

Lesson 7

Sexual Harassment: Preventive Training in Schools

High School Level

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Note: These materials are intended to provide a general guide for conducting sexual harassment preventive training in schools, and not to provide legal advice. Anyone with a specific legal harassment concerns should consult with counsel, the N.H. Commission for Human Rights or the N.H. Department of Education.~

BACKGROUND

The following materials present an overview of sexual harassment preventive training information for use in schools. It is intended primarily for use by lawyers as part of the New Hampshire Bar Association's "A Lawyer in Every School" project. However, it is also adaptable for schools to use in training faculty, staff and students. Prior to conducting any training session, each lawyer or instructor should also obtain a copy of the school's and/or district's policy on sexual harassment, and should incorporate into the training session instruction about such policy's philosophy and grievance procedure.

SUGGESTED INTERACTIVE TRAINING

1. Following the sequence of information in these materials, instructors can discuss the incidence of harassment in schools and the workplace, what harassment is, how to spot it, and how to deal with it.
2. Discuss and seek classroom discussion about the differences between the EEOC definition and AAUP definitions of sexual harassment. Discuss why "welcomeness" is not in the AAUP definition (e.g. power of teacher over student may be welcome by minor student as flattering, but is still harassment, etc.). See pages 43 and 44.
3. Evoke discussion about the differences between flirting and harassment. See page 45.
4. Ask students/faculty to silently take the quiz. After a few minutes, go over the questions and discuss answers.
5. Go over case studies with the class as a whole, or break class into groups and have small groups discuss cases and report results to class as a whole.

I. INTRODUCTION

Statistics in a number of surveys suggest that anywhere from 42 to 90% of women workers are victimized by sexual harassment at some point in their lives. Since the fall of 1991, sexual harassment charges have risen over 40%. According to General Counsel for the Equal Employment Opportunity Commission (EEOC), this increase may be attributed to a combination of the Clarence Thomas confirmation hearings and the signing of the 1991 Civil Rights Act, which now offers a jury trial and new damages to harassment victims.

In schools, the statistics are equally alarming. Results of a survey published in 1993 and commissioned by the American Association of University Women ("AAUW") Educational Foundation document that sexual harassment has reached epidemic proportions in American schools. The AAUW study surveyed more than 1,600 girls and boys in public schools in grades 8 through 11. It revealed that 4 out of 5 students have experienced some form of sexual harassment in school, and 1 in 4 report being targeted "often." Although boys, as well as girls, are both targets of harassment, girls report experiencing harassment at a much higher rate than boys.

Specific to New Hampshire, there was a 50% increase in the number of sexual harassment complaints brought between 1992 and 1993. One need only read New Hampshire's newspapers to see the increase in the number of school districts and school employees being sued on account of sexual harassment. Sexual harassment is an issue about which all educators must become more aware and better trained to know how to spot it and stop it.

II. DEFINITIONS

Sexual harassment is a form of sex discrimination, and is prohibited under both federal and state law. The EEOC has formulated a formal legal definition of sexual harassment in the workplace. Likewise, the American Association of University Professors (AAUP) offers a model definition of sexual harassment in the school setting. There are important distinctions between both definitions. See if you can find those differences:

**Equal Employment Opportunity Commission (EEOC)
Definition of Sexual Harassment**

“Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

1. Submission to such conduct is 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 is used as the basis for employment decisions affecting such individual; or
3. such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.”

**American Association of University Professors (AAUP)
Definition of Sexual Harassment**

“Sexual advances, requests for sexual favors, and other conduct of a sexual nature constitute sexual harassment when:

1. Any such proposals are made under circumstances implying that one’s response might affect such academic or personnel decisions as are subject to the influence of the person making such proposals; or
2. Such conduct is repeated or is so offensive that it substantially contributes to an unprofessional academic or work environment or interferes with required tasks, career opportunities, or learning; or
3. Such conduct is abusive of others and creates or implies a discriminatory hostility toward their personal or professional interests because of their sex.”

Generally, sexual harassment falls into two categories: (1) quid pro quo, which occurs when an attempt is made to coerce an individual into sexual cooperation by promises of rewards or threats of punishment; and (2) the creation of a hostile environment, which is one pervaded by offensive, degrading or intimidating behavior that interferes with an individual’s work performance, or learning environment.

In a hostile environment situation, the more severe the alleged conduct, the less pervasive it need be. In addition, numerous incidents which in isolation would not constitute harassment, may support a claim when viewed collectively.

Employers and school districts may be strictly (i.e. automatically) liable to employees or students who suffer harm as a result of quid pro quo harassment if the harasser had actual authority to alter the victim’s work or learning conditions even if the employer or school district didn’t have actual knowledge of the harassment. With respect to hostile environment claims, an employer or school district would be liable only if it knew or should have known of the harassment and failed to take reasonable steps to remedy the problem.

III. THE LAW

Federal

Title VII of the Civil Rights Act of 1964	Makes it illegal to discriminate against an individual based on their race, color, religion, sex or national origin.
Title IX of the Education Amendments of 1972	Prohibits sex discrimination in schools and colleges receiving federal funds.

State

N.H. RSA 354-A	Makes it illegal to discriminate against an individual based on their race, color, religion, sex, marital status or national origin.
N.H. RSA 186.11	Mandates the Commissioner of Education, on behalf of the State Board of Education, to insure protection from discrimination in public schools on the basis of sex (among other protected classes).
N.H. Admin Rule Ed. 203.01(a)	Requires each district-level school board adopt a policy prohibiting discrimination on the basis of sex (among other protected classes).
N.H. Admin Rule Ed. 203.01(b)	Requires that each district-level school board adopt a policy which guarantees an environment free of sexual harassment.
N.H. Common Law (Marquay v. Eno) (7-11-95)	Imposes a duty upon schools and some school employees to protect students from sexual abuse at school. Sets forth that there may be liability for negligent supervision of a student, for negligent hiring and retention of abusive employee, or for acts of abuser.

IV. FOUR TYPES OF SEXUAL HARASSMENT IN SCHOOLS¹

1. Adult to adult—workplace discrimination illegal under Title VII and N.H. RSA 354-A
2. Adult to student—illegal under Title IX and N.H. RSA 186.11, possible criminal offense
3. Student to student—illegal under Title IX and N.H. 186.11
4. Student to adult—workplace discrimination illegal under Title VII and N.H. RSA 354-A

V. EXAMPLES OF SEXUAL HARASSMENT²

verbal	sexual innuendo suggestive comments insults, slurs humor and jokes about sex or gender-specific traits sexual propositions threats negative stereotyping
non-verbal	suggestive or insulting sounds leering whistling obscene gestures displaying written or graphic material aimed at denigrating individuals because of their protected status

- ~physical touching
- pinching
- brushing the body
- coerced sexual intercourse
- assault

VI. FLIRTING VS. HARASSMENT

Teachers and students should come to understand the differences between sexual harassment and flirting.

Harassment

- Feels bad
- One-sided
- Frustrating
- Pressured
- Feels unattractive
- Degrading
- Powerless
- Power based
- Unwanted/Unacceptable
- Illegal
- Invading
- Demeaning
- Sad/Angry
- Negative self-esteem

Flirting

- Feels good
- Mutual
- Fun
- Unpressured
- Feels attractive
- Compliment
- In control
- Equality
- Wanted/Acceptable
- Legal
- Open/Friendly
- Flattering
- Happy
- Positive self-esteem

VII. HARASSMENT GOES ALL WAYS

The most common harassment is from boys to girls. However, boys can be harassed by girls, boys can be harassed by boys, and girls can be harassed by girls. Students can be harassed by school district employees, volunteers or contracted workers, and these persons can be harassed by students. It will take time to move the classroom and the school environment to one in which it is “normal” for everyone to be respected, but it can be done. Until that time, the longest journey begins with a single step. If we talk most about boys harassing girls, it is because three out of four times, that is the way harassment occurs. Read into this that harassment can occur among others when someone is being exploitative and disrespectful. Begin to draw a line by warning someone not to cross the line. Then report. You will help move us closer to a time when “normal” is respectful.

VIII. YOUR RESPONSIBILITY

Whether you are a teacher, support staff, administrator or a student, your responsibility is to know what the laws are; to know what your school and district sexual harassment policy says; to know what the procedures are for drawing lines and reporting harassment; and to stop it when you see it. Most harassment occurs in the hallway and in the classroom. Other frequent places for harassment include the bathrooms, cafeteria, gym, parking lot, or bus. As we begin to “see” harassment, we must move from it’s okay to it’s not okay; it’s not fun, it’s illegal. Because some things have been tolerated in the past does not mean we should condone them now or in the future. We are all responsible to ensure that our schools provide a safe and supportive learning environment.

**IX. SEXUAL HARASSMENT IN A SCHOOL SETTING:
TEST YOUR KNOWLEDGE**

1. Ignoring harassing behavior is one of the best ways to discourage harassment.
True_____False_____
2. Women/Girls can be guilty of sexual harassment.
True_____False_____
3. If a teacher observes sexually offensive behavior in the hallway, but no one complains, the teacher should do nothing.
True_____False_____
4. A sexual relationship between a teacher and a student is automatically illegal sexual harassment.
True_____False_____
5. A sexual relationship between a supervisor and a subordinate is automatically illegal sexual harassment.
True_____False_____
6. To be an illegal violation, sexual harassment must result in a tangible psychological injury to the victim.
True_____False_____
7. Sexual harassment can occur between the same sex, i.e. woman to woman, or man to man.
True_____False_____
8. An employer who is unaware of sexual harassment in the workplace can be liable for sexual harassment.
True_____False_____
9. Dating between students is a personal matter, and cannot be covered by a school district's sexual harassment protection.
True_____False_____

Answer Key: 1.F 2.T 3.F 4.T (in most instances) 5.F 6.F 7.T 8.T 9.F

X. CASE STUDIES

Case Study #1

Sara is a sophomore in high school. Tom was interested in Sara and asked her out a few times. Sara is rather shy, and said 'no' to Tom. After her refusals, Tom has begun to make lewd comments about her body parts, in front of other students. He has exposed himself to her in study hall and after school on school grounds. He has drawn sexually explicit pictures of Sara on notebooks, the chalkboard and on school property. Sara hasn't complained directly to anyone at school, but all the students are talking and gossiping about Tom's treatment of her.

QUESTIONS:

1. What is the school's responsibility to act to stop this harassment?
2. What if the school does nothing?
3. What should Sara do?
4. What discipline, if any, should Tom receive?
5. How can the school better help to prevent this kind of harassment?

□Case Study #2

Ed is an 18-year-old senior in high school. He is on the school's ski team. His coach is Miss Jones, an attractive and young teacher. Ed senses that Miss Jones is paying particular attention to him. She has made several comments about his physique such as the tone and shape of his leg muscles and buttocks. Generally, whenever they ride to practice or a competition, Miss Jones sits next to Ed and the side of her body touches his. As students warm up before the gate start line, Miss Jones gives them leg rubs (as is customarily done by ski coaches). Ed thinks that on a couple of occasions, Miss Jones has rubbed up too high and has brushed his private area. Ed is one of the school's best skiers and Miss Jones typically gives him the best spot in the race line-up.

QUESTIONS:

1. Is there anything wrong with what Miss Jones is doing?
2. What do you expect Ed will do? What should he do?
3. What if Ed has a crush on Miss Jones and asks her out? If she is interested too, can she say yes?

□Case Study #3

An employee was told by his supervisor that he "had a good body." She whispered to him: "You look good in tight jeans. It shows off your butt." During lunch, the supervisor took his hands and said, "I like my men with good looks and brains." When the employee rejected further sexual advances by the supervisor, he was fired.

QUESTIONS:

1. Is this a case of sexual harassment? What kind of harassment - quid pro quo or hostile work environment?
2. If management did not know about the supervisor's behavior, is the employer liable?
3. If the employee had not been fired, do your answers change?

Cite: *Chamberlin v. 101 Realty*, 915 F.2d 777(1st Cir.(N.H.) 1990).~

Case Study #4

A female teacher and her male department head were on a class trip. While on the trip, the department head insisted that the female teacher come to his hotel room; he provided her with wine; turned the television to a sexually explicit movie; attempted to restrain the female teacher from leaving; and slammed the door behind her when she did leave.

QUESTIONS:

1. Did the female teacher's actions in voluntarily going to the hotel room indicate the department head's advances were welcome?
2. Was this a case of sexual harassment, or merely an attempt to start a relationship?
3. If the female employee came back from the trip and mentioned this situation to you, what would you do?
4. If you found out that the teacher and department head had been dating for two years, and broke up on this business trip, would your answers be any different?

Cite: *Boyd v. James S. Hayes Living Health Care Agency, Inc.*, 671 F.Supp.1155(W.D.Tenn. 1987).

□XI. SELF PROTECTION FOR EDUCATORS

If you as a teacher fear that increased attention to sexual harassment makes you somehow suspect, here are some simple precautionary steps you can follow:

1. Avoid reference to female students' physical appearance. Male teachers do not often compliment male students on their bodies or clothing, and there is no particular reason to do so with females.
2. Avoid comments about sex. Comments about students' race and religion are not considered "teaching techniques" and those about sex are no different. It is possible to make a point, provide an example, or add humor without offending or embarrassing students.
3. Avoid physical contact with students. The school is a place where words are the favored medium of communication. If you feel that it is necessary to console or praise a student, do it with words, not with hugs or pats.
4. Give thought to contacts outside of class. Student-teacher conferences should be held in appropriate settings. Avoid situations that could be misinterpreted.
5. Be aware of and make educated judgments about the intentions and emotional stability of students. If a situation seems compromising or potentially threatening, open an office door or ask a colleague to sit in on a conference.
6. Be conscious that well intended actions may be misinterpreted and that personal limits on appropriate behavior vary considerably. In our culture, where a female's "No" is often interpreted by males to mean "TRY HARDER," miscommunication and confusion may easily contaminate the male/female interaction.

¹ Developed by Minuteman Tech, Lexington, MA

² "Fair Employment Practices," National Affairs, Inc. citing a Northeastern Illinois University Policy Statement on Sexual Harassment No. 445, 443:643, at p. 17.