

POLICY MEMORANDUM NO. 005-94

ISSUED TO: Insular Superintendents
All Labor Union Organizations

FROM: Commissioner of Education

DATE: July 28, 1993

SUBJECT: SEXUAL ABUSE OR MISCONDUCT BY DEPARTMENTAL EMPLOYEES
OR CONTRACTORS INVOLVING STUDENTS

RATIONALE: Conduct by employees that is sexually inappropriate in the school setting or of a criminal nature will not be condoned by the Government of the Virgin Islands, Department of Education. Because of the fiduciary or trust relationship that is developed between the student and teacher or the student and school, it is imperative that the morals of the minors and their civil and constitutional rights to privacy be protected against unlawful invasion.

A recent, unanimous United States Supreme Court decision in Franklin v. Gwinnett County Public Schools¹ has held that school districts are now subject to private lawsuits by students under Title IX of the Education Amendments of 1972, 20 U.S.C. 1681-1688, and are liable for monetary damages involving sexual harassment and abuse by school employees. The court found that the school district failed to take action although aware of the employee's sexual misconduct (sexually-oriented conversation, kissing and coerced intercourse) and upheld the lawsuit against the district even though the employee resigned and the student left the school. In order to set a standard against sexual impropriety in our schools and require corrective action, the following policy is enacted.

POLICY: Sexual abuse, harassment, immorality, or misconduct by a school based employee or Departmental employee or school based contractor involving a student is just cause for termination. Departmental employees and school based contractors are prohibited from engaging in physical contact with students except where health, safety or educational purposes are being met. Students are to be encouraged to report all offensive physical contacts, sexual abuse, harassment or misconduct to the appropriate Departmental officials without fear of retaliation.

¹ 498 U.S. 1080, 112 S.Ct. 1028, 117 L.Ed. 2d 208 (1992)

The school districts must conduct thorough investigations and background checks of teachers, school based employees and school based contractors for evidence of sexual misconduct by the applicant when making decisions as to hiring, transfers, retention or evaluations.

Procedures in cases of suspected child abuse by an employee:

1. Report of Incident:

(a) A report by a student or other informant of sexual abuse or misconduct by a District employee or school based contractor must be received in strict confidence without retaliation to the student or the informant and reported promptly by telephone or otherwise by a District official to the V.I. Police Department, the Department of Human Services, the Department of Justice and the Commissioner of Education. 5 VIC 2533-2535.

(b) Whenever a school teacher or other school personnel has reasonable cause to suspect that a child has been subjected to abuse, sexual abuse or neglect, or observes the child being subjected to conditions or circumstances that would reasonably result in sexual abuse, he must immediately report it or cause a report to be made in the same manner as (a) above.

2. Background Check for Sexual Abuse:

(a) The Districts must conduct background investigations of applicants, transferees and contractors applying for school based positions involving students. No person who has been convicted of a crime involving the abuse of any child shall hold any position in the Government of the Virgin Islands or the Department of Education in which he may employ, instruct, counsel or supervise children. 3 VIC 533.

(b) According to the above law, if information about an employed person or of a successful contractor surfaces after employment with the Government showing conviction of a crime of child abuse wherever committed, their employment or contract must be terminated.

(c) The Department of Education has a duty to protect its students from the negligent hiring, supervision or retention of persons who are sexually abusive to students.

(d) If the Department's Educational Personnel Services is requested in writing to furnish background information to inquiring school districts as to a history of sexual abuse by a teacher to students, they may furnish to the requesting district over the signature and approval of the Insular Superintendents, any written, truthful information about the teacher without malice and in the exercise of the privilege of qualified immunity to actions for defamation.

3. Due Process to Suspected Employee:

(a) As in any action to initiate discipline against an employee, the standards of due process must be maintained. This includes notice of the charges and an opportunity for a hearing. In sexual abuse claims, usually a student reports an incident several months after its occurrence out of reluctance, fear or embarrassment. There may be other students involved whose circumstances may surface at a later date following notice to the employee. Because of this, courts have held that timely notice of the charges is sufficient even if the incidents are months or even years old.