

REPORT TO THE PORTLAND PUBLIC SCHOOLS
BOARD OF EDUCATION:

FINDINGS AND RECOMMENDATIONS
OF THE WHITEHURST INVESTIGATION TEAM

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I. EXECUTIVE SUMMARY

Mitchell “Mitch” Whitehurst was an educator at Portland Public Schools (referred to in our report as PPS or the District) from 1982-2015, when he resigned during an investigation into allegations of coworker sexual harassment. During his career, Mr. Whitehurst allegedly engaged in sexual conduct with PPS students. He left behind little documentation of his past conduct – in part because the conduct was not detected by administrators in the first place, in part because the conduct that was brought to administrators’ attention was not documented, and in part because it was documented but then purged from Mr. Whitehurst’s files over time, per union contract requirements. As he moved from school to school, very little institutional knowledge of his inappropriate behavior followed him. His pattern of sexual conduct with students went mostly undetected. And when incidents were reported, the District gave Mr. Whitehurst the benefit of the doubt.

During this investigation, we interviewed former students who described sexual conduct by Mr. Whitehurst that took place at varying points in his 32-year career. We have no reason to disbelieve what any student told us; the students came across as honest and their recollections were credible. We received multiple

accounts of similar behavior. **We note that any time Mr. Whitehurst was ever interviewed about his alleged sexual conduct with students, he denied it.**

The most egregious allegations of misconduct involved off-campus sexual conduct with female high school students [REDACTED] [REDACTED]. This conduct was not reported to any adult at the time. In 2008, after learning that Mr. Whitehurst was still employed by the District, one former student (Caprice¹) came forward to report the sexual conduct that she [REDACTED] had experienced 24 years earlier, while [REDACTED] [REDACTED] at Franklin. The Human Resources (HR) Department at PPS received notice of that complaint but failed to investigate it adequately and did not report it to the Teacher Standards & Practices Commission (TSPC).

In 2012, after learning that Mr. Whitehurst remained employed by PPS notwithstanding her report in 2008, the same former student again reported the 1984 incident of sexual conduct, this time to the principal of the school where Mr. Whitehurst was a [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. And again, PPS responded with an inadequate investigation and no referral to the TSPC. At no time was Mr. Whitehurst disciplined for this conduct, and it is even in dispute whether he has ever been questioned about it.

¹ Caprice gave us permission to use her first name, which is also how she is identified in *Oregonian* articles. We have withheld her last name upon her request.

In 2001, a student from Marshall High School [REDACTED] reported unwanted sexual attention from Mr. Whitehurst [REDACTED]

[REDACTED] This complaint went through the proper channels but due to an inadequate internal investigation, it was treated as a “he-said/she-said” first-time offense in which faced with two conflicting accounts both deemed credible, the investigator accepted Mr. Whitehurst’s explanation that his conduct had been simply misconstrued by the student.

The behavior reported by many female students in the Faubion [REDACTED] [REDACTED] in 2013 – that Mr. Whitehurst was staring at their chests and butts, commenting on a student’s attractive figure, calling them “babe” or “baby,” and other inappropriate behavior – was brought to the attention of the Faubion administrators as well as the HR Department and in-house general counsel. Inexplicably, an investigation that started out with multi-day student interviews and typed notes reflecting first-hand accounts of students unwilling to participate [REDACTED] because of the way Mr. Whitehurst looked at and acted around the girls resulted in no discipline, no documentation of the conduct in Mr. Whitehurst’s files, and no report to the TSPC. The current and former PPS employees involved in the investigation have pointed fingers at each other to explain why Mr. Whitehurst was not disciplined or terminated for the conduct.

The student complaints made by Caprice, [REDACTED] [REDACTED] have been thoroughly covered by the media. Our investigation unearthed additional complaints about Mr. Whitehurst's sexual conduct that were also investigated by PPS – specifically, by the PPS police force that disbanded in 2001. Apparently no discipline came as a result of these investigations, either. Although the reports were documented, when the PPS police force disbanded the relevant records were archived and not incorporated into Mr. Whitehurst's HR or personnel files.

Another student complaint of ogling lodged early in Mr. Whitehurst's career while he was teaching PE at Sellwood Middle School was handled by the principal, who was unaware of any past issues and attended to it with verbal counseling. The incident was not documented.

In addition to these reports of sexual conduct, we heard from female students at various schools where Mr. Whitehurst taught that he would "check them out" in the school hallways and make comments about their appearance as they went to their lockers or to class. His inappropriately flirtatious behavior made students uncomfortable and many described him as "creepy." School administrators who supervised Mr. Whitehurst denied witnessing this type of behavior. The harassing conduct was not reported, except for one time when Mr.

Whitehurst made an offensive sexual comment to a Jefferson student. The student told her mother, who in turn confronted Mr. Whitehurst and insisted the Jefferson administrators address it. Mr. Whitehurst was verbally counseled but the incident was not documented.

Mr. Whitehurst resigned from PPS in the spring of 2015 during an investigation into alleged sexual harassment of an adult male coworker at Faubion. Through his union's attorneys, he negotiated a resignation agreement that entitled him to early retirement benefits and restricted the District's ability to disclose information regarding his employment other than basic employment information (dates of employment, position, level of compensation, resignation).

Over the course of his three-decade career, there was very little formal or written documentation of Mr. Whitehurst's inappropriate conduct. What little documentation existed did not follow him as he moved from school to school. Central files were similarly siloed. PPS police files were stored as of 2001, when the District hired its first HR legal counsel. She, in turn, kept her own separate paper files on Mr. Whitehurst, apparently unaware of any existing files other than his personnel file. The District lacked any centralized system to track an educator's conduct, such that Mr. Whitehurst succeeded in denying his conduct and administrators repeatedly treated his inappropriate conduct as a one-time lapse in



judgment.

The decentralized systems at PPS, coupled with a lack of any viable document management system or misconduct tracking system, contributed to Mr. Whitehurst's ability to evade discipline. Our investigation found that PPS administrators were reluctant to issue formal discipline because it could be challenged by the teachers' union, Portland Association of Teachers (PAT). To avoid the challenge by the union, administrators appeared to favor taking action that was short of formal discipline – such as delivering a verbal warning in response to [REDACTED] complaint or taking the remedial step of placing a Concordia student teacher in Mr. Whitehurst's [REDACTED] at Faubion. These lesser actions did not trigger union involvement. They also did not create a record of disciplinary action such that repeat behavior of the same or similar inappropriate conduct would ever result in termination of the offending educator.

The decentralized system also led to a collective failure by employees who were involved in investigations of allegations regarding sexual conduct by Mr. Whitehurst. Complaints were inadequately addressed in part because each person involved assumed the other persons involved would handle the issue and see it through to completion. Accountability for these investigations and their outcome was lacking throughout Mr. Whitehurst's career.

The same reliance on other employees to carry out a proper investigation appears to have permeated the request from the 2016-17 PPS Board to its high-level administrators to conduct a “lessons learned” internal review for the Board of how the District failed to address Mr. Whitehurst’s misconduct. Our investigation found that the Board’s directive went unheeded, but for the interim superintendent Bob McKean conducting an internal audit of existing policies and training materials regarding prevention and reporting of sexual conduct. The numerous transitions among high-level administrators during and shortly after the 2016-17 school year appear to be a significant factor in that work not being done.

Our investigation did not reveal that employees protected Mr. Whitehurst throughout his employment or that he was moved from school to school to avoid discipline for sexual conduct or to placate concerns thereof. Although Mr. Whitehurst was unassigned numerous times during his career at PPS, based on the school records and our interviews with the administrators involved in the transfers his moves appeared to be for legitimate reasons (e.g., budget cuts or staffing needs).

Our report includes a separate section on Norman “Norm” Scott, a former PPS educator whose 30-plus year employment was checkered with performance issues and allegations of sexual conduct. We found commonalities between Mr.



Scott and Mr. Whitehurst. Like Mr. Whitehurst, Mr. Scott had a reputation among female students for being “creepy” and gave certain attractive female students unwanted attention. Some female students complained that they were uncomfortable around him and did not like the unwanted attention. Like Mr. Whitehurst, many of the complaints about Mr. Scott’s inappropriate conduct were handled with non-disciplinary verbal coaching rather than formal written discipline that could follow him from one school to another during his lengthy teaching career. The verbal coaching, while perhaps immediately effective, did not change the educator’s long-term behavior.

And like Mr. Whitehurst, Mr. Scott left PPS with a resignation agreement that restricted the District’s ability to disclose information regarding his employment, even when contacted by other education providers pursuant to a statute that requires a school district to disclose any substantiated reports of sexual conduct by a former employee to an educational provider requesting this information.

Contrary to the agreement, the District did disclose to a few educational providers that Mr. Scott had been the subject of a substantiated report of sexual conduct. When he learned of one such disclosure, Mr. Scott threatened to sue PPS for breaching his resignation agreement. The District quickly entered into a second

agreement with him retracting its previous disclosure to that education provider. Our investigation of Mr. Scott focused primarily on these post-employment agreements.

In addition to investigating Mr. Whitehurst's employment history, we were tasked with making recommendations to the District. Our recommendations attempt to address all of the shortcomings that led to the District's failure to recognize an educator's sexual conduct with students, failure to investigate it thoroughly, and failure to take action to ensure a safe educational environment by removing the offending educator. The recommendations address complaint procedures, investigation procedures, training, the PAT union contract, document management, and transparency in resignation agreements.

Specifically, we make the following recommendations:

- Adopt the following procedures to investigate sexual conduct complaints (see pages 130-142):
 1. Train and require building administrators and HR Department staff who receive complaints to document every complaint or concern of sexual conduct and report them all to the Title IX coordinator or a similar designee.
 2. Have a specialized trained investigator with expertise in investigating employee/student sexual conduct complaints investigate each complaint thoroughly and fairly.

3. Have a core group of multi-disciplinary administrators (the employee's supervisor, HR legal counsel, Title IX coordinator, and investigator if different from the Title IX coordinator) make credibility decisions and agree regarding what level of discipline to impose, if any.
 4. Implement a centralized tracking mechanism to document all complaints, including their outcome.
- Work with PAT to change certain contract provisions in the District's union contract to adequately address sexual conduct complaints and ensure the protection of students. Specific provisions of the PAT contract include Article 22 (Personnel Files), Article 19 (Professional Educator Rights and Just Cause), and Article 21 (Complaint Procedure). (See pages 143-153.)
 - Review and change the District's other union contracts, as appropriate, to adequately address sexual conduct complaints and to ensure the protection of students. (See pages 153-154.)
 - Improve the District's sexual conduct training in the following ways (see pages 160-167):
 1. Improve the sexual conduct prevention and identification training provided to PPS employees.
 2. Require sexual conduct prevention and identification training for PPS volunteers and contractors.
 3. Improve the sexual conduct prevention and identification training provided to PPS students.
 4. Correct and update the materials regarding sexual conduct on the PPS website.

- Exercise transparency with employee separations and do not enter into resignation agreements that restrict the disclosure of possible sexual conduct (see pages 182-188).
- Implement an adult/student boundaries policy (see pages 188-190).
- Lobby for changes outside the District to make Oregon safer for students (see pages 190-193).
- Revise the administrative directive entitled “Prohibition Against Employee Child Abuse and Sexual Conduct With Students” to clarify that the District has cause to issue corrective action even if all four statutory elements of sexual conduct are not met (see pages 194-195).
- Require PPS employees to check with the HR Department before providing a reference for a former PPS employee (see page 195).
- Designate a liaison between the PPB and the District to monitor cases involving allegations of sexual conduct by a PPS employee (see page 196).

II. TERMINOLOGY IN THIS REPORT

“Sexual conduct” as defined by the TSPC is any conduct with a student which includes but is not limited to:

- (a) The intentional touching of the breast or sexual or other intimate parts of a student;
- (b) Causing, encouraging, or permitting a student to touch the breasts or sexual or other intimate parts of a student;
- (c) Sexual advances or requests for sexual favors directed towards a student;
- (d) Verbal or physical conduct of a sexual nature when directed toward a student or when such conduct has the effect of unreasonably interfering with a student’s educational performance or creates an intimidating, hostile or offensive educational environment; or
- (e) Verbal or physical conduct which has the effect of unreasonably interfering with a student’s educational performance or creates an intimidating, hostile or offensive educational environment.

OAR 584-020-0005(5). The TSPC deems any sexual conduct with a student by an educator to be evidence of gross neglect of duty and grounds for TSPC disciplinary action, including suspension or revocation of the educator’s license. See OAR 584-020-0040(4)(f). The TSPC’s standards apply to any licensed, registered or certified person who is authorized to engage in an instructional program including teaching,

counseling, school psychology, administering, and supervising. See OAR 584-020-0005(3).

The meaning of “sexual conduct” as defined by ORS 339.370-.400, a statutory scheme that triggers an obligation of disclosure among education providers, became effective in 2010 and requires a higher threshold of damaging conduct than the TSPC standard before the statute is triggered. ORS 339.370(9) defines “sexual conduct” as any verbal or physical or other conduct by a school employee that is sexual in nature; directed toward a kindergarten through grade 12 student; has the effect of unreasonably interfering with a student’s educational performance; **and** creates an intimidating, hostile or offensive educational environment. All four elements must be met. The statutory definition for sexual conduct does not include behavior that would be considered child abuse (and hence, immediately reportable to local law enforcement).

The District has an administrative directive that tracks the requirements of the statutory scheme. See AD 5.10.063-AD, “Prohibition Against Employee Child Abuse and Sexual Conduct with Students.” This AD uses the same four-part definition that is contained in the statute.

The District also has a policy prohibiting staff-to-student sexual harassment. The term “sexual harassment” includes conduct, verbal or nonverbal, which



denigrates or shows hostility to a student or students by reason of their gender.

The term also includes “any attempt by action or words to establish with a student an amorous, sexual, lascivious or lewd relationship, knowingly use lascivious or lewd language or gestures in the presence of a student, or permitting a student to continue acts or statements which can be reasonably perceived as attempting to establish an amorous or sexual relationship with the staff member or volunteer.”

See PPS Board Policy 5.10.062-P.

In our report, we use the term “sexual conduct” to encompass a broad set of comments and/or behaviors that are inappropriately sexual in nature, usually direct toward a student by an employee. Our use of the term follows the TSPC’s broad definition of inappropriately sexual behavior. We do not use the term as it is defined in ORS 339.370, with all four requisite elements, except when we refer to the statute in our report. The term “sexual conduct” is synonymous with “sexual misconduct” for purposes of our report.



III. INVESTIGATION METHODOLOGY

On September 19, 2017, at a Special Meeting, the Portland Public School Board of Education (the Board) defined and approved the scope of this independent investigation and subsequently formalized it in a letter to its counsel, Amy Joseph Pedersen. The letter called on the investigation team to answer 21 precise questions focused on why Mr. Whitehurst's conduct had not been adequately dealt with by PPS, the specific facts attendant to the conduct, and recommendations for policy and procedural changes to prevent its recurrence by another educator.

On February 2, 2018, the Board expanded the scope of the investigation to be informed by PPS's response to allegations raised about inappropriate conduct by former educator Norm Scott, including post-employment actions by the District.

The investigation took over six months to complete. It consisted of over 100 witness interviews and the review of thousands of documents.

WITNESSES:

We found almost all of the past and current PPS employees that we contacted to be cooperative and willing to participate in the investigation. The vast majority of witnesses not only agreed to speak with us, they were entirely candid

and offered thoughtful insights into the issues under investigation. Only a handful of witnesses declined to speak with us. In addition to live and telephonic interviews, we received and reviewed communications sent to a dedicated email address and confidential phone line.

Below are the individuals who were contacted or interviewed for the investigation, as well as the witnesses who were relevant to a particular time period but not interviewed for the reasons described:

RELATED TO TIME PERIOD AT MARSHALL HIGH SCHOOL, 1982-83:

Vince “Pesky” Paveskovich, vice principal (through a family member)
Larry Linne, school police officer

Did not interview:

Gust Kanas, principal (deceased)
Judith Lachenmeier (Valjean), vice principal (deceased)

RELATED TO TIME PERIOD AT FRANKLIN HIGH SCHOOL, 1983-84:

George Guthrie, principal
Audrey Hanes, vice principal
Cathy Schar, vice principal
Joyce Gago, front desk employee and cheerleader advisor
Larry Dashiell, teacher and speech coach
Anonymous former student #1 (allegation of sexual conduct)
Anonymous former student #2 (allegation of sexual conduct)
Caprice, former student (allegation of sexual conduct)
[REDACTED] former student (no allegation of sexual conduct)
[REDACTED] former student (no allegation of sexual conduct)
[REDACTED] former student (no allegation of sexual conduct)

Larry Linne, school police officer
Holly Vaughn-Edmunds, Beaumont Middle School counselor
Tammy Jackson, supervisor to Vaughn-Edmunds

Did not interview:

Frank Frangiapani, vice principal (deceased)
Jill Schroeder, direct supervisor to Whitehurst (deceased)

RELATED TO TIME PERIOD AT SELLWOOD MIDDLE SCHOOL, 1984-86:

John "Bill" Beck, Jr., principal

RELATED TO TIME PERIOD AT LINCOLN HIGH SCHOOL, 1986-1997:

Carol Matarazzo, principal
Toni Hunter, vice principal
Sandra Page, vice principal
Bruce Richards, vice principal
Bruce Plato, vice principal
John Cover, vice principal
Larry Dashiell, interim vice principal
Lowell Slick, athletic director
Anonymous [REDACTED] (allegation of sexual conduct)
[REDACTED] former student (allegation of sexual harassment)
[REDACTED] former student (no allegation of sexual conduct)

Did not interview:

Velma Johnson, principal (did not respond to multiple requests for interviews)
Judith Lachenmeier (Valjean), principal (deceased)
Chet Moran, vice principal (deceased)

RELATED TO TIME PERIOD AT SITTON ELEMENTARY SCHOOL, 1991-92:

James Brannon, principal

RELATED TO TIME PERIOD AT MARSHALL HIGH SCHOOL, 1997-2007:

Greg Wolleck, principal
Stevie Newcomer, vice principal
John Wilhelmi, vice principal
Fred Locke, principal of Renaissance Academy of the Arts
[REDACTED] former student (allegations of sexual harassment)
David Thoman, PPB police officer
Tom Perkins, PPB sergeant
Frank Klejmont, PPB lieutenant (2001), PPS Head of Security
Maureen Sloane, HR legal counsel

Did not interview:

[REDACTED]

RELATED TO TIME PERIOD AT EVENING SCHOLARS PROGRAM, 2002-06, 2008-13:

Greg Neuman, Principal
Eryn Berg, administrator
Macarre Traynahm, administrator
Kristyn Westphal, administrator
Ginger Taylor, administrator
Lynn Buedefeldt, administrator

Did not interview:

Gary Earle, administrator (could not locate)

RELATED TO TIME PERIOD AT JEFFERSON HIGH SCHOOL, 2007-2012:

John Wilhelmi, principal
Cynthia Harris, principal
Margaret Calvert, principal
Ricky Allen, vice principal
Sheri Kammerzell, secretary to Cynthia Harris
Shannon Misner, secretary to Mitch Whitehurst
Aznegashe Yelma, coach

[REDACTED]

Ivona Whittmayer, employee in Nutritional Services Department
Cindy Shepard, employee in Custodial Department
Dennis Tune, PPS security services
Bobbie Regan, PPS Board member
Anonymous [REDACTED]
Parent of anonymous former student #4
Loretta Benjamin-Samuels, HR performance management director
Maureen Sloane, HR legal counsel
Richard Clarke, director of HR

RELATED TO TIME PERIOD AT FAUBION SCHOOL, 2012-2015:

Jen McCalley, vice principal
Andrea Martin, counselor
Antonio Lopez, regional administrator, Jefferson and Franklin Clusters
Caprice, substitute teacher (last name withheld per her request as a former student with allegation of sexual conduct)
[REDACTED] former student [REDACTED]
Frank Scotto, HR regional director
Jollee Patterson, general counsel
Jeff Fish, HR legal counsel
Siobhan Murphy, Legal Department staff
Sean Murray, chief HR officer
Stephanie Harper, HR legal counsel and interim general counsel (2016-17)
Jeanne Windham, Legal Department paralegal
Mary Elizabeth Harper, HR senior manager
DeShawn Williams, PPB school resources officer
Mike Weinstein, PPB detective
Christina Mascal, Deputy District Attorney

Did not interview:

LaShawn Lee, principal (declined to be interviewed but did provide a written statement through her attorney)
Harriet Adair, regional administrator (declined to be interviewed)

Ken Berry, teacher (declined to be interviewed)
Rory Thompson, student management specialist (declined to be interviewed)
John Berkey, PAT Uniserv Consultant (Whitehurst's union representative)
(declined to be interviewed but provided written input)

NOT RELATED TO A PARTICULAR SCHOOL:

Vicki Phillips, superintendent (2004-07)
Carole Smith, superintendent (2007-16)
Bob McKean, interim superintendent (2016-17)
John Payne, manager of Security Operations
Amanda Whalen, chief of staff
Sascha Perrins, interim chief of staff
Various current PPS employees (not directly related to Whitehurst
employment but interviewed for purpose of making recommendations)
Mike Rosen, PPS Board member
Pam Knowles, PPS Board member
Amy Kohnstamm, PPS Board member
Scott Bailey, PPS Board member
Tom Koehler, PPS Board member and 2016-17 chair
Julia Brim-Edwards, PPS Board member and 2017-18 chair

Kim Sordyl, parent of current PPS students

Michael Porter, Miller Nash Graham & Dunn LLP attorney
Naomi Haslitt, Miller Nash Graham & Dunn LLP attorney

Christina Edgar, TSPC investigator
Trent Danowski, TSPC deputy director
Raul Ramirez, DOJ counsel (representing TSPC)

San Francisco Unified School District HR and Legal Department staff

Did not interview:
Mitchell "Mitch" Whitehurst (declined to be interviewed)
Suzanne Cohen, PAT president (declined to be interviewed)

RELATED TO NORM SCOTT:

Frank Scotto, Sellwood principal and HR regional director

Jeff Fish, HR legal counsel

[REDACTED]

[REDACTED]

Curtis Wilson, Grant High School vice principal

Michael Porter, Miller Nash Graham & Dunn LLP attorney

Clackamas Education Service District staff

Oregon City School District HR Department staff

DOCUMENTS:

The District provided or attempted to provide all documents requested. We made successful public records requests for documents from the Teacher Standards & Practices Commission (TSPC) and the Portland Police Bureau (PPB). The District's outside law firm, Miller Nash Graham & Dunn LLP ("Miller Nash"), also provided all the documents we requested.

Altogether we received and reviewed the following materials:

- PPS emails and attachments: 367.42 GB (378,008 files) (strategically searched and reviewed);
- PPS documents, not including the email searches: 459 MB (49 files);
- Documents from Miller Nash: 2 GB (2,635 files);
- Other: over 850 MB (231 files) – including documents responsive to public records requests to the TSPC, PPB, and Clackamas County DA's Office; documents provided by interested members of the community; and other miscellaneous sourced documents.

[REDACTED]

LIMITATIONS TO OUR INVESTIGATION:

This investigation was not without its challenges. We attempted to look back 36 years and investigate Mr. Whitehurst's employment at PPS starting in 1982. Given the length of time that has passed, some witnesses had passed away. Some witnesses' memories of specific events had faded. Other witnesses expressed the possibility of memory fallibility and were not sure about what they actually recalled and what they had recently read in the media about the Whitehurst matter. We did not have the power to compel any witnesses to speak with us (through a subpoena, grand jury, or other mechanism). Thus, we did not have the opportunity to interview any witnesses who told us they did not want to be interviewed or who did not respond to our requests for an interview.

The District's document management system (or lack thereof) made it difficult to gather all of the documents we would have wanted to review. For example, PPS did not have a database that could access emails created prior to mid-2011. The only pre-mid-2011 emails that we reviewed were those that had been printed out in hard copy and saved by the recipient. We also were unsuccessful finding other relevant documents that had been archived in a manner that they could not be found, such as the PPS police files that were presumably archived in November 2001, when the PPS police force was disbanded and the PPB

took over policing the schools. Documents maintained in the Blanchard Education Service Center (BESC) did not reside in one centralized location or in a centralized electronic database and our requests often required extensive searching by District personnel.

Lastly, the District's contracts with the teacher's union, Portland Association of Teachers (PAT), over the years from 1982-2016 contained terms that required the District to remove materials from Mr. Whitehurst's personnel file and building files. This routine practice of purging documents made it impossible to access some critical evidence of inappropriate conduct by Mr. Whitehurst that most likely had been placed in these files contemporaneously with the behavior. We could not ascertain what documentation, if any, was ever placed in Mr. Whitehurst's files. When we received a copy of Mr. Whitehurst's 360-page personnel record, it was void of any discipline or other documentation of inappropriate behavior.



IV. WHITEHURST CHRONOLOGY

Green	Allegations of Sexual Conduct
Gold	Notice to PPS of Sexual Conduct <i>(red font = summary of notice and response)</i>
Blue	TSPC Activity Involving Whitehurst

DATE	EVENT
1981	Mitch Whitehurst obtains a BA degree.
1/19/1982	Whitehurst is licensed by the TSPC.
1982-83	<p>Whitehurst is hired @ Marshall High School.</p> <p>Whitehurst is hired as a temporary substitute teacher. Shortly thereafter, he is hired as a temporary Student Integration Services (SIS) coordinator, a position with responsibilities that include providing counseling to students of color and at-risk students and generally acting as their advocate. He switches from temp to 1st year probationary teacher in November 1982.</p> <p>He is unassigned at the end of the school year because his assignment at Marshall was only temporary. He leaves with a positive evaluation from vice principal Judy Lachenmeier.</p> <p>Gust Kanas, principal; Judy Lachenmeier and Vince “Pesky” Paveskovich, vice principals.</p>
Sometime in the 1982-83 school year	Marshall vice principal Paveskovich reports to PPS officer Larry Linne that he has general concerns that Whitehurst is engaging in borderline inappropriate behavior with students. This was an “FYI” of sorts and was not a specific complaint from or about any particular student.

	<p><i>There is no specific complaint, therefore the PPS police do not conduct an investigation.</i></p>
<p>1983-84</p>	<p>Whitehurst works @ Franklin High School.</p> <p>Whitehurst moves to Franklin High School where he works again as an SIS coordinator.</p> <p>He is unassigned at the end of the school year because his assignment at Franklin was only temporary (he had been filling in for a staff member on sabbatical leave who planned to return in the fall of 1984). He leaves with a positive evaluation from his direct supervisor, Jill Schroeder.</p> <p>George Guthrie, principal; Frank Frangiapani, Audrey Hanes, Cathy Schar, vice principals.</p>
<p>1983</p>	<p>Whitehurst allegedly pays extra attention to and flirts in the school halls with a [REDACTED]</p> <p>[REDACTED]</p> <p><i>The student does not report the misconduct to an adult, nor is she aware of any PPS employees who witnessed anything inappropriate.</i></p>
<p>1984</p>	<p>In late May or early June, Whitehurst allegedly invites [REDACTED] (Caprice [REDACTED] 18 years old, Class of '84) to his apartment.</p> <p>Per Caprice:</p> <p>In the school halls, Whitehurst confirms [REDACTED] and then invites [REDACTED] to his apartment to swim, drink beer, and attend a party with other students. Caprice [REDACTED]. Caprice has a beer,</p>

goes swimming at the apartment complex's pool and then returns to the apartment [REDACTED]. She walks in on Whitehurst [REDACTED] making out in his apartment. He then tells her, [REDACTED], then you can, [REDACTED] Caprice says no, checks in with [REDACTED], and then runs home. She does not tell any adult at the time.

After this incident, Whitehurst makes rude comments to Caprice in the halls ("I want some of that [her last name] meat!") and appears emboldened around her to make sexual comments. When she attempts to get her transcript the week after the bad experience at his apartment, he brings her into his office, shuts the door, and tells her she will have to suck his dick under his desk to get it. She runs from his office. Caprice later hears he was fired a year later for hitting on female students.

[REDACTED]

[REDACTED]

While Whitehurst was working at Franklin High School, he lived nearby at an apartment complex that had a swimming pool.

	<p><i>Neither student reports the misconduct at the time to any adult, nor [REDACTED] aware of any PPS employees who witnessed inappropriate conduct.</i></p> <p><i>As noted later in this chronology, Caprice reports the conduct to multiple PPS employees in 2008 and again in 2012.</i></p>
<p>Sometime in the 1983-84 school year</p>	<p>While Whitehurst is working at Franklin High School, vice principal Frank Frangiapani reports to PPS officer Larry Linne that he received a call from a concerned mother: her daughter told her that within the last month, Whitehurst was entertaining female students at his residence and engaging in inappropriate conduct [REDACTED]; “sexual conduct” was not specifically mentioned.</p> <p>Linne interviews Whitehurst with a union rep present (maybe Dean Mauchley). Whitehurst denies having any students over to his residence. Linne writes up his report and puts it on the PPS police record system. It appears no formal disciplinary action was taken.</p> <p><i>A report is made by the Franklin vice principal to the school police officer. The school police officer investigates and makes a written record of the investigation.</i></p> <p><i>[This written report could not be found and is believed to have been lost or destroyed when the PPS police force was disbanded in late 2001. The report may still exist in the PPS or PPB archives. Repeated attempts by the investigation team to locate the report were unsuccessful.]</i></p>
<p>1984-86</p>	<p>Whitehurst works @ Sellwood Middle School.</p> <p>Whitehurst moves to Sellwood Middle School and works as a PE instructor from 1984-1986. He is originally hired as a temp for a PE teacher who is on sabbatical; then that teacher transfers schools and Whitehurst keeps the slot.</p> <p>He sees an opportunity to work and coach at Lincoln High School</p>

	<p>(where he is already coaching part-time), and is encouraged to pursue the opportunity by the Sellwood principal, who recognizes Whitehurst’s eagerness to coach high school teams. Whitehurst is given an excellent review and recommendation by Bill Beck to work at Lincoln High School. He is an administrative transfer to Lincoln.</p> <p>John “Bill” Beck, principal.</p>
<p>Sometime in the 1984-5 or 1985-86 school year</p>	<p>Three female students complain that Whitehurst is looking at their chests. Principal Bill Beck has the Sellwood Middle School student management specialist (Dale Smith) interview the three girls. Smith determines that one girl in particular had felt uncomfortable that Whitehurst was looking at her chest and told the other two.</p> <p>Beck verbally counsels Whitehurst not to look at the girls’ chests. Whitehurst is professional when questioned about the complaint. He offers an explanation along the lines of having looked at something on the girl’s t-shirt, and does not really deny the conduct. It appears to Beck as though Whitehurst is open to the coaching and won’t repeat the conduct. Beck does not get any other complaints and at the time, does not think this one complaint is serious enough to report to the TSPC or the District.</p> <p><i>The Sellwood principal verbally counsels Whitehurst about sexual conduct (ogling) but makes no written record of it.</i></p>
<p>1984-85</p>	<p>Whitehurst coaches @ Franklin High School.</p> <p>Boys JV Basketball Coach and Freshman Boys Baseball Coach</p>
<p>1985-86</p>	<p>Whitehurst coaches @ Franklin High School.</p> <p>Head Girls Varsity Tennis Coach</p> <p>Whitehurst coaches @ Benson High School.</p> <p>Boys JV Basketball Coach</p>
<p>1986-97</p>	<p>Whitehurst works @ Lincoln High School.</p>



	<p>[REDACTED]</p> <p>se. She avoids him as much as possible after this experience.</p> <p><i>The student does not report the misconduct to any adult, nor is she aware of any PPS employees who witnessed any inappropriate conduct.</i></p>
<p>School year 1995-96 (at least)</p>	<p>Whitehurst allegedly harasses female students in the halls of Lincoln by commenting on their appearance, looking them up and down, and acting in an overfriendly manner. [REDACTED]</p> <p>[REDACTED]</p> <p><i>The harassment is apparently not reported to any adult.</i></p>
<p>7/1997</p>	<p>Whitehurst is notified by principal Velma Johnson that he is unassigned. There is no evidence that Whitehurst is unassigned because of any inappropriate behavior around female students.</p> <p>Whitehurst's May 1997 evaluation refers to a [REDACTED]</p> <p>[REDACTED]</p> <p>He applies but is not selected for a position at Humboldt. He is selected for a position at Marshall High School.</p>

<p>1997-2006</p>	<p>Whitehurst works @ Marshall High School.</p> <p>After being unassigned, Whitehurst lands at Marshall as an SIS coordinator, 1997-2004 (hired in summer '97 on a temporary basis to fill in for Karl Newsome, .5 SIS + .5 truancy grant). He is also a dean of students, 1997-2005, as well as a PE/Health teacher in 2004 and apparently during later years.</p> <p>Boys Varsity Basketball Coach (removed due to complaints unrelated to sexual conduct) Boys Varsity Tennis Coach Boys Soccer Coach</p> <p>Greg Wolleck, principal; Gary Earle, John Wilhelmi and Stevie Newcomer, vice principals.</p> <p>When Marshall breaks into smaller schools, Whitehurst teaches at Renaissance Arts Academy as a dean from 2004-05 and a PE/Health teacher from 2004-06. Whitehurst is unassigned in '06 due to budget cuts.</p> <p>Fred Locke, principal.</p>
<p>7/1/00</p>	<p>Maureen Sloane and Jollee Patterson begin working at PPS in the Legal Department. Prior to Maureen Sloane, there was no HR legal counsel at PPS.</p>
<p>Sometime during school years 1997-2000</p>	<p>PPS officer George Weatheroy is dispatched to Marshall to interview a student [REDACTED] complained that Whitehurst made inappropriate comments [REDACTED]. Weatheroy takes the initial report and writes it up, but does not recall interviewing Whitehurst.</p> <p><i>School police respond to a student complaint and interview the student. The school police officer makes a written record of the investigation.</i></p>

	<p><i>[The written report could not be found and is believed to have been lost or destroyed when the PPS police force was disbanded in late 2001. The report may still exist in the PPS or PPB archives. Repeated attempts by the investigation team to locate the report were unsuccessful.]</i></p>
12/2000	<p>[REDACTED]</p>
2/2001 – 11/2001	<p>[REDACTED]</p>

11/1/01	<p>School police funding is eliminated, and the PPS police force is replaced by the PPB. Apparently little institutional knowledge is carried forward. Cases are only maintained in the PPB system if the alleged conduct is potentially criminal.</p> <p>Prior to this transition, the PPS police conducted personnel investigations. The PPB did not conduct personnel investigations for the District. If the conduct under investigation was deemed by the PPB to be a personnel issue and rather than criminal allegations, the PPB handed the investigation back to PPS to complete.</p>
11/2/01	<p>[REDACTED]</p> <p>[REDACTED]</p>
11/2/01	<p>[REDACTED]</p> <p>EXHIBIT 1: [REDACTED] WRITTEN STATEMENT</p>
11/2/01 – 11/7/01	<p>PPS places Whitehurst on paid leave.</p>
11/5/01	<p>[REDACTED]</p> <p>[REDACTED]</p>

[REDACTED]

EXHIBIT 3: MEMO TO WHITEHURST FROM WOLLECK

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Per the union contract in effect at the time, disciplinary materials were not to be removed from personnel files. However, this memo does not appear to have ever been added to his personnel file. There is no "cc: personnel file" or "cc: PAT rep" at the bottom of the memo, as would be expected of a memo to be placed in the personnel file. We did not find any evidence that the union was involved in the investigation.

Whitehurst had the right, pursuant to the union contract, to request and have granted that non-disciplinary materials (including a letter of warning or a reprimand) be removed from the personnel and

	<p><i>building files if after three years of being written no subsequent similar entries had been made in his building or personnel file. By 2005, with no further documented sexual conduct on record, Whitehurst apparently had the right to have the memo removed from his files.</i></p> <p><i>The union contract also called for removal of materials in the building files when either the teacher or the supervisor is transferred. Therefore, when Greg Wolleck left Jefferson in July 2002, the contract required that Whitehurst's building file be purged and the memo removed from the file due to the change in supervisors. When Whitehurst moved to Renaissance Academy in 2004, he had a new supervisor (Fred Locke) and materials would have again been removed from his building file. When he moved from Marshall to Jefferson in 2006, all materials would have been purged and the memo (if it still remained) removed from his building file to be in compliance with the union contract.</i></p>
11/8/01	Whitehurst is returned to work.
12/07/01	PPS reports the student complaint to the TSPC.
5/17/02	TSPC dismisses the case and takes no action against Whitehurst.
2002-06	<p>Whitehurst works @ Portland Evening Scholars High School</p> <p>In the evenings, Whitehurst works as a PE teacher.</p> <p>Gary Earle ('02-04), Macarre Traynham ('04-06), administrators.</p>
2003-06	<p>Whitehurst coaches @ District Athletics</p> <p>Whitehurst coaches PIL HS sports, Boys Tennis Coach</p>
2004-06	<p>Whitehurst works @ Renaissance Arts Academy on Marshall Campus</p> <p>When Marshall divides into smaller schools, Whitehurst works at</p>

	<p>Renaissance Arts Academy (SIS/PE/Health positions).</p> <p>Fred Locke, supervisor.</p>
<p>School year 2004-05 (at least)</p>	<p>Whitehurst allegedly ogles and comments on the appearance of female students in the halls of Renaissance.</p> <p><i>The harassment is apparently not reported to any adult.</i></p>
<p>2006-12</p>	<p>Whitehurst works @ Jefferson High School</p> <p>PE Teacher 2006-12 SIS Coordinator 2006-08 Dean of Students 2007-09 Student Management Specialist 2007-08 (1.0); 2008-09 (.5) Athletic Director 2008-11 (.5); 2011-12 (.3) Head Girls Volleyball Coach 2006-08 Head Boys Tennis Coach 2006-08</p> <p>Whitehurst is unassigned at Marshall and was brought to Jefferson by John Wilhelmi, who as an interim principal at Jefferson selects him over another PE teacher at Jefferson as a Round 2 pick. There is no evidence Whitehurst was unassigned at Marshall due to any inappropriate behavior with female students. Wilhelmi assumed Whitehurst was in the selection pool due to budget cuts at Marshall.</p> <p>John Wilhelmi ('06-07); Cynthia Harris ('07-10); Toni Hunter ('10-11); Margaret Calvert ('11-12), principals; Ricky Allen, vice principal.</p>
<p>1/25/08</p>	<p>Caprice (Franklin student, Class of '84) either talks to her aunt who works at Jefferson or reads an article in the paper about Whitehurst and learns he is a dean at Jefferson. She confers briefly with Joyce Gago (her Franklin cheerleader advisor) and Holly Vaughn-Edmunds [REDACTED] about whether she should report his prior sexual conduct, then goes to the HR Department, where she reports the incident to Loretta</p>

	<p>Benjamin-Samuels in the HR Department and then meets with legal counsel Maureen Sloane. She describes for Sloane the 1984 incident involving her, [REDACTED] and Whitehurst at Whitehurst's apartment including his demands for oral sex. Caprice recalls Sloane took notes and then asked her, "So what do you want?"</p>
<p>1/25/08</p>	<p>HR legal counsel Sloane writes up the complaint and describes her investigation in a memo she places in her own files but not in Whitehurst's personnel or building files.</p> <p>Sloane confirms that Caprice was a student at Franklin High School when Whitehurst was working there as an Integration Specialist. She confirms from her own files that there was a previous similar complaint from a Marshall student [REDACTED] in 2001 that Whitehurst [REDACTED]</p> <p>[REDACTED] She notes that she wrote a reprimand at that time and then reported the complaint to the TSPC, which took no action. <i>"There are no other indications of any inappropriate behavior since then. Although it is possible that Mr. Whitehurst was making inappropriate statements to students, the issue was investigated in 2002 [sic] by both the District and TSPC. I will take no further actions on this matter."</i> At the bottom of the memo, in handwriting, she notes, <i>"Richard Clarke [HR Director] agreed."</i></p> <p>EXHIBIT 4: MEMO TO FILE FROM SLOANE</p> <p>EXHIBIT 5: INVESTIGATION NOTES BY SLOANE</p> <p><i>Sloane does not contact [REDACTED], and she does not investigate the matter further (such as contacting the administration at Jefferson to find out if Whitehurst was exhibiting behavioral issues or had engaged in any undocumented inappropriate conduct). She does not interview Whitehurst about the dated allegations.</i></p>

	<p><i>During our investigation, Sloane explained that Clarke took a narrow approach to reporting to the TSPC and did not usually want Sloane to report a teacher to the TSPC unless PPS was quite confident that misconduct had actually occurred. Clarke denied that he or his office was overly cautious in reporting to the TSPC and said they always reported to the TSPC when it was appropriate to do so. He found Maureen Sloane to be a capable and competent investigator.</i></p> <p><i>HR legal counsel receives a complaint and takes no action other than documenting her intent not to take action in her own files (with HR director approval noted). No record is placed in Whitehurst's building or personnel files. The TSPC is not notified.</i></p>
<p>1/28 or 29/08</p>	<p>Skeptical that Sloane would take any action, Caprice speaks to Cynthia Harris, the principal at Jefferson. She is allegedly rebuffed by Harris. According to Caprice, Harris tells her that if HR is working on the issue, then the school does not need to do anything. She asks Caprice why she wants to “bring a good black man down” and tells her she is sure that Whitehurst’s demand for oral sex was a cultural misunderstanding.</p> <p><i>In our investigation, Harris denied Caprice’s allegations. Harris did not recall ever speaking with Caprice. She did recall that her secretary (Sheri Kammerzell) once took a call from someone who said they had read about Whitehurst in the paper and had “information about Mitch Whitehurst.” Harris said she directed the secretary to tell the caller to contact the District’s Legal Department, and at no time learned the substance of the caller’s information. After the call, Harris said she checked Whitehurst’s personnel file but did not see anything that caused concern. Harris’s secretary does not remember any call from someone with information about Whitehurst.</i></p> <p><i>After notifying or confirming notice to HR Legal Department, the principal takes no action in response to a report from a student of sexual conduct and/or abuse in 1984. (Note the principal in</i></p>



	<i>question denies this allegation.)</i>
8/2008	Whitehurst becomes the Jefferson athletic director (extended responsibility).
Sometime in school year 2008-09	<p>Whitehurst allegedly makes a comment that is sexual in nature to a Jefferson student about the manner in which she is eating grapes at a secretary's desk outside his office – something about the shape of the grapes, the way she is eating them, and how they are going into her mouth. His lewd comment disgusts her, especially because he ogles her female friends and is known to be “creepy.”</p> <p>The student complains to her mother, who comes to Jefferson to confront Whitehurst. He gives an explanation that makes no sense to her. She tells him never to speak to her daughters again. The parent also complains to the administration. (The mother thinks she may have spoken to principal Harris. Harris denies any knowledge of this complaint and does not believe it came to her attention.)</p> <p><i>Parent reports sexual comment to building administrator, possibly principal.</i></p>
Shortly afterwards in school year 2008-09	<p>Vice principal Ricky Allen verbally counsels Whitehurst about his inappropriate comment to the student. Allen (who recalls Whitehurst's comment related to what the student was wearing) did not believe the incident warranted discipline and did not document the conversation.</p> <p><i>Vice principal verbally counsels Whitehurst about a sexually harassing comment to a student but makes no written record of it.</i></p>
2008-13	<p>Whitehurst returns to work @ Portland Evening Scholars</p> <p>PE Teacher</p> <p>Gregory Neuman ('08-10), principal; Lynn Buedefeldt ('10-11), Eryn Berg ('11-12), Kristyn Westphal ('12-13), and Ginger Taylor ('11-13),</p>

	administrators who loosely supervise Whitehurst.
2009	Sloane retires. Jeff Fish becomes HR legal counsel.
2009	House Bill 2062 (HB 2062) passes. Oregon law (ORS 339.400, effective July 1, 2010) requires training on identification and prevention of sexual conduct, as well as reporting obligations, for all school district employees. The law includes a four-part definition of "sexual conduct."
10/07/10	<p>Assistant girls volleyball coach Aznegashe ("AZ") Yelma finds a cell phone [REDACTED] with texts from/to "Mitch" sent at late hours in the night. She reports this to the police based on her belief it is Whitehurst who is inappropriately texting with the student. PPB investigates and concludes that the person texting the student is not Mitch Whitehurst.</p> <p>EXHIBIT 6: POLICE REPORTS</p> <p><i>[We have no reason to dispute the outcome of the PPB's investigation.]</i></p>
12/29/10 - 1/2/11	<p>Someone puts up flyers outside of Jefferson High School with a photo of Whitehurst's face and the words "<i>Alleged Molester!</i>" above it. The flyer contains a phone number for the Portland Police Bureau and alleges Whitehurst "<i>has been violating young girls for over 20 years in his many positions as a teacher, coach, [and] administrator for Portland Schools. Please don't let it continue.</i>" Whitehurst is notified by the custodial department of the situation. He files a report with the PPB and insists the flyers were created and posted by a disgruntled parent (whom he identifies by name). Whitehurst claims that the parent was dating his former girlfriend and was motivated to harm Whitehurst's reputation.</p> <p>EXHIBIT 7: "ALLEGED MOLESTER!" FLYER</p> <p>EXHIBIT 8: POLICE REPORT</p>



12/29/10	<p>TSPC receives a copy of the flyer as an anonymous patron complaint. PPS provides what limited information it has regarding the flyers to the TSPC and does not conduct an investigation of its own because the flyer was anonymous. PPS is unaware of anyone who responded to the flyer by calling the phone number listed on it to report sexual misconduct by Whitehurst.</p> <p>EXHIBIT 9: MATERIALS PROVIDED TO THE TSPC BY PPS</p>
3/6/11	Due to program changes, Whitehurst's FTE as athletic director is reduced from .5 to .3 for the 2011-2012 school year.
5/1/11	Vice principal Allen evaluates Whitehurst, calling him an "asset to Jefferson High School."
5/13/11	TSPC dismisses the anonymous flyer complaint, taking no action against Whitehurst.
2011-2012	Whitehurst has performance issues as the athletic director. None of the issues is related to sexual conduct with students.
3/7/12	<p>Whitehurst receives a memo informing him that he is not going to continue to have extended responsibility as the athletic director as of June 15. The issues cited in the memorandum do not involve inappropriate conduct with female students.</p> <p>Whitehurst is offered a 1.0 FTE position as a Jefferson PE teacher.</p>
4/10/12	Whitehurst contacts principal LaShawn Lee regarding his interest in filling the opening for a PE teacher at Faubion School.
6/2012	<div style="background-color: black; width: 100%; height: 80px; margin-bottom: 5px;"></div> <p>Apparently no meeting takes place.</p>

2012-15	<p>Whitehurst works @ Faubion School (K-8).</p> <p>As a result of an administrative transfer, Whitehurst moves to Faubion School to teach PE. There is no evidence that Whitehurst was transferred due to sexual conduct or other inappropriate behavior with female students.</p> <p>Whitehurst makes approximately \$15k less as a PE teacher than as the Jefferson athletic director. However, Whitehurst makes the same salary as a PE teacher at Faubion as he would have made as a PE teacher at Jefferson.</p> <p>LaShawn Lee, principal; Jen McCalley, vice principal.</p>
12/12/12 or 12/13/12	<p>On bus duty after school, two educational assistants (EAs) complain to a substitute teacher (Caprice, the Franklin '84 student who complained in 2008 about Whitehurst) that Whitehurst calls them "Baby" and "Girl." They tell her that they don't want to report him to principal Lee because she appears to be friendly with him.</p> <p>Caprice tells principal Lee that she is concerned Whitehurst is teaching at Faubion. She informs Lee of her experience with Whitehurst in 1984. Lee at first defends Whitehurst and insists he would not do anything inappropriate with any Faubion girls, especially since they are not high school age. Caprice remains concerned that Whitehurst should not be teaching.</p> <p><i>Former Franklin student works as a substitute teacher at Faubion. She realizes Whitehurst is still employed at PPS and reports the 1984 sexual conduct by Whitehurst to the principal.</i></p>
12/14/12	<p>After speaking to Caprice, Lee contacts Harriet Adair, who was a regional administrator and her supervisor prior to Antonio Lopez becoming the regional administrator.</p> <p>Adair calls Jeff Fish (HR legal counsel), and asks him to call Lee. He does so and [REDACTED]</p>



[REDACTED]

Fish then emails chief HR officer Sean Murray, general counsel Jollee Patterson, and HR paralegal Siobhan Murphy to catch them up on his conversation, since he is about to resign from PPS the following day. The email states:

[REDACTED]

[REDACTED]

EXHIBIT 10: EMAIL FROM FISH TO PATTERSON AND MURPHY, CC TO MURRAY

Murphy checks the various HR files and finds Sloane's memos regarding the complaints by [REDACTED] in 2001 and Caprice in 2008.

	<p>[REDACTED] Murray and Patterson agree.</p> <p>EXHIBIT 11: EMAIL EXCHANGE BETWEEN MURPHY, MURRAY AND PATTERSON</p> <p><i>Principal notifies her regional director of a delayed report of sexual conduct from a student who graduated in 1984 and is a current substitute teacher. She also reports potential verbal harassment of adult education assistants (EAs). Regional director then notifies HR legal counsel. HR legal counsel then [REDACTED]</i></p> <p><i>It is not clear whether any action is taken to address the re-surfaced complaint of sexual conduct from 1984 or the ongoing harassment of the EAs. There is no documentation of any investigation or interview with Whitehurst about these concerns by anyone, and no evidence of follow up with Caprice.</i></p>
12/14/12	<p>Caprice receives a call from Officer DeShawn Williams, Faubion SRO. They speak for 15 minutes about her allegations.</p> <p>Caprice again speaks to principal Lee about concerns for the students as well as her concern of retaliation by Whitehurst. She follows up with an email sent shortly after her call from Williams, reiterating her concerns. She asks Lee to use discretion and only disclose her story on a need-to-know basis.</p>
12/14/2012 (approx.)	<p>A PPB GirlsStrength program representative reports to vice principal McCalley that [REDACTED]</p>

<p>12/2012 or 1/2013</p>	<p>Vice principal Jen McCalley possibly speaks to Whitehurst about not using terms like “baby” and “girl” to refer to the EAs. (<i>McCalley recalls having what she described as a “soft conversation.” She did not document it.</i>)</p> <p>Principal Lee possibly speaks to Whitehurst about not using terms like “baby” and “girl” to refer to the EAs. (<i>Lee recalls having a conversation in which she told him to stop using these terms. She did not document it.</i>)</p>
<p>12/15/12 – 1/1/13</p>	<p>Winter break. (12/24/12-1/1/13 is a furlough and District offices are closed.)</p>
<p>1/4/2013</p>	<p>Faubion counselor Andrea Martin speaks with [REDACTED]</p> <p>[REDACTED], and although there is a rumor that Whitehurst is a pedophile and he looks at the girls [REDACTED], she has not witnessed it.</p> <p>Martin takes notes of her interviews [REDACTED]. She becomes concerned Whitehurst may be engaging in grooming behavior and other inappropriate behavior. She brings her concerns to McCalley and Lee, who agree there is an issue.</p> <p><i>Students tell their school counselor about their concerns of Whitehurst’s inappropriate behavior [REDACTED]. The counselor shares the concerns with the vice principal and principal.</i></p>
<p>1/4/13</p>	<p>McCalley and Lee contact general counsel Jollee Patterson regarding the [REDACTED] concerns about Whitehurst. They tell</p>

	<p>Patterson [REDACTED]</p> <p>[REDACTED]</p> <p>Lee calls HR regional director Frank Scotto on or about this same day, also seeking his advice.</p> <p>Lee emails Scotto and Patterson (cc to McCalley) [REDACTED]</p> <p>[REDACTED]</p> <p>EXHIBIT 12: MARTIN’S INTERVIEWS NOTES</p> <p>All involved agree that a prompt investigation should proceed.</p> <p>Patterson [REDACTED]</p> <p>[REDACTED]</p> <p><i>Building administrators contact HR/Legal Departments for support. An immediate investigation is planned as the next step.</i></p>
1/4/13	<p>Whitehurst emails a personal on-line photo album to LaShawn Lee. The album contains photos of Whitehurst’s son playing sports as a child. [REDACTED]</p> <p>[REDACTED]</p> <p><i>We were unable to determine if Whitehurst’s personal communication to Lee was merely coincidental, or an attempt by Whitehurst—who did not have official notice yet of any investigation—to influence Lee.</i></p>
1/5/13	<p>Lee emails Harriet Adair and Ken Berry (a long-time PPS administrator and educator, then a teacher at Faubion) a copy of the interviews [REDACTED]</p>
1/6/13	<p>Lee speaks with Harriet Adair, Ken Berry, Jefferson principal Margaret Calvert, and possibly others about Whitehurst’s</p>

	<p>employment history and learns of persistent rumors that he has engaged in sexual conduct with female students at other schools in the District.</p> <p>She emails Faubion student management specialist Rory Thompson, who is also concerned about Whitehurst's behavior [REDACTED]: <i>"After speaking with Harriet, Ken Berry and others...this has been happening for decades! I'm so worried!"</i></p> <p>Lee sends an email to Patterson, Scotto, regional administrator Antonio Lopez, and paralegal Siobhan Murphy (cc to Jen McCalley and bcc to Harriet Adair and Ken Berry) to tell them she is <i>"extremely conflicted about the decision to allow [Whitehurst] to remain on campus during our investigation."</i></p> <p>Patterson calls her and talks to her, then responds in an email to everyone on the original email:</p> <p>[REDACTED]</p> <p>Patterson forwards the email exchange to Murray as an FYI (he is not on the original string).</p> <p>EXHIBIT 13: EMAIL EXCHANGE BETWEEN LEE AND PATTERSON (SENT TO OTHERS AS WELL)</p>
1/4 - 1/10/13	Vice principal McCalley and counselor Martin interview 23 girls [REDACTED]. The majority are uncomfortable around him and report concerns that echo what Martin's initial interviews revealed.

	<p>that is not identified. The notice cc's Loretta Benjamin-Samuels, Frank Scotto, and the Building File.</p> <p>EXHIBIT 15: INVESTIGATORY NOTICE TO WHITEHURST</p>
1/10/13	<p>McCalley makes notes in her personal notebook for follow-up steps (note this precedes any investigatory interview with Whitehurst):</p> <ul style="list-style-type: none"> • <i>6-week student teacher – female</i> • [REDACTED] • <i>resolving rumors</i>
1/11/13	<p>Lee and McCalley provide written notice to Whitehurst and his union representative, John Berkey, of an investigatory meeting scheduled to take place on 1/15.</p> <p>EXHIBIT 16: MEETING NOTICE TO WHITEHURST</p>
1/14/13	<p>Berkey informs Lee and McCalley that he is unavailable 1/15-18 and requests that they reschedule the investigatory meeting the following week, 1/22-25.</p>
1/15/13	<p>McCalley emails Scotto:</p> <p><i>"Hi Frank, Since there wasn't a huge finding on Mitch, do I still need to make a matrix? I have all the answers from the kids. Thanks, Jen"</i></p> <p>Scotto responds to McCalley: <i>"No need for matrix, Frank"</i></p> <p>McCalley replies to Scotto: <i>"Great!"</i></p> <p>EXHIBIT 17: EMAIL EXCHANGE BETWEEN McCALLEY AND SCOTTO</p> <p><i>A "matrix" refers to a chart that HR recommended for multi-student interviews; the matrix could show a pattern (if any) of the students' answers to the same questions.</i></p> <p><i>Scotto's and McCalley's respective recollections of their involvement in the investigation conflict. Lee and McCalley both contend that HR (meaning Scotto) made the determination that there was not</i></p>

	<p><i>enough evidence to move forward with discipline. Scotto denies making any determination about whether there was enough evidence to support discipline. He recalls that he did not see the results of McCalley's [REDACTED] interviews and relied on McCalley's judgment not to create a matrix since she was in the interviews and typed up the students' responses. There is no documented evidence that shows Scotto received a copy of the [REDACTED] interviews typed by McCalley; he may have only received the initial four interviews conducted by Martin that led to the initiation of that investigation.</i></p>
1/18/13	<p>Lee meets spontaneously with Whitehurst when he appears in her office after school. The meeting is brief (less than 10 minutes) and not documented.</p> <p><i>We were unable to determine the precise content of this discussion. Lee contends in a statement written in November or December 2017 that she discussed with Whitehurst only the allegations related to [REDACTED]</i></p> <p><i>[REDACTED] They had denied any inappropriate behavior by Whitehurst and told Lee the [REDACTED]</i></p> <p><i>[REDACTED] Lee denies that her conversation with Whitehurst was intended to be the investigatory interview. [REDACTED]</i></p> <p><i>[REDACTED] and it also conflicts with what she told Scotto about the meeting in an email written only a few days after the meeting took place (see entry for 1/20, below). We were unable to determine who else, if anyone, attended this meeting besides Lee and Whitehurst.</i></p>
1/18/13	<p>Scotto emails Lee and McCalley to ask if the "meeting with Mitch" has been rescheduled yet, still expecting to be included in an investigatory meeting.</p>
1/20/13	<p>Lee emails Scotto:</p> <p><i>"Jen and I met with Mitch on Friday about this situation. He approached me about wanting to meet as soon as possible. Based</i></p>

	<p><i>on the information that we were able to gather, this was probably a middle school rumor. In the meantime, we are going to keep a sharp eye on him. Jen will type up the notes and send to you and Mitch when we return from the extended weekend.”</i></p> <p>Lee’s email goes on to discuss personnel issues involving three other Faubion employees.</p> <p>EXHIBIT 18: EMAIL EXCHANGE BETWEEN LEE AND SCOTTO, CC TO McCALLEY</p> <p><i>In our investigation, McCalley denied attending the meeting and has no notes of the meeting. However, McCalley has a strong memory of Lee at some point telling Whitehurst to keep his eyes above the girls’ shoulders.</i></p>
1/21/13	<p>Scotto responds to Lee: <i>“That’s good news about Mitch.”</i> His email also responds to the personnel issues involving three other Faubion employees. Scotto defers to Lee’s conclusion (per her email) that the concerns were a middle school rumor and therefore did not warrant discipline.</p> <p>There is no further documentation of follow-up by Scotto, Lee, McCalley, Patterson, or anyone else. There are no notes of the meeting. Nothing is placed in Whitehurst’s files. There is no report made to TSPC.</p> <p><i>After the vice principal interviews the [REDACTED], the principal meets briefly with Whitehurst. The investigation ends shortly afterwards with the principal’s conclusion that “this was probably a middle school rumor,” although the typed interview notes indicate otherwise. There is no formal investigatory meeting with the union representative and the HR regional director, as originally planned. There is no documentation to support the principal’s conclusion that this was a rumor and not substantiated concerns of sexual conduct. There is no discipline issued and no documentation of the sexual conduct in Whitehurst’s files. No one</i></p>

	<i>makes a report to the TSPC.</i>
1/23/13	<p>Whitehurst emails union representative John Berkey to request that he set up a grievance meeting to [REDACTED]</p> <p>Berkey responds and offers to set up a meeting with Ricky Allen to revive the grievance. In his email to Whitehurst, he asks, "<i>What has happened with the crazy kid complaint?</i>" Whitehurst apparently does not email back.</p> <p><i>(Berkey declined to be interviewed as part of our investigation and further declined to provide a written explanation for the reference to "the crazy kid complaint," citing confidentiality concerns.)</i></p>
3/2013	Stephanie Harper joins PPS as HR legal counsel, filling a 3-month vacancy.
4/2013	Vice principal McCalley evaluates Whitehurst for the school year 2012-2013. She rates him [REDACTED]
5/6/13	Students report Whitehurst is using his personal cell phone to take pictures [REDACTED]. McCalley emails him not to take photos because "taking photos with students is a liability issue." Whitehurst agrees not to take any more pictures and explains the pictures taken are merely to [REDACTED] and he routinely deletes them.
2/25/14	The PPS Facilities Department is notified of someone illegally using the Faubion dumpsters to dispose of personal residential debris. They identify the person misusing the dumpster as Whitehurst. They contact principal Lee, who does not do anything about it. The Facilities Department then contacts Scotto, who tells Lee that she needs to do something about it because if it is true he is using

	Faubion's dumpster, it is theft of services and it is illegal. Lee appears reticent to follow up with Whitehurst.
3/5/14	Whitehurst attends an investigatory meeting regarding the dumpsters with his union rep (Berkey), Scotto and Lee. [REDACTED]
8/6/14	Whitehurst contacts the vice principal of Roosevelt High School regarding an open position for the Dean of Students and Athletic Director. He expresses a desire to interview for the position. Apparently he is not offered the job.
8/26/14	First day back at school for Faubion staff. Whitehurst hits a coworker on his bottom and is verbally reprimanded by Lee. Lee reports this incident to HR senior manager Mary Elizabeth Harper, but Lee does not discipline Whitehurst or document the incident in his file with a non-disciplinary letter of expectation or other documentation.
9/25/14	Whitehurst strikes Faubion coworker Rory Thompson on the seat of his pants, possibly penetrating the area of his anus.
9/26/14	Thompson complains to principal Lee and vice principal McCalley that Whitehurst made unwelcome physical contact. Whitehurst is put on paid administrative leave.
9/27/14	PPB detective Weinstein interviews McCalley and is told of past allegations of sexual conduct (Faubion-based and her second-hand understanding of events that pre-date Whitehurst's employment at Faubion). Weinstein also interviews Lee, who mentions Caprice's report to her in 2012 about Whitehurst's sexual conduct in 1984



	but does not mention the 2013 concerns of inappropriate conduct with the Faubion [REDACTED]. He writes up a 62-page report that includes references to the allegations of sexual conduct.
11/21/14	PPS reports the adult sexual harassment by Whitehurst to the TSPC.
12/22/14	Whitehurst pleads guilty to class B misdemeanor harassment. Conditions are 18 months' probation, no offensive contact with the victim, and a fine of \$500. Whitehurst is not restricted from teaching or being around students (the DA does not focus on the allegations of sexual conduct in PPB detective Weinstein's report).
1/2015-2/2015	Whitehurst does not submit to a PPS investigative interview. Instead, his union attorney negotiates his resignation with PPS. In the resignation agreement, PPS agrees to give a neutral reference if contacted by prospective employers. PPS also agrees that all documents related to the harassment investigation will be removed from Whitehurst's personnel file and kept in a confidential HR file. EXHIBIT 19: WHITEHURST'S RESIGNATION AGREEMENT
2/12/15	Whitehurst submits his resignation papers to PPS (resignation effective 3/20).
5/8/15	Whitehurst asks John Wilhelmi, an administrator who worked with Whitehurst at Marshall and Jefferson, for a letter of recommendation to use in applying for positions in other school districts. He does not disclose the circumstances of his resignation or the fact that he is being investigated by the TSPC. Wilhelmi provides a positive letter, unaware of any reason not to do so.
5/12/15	Whitehurst also asks Ginger Taylor, an administrator who worked with him at the Evening Scholars Program, for a reference. Aware that he had been on paid administrative leave in the fall of 2014 and could not work as a PE teacher at Portland Evening Scholars but unaware of the outcome of any disciplinary action, Taylor checks

	<p>with the HR Department and is told all inquiries need to go to HR. She informs Whitehurst of this and declines to provide a recommendation.</p>
<p>6/3/15</p>	<p>Whitehurst applies for a position as a substitute teacher in the NWRESD in Hillsboro.</p> <p>HR legal counsel Stephanie Harper and general counsel Jollee Patterson confer regarding [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Neither attorney clearly recalls what they decided to do in response to this inquiry.</p> <p><i>PPS has no record of a response to NWRESD's inquiry. BESC maintains all the responses to these inquiries, but has no record of a response to a request for information about Whitehurst.</i></p>
<p>8/10/15</p>	<p>After reading Detective Weinstein's report and noting allegations of student sexual conduct in his interviews, the TSPC initiates a separate investigation into the allegations of Whitehurst engaging in sexual conduct with [REDACTED] Franklin High School [REDACTED] in 1984.</p>
<p>8/27/15</p>	<p>Rory Thompson sues PPS for battery, intentional infliction of emotional distress, and sexual harassment.</p>

9/12/15	Whitehurst agrees to surrender his license. He is not interviewed by the TSPC.
1/26/16	<p>TSPC orders Whitehurst’s license to be surrendered and permanently revoked.</p> <p>EXHIBIT 20: TSPC STIPULATION OF FACTS AND FINAL ORDER OF SURRENDER AND REVOCATION OF LICENSURE</p>
9/19/16	The 2016-17 PPS Board approves settlement of <i>Thompson v. PPS</i> on a vote of 4-3. The Board agrees that the District (specifically, interim superintendent Bob McKean) should look into whether PPS has appropriate safeguards to protect students and staff, including effective procedures for complaints. This work is to be overseen by the Audit Committee.
9/2016	<p>Interim superintendent Bob McKean discusses PPS’s current policies with chief HR officer Sean Murray, confirms there is training given to all employees at the start of the school year regarding child abuse – including educator sexual conduct and abuse – and sexual harassment, and reviews the investigatory process for complaints. He concludes the current systems in place are effective for identifying and reporting future sexual conduct. He does not report his follow-up to the Board, and the Board apparently does not ask him about it again.</p> <p>During his year as interim superintendent, McKean also works with Amanda Whalen, chief of staff, on a review of the complaint policy and the District’s process for handling complaints.</p>
4/10/17	The 2016-17 PPS Board Committee of Business and Operations requests District staff to provide “lessons learned on the Whitehurst situation” before the Board approves the revised sexual harassment policy. Very little substantive follow up occurs.
9/19/17	The 2017-18 PPS Board (newly formed as of July 1) commissions an independent investigation into Whitehurst’s history of sexual



	conduct with students as a PPS employee.
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V. RESPONSES TO THE BOARD'S QUESTIONS:
FINDINGS AND RECOMMENDATIONS



What notice of possible concerns about Mr. Whitehurst did the District receive?

Who received those notices, from whom did they receive them, and when did they receive them?

What response did the District make to each notice it received and what was the timeline for that response?

Was each of the responses adequate and, if not, why not?

What policies, directives and procedures were in place at that time that would have been applicable to the complaints or concerns that were raised?

The District received notice of concerns about Mitch Whitehurst's inappropriate behavior with female students on at least eight separate occasions:

1. 1983-84: POSSIBLE COMPLAINT FROM PARENT TO FRANKLIN VICE PRINCIPAL²

During the 1983-84 school year, Franklin High School vice principal Frank Frangiapani fielded a complaint from a [REDACTED]. Specifically, [REDACTED] informed Mr. Frangiapani [REDACTED] that within the previous month, Mr. Whitehurst was entertaining female students at his residence and engaging in inappropriate conduct [REDACTED].

Mr. Frangiapani notified the PPS police, which was the correct procedure at the time (the PPS police conducted the District's personnel investigations until

² Note that this concern was recalled by former PPS Officer Larry Linne and we have not been able to find additional evidence to corroborate it. Mr. Frangiapani is deceased. The PPS police records have either been destroyed or archived in such a manner that they cannot be located, despite repeated attempts.

November 2001). PPS police officer Larry Linne interviewed Mr. Whitehurst with a union rep present. Mr. Whitehurst denied having any students at his residence. Officer Linne wrote up his report and placed it in the PPS police record system.

There is no evidence that any disciplinary action was taken, and there is no record of this concern in Whitehurst's existing personnel records. **Without more evidence, we cannot assess the timeline for the response or assess whether the response was adequate.**

2. 1984-86: COMPLAINT FROM STUDENT TO SELLWOOD PRINCIPAL

During either the 1984-85 or 1985-86 school year, three students came to Sellwood Middle School principal John "Bill" Beck Jr. to complain that Mr. Whitehurst was looking at girls' chests during PE class.

Mr. Beck directed the Sellwood Middle School student management specialist (Dale Smith) to interview the three girls. Mr. Smith determined that one girl in particular felt uncomfortable that Whitehurst was looking at girls' chests and told the other two.

Mr. Beck verbally counseled Mr. Whitehurst not to look at girls' chests in PE class. Mr. Whitehurst was very professional when he was counseled. He offered an explanation along the lines of having looked at something on a girl's t-shirt and did

not deny the conduct. Mr. Beck did not think this one complaint was serious enough to document or to report to the TSPC or the District. After this complaint, Mr. Beck did not receive any other complaints about Mr. Whitehurst's behavior.

At the time, this response appeared to be adequate. In hindsight, it would have been better had Mr. Beck documented the concern and reported it to the PPS police (which conducted personnel investigations at the time) or to the HR Department so the District had a record of the concern. We are unaware of any policy, directive or procedure that obligated Mr. Beck to report the concern up the chain – and out of the building – rather than handle it internally. Administrators were free to exercise their own discretion regarding concerns of this kind.

3. 1997-2000: POSSIBLE COMPLAINT FROM MARSHALL STUDENT

Sometime between school years 1997-98 and 1999-2000, PPS officer George Weatheroy responded to a complaint from a Marshall student about inappropriate comments by Mr. Whitehurst. [REDACTED]

[REDACTED]

Officer Weatheroy took the initial complaint, wrote up his report and placed it in the PPS police record system.³

³ Officer Weatheroy does not believe he interviewed Mr. Whitehurst, although another officer may have, and he now cannot recall the outcome of the investigation. We have not been able to

There is no evidence that any disciplinary action was taken, and there is no record of this concern in Whitehurst's existing personnel records. **Without more evidence, we cannot assess the timeline for the response or assess whether the response was adequate.**

4. NOVEMBER 2001: COMPLAINT FROM STUDENT TO MARSHALL ADMINISTRATORS

In November 2001, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The PPB had very recently replaced the PPS police force and, unlike

their predecessors, did not have the responsibility of conducting personnel

find additional evidence to corroborate Officer Weatheroy's recollection or learn additional details of the incident. The PPS police records have either been destroyed or archived in such a manner that they cannot be located, despite repeated attempts.

[REDACTED]

investigations. PPB Officers [REDACTED] and determined that the complaint should be handled as a personnel matter because it did not constitute criminal behavior. Ms. Newcomer provided [REDACTED] [REDACTED] to principal Greg Wolleck and HR legal counsel Maureen Sloane for further investigation.

Ms. Sloane interviewed Mr. Whitehurst, who denied the allegations. He offered various explanations for his conduct, explaining to her that his actions were misinterpreted [REDACTED]. Ms. Sloane reviewed Mr. Whitehurst's personnel file, which had no documentation of any past inappropriate conduct.

Mr. Wolleck recalls being told by Ms. Sloane that the most they could do is put a memo in the file describing the situation [REDACTED] since Mr. Whitehurst's record was clean of past misconduct and [REDACTED] [REDACTED] Mr. Wolleck wanted something in writing in the file, lest this conduct ever re-occur.

Ms. Sloane and Mr. Wolleck delivered a memo to Whitehurst. The memo stated, in part:

Both [REDACTED] and your denial are credible. The District has interviewed [REDACTED] and reviewed your entire employment record at [PPS]. Other than the complaint itself, there was no additional evidence that you engaged in any inappropriate behavior toward [REDACTED]. . . . I know that the

complaint disturbed you greatly and believe that in the future you will be extremely cautious and will try to avoid any similar situations. If I can be of any additional assistance, please let me know.

[REDACTED]

[REDACTED] but this is not reflected in the memo. [REDACTED]

[REDACTED].⁴ This is also not reflected in the memo.

Ms. Sloane reported the possible inappropriate behavior to the TSPC on December 7, some 30 days after Mr. Whitehurst's interview. The TSPC closed the case five months later without taking action.

This investigation from start to finish was completed in seven calendar days.

[REDACTED] on November 1, and Mr. Whitehurst was more or less cleared and returned to work on November 8.

The response to [REDACTED] complaint was not adequate. Ms. Sloane apparently did not review the school police records on Mr. Whitehurst. Ms. Sloane did not conduct or [REDACTED] Mr. Whitehurst's explanations that contradicted her written statement. Ms. Sloane did not consult Ms. Newcomer, who was left out of the investigation after [REDACTED]

⁴ This is Ms. Newcomer's recollection. We were not able to corroborate this with additional evidence.

[REDACTED] the police. Ms. Newcomer could have refuted some of Mr. Whitehurst's explanations and could have vouched for [REDACTED]. There is no evidence anyone interviewed Mr. Whitehurst's [REDACTED], though it is possible that did happen. Ms. Sloane is certain she did not, and Mr. Wolleck and Ms. Newcomer have no memory of doing so; however, Ms. Sloane does not believe this would be included in the memo unless interviews had taken place.⁵ No one interviewed the counseling secretary whose desk faced Mr. Whitehurst's office to see if she had any information or could confirm or refute Mr. Whitehurst's explanations. In short, it appears the investigation ended after Ms. Sloane's interview of Mr. Whitehurst and her review of his personnel file.

Additionally, [REDACTED]

[REDACTED]

As Ms. Sloane acknowledged during our investigation, she could have done more to investigate this complaint and, provided she found more evidence, document the concerns as formal discipline that would have gone into and remained in the personnel file. When interviewed, she could not remember this

⁵ Had anyone interviewed [REDACTED]
[REDACTED]
[REDACTED].

[REDACTED]

complaint in any detail, and she had no explanation for not diligently investigating it. To her credit, in our interview Ms. Sloane took full responsibility for the shortcomings of the investigation and was quite candid and apologetic about her role.

The District followed the correct process for a complaint when the Marshall administrators notified the police as well as HR legal counsel about the concerns brought to their attention by a student. Board Policy 5.10.062-P, “Sexual Harassment – Staff to Student,” in place since 1994, states in part:

Staff or volunteers becoming aware of a violation of this section shall report the information to the principal. Principals shall immediately report to the school police for investigation [sic] every such incident, which comes to their attention. If staff or volunteers by action or words have attempted to establish with a student an amorous, sexual, lascivious or lewd relationship or permitted a student to continue to pursue such a relationship, it shall be clear grounds for dismissal, and a copy of the school police report documenting the circumstances shall be referred to the [TSPC] and the Personnel Office for appropriate action.

Unfortunately, after the PPB determined that the complaint did not rise to the level of criminal behavior (incorrectly, we believe; see pages 110-12) and passed it on as a personnel matter, the complaint was not pursued in a manner that ferreted out enough evidence to find that misconduct had occurred.

Ms. Sloane determined that she did not have sufficient evidence to proceed with

formal discipline beyond writing a memorandum putting Mr. Whitehurst on notice that his explanation had been credible and that it was possible that the student had misconstrued his intent. Had the investigation established additional evidence of misconduct, there may have been clear grounds to dismiss Mr. Whitehurst in 2001.

5. JANUARY 2008: BELATED COMPLAINT FROM FRANKLIN '84 STUDENT TO HR/LEGAL DEPARTMENTS

In January 2008, a Franklin graduate of the Class of '84 named Caprice (last name withheld upon her request) was surprised to learn that Mr. Whitehurst was still employed by PPS and working at Jefferson. She thought he had been terminated in the 1980's for inappropriate behavior with female students. She consulted a couple of PPS employees (counselor Holly Vaughn-Edmunds and Franklin cheerleader advisor Joyce Gago) about her offensive and frightening experience with Mr. Whitehurst. Ms. Gago told her it was not too late to report the conduct and encouraged her to contact the District. Ms. Vaughn-Edmunds relayed the report to her supervisor (Tammy Jackson), who took the report and shortly



afterwards told Ms. Vaughn-Edmunds that the matter was being handled by HR/Legal.⁶

Caprice went to the District HR Office, where she first spoke briefly to Loretta Benjamin-Samuels, the HR performance manager for the Jefferson cluster. Ms. Benjamin-Samuels referred her to HR legal counsel Maureen Sloane. Caprice told Ms. Sloane that Mr. Whitehurst demanded oral sex from [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ms. Sloane then confirmed that Caprice was a student at Franklin High School in 1983-84, the school year Mr. Whitehurst worked there. She also checked her files and found that Mr. Whitehurst had been accused in 2001 of [REDACTED]

[REDACTED]

[REDACTED].

Ms. Sloane wrote a memo to her own file which documented her meeting with Caprice, her limited research, and the decision that she would take no further

⁶ Ms. Jackson did not recall her involvement in Caprice's report in 2008, but she has no reason to dispute Ms. Vaughn-Edmunds's recollection.

action. At the bottom of the typed memo, in handwriting, she noted, “[HR Director] Richard Clarke agreed.”

This response was not adequate. At the time she learned of this complaint, Ms. Sloane was aware of the [REDACTED] Ms. Sloane did not contact [REDACTED] [REDACTED], and she did not do any additional fact-finding. She did not contact any prior administrators at Franklin or any current administrators at Jefferson, or even interview Mr. Whitehurst to see if he denied the allegations and if so, whether he was credible. Ms. Sloane did not report the conduct to the TSPC, and did not follow up with Caprice to apprise her of her investigation. By her own admission in our interview, Ms. Sloane could have done more to respond to this complaint.

Skeptical that Ms. Sloane would take any action, Caprice also spoke to Cynthia Harris, the principal at Jefferson. She was allegedly rebuffed by Dr. Harris, who told her that if the HR Department was already informed of the issue, then the school did not need to do anything more about it. Dr. Harris denies that she ever had a conversation with Caprice. However, she does recall that her secretary once took a call from someone who said they had “information regarding Mitch Whitehurst.” Dr. Harris directed the secretary to tell that caller to contact the

District's Legal Department, and did not ever learn the substance of the caller's information.

If Caprice did speak with Dr. Harris, Dr. Harris's response was also inadequate. She may have followed proper procedure to ensure that the matter was reported to the HR/Legal Department, but she was not receptive and supportive of the complaint that was brought to her attention and she too did not follow up with Caprice.

6. 2008-09: COMPLAINT BY PARENT TO JEFFERSON ADMINISTRATOR

Sometime during the 2008-09 school year, a Jefferson High School parent complained that Mr. Whitehurst had said something inappropriate to her daughter that was sexual in nature. The student had been eating grapes outside Mr. Whitehurst's office, and he made a lewd comment about how she was eating them. The parent first confronted Mr. Whitehurst and then reported him to the Jefferson administration, possibly principal Cynthia Harris.

Vice principal Ricky Allen verbally counseled Mr. Whitehurst about the harassing conduct. Mr. Allen did not think this complaint was serious enough to

document or report to the District.⁷ He did not field any complaints regarding Mr. Whitehurst's behavior with female students other than this one complaint. Without more information, we cannot assess the timeline of the response.

At the time, this response appeared to be adequate. In hindsight, it would have been better had Mr. Allen documented the concern and reported it to the HR Department so the District had a record of the concern and had enough information to discern a pattern of inappropriate behavior. We are unaware of any policy, directive or procedure that obligated Mr. Allen to report the concern up the chain – and out of the building – rather than handle it internally. Administrators were free to exercise their own discretion regarding concerns of this kind.

7. DECEMBER 2012: RENEWED COMPLAINT BY FRANKLIN '84 STUDENT

On December 12, 2012, Caprice (the Franklin '84 graduate) worked as a substitute teacher at the Faubion School. Upon learning that Mr. Whitehurst was teaching there, she went immediately to principal LaShawn Lee to tell her of his inappropriate sexual conduct when she [REDACTED] in 1984. She also told Ms. Lee that certain Faubion education assistants (EAs) felt they were being sexually harassed by Whitehurst. Ms. Lee conferred with her former

⁷ Mr. Allen's recollection is that Mr. Whitehurst's comment related to something the student was wearing.

supervisor and regional administrator, Harriet Adair, who then contacted HR legal counsel Jeff Fish and asked him to speak with Ms. Lee.

Mr. Fish called Ms. Lee. [REDACTED]

[REDACTED]

[REDACTED]

Officer Williams contacted Caprice, and they spoke for 15 minutes. She was upset by their conversation and became concerned about retaliation by Whitehurst if he learned she had spoken up about him.⁸ She followed up with Ms. Lee shortly thereafter about this concern.

Mr. Fish also [REDACTED]

⁸ Officer Williams does not recall the substance of his conversation with Caprice but believes he would have followed his normal protocols. He did not document the substance of the call or engage in any official follow-up that he now recalls.

[REDACTED]

[REDACTED] Winter break was just starting and Ms. Patterson was about to take a pre-planned vacation; she offered to call into a meeting the following day or to meet in person as soon as she returned in January. The issue was dormant over the break. In early January, however, a different complaint about Mr. Whitehurst —reports of him ogling Faubion girls and engaging in other inappropriate behavior [REDACTED] – appeared to stall a thorough response by HR/Legal to the December concerns raised by Caprice.

The initial response to this complaint was prompt and started as an effective response to a serious complaint. Contacting the SRO fulfilled the District’s reporting obligations, if any. Because [REDACTED] [REDACTED], the District did not have an obligation to contact Child Protective Services (CPS) and make a mandatory report. Apprising the chief HR officer and general counsel of the concerns in a detailed email was appropriate for the HR legal counsel who was leaving PPS and would not be able to investigate the concerns himself. Ms. Murphy’s response to dig into Mr. Whitehurst’s past and pull up files from off-site storage was also a step towards handling this complaint in a responsible manner.

But after the winter break, apparently nothing happened; the District's response simply stopped. We could not determine why the complaint was not pursued, and surmise it was because of the new information that the Faubion administration brought to HR/Legal's attention the first week of January that took any investigation of Mr. Whitehurst's conduct in a new direction.

Whatever the reason, **the response was not adequate.** No one contacted the TSPC to report the allegations from 1984. It is possible that either principal Lee or vice principal McCalley spoke to Mr. Whitehurst about using the terms "Baby" and "Girl" when speaking to the EAs (at various points in time, they have each claimed to have spoken to him about this issue), but neither administrator documented this conversation. There is no evidence that anyone ever questioned Mr. Whitehurst in 2012 or 2013 about his past conduct in 1984, although it is possible that Ms. Lee had an undocumented conversation in which she asked him about the allegations and he denied them.⁹ And there is no evidence that the HR or Legal Departments followed up to confirm that the concerns raised in December

⁹ When interviewed by Miller Nash attorneys in September 2015, [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] In a statement written in late 2017, however, Ms. Lee makes no mention of any such conversation and states, "In regards to the investigation of Mr. Whitehurst about the substitute teacher and the pedophile posters, I do not have any information from the district on how these matters were resolved." Ms. Lee also notes in her statement that she contacted CPS, though she does not say what she reported. CPS would not confirm or deny this contact due to confidentiality rules.

2012 had been adequately addressed.

Finally, no one followed up with Caprice, formally or informally, to let her know the outcome of the investigation, as one was never completed. By this time, the District had an administrative directive (5.10.063-AD) entitled, “Prohibition Against Employee Child Abuse and Sexual Conduct With Students.” This AD fulfills the policy requirements of HB 2062, the educator sexual conduct statutory scheme passed in 2009. The AD provides, “The Human Resources’ Legal counsel must provide notification to the person who made the report about the actions taken by the district based on the report.” As of December 15, 2012, there *was* no HR legal counsel at the District who could follow up with Caprice and provide notification about the actions taken – or more accurately, not taken – by the District. The HR legal counsel position was vacant from December 15, 2012 until March 2013. It appears during the vacancy the District did not have a stopgap in place to provide notice to a reporter of sexual conduct, per the AD.

8. JANUARY 2013: COMPLAINTS BY FEMALE STUDENTS IN FAUBION [REDACTED]

In early January 2013, [REDACTED] spoke to Faubion counselor Andrea

Martin about Mr. Whitehurst's conduct [REDACTED].¹⁰ Ms. Martin informed vice principal Jen McCalley and principal LaShawn Lee. Ms. McCalley and Ms. Lee in turn contacted general counsel Jollee Patterson and HR regional director Frank Scotto, who had not been involved in the December 2012 complaint from Caprice regarding Mr. Whitehurst. The Faubion administrators sent Ms. Patterson and Mr. Scotto the hand-written notes of the interviews [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

Ms. Patterson and Mr. Scotto, and perhaps other HR/Legal staff, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ms. Lee sent

Ms. Patterson an email asking her to revisit the decision not to put Mr. Whitehurst

¹⁰ In our interviews with Ms. McCalley, she recalled Mr. Whitehurst brought the issue [REDACTED] [REDACTED] to her attention, and this was what kicked off the interviews. She did not mention the complaint brought to her attention [REDACTED]. Based on notes of Ms. McCalley's interview with Miller Nash attorneys in 2015, however, [REDACTED]

[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]

[REDACTED]

on leave, comparing the situation to the Penn State scandal,¹¹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Mr. Scotto assisted the Faubion administrators with preparing the interview questions, but everyone agreed that given the sensitive nature of the questions, the girls should be interviewed by Ms. McCalley, not Mr. Scotto, with Ms. Martin also in attendance. The interviews were conducted within one week of receiving the initial concerns.

What happened next in the investigation is not clear. The witnesses have given conflicting accounts:

Frank Scotto's account:

Mr. Scotto told us that after the initial consultation with HR and general counsel, he deferred to Ms. McCalley and Ms. Lee to conduct the investigation and

¹¹ The Penn State scandal refers to a child sex abuse scandal in which Jerry Sandusky, an assistant coach for the Penn State football team, engaged in sexual abuse of children over a period of at least 15 years between 1994 and 2009. Sandusky had located and groomed victims through his charity organization. Sandusky was convicted of sex abuse. High-level administrators at Penn State pled guilty to endangering the welfare of children by covering up for Mr. Sandusky and failing to notify law enforcement after learning of some of the incidents.

[REDACTED]

consult with him as needed. He received a general account [REDACTED] interviews via email with Ms. McCalley, who asked him by email on January 15 whether she still had to create a matrix since there was “no huge finding” from her interviews. (A matrix was a chart of the students’ answers that would have shown the information in a graphical form, making it easy to compare the students’ various responses to the allegations and detect a pattern.) Relying on Ms. McCalley’s characterization of the interviews, he told her there was no need for a matrix.¹²

He expected to be involved in the upcoming investigatory interview of Mr. Whitehurst. The interview was scheduled for January 15 but then cancelled on January 14 because the union rep could not attend.

Mr. Scotto emailed Ms. Lee on January 18 to ask if the meeting had been rescheduled. On January 20, Ms. Lee emailed Mr. Scotto and told him she and Ms. McCalley had met with Mr. Whitehurst on January 18 and based on the information they had gathered, “this was probably a middle school rumor.”¹³

¹² Mr. Scotto reviewed Ms. McCalley’s typed interview notes at our interview, denied ever seeing them before, and indicated that a matrix would have been helpful and appropriate.

¹³ [REDACTED]
[REDACTED]
[REDACTED]

Mr. Scotto deferred to Ms. Lee’s judgment and assumed the investigation was over and there was no need for him to do anything further. Mr. Scotto considered Ms. McCalley and Ms. Lee capable administrators who knew how to conduct an investigation, and he had no reason to question their judgment. He did not follow up and ask for the notes of the meeting mentioned in Ms. Lee’s January 20 email. Nor did he review the typed responses Ms. McCalley prepared from her interviews of students [REDACTED].

Jen McCalley’s account:

Ms. McCalley gave us inconsistent accounts about the investigation. We interviewed Ms. McCalley early on in our investigation, before we had the benefit of reviewing any PPS emails. (She had been eager to meet with us, and we explained that we might need to re-interview her later after we reviewed relevant documents.)¹⁴ At this early interview, she told us that she and Ms. Lee had wanted to get Mr. Whitehurst out of Faubion but [REDACTED]

[REDACTED]

[REDACTED]

¹⁴ On September 21, 2017, two days after the Board voted to commission the investigation, Ms. McCalley emailed, “I would like to be interviewed regarding this case as soon as possible.” We therefore accommodated her request.

[REDACTED]

She recalled for us an investigatory interview she attended with Ms. Lee, Mr. Scotto, Mr. Whitehurst, and Mr. Whitehurst's union representative, John Berkey. She recalled that she and Ms. Lee were frustrated during that meeting that the union representative characterized the complaints as rumors. Because of this, they could not move forward with discipline or get Mr. Whitehurst out of the building. She told us they were disappointed that the most they could do at that meeting was tell Mr. Whitehurst to keep his eyes above the girls' shoulders, which seemed ridiculous to Ms. McCalley given the seriousness of the complaints.

We received and reviewed PPS emails a short time after Ms. McCalley's interview. We found her story to be inconsistent with multiple email communications sent or received by Ms. McCalley and Ms. Lee at the time of the investigation. These emails were not included in the large binder of documents that Ms. McCalley brought to her first interview. We therefore requested that she return for another interview.¹⁵

At the second interview, we presented Ms. McCalley with the emails that contradicted her previous account – specifically, the January 15 “matrix” email exchange with Mr. Scotto and the January 20 email from Ms. Lee to Mr. Scotto

¹⁵ Were it not for Ms. McCalley's representations in her first half-day interview, we would not have needed to re-interview her. However, we wanted to give Ms. McCalley an opportunity to read the emails that plainly contradicted her original account and see if the emails affected her recollection, which they did.

informing him she and Ms. McCalley had met with Mr. Whitehurst (without Mr. Scotto or the union rep) and characterizing the complaints as “probably a middle school rumor.”

Ms. McCalley acknowledged she must have been mistaken about her previous recollections and acknowledged that the conclusion that the complaints were based on a “rumor” must have come from Ms. Lee, not HR/Legal. (We did not find any email communication from Mr. Scotto or Ms. Patterson that ever characterized the complaints as “rumors.”) Furthermore, she acknowledged there must not have been an investigatory meeting with Mr. Scotto or Mr. Whitehurst’s union representative in attendance. One had only been scheduled and then cancelled. When shown Ms. Lee’s January 20 email about the meeting with Mr. Whitehurst which Ms. McCalley purportedly attended with her, Ms. McCalley could not recall attending any meeting on January 18 with Ms. Lee and Mr. Whitehurst, nor did she recall taking notes at any such meeting. At and after our interview, she searched her laptop and notebooks and did not find any notes of the meeting. Ms. McCalley’s consistent practice is to take notes if she attends a meeting such as this one.

By the end of her second interview, Ms. McCalley was confident that she had not been in any such meeting, but she could not explain why Ms. Lee had



incorrectly informed Mr. Scotto that she attended the meeting and took notes if this had not actually happened. She maintained that she still had a recollection of Ms. Lee telling Mr. Whitehurst to keep his eyes above the girls' shoulders. However, she was no longer sure where or when Ms. Lee gave that directive.

LaShawn Lee's account:

Ms. Lee declined to be interviewed for this investigation. Through her attorney, we received a written statement she created in November or December 2017. In this statement, Ms. Lee criticized HR/Legal for not putting Mr. Whitehurst on paid leave during the investigation *and* for not authorizing her to discipline Mr. Whitehurst. She contended that HR/Legal told her that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁶ She also contended that her brief meeting with Mr. Whitehurst on January 18, 2013, was not intended to be an investigatory interview and was merely a side conversation about one student in particular with whom she was concerned of grooming behavior by Mr. Whitehurst.

¹⁶ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

She did not mention to the Miller Nash attorneys, however, that the District ever prevented her from *disciplining* Mr. Whitehurst. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 17 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17 [REDACTED]

[REDACTED] Mr. Whitehurst also did not agree to be interviewed or answer written questions about this time period at Faubion, so we were unable to get his account of [REDACTED].

[REDACTED]

[REDACTED] contradict the email she sent to Mr. Scotto on January 20, 2013, letting him know that she and Ms. McCalley had already met with Mr. Whitehurst (implying there was no need to reschedule a meeting with Mr. Scotto in attendance) and it was “probably a middle school rumor” but they would “keep a sharp eye on him.”

Because Ms. Lee would not speak with us, we were unable to ask her about the inconsistencies in her various statements about her meeting with Mr. Whitehurst.

Regardless of the inconsistent versions of the meeting between Ms. Lee, Mr. Whitehurst, and possibly Ms. McCalley on January 18, and regardless of Mr. Scotto’s involvement or lack thereof, one thing is clear: the investigation ended on or about January 18. No one took formal action and nothing was ever documented in Mr. Whitehurst’s files.

Ms. Lee and Ms. McCalley recall that they took non-disciplinary steps at Faubion to prevent harm to the female students, including hiring a student teacher from Concordia [REDACTED],¹⁸ [REDACTED]

¹⁸ We were unable to confirm that a Concordia University student teacher was placed [REDACTED] [REDACTED] PPS records did not disclose one way or the other whether there was a student teacher in the class and if so for how long, so we could not confirm this remedial action occurred. We did not seek records from Concordia University.

██████████ away from Mr. Whitehurst's office, and dropping in on his classes on random occasions. They also asked Ms. Martin and Mr. Thompson to keep an eye on Mr. Whitehurst and let them know if they saw anything inappropriate. These steps may have been helpful to stop further inappropriate behavior. Faubion did not receive any additional complaints about Mr. Whitehurst's inappropriate conduct with students.

Overall, the response to the complaints was inadequate. To the extent Caprice's allegations were going to be wrapped into an investigatory interview with the allegations ██████████, this never happened. In fact, according to Ms. Lee's recent written statement, no investigatory interview *ever* happened, and she expected one to be re-set (although her email to Mr. Scotto on January 20, 2013, implied that the matter had been handled and there was no need for any follow-up with Mr. Whitehurst). At no time did Ms. Lee or Ms. McCalley follow-up with Mr. Scotto to re-set the investigatory interview.

Meanwhile, Mr. Scotto did not follow-up to ask why he had not received the notes Ms. Lee told him Ms. McCalley would send him in her January 20 email; he simply considered the matter closed.

Ms. Patterson never checked back in with Ms. Lee or Ms. McCalley, although she told them on January 7 that ██████████

████████████████████ Instead, Ms. Patterson deferred to Mr. Scotto to offer any support the Faubion administrators needed. She believed it was her function as general counsel to see the matter was handled by the HR Department, not to attempt to manage it herself. The District's Legal Department did not have an HR legal counsel in January 2013, and Ms. Patterson did not assume that role during the vacancy. In fact, she had very little labor and employment law experience.

Ms. Patterson believed these administrators were capable of investigating the conduct, and Mr. Scotto was on deck to help them. It was not unusual for building administrators to run their own investigation and check in with HR/Legal on an as-needed basis. Both Ms. McCalley and Ms. Lee had excellent reputations as capable administrators who advocated for their school and who were adept at doing their own investigations. In hindsight, the deference given them by the HR and Legal Departments was a poor decision, and both departments should have done more to stay involved in the investigation.

The investigation fell short in large part because Mr. Whitehurst was not interviewed fully and comprehensively about the various allegations of inappropriate behavior. Consequently, he did not have an opportunity to be confronted with the evidence and given a chance to respond. And the District, in turn, did not follow through and issue the discipline that the evidence appeared to

warrant.

Ms. McCalley's typed interview notes of the 23 separate interviews is a voluminous stack of responses with first-hand accounts of inappropriate behavior by Mr. Whitehurst. This information was apparently not shared with the HR or Legal Departments.¹⁹ Ms. McCalley believes she did share it with Mr. Scotto, perhaps in person when he visited Faubion. However, Mr. Scotto is confident he never saw the responses. The email exchange between Ms. McCalley and Mr. Scotto about whether she has to do a matrix ("I have all the answers from the kids") supports Mr. Scotto's recollection that he never saw the responses.²⁰

Without giving Mr. Whitehurst an opportunity to respond to specific allegations, there was little chance to formally reprimand him. Had a proper investigatory interview been conducted, in which Mr. Whitehurst was questioned in detail about the allegations, preferably with Mr. Scotto and Mr. Whitehurst's union representative present, then formal discipline would have been an option, presuming the evidence continued to support a formal reprimand.

¹⁹ Ms. Patterson reviewed Ms. McCalley's typed interview notes at our interview and credibly denied ever seeing them before.

²⁰ Three other employees from the HR/Legal Departments – Stephanie Harper, Jeanne Windham, and Mary Elizabeth Harper – recall that they were surprised to learn in 2014-15 that there were documents regarding Mr. Whitehurst at Faubion that were not in the HR files. They recall the typed interview notes were among those documents.

Alternatively, if there was not enough evidence for a formal reprimand, Ms. Lee or Ms. McCalley could have written a non-disciplinary letter of expectation setting forth the District's standards for appropriate behavior. In either case, there would have been documentation of the issue in Mr. Whitehurst's file. No such documentation was ever prepared. The response was additionally inadequate in that apparently no one followed up with the students who had complained to let them know the outcome of the investigation.



Were there system failures and/or employee performance failures and, if so, what were those failures?

Were there performance failures by external agents or representatives of PPS?

System failures and employee performance failures alike occurred in the history of Mr. Whitehurst's employment. System failures contributed to the perpetuation of Mr. Whitehurst's employment far more than any one employee's performance failure. Multiple systemic factors also most likely contributed to the employees' performance failures. The failures appear to be intertwined.

SYSTEM FAILURES:

1. Incomplete documentation of all allegations of sexual conduct

PPS is a relatively decentralized school system. One witness compared PPS to a fleet of some 80 ships, one for each school: in September, they all head out to sea and in June, they return home to dry dock. This image is helpful to point out a weakness in any decentralized system like this one; when the administrators at each school are expected to exercise their professional judgment regarding personnel issues involving the educators in their building, there is no way for the District to track an educator's inappropriate behavior. The District cannot detect a pattern, especially when the educator moves from school to school over the

course of that educator's career, as Mr. Whitehurst did. In other words, the District cannot connect all the dots.

During Mr. Whitehurst's employment, school administrators were relatively free to handle issues brought to their attention in the manner they deemed appropriate, with a few caveats. If an administrator wanted to put the employee on leave, they needed HR approval. If an administrator wanted to pursue a formal reprimand, they typically partnered with HR to do that. But if an administrator believed a matter was not worthy of formal reprimand and could be handled internally, they simply went ahead and handled it. This is not necessarily a flawed process.

However, this process results in significantly less discipline and less documentation than is warranted – especially for a school district seeking to prevent harm to students and remove educators who engage in sexual conduct. The only documentation of an incident handled internally, if any, is often in the building file, which is currently a transient file that does not get passed on to subsequent supervisors. When building administrators repeatedly assume that a harassing comment or inappropriate ogling of students' bodies is a first-time offense and hence does not warrant written documentation or formal discipline, the District is unable to track prior inappropriate behavior and detect a pattern of

repeated sexual conduct. In short, the District misses an opportunity to protect its students from future harm.

2. Under-reporting of misconduct, chiefly to avoid union involvement

A related systemic failure is the chronic under-reporting of sexual conduct. Many witnesses shared with us that there is a clear discomfort by many building administrators when it comes to managing any type of misconduct, but especially sexual conduct. This discomfort leads to avoidance or lack of follow-through. Specifically, the administrators try to manage the behavior in a way that does not result in a formal reprimand, which would require them to “go the union route,” as one administrator put it. Not wanting to deal with the union (PAT) appears to be a major factor in the under-reporting of misconduct.

Administrators appear to be wary of engaging in formal discipline when it means facing down the teachers’ union. Some administrators expressed a fear of retaliation by the union and its members. Other administrators voiced fatigue from trying to manage an educator using the formal disciplinary process only historically to have HR, in-house legal counsel, or the Board push back on the reprimand and contend the offending behavior should not result in discipline or termination. Building administrators also expressed the feeling they were



disheartened to see the discipline grieved and reversed in a settlement or arbitration decision.

Meanwhile, individuals in the HR Department voiced concern that building administrators were not always willing to go through with discipline from the beginning to the end (usually involving a hearing) and they get worn down and give up the fight part-way through the grievance process due to the drain on their time and resources. In order to avoid union grievances in their resource-strained environment, administrators may simply be avoiding the formal discipline process.

Mr. Whitehurst's rights as a union member, and the anticipation that the union would fight any discipline, may have influenced the response to concerns about Mr. Whitehurst's conduct. Repeatedly, we found evidence of the District approaching an issue with Mr. Whitehurst from the view of what they *couldn't* do with Mr. Whitehurst rather than what they *could* do to prevent him from continuing to engage in inappropriate conduct that put the safety and well-being of students at risk.

We understand that the union has an important responsibility to protect teachers from false or baseless accusations, exercise the rights that teachers have, and otherwise ensure that the District follows the terms of the union contract. Likewise, the building administrators have important responsibilities as well –



among them, to protect students from educator misconduct, exercise management rights, and otherwise ensure that the District has qualified educators helping children learn in a safe educational environment. These are not mutually exclusive roles, especially in this new era of cooperation heralded by the District's administration and the PAT. Keeping schools safe for children is a shared commitment. We recognize that the vast majority of educators in the District are ethical, act appropriately around students, and want to see unethical educators who engage in sexual conduct removed from the system. The District and the teachers' union should be able to work together to keep schools safe and eliminate any obstacles to promptly removing the unethical educators.

3. Decentralized response to sexual conduct complaints, with no accountability

Another system failure detected by this investigation is the manner in which reports of sexual conduct went to various different PPS resources, all of which were appropriate avenues to report sexual conduct at the time of the complaints, but none of which consistently coordinated its information. The end result was the PPS police knew of some allegations regarding Mr. Whitehurst, the HR/Legal Departments knew of other allegations, certain school administrators who had managed Mr. Whitehurst's behavior on their own knew of still other allegations,



and the PPB knew of yet more allegations.

The District's decentralized system makes it too easy for an investigation to fall short of a comprehensive examination of the evidence because no one is held accountable for ensuring the process is followed to a full and fair resolution. We heard from building administrators that the HR and Legal Departments are in charge of complaints, investigations and discipline decisions, and the building administrators are powerless to get bad educators out of their schools. At the same time, we heard from the staff of the HR and Legal Departments that building administrators have a healthy amount of autonomy and are responsible for following through on investigations and making the decision about an appropriate level of discipline. HR is there for support if the building administrators need them. While PPS employees fell short of finger pointing, they demonstrated the problem at hand: during Mr. Whitehurst's employment, there was no clearly designated position or department responsible and accountable for an investigation into an employee's sexual conduct.

In the high-volume, high-traffic world that is PPS, it is too easy for a complaint to be inadequately addressed because everyone involved believes the other persons involved are in charge. And when a complaint is not responded to appropriately, it is not always evident where the failure occurred, since no



department or position is clearly designated to manage the complaint through its life cycle. There is either a general confusion about who is in charge of disciplinary decisions or a disowning of responsibility. What we never heard from anyone – other than perhaps former HR Legal Counsel Maureen Sloane, loosely paraphrasing – was “this was my fault and I take responsibility for it.”

4. No viable document management system

For most of the years in which Mr. Whitehurst was employed, the District lacked an electronic database or other means to track an individual employee’s behavior issues over time. The lack of technological infrastructure resulted in a reliance on paper files and manual processes to track issues attendant to Mr. Whitehurst’s 32-year career.

The hard-copy documentation that existed for Mr. Whitehurst was not maintained in a central location. Depending on who created the documentation, it found its way to different repositories. The paper PPS police files were archived (we think); Maureen Sloane maintained her own paper files in a file cabinet in her office, and after she left these were moved and eventually put into storage; and the building files were maintained in the school that Mr. Whitehurst was working in at the time, until they were purged due to his transfer or that of his supervisor.



This decentralized system created gaps in knowledge about Mr. Whitehurst's employment history and led various PPS employees to believe his record was clean when in fact, he had been counseled or investigated repeatedly about inappropriate behavior with female students.

When the PPS police force was disbanded in late 2001, the hand-off apparently led to the PPS police records being archived rather than incorporating documentation of personnel investigations into HR files.

The current transience of building files (as required under the terms of the PAT union contract) contributes to yet another gap in information, leaving each subsequent administrator to believe that Mr. Whitehurst's record was cleaner than it actually was.

Similarly, to the extent Mr. Whitehurst's personnel file was purged of documentation (such as the 2001 memo, if it was placed in the personnel file), this too worked in favor of Mr. Whitehurst. Each time he faced a reprimand, he could deny all allegations knowing there was no permanent record of past misconduct that would render his denials less credible.

Spotty record-keeping contributed to Mr. Whitehurst avoiding formal reprimand on multiple occasions:



- Marshall administrators and Maureen Sloane did not review the PPS police records when they gave Mr. Whitehurst the benefit of the doubt [REDACTED]. There is a reference in the memo he received of the District’s review of his “entire employment record” and there being no additional evidence of inappropriate behavior.
- Jefferson administrators did not know of the 2001 memo [REDACTED] when Ricky Allen verbally counseled Mr. Whitehurst in 2008-09 about his harassing comment to the student eating grapes.
- Maureen Sloane did not have the benefit of the PPS police report in the 1983-84 school year regarding Mr. Whitehurst’s inappropriate conduct [REDACTED]. She and Richard Clarke decided to take no action to pursue the belated complaint. She references his employment record in her memo, noting that the only pertinent record is the 2001 complaint: “There are no indications of any inappropriate behavior since then.”
- Faubion administrators did not know of the 2001 memo regarding [REDACTED] when they attempted to address Caprice’s complaint and the concerns about Mr. Whitehurst’s behavior in PE class.
- The HR and Legal Departments were unaware of the extent of the concerns noted in the Faubion [REDACTED] interviews at the time Mr. Scotto deferred to the Faubion administrators’ judgment that the issue “was probably a middle school rumor.”

Better record-keeping could have led to shared knowledge about Mr. Whitehurst’s career, and perhaps a different outcome.

5. Lack of accountability of executive-level leadership due to lack of systems to address sexual conduct issues

Decentralization coupled with a lack of systems led to a lack of accountability at the top. Historically, the District's executive leadership took a hands-off approach and let the school administrators have significant autonomy. Without systems in place to ensure that policies were being followed and investigations were being conducted fully and fairly, this autonomy created a silo effect whereby employees focused on their own duties in isolation. Without proper systems in place to elevate sexual conduct complaints to a central tracking system or otherwise ensure that such concerns were being adequately addressed, the District failed to keep the schools safe, while Mr. Whitehurst was repeatedly given the benefit of the doubt.

There was no top-down involvement to ensure systems accountability. No one ensured that everyone else was doing their job, no one ensured that this decentralized process achieved the expected results. Apparently no upper-level leadership has been held accountable for system failures or the lack of adequate systems.

The District needs to have accountability all the way to the top. When the internal investigation process repeatedly failed to hold Mr. Whitehurst



accountable for sexual conduct with students, no one above the Legal Department was apparently aware of it. The superintendent, for example, was not apprised of any issues regarding Mr. Whitehurst, nor was there an expectation that she would be briefed on any employment issue that did not rise to a level of potential dismissal, non-renewal or litigation.

At the very top of the District, the Board must be accountable. First, the Board should hold the superintendent accountable for the staff and operations of the District. The Board also has the power to approve involuntary terminations of educators. When the evidence supports removing an educator from the District due to his or her unethical sexual conduct with students, the Board should support the recommendation to terminate.

PERFORMANCE FAILURES BY EMPLOYEES:

As discussed in earlier sections of this report, we found that HR legal counsel **Maureen Sloane** conducted insufficient investigations in 2001 [REDACTED] [REDACTED] and 2008 (Caprice's complaint). She also did not report the 2008 complaint to the TSPC, which we believe would have been an appropriate response.

As discussed in earlier sections of this report, Jefferson principal **Cynthia Harris** may have failed to take appropriate action in 2008 if indeed she was put on notice by Caprice of inappropriate sexual behavior by Mr. Whitehurst (something she denies).

As discussed in earlier sections of this report, Faubion principal **LaShawn Lee** appears to have failed to take appropriate action in late 2012 and early 2013 to respond to the complaint from Caprice and the complaints [REDACTED].

According to Caprice, she spent over an hour in Ms. Lee's office in December 2012 attempting to convince her that Mr. Whitehurst had engaged in sexual misconduct when she was a high school senior and that the students at Faubion may not be safe. Ms. Lee expressed disbelief and told Caprice that "everyone loves him!" She was incredulous that he would ever harm a Faubion student. It was clear to Caprice that Ms. Lee did not want to recognize that there was a problem.²¹ If Ms. Lee spoke to Mr. Whitehurst about Caprice's complaint or the EAs' concerns, it was not documented.

In early January 2013, for no apparent work-related purpose, Mr. Whitehurst emailed Ms. Lee a photo album with pictures of his son [REDACTED]. This [REDACTED].

²¹ Because no one else at the District interviewed Caprice in 2012-13, Ms. Lee's possible bias did not come to light.

suggests a close personal history with Mr. Whitehurst which, if true, should have required Ms. Lee to recuse herself or at a minimum to disclose that issue to the HR and Legal Departments.

Ms. Lee apparently did not interview Mr. Whitehurst about the specific allegations arising from the [REDACTED]. She did not conduct a standard investigatory interview with Mr. Whitehurst on January 18, 2013, and instead had a brief conversation with him which did not apprise him of all of her concerns. This was a meeting for which there are no notes and no documented follow-up with Mr. Whitehurst (e.g., a memorandum of the discussion placed in the building or personnel files). Ms. Lee also failed to document the basis for her conclusion that “this was probably a middle school rumor” such that anyone else involved in the investigation could review and challenge or confirm her findings.

As discussed in earlier sections of this report, Faubion vice principal **Jen McCalley** appears to have also failed to take appropriate action to respond to the complaints [REDACTED]. We do not know why Ms. McCalley concluded there was “no huge finding” after interviewing almost two dozen students and hearing first-hand about [REDACTED]. [REDACTED]. As a first-year vice principal at Faubion, where the community strongly supported its

principal, Ms. McCalley may have felt pressured to follow Ms. Lee's lead in taking remedial measures without conducting a satisfactory investigatory interview and pursuing formal discipline.

Lastly, we have concerns that the District's long-time general counsel, **Jollee Patterson**, did not do enough when she became involved in the Faubion issues in December 2012 and January 2013. By the time she was contacted by Faubion's administrators regarding concerns voiced by female students in Mr. Whitehurst's [REDACTED], Ms. Patterson was already on notice of the 2001 complaint of [REDACTED] [REDACTED], plus the 2008 complaint by Caprice of egregious sexual conduct in 1984 [REDACTED] [REDACTED] Neither of these reports concluded that the student was not credible or that the complaint was unfounded. To this Ms. Lee added reports of her conversations with Mr. Whitehurst's previous supervisor who described his behavior as overly friendly and told her about the flyers that had been posted at Jefferson.

Although Ms. Patterson defends her decision to rely on HR as the proper channel for the PE class investigation, it is regrettable that the District's general counsel was satisfied with the follow-up she received from Mr. Scotto, who she was aware had not attended the interviews or any investigatory meeting.

She did not ask Mr. Scotto (who was not included on the December emails about Caprice's complaint and the HR files found by Ms. Murphy, and who may have been unaware of the other complaints of sexual conduct) to report the facts upon which the Faubion administrators suddenly dismissed the [REDACTED] as probable rumors. Nor did she insist on an investigation of Caprice's complaint.

We appreciate that Ms. Patterson is not an employment attorney and did not step into the shoes of HR legal counsel during that position's vacancy. Before Stephanie Harper's arrival in the District in March 2013, the HR legal counsel did not even report to the general counsel; she or he reported to the head of the HR Department.

However, we note that during the same time period that Ms. Patterson was involved in the Faubion matters, she sought advice from Miller Nash regarding [REDACTED]

[REDACTED]

[REDACTED] Ms. Patterson did not consult Miller Nash about Mr. Whitehurst's employment issues. Given her leadership role at the District, coupled with her knowledge of repeated allegations of sexual conduct by Mr. Whitehurst, Ms. Patterson should have done more to ensure that the District thoroughly investigated the Faubion allegations or

[REDACTED]

requested outside counsel with expertise in this area to do that work or support those who were doing it.

Of these employees, only Jen McCalley, now the principal of Faubion, remains at PPS.

There are other employees not named here who may have contributed to the failure to detect, report, investigate, and discipline Mr. Whitehurst. His history appears to be a collective failure rather than the failure of any one individual or group of individuals. We note that although students reported his overly flirtatious, harassing behavior as a common sight in the halls, where he would sometimes comment about their appearance when he was standing with a group of other male adults, no other staff or educators reported that conduct to the District. Mr. Whitehurst had a reputation as a smooth talker and a ladies' man with female staff and students alike, yet apparently no employee felt it was their job to report this behavior.

In our interviews, we heard from many, many witnesses that they felt they had followed all of the District's policies, done that part of the process that was their responsibility, and then relied on others involved in the process to do *their* jobs. We did not find District employees went *beyond* their job responsibilities or assigned roles to make sure the investigation into Mr. Whitehurst's conduct had



been robust and complete, and that everyone had, in fact, done their jobs in a comprehensive manner.

As a case study, take the Faubion complaints:

- General counsel **Jollee Patterson** contends that her function as general counsel was to get concerns about Mr. Whitehurst to the proper department to support the Faubion building administrators. She made sure chief HR officer Sean Murray and HR regional director Frank Scotto were involved, and asserts that by doing so, she completed her job function. As general counsel, she had little expertise in employment or labor law and believed that handing this over to HR to manage was appropriate in her role as general counsel. She expected HR and the building administrators to investigate and, if warranted, formally reprimand or terminate Mr. Whitehurst. She recalls that she later learned from Mr. Scotto that Ms. Lee had dismissed the complaints as rumors, and she did not believe further review was necessary.
- Chief HR officer **Sean Murray**, cc'd on correspondence from HR legal counsel Jeff Fish in December 2012 as well as correspondence acknowledged only as an "FYI" from Jollee Patterson in January 2013, recalled that the Legal Department was involved in these complaints. He thought that department was taking the lead. He also saw that Frank Scotto was involved on behalf of the HR Department, so he did not believe he needed to take a lead role on this particular matter. (Note that Mr. Murray had just joined the District in November 2012.)
- HR regional director **Frank Scotto** insists that he gave support to the building administrators in the form of helping them draft the investigatory meeting notice and the interview questions for Ms. McCalley to use in her interviews. He would have reviewed a matrix showing any pattern of allegations in preparation for the investigatory interview, but Ms. McCalley indicated there was no "huge finding" and implied one was not necessary.

He was also prepared to attend an investigatory meeting had one been rescheduled, but Ms. Lee told him she had already met with Mr. Whitehurst and that the issue was “probably a middle school rumor.” In reliance on the judgment of these two administrators whom Mr. Scotto considered capable of conducting investigations, he did not follow up further.

- Regional administrator **Antonio Lopez** was one of the individuals who received Ms. Lee’s “Penn State scandal” email asking the District to re-think the decision not to place Mr. Whitehurst on leave during the investigation. He did not take any action other than emailing back to thank Ms. Lee for “doing the hard work.” He believed the matter was in others’ capable hand and his involvement was not required.
- Paralegal **Siobhan Murphy** also [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- The two Faubion building administrators, **LaShawn Lee** and **Jen McCalley**, contend that the HR and Legal Departments [REDACTED]
[REDACTED]. They took some non-disciplinary remedial steps in an effort to protect the Faubion students.

In hindsight, it is easy to criticize each of these individuals in some way or another. At the time, most apparently believed their efforts were satisfactory to address that portion of the process that required their attention. Had other individuals been more diligent, this assumption might have been correct.

EXTERNAL AGENTS:

Miller Nash Graham & Dunn LLP. The only external agent or representative of PPS that we consider to be involved in Mr. Whitehurst's employment is the law firm of Miller Nash Graham & Dunn LLP, and we did not find any performance failures by this firm in regard to the allegations of student sexual conduct by Mr. Whitehurst. Miller Nash was not asked for employment advice specifically pertaining to Mr. Whitehurst's conduct at any time he was employed by PPS. Michael Porter, the attorney in charge of PPS matters, recalls having no knowledge of Mr. Whitehurst up until the time he learned that a new lawsuit had been filed against PPS. This was the sexual harassment lawsuit filed by former employee Rory Thompson in August 2015, which Miller Nash defended on behalf of PPS. By the time of the lawsuit, Mr. Whitehurst had resigned. The District negotiated his resignation agreement in January and February 2015 without assistance from outside counsel.

Miller Nash provided copious documents in response to our requests. We found no evidence that the firm was ever involved in Whitehurst-related legal matters until the *Thompson* lawsuit was filed, at which point Mr. Whitehurst was no longer employed by PPS.

As for other third parties that were not PPS agents but that may have affected Mr. Whitehurst's trajectory as a PPS employee, we make the following observations:

Oregon Teacher Standards and Practices Commission (TSPC). The one time the TSPC received notice from PPS of possible sexual conduct with students by Mr. Whitehurst was in 2001, when Maureen Sloane reported [REDACTED].²² The TSPC received [REDACTED] written statement, Mr. Wolleck's memo, and Ms. Sloane's notes of her interview of Mr. Whitehurst, as well as other documents (whatever was in Mr. Whitehurst's personnel file, the school building file, and Ms. Sloane's working file). The TSPC closed its investigation five months later without taking any action against Mr. Whitehurst. Closed cases are confidential, so we do not know whether the TSPC relied on Ms. Sloane's investigation or conducted a thorough and independent investigation of the student's complaint).²³

²² On December 29, 2010, the TSPC received a letter of complaint from an anonymous patron in the Portland School District regarding Mr. Whitehurst. Someone apparently sent the TSPC a copy of the flyer that was posted at Jefferson. PPS responded to a TSPC subpoena for documents related to the flyer. The TSPC found insufficient cause to justify a hearing and took no action against Mr. Whitehurst.

²³ We are unaware of any interviews conducted by the TSPC in response to this report.

Law Enforcement Agencies. Special comment deserves to be made about two instances in which Mr. Whitehurst's conduct came to the attention of outside law enforcement agencies. In both instances opportunities to put an end to his behavior and remove him from employment by PPS were missed. On each occasion, the reasons for this failure were multiple. We discuss each incident separately below.

First in 2001, the Portland Police Bureau (PPB) was informed of [REDACTED] [REDACTED]. Unfortunately this occurred during a very short transition period when the school police were being absorbed into the PPB. During that transition (we were told it was two or three weeks), individual school police officers were paired with individual incoming PPB officers who were unfamiliar with school police duties and history. After the transition period, *all* former school police officers were immediately reassigned to other parts of the PPB unrelated to PPS. The consequence of this transition was that most institutional knowledge of the first line law enforcement agents at PPS disappeared from the district.

Prior to this restructuring, the school police had conducted at least one and probably two investigations of Whitehurst regarding allegations of sexual conduct with female students. We were unable to locate written reports for any such investigations. It is unclear if there was ever a system in place to make such

reports available to incoming members of the PPB who became responsible for school policing duties. What is clear is that the officers who ultimately responded to [REDACTED] had no knowledge of the prior investigations.

Moreover, the former school police had had responsibility for conducting both personnel and criminal investigations for PPS. At the time of the transition period in approximately November 2001, no provision had been made for what entity would conduct future personnel investigations. What was clear was that the PPB was not going to do it and its members were resistant to participating in anything that seemed to be a personnel investigation. This resistance and the failure to designate any entity to conduct personnel investigations may have been factors in the failed response to [REDACTED].

A team consisting of one PPB officer and one school police officer responded to [REDACTED]. The officers involved and the sergeant who reviewed the case felt that [REDACTED] were not criminal in nature. Our investigation determined they were mistaken. However, it would have taken a person who specialized in child abuse investigations to have discerned that potential criminal charges existed. To be fair to the officers involved, they had no such training and they did take the step of coding [REDACTED] in a manner they thought would compel them to be forwarded to the District Attorney's Office

for more specialized review of their perception that no criminal charges existed and no further criminal investigation was warranted.

Our investigation disclosed that for unknown reasons the reports were either not forwarded (there is no record of them being received by the District Attorney's Office) or, if they were forwarded, proper records were not made and the reports were never reviewed by the appropriate deputy district attorney.

We spoke with the deputy district attorney responsible for these reviews at the time. Had he reviewed the reports the potential for criminal charges would have been noted and, at the very least, a criminal investigation would have taken place. As it was, no further criminal investigation occurred and Mr. Whitehurst was not even interviewed by criminal investigators regarding the allegations. The message PPS received from the PPB was that [REDACTED] did not constitute a crime.

Last October, when our investigation of the case revealed there may have been a basis for further criminal investigation and possible criminal charges, we immediately brought the matter to the attention of the Multnomah County District Attorney's Office. The case was reviewed by the DA's Office and a determination made that any potential criminal charges would, at this time, be barred by the statute of limitations.

The second encounter with outside law enforcement agencies occurred 13 years later in 2014. By that time Mr. Whitehurst had moved to Faubion School. This second case involved allegations that Mr. Whitehurst had struck another teacher on the buttocks apparently with a foreign object penetrating the teacher's anus through his clothing. There had been other similar although less serious incidents in the past by Mr. Whitehurst against this teacher and one other.

The case was investigated by a member of the PPB's Sex Crimes Unit. For reasons we were unable to determine with certainty, the detective did not discover the 2001 PPB reports regarding [REDACTED], nor the other school police investigations from years prior, when checking into Mr. Whitehurst's background. When he interviewed Faubion administrators, however, the detective did learn second-hand of the details of more recent PPS internal allegations against Mr. Whitehurst, including the allegations by Caprice of sexual conduct in 1984.

The detective produced a 62-page report highlighting many concerns about misconduct by Mr. Whitehurst stretching back over decades. The detective did not suspend his investigation, but sent the report to the sex crime unit of the Multnomah County District Attorney's Office for prosecutorial consideration.

Unfortunately the deputy district attorney assigned to the case appears to have treated the allegations almost dismissively. In her description of the case on a

CRIMES Fact Sheet, she characterized the incident as one in which Mr. Whitehurst “likes to smack co-workers on the butt” and the victim teacher was “fed up” the third time this happened and now wants the case prosecuted.

District Attorney’s Office policy at the time required that the highest levels of the office be notified when a case was presented against a member of a profession or occupation that is licensed by a state regulatory agency, including a licensed educator like Mr. Whitehurst. The deputy district attorney’s standard practice was to follow this policy. However, it appears not only did this not occur, but the deputy district attorney’s immediate supervisor was in all probability not notified. Had such notifications occurred our investigation concluded that the matter would have been handled in a much more serious fashion.

As it was, the detective was informed by the deputy district attorney that the case was going to be resolved on pre-indictment basis and he ended his investigation into Mr. Whitehurst’s history of misconduct allegations. The case was handled without being presented to a grand jury with a plea to a Class B misdemeanor charge of harassment. The result was a probationary sentence that did not require Mr. Whitehurst to surrender his license.

Each of these two incidents where accusations against a PPS educator were presented to law enforcement agencies, though widely separated in time,

convinced us that a change is necessary to ensure that organization policies are followed, that information is more fully shared between PPS and law enforcement agencies, and that best practices are followed.



Did any PPS employee(s) fail to comply with mandatory reporting requirements or violate any policies, laws or ethics rules? If so, who and when?

Were there any consequences for those failures?

Did any of those failures have licensure implications?

Our investigation did not reveal any failure to comply with mandatory reporting obligations. The sexual abuse reported to the District – specifically, Caprice’s report of sexual conduct when she and [REDACTED] [REDACTED] – allegedly involved 18 year old students. Oregon’s mandatory child abuse reporting laws and the District’s policy require PPS employees to report suspected abuse or neglect *of a child*, meaning a person under 18 years of age. See ORS 419B.005(2), -.010, and -.015. Therefore, no report to Child Protective Services (CPS) was required, nor would the agency have taken the report.

In 2012, principal LaShawn Lee reported Caprice’s allegations to the PPB – specifically, Officer Williams, the Faubion school resource officer (SRO). [REDACTED]

[REDACTED]

[REDACTED]

The failure to report Caprice’s allegations to the TSPC in 2008 and again in 2012 was not a failure to comply with mandatory reporting requirements, *per se*, but arguably ran afoul of OAR 584-020-0041(3), a TSPC standard that provides:

A chief administrator will report to the Executive Director [of the TSPC] within thirty (30) days the name of any [licensed educator], when the chief administrator reasonably believes the person may have committed any act which may constitute any of the designated acts of gross neglect of duty under OAR 584-020-0040(4)

OAR 584-020-0040(4) includes sexual conduct with a student. Thus, if a chief administrator at the District reasonably believed at any time that Mr. Whitehurst may have engaged in sexual conduct with one [REDACTED] in 1984, this concern should have been reported to the TSPC. It was not.

The TSPC only became aware of the allegations of sexual conduct when it investigated the District's report to the TSPC of Mr. Whitehurst's adult-to-adult unwanted physical contact with Mr. Thompson in the fall of 2014. During that investigation, the TSPC investigator learned from the PPB report written by Detective Weinstein about second-hand accounts of Mr. Whitehurst's sexual conduct with students. The TSPC opened up a second investigation into this conduct on its own initiative in 2015.

The TSPC recommends that a school district conduct at least a preliminary investigation into an allegation prior to reporting it in order to substantiate a *reasonable belief* that an educator has engaged in sexual conduct. Because Caprice's complaint was never investigated adequately by the District, we believe the issue never developed to the stage where it would typically be brought to the

attention of the TSPC (such as after discipline is imposed or a thorough investigation has been conducted). The TSPC standards state that failure of a chief administrator to report a violation of TSPC standards is itself possibly grounds for “gross neglect of duty,” but we have no reason to find the then-chief administrator (meaning Carole Smith, the superintendent) was even aware of any allegations about Mr. Whitehurst. Ms. Smith does not recall ever being informed of any allegations of student sexual abuse by Mr. Whitehurst. The allegations of sexual conduct were apparently not brought to the superintendent’s attention or to that of any designee whose job duty was to report to the TSPC on behalf of the District.

PPS records show that the District’s HR legal counsel was the person who typically made a report to the TSPC when there was a reasonable belief of a violation of the TSPC standards. From mid-December 2012 until March 2013, a critical period in the chronology, the District did not have anyone in that role. The general counsel (Ms. Patterson) had never before made a report to the TSPC and did not consider this duty to fall to her during the three-month vacancy. We were unable to determine who would have been responsible for reporting to the TSPC during this HR legal counsel vacancy.



Is there any evidence that any person or group of people protected Mr. Whitehurst?
Who initiated and approved Mr. Whitehurst's transfers?
Is there any indication that District personnel used transfers as a way to avoid taking disciplinary action?

Our investigation did not uncover evidence that any person or group of people protected Mr. Whitehurst, beyond what we have already presented in the earlier discussion of employee performance failures. We did not find evidence of an intent to protect Mr. Whitehurst, though we did find there were employees (e.g., the administrators at Faubion) who appeared unwilling to confront Mr. Whitehurst about his inappropriate behavior and document the issue for reasons that are not clear.²⁴

We did not find evidence that District employees used transfers as a way of avoiding disciplinary action against Mr. Whitehurst. Many of the principals and vice principals interviewed indicated that they saw nothing inappropriate about Mr. Whitehurst's behavior and received no complaints about him. These administrators trusted him, believed he was a good person, and were shocked and disturbed to learn of the allegations of sexual conduct detailed in *The Oregonian*.

²⁴ Of the handful of witnesses who declined to be interviewed for this investigation, almost all of them were involved in the 2012-13 issues involving Mr. Whitehurst at Faubion: LaShawn Lee, Rory Thompson, Harriet Adair, and Ken Berry.

As detailed in the chronology at the beginning of this report, Mr. Whitehurst transferred six times during his 32-year career at PPS (not including his brief stint as a .5 FTE at Sitton Elementary School):

From Marshall in 1983: Mr. Whitehurst was unassigned because his original assignment was a one-year temporary position. From Marshall, he moved to Franklin High School.

From Franklin in 1984: Mr. Whitehurst was unassigned because his assignment was a one-year temporary position filling in for an educator on sabbatical. From Franklin, he moved to Sellwood Middle School.

From Sellwood in 1986: Mr. Whitehurst was an administrative transfer to Lincoln High School, where he could coach and teach at the same school. He left Sellwood with an excellent review from principal John “Bill” Beck, who supported the move because of Mr. Whitehurst’s interest in coaching at a high school level.

From Lincoln in 1997: Mr. Whitehurst was unassigned in July 1997 by principal Velma Johnson, who did not respond to numerous attempts to contact her during our investigation. There is no evidence that the unassignment was due to inappropriate conduct with female students and not due to budget cuts. Mr. Whitehurst was put on a plan for improvement at the start of the 1996-97 school year. During our investigation, we were told of unreported sexual abuse and

sexual harassment by Mr. Whitehurst while he was working at Lincoln, so it is certainly *possible* that his unassignment was used as a way to pass on a problem employee and avoid taking disciplinary action, but we have no evidence of this. From Lincoln, Mr. Whitehurst moved to Marshall.

From Marshall in 2006: Mr. Whitehurst was unassigned during a period of flux and upheaval at Marshall. Records indicate the unassignment by Renaissance Academy principal Fred Locke was due to budget cuts. From Marshall, Mr. Whitehurst moved to Jefferson.

From Jefferson in 2012: Mr. Whitehurst was an administrative transfer to Faubion. He lost his extended responsibility as athletic director at the end of the 2011-2012 school year for performance reasons unrelated to sexual conduct, but was offered a 1.0 position as a PE teacher at Jefferson such that he could have stayed on at Jefferson had he wanted to. Rather than accept the position, he contacted principal LaShawn Lee at Faubion and indicated his interest in a 1.0 FTE [REDACTED] position at Faubion. She and Jefferson principal Margaret Calvert agreed to the transfer.

Based on our review of Mr. Whitehurst's personnel files and other PPS records, as well as our interviews with almost all of Mr. Whitehurst's administrators, we found no evidence he was unassigned or transferred from

school to school to avoid being reprimanded for his sexual conduct with female students. We further found no evidence that he was ever transferred to a school like Sellwood or Faubion to get him away from high school girls, as has been suggested by the media. In conclusion, we did not find evidence that any school intentionally allowed or encouraged Mr. Whitehurst to move to another school in the District in order to conceal an ongoing concern regarding his inappropriate behavior.



Was there any follow up by the administration following settlement of the Rory Thompson matter as directed by the Board and, if not, why not?

We found there was some follow-up by high-level District administrators, but not to the extent the 2016-17 Board expected. The 2016-17 board consisted of Chair Tom Koehler, Vice Chair Amy Carlsen Kohnstamm, and Directors Mike Rosen, Pam Knowles, Paul Anthony, Steve Buel and Julie Esparza Brown.

At a special PPS Board meeting held on September 19, 2016, the Board approved settlement of *Rory Thompson v. PPS* by a 4 to 3 vote. During the Board's discussion before the vote, Director Anthony expressed his disapproval of the settlement because he believed it placed the small financial risk and the risk to reputations over the risk to children. Director Kohnstamm countered by noting that there were two issues: (1) resolution of the *Thompson* matter, and (2) the District's own process of assessing how the District allowed Mr. Whitehurst's conduct to persist throughout the period of his employment, and what the District needed to do now to be sure it had a process that first and foremost protected the District's students and staff. Directors Koehler and Esparza Brown agreed with Director Kohnstamm's comments. Director Buel pointed out that this was one of the things that had come under the Board's purview and noted for the record that the Board had asked the interim superintendent, Bob McKean, to "take a look at all

of these procedures having to do with complaints with children, with employees and so forth” and this would also be spearheaded by the Board’s Audit Committee.²⁵ Chair Koehler then thanked Mr. McKean, who attended the meeting, “for taking this on” and also thanked Director Rosen (chair of the Audit Committee) “for taking this on.”

Following this meeting, Mr. McKean met with chief HR officer Sean Murray to discuss the District’s policies and procedures regarding student sexual conduct. He confirmed there was annual training given to all employees at the start of the school year regarding child abuse, including educator sexual conduct and abuse. There was also sexual harassment training (this was relatively new). Mr. McKean and Mr. Murray reviewed the investigatory process for complaints. They found the investigatory methods to be thorough.

Mr. McKean concluded that the systems in place offered effective methods to prevent, identify and report future sexual conduct or abuse. Mr. McKean did not think he needed to report back to the Board on his efforts, since he found the systems in place to be satisfactory. He does not recall anyone on the Board ever asking him about what he did in response to their request.

²⁵ Director Buel went on to note that he personally thought the Board should investigate “how this whole thing came down,” but that appeared to be his own view and not the Board’s official directive to the interim superintendent.

During his year as interim superintendent, Mr. McKean also worked with his chief of staff Amanda Whalen on a review of the complaint policy and how the complaint process worked. The complaint process review was much broader than a Whitehurst-focused review, but included reviewing the complaint process regarding sexual harassment and educator sexual conduct or abuse.

The next time the Whitehurst matter was broached by the 2016-17 Board was at the Board's Business and Operations (B&O) Committee meeting on April 10, 2017. The informal minutes of the Board's reflect the following discussion:

Jeff Fish presented a revision to the District's Anti-Harassment policy and shared there would be one version for students and one version for staff. . . . Chair Knowles asked how this policy would relate to the child abuse reporting requirements. Jeff Fish stated they go hand in hand and provided an overview of the policy. Director Rosen asked who would investigate complaints raised and what does the District do until an investigation is complete. Jeff Fish stated it would be the Title IX coordinator and shared various scenarios. ...

Director Kohnstamm asked if the Whitehurst situation was a result of the policy or how it was implemented. Director Tom Koehler stated that he would like to see a lessons learned from the Whitehurst situation. Yousef Awwad stated that these were things the Title IX coordinator could look at. The committee thought it should go to the Board for a first reading. Director Koehler stated he wanted to make sure there was lessons learned on Whitehurst before this goes to the Board. He then moved and Director Rosen seconded to recommend the policy go to the full Board for a first reading. The committee

unanimously agreed to move the policy to the full Board for a first reading.

This committee meeting was attended by the following District staff: Jeff Fish (HR legal counsel),²⁶ Yousef Awwad (chief executive officer), Sascha Perrins (interim chief of staff), and Rosanne Powell (Board manager).

On May 23, 2017, Ms. Powell followed up with an email to interim general counsel Stephanie Harper and Mr. Perrins, cc to Mr. McKean and Mr. Awwad:

Dear Stephanie and Sascha,

I was reviewing the B&O notes where the committee heard Jeff's overview of the revised Non-Discrimination and Anti-Harassment policy. The committee requested a "lessons learned" from the Whitehurst case before going to the Board. Since the second reading and vote will be happening on June 13th, this will need to happen before then.

Stephanie, I'm not sure if this would be something that would be done best in a memo or if it even qualifies for an executive session?

Thanks.

Ms. Harper promptly responded to Ms. Powell and Mr. Perrins, cc to Mr. McKean and Mr. Awwad:

Well, Jeff and I talked about Whitehurst and he worked to incorporate that into the work he already did, and answered questions individually from board members. I can do a short "lessons learned" in writing (I

²⁶ Jeff Fish left the District in mid-December 2012 and then returned in May 2016.

don't have time to do a full scale analysis of the case) or talk with the board in executive session. . . .

As far as we can tell, there was no written follow-up. Board members do not recall Ms. Harper addressing them about this issue in executive session.

During the spring and summer of 2017, there were many changes among the District's high-level administrative personnel:²⁷

- Chief of staff Amanda Whalen resigned February 10, 2017.
- HR legal counsel Jeff Fish resigned May 11, 2017.
- Chief HR officer Sean Murray resigned June 3, 2017.
- Jim Harris was hired as general counsel June 15, 2017.
- Interim general counsel Stephanie Harper became senior legal counsel on June 16, 2017.
- Interim superintendent Bob McKean ended his one-year contract July 1, 2017.
- CEO Yousef Awwad was promoted to interim superintendent July 1, 2017.
- Interim chief of staff Sascha Perrins resigned on or about August 31, 2017.

This was a time of immense change among the District's high-level personnel, and the volatility may explain why the presentation of "lessons learned" from the Whitehurst case was never fully delivered to the Board. Of the three administrators present for the April B&O committee meeting (Mr. Awwad, Mr.

²⁷ In addition to changes in District personnel, three newly-elected Board members joined the Board in July 2017.

Perrins, and Mr. Fish), one (Mr. Fish) had resigned before Ms. Powell sent her May 23rd reminder email. The four administrators who received her May 23rd email were either in the process of leaving the District or moving to different positions at the time of the June committee meeting. As it happened, the June meeting did not result in a second reading of the anti-harassment policy, nor was there one read in subsequent meetings.

After *The Oregonian* ran its Whitehurst exposé in August 2017, newly-elected 2017-18 PPS Board Chair Brim-Edwards notified the rest of the 2017-18 Board that she and the superintendent, as well as she and Vice Chairs Esparza Brown and Moore, had discussed hiring an outside firm to investigate the matter and provide recommendations. The new board was composed of Chair Julia Brim-Edwards, Vice Chairs Julie Esparza Brown and Rita Moore, Scott Bailey, Amy Carlsen Kohnstamm, Mike Rosen and Paul Anthony.

Board leadership and outside counsel identified the investigation team and the Board unanimously approved the hiring of the team at a Special Board Meeting on September 19, 2017. Brim-Edwards notified then-interim superintendent Yousef Awwad of the Board's plan to hire an outside firm to investigate the Whitehurst matter to "provide [him] with visibility to this." Mr. Awwad responded in an email to Director Brim-Edwards: *"I appreciate the visibility on this. I was*

planning to assign staff to do this work but it is my understanding that you have already reached out to staff and started the work on this. Thank you.”

It is not clear what work the interim superintendent had planned to assign to staff, or why he did not take action earlier. Mr. Awwad had attended the B&O committee meeting in April 2017, at which Chair Koehler requested a “lessons learned” briefing in the near future, and he had been on an email exchange regarding this topic in late May 2017, in which Ms. Powell stated that the “lessons learned” would need to be delivered to the committee by mid-June.

We note that the Title IX coordinator position – the person Mr. Awwad had originally indicated could do the “lessons learned” analysis – was vacant during the period of his leadership. A job description for the Title IX coordinator was finally posted after the District hired a new superintendent in the fall of 2017. The lack of a Title IX coordinator in 2016-17 may partially explain the lack of follow-through.



What complaint and investigation procedures should the District adopt to ensure that complaints regarding personnel and agents working on behalf of PPS are received and acted upon promptly and appropriately?

Do the District's recordkeeping or other procedures allow for consideration of all prior complaints related to employee misconduct involving students such that the District can identify any patterns of related issues?

If not, what should be done to change that?

The District's current record-keeping procedures do not allow for consideration of all prior complaints related to employee misconduct involving students. Consequently, the District is hampered in its ability to identify patterns of related issues. To change that, the District will need to negotiate to change the PAT union contract (see the next section), as well as any other union contracts that require document destruction or removal from employee files. The District will also need to modify its procedures for tracking sexual conduct complaints.

We limit our recommendations to complaints and investigation procedures specific to employee sexual conduct with students. We recommend the District adopt the following procedures:

1. Train and require building administrators and HR Department staff who receive complaints to document every complaint or concern of sexual conduct and report them all to the Title IX coordinator or a similar designee.

2. Have a specialized, trained investigator with expertise in employee/student sexual conduct investigate each complaint thoroughly and fairly.
3. Have a core group of multi-disciplinary administrators (the employee's supervisor, in-house legal counsel, Title IX coordinator, and investigator, if different from the Title IX coordinator) make core credibility decisions and agree regarding what level of discipline to impose, if any.
4. Implement a centralized tracking mechanism to document all complaints, including their outcome.

We explain our recommendations in more detail below.

1. *RECOMMENDATION: REQUIRE EMPLOYEES TO DOCUMENT ALL ALLEGATIONS, CONCERNS AND COMPLAINTS AND REPORT THEM TO THE TITLE IX COORDINATOR OR A SIMILAR DESIGNEE.*

As a preliminary matter, we heard from many witnesses that there is no clear protocol for reporting a sexual conduct complaint. The District should publicize clear protocols conveying the simple directive that anyone with a complaint or concern or a reasonable suspicion that an employee is engaged in sexual conduct should immediately report it to either the principal of their building or to the Title IX coordinator.

Building administrators and relevant central office staff should be trained to document sexual conduct concerns brought to their attention. Then they should

report those concerns immediately to the Title IX coordinator,²⁸ a position that must be clearly tasked with the job responsibility of receiving and handling all sexual conduct complaints in the District, and one that is held accountable for doing so properly.

If the District deems it more appropriate to assign these duties to a position other than the Title IX coordinator, we defer to the District. The Title IX coordinator is not a “magic” title. Any other position with authority and expertise could receive and handle all sexual conduct complaints in the District. What is important is that this role be clearly designated and publicized to the schools, and that this position be held accountable for properly handling all sexual conduct complaints.

To track complaints and concerns, the District could create a *Confidential Staff-to-Student Sexual Harassment and Misconduct Reporting Form* for building administrators to use when reporting complaints or concerns to the Title IX coordinator or other designee. The form should identify the school’s name, the name of the person who received the report, the date, and the allegations or a summary of the incident. It should require a narrative of events as reported by the student/witness, including the student’s exact words, phrases or descriptions to

²⁸ If the District prefers to establish an HR intake process that requires administrators to contact HR, and HR in turn then routes sexual conduct complaints to the Title IX coordinator, we defer to the District. The important thing is that everyone in the chain is held accountable and there are not so many parts in the chain that it breaks down.

the building administrator. The log should be treated as confidential and shared only with appropriate school personnel (e.g., the Title IX coordinator, HR legal counsel, any PPS investigator), law enforcement authorities, and as otherwise required by law.

2. *RECOMMENDATION: USE A SPECIALIZED, TRAINED INVESTIGATOR WHO HAS EXPERTISE IN EMPLOYEE/STUDENT SEXUAL CONDUCT AND CAN INVESTIGATE EACH COMPLAINT THOROUGHLY AND FAIRLY.*

Currently, building administrators may and often do conduct the investigations of sexual conduct complaints. We do not recommend that building administrators lead these investigations. Building administrators are highly skilled, hard-working, dedicated educational leaders but few are trained in or have extensive experience in investigating sexual conduct. Moreover, building administrators should not be expected to investigate sexual conduct complaints given the complexities and the seriousness of the allegations if proven (e.g., termination, revocation of teaching license, criminal liability, placement on sexual offender list).

There is also the possibility of administrator bias toward the educator being accused of misconduct, who could be a colleague and may have a close working relationship with the administrator. Building administrators may face a complaint of sexual conduct about a beloved educator with a sense of disbelief, avoidance,

and reluctance to confront the educator, or a reticence to follow-up with a formal investigation or grievable reprimand. Furthermore, it is possible that the administrator's conduct could be called into question in the event the administrator has covered up or ignored past inappropriate behavior.

We recommend that the District remove all sexual conduct investigations from the purview of the building administrators and have them conducted by a qualified, experienced investigator trained to identify employee/student sexual conduct (including obviously inappropriate behavior as well as grooming behavior and adult/student boundary violations). The process should be centralized and assigned to a dedicated individual who will be expected to do a full and fair investigation. Consultation with the building administrator may be appropriate, but we recommend that the administrator not be in charge of the investigation.

The investigator should approach the complaint as one that warrants heightened scrutiny, not as a low-level disciplinary matter. The investigation of sexual conduct needs to be a thorough, detailed inquiry into the factual allegations of a report of suspected sexual conduct that is based on interviews with the complainant, witnesses and school employee who is the subject of the report. The

investigation must meet any negotiated standards of any applicable union contract.²⁹

A thorough investigation will include any or all of the following steps:

- ✓ Identification of the allegation or complaint (who, what, when, where, frequency, plus any context to the comment or conduct).
- ✓ Identification of standards of behavior (policies, ADs, job description, TSPC standards, union contract, statutes).
- ✓ Identification of the issues.
- ✓ Notification up the chain and to outside parties, as appropriate – HR/Legal, PPB, CPS, TSPC.
- ✓ Placement of the educator on leave, if appropriate (in consultation with HR, review the union contract and educator sexual conduct statute).
- ✓ Interview of the complainant. Include exact words, phrases or details used by the student. (A student reporting an incident of sexual violence or other traumatic sexual conduct should not necessarily be asked to submit a written report detailing the incident, as this may re-traumatize the student.)
- ✓ Notification to the parent(s) or legal guardian(s) of the student making the complaint, unless notification will create a substantial risk to the student's health, safety or welfare.
- ✓ Collection and review of documents or other evidence.

²⁹ This heightened investigation is expected to have taken place before a district reports substantiated conduct to another district seeking information about a former PPS employee. See ORS 339.370(4) and (10). Therefore, it should be the standard for all investigations of reports of sexual conduct.

- ✓ Interview of all witnesses, one at a time. For students, use prepared scripts with open-ended questions that do not suggest the answer (consider recording or transcribing responses).
- ✓ Interview of the employee accused of inappropriate behavior.
- ✓ Re-interview of witnesses or collection of additional evidence when facts are in dispute.

To determine whether the inappropriate conduct rises to the statutory definition of “substantiated sexual conduct,” as prescribed by Oregon law (which could trigger the District’s obligation to provide additional procedures to the employee per ORS 339.388 and to disclose the conduct to other education providers per ORS 339.378), the District needs to determine whether the student’s educational performance was impacted in any way. This is probably not a question that is routinely asked in the interview process, but it is part of the showing of “substantiated sexual conduct” under the reporting statute, so the District may want to ask questions relating to the effect of the conduct on the student’s educational performance. The District should try to determine whether the conduct unreasonably interfered with the student’s educational performance, and if so, how. The District should also attempt to ascertain whether the conduct created an intimidating or hostile or offensive environment for the student, and

again, if so, how. When these questions are asked, they should not be leading questions that suggest the answer.

The District's Guidelines for Internal Personnel Complaint Investigations should be incorporated, as appropriate, with these recommendations.

3. *RECOMMENDATION: HAVE A CORE GROUP OF MULTI-DISCIPLINARY ADMINISTRATORS MAKE CREDIBILITY DECISIONS AND AGREE REGARDING WHAT LEVEL OF DISCIPLINE TO IMPOSE, IF ANY.*

After the investigation has been completed, a multi-disciplinary team that includes but does not have to be limited to the employee's supervisor, the Title IX coordinator, in-house legal counsel, and the investigator (if the investigator is not the Title IX coordinator) should review the investigation's findings and the employee's employment history, including the full history of concerns relating to the subject of the complaint, to decide what level of discipline, if any, is appropriate.³⁰ This centralized approach is important for consistent responses at schools across the District. It is also advisable that the District have a team of accountable employees led by the Title IX coordinator make the determination

³⁰ It is not unprecedented for a school district to review the full history of concerns. In the San Francisco Unified School District, for example, whenever that district receives a report concerning a possible boundary violation, the site supervisor and assigned talent management director conduct an investigation that includes a review of the full history of concerns (substantiated *and* unsubstantiated) relating to the educator who is the subject of the concern/complaint. See SFUSD Professional Adult/Student Boundaries Policy 4019.1.

about whether to believe a student's version of an incident of sexual conduct or abuse over a teacher's account of the incident. The individual who interviewed the student should be part of the team that makes any credibility decisions. The team should document its reasoning in support of its credibility determinations.

For purposes of substantiated sexual conduct, investigations must also determine whether the conduct has met all four elements of the statutory definition of "sexual conduct" under ORS 339.370(9). ORS 339.370(9) defines "sexual conduct" as "any verbal or physical conduct by a school employee that (A) Is sexual in nature; (B) Is directed towards a kindergarten through grade 12 student; (C) Has the effect of unreasonably interfering with a student's education performance; **and** (D) Creates an intimidating, hostile or offensive educational environment." All four parts of the definition must be met before this law's procedural requirements for disclosing the conduct to other education providers are triggered.

However, finding that an employee did not engage in "substantiated sexual conduct" under the Oregon statute does not excuse the employee's inappropriate conduct and breach of professionalism. If the team concludes that the evidence does not support all four elements of the definition of "sexual conduct" under ORS 339.370(9), the team should assess whether the evidence demonstrates that there

was inappropriate conduct of a sexual nature directed towards a student. If so, it should be reported to the TSPC if the employee is a licensed educator.

The TSPC definition does not require all four elements of the state statute to be met to establish sexual conduct that is reportable to the TSPC. See OAR 584-020-0005(5)(d) (definition of “sexual conduct” includes, *inter alia* ... “Verbal or physical conduct of a sexual nature when directed towards a student **or** when such conduct has the effect of unreasonably interfering with a student’s educational performance **or** creates an intimidating, hostile or offensive educational environment. . . .”) (emphasis added). Note that the TSPC has an expanded definition of “sexual conduct” that also includes “verbal or physical conduct which has the effect of unreasonably interfering with a student’s educational performance or creates an intimidating, hostile or offensive educational environment.” OAR 584-020-0005(5)(e). The conduct does not need to be *directed* at a student to be considered sexual conduct under the TSPC’s definition; it is enough for it merely to have a deleterious *effect* on the student.

Thus, even when the District’s proof does not meet the four-part statutory definition of sexual conduct, the District may still find that an educator has engaged in sexual conduct that should result in discipline or dismissal and a report

to the TSPC.³¹ In-house legal counsel should notify TSPC of a possible violation of standards within 30 days of the complaint, as appropriate. If in doubt whether to report to the TSPC, in-house legal counsel should contact the TSPC to discuss the concern.

But even when the conduct does not meet the statutory four-part test for “sexual conduct” or the TSPC’s definition of “sexual conduct,” verbal or physical or other inappropriate conduct by a school employee that is sexual in nature or inappropriately personal or boundary-crossing with students can be sufficient cause to warrant disciplinary action.

Any discipline arising from the complaint or concern should be documented in the building file and the personnel file. Any concern that is well-founded, even when it does not rise to formal discipline, should always be documented in the building file.

Regardless of the investigation’s outcome, all information relating to the complaint should be logged by the Title IX coordinator or its designee (see section 4, below) and saved in a database.

³¹ The Beaverton School District’s policy entitled “Reporting Requirements Regarding Sexual Conduct With Students” clearly states in its second sentence: “The first two elements of the following definition will be considered sufficient cause for taking disciplinary action.” PPS should consider adding this line to its policies, as well.

Finally, either the Title IX coordinator or its designee should notify the complainant about the outcome of the investigation.

4. RECOMMENDATION: IMPLEMENT A CENTRALIZED TRACKING MECHANISM TO DOCUMENT ALL COMPLAINTS, INCLUDING THEIR OUTCOME.

After the investigation concludes, the Title IX coordinator or its designee should document the outcome of the investigation and the follow-up that occurred with the employee (e.g., no action, verbal counseling by supervisor, non-disciplinary letter of expectation, formal reprimand, dismissal).

Maintaining a record of all reported incidents of sexual conduct will enable the District to monitor, address, and prevent repetitive inappropriate behavior that may otherwise go undetected. To identify a pattern of sexual conduct, the District should maintain a full history of all concerns, whether they are (a) substantiated per the Oregon statute, (b) well-founded but not meeting the four-part test of the statute, (c) unsubstantiated because the evidence was inconclusive, or (d) unfounded (meaning there was no basis for the concern)³² – for each employee who is the subject of any sexual conduct complaint.

³² A complaint that is found to be meritless is still worth tracking because it may reveal a pattern of some other issue that the District might want to address. Tracking unfounded complaints will also assist the District in showing that its investigations are fair and result in varied outcomes.

The complaint, investigatory files, and any discipline or other follow-up with the employee should all be maintained in a confidential database so the employee's full history of concerns is accessible to in-house legal counsel, the Title IX coordinator, the designee, and anyone else with an authorized need to know. Given that the District will inevitably have a different slate of employees working in the Legal and HR Departments over the course of an investigated employee's career with the District, it is critical that the information be documented and maintained on a database to ensure there is a written record of all institutional knowledge about an employee.



Are there provisions in the union contract that impact the District's ability to adequately address complaints?

Yes. We assume the “union contract” this question refers to is the recently ratified 2016-2019 collective bargaining agreement between School District No. 1, Multnomah County, Oregon, and the Portland Association of Teachers (PAT).

1. ARTICLE 22.B, PERSONNEL FILES:

“With the exception of items which are duplicates of those in the District [personnel] file, evaluation materials. . .and other official records, materials in the supervisor’s building file, including Letters of Expectation, shall be removed when the supervisor or the professional educator is transferred. “

This provision protects educators, not students. If an issue is worth documenting in the building file, it is relevant to the educator’s employment and a change of supervisors or a change of teaching assignment does not mitigate its relevance. The issue being documented (e.g., the behavior of the educator, or the educator’s response to being counseled for inappropriate behavior) remains a historical fact for that educator. It does not logically follow that a transfer of either the supervisor or the educator abruptly erases it, and at least as it bears on sexual conduct, it certainly does not protect students. It prevents the District from discovering a pattern of inappropriate behavior that may only become visible over time after multiple incidents, perhaps each one too minor to rise to a level of

grieve-able discipline, but in the aggregate become worthy of discipline. This includes behavior such as sexual harassment, boundary violations and grooming behavior. Similarly, a letter of expectation³³ which documents that the educator was made aware of certain District policies, directives or procedures should not be discarded and allow that educator to escape discipline the next time that educator engages in behavior similar to what led to the initial letter of expectation.

The District has many educators who make a life-long career of teaching at Portland Public Schools. Due to promotions, budget cuts, unassignments, transfers, seniority, residential neighborhood moves and other personal decisions, they often – and, in some cases, frequently – move from one school to another. Many do not remain at one building during their career, nor is there any expectation they will do so. Supervisors similarly move among the schools for numerous reasons. Properly documented building files contain valuable information that should be passed on to all future supervisors who are required to manage the educator’s performance, whether it occurs in the same or a different building.

Retaining or removing materials from the building files should be the District’s choice (assuming what the District seeks to remove is not prohibited by

³³ According to the District’s contract with PAT, a letter of expectation “is a written notice of an expectation, standard, policy or procedure. It is not a finding of fault or misconduct and is not a disciplinary action.” See Article 19.H.1.

law), and not a contractual requirement that prioritizes an educator's employment over the students' safety and well-being. The building file should always follow the educator and remain intact when a new supervisor takes over.

2. ARTICLE 22.G, PERSONNEL FILES:

"A professional educator may request and have granted that any materials in the District personnel file (excluding evaluations and letter stating final disciplinary action) be removed from his/her file if after three (3) years of being written no subsequent similar entries have been made into the professional educator's personnel file."

"Letters of Expectation shall be removed from a professional educator's building file three (3) years after the date of the Letter of Expectation."

For most of the same reasons, this provision protects educators, not students. Similar to removing materials from the building files, Article 22.G cleans the slate for an educator who may, over time, exhibit a pattern of inappropriate conduct with students. Conduct that is perhaps considered by an administrator as not serious enough to rise to the level of discipline for one occurrence but is nevertheless documented should remain in the educator's files so that if that educator engages in similar conduct in the future, a pattern can be detected and appropriate disciplinary action can be taken. Materials relating to allegations of an educator's sexual conduct with students should not ever be removed from any files.

In the case of Mr. Whitehurst's employment, PPS employees who reviewed his personnel file found it void of any references to inappropriate conduct with students. The employees who made recommendations and decisions regarding his employment took his clean file into consideration when determining that there was not enough evidence to formally discipline him [REDACTED]. Had the PPS police reports regarding Mr. Whitehurst from the 1980's and 1990's been in his personnel file, Maureen Sloane would have seen a persistent pattern of sexual conduct and had sufficient evidence to justify discipline or termination in 2001 and again in 2008.

3. ARTICLE 19.H, PROFESSIONAL EDUCATOR RIGHTS AND JUST CAUSE:

Letter of Expectation

1. * * *
2. *"... Letters of expectation may be placed in the building file. ... Letters in the Letter of Expectation file shall be organized District-wide by school year and shall be removed from the file after three (3) years."*

This provision also protects educators, not students. First, letters of expectation in the building file will, for most of the same reasons, have a short shelf life of three years or less. The letter is removed sooner than three years if the supervisor or educator transfers, a common scenario. Second, letters of

expectation are maintained at the District office not by name of educator but rather, by school year so that they may be expeditiously purged. This further impairs the District's ability to detect any pattern of behavior for any particular educator. A system that tracked letters of expectation by individual employee and did not remove these notices would improve the District's ability to adequately address complaints of educator sexual conduct.

4. ARTICLE 21, COMPLAINT PROCEDURE:

The complaint procedure presumes that the educator's supervisor will conduct the investigation of a complaint. For the reasons set forth in the preceding section in our report, all investigations into sexual conduct complaints should be led by a qualified, experienced investigator trained to identify employee/student sexual conduct (including obviously inappropriate behavior as well as grooming behavior and adult/student boundary violations), and not led by the school administrators. Consultation with the educator's supervisor may be appropriate, and certainly the educator's supervisor should be consulted in any investigation, but that administrator should not be in charge of the investigation.



5. ARTICLE 21.C, COMPLAINT PROCEDURE:

“If the supervisor decides to proceed further with the written complaint, it shall be processed within ten (10) workdays of receipt under the following circumstances...”

The process outlined in the complaint procedure has the potential to be rushed by the supervisor in order to meet this deadline. In cases of sexual conduct, the District may not have a sufficient amount of time to process a complaint within ten days. We understand this provision to mean that the supervisor will notify the educator of a complaint in detail within 10 days, not that the complaint itself will be investigated within 10 days.

Being fully prepared for this meeting and having specific detailed examples of the actions complained of may from time to time require more than ten workdays. PAT should not be permitted to argue that the District has lost its opportunity to proceed further with a complaint of educator sexual conduct – and has therefore lost its ability to make a record of the complaint or investigate and possible discipline or dismiss a badly-behaved educator – because of the contract’s ten-day complaint processing deadline. At a minimum, the parties should agree that this deadline is aspirational and not enforceable for a complaint of educator sexual conduct, and agree that the District does not waive its ability to proceed with a complaint of educator sexual conduct after the ten-day deadline, provided



the District is diligently pursuing the complaint and provides a detailed description of the complaint within a reasonable time period.

6. ARTICLE 21.D, COMPLAINT PROCEDURE:

If the complaint is used in any manner to support actual or recommended discipline, administrative transfer, nonrenewal or dismissal, such record shall be placed in the personnel file and the complainant's name shall be disclosed if the unit member so requests.

Some parents who participated in the investigation expressed concerns that the requirement that a complainant's name be disclosed upon the educator's request leads to under-reporting of complaints and fear of retaliation by the educator accused of misconduct. A few parent witnesses voiced criticism of the District after they were cautioned about coming forward with a bullying complaint against an educator because their identities would be revealed, *"and did they really want that."* They interpreted this caution as a warning, and believed there could be retaliation once the parents' – and by extension, their students' – identities were disclosed. Whether intended or not, this message was not well-received and made these parents feel unsupported by the District even when they were prepared to offer examples of behavior that could have (and in their minds, should have) resulted in discipline of an educator. Some chose not to proceed with their complaint as a result.

Per the current contract, if the District intends to formally reprimand the educator based on a confidential complaint, the complainant's identity must be revealed upon request. Given this limitation to confidential complaints, it would be beneficial for the District to train on and strictly enforce the non-retaliation provisions of its complaint policies, so that complaints are not under-reported due to concerns of retaliation.

Some parents also criticized the District for not encouraging anonymous complaints. Anonymous complaints can have the effect of obstructing a thorough investigation and/or infringing on an educator's due process rights. We note that ORS 339.356(2) requires each school district to adopt a policy prohibiting harassment and include in that policy a procedure that allows a student or volunteer to report an act of harassment *anonymously* to the appropriate administrator. However, the statute expressly cautions that this requirement does not "permit remedial action solely on the basis of an anonymous report." See ORS 339.356(2)(f)(D). In other words, more evidence is needed than merely the anonymous report before corrective action may be taken by the District.



7. MULTIPLE FILES FOR MISCONDUCT:

The union contract sets forth five separate files that could house documents pertaining to misconduct by an educator:

1. **Investigation File:** Article 19.G.8 states, “The written notice of [a meeting that could result in disciplinary action or termination] shall not be placed in the professional educator’s building file or personnel file but may be kept in an investigation file.” Article 19.I.4 states, “The District shall place paid administrative leave letters in the investigation file, not in the professional educator’s personnel file.”
2. **Letter of Expectation File:** Article 19.H.2 states, “Letters of Expectation may be placed in the building file. Letters of Expectation shall be placed in a District ‘Letter of Expectation’ file maintained by the Human Resources Department.”
3. **Building File:** Articles 21 and 22 refer to the supervisor’s building file and the constraints currently put upon maintaining documents in that file for any length of time.
4. **Personnel File:** Article 22.A states, “There shall be one official District personnel file, which shall be maintained by the Human Resources Department.”
5. **Grievance File:** Article 26.C.8 states, “All documents, communications and records dealing with the processing of a grievance shall be filed in a separate grievance file which shall constitute a ‘personnel file,’ within the meaning of the confidentiality provisions of ORS 342.850. Access to those files shall be limited to those with a valid business interest in the case.”

The multiple files, even if vigilantly maintained, make it difficult to track a complaint or concern from start to finish. They also give rise to the possibility that

some relevant documents will be overlooked. The District apparently did not provide all documents in a timely manner pursuant to one or more public records requests for documents regarding allegations of Mr. Whitehurst's sexual conduct. This was due in part to the manner in which documents regarding Mr. Whitehurst were maintained (or not) by PPS.

We are concerned that a file scheme requiring portions of related documents regarding a complaint of sexual conduct to go to five separate locations will make it challenging for the District to "connect the dots" because no file will have all the necessary information or put the educator's current and subsequent supervisors on notice of the educator's history. Moreover, in the event of future budget cuts that result in significant layoffs, transitions and turnover in the HR Department, the District could once again face the systemic issue of poor document management, which could lead again to an inadequate response to a complaint of educator sexual conduct.

Lastly, but no less important, maintaining documents in five separate locations will make it more difficult for the public to gain access to files they may be entitled to see.



RECOMMENDATION: CHANGE THE DISTRICT'S UNION CONTRACT WITH PAT TO ENSURE THE PROTECTION OF STUDENTS, AS DETAILED IN THIS SECTION.

We recommend that the District and PAT agree to move forward to change the provisions in the PAT-PPS contract to better protect students. We understand that the current three-year contract (2016-2019) has been ratified and cannot be re-opened except in exigent economic circumstances. The District is essentially locked in to the current provisions until it negotiates the next three-year contract. We advise the District and PAT to negotiate and implement changes to the contract at its earliest opportunity.

RECOMMENDATION: REVIEW AND CHANGE THE DISTRICT'S OTHER UNION CONTRACTS, AS APPROPRIATE, TO SIMILARLY ENSURE THE PROTECTION OF STUDENTS.

We note that the union contract analyzed above is not the only union contract that may have provisions that impact the District's ability to adequately address complaints. The District has a total of five unions:

- PAT, Portland Association of Teachers: teachers, counselors, school psychologists, librarians and substitutes;
- PFSP, Portland Federation of School Professionals: secretaries, educational assistants, paraeducators and clerks;
- SEIU, Service Employees International Union: custodians and nutrition services workers;

- DCU, District Council of Unions: maintenance and construction crafts workers; and
- ATU, Amalgamated Transit Union: bus drivers.

We did not review any union contracts other than the current PAT agreement. To the extent any other contracts have similar provisions that protect employees over students, require the removal of documents from files, present unrealistic time frames for investigating complaints, or make document management of complaints difficult, we recommend the District make similar changes in its other contracts.



Are there other complaints about sexual misconduct by other employees or agents of the District that have not been adequately addressed?

During our investigation, we did not learn of any complaints about sexual conduct or abuse by any current PPS employees or agents of the District that had not been or were not being adequately addressed.



Do PPS employees receive adequate training in recognizing possible predatory behavior and how to respond appropriately?

It is a challenge to assess whether the training PPS employees receive is “adequate,” as there is no clear way to determine the extent to which employees have (or have not) applied what they have learned. Educators and other school staff who worked with Mr. Whitehurst did not report him for inappropriate conduct, although high school students found him to be inappropriately flirtatious at their schools in an obvious way, and rumors abounded about him dating and trying to hit on students. We do not know whether the failure to report was due to a failure to recognize possible predatory behavior, a cultural failure of PPS employees not viewing it as their responsibility to report another educator for misconduct, or some other failure.

The current training could certainly be improved.

CURRENT PPS TRAINING:

As of 2009, PPS employees have received training that meets the legal requirements of ORS 339.400, which requires annual training “on the prevention and identification of abuse and sexual conduct and on the obligations of school employees under [Oregon law] and under policies adopted by the school board to



report abuse and sexual conduct.” PPS employees are required to take this annual online training, and they do so.

While that training may be legally compliant, it is not robust. The online mandatory training provided by the District could be greatly improved.³⁴ Currently, PPS employees are required to watch a still-slide, reading-based presentation that has no sound. Until a few years ago, there was a quiz at the end; this comprehension component has been removed. The less-than-10-minute, silent training on educator sexual conduct prevention comes after the child abuse prevention training slides. While we cannot assess the level of engagement of a PPS educator who has already watched 34 minutes of silent slides regarding their mandatory child abuse reporting requirements, and who now has to sit through 10 more minutes of slides displaying text and irrelevant stock photos in a rudimentary PowerPoint presentation, we imagine the level of enthusiasm for watching this second segment of the module is low. In sum, this 44-minute experience is not engaging, and it may not be effective.

The training may send a message that prevention and identification of sexual conduct and abuse of students by PPS employees is not a priority; rather, it

³⁴ Note that for purposes of the investigation, we watched the online training available to parents and guardians: <https://www.pps.net/Page/1957>. We were advised by multiple District employees that the employee training was identical.

is merely a statutory requirement and an afterthought.

In addition to not being particularly engaging, the current PPS employee sexual conduct training misses multiple opportunities to educate its employees about this important subject. For example, the training opens with a slide intended to illustrate real-life examples of sexual conduct. Unfortunately, the examples only identify educators in *other* school districts in Oregon and the training does not acknowledge that sexual conduct is an issue for *this* district, as well. All of the examples involve arrests for *illegal* behavior and none involve examples of common *inappropriate* behavior, such as boundary violations. Boundary violations are significant issues worth emphasizing.

The introduction acknowledges that sexual conduct and abuse can be perpetrated by adults in all job categories within schools, and then calls out teachers (the most common category of suspects) and other specific job categories, but does not mention coaches – the second most common category.

The slides later set forth the four-part statutory definition of “sexual conduct” in an ambiguous manner that does not make it clear that all four elements must be met for the conduct to meet the statutory definition of “sexual conduct,” or that violation of only the first two elements could result in formal

discipline up to and including termination but would not trigger the obligations of the educator sexual conduct statute.

The training also does not adequately emphasize the role of social media in grooming and boundary violations, though this is a growing issue that needs to be addressed.

A STUDY IN CONTRAST – SEATTLE PUBLIC SCHOOLS:

In stark contrast to the current training provided to PPS employees, Seattle Public Schools provides an engaging online training that the District should consider emulating. The training can be found here:

<https://www.seattleschools.org/cms/one.aspx?pageId=9291816> (approximately

35-minute training for staff) or here: www.seattleschools.org/misconductvideo

(17-minute training for volunteers). The interactive training is the result of a grant

from the Department of Education. It contains videos and narration, including

interviews of various experts and administrators. To actively engage the viewer,

there are vignettes of realistic examples of borderline conduct with a self-paced

quiz after each scenario, compelling the viewer to consider how “gray” some

situations may be and how easy it is to overlook or misjudge grooming behavior or

boundary violations. It also sends the message that the district takes sexual

conduct seriously and that the responsibility for protecting students from sexual conduct is shared by the school board, the superintendent, all school employees, volunteers, parents, state agencies, and law enforcement. The training is required for all staff members as well as volunteers, and is available for parents and other community members as well.

PROPOSED CONTENT FOR EFFECTIVE TRAINING:

A Training Guide for Administrators and Educators on Addressing Adult Sexual Misconduct in the School Setting (“Training Guide”), guidance recently published by the Readiness and Emergency Management for Schools (REMS) Technical Assistance Center of the U.S. Department of Education, Washington, D.C., 2017, includes extensive guidance on sexual conduct and abuse awareness and prevention training. The entire training guide can be found here:

<https://rems.ed.gov/docs/ASMTrainingGuide.pdf>.

The *Training Guide* recommends that an all-staff training on sexual conduct and abuse cover the following topics:

- ✓ Include a working definition of sexual conduct and abuse.
- ✓ Explain the school’s policies, underscoring the fact that some behaviors (e.g., those meeting the legal definition of child sexual abuse) are criminal acts. Therefore, certain behaviors may lead to termination of employment and punishment under the law.



- ✓ Identify the warning signs of the effects of sexual conduct and abuse on children, providing examples, when possible, from reported cases.
- ✓ Explain the role and legal responsibilities of mandatory reporters and the school's internal reporting procedures.
- ✓ Point out the consequences for failing to report sexual conduct and abuse, as well as protections for those who report in good faith when incidents of suspected sexual conduct or abuse turn out to be unsubstantiated.
- ✓ Describe how school policy prohibits the making of intentionally false complaints and the repercussions for doing so. Emphasize that protecting the reputation of innocent employees is a high priority for the school.
- ✓ Identify perpetrator patterns of behavior, providing examples from local and national media accounts or case studies that are relevant to the school setting.
- ✓ Describe policies and procedures involving transportation, the physical school environment, toileting, and electronic communications, including social media.
- ✓ Take time to address questionable, but not criminal behaviors (i.e., the "gray areas") in both in-person and electronic interactions with students.
- ✓ Include information about which students are likely to be targets of sexual conduct and abuse and what school personnel can do to protect these at-risk students.
- ✓ Identify a district Title IX coordinator(s) and describe their roles, pointing out the location of their office(s) in the school or district and providing contact information.
- ✓ Discuss the steps school personnel are expected to take to reduce the risk of sexual conduct and abuse in the physical environment.

- ✓ Consider distributing a handout during training that describes the school's policies and asking employees to sign it.
- ✓ Conduct a post-training assessment mechanism, such as a survey, to gauge the impact of the training and determine the need for adjustments in content, approach, or format.

See *A Training Guide for Administrators and Educators on Addressing Adult Sexual Misconduct in the School Setting*, page 30.

In addition to the requisite mandatory training for all PPS employees, the District should provide additional training to its administrators and HR staff, as well as specialized training to its Title IX coordinator, about how to respond to and investigate reports of sexual conduct. *The Training Guide* recommends that additional administrator training cover the following topics:

- ✓ State laws and mandates specific to sexual conduct and abuse prevention and response.
- ✓ Title IX policies and procedures pertaining to sexual conduct and abuse.
- ✓ Oversight of the Title IX coordinator.
- ✓ Strategies for ensuring prevention and response compliance by other school personnel.
- ✓ Complaint processes and critical communication protocols within the school and the District.
- ✓ The threat-specific and hazard-specific annex(es) relating to sexual conduct and abuse.

- ✓ Policies for placing alleged perpetrators on administrative leave, and maintaining confidentiality during internal and external investigations.
- ✓ Guidelines for working with local law enforcement.
- ✓ Measures to promote school recovery after an incident.
- ✓ Recordkeeping, data management, and accountability related to complaints or reports of sexual conduct and abuse.

See *A Training Guide for Administrators and Educators on Addressing Adult Sexual Misconduct in the School Setting*, pages 30-31.

In conclusion, the District has legally compliant training but it could and should improve its online module to create comprehensive, high-quality training to help its employees prevent, identify and report sexual conduct. Live face-to-face training or table-top conversations at leadership meetings, where employees can actively participate and ask questions, is also recommended, though this type of training is not legally required.

RECOMMENDATION: IMPROVE THE SEXUAL CONDUCT PREVENTION AND IDENTIFICATION TRAINING PROVIDED TO PPS EMPLOYEES.

As explained in more detail above, we recommend a wholesale revamping of online training. The District should allot more time to training in an effective, interactive, and meaningful manner. The current PAT union contract calls for four hours of mandatory online training. (See Article 5.C.10.c.) The current sexual

conduct training runs just less than 10 minutes, which means only 4% of the mandatory online training is allocated to educator sexual conduct.

RECOMMENDATION: REQUIRE SEXUAL CONDUCT PREVENTION AND IDENTIFICATION TRAINING FOR PPS VOLUNTEERS AND CONTRACTORS.

Other school districts require their contractors and volunteers to take the same training as their employees. If the District is serious about identifying and preventing sexual conduct, it should consider adding this requirement. This recommendation would apply, for example, to the volunteer coaches who routinely come in contact with PPS students. (Coaches are the second most common perpetrators of sexual conduct with students.)

RECOMMENDATION: IMPROVE THE SEXUAL CONDUCT PREVENTION AND IDENTIFICATION TRAINING PROVIDED TO PPS STUDENTS.

ORS 339.400(3) requires the District to make training that is designed to prevent abuse and sexual conduct available to its students each school year.³⁵ While the District should not rely on the students to self-report, it should teach its students to use their voices and to speak up when something is not right, and to report their concerns without fear of retaliation or of being disbelieved.

³⁵ ORS 339.400(3) states, “An education provider shall make training that is designed to prevent abuse and sexual conduct available each school year to children who attend a school operated by the education provider.”

Age-appropriate training can play a role in prevention. Training can teach students about appropriate boundaries with PPS employees, when to be concerned about something they see or hear involving themselves or their peers, and how to report inappropriate or illegal behavior. Training for students should also emphasize that the District takes student complaints seriously and intends to respond to any complaints with a full and fair, documented investigation. Students should also know of their right to notification by the District about any actions taken by the District based on the student's report of sexual conduct. We advise the District implement additional training in home room or health class, or provide some other age-appropriate, centralized curriculum that is designed to prevent abuse and sexual conduct. The District should consider translating its materials for students for whom English is a second language.

RECOMMENDATION: FIX THE MATERIALS RELATING TO SEXUAL CONDUCT ON THE PPS WEBSITE.

5.10.063-AD (“Prohibition Against Employee Child Abuse and Sexual Conduct with Students”) states that the District will require annual training for district employees and provides, “Procedures and resource materials are available and are on the website.” Currently, there are inconsistencies in the materials on the



website. It would be helpful to ensure that all references to the timing of the required training are consistent.

The “*Child Abuse and Sexual Conduct Reporting Procedures and Resource Materials*,” a pdf available on the PPS website,³⁶ sets forth timing requirements for annual training that conflict with other information on the PPS website. On page 15, the materials state:

Principals and department supervisors are responsible to ensure that each employee under their supervision completes this annual training in a timely manner.

- *Central office employees by August 31, each year*
- *School-based employees by September 30, each year*
- *New employees within 30 days of hire date.*

However, other references to the training on the PPS website have different timing requirements. For example, under the tab for *Student Support, Health & Wellness/Child Abuse Prevention Training*, the website provides “District guidelines are for this training to be completed **by October 31 for the 2017/18 school year** or within 30 days of hire date.” <https://www.pps.net/Page/1957> (emphasis added). This date is later than what is laid out in the other materials. We

³⁶ These resource materials should be updated to revise the general counsel contact. Currently, the materials list Jollee Patterson as one of the two contacts for questions about child abuse and sexual conduct legal issues, even though Ms. Patterson left the District in July 2016. See pdf at page 3 (“Introduction and Who to Contact”).

further recommend that PPS relabel this tab “Child Abuse Prevention **and Sexual Conduct** Training” so it is clear where to find this information.

Under the tab for *HR/Substituting/Substitute Secretaries/Child Abuse Prevention and Sexual Conduct Training*, the website states:

- *Every year all administrators are directed by the Superintendent to have child abuse reporting procedures presentations and sexual conduct, including taking the online video training, for all Portland Public School employees.*
- *All school district employees are required to take the training every year.*
- *Any new public school employee hired shall, **within six months of their employment**, complete the training.*

<https://www.pps.net/Page/1688> (emphasis added). This timeframe differs from the 30-day deadline for new employees to complete the training and should be consistent with other references on the website. We further recommend that PPS re-locate this information so it is not buried in a remote section pertaining only to substitute secretaries.

VI. FORMER PPS EMPLOYEE NORMAN SCOTT

In February 2018, the Board requested that our investigation be informed by the District's response to allegations raised about inappropriate conduct by former PPS educator Norman "Norm" Scott, including the agreements entered into between the District and Mr. Scott and employment references provided by the District to other education providers. In the course of our investigation, we reviewed Mr. Scott's personnel records, grievance records, and HR files. We also conducted several interviews specific to Mr. Scott. However, we did not investigate Mr. Scott as a comprehensive separate subject of our investigation because we understood the Board did not expect a full review of his employment (as with Mr. Whitehurst) and desired that we focus on the post-employment agreements. The information we gathered is not, and should not be construed as, comprehensive or exhaustive.

We found similarities between the two educators and how their sexual misconduct was addressed (or not) by the District. Both educators ogled female students or made inappropriate verbal comments, for which they received verbal counseling but rarely had written documentation of any inappropriate conduct of a sexual nature placed in their files. Like Mr. Whitehurst, Mr. Scott had a reputation

among female students for being “creepy” and gave certain attractive female students unwanted attention. Some female students complained that they were uncomfortable around him and did not like the attention. Students felt unheard or disbelieved when they brought subjective complaints (for example, about being leered at by their PE teacher) to the attention of administrators, and did not get an adequate response to their complaints.

Both educators had the benefit of a fresh start when they moved to a different school and started a new building file from scratch, leaving behind any previous supervisor’s documented concerns. Administrators rarely had enough evidence to issue formal discipline due to the union contract’s “just cause” requirements, and the few investigations that were conducted were not robust. The District had no centralized method to track all the complaints and concerns, so it did not detect or respond to the pattern of misconduct.

Both educators engaged in boundary violations with students that were inappropriate but not clearly prohibited by any PPS policy (Mr. Whitehurst tried to engage Faubion students on Facebook, while Mr. Scott texted and left voicemails on his TAs’ personal cell phones and gave them inappropriately personal gifts).

And both educators ended their long careers by resigning with favorable terms in their agreements such that no one would know there was concern about

their inappropriate behavior around female students.

Mr. Scott taught for 36 years in the Portland Public Schools as a health and PE teacher. He started in 1976 at Sellwood Middle School as a PE teacher, taught PE briefly at Beaumont Middle School for a year in the 1990's, and then returned to Sellwood from 1995-2006 (except in 2004-05, when he taught half-time at Franklin High School). In 2006, Mr. Scott moved to Grant High School, where he taught until his employment ended in 2012.

From time to time throughout his long career at the District, Mr. Scott had performance and conduct issues. Many of these issues did not arise from inappropriate conduct of a sexual nature with students, but they involved a

[REDACTED]

While Mr. Scott was a teacher at Sellwood, parents and students complained that his conduct made female students uncomfortable. Female students complained he was “creepy” and would brush against them and touch them inappropriately, purportedly to assist them, when they were stretching or exercising in PE class. He was also known to occasionally walk into the girls’ locker room when he knew the students were changing. A student complained that Mr. Scott was ogling her as he made multiple trips to his car one day (she was seated outside the school). Students at Sellwood felt their concerns went unheeded.

[REDACTED]

Although the principal (Frank Scotto, who later joined the HR Department) verbally counseled Mr. Scott about his behavior, the District was not consistently responsive to the students' concerns. Sometimes it was quite the reverse. One student was forced to apologize to Mr. Scott after she was caught writing a note complaining about how creepy he was and in it called him "Molester Scott."

As a side gig, Mr. Scott led trips to the East Coast. These trips were not sponsored by PPS but they were heavily advertised to Sellwood students, and many 8th graders tended to go on them as a graduation trip. Two years in a row, in the summers of 1999 and 2000, there were complaints about Mr. Scott's poor judgment and inappropriate behavior on these trips. The District attempted to rein in Mr. Scott's ability to coordinate his trips on school premises and use school resources to organize them.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Thereafter, Mr. Scott continued to recruit PPS students for his trips, though he apparently abided by the new restrictions. One student recalled that after he was not allowed to recruit students at school, he came to her home uninvited to provide information about an upcoming trip.

[REDACTED]

In 2001, principal Scotto received a complaint from another Sellwood educator that something had taken place in Mr. Scott's office that could potentially rise to the definition of child abuse. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mr. Scott transferred to Grant High School in 2006, where he taught Health. There is nothing in his files to indicate the transfer was a deliberate effort to move an offending educator to avoid issuing discipline. At Grant, many parents and students continued to complain about his conduct and performance. Some students had issues with his teaching style and asked to be switched out of his classes. Some female students complained he was "creepy" and they were uncomfortable being in his class. He offended some students when he called them

[REDACTED]

“beautiful” or told them they would “make good wives.” Mr. Scott was verbally counseled from time to time regarding his inappropriate conduct in the classroom.

In December 2011, Mr. Scott’s student TAs (all females) complained to the vice principal that Mr. Scott had asked for their personal cell phone numbers and they were receiving unwanted texts and voicemails from him. As a Christmas gift, he had given at least two of the TAs body lotion. They were offended and found this gift from a teacher disturbingly personal.³⁷

[REDACTED]

[REDACTED] (See EXHIBIT 21). [REDACTED]

³⁷ When asked about these gifts, Mr. Scott explained they were not intended to be sexual in nature.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The “Retirement Agreement,” as it was titled, was negotiated by the union’s outside counsel and the District’s Legal Department. The terms of the agreement included the District providing only basic employment information if contacted about his employment. Other than dates of employment, position(s) held, and the fact that Mr. Scott had retired, the District agreed not to provide other information. The District also agreed to put *“any and all discipline issued to Mr. Scott over the course of his [36-year] District employment in a sealed file in Mr. Scott’s personnel file, to be opened only by the superintendent or his/her representative, Mr. Scott or his/her representative, or a representative of the Portland Association of Teachers, unless required by law.”* (See EXHIBIT 22.)

In 2013, Mr. Scott applied to work for the Archdiocese of Portland as a substitute teacher in the Catholic schools. The Archdiocese sent an inquiry to the District asking whether Mr. Scott had a substantiated report of child abuse or sexual conduct while employed at PPS. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].³⁸ Ms. Murphy checked “yes” on the form, and attached the warning letter itself to the form so the Archdiocese could see the reprimand for sexual conduct and decide for itself if it wanted to hire Mr. Scott. (See EXHIBIT 23.)

In 2012, when the District [REDACTED], the District did not yet have internal formal protocols in place to fulfill the procedural requirements of the sexual conduct statute, such as formal notice to the educator of the substantiated report and his/her right to appeal. Mr. Scott therefore had not been provided the notice that is due an educator when there is a substantiated report of sexual conduct reportable to education providers who may later inquire about the educator’s employment.

When Mr. Scott learned from the Archdiocese in late 2013 that the District had disclosed that Mr. Scott was the subject of a substantiated report of child abuse or sexual conduct, he asked the District to promptly remedy what he considered to be an error. He then hired a lawyer who threatened to sue the District for breach of the Retirement Agreement. Through his counsel, Mr. Scott

³⁸ Mr. Fish had already responded affirmatively and attached the letter of warning to a prior inquiry by an education service district. Ms. Murphy may have simply referred to this prior form and checked the same box on the inquiry from the Archdiocese.

demanded \$5,500, written acknowledgment of the breach, and a letter retracting the “erroneous information” communicated to the Archdiocese.

HR legal counsel Stephanie Harper received the correspondence from Mr. Scott’s attorney and sought advice from Miller Nash (specifically, Michael Porter). Ms. Harper had joined the District earlier that year and had no prior involvement in the negotiation of the Retirement Agreement.

Mr. Porter advised Ms. Harper that [REDACTED]

The District faced potential additional liability for two reasons: (1) the District had not followed the statutory protocols proscribed in ORS 339.388(9) but had indicated in response to an inquiry that Mr. Scott had been the subject of a substantiated report of sexual conduct, and (2) the District had entered into a resignation agreement that restricted its ability to disclose anything more than basic employment information in response to inquiries about Mr. Scott.

Had the District refused to retract the disclosure it could have faced a challenging legal dispute that would result, win or lose, in significant legal fees. The District was defending multiple lawsuits in 2013 and was under scrutiny for its high legal fees. To Mr. Porter, [REDACTED]

[REDACTED]

Ms. Harper, also acutely aware of the resource-constrained environment in which she worked and engaged in all-consuming bargaining mediation with PAT in an effort to stave off a teachers' strike, apparently agreed with him.³⁹

The District entered into an Agreement and Release in which it paid Mr. Scott \$3,500 and issued a letter of retraction to the Archdiocese; in exchange, Mr.

³⁹ [REDACTED]
[REDACTED] Paralegal Siobhan Murphy [REDACTED]
[REDACTED] However, we note that Ms. Murphy later signed a Medford School District Sexual Misconduct Disclosure Release in March 2014 indicating that Mr. Scott was *not* the subject of a substantiated report of child abuse or sexual conduct.

Scott released the District from all claims.⁴⁰ (See EXHIBIT 24.) The retraction letter read as follows:

Due to an administrative error, the form indicates that Norm Scott was the subject of a substantiated report of child abuse or sexual conduct. That information is incorrect, and instead the correct entries should indicate that Mr. Scott has not been the subject of a substantiated report of child abuse or sexual conduct and that he is not the subject of an ongoing investigation related to a report of suspected child abuse or sexual conduct. Mr. Scott retired from Portland Public Schools, effective June 30, 2012.

(See EXHIBIT 25.) This language was proposed by Miller Nash and sent to Stephanie Harper. The agreement was approved and the letter signed by chief HR officer Sean Murray.

From the perspective that the right thing to do is to keep all students safe from potential harm, it was not appropriate for the District to issue a retraction *if in fact* it had determined Mr. Scott engaged in conduct of a sexual nature. (It is not clear whether this conclusion was reached in the January 2012 letter of warning, or whether the District was merely concerned about boundary violations by Mr. Scott

⁴⁰ Indeed, Mr. Scott did later sue the District, just not over the affirmative responses to the ESD inquiries. He contended that the District's report to the TSPC, made soon after he signed the Retirement Agreement but before he signed the Agreement and Release, violated the terms of his Retirement Agreement. PPS denied it violated the terms of the Retirement Agreement because the District did not – and never intended to – waive its obligation to report conduct to the TSPC and argued Mr. Scott had released all claims against the District in the subsequent Agreement and Release. Miller Nash represented PPS and won this case on summary judgment.

that fell below the threshold for a “substantiated report of sexual conduct.”) The District would have been hard pressed to re-open the investigation into the January 2012 allegations that resulted in his letter of warning or belatedly issue the notice required by the sexual conduct statute. Furthermore, the decision to defend a lawsuit for breach of contract and defamation in lieu of settling for nuisance value and a retraction would probably have been questioned, if not roundly criticized, by the Board at the time. The District appears to have made its decision to agree to issue a retraction in the face of circumstances that on balance weighed in favor of an expedient and cost-effective resolution.

Mr. Scott’s post-employment complaints appear to be the result of two separate issues: first, the District agreed – as it agreed in Mr. Whitehurst’s resignation agreement – to restrict what it would disclose about an educator’s employment, including his past issues of inappropriate sexual behavior. The District should not have agreed to suppress this information. Second, the District did not have the protocols in place that are prescribed in ORS 339.370-.400 and did not provide Mr. Scott with the appropriate notice and appeal rights when it delivered his letter of warning.

We understand that both of these issues have been addressed by the District such that these issues should not occur in the future if the District's protocols are followed.

In a lamentable turn of events, PPS's affirmative disclosure of sexual conduct apparently did not deter another school district from hiring Mr. Scott as a substitute teacher. Mr. Scott was found guilty in October 2017 of sexually abusing six girls while working in 2015 as a substitute PE teacher at Gardiner Middle School in Oregon City. It appears the Oregon City school district was on notice of the same sexual conduct that had caused a controversy at PPS after Mr. Scott's resignation. Although the disclosure to the Archdiocese was retracted, the other disclosures that had already been made were not.

The Clackamas Education Service District (CESD) acts as a clearinghouse for HB 2062 disclosure inquiries on behalf of the Clackamas County public school districts. In 2012, CESD sent a disclosure release to the District and was given an affirmative response that Mr. Scott *was* the subject of a substantiated report of child abuse or sexual conduct (the letter of warning was sent along with the disclosure). CESD loaded this information into its database and provided this information to any Clackamas County school district that inquired about Mr. Scott.



As of February 2015, the CESD also uploaded to Mr. Scott's file a letter from the TSPC dismissing an investigation into Mr. Scott's conduct. In May 2012, PPS had reported to the TSPC that Mr. Scott "may have violated adult/student boundaries." The TSPC did not investigate the concern until October 2014. It dismissed the matter without taking any action four months later after it did not find evidence sufficient to charge Mr. Scott with professional misconduct. Mr. Scott walked the TSPC's dismissal letter into the CESD in February 2015 and requested that it be added to his file.

Mr. Scott worked as a substitute at Gardiner Middle School on October 5, 2015. Based on complaints of inappropriate touching by female students in his PE classes, he was removed from the school before the end of the day and later charged for his criminal conduct. Mr. Scott was convicted of multiple counts of sexual abuse in the third degree and harassment in November 2017.⁴¹ He has appealed his conviction.

VII. ADDITIONAL RECOMMENDATIONS

⁴¹ Mr. Scott was sentenced to six months' incarceration in the county jail, plus a five year period of supervised probation that requires him to register as a sexual offender; have no contact with minors or the victims' families; be financially responsible for all counseling costs incurred by the victims; not teach or be present on any school property; not be involved in any organizations that would place him in direct contact with children; and surrender his teaching license.

RECOMMENDATION: EXERCISE TRANSPARENCY AND DO NOT ENTER INTO RESIGNATION AGREEMENTS THAT RESTRICT DISCLOSURE OF POSSIBLE SEXUAL CONDUCT.

An educator suspected of sexual conduct is a challenge to any school district. If a district fires the educator, it may face a very costly legal battle with the educator's union and, if the termination is not upheld, may have to return the educator to the school. Putting an educator on paid leave while the TSPC investigates the complaint is also costly because the TSPC can take months or even years to complete its investigation due to internal and external factors; meanwhile, the school district pays the educator's salary plus the salary of a substitute teacher. Resignation agreements inked before an investigation is completed provide an expedient, final, and usually much less expensive way for a district to get an offending educator out of its schools.

But at what cost? In exchange for protecting a school district from draining its resources to defend arbitrations and lawsuits, resignation agreements with problem educators can put at serious risk the safety of students in other districts.

ORS 339.392, part of the statutory scheme passed in 2009 to prevent and report substantiated sexual conduct, was intended to curb this practice. It states, in part (emphasis added):

(1) An education provider may not enter into a collective bargaining agreement, an employment contract, an agreement for resignation or termination, a severance agreement or any other contract or agreement that:

(a) Has the effect of suppressing information relating to an ongoing investigation related to a report of suspected abuse or sexual conduct or relating to a substantiated report of abuse or sexual conduct by a current or former employee;

(b) Affects the duties of the education provider to report suspected abuse or sexual conduct or to discipline a current or former employee for a substantiated report of abuse or sexual conduct;

(c) Impairs the ability of the education provider to discipline an employee for a substantiated report of abuse or sexual conduct; or

(d) Requires the education provider to expunge substantiated information about abuse or sexual conduct from any documents maintained by an education provider.

Mr. Whitehurst was not the subject of an ongoing investigation related to a report of suspected abuse or sexual conduct at the time of his resignation. Nor was there ever a substantiated report made about Mr. Whitehurst alleging sexual conduct against students, in part because reports of suspected sexual conduct to the District were inadequately investigated and hence, never substantiated. We do not find that the District violated ORS 339.392 when it negotiated a resignation agreement with Mr. Whitehurst.

There have been other educators, however, who left the District with resignation agreements that restricted the District's ability to share information relating to that employee's conduct with other education providers that requested such information.

Historically, PPS has taken the legal position that ORS 339.392 prohibits the District from covering up *substantiated* sexual conduct through an agreement, but does allow the District to negotiate a resignation agreement *before the conduct is substantiated* (for example, before a detailed investigation can be completed that includes an interview of the educator accused of sexual conduct), so long as the agreement does not suppress information.

While the District's past practice may meet the letter of the law, it appears to violate the law's spirit – that is, to prevent sexual conduct from occurring in other districts by being forthcoming about past misconduct. In our review of some resignation agreements entered into between 2011-2016 with PPS educators accused of inappropriate sexual behavior and/or boundary violations, we found restrictive terms in resignation agreements negotiated between the HR and/or Legal Departments and counsel for the union that protected the educator and put students in other districts at risk. They include:



- Agreeing to limit HR inquiry responses to only basic employment information such as the employee’s position, dates of employment, the fact he/she resigned, and his/her salary at the time of resignation.
- Agreeing to remove from the personnel file and maintain in a separate location all investigatory information relating to allegations of inappropriate behavior of a sexual nature.
- Agreeing to place all discipline issued to the educator over the course of his/her employment in a sealed file within the educator’s personnel file, to be opened only by specified individuals or as required by law.
- Agreeing to respond, if asked whether the educator’s employment included any sexual misconduct, that there was an investigation into allegations of sexual misconduct that the educator denied, no findings were made, and the educator resigned before the conclusion of the investigation.

The District made the expedient choice to agree to these terms in an effort to move the educator out of the District in a resource-efficient, timely manner.⁴²

Other districts may be agreeing to similar terms in their resignation agreements. However, expediency disserves the longer term goal of protection of all children.

The District has been unwilling to take on the union in difficult dismissal cases but we encourage it to do just that – even if the District loses from time to time, and even if it is costly. There is a mission-critical reason to go through the dismissal process and terminate the employment of educators who violate

⁴² The lack of uniform direction and support from past Boards regarding recommended educator terminations may also have been a factor in the decision to enter into a resignation agreement.

important policies and neglect their duty to their students; it reinforces the message educators are first and foremost employees of the District who have a responsibility to PPS students to keep them safe.

If the District deems it too costly or too risky to fight a dismissal case and resignation is a more desirable alternative, then any resignation agreement that the District enters into should allow the District the discretion to disclose information freely. Entering into a resignation agreement that restricts the District's ability to disclose reports of suspected sexual conduct puts PPS's risks ahead of the potential for future harm to other students.

We recommend the District handle the departure of these occasional problematic educators differently. The District should be accurate, honest and transparent in response to inquiries about employees who have left the District. PPS should not enter into any more resignation agreements that prevent the disclosure of sexual conduct that potentially could have been substantiated if only a complete and thorough investigation had taken place before the employee resigned. We are concerned about the scenario where an employee resigns in the middle of an ongoing investigation into potential sexual conduct that has yet to be substantiated (or not) because the investigation has not been completed. It is not appropriate to end the investigation prematurely and agree in a resignation

agreement not to disclose any details regarding the allegations, unless the District has concluded that sexual conduct did not in fact occur.

We also have concerns about a scenario in which an employee resigns and then at a later date, evidence surfaces of the employee's sexual conduct with students during the time period the employee was employed by PPS.⁴³ If there is a resignation agreement restricting the District from disclosing any details about the employee's employment, then disclosure of the sexual conduct could lead to litigation (specifically, a breach of contract claim by the employee). If the District enters into a resignation agreement with a seemingly ethical PPS employee, it should include a reservation by the District to disclose any known sexual conduct and not provide a neutral reference should any credible complaints come to light.

Open transparency and full disclosure is the only way all school districts will be able to root out employees who engage in sexual conduct or abuse and stop "passing the trash" by allowing an employee accused of sexual conduct to leave a school through a resignation agreement or other means and quietly seek employment at another school district without the new school district being alerted to the allegation. We understand that the District with support from a new superintendent and new Board has recently changed its approach and is currently

⁴³ It is entirely possible – as was the case with Mr. Whitehurst's employment – that additional details regarding an educator's conduct can surface after the educator leaves the District.

refusing to enter into any agreements that prevent full disclosure of suspected or substantiated sexual conduct, and we endorse this approach.

RECOMMENDATION: IMPLEMENT AN ADULT/STUDENT BOUNDARIES POLICY.

We recommend the District adopt a policy to provide its employees with information to increase an awareness of their role in protecting students from inappropriate conduct by adults and to ensure that contact and communication with students occur in a professional manner.

The District currently has some of the precepts of an adult/student boundaries policy in various other current and draft policies and administrative directives. For example, the District already has a sexual harassment policy (5.10.62-P) that prohibits staff-to-student harassment. It also has an administrative directive (5.10.063-AD) that prohibits sexual conduct with students, as that term is defined under the Oregon statutory scheme. Furthermore, the District is in the process of rolling out a social media administrative directive that is intended to address proper electronic communications between employees and students. And in the PPS School Staff Handbook for 2017-18, there is an ethics policy that reminds licensed educators of their obligation to meet the TSPC's professional, moral and ethical standards in their interactions with students. The District quotes

the TSPC's "Ethical Educator" standards (OAR 584-020-0035), including in relevant part:

1. *The ethical educator, in fulfilling obligations to the student, will:*
 - a. *Keep the confidence entrusted in the profession as it relates to confidential information concerning a student and the student's family;*
 - b. *Refrain from exploiting professional relationships with any student for personal gain, or in support of persons or issues; and*
 - c. *Maintain an appropriate professional student-teacher relationship by:*
 - i. *Not demonstrating or expressing professionally inappropriate interest in a student's personal life;*
 - ii. *Not accepting or giving or exchanging romantic or overly personal gifts or notes with a student;*
 - iii. *Reporting to the educator's supervisor if the educator has reason to believe a student is or may be becoming romantically attached to the educator; and*
 - iv. *Honoring appropriate adult boundaries with students in conduct and conversations at all times.*

We recommend that the Board create a policy and, if necessary, the District staff develop a complementary administrative directive that directly addresses interactions between all PPS employees and students. The policy should address a range of behaviors that include not only unlawful or improper interactions with

students, but also boundary-blurring and grooming behaviors that undermine the professional adult/student relationship and lead to actual or apparent impropriety.

The policy should define and give examples of boundary violations and appearances of impropriety that the District expects its employees to avoid. It should also cover in detail the District's expectations for staff/student electronic communications. Finally, like the administrative directive prohibiting employee sexual conduct with students, the policy should include an expectation that any employee who observes or has knowledge of another employee's violation of this policy will immediately report the information to the principal, who shall report the information to the Title IX coordinator (or other clearly-designated HR intake point person who routes the information to the Title IX coordinator). And finally, if the employee suspects child abuse, the employee must also follow the District's child abuse reporting policy and immediately make a mandatory report to law enforcement.

RECOMMENDATION: LOBBY FOR CHANGES OUTSIDE THE DISTRICT THAT WILL MAKE OREGON SAFER FOR STUDENTS.

The problem of sexual conduct with students is not unique to PPS. It is a problem state-wide and nation-wide. As Oregon's largest school district, PPS should lobby the legislature to amend the definition of "sexual conduct" in



ORS 339.370-.400, the statutory scheme intended to assure the prevention, identification and reporting of sexual conduct. The definition currently requires conduct by a school employee that is sexual in nature and directed toward any prekindergarten through grade 12 student *not only* to unreasonably interfere with a student’s educational performance *but also* to create an intimidating, hostile or offensive educational environment before it is deemed to be “substantiated sexual conduct” that must be reported to other education providers inquiring about the employee’s past record. This bar is too high, as it does not focus on *preventing* sexual conduct by the employee. Instead, it only catches sexual conduct that has already occurred and was not prevented by the employee’s former school district.

The current definition also does not address the situation where the student is groomed and flattered by the attention, not appreciating (yet) that the sexual attention the student is receiving is causing damage to their mental health, or the situation where the student is academically resilient and does not objectively manifest poor grades, spotty attendance, or some other indicator of an unreasonable interference in educational performance.⁴⁴ The employee’s conduct

⁴⁴ Query also why the legislature requires an “unreasonable” interference in a student’s educational performance and why **any** interference in a student’s educational performance due to an employee’s inappropriate sexual conduct shouldn’t be enough to satisfy the definition.

is these scenarios is no less unethical, and should be disclosed to future educational providers conducting a background check.

PPS should lobby to align the statutory definition of sexual conduct with the TSPC's definition of sexual conduct. Given that the TSPC deems any sexual conduct (using its own regulatory definition) with a student by an educator to be evidence of gross neglect of duty and grounds for TSPC disciplinary action, including suspension or revocation of the educator's license (see OAR 584-020-0040(4)(f)), there is no reason the state statute that applies to all employees of educational providers should have a separate definition with a higher bar. Meeting the TSPC's "lesser" definition of sexual conduct is enough to end an educator's career, and the same standard should apply for disclosures of substantiated sexual conduct to subsequent education providers.

"Sexual conduct" as defined by the TSPC is any conduct with a student which includes but is not limited to:

- (a) The intentional touching of the breast or sexual or other intimate parts of a student;
- (b) Causing, encouraging, or permitting a student to touch the breasts or sexual or other intimate parts of a student;
- (c) Sexual advances or requests for sexual favors directed towards a student;

- (d) Verbal or physical conduct of a sexual nature when directed toward a student **or** when such conduct has the effect of unreasonably interfering with a student's educational performance **or** creates an intimidating, hostile or offensive educational environment; **or**
- (e) Verbal or physical conduct which has the effect of unreasonably interfering with a student's educational performance or creates an intimidating, hostile or offensive educational environment.

See OAR 584-020-0005(5).

In addition to changing the Oregon statute's definition of "sexual conduct" for purposes of the reporting statute, PPS should lobby to shorten the TSPC's timelines for investigating educators. It should not take years for the Commission to investigate sexual conduct complaints brought to their attention. During the time period that an educator is being investigated, there is no public acknowledgment by the TSPC that the educator is under investigation. Nothing prevents that educator from finding another teaching job while under investigation (unless the educator candidly discloses this fact to potential employers). We recommend that the District advocate for shorter timelines in order to keep students safe from unethical educators.

RECOMMENDATION: REVISE ADMINISTRATIVE DIRECTIVE 5.10.063—AD TO CLARIFY THAT THERE IS SUFFICIENT CAUSE FOR CORRECTIVE ACTION WITHOUT ALL FOUR ELEMENTS OF SEXUAL CONDUCT.

We recommend the District add a line to the definitions section of its administrative directive, 5.10.063--AD (“Prohibition Against Employee Child Abuse and Sexual Conduct With Students”). That section currently reads:

I. Definitions

Sexual conduct and child abuse by district/school employees will not be tolerated. All district employees are subject to the guidelines of this administrative directive.

- (1) “Sexual conduct” is any verbal, physical, or other conduct by a school employee that is sexual in nature; directed toward any prekindergarten through grade 12 student; unreasonably interferes with a student’s educational performance; and creates an intimidating, hostile or offensive educational environment.
- (2) “Child abuse or neglect” is any form of abuse, including abuse through neglect and abuse or neglect by a third party, of a person under age 18.

The District should consider clarifying that the first two elements of the definition of “sexual conduct” will be considered sufficient cause for taking disciplinary action. As written, it sounds like all four elements must be met before sexual conduct will not be tolerated. We realize this AD was probably written in response to the statute (which contains the four-part definition). However, the District

should be taking steps to address an employee's misconduct before it causes an unreasonable interference with a student's educational performance or creates and intimidating, hostile or offensive educational environment.

RECOMMENDATION: REQUIRE EMPLOYEES TO CHECK WITH THE HR DEPARTMENT BEFORE GIVING A RECOMMENDATION TO ANOTHER EMPLOYEE OR SERVING AS A REFERENCE.

The District does not currently have a policy restricting its employees from giving recommendations and serving as a reference for other employees. Given the confidential nature of personnel investigations, most PPS employees are unaware of the reasons another employee has left the District. In the case of Mr. Whitehurst's departure, for example, Mr. Wilhelmi was unaware of any reason not to provide a positive reference when Mr. Whitehurst requested one.

The District should have a process by which any employee wanting to give a reference to a former employee is required to check with the HR Department to confirm that a reference can be given freely. This process would only preclude individuals from providing such references if the HR Department informs them that restrictions exist.

RECOMMENDATION: DESIGNATE A LIAISON BETWEEN THE PPB AND THE DISTRICT TO MONITOR CASES INVOLVING ALLEGATIONS OF SEXUAL CONDUCT BY A PPS EMPLOYEE.

We recommend that PPS meet with the PPB and the District Attorney's Office and designate a person within each organization who will be responsible to record, review and monitor every case against a PPS employee that is presented to local law enforcement. Steps should also be taken within each organization to ensure that these designated individuals are made aware of each case of sexual conduct involving PPS employees. The records of all such monitoring should be reported to a designated official at a high level in each organization on a regular basis.



VIII. SUMMARY OF ALL RECOMMENDATIONS

- Adopt the following procedures to investigate sexual conduct complaints (see pages 130-142):
 1. Train and require building administrators and HR Department staff who receive complaints to document every complaint or concern of sexual conduct and report them all to the Title IX coordinator or a similar designee.
 2. Have a specialized trained investigator with expertise in investigating employee/student sexual conduct complaints investigate each complaint thoroughly and fairly.
 3. Have a core group of multi-disciplinary administrators (the employee's supervisor, HR legal counsel, Title IX coordinator, and investigator if different from the Title IX coordinator) make credibility decisions and agree regarding what level of discipline to impose, if any.
 4. Implement a centralized tracking mechanism to document all complaints, including their outcome.

- Work with PAT to change certain contract provisions in the District's union contract to adequately address sexual conduct complaints and ensure the protection of students. Specific provisions of the PAT contract include Article 22 (Personnel Files), Article 19 (Professional Educator Rights and Just Cause), and Article 21 (Complaint Procedure). (See pages 143-153.)

- Review and change the District's other union contracts, as appropriate, to adequately address sexual conduct complaints and to ensure the protection of students. (See page 153-154.)

- Improve the District's sexual conduct training in the following ways (see pages 160-167):

1. Improve the sexual conduct prevention and identification training provided to PPS employees.
 2. Require sexual conduct prevention and identification training for PPS volunteers and contractors.
 3. Improve the sexual conduct prevention and identification training provided to PPS students.
 4. Correct and update the materials regarding sexual conduct on the PPS website.
- Exercise transparency with employee separations and do not enter into resignation agreements that restrict the disclosure of possible sexual conduct (see pages 182-188).
 - Implement an adult/student boundaries policy (see pages 188-190).
 - Lobby for changes outside the District to make Oregon safer for students (see pages 190-193).
 - Revise the administrative directive entitled “Prohibition Against Employee Child Abuse and Sexual Conduct With Students” to clarify that the District has cause to issue corrective action even if all four statutory elements of sexual conduct are not met (see pages 194-195).
 - Require PPS employees to check with the HR Department before providing a reference for a former PPS employee (see page 195).
 - Designate a liaison between the PPB and the District to monitor cases involving allegations of sexual conduct by a PPS employee (see page 196).

IX. ISSUES BEYOND THE SCOPE OF THE INVESTIGATION

Certain issues came to the attention of the investigation team but were not pursued because they were beyond the original scope of the investigation or could not be completed within the timeline and budget approved by the Board. The Board may want to consider pursuing these topics, as they deem appropriate.

Consequences for Mr. Whitehurst. One question often asked by witnesses in our investigation was whether there could be legal consequences for Mr. Whitehurst for his past sexual conduct with students. The scope of our investigation was limited to what employee or systemic failures resulted in Mr. Whitehurst never being disciplined. We did not explore possible recourse against Mr. Whitehurst. Pursuant to his resignation agreement, Mr. Whitehurst received early retirement benefits. He is also collecting pension benefits of \$2,984/month from the Oregon Public Employees Retirement System (PERS) (see <https://gov.oregonlive.com/pers>). Mr. Whitehurst's PERS benefit is beyond the District's control. However, the District may want to refer our investigation report to its general counsel to evaluate whether there is any other recourse for the District. Our report could also be given to the District Attorney's Office to evaluate whether there is any criminal conduct that can still be prosecuted.

Caprice's Retaliation Claim. During the investigation, Caprice (the student who notified the District in 2008 and 2012 about allegations of Mr. Whitehurst's sexual conduct with Franklin students in 1984) made a formal complaint that she had been retaliated against on two occasions: (1) after she brought her allegations to the District's attention in 2012, she believed she was blackballed from working at Faubion as a substitute teacher; and (2) after she indicated to outside counsel defending the *Thompson v. PPS* lawsuit that she was sympathetic to the plaintiff and had spoken to the plaintiff's counsel, she believed she was threatened by the District's outside counsel. Because this retaliation complaint involved a current employee, it was deemed to be outside the scope of our investigation and referred to the District, where the complaint was investigated internally and responded to by a letter dated February 9, 2018. To the extent the evidence in our investigation overlapped with that investigation, we have no reason to disagree with the District's findings.

Past Employment Issues Involving Former Employee Norm Scott. The Board expanded the original scope of our investigation to include certain aspects of Norm Scott's employment. We investigated issues relating to Mr. Scott's resignation agreement and post-employment inquiries about sexual conduct, as these issues

were similar to the analysis we were already conducting for Mr. Whitehurst. We did not exhaustively investigate Mr. Scott's employment history, as the investigation scope, timeline, and budget had been set by the Board. From the evidence we did gather, however, there seemed to be a pattern in Mr. Scott's employment similar to Mr. Whitehurst's history, where allegations were not vigorously investigated and where full information about the employee's overall conduct was not known by all administrators who had to deal with him.

One additional issue that the Board should also address is its policy for field trips and out-of-town travel. Mr. Scott led trips to the east coast that led to parent and student complaints about his conduct during those trips. The most serious incident was arguably sexual in nature and was the subject of testimony at his sentencing hearing in Clackamas County last year. Although the trips were actually not sponsored by PPS, they involved PPS students and teachers and the perception by students and their families was that these trips were promoted by or related to PPS even though they were independent. When Mr. Scott led other local field trips that were District-sponsored, he appeared to have exercised poor judgment. The Board may be well served to tighten up its policies relating to all trips, both District-sponsored and independent but led by District employees.



The Role of Student Teaching Assistants. In both Mr. Whitehurst's career and Mr. Scott's career, student TAs made complaints about the educators. Both teachers' selections of their TAs appeared to be highly subjective and involve attractive female students who would later report that the teacher gave them unwanted and inappropriate attention. The District may want to re-evaluate (1) its method of TA selection, which appears to be heavily influenced by the individual educator; and (2) whether there is a way to supervise TAs to keep them safe from opportunistic educators.

Adult Sexual Harassment. Our investigation did not analyze the District's response to any adult harassment by Mr. Whitehurst, including the EAs who complained in December 2012 that Mr. Whitehurst called them "Baby" and "Girl." During our investigation, some witnesses voiced concerns that PPS had tolerated adult-to-adult sexual harassment in the schools, but noted that the environment was improving and the recent sexual harassment training had been helpful.

Substantiated Reports of Sexual Conduct by Other PPS Educators. During our investigation, we came across various other educators who had resigned or been disciplined or terminated due to issues relating to inappropriate conduct of a



sexual nature. We did not analyze whether the District correctly followed ORS 339.388 or made the appropriate disclosures under ORS 339.378.

Thompson v. PPS. We did not investigate the legal advice provided by outside or in-house counsel regarding settlement of Rory Thompson’s lawsuit against the District.

Public Records Requests. There have been numerous public records requests to the District regarding Mr. Whitehurst. We did not investigate the response to or opposition of these requests by the District or its agents.

The District’s Other Union Contracts and non-represented employees. We did not review any collective bargaining agreements other than the PAT contract, nor the policies and practices applicable to non-represented employees. However, our recommendations regarding preventing, reporting and investigating sexual conduct with students apply to all PPS employees. Any other policies, practices or union contracts with impediments to protecting students should be changed at the District’s earliest opportunity.

