

Awareness of the prevalence of child sexual abuse and misconduct in kindergarten through 12th (K-12) grade schools has been growing over the past 20 years. A seminal 2004 report for the U.S. Department of Education (ED), [Educator Sexual Misconduct: A Synthesis of Existing Literature](#), defined educator sexual misconduct as behavior by an educator that is directed at a student and intended to sexually arouse or titillate the educator or the child. This means educator sexual misconduct includes both contact sexual abuse—a clearly defined term in federal law—as well as noncontact sexual abuse (such as showing a student sexually explicit pictures; acts of exhibitionism; boundary violations including sexual talk, jokes, gestures, or questions).

New Mexico law defines educator sexual misconduct under the broader umbrella of ethical misconduct in Section 22-10A-2 NMSA 1978 and includes both contact and noncontact sexual abuse. *Educator Sexual Misconduct: A Synthesis of Existing Literature* estimated 9.6 percent of students nationally experience contact or noncontact educator sexual abuse at some point during their K-12 education. A November 2024 publication, [Organizational Betrayal: How Schools Enable Sexual Misconduct and How to Stop It](#) cited more recent research estimating the prevalence of educator sexual misconduct, including daycare and afterschool programs, at 11.1 percent nationally.

The most recent [data](#) from ED’s Office for Civil Rights (OCR) indicate contact sexual abuse has been increasing in K-12 schools. In 2020, ED found there was a 55 percent increase in the total incidents of sexual violence (rape or attempted rape) from the 2015-2016 school year (SY16) to SY18, and a 53 percent increase in sexual assault (other than rape or attempted rape) from SY16 to SY18. ED’s report also noted New Mexico was one of the highest-ranking states in terms of reported incidents of sexual violence (sixth) and sexual assault (ninth). Importantly, ED notes the increase in reported allegations may reflect underreporting in SY16, an increased sensitivity to this issue in SY18 (of note, the “Me Too” movement went viral in October 2017), or an actual increase in incidents of sexual violence.

Researchers [note](#) official reports are believed to significantly underestimate the true prevalence of educator sexual misconduct. For example, the 2004 ED report [found](#) only 6 percent of students formally report educator sexual misconduct. However, anonymous survey data—such as the Centers for Disease Control (CDC) [Youth Risk Behavior Survey Data Summary & Trends Report](#)—point to the need to prevent contact sexual abuse for secondary students. The most recent CDC Youth Risk Behavior Surveillance survey from 2023, which provides key trend data for middle and high school students across the United States, indicates in 2023, 9 percent of secondary students report having ever been forced to have sex when they did not want to, and 11 percent report experiencing any kind of sexual violence—rates which have remained relatively flat since 2017. While this data is not limited to sexual abuse in schools, it illustrates both the prevalence of sexual violence as well as the gap between experience and reporting among students.

Data from the New Mexico Public Schools Insurance Authority (NMPSIA) indicates child sexual abuse has been an increasing burden on K-12 schools in the state, both in terms of educator sexual misconduct and student-on-

### Key Takeaways

- Child sexual abuse in K-12 schools has far reaching impacts on students and the state ([Page 1](#)).
- In the past 10 years, educator sexual misconduct has cost the state of New Mexico over \$73.2 million, and student-on-student sexual misconduct has cost over \$19.8 million ([Pages 2-4](#)).
- Laws 2021, Chapter 94 (House Bill 128) provided preventative and responsive measures to sexual misconduct in schools, but work remains to ensure uniform implementation across the state ([Pages 4-5](#)).
- State policies to prevent child sexual misconduct in K-12 schools include employee training, employee screening, and criminalizing educator sexual misconduct ([Pages 5-7](#)).
- State legislatures can play an important role in setting policy to eliminate sexual misconduct in public schools ([Pages 5-7](#)).

student sexual misconduct. Child sexual abuse in schools has far reaching impacts on students, with [research](#) indicating students who suffer educator sexual misconduct experience more difficulties in social emotional functioning, increased alcohol and illicit drug use, suicide attempts, coercive sexual experiences, and lower levels of psychological flourishing. In addition, increasing NMPSIA employee-on-student and student-on-student claims present a financial challenge for both the agency and the state. This is a vast, important topic worthy of further and continued study by LESC. This brief focuses on current NMPSIA data, the national policy landscape and efforts in other states to prevent child sexual abuse in schools, current work in New Mexico to keep students safe, and recommendations for lawmakers, the Public Education Department (PED), and schools.

## NMPSIA Data and Work to Prevent Sexual Misconduct

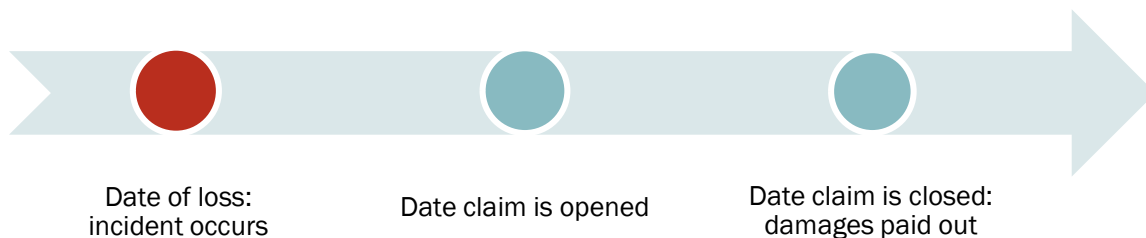
[NMPSIA](#) estimates that one in five girls and one in eight boys are victims of sexual abuse. NMPSIA was created by the Legislature to serve as a purchasing agency for local education agencies (LEAs) and postsecondary educational institutions. Today, NMPSIA serves member schools (including all LEAs except Albuquerque Public Schools) to offer employee benefit and risk coverage. Preventing sexual misconduct is part of NMPSIA's risk control and insurance work.

### Data

NMPSIA provided LESC staff with data on all open and closed claims of educator sexual misconduct and student-on-student sexual misconduct from the last 10 years. It is important to note numbers are based on the date of loss (in other words, when sexual misconduct occurred) and not when the claim was open or reported.

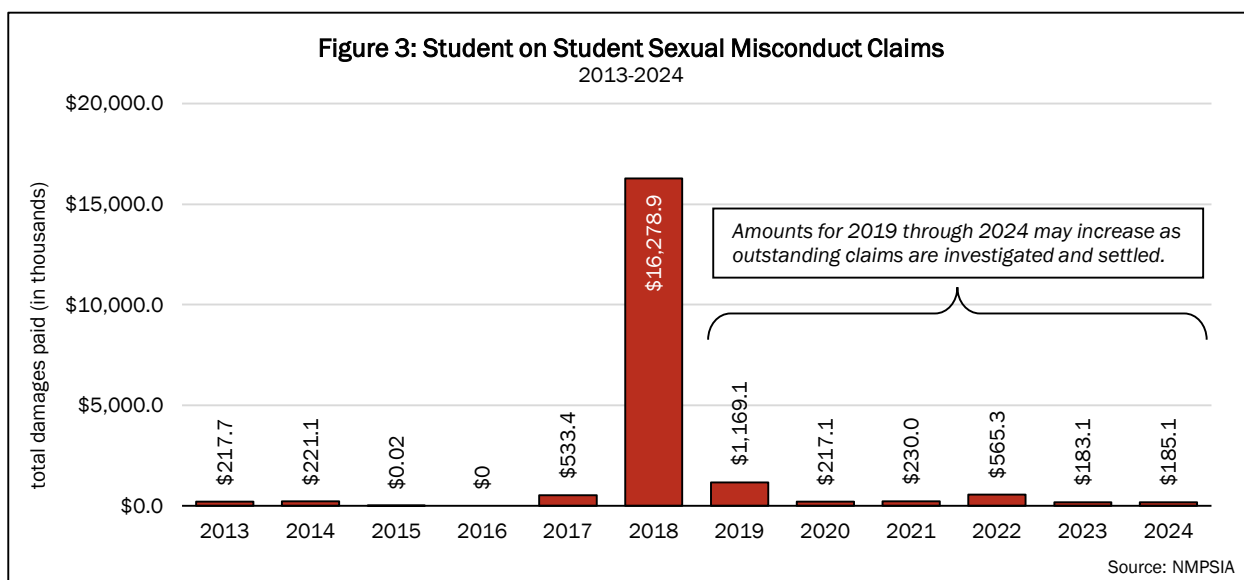
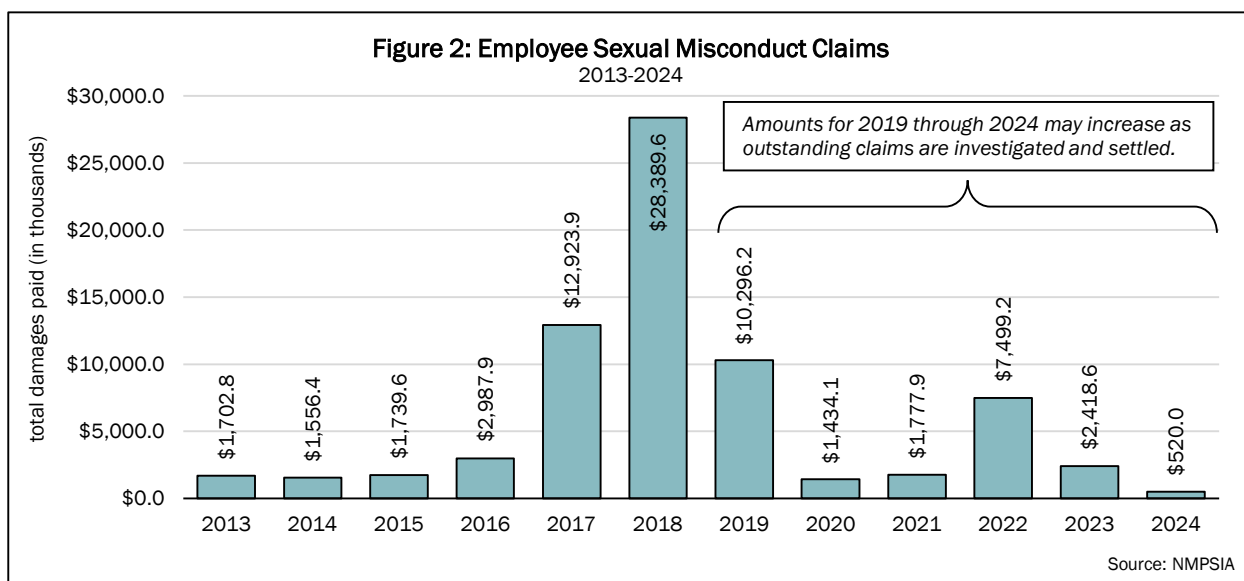
According to NMPSIA, sometimes there is a major gap between when a sexual misconduct incident occurs and when a claim is opened. For example, NMPSIA reported just receiving a suppressed memory claim from 1997 alleging educator sexual misconduct that is not included in this data—as the date of loss is outside the 10-year parameter—however, this would still be an upcoming cost if the claim is paid out. It's also important to note there is often a gap, sometimes substantial, between the date when a claim is opened and when a claim is closed. The charts shown on the next page, **Figure 2: Employee Sexual Misconduct Claims, 2013-2024** and **Figure 3: Student on Student Sexual Misconduct Claims, 2013-2024**, show a peak in costs in 2018, the dates reported represent the date of loss and not the date of payout; claims can take many years to be settled.

**Figure 1: Sexual Misconduct Claims Timeline**



Source: NMPSIA

It's also important to note open claims include a minimal dollar amount to "hold" the claim. As shown on subsequent pages in **Figure 1: Employee Sexual Misconduct Claims, 2013-2024** and **Figure 2: Student on Student Sexual Misconduct Claims, 2013-2024**, dollar amounts include both open and closed claims. While closed claim costs are fixed, as they have been paid out, open claims can be held with an amount as minimal as \$1. This means that both **Figure 1: Employee Sexual Misconduct Claims 2013-2024** and **Figure 2: Student on Student Sexual Misconduct Claims, 2013-2024** show only claims as they stand currently—as claims are closed and settled, dollar amounts will likely increase, especially for recent years that contain open claims. That said, as illustrated by the example above, sometimes claims are opened more than a decade after the date of loss; claim amounts for all years could increase.



**Educator Sexual Misconduct.** NMPSIA data indicates that from 2013 to the present, there have been a total of 129 educator sexual misconduct claims for a total claim cost of over \$73.2 million, including one claim of \$1 held for an upcoming claim in 2025. Of these educator sexual misconduct claims, NMPSIA reports 54 claims have been for sexual assault (\$26.3 million), 39 for sexual penetration (\$25 million), and 36 for inappropriate conduct (\$21.9 million). Claim descriptions of alleged educator sexual misconduct have a wide range from descriptions such as “potential grooming” to “alleged criminal sexual contact, including rape.” Of the 129 educator sexual misconduct claims, 106 are closed, and 23 remain open.

**Student-on-Student Sexual Misconduct.** NMPSIA defines student-on-student sexual misconduct as any form of unwanted sexual contact or behavior between students, including touching, sexual comments, or advances. NMPSIA data indicates from 2013 to the present, there have been a total of 76 student on student sexual misconduct claims for a total cost of \$19.8 million. Claim descriptions of alleged student on student sexual misconduct include but are not limited to hazing, rape, inappropriate touching, and molestation. Similar to educator sexual misconduct data, the time between the date of loss and the date of a claim being opened is substantial. For example, in one case opened in 2022 of an alleged rape, the date of loss was more than 1,790 days prior. Of the 76 student on student sexual misconduct claims, 58 are closed and 18 remain

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Data from NMPSIA illustrates educator sexual misconduct and student on student sexual misconduct impacts LEAs across the state—from large, urban school districts to small, rural school districts and charter schools. There is no type of LEA or area of the state that has not been impacted by educator sexual misconduct or student on student sexual misconduct. This is a pervasive, widespread issue.

## Work to Prevent Sexual Misconduct

NMPSIA provides a variety of services, including human resources (HR) audits, training for school districts and charter schools, and anonymous reporting tools, to prevent sexual misconduct in K-12 schools. Included in this work are some of the requirements introduced in Laws 2021, Chapter 94 (House Bill 128), which created several preventative and responsive measures to address ethical and sexual misconduct by public school employees.

**Audits and Trainings.** NMPSIA provides training for HR and administrators to help member schools better understand the requirements of Laws 2021, Chapter 94. Training includes a discussion and review of expectations for board policies and staff handbooks regarding professional boundaries, child abuse, and ethical misconduct. NMPSIA also trains HR and administrative staff on the child abuse and ethical misconduct training requirements stipulated in Laws 2021, Chapter 94, including that the training must be attended by all staff. Training also covers a discussion and review of the requirements the hiring process, including on applications, interviews, background, and reference checks that must occur before offering a position involving student contact, including for volunteers. Finally, training covers federal and state statute and administrative code on duty to report and when staff should notify NMPSIA.

According to national data cited by NMPSIA, less than 11 percent of educators will report misconduct by another employee. NMPSIA training includes information for public school employees so they are aware of their legal duty to report, as well as information on how to identify “red flags” of educator grooming behavior. In addition,

### Española Public Schools OCR Findings

On September 27, 2024, Española Public Schools entered into a [resolution agreement](#) with ED’s Office of Civil Rights (OCR) to remedy violations of Title IX of the Education Amendments of 1972—a federal law that is used to prevent sexual harassment by defining it as a form of sexual discrimination. OCR determined Española Public Schools discriminated against students based on sex by failing to:

- Respond to reports of sexual assault by employees and students;
- Adopt and implement Title IX grievance procedures that provide for the equitable resolution of complaints; and
- Coordinate the district’s responses to such reports through its Title IX coordinator.

OCR outlined two examples of employee-to-student sexual assault allegations for which the district did not fulfill its Title IX obligations. According to OCR, in 2019, some students reported a teacher’s inappropriate touching of students, but the district counseled the teacher and did not remove them from class until a week later when the district received another report. Instead of conducting a Title IX investigation to determine if the teacher sexually harassed the students or notifying the students or families of the outcome of their complaints as required by law, the district allowed the teacher to resign. OCR reported that in 2021, employees observed a teacher sexually assaulting a student with disabilities in a private space in the school. While the district reported the incident to law enforcement and a state agency, it did not treat the incident as a Title IX matter and also permitted the teacher to resign without conducting an investigation, among other violations.

Española Public Schools’ [commitments](#) to resolve this compliance review include, but are not limited to, conducting a review of reported sexual harassment from SY18 through SY24 to determine if action is needed to provide an equitable resolution of reports, ensuring district policies comply with Title IX, and annually training employees and students on how to recognize and report sexual harassment.

This example illustrates that, despite training requirements and protections against sexual harassment in federal and state law, much work remains to ensure all schools across New Mexico are adhering to federal and state requirements to protect students from sexual misconduct. Currently, OCR [reports](#) there are nine open Title IX pending cases under investigation in K-12 schools in New Mexico.

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NMPSIA training stresses that LEAs must ensure allegations of misconduct are taken seriously and followed up on. [Organizational Betrayal: How Schools Enable Sexual Misconduct and How to Stop It](#) notes that in 70 percent of cases where an employee was found guilty of sexual misconduct, “red flags” (for example, exchanging text and emails, receiving special attention from the educator, buying gifts, bribes) had been observed by adults and students, but increased supervision only occurred in 2 percent of the reports of a red flag nationally.

NMPSIA also conducts pre-audits for LEA’s HR departments to better understand the requirements of Laws 2021, Chapter 94. Prior to the audit, NMPSIA trains HR and administrative staff on what the audit will cover. According to NMPSIA, since the passage of Laws 2021, Chapter 94, they have dealt with countless calls and emails to assist member schools with questions, issues, and concerns regarding implementation of the law.

**Anonymous Reporting.** NMPSIA began offering the anonymous reporting system [STOPit Solutions](#) to member districts at no charge beginning July 1, 2023. STOPit is a comprehensive platform that enables the anonymous reporting of various issues, including sexual harassment, bullying, and safety threats. Students, staff, and community members can all report concerns, incidents, and potential threats anonymously and securely through a 24/7 command center, including 24/7 access to crisis-trained counselors through the web, mobile app, and telephone. STOPit also includes custom-created educational videos on sexual grooming and abuse specifically tailored toward middle school students, high school students, and parents.

## National Policy Landscape

Child sexual abuse is a serious public health issue, but it is also preventable. State legislatures can play an important role in setting policy to eliminate sexual misconduct in public schools. LESC staff worked with staff from the National Conference of State Legislatures (NCSL), a bipartisan nongovernmental organization that serves state legislators and staff in the United States, to identify state policy levers to prevent child sexual abuse in K-12 schools. NCSL staff provided LESC staff with recommended best practices for lawmakers to consider, along with a current list of states that have adopted these laws.

### Policy Levers

States have applied a variety of legislative strategies to address school-based child sexual abuse. The primary levers state legislatures have used to prevent child sexual abuse in K-12 schools include employee training, employee screening, and criminalizing educator sexual misconduct.

**Employee Training.** According to NCSL, at least 27 states, Washington D.C., and Puerto Rico have provisions requiring school employees receive training related to child abuse. Some states require all school employees to complete the training, while others specify that the requirements only apply to certain employees, such as teachers and licensed school personnel. Other states, like Colorado, Minnesota, and Montana, only encourage school districts to adopt child abuse training requirements, and Georgia, Michigan, and Wyoming authorize schools to offer such training.

New Mexico law has strong requirements regarding employee training, as Section 22-10A-32 NMSA 1978 stipulates that all school district personnel, including volunteers and contractors, must complete training in the detection and reporting of child abuse and neglect, ethical misconduct, professional responsibilities, sexual abuse and assault, and substance abuse. This law requires that training must be completed within the first year of employment. While this state policy action has been rated as green in **Table 1: NCSL Recommended State Policy Action**, indicating New Mexico has instituted strong employee training requirements, there is still work to be done to ensure all schools are implementing training as required by law.




**Employee Screening.** Beyond fingerprint-based background checks—which is required by federal law—states take numerous approaches to employee screening for determining applicants’ eligibility for employment in a school. One best practice is state maintenance of a list of public school employees disqualified from employment due to findings of sexual misconduct. According to NCSL, Florida and Texas law requires maintenance of a list of individuals who are disqualified from employment in a school and prohibit the employment of individuals on the list. Florida also requires an affidavit of separation for public school employees who were terminated or resigned in lieu of termination that must be disclosed when separation is due to a report of sexual misconduct with a student; hiring schools are required to conduct employment history checks of previous employers, including a review of each affidavit of separation, before hiring a person that requires direct contact with students.

Another best practice regarding employee screening is a review of employment history. Iowa requires prospective employers to conduct an employment history review prior to offering employment to any school personnel who would have regular contact with students. Colorado requires prospective employers to contact previous employers of applicants as well as check with the Colorado Department of Education regarding whether applicants have been dismissed or resigned because of allegations of unlawful behavior involving a child that were supported by a preponderance of evidence. Similarly, Washington requires hiring school districts to request the applicants' personnel record relating to sexual misconduct from current and past employers as well as request verification of certification from the state superintendent, including information related to sexual misconduct. Arkansas requires prospective employees to check the state's website to determine if the state board has revoked or suspended the applicant's license or if an applicant has a pending ethics complaint related to maintaining a professional relationship with students.

A number of states require school districts to check certain registries before offering employment. For example, Illinois requires employing school districts to check the Statewide Sex Offender Database and Statewide Murder and Violent Offender Against Youth Database. In addition, Illinois requires districts to consider the status of a person who has been issued an indicating finding of abuse or neglect of a child as a condition of employment. Similarly, Delaware and Mississippi require districts to check potential employees against the state's child abuse registry, while Missouri requires its Department of Education to annually check all employees against criminal history records, sex offender registry, and child abuse registry.

Seven states and D.C. require schools to collect written affirmation from applications and previous employers as to whether or not the applicants has ever been the subject of a substantiated child abuse or sexual misconduct investigation, has ever been disciplined, discharged, or resigned from employment while allegations of child abuse or sexual misconduct were pending, or has ever had a license suspended or revoked while allegations of child abuse or sexual misconduct were pending. Similarly, Louisiana requires applicants for public school employment to disclose all actual or investigated cases of sexual misconduct, abuse, or neglect of a minor or student and requires hiring schools requires information from the applicant's current and previous employers related to instances of sexual misconduct, abuse, or neglect.

**Table 1: NCSL Recommended State Policy Action**

State Action	Staff Analysis on Status of Progress?
Employee Training	
Employee Screening	
Criminalizing Educator Sexual Misconduct	

Source: NCSL; LESC Staff Review

New Mexico law contains most, but not all, of these best practices regarding employee screening. Section 22-10A-5 NMSA 1978 requires applicants for licensure from PED to undergo a state and federal criminal history record check, and for LEAs to develop policies and procedures to require criminal history record checks on all applicants as well as school volunteers and contractors who may have unsupervised contact with students. This section of law also requires superintendents to report to PED any known conviction of any felony or misdemeanor involving moral turpitude of school district personnel, a school employee, a school volunteer, a contractor, or a contractor's employee.

Superintendents, or their designee, must also follow stipulated requirements to report ethical misconduct to PED including allegations of sexual assault or sexual abuse—which also must be reported to law enforcement—by any school personnel, including volunteers and contractors. PED must also maintain a list of the names of people reported to PED who have been convicted of a felony or misdemeanor involving moral turpitude and have been found to have committed ethical misconduct and update this list monthly. PED is also authorized by this section of law to suspend, revoke, or refuse to renew the licenses of a superintendent who fails in their lawful duty to report, and any licensed school personnel who fails to report child abuse, neglect, or ethical misconduct. Employee screening has been rated as yellow in **Table 1: NCSL Recommended State Policy Action** because while New Mexico law contains many best practices, it does not require schools to collect written affirmation from previous employers regarding discipline for sexual misconduct, and according to NMPSIA, much work still needs to be done to ensure all schools are conducting reference checks, including checking applicant's social media accounts.

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**Criminalizing Educator Sexual Misconduct.** According to NCSL, 39 states and D.C. have specific provisions related to criminalizing educator sexual misconduct. Some states are specific to educators or school employees, while others refer to individuals in positions of trust or authority. Additionally, some states, such as Nebraska and Minnesota, have enacted provisions requiring local districts to adopt policies addressing sexual abuse perpetrated by school personnel.

New Mexico law does criminalize educator sexual misconduct. In New Mexico, state law in Section 30-6A NMSA 1978, Sexual Exploitation of Children Act, defines and outlines sexual exploitation of children. In addition, Section 30-9-13 NMSA 1978, Criminal Sexual Contact of a Minor, outlines that licensed or unlicensed school employees, contract employees, school health providers, or volunteers can be charged with a fourth-degree felony for criminal sexual penetration of a child between the ages of 13 and 18. The punishment for this crime is up to 18 months in prison and a fine of up to \$5,000, and the offender must register as a sex offender. Criminalizing educator sexual misconduct had been rated as green in **Table 1: NCSL Recommended State Policy Action** because New Mexico law does contain this best practice; it's important to note state penalties for criminalizing educator sexual misconduct vary widely, ranging from months to life.

## Policy Considerations and Recommendations

The Legislature, PED, and school districts and charter schools all have a role to play in preventing child sexual abuse. Laws 2021, Chapter 94 took important steps to prevent and address sexual misconduct in K-12 schools, but it is imperative PED and LEAs fully implement these provisions. In addition to full implementation of Laws 2021, Chapter 94, there are additional steps lawmakers and stakeholders could consider to address child sexual misconduct in public schools.

### The Legislature should...

- Consider amending the Criminal Offender Employment Act to stipulate that this act does not apply to PED, similar to or as an addendum to a [bill](#) proposed by the Early Childhood Education and Care Department for the upcoming session, as discussed in a Courts, Corrections, and Justice committee meeting in [November 2024](#).
- Consider amending Section 22-10A-5 NMSA 1978 to provide concrete consequences for failure to report beyond action to suspend, revoke, or refusal of licensure.
- Consider funding a national database on verified educator misconduct cases accessible to the public (as opposed to [NASDTEC](#) which is only available to members) again.

### The Public Education Department should...

- Consider providing more support to school districts and charter schools to provide professional impartial investigations of allegations of sexual misconduct.
- Ensure reference checks for all public school employees, volunteers, and contractors are happening, including checking social media accounts.
- Ensure superintendents and licensed school employees who fail to report child abuse, neglect, or ethical misconduct are held fully accountable.

### School Districts and Charter Schools should...

- Evaluate school culture to determine if schools are promoting and protecting perpetrators—and discouraging the abused child. If necessary, provide increased training and accountability measures to ensure all school staff understand their duty to report sexual misconduct, including utilization of NMPSIA resources like STOPit.
- Ensure follow-up and increased supervision when a “red flag” is reported.
- Work with NMPSIA to ensure full compliance with Laws 2021, Chapter 94.