Misconduct and Sexual Harassment

A guide for Randolph County School Systems’ Employees
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.
What is Sexual Harassment?

Sexual Harassment in the Workplace

Quid Pro Quo ("This for That" harassment)

Hostile Work Environment

Sexual Harassment in the Classroom

Hostile Learning Environment

Teacher-on-Student

Student-on-Student
Sexual Harassment in the Workplace

- The exchange of employment benefits by a supervisor for sexual favors from a subordinate employee
- Can also be the exchange of sexual favors to avoid the threat of a negative employment consequence
Common Misconception:

- If a supervisor makes a threat, but then doesn’t carry through with that threat, then the supervisor did not commit sexual harassment

  **FALSE.** Unfulfilled *this for that* threats can constitute sexual harassment if they create a hostile work environment for the victim.
Consider this:

- The senior custodian at a high school continues to ask another custodian that he supervises over to his house “to spend some time alone with him.”
- She tells him she’s not interested, but he continues to ask her over;
- He also repeatedly tells her that if she doesn’t come, he’s going to tell his boss that she’s not pulling her weight, that he’ll change her shift, and that she’ll be responsible for a larger area.
A Hostile Work Environment Claim of Sexual Harassment

- Hostile Work Environment Claim can occur between any two employees
  - Unwelcome conduct
  - Based on gender
  - Conduct that is repeated enough, or severe enough to create a hostile environment
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; hiding tools, 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
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
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)
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 or sexual relationship 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.
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!
Common Misconception

- If my conduct doesn’t constitute sexual harassment, then I have nothing to worry about

  **FALSE.** All employees with the 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.
True or False:

- School districts can be legally responsible for the sexual harassment of volunteers

  - **TRUE.** Volunteers can create a hostile work environment for an employee, or a hostile learning environment for a student.
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 disrespect toward other students, certain peer relations, 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
  - But if you have a good policy and you fail to follow it, there is no 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
Reporting

“Whoever receives a complaint of discrimination, harassment or bullying . . . shall immediately notify the appropriate investigator who shall respond to the complaint and investigate.”

The “appropriate investigator” is:

- The principal, for most school-based complaints
- The Assistant Superintendent for Human Resources, for school-based complaints against the principal and for most central office complaints
- The Superintendent, for complaints against the Assistant Superintendent for Human Resources
- The Board attorney, for complaints against the Superintendent or a member of the Board of Education
Policies 1710/4021/7230 and 1720/4015/7225 apply equally to students and employees.

Reporting obligations remain the same irrespective of the source of the complaint.

Complaint not necessary.

“Any employee who witnesses or who has reliable information or reason to believe” that there has been a violation of these policies must report.
What *do* our policies require?

- **Policy 4040/7310 – Policy on Staff-Student Relations**
  - If an employee has reason to believe that another employee is inappropriately involved with a student, the employee shall report this information to the superintendent.
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: 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 Four: 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
- Stay in Center Court
  - Always make sure your own actions are appropriate
- Do not retaliate against someone who wrongly accused you of sexual harassment