

#MeToo: Student Social Media Disclosure of Sexual Harassment *Podcast Transcript*

Prevention and Protection a United Educators Risk Management Podcast

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MELANIE: Welcome to *Prevention and Protection*, the United Educators (UE) risk management podcast. I'm Melanie Bennett, associate risk management counsel for UE. Today's topic is student disclosure of sexual harassment via social media. Joining me is David Wolowitz, a partner and co-chair of the Education Practice Group at the law firm of McLane Middleton in New Hampshire and Massachusetts. Welcome, David.

DAVID: Hello, Melanie.

MELANIE: In late 2017, the MeToo hashtag took hold. Social media users began to write #MeToo as a statement that they had experienced sexual harassment. Sometimes the hashtag appeared with a story, other times it included no further explanation. David, how did you first hear about the MeToo hashtag?

DAVID: Soon after the fairly recent news coverage about high profile incidents of sexual harassment and the beginning of the so-called #MeToo postings on social media, a number of independent schools told me that they had reports of #MeToo postings that implicated either current or past students and current or past faculty of their schools. They wanted to know what to do about it.

MELANIE: How were the schools seeing these #MeToo postings coming in? Were there patterns to the current student posts on social media?

DAVID: Yes, there were patterns. With regard to current students, it was less #MeToo and more her or him too postings. In other words, less first-person public social media postings, and more third-person private social media postings. So specifically, they would get contacted by somebody, often a parent of a student, who had read a friend's private posting stating that they knew of a student who had been sexually harassed or sexually assaulted. Those parents were concerned about the safety of students in general or that student in particular.

That was a pattern that I saw, and actually, part of that pattern was that often the reporting person, meaning the person who informed the school of the concern, asked for confidentiality or protection from their name being disclosed. They didn't want their child or somebody else to find out that they had disclosed this.



MELANIE: You mentioned that some of the postings were public and some were private. Does that mean, in social media terms, that the public postings were not limited in who they originally went to, and the private postings were?

DAVID: Yes, so the distinction that I'm making between private and public is that one of the patterns we see with former students, we'll call them alumni, is that they tend to be first-person public statements. So they're basically saying publicly, "Something happened to me, and I'm willing to say it publicly. Me too." And they don't have their statements limited to only people that they authorized to see it; they're making them pretty publicly.

When those come into the schools they can often, I mean, sometimes the schools just see those directly because many schools these days have crisis communications firms that monitor public social media. We see less public and more private postings by current students because, well, frankly, I think current students just have their privacy settings on and aren't thinking about making a public statement. They may just be gossiping among themselves and saying, "Did you know that such and such happened to so and so?" So that's the distinction.

MELANIE: What should schools be doing when they receive the social media post either from the current students or from somebody else who saw it on social media and sends it to the schools? Are there any steps that schools should all be taking at that point?

DAVID: There are steps that schools should be taking, and some of the steps they can prepare for in advance. Let me start by saying that I don't think there is a distinction between being put on notice of possible sexual misconduct within a school by learning about it through social media indirectly or learning about it from some individual who simply writes, or telephones, or comes in and states it directly.

In both instances the school is put on what's called notice, and once a school is on notice about potential harm or unsafe conditions to students, that triggers a duty to take action to protect the students. So given that, schools can and should be prepared on what they're going to do when they're put on notice that there's a current risk due to having a potential harasser in their school, whether it's a student or an adult.

So one thing virtually everybody recommends is having a team in place to deal with such reports that is trained in how to deal with such reports, and that it is familiar with the policies, and has protocols. And those protocols, I'm not going to cover everything that a school would do. But certainly that would include reporting compliance to Child Protective Services or the police, parental notification, triggering protection for students that are at risk, investigation, and crisis communications as broad categories.

MELANIE: Can you go a little bit more into parental notification? Should schools always be notifying parents when they hear from current students that a #MeToo post has occurred?

DAVID: Well, the short answer is yes, they should be notifying parents, because we're dealing with adolescents, and for the most part minors. Although clearly some of these students, these adolescents, especially in their senior years, could turn 18. But nonetheless, the schools are essentially in loco parentis, meaning they have a duty to protect kids the way a parent would.

And I do think that parents reasonably expect that if the school learns that their child has been harassed, or abused, or the victim of sexual misconduct, even if it's just alleged, that they would be notified, so that's why I say yes. But I say yes with this qualification, the circumstances are very important in determining how to go about notifying the parents, and even when.

For example, I started out by saying that it's not uncommon that reports of alleged sexual misconduct against students that are current come in through third-party reports on social media. So someone says on social media to someone else, "I heard that so and so had such and such happen to them," and that gets eventually sent to the school.

Simply picking up the phone and calling the parents of that child who's named could have very significant consequences. It could be, one, that it's not true, or it could be two, that it's true and that the child has kept it a secret from their parents. And the parents learning about it could devastate the child and could cause the child to have a strong emotional reaction. So that's part of the planning process, for example, having counseling in place and other support in place, and having people to consult with. All of that would be part of the preplanning of that parental notification.

MELANIE: Should schools respond in the same way to allegations of student-on-student harassment as they do to allegations of teacher-on-student harassment?

DAVID: Well, there is a difference, but there are a lot of similarities. First and foremost, the reaction should be steered by the policies of the school. So independent schools should handle response to peer-to-peer sexual, or misconduct we'll call it, according to the student handbook policies and the protocols that are established pursuant to those student handbook policies. And for educator-student sexual misconduct, they should look to the employee handbook.

Now those should be fairly similar, but there may be differences because you're dealing in the one case with employees, and the other case with students. That's a very broad answer, but that would be one significant distinction.

MELANIE: Let's shift the conversation now to allegations by former students, because you mentioned earlier that the way that they're coming in is fairly different. When former students make #MeToo allegations, you said that they're generally public allegations. Are schools generally seeing allegations from one individual student or multiple students at the same time?

DAVID: Well, that's a very interesting question. When it comes to former students, let's refer to them as alumni, on social media, engaging in a #MeToo moment, if there is a pattern, the pattern that I see is that it starts out as somebody very consciously deciding to announce that some form of sexual harassment occurred to them. And they see that as a kind of a public coming out moment. It's not unusual, it's fairly typical, that that is done publicly and not privately within social media.

Sometimes they identify the school where it occurred, sometimes they don't. Sometimes they identify the perpetrator by name, and sometimes they identify the perpetrator more by position. So they might say, "When I was in school as a 10th-grader," let's say, and they may or may not name the school. "My English teacher," and they may or may not name the English teacher, "did such and such to me."

So that would be the initial #MeToo posting. By the time the school is alerted to that, which, as I said, is usually public, not protected by privacy controls, my experience is that many people have responded. Interestingly, the people who respond are often people who went to the same school and sometimes had experiences with the same teacher.

Now that's not always the case. Sometimes it'll be friends who just say, "Oh, well, when I was a 10th-grader in my school something similar happened to me." It may be a different school. That's not unusual. But the reports that I'm seeing coming in, what is pretty common is that there's a whole string of individuals after the first disclosure adding more disclosures, or if nothing else, corroboration. Like, "Oh, I thought he or she was a creep, and I thought other people knew about it. Isn't it outrageous that the school didn't do anything about it," and so forth.

MELANIE: So once a school does learn of an alumni #MeToo posting, what should their immediate response be?

DAVID: Well, ideally the schools should prepare not just for #MeToo and social media type postings, but to being put on notice of historical educator-abuse allegations. Hopefully schools are being proactive, because so many schools, independent schools across the country, are having that occur, and preparation is key.

With regard specifically to disclosures on social media, such as #MeToo disclosures, it is a real challenge for the schools to get on top of the reputational issues. Because social media operates so quickly, and the word on social media can spread instantaneously to so many people, that if the school waits to try to come up with a strategy for responding, and assembling a team and all of that, real damage can be done very quickly, before the school even has a chance to gather and assemble the team and put together a strategy.

I recommend to schools that in advance, the board and the administration develop a strategy for dealing not just with social media allegations, but any allegations from any source about historical educator abuse, so that they've got the plan in place. I also advocate that they establish the guiding principles that they will use to determine their strategy and course of action in advance so that they're not trying to figure them out as they go along when the crisis occurs.

I suggest, but every school's different, that they consider this, at least as a conversation starter, the following guiding principles, and that is to have a balance of transparency, equity, and accountability for how they're perceived as responding. Whether it's on social media, whether it's through a letter to the community, whether it's through the press, whether it's through meetings with faculty and parents, or all of those things.

MELANIE: Are crisis communications an important part of the school's response?

DAVID: They are a critical part of the school's response because, for many reasons, one is very practical. Most schools, and most individuals, are not even trained at how to monitor public postings on social media. But even if a school is fortunate to have somebody who is trained, it takes a lot of time and effort. That's not really how schools want to spend their time or money.

So crisis communications firms can stay on top of social media postings, but even more importantly, good crisis communications firms that have experience with this kind of issue have learned what the key issues are and what strategies may or may not be more effective depending on the circumstances, and that's invaluable to schools.



Lots of schools, of course, will bring in a lawyer, but being a lawyer I can speak from personal experience and say that although I do a tremendous amount of this work, I do not consider myself to be a crisis communications specialist. So having a team that has a crisis communications specialist on the team and is involved at every step of the way is, in my opinion, crucial.

MELANIE: It's worth noting that UE members may be able to cover some investigation and crisis response expenses through **ProResponse**, which is UE's crisis response benefit. Members can find out more about that program either through the *Prevention and Protection* podcast we did on it called, "**Your ProResponse Crisis Response Benefit**," or at **UE.org**. David, are there actions schools should take specifically if large numbers of students disclose sexual harassment?

DAVID: Yes, even if it's a small number, but especially if it's a large number of students, it is the obligation of schools to determine whether there is a systemic issue within the school that is leading to misconduct that is widespread. Think of it this way, you could have an internal investigation of, say, one report that comes in of, let's say, possible sexual harassment.

Let me give you an example. Say some girls who are adolescent age, are walking into the school cafeteria and they are made to feel uncomfortable by some boys who are early adolescent age, who are giggling, and pointing, and using their smartphones as the girls walk by. The girls tell an adult and the adult asks the boys, "What's going on," and takes the phones, and discovers that the boys are rating the girls on their physical attributes.

That could be then "investigated" by the disciplinary deans, or whomever they might be, and the boys could be disciplined. But if you have a trained team to look at whether the culture of the school has issues that are contributing to this, they would look further and look behind that, and try to determine why the boys did this, how it came about, how widespread it was. They might discover, as actually happened in a real matter that I was dealing with, that this was just a small part of a larger problem where there was a whole network, a whole rating system on social media that was schoolwide.

That was a school culture problem, and that requires much more than just a disciplinary response. Without going into a lot of detail, I can tell you that schools need to have a balanced approach to having a healthy culture, which is a safe culture in a school.

UE has excellent materials on what it calls **enterprise risk management**, which I would recommend be supplemented by behavioral risk management. Behavioral risk management focuses on setting behavioral standards, both for adults and for students, and using behavioral standards to evaluate conduct, and hopefully, intervene before that conduct becomes severe and results in harm to students.

MELANIE: David, that's a really good point, and thank you so much for including so much about what schools should be doing as these posts keep coming in in the future, as I'm sure they will. That concludes today's *Prevention and Protection* podcast. All of our podcasts are made available on our website, **EduRiskSolutions**, and on iTunes. Once again, I would like to thank David Wolowitz for joining me today.



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