



Seeing #MeToo and other online reports of sexual misconduct involving your students and faculty? Tips for addressing allegations successfully

By Tina Sciocchetti and Julianna Malogolowkin

Higher education institutions are finding themselves alongside Hollywood, Congress and celebrity chefs as the newest targets of the #MeToo campaign and other online forums “outing” faculty, staff and current students as alleged perpetrators of sexual harassment and assault. Entire institutions have been targeted, as was the case with Morehouse College and Spelman College, subjected to anonymous “hashtag campaigns” on Twitter entitled #RapedByMorehouse and #RapedAtSpelman purporting to catalogue present and historical sexual abuse. A crowdsourcing survey, “Sexual Harassment in the Academy,” is collecting descriptions of incidents in academia, identities of subject schools and other data about the alleged harassment through a public spreadsheet. In shortly over two months, nearly 2,400 incidents have been logged.

These social media complaints of sexual harassment and abuse present many challenges for schools as they arise outside the context of carefully established Title IX and disciplinary procedures. Often, these postings are from anonymous sources, but name current students or faculty members as alleged harassers and abusers. Many posts identify faculty members and staff who are no longer affiliated with the subject institution. Taking place in public, with the potential for instantaneous widespread distribution, the posts may spur calls to action from your on-campus, parental and alumni communities, and pose the potential for significant reputational harm if not handled properly. This alert offers some suggestions for addressing online allegations of sexual misconduct affecting your campus community.

1. Pay attention to the post. If you become aware of an online allegation concerning harassment or abuse at your institution, treat the complaint seriously. Ascertain the nature of the allegations and the individuals implicated. Are there sufficient allegations of sexual misconduct that should be investigated? Is the complainant identified or identifiable? Is the complainant a current student on your campus or does the post concern a student who attends another school? Is the student or faculty member who is “outed” in the post currently on campus? Does the complaint in isolation, or taken together with other social media posts, suggest a pattern of abuse by a particular student or adult on campus or a systemic problem at the institution that needs to be addressed? Gathering answer to these questions quickly will inform the best response.

2. Respond. The action you take in response to an online allegation will vary depending on the type and source of the allegation. Some situations can be addressed with current resources, such as those presently supporting Title IX incidents (e.g., Title IX offices, campus safety and human resources where personnel are involved). Others may necessitate action by your board of trustees or suggest additional support such as investigation by an impartial professional unaffiliated with your school.

Allegations by students currently on campus. Where a complainant is known or identifiable as a current student who has not previously filed a complaint, work with your Title IX professionals and counselors to do outreach to the reporting student. Make sure the student is aware of their options regarding a formal Title IX complaint, and offer support to the student and remedial measures as appropriate whether or not the student files a formal complaint. If the complaint involves a student at another school, engage that school's Title IX office to determine relative responsibilities, if any. In interacting with students who have chosen to make a public statement about their alleged harassment or abuse in social media forums, be mindful of the 2017 Q&A guidance from the Department of Education, Office of Civil Rights, to not engage in any conduct that might be viewed as the prohibited imposition of a "gag order" against the student.

Allegations against current students. Schools should be mindful that being the subject of a public social media post alleging sexual misconduct may also have significant impact on the student "outed" in the post. The accused student may face social judgment and possibly harassment by other students, alumni or even third-party activists completely unaffiliated with the school. As a result, accused students may experience anxiety and other physical or emotional consequences from social media posts that should be addressed for the student's wellbeing. As with student complainants, institutions should engage accused students to offer support and remedial measures, as appropriate.

Depending on the nature of the allegations contained in the post, you may have concerns about the accused student's presence on your campus and, possibly, other students are raising that concern. If the complainant is not identifiable from the social media post or is unwilling to proceed with a complaint, but you retain jurisdiction over the matter under your school policies, consider whether a Title IX process is appropriate under the factors you typically use to assess a non-complainant report of sexual misconduct. If the nature of the public post does not trigger your Title IX process but nonetheless raises on-campus issues, determine whether another type of investigation of the public allegations is appropriate and address student wellbeing concerns related to the student's continued presence on campus. In the absence of a formal complaint, consult carefully with counsel about what actions involving the accused student are permissible.

Allegations against current faculty. Unlike isolated allegations from or against current students, allegations of harassment or abuse published against current faculty and other staff members are likely to cause significant disruption among your on-campus community. Depending on the notoriety of the social media information, media attention is also likely. Accordingly, your institution should take direct steps to investigate and address allegations involving current faculty and other staff members, no matter how dated the alleged harassment or abuse. An assessment should be made whether employment action is necessary pending an investigation of the allegations, such as suspension.

Allegations against current faculty must be expeditiously investigated, and an outside, impartial investigator may be advisable. If allegations are sustained, consider appropriate disciplinary action up to and including termination. Be prepared to address the impact of removing the faculty member on current students in the faculty member's classes, and the possible dissent among other faculty and staff. Treat the faculty member fairly in accordance with your faculty rules, and foster confidence in other faculty and staff that they will be treated fairly should allegations concerning them arise. Finally, establish a set of principles of disclosure in consultation with your board of trustees and counsel, being careful to address any possible defamation issues. Under the principles, determine whether and how much information about sustained allegations of sexual harassment or abuse that your investigation has disclosed should be publicly shared with your community.

Allegations against former students and faculty. In the case of an allegation of sexual misconduct against former students or faculty and staff, steps should be taken to understand the full nature of the allegations and what remedial steps are necessary. Conduct outreach to alumni complainants who are identified in postings in order to fully understand the allegations. Investigate the allegations, including through the use of an impartial investigator. Use the information learned from investigation of online allegations to identify and address any apparent deficiencies in your campus culture, student support systems and policies and procedures. Let historical allegations inform training to prevent future sexual misconduct on campus and other efforts to combat sexual harassment and abuse. Using established principles of disclosure, determine whether sustained allegations of abuse against a former faculty member should be disclosed to the community and what form such disclosure will take. If the former faculty or staff member retains honoraria from your institution (such as emeritus status), consider whether withdrawal of such status is warranted as well as whether the former faculty/staff should be prohibited from attending on-campus or alumni events.

3. Speak to your constituents throughout. If a particular post or series of posts in social media directly implicates your institution, you should address them with your constituents, including students and parents, faculty and staff and alumni. Reaffirm your commitment to the safety and wellbeing of your students and having a campus free from discrimination. Highlight policies and programs available to students in this area, and any new actions you have deemed are appropriate in the face of the allegations. Your communication should invite anyone with information of sexual misconduct associated with your school to come forward. Strive to be as transparent and responsive as possible about the allegations, the process and the outcome.

Of course, institutions are advised not to wait for #MeToo or other social media posts to evaluate and strengthen their programs, policies and practices in the areas of sexual harassment and abuse. Instead adopt a proactive approach that demonstrates a genuine commitment to student safety, and communicate to your constituents about your work in this area. However, if allegations of historical sexual harassment and abuse appearing in social media implicate your school and individuals on campus, be prepared to address them credibly and comprehensively. Look to professionals, including counselors, survivor advocates, public relations professionals and legal counsel, for assistance as needed.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- Michael J. Cooney at mcooney@nixonpeabody.com or 202-585-8188
- Tina Sciocchetti at tsciocchetti@nixonpeabody.com or 518-427-2677

- Steven M. Richard at srichard@nixonpeabody.com or 401-454-1020
 - Christopher D. Thomas at cdthomas@nixonpeabody.com or 585-263-1087
 - Julianna Malogolowkin at jmalogolowkin@nixonpeabody.com or 617-345-1069
-