K–12 schools and ending the practice of passing the trash.

“ It appears that, perhaps under pressure from teacher unions, state education agencies, and school districts, the Biden administration has silently delayed or even killed ED’s Title IX initiative announced in 2020.

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Recommendations

State Policies

Given the willingness of K–12 schools and school districts, often in concert with politically influential public employee unions, to engage in passing the trash and to protect their bureaucratic interests at

the expense of student protection and compliance with Title IX, state legislatures have an important role to play in forcing LEA officials and school administrators to stop sexual abuse.

State legislatures should do the following:

- ban confidentiality agreements among schools, unions, and accused abusers that prevent future employers from discovering sexual abuse investigations and findings;
- ban any CBA provisions that prevent school district personnel from reviewing serious allegations about a teacher, including accusations of sexual abuse, after a certain period of time has passed;
- impose penalties on school district personnel who assist employees in obtaining a job in a different school district when they have probable cause to believe that the employee engaged in sexual abuse, unless the employee was investigated and cleared of the abuse; and
- impose penalties on any teacher who knowingly fails to report to law enforcement or child services a reasonable suspicion that a minor has been sexually abused by anyone, including a school employee.

If protecting students from sexual assault is not enough incentive to spur state lawmakers to take action, they should recall that Congress has legally mandated that they do so, under Title IX and the ESEA, or risk losing access to K–12 federal education funding.

The NEA and the AFT have influenced Biden administration education policies. This raises concerns that ED has pulled back on its Title IX enforcement responsibilities against heavily unionized school districts with poor records of Title IX compliance and significant numbers of sexual assaults.

U.S. Department of Education Enforcement

As significant financial supporters of President Biden,¹⁸⁷ the National Education Association (NEA) and the American Federation of Teachers (AFT) have heavily influenced Biden administration education policies.¹⁸⁸ This influence raises concerns that ED has pulled back on its Title IX enforcement responsibilities against heavily unionized school districts (like CPS) with poor records of Title IX compliance and significant

numbers of sexual assaults. Whether due to political favoritism or bureaucratic inertia, OCR cannot sit on the sidelines and fail to enforce Title IX against public K–12 school districts. OCR must revive the DeVos-era Title IX K–12 enforcement policy, vigorously enforce Title IX’s prohibition on sexual harassment, including sexual assault, and withhold federal dollars from those LEAs that, like CPS, constantly and repeatedly fail in their Title IX obligations. ED must also apply pressure on states to comply with ESEA’s requirement to pass legislation prohibiting the practice of passing the trash and outlawing secretive agreements that cover up teachers’ sexually abusive behavior.

Congressional Action

Clarification of ESEA’s Pass the Trash Mandate

Congress should amend the ESEA to clarify penalties to be imposed upon states that fail to prohibit school personnel from aiding and abetting sex abusers in obtaining new employment, specifying a certain percentage of K–12 funding to be withheld for noncompliance. Such a revision would permit the enforcing agency to pursue enforcement measures without triggering the “nuclear option” of denying states the full amount of ESEA funding. In keeping with the principle of federalism, Congress must maintain the flexibility within the ESEA in permitting states to accomplish the nationwide goal of prohibiting the aiding and abetting of sex abusers in obtaining new jobs as a baseline, while pursuing any methods they consider to be best in preventing sexual abuse.

Clery Act for K–12 Schools

Congress should pass a transparency act requiring public K–12 schools and school districts to inform parents, students, and teachers about incidents of violent criminal activity, including sexual abuse, that occurs on school grounds, on school transportation, and in school-sponsored activities.

Higher education, unlike elementary and secondary education, already operates under federal transparency laws and provides a model for reform in K–12. Through the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act)—passed in 1992 and renamed in 1998—Congress requires postsecondary institutions receiving federal financial assistance to report campus crime statistics and other information related to security.¹⁸⁹ Under the Clery Act, schools must report to ED and publish in an Annual Security Report certain crimes that occurred within their “Clery Geography”—defined as on-campus, non-campus buildings or property, or public property¹⁹⁰—and that are reported to police or campus security.¹⁹¹ Under the Clery Act, institutions must include in this Annual Security Report information on how students and employees should report Clery Act crimes and a range of statements of policy regarding campus safety and crime prevention, including policies that encourage the reporting of crime to campus security¹⁹² and programs and procedures addressing sexual assault and other sexual misconduct.¹⁹³

Congress should require similar but more narrowly tailored reporting requirements for LEAs—a “Clery K–12” that would require LEAs to report annually school-level and district-level data to inform their communities about crime on campus or in their educational programs and activities. On an annual basis, the law would require each school receiving funding under the ESEA to post on its public-facing website and transmit to its school district data showing the number of violent crimes, including sexual offenses, reported on their campuses, during school-sponsored activities, and on school transportation that occurred during the prior academic year, broken down by type of crime and position of the perpetrator and victim. Incidents of violent or sexual crime would be limited to crimes that are reported either to law enforcement or to another state or local agency—such as a child welfare agency—to which state law directs mandatory or permissive reporting of child abuse or neglect.

Consistent with federalism, the law would make clear that its mandates serve only as a baseline for data schools, LEAs, and states must publish to continue to receive funding under the ESEA, allowing states to require more data reporting as they see fit.

The law would require each K–12 school to maintain on its website information on state and

local laws, regulations, and policies related to school crime prevention, including mandatory and permissive reporting provisions on abuse and neglect. The information must include guidance to students and parents to contact law enforcement with any reports of past or ongoing crimes committed by school personnel or other students.

The law would provide that, at the end of each year, each school must mail to the registered address of or otherwise provide to each student an annual security report that contains the school's data on violent and sexual offenses and state and local laws, regulations, and policies related to school crime prevention.

It would also require each LEA receiving ESEA funding, on an annual basis, to post aggregated school district-level data on violent and sexual offenses on its website. Each state would also post school district-level and school-level data on its website, broken down by school district and school.

Such Clery K–12 legislation is urgently needed because it would not only allow students and teachers to gain awareness about crimes at their schools but also arm parents, policymakers, and the general public with critical information about the state of the nation's public schools. Critically, under a Clery K–12, LEAs would be subject to sanction for concealing from their communities reports of sexual assault and other violent crimes—a welcome reform that would contribute to piercing the veil of secrecy that some school administrators, district officials, and teacher unions have effectively draped over employee-on-student sexual misconduct in K–12.

Conclusion

The employees discussed in this report (and many others) have left in their wake a trail of student victims who will deal with the trauma of their abuse for the rest of their lives. In these cases, school administrators either ignored or shielded from others evidence that could have stopped this abuse. In some cases, hamstrung by CBAs and fearing that bringing attention to the abuse would result in litigation, personnel simply pawned the abuser off on another system, possibly endangering others. OCR has aggravated these troubling circumstances by failing vigorously to enforce Title IX and, where appropriate, commence actions to withdraw or otherwise limit federal financial assistance. School districts and teacher union bosses no doubt understand this and carry on without penalty.

What must be done in response to these failures, and what we owe to this and future generations of public school students, is to stop turning a blind eye to the sexual abuse occurring in too many public schools and the practice of passing the trash; recognize that there is a problem that must be addressed; and address that problem through meaningful and comprehensive reform of laws and policies that currently shield sex abusers in schools in receipt of federal funds.

“Because unions exist to protect their members, not children, they perpetuate the status quo and grow their political power and influence over the education system.”

Public school employees discussed in this report have left a trail of student victims who will deal with the trauma of their abuse for the rest of their lives. School administrators either ignored or shielded evidence that could have stopped this abuse.

As we have seen, common-sense reforms exist, yet offending employees are often shielded from public scrutiny, making termination and licensure actions difficult and costly. Specifically, union leaders—using political contributions, a network of campaign volunteers, and other tools of persuasion—wield a vast amount of influence with state legislatures, and they use that influence to convince politicians to resist reforms that would meaningfully address the problems that

students, parents, and teachers face. Because unions exist to protect their members, not children, they perpetuate the status quo and grow their political power and influence over the education system. In the face of these developments, OCR has ignored the prior administration's initiative to combat the issue of sexual assault in public schools and failed to take aggressive action, including financial penalties, to enforce Title IX in K–12 public schools.

School administrators, school district officials, and teacher union leaders have not worked effectively to stop sexual abuse in public schools. Consequently, the states and Congress must demand accountability and give parents, students, and teachers the tools they need to ensure that their local school is safe for students and employees. In the interim, ED must take immediate action to step up its Title IX enforcement efforts in K–12, whatever the resistance from school district bureaucracies and the leaders of teacher unions.

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DFI is a nonpartisan, nonprofit organization focused on providing thoughtful, conservative solutions to challenges in the areas of education, workforce, labor, and employment policy. Through a unique blend of policy and legal expertise, we fight to expand school and work opportunities for all Americans; to limit the power of federal agencies and government-sector unions; and to defend the civil and constitutional rights of all Americans in the classroom and the workplace.

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