A Review of Existing Literature Surrounding Female Educator Sexual Misconduct in Anglo-American Classrooms

Avery Barnes
Isaac Calvert

Follow this and additional works at: https://scholarsarchive.byu.edu/byu_elj

Part of the Education Commons, and the Law Commons

Recommended Citation
Available at: https://scholarsarchive.byu.edu/byu_elj/vol2024/iss1/2

This Article is brought to you for free and open access by the Journals at BYU ScholarsArchive. It has been accepted for inclusion in BYU Education & Law Journal by an authorized editor of BYU ScholarsArchive. For more information, please contact ellen_amatangelo@byu.edu.
A REVIEW OF EXISTING LITERATURE

SURROUNDING FEMALE EDUCATOR SEXUAL MISCONDUCT IN ANGLO-AMERICAN CLASSROOMS

Avery Barnes and Isaac Calvert

A 2004 literature review commissioned by the U.S. Department of Education estimated that one in every ten students would experience sexual harassment or abuse at the hands of an educator during their time in public schools.\(^1\) Even more alarming, multiple studies within Shakeshaft’s 2004 review suggested that this issue goes well beyond the reported data. At that time, leading social science research estimated that only 6% of children who were victims of educator sexual misconduct reported it.\(^2\) With significant developments in digital communications technologies since that 2004 study, researchers in the U.S. Department of Education have estimated that the number of these cases has increased given that 35% of the 4.5 million recorded cases in 2014 involved social

\(^2\) Id. at 16.
media. Furthermore, at the time of this article’s writing, no known national database for recording and reporting instances of educator sexual misconduct (hereafter ESM) exists.

As a result, this area of research consists of an often-unwieldy combination of government-mandated reports and independent studies. While useful as a starting point, these bodies of work fall short of offering the kinds of large-scale statistics and generalizable conclusions that might prove more concretely helpful in addressing these troubling trends.

Nevertheless, these reports provide crucial data primarily by focusing on several key facets of the situation as it stands. For example, the Texas Education Agency reported that between the years of 2007 and 2017, inappropriate relationships (i.e., relationships deemed outside local, state, and federal bounds based on age, workplace norms, and child protection) between educators and their students increased 249%, with that number rising from 123 cases in 2007 to 429 cases in 2017. Though limited in scope to a single state, this case gives insight into a more overarching trend whose precipitous growth is troublingly unmatched by

---


5 Julie Chang, *Statesman Exclusive: Improper Teacher-Student Relationship Cases Soar*, MY STATESMAN (June 3, 2017), https://improper-teacher-student-relationship-casessoor/sBGynWidwxBFoYvb1AtdpI/
Female Sexual Misconduct in Anglo-American Classrooms

research to either ameliorate the conditions that allow it or provide punitive constraints to those who perpetrate it.

Contemporary research that addresses the various facets of ESM can be found in many different areas of study, including criminal justice, child psychology, and educational policy, to name a few. Knoll asserts that in areas of research that report on ESM, “most attention has focused on male teachers as the primary perpetrators.” However, the instances and implications of when female educators sexually abuse their students are of noteworthy importance, especially when considered in light of the overwhelming majority of female teachers in North America. Female educators who perpetrate ESM are acutely under-researched, and this represents an area of research currently in need of greater data and analysis.

Through the interpretation of EMS data, collected over the past twenty years, the study of female teachers as sexual predators is a relatively recent area of inquiry. It is noteworthy that the language of federal statutory rape laws in the United States was not changed to allow

---

6 Jennifer Knoll, Teacher Sexual Misconduct: Grooming Patterns and Female Offenders, 19 J. OF CHILD SEXUAL ABUSE 371, 373 (2010).
8 Id.; Shakeshaft, supra note 1; Andrea Darling, Understanding Female Perpetrated Child Sexual Abuse in Organisational Contexts (Aug. 28, 2018) (Ph.D. dissertation, Durham University) (on file with Durham University).
for the possibility of female offenders and male victims until the late 1970s. Before that, the courts held that sexual contact would have necessarily been initiated uniquely by males.\(^9\) Considering female sexual misconduct, specifically among educators, adds additional layers of complexity that draw upon research in gender theory, public discourse on compulsory education’s role, child development, power dynamics in government-funded organizations, and the nature and dynamics of the student-teacher relationship. This multifaceted issue problematizes a shared understanding of EMS among researchers, education practitioners, and colors public perception and discourse about schools and child safety within them. But more pressing than all of these considerations (and indeed one of the primary axioms upon which this article rests) is that a more accurate understanding of female educator sexual misconduct can inform policy and practices for a safe environment in which children and adolescents might learn and grow into adulthood free from such abuse.

Pursuant to these goals, this article surveys and synthesizes social science research and legal precedent related to female ESM to call attention to this area of study in pressing need of further academic, professional and legal consideration.

Often, the notion of Female ESM (hereafter FESM) proves so multifaceted as to elude clear definition among researchers across many fields. Such researchers have tended to narrowly delimit a hyper-specific definition of ESM using such terms as “misconduct,” “abuse,” and “harassment” to describe it. Following this tendency toward specificity, Shakeshaft found that the behaviors highlighted in social science research included those which violated students visually, verbally, and physically; examples may include “touching breasts or genitals of students; oral, anal, and vaginal penetration; showing students pictures of a sexual nature; and sexually-related conversations, jokes, or questions directed at students.”

In an oft-cited survey conducted by the American Association of University Women ESM was characterized by only differentiating between educator sexual misconduct that involved contact and/or what they termed “noncontact events” in the examination of teacher-instigated sexual harassment (Bryant, 1993). The binary nature of these definitions of ESM illustrates the disparities of understanding that exist across related bodies of literature. An essential aid to making progress in this fraught

---

10 Shakeshaft, supra note 1; Darling, supra note 8; Dan H. Wishnietsky, Reported and Unreported Teacher-Student Sexual Harassment, 84 J. Of EDUC. RSCH. 164 (1991).
11 Shakeshaft, supra note 1, at 1.
12 Anne L. Bryant, Hostile Hallways: The AAUW Survey on Sexual Harassment in America's Schools, 63 J. Of SCH. HEALTH 355 (1993).
area of inquiry will be for researchers across various disciplines to come to a more broadly agreed-upon consensus of what constitutes sexual misconduct. Whether this understanding is operationalized for more generalizable study or made contingent upon the unique, qualitative perceptions of who experience it, a shared understanding of the fundamental phenomenon in question would advance research and understanding in this area.

Shakeshaft supported this claim, pointing out that the term ESM describes such a broad range of behaviors that its lack of specificity can become problematic to the very process of inquiry it attempts to aid. As mentioned earlier, the breadth of ESM’s scope becomes even more complex in light of the multitude of digital communications media through which such interactions can occur. Therefore, antiquated characterizations of ESM are inadequate in the midst of so much technologically driven change to student-teacher interaction. Wurtele however, has attempted to provide a more definitive and comprehensive list that better reflects contemporary modes of contact in this context, defining educator sexual misconduct as, “sexual harassment, sexual invitations, text messaging, e-mail, or social media contact of a sexual nature, showing or producing sexually explicit images, sexual touching, oral sex, and any type of penetrative intercourse.”13 It is noteworthy that this more contemporary

13Sandy Wurtele et al., Keeping Students Out of Harm’s Way: Reducing
definition includes a multitude of modalities for non-physical ESM, shifting ESM from a primary role to be considered as only one (albeit egregious) form of ESM among many. Understanding and reaching consensus on these definitions is essential to identifying and preventing ESM in schools, as physical safety is no longer a sufficient condition for protecting students from this kind of abuse. A holistic and comprehensive understanding of that which constitutes sexual misconduct may prove instructive to teachers, administrators and other education professionals who might otherwise have considered such non-physical abuse innocuous or even harmless.

An essential dimension of the vocabulary surrounding the ESM framework in both academic and legal research is the use of the term “misconduct.” A common issue in cases of ESM is that students involved often either claim to have not felt like victims or claim to have expressly consented to the relationship or interactions in question. 14 This is especially the case in instances of FESM. However, research from Canada’s Ontario College of Teachers asserts that the intentional use of the term “educator sexual misconduct” is essential to correctly attribute responsibility and accountability in litigating such cases. “By referring to ‘sexual abuse,’” they assert, “the emphasis is placed on the victim, and the

---

14 Knoll, supra note 6.

*Risks of Educator Sexual Misconduct, 28 J. OF CHILD SEXUAL ABUSE 160 (2019).*
question of whether the victim did or did not suffer abuse or harm. This,” they continue, “is not the appropriate focus. The proper emphasis must not be on the student, but on the teacher, who is solely responsible for his or her professional conduct.” In short, a marked shift from terminologies of “abuse” to those that comprise an ESM framing of the issue represents an intentional moving of the locus of accountability from student-victim to teacher-perpetrator.

Nevertheless, it is difficult to overlook that conversations about consent and teacher-student relationships are fraught with sociocultural, ethical, and legal complexities. Contemporary reporting based on interviews with legal representatives of students and teachers involved in these cases suggests that students may be perceived to assert or even overtly assert themselves as willing participants in such interactions with educators. Again, as discussed hereafter, this tends to be the case, especially in cases of FESM. Additionally, domestic abuse researchers note that victims caught in a relationship with an imbalance of power often “see themselves as functionally helpless and powerless to escape their


16 Simone Sebastian, He Was Abused by a Female Teacher, But He Was Treated Like the Perpetrator, WASHINGTON POST (January 9, 2015), https://www.washingtonpost.com/opinions/he-was-abused-by-a-female-teacher-but-he-was-treated-like-the-criminal/2015/01/09/3f2e7980-96d5-11e4-aabd-d0b93ff613d5_story.html.
situation.” In such instances, victims “remain not because they want to but because they believe there is no point in trying to get out.” No matter the student’s disposition, teachers and administrators must operate with the knowledge that “they are the adult in any given situation and the responsibility for their behavior – professionally, morally, and ultimately legally – lies with them.” It is critical to communicate and reinforce this standard of interpersonal engagement to assure affected students and their trauma are accurately understood and preventative measures are properly employed.

**EFFECTS ON STUDENTS**

Understanding the effects of teacher-instigated sexual abuse and harassment on a student’s psyche is crucial if schools and the public are to comprehend the gravity of these situations. According to behavioral researchers Steely and Bensel, an ideal student-teacher relationship exhibits high levels of trust, warmth, and care between the two parties.

---

19 Mollee Steely & Tusty T. Bensel, *Child Sexual Abuse Within Educational Settings: A Qualitative Study on Female Teachers Who Sexually*
Positively, such relationships can encourage students “to foster positive aspirations, attitudes, motivations, and academic efficacy.”\textsuperscript{20} Dangerously, however, such trust, warmth, and care can act as seedbeds for abuse when inappropriately leveraged within the context of an almost inherent imbalance of power between teachers and students. In such situations, the kind of wholesome, trusting teacher-student relationships to which students are entitled become toxic and have been consistently shown to affect students on a variety of fronts negatively.\textsuperscript{21} This type of improper relationship dynamic is most dangerous and harmful in cases of sexual harassment and misconduct in which trust is broken and power abused.

For students affected by such toxic relationships, the trajectory of their future might be forever altered by a single encounter with even one educator engaging in this type of behavior. Such detrimental effects are by no means limited to academic performance. Psychological research on childhood sexual abuse indicates that these traumatic events are often predictors of low self-esteem, depression, and suicidality.\textsuperscript{22} Additionally, children who are victims of sexual abuse report feelings of guilt, abuse-
related fears, and difficulty in social settings.²³ Ironically, the very closeness of the student-teacher relationship that, at its best, uniquely enables teachers to help their students holds the potential for the most far-reaching and damaging of abuse to which students can be subjected. When the singular trust that exists between a teacher and her student has been broken, and the effects of that betrayal have the potential to be devastating.

Psychotherapist Mike Lew considered sexual abuse within an asymmetric power dynamic so destructive as to classify it as “incest” rather than simply as abuse or misconduct. According to his definition of incest as any “violation of a position of power, trust, and protection,” Lew would almost certainly place teacher-student sexual misconduct in this more serious classification.²⁴ In Richard Gartner’s book “Betrayed as Boys: Psychodynamic Treatment of Sexually Abused Men,” he took Lew’s definition a step further. “By this broad definition,” he wrote, “any older caretaker who sexually betrays a child is committing a form of incest. For the child, the result may be nearly the same as betrayal by a parent: a shattering of the natural trust he has in the adults who care for him.”²⁵

Applying Lew’s definition, students who are betrayed by their

---

teachers in this manner may experience a loss of trust in authority figures and adults in general. This can be particularly devastating for a younger victim who will continue to be dependent on teacher-student relationships during what remains of their years in school. The unique breadth of ESM’s effects on children and adolescents is harrowing when seen in this light. With a proper understanding of the scope of ESM, school administrators, the community and students’ families can be better prepared to protect students and properly train those who have the capacity to prevent a detrimental influence upon the lives of students. This is especially important in a school setting that should be a safe space for young people’s learning and development (ethically, legally, and socioculturally).

**FEMALE EDUCATOR SEXUAL MISCONDUCT**

Contemporary data available regarding ESM tends to focus heavily on male offenders, as only limited empirical research exists that highlights female offenders compared with their male counterparts. Andrea Darling of Durham University has made great strides to clarify the challenges that are posed when citing data regarding female sexual offenders in her 2019 thesis, “Understanding Female-Perpetrated Child

27 Christensen & Darling, *supra* note 18.
Female Sexual Misconduct in Anglo-American Classrooms

Sexual Abuse in Organizational Contexts.” She problematizes the various issues that factor into the data reporting process of FESM such as, “the view of the researcher or author as well as the geographical location, population sampled and time period in which the data is collected.”

Isolating statistics that specifically highlight female sex offenders who use their position as teachers to commit such crimes is “compounded by the fact that typically the relationship between victim and offender is not routinely recorded in criminal justice or child protection systems.”

As previously cited, the U.S. Department of Education published a synthesis of existing literature regarding sexual abuse as perpetrated by educators in 2004. The primary author, Caroline Shakeshaft, ran into many of the same statistical limitations highlighted by Darling. Moreover, she found that “in studies that ask students about offenders, sex differences are less than in adult reports.”

She first presented a report conducted by the American Association of University Women (AAUW) in 2000. The AAUW data indicates that “57.2 percent of all students report a male offender and 42.4 percent a female offender.” Shakeshaft goes on to cite studies in which adults controlled the collection of data, public records,

---

28 Darling, supra note 8, at 30.
29 Id.
30 Shakeshaft, supra note 1, at 24.
31 Id.
and newspaper reports. In these reports, men were cited as offenders 80–96% of the time while female offenders only represented 4–20% of the educator offender population (see figure 1). While this constitutes a significant disparity in and of itself, it remains even more problematic that accompanying analyses remain largely theoretical regarding these discrepancies. More research is needed in this area to investigate the method of collection and why this statistical gulf exists between male and female offenders.

**Figure 1**

USDE Synthesis of Educator Sexual Offender Breakdown by Gender

<table>
<thead>
<tr>
<th>Table 8. Sex of Offenders</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>Percent Males</td>
</tr>
<tr>
<td>Percent Females</td>
</tr>
</tbody>
</table>

Studies that analyze the various dimensions of ESM treat female offenders as a separate category. A 1984 journal article analyzing the effects of child sexual abuse by Finkelhor and Russell suggested that this “separate group” treatment of female abusers may stem from social norms that ascribe sexual abuse to men as “normal” behavior. Based upon this assumption, abuse perpetrated by women becomes abnormal. As a result, female abusers together with the FESM they perpetrate are often treated as if they are an entirely disparate group. Another analyst theorized that if the target is male they may not be seen as a victim “because males have been socialized to believe they should be flattered or appreciative of sexual interest from a female”. This last point represents a remarkably unique dimension of FESM.

This notion, namely, that female perpetrators of sexual misconduct find themselves outside sociocultural understandings characteristic of abusers, held in the 2015 case of FESM between physical education coach Gail Gagne and her student Cameron Clarkson. In a Washington Post opinion piece, Clarkson expressed, “There are people

33 Hendrie, supra note 32; Robins, supra note 15; ROBERT J. SHOOP, SEXUAL EXPLOITATION IN SCHOOLS: HOW TO SPOT IT AND STOP IT (2004).
35 Shakeshaft, supra note 1.
who believe that I cannot possibly be a victim of abuse.”

During the investigation, instead of focusing on his abuser’s wrongdoing, Clarkson was interrogated about his sexual history. School officials faulted him for failing to invoke the school’s sexual harassment policy. A Los Angeles lawyer specializing in cases of this nature was quoted in the piece as arguing that “jurors and prosecutors don’t have nearly the same outrage for abusive female teachers . . . ‘So what? Good for [the victim].’ [they will say] That’s how society looks at it.”

Since this Post’s publication, researchers in interdisciplinary sociology have given increasing attention to this phenomenon in an attempt to investigate and perhaps come to understand the double standards and gender biases that cloud the analysis of female educator sex offenders. As we delve into a potential typology of women who commit these crimes, it is important to keep in mind that, while the primary methodological orientation of this article is to review various literatures relevant to FESM, its ethical orientation is one aimed at prevention. By focusing on the female educators who commit FESM, we hope to be able to more accurately understand how and why these instances occur and what can be done to prevent such abuse.

36 Sebastian, supra note 16.
37 Id.
38 Id.
39 Christensen & Darling, supra note 18.
Due to the difficulties surrounding data collection of female educators who commit sexual offenses, the studies which analyze these individuals often attempt to classify and categorize them or create typologies to the same end. These studies often base their conclusions on sample groups of female sex offenders from a specific area or time period. For example, in a 2004 proposal of typologies for males who sexually abuse others, Vandiver & Kercher gathered data from all 471 registered female sex offenders in the state of Texas.\(^{40}\) The previously cited Christensen and Darling research compared typologies of female and male educators who sexually abused students based on 20 cases of sexual misconduct as reported in England from June 2006 to December 2016.\(^{41}\) Steely and Bensel, meanwhile, conducted interviews “with 35 female sex offenders who used their position as a teacher to sexually abuse underage students from 1995 to 2016 in a southern state.”\(^{42}\) Regardless of their research method, each of these projects, though not necessarily exhaustive or generalizable, provides valuable insight into the motivations and patterns of female sexual offenders.


\(^{41}\) Christensen & Darling, *supra* note 18.

\(^{42}\) Steely & Bensel, *supra* note 19, at 1440.
Vandiver and Kercher found six different types of female sex offenders, the most common being the “heterosexual nurturer… [who is] the least likely to have an arrest for a sexual assault.” Darling’s analysis led her to create five different typologies: “immature regressed; sexual and risky; savior syndrome; unrequited infatuated and psychologically troubled.” Though female sex offenders may be a heterogeneous group, they share many similarities that can aid parents and educators in identifying and ending the abuse. For example, Steely and Bensel noted that 63 percent of their sample revealed that the inappropriate relationships were initiated through “sexually provocative comments in the classroom or text messages, followed by manipulated opportunities by the offender to engage in sex with the victim.” In fact, compared to the legislative definition of “sexually violent predators,” these cases lacked physical violence as offenders instead used leverage and academic threats to perpetrate these crimes. Similarly, Darling and Christensen concluded that “most appeared to offend as a result of situational and contextual factors rather than any evident sexual preference for children or predisposition to sexually offend.” Instead of the pedophilic or malicious intentions of some of their male counterparts, this line of inquiry suggests

43 Vandiver & Kercher, supra note 41, at 1.
44 Darling, supra note 8, at 174.
45 Steely & Bensel, supra note 19, at 1446.
46 Id.
47 Christensen & Darling, supra note 18, at 25.
that women blame their offenses on stress, dissatisfaction, or insecurity in their personal lives. Though it is fairly difficult to prescreen for teachers who commit acts of this nature as the majority of offenders have no previous criminal record, typologies can provide educators and families alike with a framework to reference should they feel that a teacher in their student’s life is acting inappropriately. In many cases, female teachers are given the benefit of the doubt and often even receive lighter criminal sentences. Educating the public on the prevalence of educator sexual misconduct, particularly female educator misconduct, is essential if educators are to maintain schools that foster safety and learning in the classroom.

**FEDERAL CASE LAW REGARDING FESM IN THE UNITED STATES**

In the United States, the Fourteenth Amendment decrees, in part, that states may not “deny to any person within its jurisdiction the equal protection of the laws.” Title IX was adjoined as a clause in 1972 which declared that “No person in the United States shall, on the basis of sex, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity

---

48 Darling, supra note 8; Id; Steely & Bensel, supra note 19.
49 Darling, supra note 8.
50 Sebastian, supra note 16.
51 U.S. Const. amend. XIV, § 2.
receiving Federal financial assistance". Title IX has since become a viable legal recourse to address the issue of ESM. In 1992 the Court ruled that under Title IX school districts could be found liable should students face sexual abuse at the hands of teachers. They clarified this ruling in 1998 with the Gerbser v. Lago Vista I. S. D. case by stating that school districts may be held liable only if they acted with deliberate indifference after receiving actual notice of sexual harassment claims against a teacher. The federal government’s role in these rulings is to uphold the responsibility of governmental agencies to protect students from unwelcome sexual contact and allow for victims to claim damages when state agencies do not protect these rights.

STATE STATUTES REGARDING ESM

Each individual state has the power to impose specific laws, statutes, and codes of conduct that govern school districts. In 2020 Mia J. Abboud and fellow researchers published an in-depth policy review of each state’s legislation regarding ESM and became one of the most recent reviews completed on this topic. Since their publication, 29 states have passed laws with language that specifies the illegality of ESM. The

remaining 21 states have laws regarding the sexual abuse of children, but do not have legislation that expressly refers to educators as possible offenders (U.S. Government Accountability Office, 2014).  

There are many potential antecedents as to why this dramatic increase in legislation has occurred in recent years. Abboud suggests that media involvement has played a major role in states legislating this issue. They argue that the moral panic associated with ESM in the media, along with a “perceived increase in educator sexual misconduct,” has pushed states to create these specific statutes. In fact, 7 of the 29 states that introduced statutes between 2010 and 2017 did so after a significant case of ESM was discovered in their state. The specific nature of the relationship between media coverage and state legislation, however, remains underexplored.

**LEGAL CONSEQUENCES**

Because each state has legislated this issue to varying degrees, the punishments for educators who violate these laws also differ by state. Seventeen states classify the crime as a felony and 20 specify the individual to register as a sex offender. As of the publication of Abboud’s

---

57 Abboud, *supra* note 55, at 149.
58 *Id.*
policy review, only one state, Montana required that the teacher have their license revoked upon prosecution.\(^\text{59}\) These state laws are certainly not “all encompassing,” but we second Abboud’s assertion that “it is important to take stock of the language that these statutes use.”\(^\text{60}\) Additionally, most state statutes include the possibility of imprisonment and/or a fine for the offender.\(^\text{61}\) Depending on the state, these punishments can range from single dollar fines to $300,000 fines and prison time that could be months or decades.\(^\text{62}\) As we address the disparity in the treatment of female educators and their male counterparts in the U.S. justice system, it is crucial to highlight the disparity in legislation among the states.

**MALE V. FEMALE CONVICTIONS AND PENALTIES**

While a theoretical discrepancy exists between the severity of punishments for male and female educators, much like the issue of ESM itself, rigorous study regarding that discrepancy remains sparse. Research in the areas of criminology and sociology have shed light on public perceptions of student relationships with female teachers. Researchers often address the media’s tendency to represent these instances in a salacious or desirable manner and investigate potential biases and double

\(^{59}\) *Id.* at 148.

\(^{60}\) *Id.*

\(^{61}\) Clark, *supra* note 53.

standards held by the public. It is notable that studies concerning ESM tend to address public perception of the issue of male versus female teachers, rather than showcasing statistics regarding these offenders as they encounter the American justice system.

Citing data from the United States Sentencing Commission, Doerner and Demuth identified considerable gaps in sentencing severity between male and female defendants in general, finding that “the odds of incarceration for female defendants are approximately 42% lower than the odds of incarceration for male defendants.” When researchers attempt to focus the statistics on male and female educators who are being imprisoned for misconduct they often highlight a specific year or state/county in the U.S., as the data are more easily obtained on these smaller scales. For instance, from 2007-2008, the American Prosecutors Research Institute reported that female teachers who were found guilty of sex crimes with minors received “much-reduced” sentences, if they received prison time at all, compared to their male counterparts. Instead

---


65 Reid, supra note 9, at 360.
of focusing on prosecutions from one calendar year, Simmon describes sentencing disparities in Maricopa County, Arizona. According to their findings, male educators are subject to harsher punishments than female educators convicted of these same crimes.66

In addition to these analyses done in isolation, reports on the subject of sentencing disparity, and reports on the double standard of treatment between male and female victims, will often cite district attorneys or defense lawyers who deal with cases of ESM to provide their insights. While the opinions expressed by such individuals do not represent a generalizable sampling, they give a glimpse into contemporary legal proceedings against teachers accused of committing sex crimes. Los Angeles-based lawyer David Ring, who represents victims of sexual abuse, has seen cases involving male teachers settle for over $1 million. In contrast, settlements for female teachers rarely exceed $200,000.67 In one Louisiana prosecutor’s time reviewing such cases, he stated, “When an adult woman has sex with an adolescent male younger than 17 years old, a crime under the laws of Louisiana, the case often doesn't even end up in a courtroom.”68 The purpose of sharing these expert opinions is not to provide generalizable data on the subject, but to give context to this

67 Sebastian, supra note 16.
68 Reid, supra note 9, at 357.
literature review with authentic experiences of those who have played significant roles in the prosecution (or under-prosecution) of these crimes. We hope that these qualitative data points serve as calls for more rigorous research in the area of FESM legal precedent to understand the issue more fully, especially when compared with similar crimes committed by male educators.

**CURRENT FESM CONVICTIONS**

To further highlight the contemporary scope and importance of FESM, this section focuses on recent FESM convictions in three different states. As each of these cases occurred within the last four years, they represent some of the most recent legal decisions regarding FESM across the United States. As noted in the literature, the prosecution of FESM can vary widely from state to state. We acknowledge that three cases do not constitute a representative sampling of all such variations; however, we include them to showcase some of the ways in which FESM is treated in contemporary case law as well as to invite further research in this area. As such, while the salient themes portrayed by these cases in common are not necessarily representative of contemporary case law trends, they are indicative of some noteworthy directions in which current legal thought is headed with regard to FESM.

Middle school teacher Marka Bodine of Tomball Independent
School District in Harris County, Texas was charged with first-degree felony aggravated sexual assault in 2021 for engaging in a sexual relationship with a thirteen-year-old student.\(^{69}\) The assault was categorized as aggravated in this case as the victim was under fourteen years old at the time.\(^{70}\) Prosecutors requested that Bodine receive 20 to 40 years in prison. However, per the decision of Judge Glass, Bodine was sentenced to 60 days in prison and ten years of probation.\(^{71}\) Bodine was also ordered to register as a sex offender and undergo court-mandated therapy.\(^{72}\) It is perhaps noteworthy that Judge Glass did not provide a specific explanation for this de-escalation of Bodine’s sentencing in the court’s decision. Research Analyst Jack Sevil from the Center for Justice Research at Texas Southern University and local defense attorney, Chris Downey, have speculated that this could be due Bodine’s pregnancy at the time of prosecution, her gender, or a combination of these two factors.\(^{73}\) This decision seems in keeping with trends of reduced sentencing for FESM, as


\(^{72}\) Conner, *supra* note 69; Sevil, *supra* note 70.

\(^{73}\) Conner, *supra* note 69.
noted earlier.

Another noteworthy case comes from Maricopa County, Arizona, the same county Simmons used to analyze sentencing disparities between male and female educators in 2012. In June of 2019, Brittany Zamora pleaded guilty to sexual conduct with a minor, attempted molestation of a minor, and public sexual indecency. At her hearing, Judge Sherry Stevens handed down the minimum sentence of 20 years in prison for her crimes, which carried a potential maximum sentence of life in prison. Zamora was sentenced to two lifetime terms of probation, the relinquishment of her teaching license, and required her to register as a sex offender. Prosecutors and families of the victims expressed satisfaction with this punishment. However, the families are pursuing additional settlements from Zamora's husband and the Liberty Elementary School District for neglecting to act on reports of Zamora’s wrongdoing. This case again demonstrates a tendency for courts to favor less punitive measures for female educator sexual misconduct. Zamora herself suggests a broadening


76 Burkitt, supra note 74.
of culpability to include (and perhaps even focus on) parties indirectly responsible for Zamora’s criminal actions.

In Steubenville, Ohio, track coach Corissa McCalister was accused of two counts of sexual battery after engaging in sexual relations with a 15-year-old student in 2021.77 The second count of sexual battery was dropped after McCalister accepted a plea deal, changing her plea from not guilty to guilty.78 As a result, Judge T. Shawn Hervey sentenced her to two years of probation, 80 hours of community service, and a 2 ½ year reserved prison sentence, in addition to her registration as a sex offender.79

In an address to McCalister, Hervey stated for the court, “Punishment is necessary in this case because you held a position of trust and responsibility and you violated that and you’re going to face severe consequences for that; however, it’s my understanding that you still have the ability, you’re 22 years old, you still have a long life ahead of you and some day you can put this behind you.”80 Furthermore, Hervey cited her age and immaturity as possible factors in her crimes as she was 21 when she received her teaching license and 22 at the time of the crime.81


79 Id.

80 Graham, supra note 77.

81 Id.
decision again affirms the aforementioned trend of reduced sentencing for perpetrators of FESM.

These three cases serve as examples of the various crimes and multifaceted convictions that can accompany instances of FESM. As with criminal cases more generally, a multitude of factors can influence a judge’s sentencing decision regarding perpetrators of FESM, none of which need be explicitly outlined in either written statements of the decision or any form in dicta. The presentation of these cases was not necessarily intended to identify current trends in sentencing, nor to point to a specific conclusion about the state of FESM in American courts that would apply generally across the country. Instead, these cases provide a snapshot of how the justice system has handled these cases in recent years, the reasoning behind these decisions and the resultant patterns of sentencing for perpetrators of FESM. As we have established, a current dearth of recent and reputable data exists regarding actual incident rates of FESM in the United States. The presentation of these cases is in part a basis for the collection of future data to address what seems from both a legal and scholarly standpoint to be a pressing issue in education and law in the United States.
CONCLUSION

As previously discussed, the data regarding the prevalence of educator sexual misconduct, especially female sexual misconduct, is muddled and scarce. This area of research is in desperate need of a greater number of empirical studies conducted with larger and more recent sample sizes. Future research might involve national surveys for teachers and administrators regarding their knowledge of their school’s sexual harassment policy. Students are a valuable resource as well, and updated research is needed from their perspective, as was done by AAUW in 2004.

Parents, educators, and other members of the community can all have a role in protecting children from sexual abuse in organizational settings. Teachers are in a position of power and as such, have a great degree of responsibility given to them. When we can understand the extent to which these cases of educator misconduct are prevalent and the extent to which they devastate the lives of students, we may feel a greater sense of urgency to disseminate this knowledge. Despite efforts to demean and belittle teachers in contemporary social discourse, teaching has been and continues to be an honorable profession. One of the primary purposes of this article is to invite readers to properly understand, identify and come to prevent those who would use the otherwise wholesome and uplifting power of the teacher-student relationship to nefarious ends. We hope that such understanding and action will ensure that the well-being and learning
Female Sexual Misconduct in Anglo-American Classrooms

of students be fostered and protected for generations to come.