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Preventing Sexual Grooming by Teachers: One State's Legislative Approach

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Breakout Session:

Preventing Sexual Grooming by Teachers: One State's Legislative Approach

A Paper Prepared for a Concurrent Session at the 2021 Education Law Association Annual Conference

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Introduction

Twelve years old. The 7th grade teacher noticed that LD, a quiet girl in his class, was upset because a good friend of hers was moving. He told her, “You can talk to me anytime.” They began having lunch alone in his classroom. One time she was standing with a group of girls; he bent down and kissed her on the forehead and walked away. The emails began with him telling her that he missed her. Later he apologized and told her that the kiss was how he expressed his emotions. Using his school email account, they started to email back and forth, talking about everything from soccer games, his marriage and her life. Toward the end of the school year, he began to show her affection in front of other people. The teacher began to attend the same church service as her family and eased his way into their lives. He continued to meet with her under the guise of mentoring. On a day off from school, he kissed her, and after that, he mentioned doing other things. She was not ok with it, but he said, “she would do it all eventually; it might as well be now” She thought he cared about her things and became physical. He began to tell her, “Do not tell anyone because no one will believe you.” (Nitcher & Dejak, 2019, para. 1).

Research on reported sexual grooming between teachers and students began somewhere around the 1980s but, with the arrest of former Pennsylvania State football coach Jerry Sandusky for numerous counts of child sexual abuse, the concept of sexual grooming became more public and recognized in the most recent decade. Following the Sandusky cases, sexual grooming has been implicated in other high-profile organizations involving such large groups as the Catholic Church, the Boy Scouts, and numerous public and private school. (Winters, Jeglic, & Kaylor, 2020) Sexual abuse tactics have been found to be used by 30-45% of child sexual abusers

(Canter, Hughes and Kirby 1988; Groth and Birnbaum, 1978) indicating that sexual abuse by a trusted adult (teacher, coach, leader) is often preceded with grooming activities priming a child to be lured into a sexual relationship of some sort.

Patterns of sexual abuse behaviors are varied based upon the age and gender of the offender and the victim and their relationship. There are also differences between online and in-person tactics. The steps in grooming typically start with the groomer mentally preparing him/herself to cross known boundaries. Self-grooming involves the offender cognitively/psychologically preparing themselves in order to justify, minimize, or deny their behaviors (Craven, Brown & Gilchrist, 2007; Katz & Field, 2020; McAlinden, 2006). The second step of grooming involves gaining the trust of the family or caregivers of the intended victim in order to increase access to the victim and decrease the likelihood of disclosure (Craven, Brown, & Gilchrist 2006; Katz & Barnett 2016; Leberg 1997; McAlinden 2006; McElvaney 2019). Next an offender may groom the community by becoming a recognized and respected member of the community before or while sexually abusing children (Van Dam 2001; 2006; Winters & Jeglic, 2017). Offenders may also engage in institutional grooming by seeking careers or volunteer positions that provide easy access to children. Grooming is often very hidden and difficult to detect because of these tactics.

Research identifies and describes the school culture and the behaviors, patterns, and conditions in which sexual misconduct occurs. Most importantly, since very few document the link between school culture and the behaviors of adults who sexually abuse children in schools, school professionals fail to understand what patterns and behaviors should trigger supervision investigation and/or reporting. Stopping sexual misconduct by teachers directed toward students means understanding the process adults use to prepare students to be abused so that they do not tell, fight, and will acquiesce (Shakeshaft, Parry, Chang, Sauna, & Lindh, 2021).

Tanner and Blake developed a framework for understanding grooming. They make a distinction between grooming the individual and grooming the environment. As others have said, the offenders find their targets, gain their trust, reduce discovery by others, and reduce the target's credibility if they are discovered. They groom the victims to "overcome resistance, maintain access, and minimize disclosure" (Tanner & Brake, 2013). The offenders gain the trust of the victim and the community, then then grooms the victims and the victim's families in order to move forward with the sexual crimes. The offender seeks to be admired by colleagues,

recognized by the community, often setting up a situation where if reported, authorities may question the truthfulness or motives of the victim. Tanner and Brake have summarized this process in Table 1.

| | |
|-----------------------------------|--|
| Purpose of victim grooming | Overcome resistance, maintain access, and minimized disclosure |
| Target of victim grooming | Emotionally vulnerable child |
| Goals of victim grooming | Access/affiliate Allure/accept Alibi/assure |
| Actions of victim grooming | Gaining trust, access, relationship |
| Bond | Form a special bond, keep secrets, special lures |
| Reliance | Push and pull of victim. Make victim need offender |
| Attenuate | Reduce resistance through slow progression and explanation of normalcy |
| Trap | Prevent disclosure through grooming, threats, guilt, and fear |
| Environmental Grooming | |
| Purpose of Environmental Grooming | Find victims and reduce the probability of being reported or victim being believed |
| Target of Environmental Grooming | Parents/family, teachers, social organizations, peers, significant others, etc. |
| Goals of environmental grooming | Access: provide entrée Allure: create interest Alibi: minimize risk |
| Actions of environmental grooming | |
| Position | Social, Personal |
| Charm | Personality |
| Power | Political, fiscal, absolute |
| Celebrity | Fame |

Table 1.*Tanner and Blake's summary of child victim grooming*

According to Tanner and Blake, grooming is rarely perceived as a violent act. In fact, grooming actions bond the target to the offender, such as time together, secrets shared, gifts, and special attention. The process presents the offender to the child as kind, gentle, understanding, caring, generous, charming, and accessible. The victim is drawn into this special bond. The offender assures the victim that the relationship is normal by typically telling the target they are more mature than other students, smarter, extra special, and so forth.

After the victim is drawn in, the offender uses threatening methods when the victim tries to stop the predator after the grooming period begins and well into the physical or emotional sexual misconduct. The offender may begin to use threats, guilt, and fear to keep the victim involved and quiet. Most school-based grooming and sexual misconduct occurs within the school building in an empty classroom, in hallways, and in offices. Recess and lunch are prime offending times. Preventing sexual misconduct and abuse directed toward students, in particular, requires adult bystanders and other students to understand the “red flags” of grooming behavior within the unique school environment.

Back to the twelve-year-old. School districts must take action. Most of the grooming and sexual activity in the case we describe occurred on school premises. In the case of LD, no one at school helped her. A neighbor discovered something unusual at their home (the teacher visiting the student's home during daytime hours) and called her parents. The civil case involving this child was heard in the 8th Judicial Circuit and is now on a petition of writ of certiorari to the United States Supreme Court. The case, KD and JD, vs. Omaha Public Schools showcases a stunning lack of awareness and accountability for an invasive teacher/student sexual relationship. A question before the Court is the deliberate indifference requirement for liability against a School District under 20 U.S.C. Section 1681 satisfied by willful blindness? That is, lower courts have questioned just how much a school administrator needed to exercise “deliberate indifference” in order to be civilly liable for knowingly failing to interfere with teacher/student sexual relationships. In this particular case, no one said to the principal, “I saw them engaged in sex.” However, district staff made repeated reports of observed behaviors against the student and had training to recognize as “yellow light” or “red light” behaviors suggesting improper sexual interest in students and the principal failed to or chose not to

investigate the reports. In this case, the school had policies but, did not enforce the policies and the principal was able to claim he simply did not have enough information to justify investigating the purported grooming behaviors and sexual relationship between the teacher and the student. The teacher perpetrator fits many profiles of a potential sexual abuser, and his grooming behaviors followed the steps outlined by Tanner and Blake. The principal and others were required mandatory reporters of child abuse under Nebraska law, yet no report was made. It was the principal's job to investigate, and but he did not. Failure to report what is required by law is deliberate indifference, and failure to investigate what is reported is willful blindness. Needless to say, the child was deprived of educational benefits, and now suffers post-traumatic stress disorder, anxiety, and depression. The family is asking the Court to equate willful blindness and deliberate indifference in cases arising under 20 U.S.C. section 1681 and 42 U.S.C. section 1983.

A Shift in the Focus on Teacher/Student Relationships in Nebraska

Sexual relationships between students and teachers are largely unreported and yet are assumed to take place in many communities throughout the nation and the state we focus on in this session here, Nebraska. Nebraska is a largely rural state with roughly 1.9 million people statewide. Schools range from urban, with Omaha Public Schools being the largest public school district in the state educating around 50,000 students per year to extremely small districts with schools like Arcadia Public Schools housing around 125 students in a K-12 setting. School districts are separated into distinct classes based on the number of inhabitants in the school's district. The largest of these, including Omaha, is considered a Class 5 district, while schools near areas where there are less than 1,000 inhabitants are considered Class 2 schools.

An expose in the Omaha World Herald on January 4, 2020, opened the door to widespread public concern about sexual relationships taking place between teachers and students throughout the state. The report, a Sunday morning feature piece, told the stories of real Nebraska students that had been sexually abused by their teachers. It was reported that since 2014, 56 certified educators were caught having "inappropriate communication or sexual contact with students" (Dejka, Nitcher, & Robb, 2020, para. 4) (Side note: there are about 28,000 teachers in the state). Seventy-four students reported being victimized by these 56 educators, yet the news report suggested the number of victims and perpetrators was notably low due to known lack of reporting among teacher/student sexual crimes (generally it is assumed that less than 10%

of teacher/student abuse is reported nationwide). State education leaders, in responding to the newspaper's quest for information, essentially threw up their hands noting that they could only investigate what they know about and if reporting rates are low, then their response rate will be low as well.

When compiled in one place, statistics for this relatively traditional Midwest state do show troubling patterns of sexual relationships between teachers and students. Available reports shared in the news feature included methods teachers in the state had used to lure students (leaving notes in lockers, taking them to motels, etc.) and the repetitive acts of some of the perpetrators. In all, the news article presented some troubling information: sexual abuse has and does occur between teachers and students in Nebraska, there is no clear, accurate method of ensuring every victim and perpetrator is identified, and with the advent of technology, grooming practices may be easier and more covert.

Legislative Interventions in 2020

The front-page news article spotlighting the lack of information and potential difficulties in detecting, reporting, and preventing teacher sexual grooming and abuse of students sparked the attention a Nebraska legislator who sought to propose a new law to help minimize the potential for teachers to groom and abuse students in the state's schools. On February 11, 2020, roughly one month after the feature publication of the problem facing the education system in the state, Senator Steve Lathrop proposed LB1080, a bill to require all public and private schools in the state to have policies pertaining to the appropriate conduct between teachers and students, including a provision that prohibited sexual activity between teachers and current and former students (former students meaning any student who was enrolled in the school within the past year, including graduates).

The legislation met no objection during its travels through the Nebraska Unicameral. Testimony in favor of the bill included that of the mother of a high school graduate that had been groomed to have sex with a substitute teacher shortly after she graduated from high school. The student's mother reported that her daughter suffered "life-altering affects" and that recovery was a long process (Dejka, 2020, para. 16). The bill passed and was signed into law by Nebraska's Governor Pete Ricketts on August 7, 2020.

LB1080 Becomes Neb. Rev. St 79-879

The 2020 state legislation became law and required public and private K-12 schools throughout the state to ensure that policies were in place to define and limit inappropriate relationships between teachers and students. While some districts did have policies about appropriate teacher/student conduct, some did not, thus, this legislation was an attempt to provide consistency among school policies throughout the state. The law itself contained several components including: (a) a definition of grooming; (b) a requirement that schools prohibit grooming and/or sexual contact between a teacher and a student (who has attended the school within the past year); (c) examples of grooming; (d) a clear procedure to ensure every school employee verifies receipt of and understanding the policy; (e) a procedure for reporting suspected grooming or inappropriate conduct outside of the required mandatory reporting mechanisms; (f) a description of preferred methods of communication between teachers and students; and (g) notice that any violation of the school's policy could result in disciplinary action at the local and/or state level. School districts were given until June 2021 to approve and these policies.

The Age of Consent Gap

It is important to note that around the same time as the new teacher/student school policy legislation emerged, a new criminal law was passed as well. Neb. Rev. State 28-316.01 identified sexual abuse, penetration, contact or a scheme of contact between a teacher and a student aged 16 or older to be a felony offense. Up until 2020, teachers who engaged in sexual relationships with students over the age of 16 were able to argue that the student met the state's age of consent, and the sexual relationship was, therefore, not a crime. The law, in essence closed a gap that enabled school employees to victimize students simply because they were over the age of 16. Paired with the newly required school policy legislation, schools were empowered to better alert, navigate, and promote processes and procedures attempting to limit inappropriate teacher/student relationships.

Additionally, some teachers who were charged with sexual abuse of a student never lost their teaching credentials due to a strange lapse of time. That is, while an accused teacher may be awaiting trial, his or her teaching certificate could potentially lapse meaning the state could not take action against the teacher for criminal infractions. In a way, this allowed an accused teacher

to have no disciplinary record, particularly if the relationship took place with a student over the age of 16 that did not violate state criminal law at the time.

Putting Law Into Action

The year 2020 saw several changes in regard to legislative action taken to attempt to minimize inappropriate sexual teacher/student relationships within the state of Nebraska. A pair of new laws, one criminalizing sexual relationships and grooming between teachers and older students (over 16 years of age) previously not covered by prior child abuse laws and one mandating every school in the state to adopt policies prohibiting student/teacher relationships, defining grooming, and laying out the potential ramifications for school employees who violate the policy, were welcome changes in the attempt to prevent and punish grooming and sexually abusive behaviors by teachers. The results remain to be seen as there has been only one newsworthy case of a school employee's arrest under the new statutes – that of a high school football coach arrested in March 2021 and charged with third degree sexual abuse by a school employee (“Bond set for former football coach,” 2021). The coach allegedly was communicating inappropriately with a student when the student's parents found the communications and reported the coach to the local authorities. The county's prosecutor utilized the new law that criminalized grooming behavior (or a scheme of conduct with the intent to seek sexual contact) and that protected students that were formerly unprotected due to their age being over the state's age of consent of 16. One interesting facet of this case is that no sexual contact took place between the coach and student – the case apparently rests solely on the compilation of evidence of communication of potential grooming behaviors. As of this paper's draft, no convictions have been recorded.

Questions for Future Research

The 2020 legislative attempts to prevent sexual grooming, contact, and abuse by teachers of students are certainly steps in the right direction. If the state follows national trends, sexual abuse by teachers is widely underreported and schools need to take proactive steps to not only implement policies defining inappropriate relationships, but to secure measures to protect students who report problematic school employee behaviors. Additionally, the new criminal law closing the gap an ensuring that any student, regardless of age, is protected against sexual abuse by a teacher can help further promote professional boundaries.

While these are attempts at solving a problem, there still remain a few areas that are ripe for further research. First, the school policy mandate requires schools to identify proper channels for teachers and students to communicate with each other. This is common in school policy, but sometime unenforced or unmonitored. Teachers often rely on the most convenient method to reach a group of teens or to respond to a student who reaches out to them and may not always consider the “school-approved” methods of communication. What is the future of this provision? Is it enforceable and if so, how and when? What happens when technology advances and schools don’t keep up with the latest or most secure communication apps or measures? And is there a way that grooming can take place within “school approved” communication methods and yet be disguised in such a way as to be indiscernible as grooming behavior? Last, like the coach that was arrested under these new laws in 2021, is sexual communication enough to secure a conviction under the statute or to discipline a teacher under new school policy?

Second, as noted in the introductory case that is currently on a petition for a writ of certiorari with the U.S. Supreme Court, what is the responsibility of a school official when he or she suspects, learns of, or investigates inappropriate teacher/student relationships? Is there a measure of protection for school officials who feel like they do not have enough evidence or documented occurrences to act on a report? Should there be?

Last, how will this change what we know about the rate of sexual grooming and relationships between teachers and students in the state? Will it prevent these relationships? Will more instances be reported due to the policy implementation that threatens to discipline teachers who fail to report suspected grooming behaviors? Will more teachers be implicated in sexual relationships now that those relationships are criminal until the student is at least one year out from attending the school? And are there any potential challenges or loopholes in having schools adopt inappropriate relationship policies?

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