

PREVENTING SEXUAL HARASSMENT

GOAL

To learn about the issues of sexual discrimination and sexual harassment, in order to foster a positive staff work atmosphere and student learning environment, to avoid potential complaints and lawsuits.

WHAT IS SEXUAL HARASSMENT?

- **According to the Equal Employment Opportunity Commission (EEOC): Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature; it is unlawful.**
- **It is intimidation, bullying or coercion, of a sexual nature, or the unwelcome or inappropriate promise of rewards in exchange for sexual favors.**
- **The harassment does not have to be of a sexual nature.**
 - **It can include offensive remarks about a person's sex.**
 - **For example, it is illegal to harass a woman by making offensive comments about women in general.**
 - **It can take the form of slurs, graffiti, offensive or derogatory comments, or other verbal or physical conduct.**

WHAT IS SEXUAL HARASSMENT?

- **Although the law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, sexual harassment is illegal if it is so frequent or severe that it creates a hostile or offensive work environment or if it results in an adverse employment decision (such as the victim being fired or demoted).**
- **Sexual harassment outside of the workplace may also be illegal if there is a link with the workplace. For example, if a Supervisor harasses an employee while driving the employee to a meeting.**
- **Sexual harassment is a TYPE of sex discrimination which is prohibited under Title VII of the Civil Rights Act of 1964.**

WHAT IS SEXUAL HARASSMENT?

- **Education Code 212.5It involves:**
 - **Unwelcome sexual advances.**
 - **Requests for sexual favors.**
 - **Other verbal or physical conduct of a sexual nature.**
 - **Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.**
- **It is unlawful and prohibited between students and between employees and students.**
- **It is unwelcome, unwanted sexual behavior that makes an employee or student, feel uncomfortable.**
- **It is behavior directed at an employee or student because of his or her sex.**
- **The victim and harasser can be any gender.**
- **The harasser does not have to be of the opposite sex.**
- **It can be: male to female; female to male; female to female; male to male; student to student; staff to student; student to staff.**

VICTIM VS. HARASSER

- **Both victim and the harasser can be either a woman, man or student, and the victim and harasser can be the same sex.**
- **The harasser can be the victim's Supervisor, a Supervisor in another area, a co-worker, a student, or someone who is not an employee of the employer, such as a client or customer.**

EVOLUTION OF SEXUAL HARASSMENT LAW IN EDUCATION

- In the US, the Civil Rights Act of 1964 prohibits employment discrimination based on race, sex, color, national origin, or religion. Initially, it only intended to combat sexual harassment of women, {42 U.S.C. § 2000e-2; it led to the prohibition of sex discrimination and now covers both females and males.
- Title IX of the Education Amendments of 1972 states: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."
- In Franklin v. Gwinnett County Public Schools (1992), the U.S. Supreme Court held that private citizens could collect damage awards when teachers sexually harassed their students.
- In Bethel School District No. 403 v. Fraser (1986) the courts ruled that schools have the power to discipline students if they use "obscene, profane language or gestures" which could be viewed as substantially interfering with the educational process, and inconsistent with the "fundamental values of public school education."

EVOLUTION OF SEXUAL HARASSMENT LAW IN EDUCATION

- Under regulations issued in 1997 by the U.S. Department of Education, which administers Title IX, school districts should be held responsible for harassment by educators, if the harasser "was aided in carrying out the sexual harassment of students by his or her position of authority with the institution."
- In Davis v. Monroe County Board of Education and Murrell v. School District No. 1, (1999), schools were assigned liability for peer-to-peer sexual harassment, if the plaintiff sufficiently demonstrated that the administration's response shows "deliberate indifference" to "actual knowledge" of discrimination.

EVOLUTION OF SEXUAL HARASSMENT LAW IN EDUCATION

- **In 1980, the Equal Employment Opportunity Commission (EEOC) produced a set of guidelines for defining and enforcing Title VII (in 1984 it was expanded to include educational institutions). The EEOC defines sexual harassment as: Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:**
 - **1. Submission to such conduct was made either explicitly or implicitly a term or condition of an individual's employment.**
 - **2. Submission to or rejection of such conduct by an individual was used as the basis for employment decisions affecting such individual.**
 - **3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.**
- **#s 1 and 2: “quid pro quo “ (Latin for "this for that" or "something for something")...essentially "sexual bribery", or promising of benefits, and "sexual coercion."**
- **# 3: “hostile work environment” is the most common form. This form is less clear cut and is more subjective.**

SEXUAL DISCRIMINATION AND/OR HARASSMENT

Sex discrimination and/or harassment, can take two forms:

1) "Hostile Work Environment Harassment"

Occurs when employee is subjected to comments of a sexual nature, unwelcome physical contact, or offensive sexual materials, as a regular part of the work environment. For the most part, a single isolated incident will not be enough to prove hostile environment harassment unless it involves extremely outrageous and egregious conduct. The courts will try to decide whether the conduct is both "serious" and "frequent." Supervisors, managers, co-workers and customers can be responsible for creating a hostile environment.

2) "Quid Pro Quo Sexual Harassment"

This means "this for that" In the workplace, it occurs when a job benefit is directly tied to an employee submitting to unwelcome sexual advances. For example, a Supervisor promises an employee a raise if he/she will date him/her, or tells an employee he/she will be fired if he/she doesn't sleep with him/her. It also occurs when an employee makes an evaluative decision, provides/withholds professional opportunities based on employee's submission to verbal/nonverbal or physical conduct of a sexual nature. It is equally unlawful whether the victim resists/suffers the threatened harm or submits to avoid threatened harm.

SEXUAL DISCRIMINATION AND/OR HARASSMENT

The line between “quid pro quo “ and "hostile environment" harassment is not always clear and the two forms of harassment often occur together. For example, an employee's job condition is affected when a sexually hostile work environment results in a constructive discharge. At the same time, a Supervisor who makes sexual advances toward a subordinate employee may communicate an implicit threat to retaliate against her if she does not comply.

"Hostile environment" harassment may acquire characteristics of "quid pro quo" harassment if the offending Supervisor abuses his authority over employment decisions to force the victim to endure or participate in the sexual conduct. Sexual harassment may culminate in a retaliatory discharge if a victim tells the harasser or her employer she will no longer submit to the harassment, and is then fired in retaliation for this protest. Under these circumstances it would be appropriate to conclude that both harassment and retaliation are in violation of section 704(a) of Title VII.

HARASSMENT SITUATIONS

- **Sexual harassments can occur in a variety of circumstances. Often, but not always, the harasser is in a position of power or authority over the victim (due to differences in age, social, political, educational or employment relationships) ,or expecting to receive such power or authority in the form of a promotion.**
- **Forms of harassment relationships include:**
 - **The harasser can be a co-worker, a teacher, or a student.**
 - **The victim does not have to be the person directly harassed but can be a witness of such behavior who finds the behavior offensive and is affected by it.**
- **The place of harassment occurrence may vary from school, workplace, etc.**
- **There may be other witnesses.**
- **The harasser may be completely unaware that his or her behavior is offensive or constitutes sexual harassment or may be completely unaware that his or her actions could be unlawful.**

HARASSMENT SITUATIONS

- The harassment may be a one time occurrence, but more often it has a type of repetitiveness.
- Effects of sexual harassment can vary depending on the individual and the severity and duration of the harassment.
- Often, sexual harassment incidents fall into the category of the "merely annoying."
- In other situations harassment may lead to temporary or prolonged stress and/or depression depending on the individual's psychological abilities to cope, the type of harassment, and the social support or lack of it.
- **Misunderstanding:** It can result from a situation where a person thinks he or she is being clear, but is not understood the way it was intended. The misunderstanding can either be reasonable or unreasonable.
 - An example of unreasonable is when a man holds a certain stereotypical view of a woman such that he did not understand the woman's explicit message to stop.

SEXUAL HARASSMENT CAN TAKE MANY FORMS

- **It may be physical**
 - **Purposely bumping or rubbing against a person.**
 - **Standing in someone's way or standing too close.**
 - **Patting, hugging or kissing.**
 - **Touching, grabbing or pinching.**
- **It may be verbal**
 - **Making comments about a person's body, body parts or rating people's bodies.**
 - **Sexual jokes or "dirty" stories; spreading sexual rumors.**
 - **Pressure to go out on a date.**
 - **Whistles or rude, sexual noises.**
 - **Name-calling.**
 - **Questions about a person's sexual practices.**
 - **Use of patronizing terms or remarks.**

SEXUAL HARASSMENT CAN TAKE MANY FORMS

- **It may be visual**
 - **Displaying sexual pictures or posters of males or females.**
 - **Notes, letters, or graffiti that are sexually explicit.**
 - **Leering/staring at a person's body in a sexual way.**
 - **Inappropriate gestures—winking, licking lips, or suggestive body movements that are sexual in nature.**

VARIED BEHAVIORS

- **One of the difficulties in understanding sexual harassment is that it involves a range of behavior, and in most cases (although not in all cases) is difficult for the victims to describe first to themselves, and then to others, about exactly what they are experiencing.**
- **The behaviors can be related to the difficulty of classifying the situation, or could be related to the stress and humiliation experienced.**
- **Behavior and motives vary between individual cases.**

COMMON EFFECTS ON THE VICTIM

Sexual harassment and retaliation create psychological, academic, professional, financial, and social effects:

- Psychological stress and health impairment.
- Decreased work or school performance as a result of stress conditions; increased absenteeism in fear of harassment repetition.
- Firing and refusal for a job opportunity can lead to loss of job or career, loss of income.
- Having to drop courses, change academic plans, or leave school (loss of tuition) in fear of harassment repetition and/or as a result of stress.
- Being objectified and humiliated by scrutiny and gossip.
- Having one's personal life offered up for public scrutiny—the victim becomes the "accused" and his or her dress, lifestyle, and private life will often come under attack.
- Becoming publicly sexualized (i.e. groups of people "evaluate" the victim to establish if he or she is "worth" the sexual attention or the risk to the harasser's career).
- Defamation of character and reputation.
- Loss of trust in environments similar to where the harassment occurred.
- Loss of trust in the types of people that occupy similar positions as the harasser or his or her colleagues, (especially in cases that they are not supportive), difficulties or stress on peer relationships, or relationships with colleagues.
- Effects on relationships: can put extreme stress upon relationships with, sometimes resulting in, divorce.
- Weakening of support network, or being ostracized from professional or academic circles (friends, colleagues, or family may distance themselves from the victim, or shun him or her altogether).
- Having to relocate to another city, another job, or another school.
- Loss of references and/or recommendations.

IN OTHER WORDS...

A HOSTILE WORK OR CLASSROOM ENVIRONMENT CAN BE CREATED BY ANYONE WHO SUBJECTS ANOTHER TO HARASSMENT OF A SEXUAL NATURE OR INDIRECTLY CONVEYS SEXUALLY DEMEANING MESSAGES

RECOGNIZING A HOSTILE ENVIRONMENT

- **Does the hostile behavior in question occur on a frequent basis, so it can be considered pervasive?**
 - **One or two incidents of name-calling (“dumb blonde”) or inappropriate comments are usually not enough to justify a legal claim for hostile environment. You don’t have to sterilize your department or classroom of humor or camaraderie. But one thing usually leads to another!**
- **Is the conduct severe in nature?**
 - **It only takes one severe incident, and it doesn’t have to be physical. A female propositioned two or three times in a short meeting by a colleague, is enough to push the behavior into the severe category.**

RECOGNIZING A HOSTILE ENVIRONMENT

(continued)

- **Is the offensive behavior physically threatening or humiliating to the employee?**
 - **A woman felt stalked by a male colleague, who followed her home and later broke into her house.**
 - **Grabbing, pushing, or cornering someone can be construed as a physical threat, as well as making threatening statements.**
 - **Humiliation can also come in the form of degrading someone's abilities with comments like "You only got this far by sleeping around."**
- **Does the conduct unreasonably interfere with the employee's ability to perform his or her job duties, or otherwise affect a term, condition, or privilege of employment?**
 - **An employee was never subjected to anything sexual, instead, she was given more difficult assignments than the men, more assignments, tricks were played on her, and colleagues derided her capabilities.**

STEPS TO TAKE IF YOU ARE BEING SEXUALLY HARASSED

- **Tell the harasser that his/her behavior offends you and you want it stopped.**
- **Inform your Supervisor.**
- **File a complaint with your Supervisor, who will involve Personnel in investigating your complaint. Personnel will investigate, in a discreet/confidential manner, the reported incident of sexual harassment and/or retaliation.**
- **Keep a record of what happened, where it happened, and who witnessed it.**
- **Avoid being alone with the harasser, if possible.**

HOW CAN YOU FIGHT SEXUAL HARASSMENT?

- **Don't harass or encourage others who sexually harass other employees or students. Discourage the harasser and never join the harasser by taking part in any offensive behavior.**
- **Give everyone respect. Be sensitive to how others perceive your actions or words.**
- **If a colleague or student confides in you, listen with understanding and support. Encourage that person to take action.**
- **Set a good example. Ask yourself the following questions:**
 - **Am I making the person feel uncomfortable?**
 - **Would I do the same things in front of other persons?**
 - **Would I like it if someone did the same thing to my spouse, companion, sister, brother, cousin, best friend or colleague?**
 - **How would I feel and how would my family feel if my actions were reported in a newspaper or on the local news?**

REMEMBER

It is against District Policy and State and Federal laws for anyone to retaliate against you because you filed a sexual harassment complaint, oppose sexual harassment, testify, assist or participate in any manner in an investigation, proceeding, or hearing, conducted by the district, the Department of Fair Employment and Housing, the Fair Employment and Housing Commission or the Equal Employment Opportunity Commission (EEOC).

SEXUAL HARASSMENT VS. FLIRTING

SEXUAL HARASSMENT

- Person feels uncomfortable and powerless.
- Person feels angry and fearful.
- Person feels humiliated.
- It is unwanted.
- It creates negative self-esteem.
- It can get out of control.
- It is illegal.

FLIRTING

- Both persons have equal power and agree to flirt with each other.
- Person feels happy.
- Person feels flattered and attractive.
- It is wanted.
- It provides positive self-esteem.
- Persons are in control.
- It is legal, but may be inappropriate at times.

NOTE

- **In certain instances, even flirting may be considered inappropriate. What one person feels is flirting may be considered sexual harassment by another person. Sexual harassment is not a joke. It is not funny. It is hurtful and it is illegal.**

PREVENTING SEXUAL HARASSMENT

- **Know ESGVROP/TC's written policy.**
 - **What does the district say about sexual harassment?**
- **Set an example.**
 - **Exhibit a completely gender-neutral attitude.**
- **Create the right atmosphere.**
 - **Encourage mutual respect among colleagues or students.**
 - **Don't allow offensive visual materials and jokes.**
 - **Don't tolerate an "us vs. them" attitude between genders.**

ACTIONS WHICH ARE COMMON TROUBLE AREAS

- 1. Repeated one- to-one contact with an individual student.**
 - a. A teacher assigns a single student or even two students, to come in early to help him or her set up for the day's classes.**
 - b. A better solution is to assign this privilege to two students, one male and one female, for 5-weeks or a quarter; two students should be selected in subsequent 5-week periods or quarters.**

- 2. Giving gifts to students.**
 - a. If you wish to give gifts to your students, discuss such gifts with your Supervisor.**
 - b. Never give students an expensive gift or a personal gift, such as cologne.**

- 3. Writing cards, notes or letters to students. Be particularly careful what you write in yearbooks.**

- 4. Driving students in cars.**

Students who are in cars with educators often say they were molested. Avoid this situation.

- 5. Social activities with students.**
 - a. Taking a student or two to the movies.**
 - b. Inviting students to your home.**
 - c. Visiting students while they baby-sit.**

ACTIONS WHICH ARE GROUNDS FOR DISCIPLINE AND DIFFICULT TO EXPLAIN

- 1. Any request for affection: "Give me a hug," "Give me a kiss," etc.**
- 2. Any touching, except on the shoulders, back and arms. Even this can be dangerous.**
- 3. Requests for sex or for dates, even if the student is over 21.**
- 4. Any lascivious or sexual remarks of any sort, even those that are jokes.**
- 5. Remarks about body parts: "You have great legs," "I wish my wife was built like you," "I'm better than your boyfriend."**
- 6. Touching female and male students in a different fashion. For example, hugging girls but not boys. Even if not sexual in nature, it is sexist behavior and may be grounds for discipline.**
- 7. Sexual contact with any student, this includes students over the age of 21.**
- 8. Sexual contact with a former student. Wait at least a year after graduation and be sure the student is 18 years of age. Even so, such contact with former students is dangerous to job security.**
- 9. Giving alcohol to students or former students, under the age of 21.**
- 10. Lending identification to underage students so they can obtain alcohol.**

DISCIPLINARY CONSEQUENCES FOR EMPLOYEES WHO COMMIT SEXUAL HARASSMENT

- **Disciplinary consequences depend on the seriousness of the sexual conduct and frequency of such behavior. Such disciplinary action shall be in accordance with applicable policies and laws. For ESGVROP/TC employees, these may include, but are not limited to, the following:**
 - **Transfer/Change in work location**
 - **Change in work hours**
 - **Reduction of work hours**
 - **Completion of Harassment Activity Assignments**
 - **Performance Appraisals**
 - **Involvement of Law Enforcement**
 - **Contact CTC for possible credential revocation**
 - **Termination/Dismissal**
- **Students who act in violation of this policy and/or the law may be subject to discipline, including suspension or expulsion. The disciplinary action shall be in accordance with Board Policy and State law.**

FINAL NOTE

- **Memorize ESGVROP/TC's Sexual Harassment Policy and definition of Sexual Harassment, including what verbal, nonverbal, and physical behaviors the district considers inappropriate or unacceptable.**
- **Review the Sexual Harassment policies, procedures, and behavior expectations with your students, and at other times informally, when appropriate. Include examples of inappropriate or unacceptable verbal, nonverbal, and physical behaviors and their consequences.**