

Wisconsin Evangelical Lutheran Synod

SEXUAL MISCONDUCT POLICY

I. Introduction

God clearly spells out a standard of conduct for those who serve him in the public ministry (1 Timothy 3:1-6; Titus 1:9). Our Lord's requirements would exclude from the public ministry those who are guilty of child molestation, child abuse, sexual exploitation, or harassment. Our membership and the public have every expectation that we will conduct our ministry according to the standards the Lord has set and in compliance with the laws of our land.

II. WELS Background

In December 1993, the Wisconsin Evangelical Lutheran Synod (WELS) Conference of Presidents distributed a background check "certification letter" to each congregation. The original intent of the certification procedure was to have each congregation and school submit an annual certification that it was in compliance with the synod's procedure in conducting background checks on each called worker. While most congregations responded initially, it was determined that annual reporting was unnecessary. In May 1996 congregations were issued a less intrusive incident reporting procedure as developed and tested by the Conference of Presidents. At the same time, the synod president requested that all congregations that had not responded to the certification letter or received graduates since the spring of 1993 do so as documentation of a one-time background check on all called workers.

It became obvious that a synod-level background check procedure was too cumbersome and left a very negative feeling and concern on the part of those responding because it did not address the detrimental personal and long-term impact of a reported incident, regardless of how frivolous. The guidelines and procedure provided in this document are a joint effort of the Conference of Presidents and the Synodical Council in an effort to address these concerns and still stay within the framework of the law.

Since 1996, all new Martin Luther College graduates have a background check prior to entering public ministry. A background check is required of pastoral candidates as a prerequisite to entering Wisconsin Lutheran Seminary. Colloquized called workers must submit to a background check prior to entering public ministry.

III. Purpose

The purpose of this procedural guideline is to establish a working model to be followed in reporting and resolving incidents of this nature. The procedure is intended to recognize and be especially sensitive to the feelings of, needs of, and long term implications for the accused, the accuser, the congregation, and the synod while fulfilling the legal mandates in

disposing of such incidents. The procedure takes into account present and future “call” implications, defamation of character, and concerns about the continued ability to earn a livelihood. It does this by minimizing the amount of reporting, involving in the process only those who have a need to know and screening out the impact of frivolous incidents from the calling process. It also recognizes the need to have a cumulative record of incidents involving an individual regardless of how frivolous each may seem. Such accumulation may indicate a need for corrective action at some point for the good of the individual and/or the legal defensive posture of the congregation and synod.

IV. Definitions

Definition of terms:

- A. **Incident** –a charge, report, or allegation made to a responsible church official which requires investigation. This does not include hearsay or anonymous calls.
- B. **Allegation** – as commonly used, a statement asserting something without proof. The words “charge” or “report” are preferred as being more definitive.
- C. **Sexual Harassment**– There are two types as defined under federal law:
 - 1. Situations in which tangible job benefits are granted or withheld based on submission to or rejection of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
 - 2. Situations in which the working environment is oppressive because of sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
- D. **Sexual exploitation** – usually refers to a therapist who abuses his or her position of power to manipulate a patient they are counseling into permitting sexual contact. Numerous state statutes, including Wisconsin’s, include members of the clergy within the term therapist.
- E. **Sexual contact** – any intentional touching, either directly or through clothing, of a person’s intimate parts.
- F. **Child physical or sexual abuse, molestation** – or any other inappropriate action involving children.
 - 1. **Physical abuse** is intentional physical abuse on a child resulting in bruises, cuts, breaks, or internal injury.
 - 2. **Emotional abuse** is abuse administered mentally which impacts on the emotions of the child. Emotional abuse is usually tied in with physical abuse.

3. **Sexual molestation** is the making of annoying sexual advances with hostile intent or injurious effect.

- G. **Corporal punishment** – is punishment applied to the body of an offender, e.g., whipping

With regard to corporal punishment, the congregation should be certain their insurance policy covers it. Church Mutual Insurance Company policies provide protection for the congregation and the individual against civil suits, not criminal. As a word of caution, if the congregation/school practices corporal punishment, it should make sure it has a corporal punishment policy in writing. Have the parents sign and date the document when they initially register the child. Also, have a witness anytime corporal punishment is administered. This helps keep things on an even keel and serves as a legal safeguard in other areas too.

V. Insurance Coverage

Congregations should periodically review their insurance policies to assure adequate coverage for each of these liability areas including corporal punishment. Coverage is usually included by endorsement and involves three liability categories. Suggested insurance coverage for each is 1) corporal punishment \$1,000,000; 2) counseling \$1,000,000, and; 3) sexual misconduct \$1,000,000.

VI. What Incidents must be Reported

Congregations and/or schools are responsible for reporting incidents involving pastors, teachers, vicars, full or part-time employees, and volunteers in any capacity. This includes incidents that happen in any activity in which the church is involved and has responsibility, e.g., Sunday school, Pioneers, day care, camping trips, class trips, etc. Reporting is to be made to the synod and, in most cases, to governmental authorities where minors are involved.

VII. Reporting of Incidents to the Authorities

INCIDENT REPORTING GUIDELINES

What to report: Any charge, report, or allegation of an incident of sexual misconduct or physical abuse involving pastors, teachers, vicars, full or part-time employees, or volunteers in any capacity. Incidents *must* be reported that occur in any activity in which the church is involved and has responsibility (Sunday school, Pioneers, day care, camping trips, class trips, counseling, etc.).

Who should report: Generally the pastor (or principal in an incident related to a school) is responsible for the reporting of an incident unless it involves him directly. In such cases, the chairman of the congregation would make the report.

Children and Minors – There is a legal obligation to report cases of child abuse (i.e., physical, sexual, molestation, or any other inappropriate action involving children) to the proper authorities. The local department of health and social services, the sheriff’s department, or police department must be notified in the following instances:

1. Reasonable cause to suspect child abuse in the home must be immediately reported by the teacher, pastor, or other person having direct oversight of the child. Failure to report could result in criminal charges being filed against that individual.
2. Instances of child abuse that occur at a function of the congregation/school must be immediately reported by the pastor, principal, teacher or oversight person witnessing the abusive act. Failure to report could result in criminal charges being filed against the individual witnessing the act.

In situations where a parent or other person responsible for the child brings reasonable cause to suspect that an abusive act against a child has taken place during a church/school function, it must be investigated immediately and reported to the proper authorities.

Adult sexual exploitation/harassment – Allegations should be investigated in a timely fashion to the depth necessary to develop the facts and a resolution. Certain situations of sexual harassment may create liability to the church/school, and a criminal penalty could be assessed against the one committing the act as well as the employer.

Matthew 18 may be used as a part of the investigation and resolution. However, since exploitation incidents by definition involve individuals of disparate positions, bringing the accused and accuser together face-to-face at the investigation meeting can easily result in unjust resolution because the counselor has a psychological advantage.

Matthew 18 certainly is an initial and integral part of a harassment claim investigation and its resolution. For legal protection purposes, each congregation and school should have a very simple, direct, internally publicized statement outlining the kind of conduct that will not be tolerated. The statement should indicate that complaints will be discreetly but thoroughly investigated with verified complaints and that offenders will be subject to discipline up to and including termination. This type of policy statement may provide the best legal protection an employer may have against such liability.

Reporting Procedure:

1. Immediately notify local authorities in allegations against church personnel that involve children and minors. The pastor and/or church president should notify the congregation’s insurance company.

When immediate reporting to authorities is not mandatory, reporting to the insurance company should be deferred until the facts developed by the investigation warrant it.

2. The pastor and/or church president notifies the district president, or in his absence, reports the incident directly to the synod director of human resources (HR) at 414- 559-4037.
3. The district president notifies the synod director of human resources or designated representative at the synod office. HR initiates documentation and verifies that notification requirements have been met.
4. In the event that the incident is public in nature, the synod’s director of communications will oversee synod media contact and assist the congregation or school in developing appropriate communications for the media.

WELS Documentation: Due to legal ramifications, all incidents must be reported to the human resources director regardless of how frivolous they may seem. Documentation of the incidents is filed in confidential files accessible only to the HR director, the administrator of the Commission on Parish Schools, and the synod president. The incumbents of these positions make up the “panel” which has responsibility for reviewing, screening and revealing incident issues into the calling process, if warranted.

Because of the confidential nature, need for immediacy in reporting, and perhaps the need for legal or procedural instruction, all reporting should be made by phone to (414) 559-4037. Significant happenings or status updates should be phoned to the same number as they occur so that “panel” files are always current. The “panel” files should also contain investigative dispositions, solutions, findings, court findings, rulings, etc. so that files can be closed in a timely fashion.

VIII. The Investigation

Whether reporting to the authorities is required or not, all incidents, frivolous or not, must be thoroughly investigated and reported internally within the synod. The investigation must be conducted by those who, because of their congregational position, should be involved as the logical choice based on the type of incident involved. Some guidelines on who might conduct an investigation:

Teacher involved in sexual exploitation incident: The principal, pastor, board of education chairman and congregational chairman would conduct the investigation.

Pastor involved in sexual exploitation incident: The circuit pastor, congregational chairman and chairman of the board of elders would conduct the investigation. The district president would be informed and involved.

Circuit pastor involved in a sex discrimination incident: The district president, plus the congregation chairman and board of elders chairman of the reporting congregation would conduct the investigation.

The investigation should begin immediately when an incident is made known. The investigative meeting should be held as quickly as possible. The investigation should not delay reporting to the authorities when such is required. To do so may be viewed as jeopardizing/delaying the investigation by the authorities.

The purpose of the investigation is to establish the facts surrounding an incident to aid in determining the probability that one has occurred and how best to resolve it. Appropriate written notes should be made including at the investigative meetings. These meetings should include face-to-face discussions with all directly involved parties, informants, witnesses, and those with a need to know, i.e. those conducting the investigation. Copious notes should be taken of the facts including the rationale for any determination, resolution, or agreement. Notes should be signed and if a resolution or understanding is reached, the involved parties should sign it. A confidential filing should be kept of all such records. An incident report form is attached for use in recording and updating information for the file.

IX. Timing of Reporting

The timing of reporting has been mentioned earlier in various sections. It is discussed here in a dedicated section to emphasize the importance of timely reporting when legally mandated and for clarity and ease of reference.

To Synod

- All incidents must be reported and each must be reported immediately.
- Update reports of significant happenings must be reported on an ongoing real-time basis. This includes a report covering the final disposition of the incident.

To Civil Authorities

- All incidents involving a child or minor under 18 years of age must be reported to the appropriate authorities immediately, i.e., county or state department of health and human services (may be known by some other name), sheriff's department, or local police. Reporting to any one within the department usually suffices, but verify that no other authority needs to be contacted.

To Insurance Company

- An immediate incident report should be made to the congregation's insurance company agent to alert him of a possible claim.

All of the above reporting should be made by phone or at least initiated by phone and documented on the incident report form.

X. The Panel

The synod has created a panel for the purpose of maintaining a confidential file of reported incidents and assisting congregations in maintaining compliance with reporting requirements. The panel is comprised of the Synodical Council Administrative Committee chairman, the

director of human resources, the administrator for the Commission on Parish Schools, and the synod president. In the event the incident is public in nature, the director of communications serves in an advisory role to the panel. The review function of this panel is tied directly into the ongoing called worker calling process. District presidents desiring to place a name on a call list will review the Progress notes section to determine if a “flag” has been placed on the worker’s record for the district president to contact the director of human resources. The district president will then contact the HR director and request a name check of the incident file. If no incident report is found or the content of the record shows it to be frivolous or unfounded based on the local investigation, neither the existence of the incident report on file nor its content will be made known to the requesting district president. However, if the incident report on file indicates that, based on the local investigation, the incident could not be dismissed for lack of factual foundation or that it resulted in an unfavorable disposition, the incident information will be made known to the district president requesting the file check. The panel will make judgments on the release of information on “open” incident reports based on the facts of the situation, including the type and severity of the unresolved incident. Responses to a district president’s request for incident file information will be given over the phone at the time of the request.

This procedure obviates the need for follow-up requests for such information by a calling congregation. It is sensitive to the personal and long-lasting effects associated with such incidents, and yet it also meets the legal reporting requirements and protection needs of the congregation and synod. An accumulation of frivolous or unfounded incidents may be indicative of something in an individual’s ministry that makes it prone to such claims and the need for corrective action for the benefit of the individual and the ministry.

Although the volume of name checks on Progress for Parish Schools and the district presidents could be substantial at times, this procedure is not burdensome because the number files of incidents involving active workers is very small.

XI. Background Checks – Called Workers

The incident reporting procedure demonstrates the need to be in strict compliance with legislated rules in regard to sexual misconduct in the workplace. In addition, many state and insurance providers are requiring that all applicants for jobs with schools, public or private, have their backgrounds checked for criminal records on a regular basis. Knowledge of and compliance with state and federal laws is the responsibility of each calling body. The synod has every intention of complying with these statutes and is looking to the calling bodies to develop guidelines for local compliance.

The synod serves as the centralized calling body for all called workers serving in ministry throughout the United States and the world. The procedures provided in this document complement the synod’s calling process and thus provide the needed legal defense, precluding the possibility of problem called workers being inadvertently transferred to another congregation. Identifying offenders and stopping their mobility is likewise a priority for governmental agencies and insurance providers.

New graduates are required to have submitted to background checks while students at Martin Luther College or prior to attendance at Wisconsin Lutheran Seminary. The applicable school is

responsible for making appropriate arrangements with local police departments or state agencies to process students through the FBI files. The cost of background checks is included in student fees.

Colloquy candidates should be fingerprinted upon application as an integral part of the interview process. The district president responsible for the interview process is responsible for having the fingerprints taken and processed by the local police.

Documentation of each student's background checks is maintained at synodical schools for a period of seven years.

XII. Incident Prevention – Local Church Workers/Volunteers

Attached for use by local congregation or synod organizations is a “call to serve” form and sample application forms for volunteers. It is intended that these documents be used at the local level in all instances where volunteer help is involved with youth in any way, e.g., Sunday School teachers, Pioneer leaders, coaches, field trip organizers, etc. Although there are no guarantees that the individuals signing the forms have not been involved in prior incidents, such forms obtained and filed on workers do provide hard evidence recognizable by the courts that a screening procedure was in effect and, in fact, was used.

Individuals applying for hired positions within local congregations, schools, and synod organizations must complete an application for employment in its entirety and furnish references. Each reference must be checked prior to the person being hired. If the individual will have access to children in the normal course of business, a background check is recommended.

Local congregations and organizations are encouraged to use resources provided by WELS human resources and their insurance providers in conducting training for all workers on a regular basis.

XIII. Reference Checks

The procedures used in the calling process automatically provide internal reference checking for called workers within the synod. They do not cover local church workers or volunteers. The congregation should establish a procedure for subtly or directly seeking background information on all persons who will be working directly with children in any capacity. As an example: the congregation may want to consider a policy where no member or volunteer is assigned to work with children during the first six months of membership or at least not alone. This allows the congregation and school time to get to know the new member better. Also, ask for and check references on any potential employee.

Reference checks from the outside on a prior employee or member of the congregation may pose a different issue. If a former worker has a good record, there is no problem in responding positively to such requests. The legal concern or problem occurs when a person has a poor employment record, and a poor reference may give rise to a charge of defamation. Facts may

differ greatly from situation to situation and state law may require different responses in different situations.

When non-WELS organizations are seeking reference information for a worker with a poor employment record, the reference should include the name of the your organization, date of service and position held together with a statement that no further information will be furnished unless a document authorizing the furnishing of more information with a release of liability signed by the former worker is received by the congregation or WELS organization involved. If child abuse is involved, many states either have or are considering laws which may require further reporting to potential employers.

When providing employment references within WELS for non-called positions, the discussion in the previous paragraph would apply. The calling process when coupled with the incident handling and reporting procedure described herein should suffice for called workers in providing personal worker background information, including protection where child abuse is involved.

XIV. Incident Prevention – Congregation Program

In this connection, there are excellent resource materials available to congregations and schools for legal updates and training programs. *Church Law and Tax Report*, publisher of legal and tax materials for churches and a newsletter by the same name, has developed an excellent resource kit for helping religious organizations prevent and deal with incidents of child abuse. The title of the kit is “Reducing the Risk II” and contains a video (CD or VHS format) and other printed materials. The cost of this program if ordered from *Church Law and Tax Report* is about \$50. The program is also available at minimal cost to WELS organizations insured by Church Mutual Insurance Company at the following address:

Church Mutual Insurance Company
P.O. Box 357
Merrill, WI 54452.
www.churchmutual.com

Non-Church Mutual policy holders should check on the availability of “Reducing the Risk II” from their insurance provider or go to www.churchlawtoday.com to order.

Establishing an incident prevention program at the local level is a major step in providing a safe and loving environment for children and workers. Invite parents and members to participate in awareness training so that everyone who wants to be involved knows the parameters the congregation and school have established. Most importantly, the guidelines demonstrate our ongoing concern for the welfare of our children as well as the high moral responsibilities of those who supervise them.

XV. Implementation of this Procedure

This policy and procedure guideline is provided for use in handling and reporting all incidents involving called, volunteer, or hired workers on an ongoing basis as they occur.

Incidents should be reported to the synod via the special private hotline at 414-559-4037. This is a direct line to the director of human resources' mobile phone. Messages and faxes can also be sent to the director of human resources at 414-256-3268. District presidents use the same phone numbers for seeking incident information when preparing call lists.

XV. Links and Resources

- Godly Response to Abuse in the Christian Community (G.R.A.C.E.): www.Netgrace.org
- Prevent Child Abuse America: www.preventchildabuse.org
- Child Welfare Information Gateway: www.childwelfare.gov

In The Name of God the Father, Son, and Holy Spirit

Having called upon the Lord our God for guidance as we carry out the Savior's command to preach and teach his word to our youth, we the

Name of Calling Body

having chosen you _____
to serve as the _____
from _____ to _____, and so extend this

Call to Serve

In the name of the Triune God and by his authority, we ask you to assume this service for Christ as part of the mission and public ministry of this church and to perform it faithfully for the growth of God's kingdom among us.

Our church asks its volunteer youth workers, teachers and coordinators to:

1. Prepare themselves for their ministry by attending necessary training sessions and organizational meetings.
2. Be concerned about the faith and life of the young people assigned to them and nurture their growth in Christ.
3. Serve the congregation as an example of Christian conduct as required by the Lord (1 Corinthians 6:9-10, Colossians 3:5, Ephesians 5:1-7); work with the pastor and the leadership of the congregation; and by the grace of God do everything possible to promote Christian training and a spirit of service with our youth, and so advance the kingdom of Christ among us.

We pray God, the Father of our Lord Jesus Christ, to convince you by his Holy Spirit that this call comes from the Lord himself; to move you to accept his call; and to bless your service to the glory of God's holy name, the advancement of his kingdom, and the welfare of his people in your church and community.

Signed in the name of the congregation:

Date: _____

Committee Chairman, or Congregation Chairman.

Date: _____

Pastor

By acceptance of this call, you are also certifying you have not been personally involved in any incidents of child molestation, child abuse, sexual misconduct, exploitation, or harassment in this or any other states in the past. If you have been involved in such an incident, please discuss the circumstances surrounding it with pastor prior to your acceptance of this call.

Date: _____ Call Accepted _____
Signature

Date: _____ Call Declined _____
Signature

INCIDENT REPORT FORM

Incident Reporting Date _____
Month/Day/Year

Date of Incident _____
Month/Day/Year

Name of Person Reporting: _____

Phone ▶ Office () _____

Title: _____

▶ Home () _____

Congregation Involved: _____
Name City

▶ FAX () _____
State

Pastor of Congregation: _____ ()
Last First Initial Class of

Phone ▶ Office () _____ ▶ Home () _____ ▶ FAX () _____

Accused: _____ () () () () () ()
Last First Initial Pastor Teacher Principal Employee Volunteer

Other

(√) as applicable

Accuser: _____ () () () () () ()
Last First Initial Pastor Teacher Principal Employee

Volunteer Other

Insured by Church Mutual: Yes ___ No ___ Other Company Name _____

Insurance Company → Agent notified Date _____ Name _____
M/D/Yr

→ Lawyer notified Date _____ Name _____
M/D/Yr

Authorities Notified: Date of Notification _____
Month/Day/Year

Name of Person doing notifying _____

Name of Authority notified _____

Names of Individual notified _____

Charge: _____

Description of Incident: Describe in enough detail with names to provide the relationship and relevancy to the incident, accused, and accuser.

Updates: (This will be done on a continuing basis as received until a disposition is reached. Always show the date, time and who is providing update. Keep adding updating sheets as necessary.)

Disposition: (Include a description of the disposition or resolution reached by congregation, district, synod, and courts doctrinally and legally as appropriate.)

Date Disposition Reached: _____
Month/Day/Year