

MISCONDUCT AND SEXUAL HARASSMENT

A Guide for Randolph County School System's
Employees



OVERVIEW

- What is sexual harassment?
- What are the potential consequences of sexual harassment?
- What type of conduct may create a hostile work environment for employees or a hostile learning environment for students?
- What requirements do board policies set for employee conduct and employee reporting?
- What are common mistakes (including of bystanders) and how can they be avoided?



COMMON MISCONCEPTION:

- Sexual Harassment is something that only happens between a supervisor and an employee
 - **FALSE.** Sexual harassment can happen between any two employees, between an employee and a student, and between a student and another student.



STAY IN CENTER COURT

- How do you ensure your behavior is appropriate?
 - STAY IN CENTER COURT
 - Learn what behaviors are clearly out-of-bounds, and which ones could put you in foul trouble.
 - By staying in Center Court, you can be confident that you have no risk of stepping out of bounds.



DEFINING SEXUAL HARASSMENT

- Title VII prohibits *quid pro quo* harassment and creation of a hostile work environment.
 - *Quid pro quo* means “this for that.”
 - Hostile work environment means unwelcome conduct that is based on gender and is sufficiently pervasive or severe to alter employment and create a hostile environment.
- Title IX prohibits the same type of conduct between students or between an employee and student.



DEFINING OUT-OF-BOUNDS BEHAVIOR

Board Policy 1710/4021/7230 - Prohibition Against Discrimination, Harassment and Bullying

- Prohibits sexual harassment
- Prohibits gender-based harassment
- Prohibits the creation of a “hostile environment”
- Explains that “verbal, nonverbal or physical aggression, intimidation or hostility based on sex” may create a sexually hostile environment.



DEFINING OUT-OF-BOUNDS BEHAVIOR (CONT'D)

- Board Policy 1710/4021/7230 (Prohibition Against Discrimination, Harassment and Bullying) applies to:
 - Any school building or on any school premises before, during, or after school hours;
 - On any bus or other vehicle as part of any school activity;
 - At any bus stop;
 - During any school-sponsored activity or extracurricular activity;
 - At any time or place when the individual is subject to the authority of school personnel; and
 - At any time or place when the behavior has a direct and immediate effect on maintaining order and discipline in the schools



CONSEQUENCES OF SEXUAL HARASSMENT

- Potential Employment Consequences:
 - Warning
 - Reprimand
 - Suspension
 - Dismissal

- Potential Career Consequences:
 - Revocation or suspension of professional license (16 N.C. Admin. Code 612)



CONSEQUENCES OF SEXUAL HARASSMENT (CONT.)

- **Criminal Sanctions**
 - It is a **FELONY** for an employee to take indecent liberties with a student or have a sexual relationship with a student.
 - It may be a **FELONY** for you to not disclose information you have of any sort of contact between an employee and a minor
 - **CONSENT IS NO DEFENSE**
 - **AIDING AND ABETTING** in the sexual assault of a minor is a serious crime in North Carolina
 - **INTERFERING WITH A CRIMINAL INVESTIGATION** is also a charge that a District Attorney may pursue if warranted



IDENTIFYING SEXUAL HARASSMENT



COMMON MISCONCEPTION:

- Sexual Harassment is an intentional act against another person
 - FALSE. Intent is not an element of sexual harassment. So while sexual harassment may be intentional, the harasser may be engaging in behavior that he or she doesn't intend to be harassing.



TRUE OR FALSE:

- A claim of sexual harassment does not have to be sexual in nature
 - **TRUE.** The conduct need only be different treatment based on gender
 - Example: continued comments about women not being able to do the job; making job harder to try to get woman/man to quit; severe and repeated teasing because a woman's behavior is consistent with male stereotypes, etc.



TRUE OR FALSE:

- It is possible for the harasser and the victim to be the same sex (both men, or both women)
 - **TRUE.** Harassers can be male or female, and victims can be male or female. What matters is that the harassment is based on gender or sex
 - **Example: a male employee is harassed by his male co-workers because he is perceived as being homosexual, or a female student inappropriately touches other female students**



WHAT DOES CREATE A HOSTILE WORK ENVIRONMENT?

- It all depends on how severe the conduct is, and how often it occurs.
- Here are some examples of behaviors that could be problematic:
 - Unwelcome touching
 - Consistently using terms of endearment for female employees (sugar, baby, sweetie)
 - Inappropriate comments about how a person looks



YOU BE THE JUDGE:

**WHAT MAKES A
HOSTILE
ENVIRONMENT?**



YOU BE THE JUDGE: JUST A JERK OR HOSTILE ENVIRONMENT?

- Male supervisor called female employee “stupid” or “f***ing stupid” on a near daily basis. Supervisor yelled obscenities at other female employees. Supervisor also got angry with male employee but never called him “stupid” to his face or used vulgarities directly to male employee.



YOU BE THE JUDGE: CRUDE OR HOSTILE ENVIRONMENT?

- Supervisor talked to his female employee about his wife's anatomy and their sex life. He showed the female employee vacation photos taken on a beach where he was in a speedo and his wife was topless. He invited female employee into his office when he was shirtless. Supervisor told "dirty jokes" about "two to three times a month" in front of the female employee. He also talked about female body parts in graphic terms. While the female employee was pregnant, he frequently commented about the size of the employee's breasts. After the employee gave birth, supervisor asked to see her breasts and to pump them, inquired about the status of her libido, and opined that she was probably a "wild thing" in bed.



YOU BE THE JUDGE: RUDE OR HOSTILE ENVIRONMENT?

- Co-worker used the word “b****” regularly in the office, often discussed his sexual encounters with women, showed naked pictures of women to the female co-worker and others, passed gas on his female co-worker’s phone, discussed that he wanted to “hook up” with another co-worker’s daughter, frequently made other “lewd” comments, and called his female co-worker a “b* * * *,” among other things.



YOU BE THE JUDGE: HOSTILE ENVIRONMENT?

- A teacher who is a lesbian was told she could no longer stay in the classroom because she was “too much of an influence” on her students. During the transfer meeting, she was told “her people” are “aggressive.” She was called “f**” and addressed as “Mister.” She found slurs written on her chalkboard.



AVOIDING A HOSTILE ENVIRONMENT

- There's a fine line between rude/crude behavior and creating a hostile environment so foster an environment that does not tolerate rude or crude behavior so the workplace, classroom, and athletic field does not slide into hostile environment territory.



COMMON MISCONCEPTION

- If my conduct doesn't constitute sexual harassment, then I have nothing to worry about
 - **FALSE.** All employees with RCSS have a duty to behave in a professional and harmonious fashion. Failing to abide by this high standard may subject you to disciplinary action.



HOW TO STAY IN CENTER COURT AND AVOID SLIPPING INTO HOSTILE ENVIRONMENT FOUL TROUBLE?

- Don't tolerate or engage in name-calling or vulgar language
- Avoid conversations about sex, comments about anatomy, and suggestive jokes
- Call a foul! If you see or hear someone else engaging in harassment, report the conduct to your supervisor.



SEXUAL HARASSMENT IN THE CLASSROOM

- With the Hostile Learning Environment Claim, we're talking about a student as the victim
 - Students can be harassed by a teacher, employee, or volunteer of the school district
 - Students can be harassed by another student



WHAT *DOES* CREATE A HOSTILE LEARNING ENVIRONMENT?

- That depends on a lot of factors:
 - How often does the behavior occur?
 - How severe is the behavior?
 - Is the conduct offensive to the average person?
 - Is the conduct based on sex or gender?
 - If the harasser and victim are both students, how old are they and is the behavior unusual for the age of the students?



EXAMPLES OF POTENTIALLY PROBLEMATIC BEHAVIOR:

- **Teacher/Employee/Volunteer-on-Student**
 - Any physical contact of a sexual nature between teacher/employee/volunteer and a student, including some touching that could be interpreted as sexual, even if not intended as such:
 - Sitting on laps
 - Slapping rear ends
 - Prolonged hugging
 - Rubbing shoulders, arms, legs



EXAMPLES OF POTENTIALLY PROBLEMATIC BEHAVIORS (CONT.)

- **Teacher/Employee/Volunteer-on-Student**
 - Inappropriate verbal/non-verbal communications based on gender or sex
 - Commenting on the size and shape of a student's body
 - Looking students "up and down"
 - Compliments with sexual overtones
 - Treating female students differently
 - Going beyond the role of mentor and becoming overly familiar with students



EXAMPLES OF OTHER RISKY BEHAVIOR

- Alone with a student in isolated, non-public area of campus, behind closed/locked door, before school, while student supposed to be in another class
- Offering students rides in personal vehicles
- Buying gifts for students or giving “special treats” to individual students
- Tutoring outside normal school hours or remediation program
- Taking student to movies, spending too much time where students congregate, interacting with students socially outside school



OTHER RISKY BEHAVIOR (CONT.)

- Getting “too close” to parents; offering to baby-sit for students
- Taking students to your home
- Allowing students to use your first name
- Allowing students to congregate in your office
- Physical contact with students



OTHER RISKY BEHAVIOR OR CIRCUMSTANCES

- Private discussions with students about sex, romantic relationships, other personal topics
- Non-school related communication with students (phone calls, emails, text messages, etc.)
- Be aware of places and situations involving less student supervision and thus greater risk of incidents (field trips and athletic events, especially overnights; behavior on buses)



YOU BE THE JUDGE: HOSTILE ENVIRONMENT?

- Very successful college coach talked to female players about their sex lives. He accused some players of being promiscuous, asked another about the size of her boyfriend's genitalia, and mocked a lesbian player by referring to her with a male's name and asked her why she did not like guys.



RELEVANT BOARD POLICIES THAT ADDRESS CONDUCT TOWARD STUDENTS

- Policy 1710/4021/7230 - Prohibition Against Discrimination, Harassment and Bullying
- Policy 4040/7310 Staff-Student Relations
- Policy 7335 Employee Use Of Social Media



RELATIONSHIPS WITH STUDENTS ARE PROHIBITED (POLICY 4040/7310)

- **NO, NO, NO!**
- An absolute ban on romantic or sexual relationships with students regardless of the age of the student



POLICY 4040/7310 STATES ...

- All employees are prohibited from dating, courting or entering into a romantic relationship or having sexual contact with any student enrolled in the school system regardless of the student's age. Employees engaging in such inappropriate conduct will be subject to disciplinary action, up to and including dismissal, and may be subject to criminal action as provided in G.S. 14-202.4 and 14-27.7.
 - For purposes of this policy, “employees” include contractors and school safety officers.



POLICY 4040/7310 REQUIRES ...

- If you have reason to believe that another employee is inappropriately involved with a student, you must report the information to the Superintendent.
 - Failure to report a suspected inappropriate relationship between an employee and a student can result in disciplinary action, up to and including dismissal.



RELATIONSHIPS WITH STUDENTS ARE CRIMINAL

- In North Carolina, a sexual relationship with a student and a school employee is always criminal.
- For some categories of employees, such as teachers, administrators, SROs and coaches, it is an automatic felony regardless of the age of the student or the employee.
- Consent of the student is never a defense!



COMMUNICATING WITH STUDENTS THROUGH SOCIAL MEDIA

- Employee-student social media communication “must be school-related and within the scope of the employees' professional responsibilities”
- “Employees are prohibited from knowingly communicating with current students through personal social media without parental permission” (some exceptions – student is a family member, friend of employee’s child, etc.)
- Review Policy 7335 for all of the rules that apply to social media use!



STUDENT-ON-STUDENT HARASSMENT

- In general, any conduct that could be a problem for teacher-on-student harassment could also be a problem for student-on-student harassment
- Student harassment violates multiple board policies (Prohibition Against Discrimination, Harassment and Bullying - Policy 1710/4021/7230; Code of Conduct - Policy 4300)
- Code of Conduct prohibits verbal abuse or seriously disrespectful language toward other students, conduct of a sexual nature, hazing and bullying, and harassment



COMMON MISTAKES

The most common mistakes made by public school employees and volunteers . . .

And how to avoid them.



MISTAKE ONE: FAILURE TO REPORT CO-WORKER'S CONDUCT

- You are an assistant coach for girls' basketball.
- The head coach often comments on girls' physiques and speculates about their sexual activity.
- On several occasions, you observe him telling students they look good, asking them if they have a boyfriend.
- Once, you witness him inappropriately touching a student. In your opinion, the student invited the contact and did not object to it.
- Your mistake: you tell no one.



WHEN IN DOUBT, REPORT IT OUT

- Know the reporting requirements of your policies
- The policies, if followed, are your best protection
- Not understanding or knowing the requirements of policy is not a defense



WHAT DO OUR POLICIES REQUIRE?

- Policies 1710/4021/7230 and 1720/4015/7225
 - **Any** possible sexual harassment **must** be reported and investigated
 - **All employees** are responsible for reporting complaints of possible sexual harassment
 - If you fail to make a report, you may be subject to disciplinary action
 - If you are the harasser, policy violations will be deemed serious disciplinary infractions



MISTAKE TWO: FAILURE TO TAKE A STUDENT COMPLAINT SERIOUSLY

- The scenario: A student comes to you with a complaint of inappropriate sexual conduct from a teacher or employee.
 - Student has a reputation, is somewhat of a troublemaker, history of lying or comes from a volatile home situation.
 - The teacher is well-liked and you have a hard time imagining the student to be telling the truth.
- Your response: You listen to the student, but you choose to not inform your supervisor or principal.



TAKE ALL COMPLAINTS SERIOUSLY

- Don't discount a complaint based on who is being accused or who is complaining
- Don't try to explain away the employee's conduct to the student.
- Encourage the student to go directly to the principal or take the student to the principal yourself.
- Regardless of what the student chooses to do, report the complaint to your principal or supervisor.



MISTAKE THREE: IGNORING CONDUCT THAT OCCURS OFF SCHOOL GROUNDS

- You work at a high school.
- Parents of a female student report that their daughter has a non-consensual sexual encounter with a male student who also attends the same school.
- The sexual encounter took place away from campus and off of school grounds.
- The female student's parents insist that male student must be assigned to another school.
- Your response: You tell the parents you sympathize with them but the only entity that can help them is law enforcement since the incident did not occur on campus or at a school event.



DON'T BE TOO QUICK TO DISMISS A COMPLAINT

- Don't dismiss a complaint because it occurred off campus or because it has already been reported to law enforcement.
- Encourage the parents to share their complaint with the principal, but regardless, you should also report their complaint to your principal or supervisor.



MISTAKE FOUR: FAILURE TO STOP YOUR OWN RISKY BEHAVIOR

- Problem behavior:
 - Commenting about the physical attributes of teachers and students
 - Making advances on a co-worker who has not responded to such advances
 - Telling jokes of a sexual nature
 - Making derogatory comments
 - Socializing with students outside of school
- The solution: STAY IN CENTER COURT
 - **We all stand together to serve and protect the welfare and safety of our students**



MISTAKE FIVE: RETALIATION

- Employee accuses another employee of harassing her.
- The investigation does not substantiate her complaints.
- The employee she complained about then starts to treat her differently because she accused him of harassment – doesn't help her, makes negative comments about her to other workers, generally tries to make her unhappy in her job so that she'll quit.



THE LESSONS LEARNED

- When in doubt, report it out
 - Know the reporting requirements of the policies, and **always** adhere to them
- Take all complaints seriously
 - Don't dismiss a complaint because who is complaining or who is being accused or because of where the incident occurred
- Stay in Center Court
 - Always make sure your own actions are appropriate
- Do not retaliate against someone who wrongly accused you of sexual harassment

