

Safe Sport Act: Reporting Sexual Abuse in Athletics

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, an attorney in the risk management department at UE. Today, we're going to talk about the **Safe Sport Authorization Act**. Joining me is Phil Catanzano, a senior counsel and member of the education team at the law firm Holland and Knight in Boston. Before joining Holland and Knight, Phil was an attorney with the U.S. Department of Education's Office for Civil Rights, focusing on matters including intercollegiate athletics and campus sexual violence. Welcome, Phil.

PHIL: Thank you, Melanie. I'm happy to be here.

MELANIE: I first learned of the **Safe Sport Authorization Act** in the media coverage surrounding Larry Nasser's conviction. The federal bill signed into law on Feb. 14, 2018, provides a new avenue for reporting athletic sexual abuse. Phil, why should schools and colleges familiarize themselves with this law?

PHIL: It's a great question, Melanie, and it's an important one for UE to understand it, for the members to understand, because this really does create additional requirements that many schools and higher ed institutions may have to consider when they're thinking about their own athletic programs. For example, it potentially creates a new standard of care, which we'll talk about in a few moments. It also has reporting requirements, trainings, policies, and procedures that should be put in place to help educate coaches and individuals authorized to work with minor amateur athletes. Those are key terms on how to prevent sexual abuse to people who are under their care.

The law is aimed at youth and amateur sports organizations that travel interstate or internationally, but it's written broadly. And with that breadth, there's going to be a lot of issues that come up. For example, with postsecondary institutions, it'll be very easy to brush this aside and say, "Well, this is all about minors." But in the summertime, they often have minors on their campus. And while they also have the Title IX regulations that we'll talk about, it's a sensitive and vulnerable population. And, you know, don't forget, this is where Penn State started from. This is where that big challenge that happened there came from. It was minors on campus in the summer at camps.

MELANIE: The act's reporting requirements appear to designate most athletic personnel as mandatory reporters. However, mandatory reporter laws in some states may not currently assign that status to personnel such as coaches, athletic assistants, or medical advisors. Are athletic personnel in those states now mandatory reporters under this law?

PHIL: I think the answer is, most likely, yes. I always think about it in the larger context of the obligations that schools have. So, for example, Massachusetts already has a mandatory reporting law that defines coaches as a mandatory reporter. Then there's also Title IX responsibilities. Title IX, as we all know, applies to colleges and universities, but it also applies at K-12 schools. Under Title IX and those laws, they are designated to have responsible employees—people who are charged with reporting information internally. But the Safe Sport Act itself has additional language that we have to think about. Basically, the Safe Sport Act defines any adult who interacts with a minor athlete as a covered individual, and a covered individual has to comply with the mandatory requirements under the Safe Sport Act.

That's broad, and it's going to have to be contextualized in every state to determine, OK, what does the Safe Sport Act require us to do? What does our state law and our state reporting requirements require us to do, and then what do we have to do under Title IX and the federal laws? In general, however, the reporting requirement is that if you are a certain class of people as defined by the act, you have to report sexual abuse within 24 hours. In some cases, that is to a Safe Sport Act's governing board or the body that is doing the investigations. In other cases, there are catchall provisions that say, even if you don't qualify under the first aspect of the law, then you should report under your own state's reporting requirements, your state's reporting statutes.

The bottom line here I think is that the Safe Sport Act really changes things to the extent that a coach can no longer claim ignorance. They can't say, "Oh, I didn't know I needed to report." Now there are several laws that are likely in place in each state, including the Safe Sport Act, that are saying, "You need to report."

MELANIE: You mentioned earlier that the Safe Sport Act may create new standards of care in relation to training and background checks. Can you talk about those standards?

PHIL: That's an important one to think about in the sense that the Safe Sport Act definitely puts more weight on things that are potentially happening, but they're happening in different ways. For example, we talked about the reporting requirements a moment ago, but the standard of care goes more broadly than that. There are required trainings, and that training is designed to be proactive and not just reactive. Making sure coaches understand what their obligations are, what their reporting requirements are, and how to make that work.

There's specific focus in the Safe Sport Act about the grooming process, which is really important for people who do these investigations or who work with student athletes and just study the cases. You see that it's pretty consistent that this idea of grooming happens relatively frequently in these cases, where a bad actor or a coach or an individual who wants to do harm to a student or a child will basically create an environment where they befriend the child. They encourage the child to cut off contact with other family members who are support people for them. They encourage them to really rely upon them and then they test the waters. They test to see how far they can go. Once they get as far



as they would like with the child, and the child may say, “Wait, this is wrong,” then they kind of use some psychology to say, “You cannot tell on us because now you’re going to be in trouble, too. You, the child, have done something wrong.”

That’s a pattern we see over and over again in investigating these cases. The training is designed to not only help the administrators and the leaders of the school understand that, but help other coaches see it. In a sense, it’s very similar to the bystander training that we do in the sexual misconduct on campus lens.

The other thing that the standard of care potentially throws out there is the requirement to have tailored policies and procedures to protect minor athletes.

While most colleges and universities have these, and many schools do, in my experience at the Department of Education, many high schools do not have those. When you keep going down the definition to the different athletic groups that could apply here, you’ll see that even some of them don’t have policies. And so, this really puts the burden on nonprofits, schools, club teams, and athletic teams to create policies and procedures to make sure that they’re protecting minor student athletes.

The final thing it does is prohibit retaliation against individuals who come forward with reports of sexual abuse. And it says that it’s encouraging reporting. It’s hopefully not going to encourage retaliation or allow retaliation if someone files a report, and if for whatever reason the report proves to not be true, or even if it is true, they can’t lose their job. They can’t be demoted or they shouldn’t be demoted for following the federal rule here or the state rule.

MELANIE: We’ve talked a lot about the application of the law in relation to minor athletes. Is the law limited to adults abusing minors, or does it also apply to all abuse of amateur athletes whether or not that athlete is a minor?

PHIL: Based on the language of the act, it seems like it’s tailored toward minor amateur athletes. But again, it’s written broadly, and it could be interpreted in broad ways. As a result of that, I’m advising institutions that I work with to really consider this more broadly than just minors. Part of the challenge is, especially when you’re talking about the higher levels of K-12 education and the first-year levels of postsecondary athletic participation, you may be talking about someone who is 16 or 17 who’s participating at the college level, usually 17. So, they’re now participating in college, and no one may think to ask them, “Are you a minor?” Only the registrar’s office or the financial aid office might know that.

My suggestion is that many of the things that the Safe Sport Act is requiring are already captured in other trainings that many institutions have to do under their state or federal laws. So, just consider this when you’re thinking about your training protocols, when you think about your policies and procedures, and make sure that they’re inclusive of the things that Safe Sport is looking for.

MELANIE: You’ve been talking a lot about this throughout, but just to encapsulate it, what steps should K-12 schools take to comply with this new law?

PHIL: First and foremost, they really should have a written policy that they can circulate and put on their website if they have one. And the policy should be, it can be incorporated in larger policies about sexual misconduct, but it should have a specific portion that’s focused and tailored on child abuse prevention.



So, one that allows free and easy reporting, one that provides solid reporting options that are not just the head coach, for example. I mean, that's a problem when you're talking about potentially the head coach or an assistant coach who may be friends with the head coach doing the bad act. So, making sure there's a clean way for individuals to report and to comply with the things that they need to do in terms of their professional status.

Make sure that there's appropriate training. This is important because the training that we mentioned before is broader, but also more focused on child abuse, but it can be incorporated in other trainings that you're doing. Boundary trainings, for example, are common at the K-12 level to make sure that students and teachers understand the boundaries between them. This is something that would fit neatly in there.

Finally, making sure there's a strong prohibition against retaliation so that people who do take advantage of the reporting options here do feel free to come forward and don't then have to experience some level of adverse action on the back end because they followed what the Safe Sport Act was designed to do.

MELANIE: Should colleges and universities take the same actions you recommended for K-12 schools?

PHIL: I would err on the side of caution and say yes. Part of my justification for that statement is that I primarily work with colleges and universities and I see the efforts they make on an everyday basis. Many of the things that Safe Sport is looking at are things that would be easily incorporated into their Title IX policies—into their athletic code of conduct or their student handbooks. These are things that wouldn't be a hard push to get in there. And then to the prior example I mentioned, a lot of times colleges and universities don't truly know when a student reaches the age of maturity. They may have, as first year students, 17-year-olds who are on their campus. They may have people who are coming to campus over the summertime or during the breaks to use the facilities to take part in clubs or activities or camps that are run by college staff.

From my perspective, all of that creates a sense of risk and a sense of liability if they're not on notice of what the Safe Sport Act requires, and they're not on notice of what they have to do under that. I would suggest that colleges and universities should take this seriously, should consider it, and not just push it away because they think that it's not going to apply to us because it's focused more on minors or even amateurs.

MELANIE: The Safe Sport Act also designates the **U.S. Center for SafeSport** as the official oversight body charged with investigating Olympic athlete abuse. What does that mean?

PHIL: Part of the challenge with this law is the breadth. In some ways, it is definitely a response to the things that we all heard earlier this year, the horrible things that happened with USA Gymnastics. I think that is one element of what this law is aiming to do. But at the same time, it's much broader. So, the U.S. Center for SafeSport is the governing body under the Safe Sport Act. That means the center will maintain an office for response and resolution to reports of sexual abuse against minor amateur athletes.

So, if you are a person who has to report, and you report to this entity, they are going to be the ones who facilitate the investigation, the next steps, and any reports that have to come out of it. The center is also tasked with ensuring a system of fair, protective, private and safe reporting investigation resolution, so it's designed to be even-handed but also be thorough in their work.



Finally, the center is maintaining an office for education and outreach that will hopefully be helpful to schools and individuals who are reporting under the Safe Sport Act. So, they are, in many ways, the keystone to this effort. They are the group that is going to be doing much of the investigation if they receive a report. There's the other category of individuals who do not need to report directly to this governing body, but they may need to report under their own state reporting laws or different reporting laws that may apply to them. So, in some ways, the U.S. States Center for Safe Sport is going to be doing much of the investigation, but I also think there are going to be additional investigations that come from this that may be done at the state level and may be done at the institutional level. So, in some ways, understanding who the important players are and where the investigations might come from is really important.

Another aspect of this is that schools are also held to the standards of FERPA in terms of when they can share information and what sort of information that they can share. To the extent that the U.S. Center for SafeSport is the investigating body, schools need to know that, and they need to understand what the implications are under FERPA. Do they have an exception that they can provide materials to the center? Or do they need to seek a waiver from the student or from the individuals whose information they're sharing before they comply with that? These are all the questions that go through practitioners' minds when we receive requests for advice to whether institutions should report to the center. Overall, the advice and the answer are typically, "Yes, you should report if it qualifies under the law, but also think about these other considerations."

MELANIE: If an athlete reports to the U.S. Center for SafeSport and they also report to the school, should those two organizations conduct simultaneous investigations? And along with that, will schools necessarily know if the center is conducting an investigation if the athlete does not tell the school?

PHIL: On the first question in terms of whether they should conduct a simultaneous investigation, my advice is typically yes. The reason for that is because colleges and universities in particular, but also K-12 schools, are vulnerable to a lot more than just the things that are outlined in the Safe Sport Act. So, if the Safe Sport Act triggers an investigation, either by a social services agency or the Center for Safe Sport itself and one of their investigators, then they're going to be looking at things that satisfy their agenda. For example, in Massachusetts, the Department of Children and Families investigates allegations of child abuse or neglect. Their focus is on determining whether or not child abuse or neglect occurred and what the appropriate steps are, but they may not be looking at the larger hostile environment that may be created by the event itself or by the accusation or the behavior. That's something that the institution is charged with looking at under Title IX.

That's why, when a case comes across my desk and the question is, "Do we just wait for the center or for law enforcement to do their investigation?" my answer is typically no, unless they explicitly order you not to investigate and give you some justification for that. You should do some level of investigation so that you, the institution, can make sure that your community is safe, and no one is doing anything that you disagree with. The challenging questions come up if you do, as an institution, reach a contrary result than the center. If you determine that a person did do an act and the center



disagrees with you or DCYF in Massachusetts or Department of Children, Youth, and Families. If you reach a different result, that may present a challenge. But on the whole, I feel that when institutions do their own investigations typically, they reach the same or similar conclusions, but they are able to go a lot more deeply and answer the questions that they need to know, and they need to have answered for their own protection and their own purposes.

MELANIE: Are there any resources that you recommend schools review if they want to learn more about this issue?

PHIL: Absolutely. I think it's a good question because this is a relatively new law still and there's not as many resources as we'd like to see, but there are some good ones that are out there. First and foremost, I think the U.S. Center for SafeSport has a good website. They've been updating it with a lot of good materials—good, practical guidance for institutions. I'd also take a look at the other responsibilities institutions have to determine where these things may conflict, and how do you work through that. So, for example, not only would I use the resources that I could find on the on the U.S. Center for SafeSport's website, but I'd also share with my clients the reporting statute in Massachusetts, which is MGL51A, and what does that require, and when do you have to provide a written response versus an oral response, and the timing of that? Because in some cases, they're different.

The Safe Sport Act requires a mandatory reporter to report within 24 hours. Different states have different timing requirements there, and so you want to be able to understand what do we need to do under the state law, and then what do we need to do under the federal law? Finally, to the extent that things like training and proactive actions are happening, also consider if you are an NCAA-governed sport or if you are governed by a state athletic agency, which most K-12 schools are in the different states. Make sure that you're doing what you need to do in accordance with those regulations, too. The goal and the hope by the end of this process, by the time this law becomes more accepted and more well-known, is hopefully that all of these tools to prevent child abuse are pointed in the right direction and are consistent with each other.

At this point, there's really not enough case law out there to see how some of these discrepancies will be handled or dealt with by the courts or by the agencies or the administration. But a really important thing to consider is how these differences will affect you every day. That's really where I would start, getting a sense of your local rules and regulations, getting a sense of what Safe Sport requires, using their resources, and then trying to come up with your own policy and protocol so that if something like this happens on your campus, whether it be a K-12 campus or a college or university campus or camp during the summer, that you're ready to respond, your coaches understand what their responsibility is, the adults that work with the minor athletes understand what their responsibilities are, and that the institutions themselves have a good approach to determine what they're going to do, when they're going to do it, and how it's going to be done.

MELANIE: That concludes today's *Prevention and Protection* podcast. All of our podcasts are available on **EduRiskSolutions** and iTunes. Once again, I would like to thank Phil Catanzano for joining me today.



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