



DANNIS WOLIVER KELLEY

CRISIS INTERVENTION: RESPONDING TO A CRITICAL INCIDENT

ACSA 2014 *Every Child Counts Symposium*

January 17, 2014

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Crisis Intervention: Responding to a Critical Incident


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Presented By
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Welcome

Crisis: A principal has received a report that a student was molested at the school.

Today we will cover how to respond:

- Ensuring student safety
- Reporting requirements
- Initiating an investigation
- Communicating with the school community
- Addressing the needs of the victim

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Statistics

According to the U.S. Department of Education's Policy and Program Studies Service:

Approximately 10% of students in grades 8 through 11 report unwanted sexual misconduct by a school employee during their years in school.

Teachers are identified as the most common offenders followed by coaches, substitute teachers, bus drivers, teacher's aides, and other school employees.

(USDOE, Educator Sexual Misconduct: A Synthesis of Existing Literature, Washington, D.C., 2004.)

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Our Scenario

It is a pleasant spring day near the end of the school year when three students come to the Principal in a visually agitated state. They tell you that earlier that day one of them saw – and recorded on cell phone video – a teacher’s aide touching an intellectually disabled special education student in the stairwell “in a really weird way.” The other two students report that they witnessed a second incident of the same nature on the video monitors in the security office minutes before coming to you.

What do you do?

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ALERT

- Alert administration:
 - Superintendent to gather team
 - HR, Security, Special Education, Legal Counsel
- Learn the facts:
 - Ask clarifying questions if necessary
 - Ask the students/reporting parties to write down what they saw
- Employee:
 - Identify the employee perpetrator
 - Make sure the victim is safe from the perpetrator
 - Take steps to separate the victim from the perpetrator
- Report and Remove:
 - Make a report and follow instructions from law enforcement
 - Do *not* do anything that could compromise a criminal investigation
 - Remove the perpetrator from the school by placing him or her on administrative leave pending investigation
- Talk:
 - Student
 - Family
 - Community

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**Dual Tracks:
Understand Your Role**

The investigation of a critical incident like this will follow two distinct tracks. The school district is responsible for one, while law enforcement is responsible for the other:

Criminal Investigation (by law enforcement)	Civil Investigation (by the school district)
Law enforcement is responsible for handling the <i>criminal</i> implications of the alleged abuse	The school district is responsible for handling personnel <i>misconduct</i> , not criminal implications, and for student safety.

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Our Scenario

Following the initial verbal reports, students are asked to make written statements. Meanwhile, a staff member is sent to the stairwell to make sure the abuse is not still happening. Neither the victim nor the aide is in the stairwell when the staff member arrives. Student is located in the classroom. The district's Director of Security who tells you he will contact law enforcement. The Director of Security also informs the team that the area is under surveillance cameras and he is gathering tapes.

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Mandated Reporting



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Mandated Reporting

School administrators and employees are mandated child abuse reporters under Penal Code section 11165.7, subdivision (a), and thus could potentially be subjected to liability for their failure to report suspected child abuse or neglect.

(Pen. Code, § 11166, subd. (c).)

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Criminal Liability is Real

- **HEADLINE -- San Jose: Principal convicted of failing to report suspected child abuse by teacher, November 5, 2012.**
- 8-year-old girl told principal "in vivid and explicit detail about a possible sexual act a teacher performed on her."
- Principal consulted with human resources director who told her to question the teacher but left the ultimate decision what to do up to the principal.
- Principal accepted teacher's (ludicrous) explanation.
- Neither the principal nor the HR director had been trained regarding reporting duties.
- Sentenced to two years of court probation and 100 hours of community service. (Maximum penalty was six months in jail and a \$1,000 fine.)

(http://www.mercurynews.com/ct_21934461/san-jose-principal-convicted-failing-report-child-abuse)

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Criminal Liability is Real

"The girl told the principal that [teacher Craig] Chandler blindfolded her in a room with no one else there, made her lie down on the classroom floor, told her to open her legs, touched her feet with something that felt like a tongue, inserted something gooey in her mouth and then wiggled her head around until she tasted a salty liquid. Chandler told [the principal] that he called the girl into the classroom to prepare a lesson on Helen Keller, which he had been using for years."

"Prosecutor Allison Filo said the District Attorney's Office made the rare decision to try [the principal] because her lack of judgment in October 2011 had devastating consequences. Another child reported being molested in a similar fashion by the same teacher about three months later."

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Mandated Reporting

Penal Code section 11165.9 requires mandated reporters to report suspected child abuse or neglect "to any police department or sheriff's department, not including a school district police or security department, county probation department, if designated by the county to receive mandated reports, or the county welfare department."

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No Substitute for Reporting

Providing the information of suspected child abuse or neglect to "an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9."

(Pen. Code, § 11166, subd. (l)(3).)

However, "When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report."

(Pen. Code, § 11166, subd. (h).)

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Child Abuse or Neglect

"Child abuse or neglect" includes

- physical injury or death inflicted by other than accidental means upon a child by another person,
- *sexual abuse* as defined in Section 11165.1,
- neglect as defined in Section 11165.2,
- the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, and
- unlawful corporal punishment or injury as defined in Section 11165.4.

(Pen. Code, § 11165.6.)

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"Reasonable Suspicion"

Reasonable suspicion "means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect."

"Reasonable suspicion" does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any "reasonable suspicion" is sufficient.

Pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

(Pen. Code, § 11166, subd. (a)(1).)


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Making the Call

What information must be reported?



"the name, business address, and telephone number of the mandated reporter; the capacity that makes the person a mandated reporter; and the information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information."
(Pen. Code, § 11167, subd. (a).)

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Our Scenario

The Director of Security informs the team that he made a mandated report to the Sheriff's Department. The Director of Security advises that the Sheriff's Department will investigate and informs the team that he has gathered several tapes of the student and aide in the stairwell. The aide cannot be located on district property. Assistant Superintendent of Human Resources will take appropriate steps to place aide on administrative leave.

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Investigation



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Employee Rights

Employment classification determines the rights:

- "Certificated" employees have different rights than "Classified" employees
- Probationary employees have fewer employment rights than Permanent employees: Permanent Employees have property interests in employment and cannot be dismissed without cause; pre-termination due process rights include notice and a hearing.

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Employee Rights

Administrative Leave (merit system):

- A classified employee may be suspended without pay for reasonable causes for not more than 30 days.
- A classified employee charged with a mandatory leave of absence offense (e.g., a sex offense) shall immediately be placed on a compulsory leave of absence, which shall be with pay provided the employee provides a suitable bond or other security.

(Ed. Code, §§ 45304, 44940, 44940.5.)

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Employee Rights

Aide is classified employee:

- Causes for dismissal of classified employees are set forth in written Board Policies; Collective Bargaining Agreements; and Personnel Commission Rules and Regulations (merit system districts only). (Ed. Code, § 45113, subd. (b).)
- Classified dismissal proceedings include written notice of the specific charges against employee, and of his/her right to a hearing; evidentiary hearing before personnel commission or impartial third party hearing officer; Personnel Commission decision is final. (Ed. Code, § 45113.)

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Notice

- When any manager or supervisor becomes aware of facts that, if true, may constitute a violation of law or policy it should be promptly investigated
- A manager/supervisor presumably has knowledge where he or she observes the conduct, is directly informed by the complaining party about any alleged misconduct, or is informed by others of such misconduct
- A manager may also be deemed to have constructive knowledge of a problem where a reasonable person would have been aware of it based upon the available circumstances

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Sources of Complaints

- Parent/Public: Request they put it in writing
- Staff: Ask them put it in writing; do not solicit information; listen, do not comment
- Students: Ask them put it in writing; may need to ask clarifying questions; notify parents when appropriate

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**Investigation:
Getting Started**

Upon notice of possible misconduct:

- Immediately notify Human Resources Administrator or designated administrator.
- Calendar investigation so as to promptly and thoroughly investigate complaint in a neutral manner.
- Especially in cases of harassment or threatened workplace violence, address how to reduce interaction between complainant and accused

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**Investigation:
 Witness Interviews**

- Interview complainant first to clarify all details/allegations in the complaint
- Interview all witnesses identified by the complainant, to the extent they have relevant information
- Interview the accused
- Interview witnesses identified by the accused
- Re-interview witnesses, to clarify any factual disparities or give individuals a chance to respond
- Consider audio taping each interview, but only if witness is notified and provides consent

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**Investigation:
 Preparation**

- Review the complaint and determine the basis and issues presented
- Review the District's complaint procedure and harassment/discrimination policy, if applicable
- Review the personnel files and other site files (if any) of the primary parties, as well as any other information received regarding the complaint (security tapes, etc.)
- Prepare a list of each and every allegation in the complaint
- Prepare list of questions for the interviews

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**Investigation:
 Final Report**

A final report may be required:

- Brings resolution and provides a defense in some cases
- Provides notice to the complainant
- Gives the investigator an opportunity to compile/consider all the evidence
- May identify recommended next steps including termination of the employee

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Our Scenario

Human Resources provides the aide written notification that he is being placed on administrative leave pending the investigation. The next day, deputies from the Sheriff's Department arrive to interview students and staff witnesses. The deputies request copies of several weeks of video footage to review. Two days later, the aide is arrested at his home and booked into jail.

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Communication After a Crisis



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Responding to the Crisis

- Because a crisis is usually an unforeseen situation that causes serious disruption of normal events, it is important to develop a crisis management plan before the disruption occurs.
- Identify key players who will act during the crisis and decide who will communicate with the outside world about what's going on.

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Communicating about the Crisis

- Hot button issues, like a sex abuse, will likely generate media and community attention
- Do not ignore hot button issues – deal with them quickly and honestly, while respecting confidentiality
- Figure out how to respond to the who, what, when, where questions that will come

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Our Scenario

The victim's parents were notified about what happened in the stairwell the same day. Pending the criminal and internal investigations, however, the school district did not put out any general public statements. But when the aide was formally arrested, it was necessary for the district to notify the public. Working with legal counsel, the district issued a press release announcing the arrest of one of its employees, who was not identified by name. The release directed all questions to the attention of legal counsel, but provided an opportunity for the district to reiterate its top priority: student safety.

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Our Scenario

Following the aide's arrest, the dual tracks of criminal prosecution and employee dismissal proceed.

But what about the student victim, in this case an intellectually disabled teenage girl?

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Addressing the Victim's Needs

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Counseling and Psych Services as Related Services

Under the Individuals with Disabilities Education Act "related services" include, among other things:

- psychological services,
- social work services, and
- counseling services, including rehabilitation counseling

as may be required to assist an individual with exceptional needs to benefit from special education.

(20 U.S.C. § 1400(26); 34 C.F.R. § 300.34.)

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Counseling and Psych Services as DIS

Under California law, "designated instruction and services" include, among other things:

- Counseling and guidance services, including rehabilitation counseling,
- Psychological services, other than assessment and development of the IEP,
- Parent counseling and training,
- Social worker services.

(Ed. Code § 56363, subd. (b).)

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Educational Counseling

The Education Code authorizes school districts to provide "a comprehensive educational counseling program for all pupils."

"Educational counseling" is a specialized service provided by a school counselor possessing a valid credential with a specialization in pupil personnel services who is assigned specific times to directly counsel pupils.

- includes, but is not limited to: academic counseling, career and vocational counseling, personal and social counseling

(Ed. Code, § 49600.)

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Psychological Related Services

Psychological services refers to application of psychological principles and methods, e.g., procedures on interviewing, psycho-educational assessment, diagnosis of specific learning and behavioral disabilities, and amelioration of learning and behavioral problems, and may include:

- Counseling provided to a disabled student by a credentialed or licensed psychologist or other qualified personnel.

(5 C.C.R. §§ 3051.10, 3065, subd. (p)(1).)

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Social Work Related Services

Social work services may include, among others, Individual and group counseling with the Individual and his or her Immediate family.

(5 C.C.R. § 3051.13, 3065.)

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Counseling & Confidentiality

Credentialed school psychologists are considered "psychotherapists" for purposes of the psychotherapist-patient privilege. (Evid. Code, §§ 1010, subd. (d), 1014.)

The patient (i.e. the student) holds the privilege, and only the patient can waive the privilege. (Evid. Code, § 1013.)

But "[n]either the physician-patient privilege nor the psychotherapist-patient privilege applies to information reported pursuant to [the Child Abuse Reporting Act] in any court proceeding or administrative hearing." (Pen. Code, § 11171.2.)

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Counseling & Confidentiality

Although school counselors do not enjoy a psychotherapist-patient privilege between themselves and their students, any information of a personal nature disclosed by a pupil 12 years of age or older in the process of receiving counseling from a school counselor, and any information of a personal nature disclosed to a school counselor by the pupil's parent or guardian, is confidential. (Ed. Code, § 49602.)

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Confidential Information Received in Counseling - Exceptions

Protected counseling information may not be revealed, released, discussed, or referred to by the school counselor **except** that such information may be shared:

- with psychotherapists, other health care providers, or the school nurse solely for purposes of referring the student for treatment;

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 Student Information Received in Counseling - Exceptions

- with *local child protective agencies* to report of child abuse or neglect;
- with *the principal or parents of the student* when the school counselor has reasonable cause to believe that disclosure is necessary to avert a clear and present danger to the health, safety, or welfare of the pupil, administrators, teachers, school staff, parents, pupils, and other school community members;

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 Student Information Received in Counseling - Exceptions

- with *the principal or other school personal, and, as necessary, the parents and other persons outside the school* when the pupil indicates that a crime, involving the likelihood of personal injury or significant or substantial property losses, will be or has been committed; and,
- with *persons specified in a written waiver of confidentiality* after this written waiver of **confidentiality** is read and signed by the student and maintained in the pupil record file.

(Ed. Code, §49602, subd. (a)-(e).)

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 Questions & Discussion



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Thank you

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