



PROMOTING A DISCRIMINATION & HARASSMENT FREE SCHOOL & WORK SETTING

Online In-Service
"the basics"

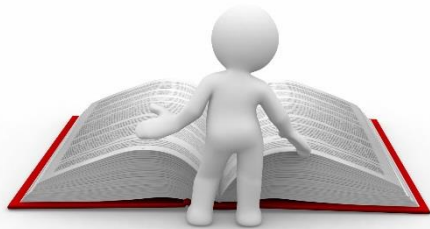
2020-2021

This presentation includes a few sound effects.
If you would like, you may disable the sound and
read through the content.

- This training provides general information intended to promote a discrimination and harassment free work and school environment.
- Your school/BOCES maintains policies and procedures to address unlawful discrimination and harassment which may be obtained through your supervisor, HR or District office.
- **You should review and remain familiar with your District's/BOCES' policies.**
- **Any questions regarding your District's policies, including policies addressing unlawful discrimination and harassment, should be directed to your supervisor, HR or the District Office.**

What are our Objectives?

1. Understand the definition of, and be able to identify, unlawful discrimination and/or harassment, including sexual harassment.
2. Understand **your role and responsibility** to promote a discrimination and harassment free school and work setting.
3. Identify follow-up questions, if any, to ask your supervisor, or other appropriate person in your school/BOCES.



ALERT: On August 14, 2020, changes in Title IX regulations went into effect. More to come ahead...

Unlawful Discrimination & Harassment

- Defined by state (NYS Human Rights Law) and federal law (e.g., Title VII of the Civil Rights Act of 1964 & Title IX of the Education Amendments of 1972).
- Based upon protected classifications.
- Discriminatory or harassing actions result in:
 - Unfair (disparate) treatment (being treated differently);
 - Hostile environment; or
 - Retaliation.



Discrimination is, generally, the practice of **conferring or denying privileges** on the basis of **membership in a legally protected class**.

So what is discrimination?



Laws

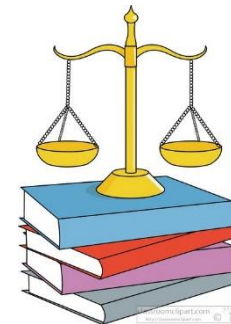
- State and federal laws (e.g., New York State Human Rights Law , Title VII and Title IX) prohibit workplace discrimination and/or harassment in schools based upon protected classifications, such as:
 - Race
 - Color
 - National Origin
 - Religion
 - Sex
 - Sexual Orientation
 - Disability
 - Age
 - Citizenship status
 - Genetic information
 - Creed
 - Military Status
 - Marital Status
 - Domestic Violence Victim Status
 - Criminal History
 - Gender Identity



Laws (Cont.)

- State and federal laws (e.g., the Dignity for All Students Act and Title IX) prohibit discrimination and/or harassment of students in a school setting based upon protected classifications, such as:
 - Race
 - Weight
 - National Origin
 - Religion
 - Sex
 - Disability
 - Sexual orientation
 - Gender identity

FYI - Title IX regulations were recently amended. Some of the changes will be reviewed in this training.



Harassment

Harassment, *generally*, consists of subjecting an individual, **on the basis of his/her membership in a protected class**, to conduct and/or communications that are **sufficiently severe, pervasive or persistent** as to have the purpose or effect of:

- creating an intimidating, hostile, or offensive environment;
- substantially or unreasonably interfering with an individual's work or a student's educational performance, opportunities, benefits or well-being; or
- otherwise adversely affecting an individual's employment or educational opportunities.

In 2019, New York set the standard for state harassment claims: whether the conduct subjects an individual to **"inferior terms, conditions or privileges of employment"** based upon **membership in a protected class**.

Sexual harassment is a form of gender or sex discrimination.

Includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.

So what is sexual harassment

It is unlawful!



Under “Title IX”

- Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
 - An employee of the District/BOCES conditioning the provision of an aid, benefit, or service of the District/BOCES on an individual’s participation in unwelcome sexual conduct (quid pro quo);
 - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District’s/BOCES’ education program or activity; or
 - Sexual assault as defined in federal laws (dating violence, domestic violence, or stalking).

Section 106.30 of Title IX

Definition is New to Title IX regulations

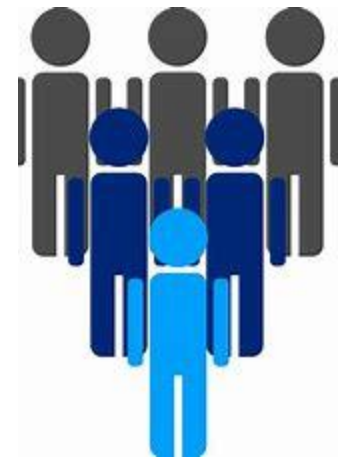
How can discriminatory or harassing behavior take place?

- Physical – unwanted touching, groping, attempting or committing sexual assault, etc.
- Verbal – comments, innuendos, sexual jokes, threats or bribes, sexually suggestive sounds, spreading rumors, gossip regarding another's sex life, orientation or gender identity, etc.
- Non-verbal – leering, staring, stalking, display of offensive material, (including emails).
- Change of academic or employment responsibilities based on a protected classification, including sex, gender identity or expression, or sexual orientation.

Not all reports need to lead to an investigation.
If you are unsure or uneasy, report it.

Who can be involved in a sexual harassment matter?

- Administrators and teachers/staff.
- Teachers/staff in quasi supervisory roles and other teachers/staff.
- Teachers/staff generally amongst themselves.
- Teachers/staff and students.
- Students and other students.
- Other third parties (e.g., vendors, visitors, etc.).



Where can it occur?

- Whenever and wherever employees are fulfilling their work responsibilities, including:
 - On school grounds.
 - Off school grounds, but at school functions, extra-curriculars, field trips, conferences, off-site or during non-work hours (e.g. hotel while traveling, calls, text messages, emails, social media), etc.



How can discriminatory or harassing behavior take place?

Other forms:

- Unintended harassment – you do not mean to offend or harass, but they take offense.
- Same-sex harassment – harassment can occur between persons of the same sex.
- Sex stereotyping –
 - When conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of either sex should act or look.
 - Harassing a person because that person does not conform to gender stereotypes as to "appropriate" looks, speech, personality, or lifestyle is sexual harassment. Harassment because someone is performing a job that is usually performed, or was performed in the past, mostly by persons of a different sex, is sex discrimination.

What is the threshold/standard?

How can I tell if it is really sexual harassment?

“The Reasonable Person Standard”

...whether a “reasonable person” would perceive the conduct as being sexual harassment. Additionally, it will be viewed from the eye of the recipient, including their particular circumstance.

“But...”


“I was only kidding!”

“I meant no harm!”

“She/he misinterpreted my meaning.”

YOUR INTENT MEANS NOTHING

Supervisor's Responsibility



Supervisor

- Supervisors/Administrators

- They are placed in a position of authority by the District and must not abuse that authority.
- Their actions can create liability for the District without the District having any opportunity to correct the harassment.
- They are **required to report** any harassment that is reported to them, or which they observe or know of (even if they think the conduct is trivial or the harassed individual asks that it not be reported).
- They are responsible for any harassment or discrimination that they should have known of with reasonable care and attention to the workplace for which they are responsible.
- They are expected to model appropriate workplace behavior.
- They may be subject to discipline for failing to report suspected harassment or engaging in retaliation.

File a Complaint?

- If you have knowledge of unlawful discrimination or harassment occurring, or allegations of sexual harassment, you are to promptly report it to the person designated by your District to receive complaints. If there is other behavior you experience or know about that is inappropriate, you should report it without trying to determine if it is unlawful.
- If the person designated by the District to receive complaints is the offender – report to next level of supervisory authority, the Superintendent or Business Official, or other person in supervisory authority. Additionally, if the first person to whom you report provides an inappropriate response (e.g., “just ignore it”), you should report to the next level of supervisory authority.
- While not necessary, it is best to file a detailed written report, which may be on the District’s Complaint Form.
- The District will promptly and thoroughly investigate (e.g., collect evidence, conduct interviews, etc.) in accordance with the applicable law and policy.
- To the extent possible, the complaint will be treated as confidentially and privately as possible.
- When appropriate, immediate interim or remedial action will be taken (e.g., administrative leave) and supportive measures provided.

Potential Outcome of Complaint

- If the allegation(s) is substantiated:
 - The District/BOCES may take actions including, but not limited to:
 - Counseling or disciplinary action (up to and including termination);
 - Additional training or remediation; and
 - Other remedies as necessary to prevent harassment and ensure compliance with the law and District/BOCES policies.
- If the allegation(s) is unsubstantiated:
 - The District/BOCES may take actions including, but not limited to:
 - Providing additional training/counseling regarding what constitutes harassment or proper workplace conduct; and
 - Other actions as necessary to ensure compliance with the law and District policies.
- If the complaint is a "false complaint":
 - The District/BOCES may counsel or discipline the employee who *knowingly* filed the false complaint without a good faith belief that the conduct constituted unlawful harassment.

State and Federal Agencies

- **New York State Division of Human Rights** (www.dhr.ny.gov)
 - A complaint of harassment or discrimination under New York Law may be filed with either the Division of Human Rights or State Supreme Court.
 - A complaint may be filed with the Division of Human Rights ***within three years*** of the alleged discrimination, and you do not need an attorney.
 - A complaint may be filed in State Supreme Court ***within three years*** of the alleged discrimination. (Complaints of certain alleged conduct against students may be filed, under the Child Victims' Act, many years after it is alleged to have occurred.)
- **U.S. Equal Employment Opportunity Commission (EEOC)** (www.eeoc.gov)
 - A complaint of harassment or discrimination under federal law may be filed with the local EEOC office ***within 300 days*** of the alleged discrimination, and you do not need an attorney.

What is not Harassment?

- **Consensual Relationships**

Caution! Consensual relationships can quickly turn non-consensual and the other person could take offense.

- **Welcomed conduct**

Caution! Welcomed conduct one day could be unwelcomed another day.

- **Unkind comments/inappropriate conduct**

Caution! Comments that may not be deemed unlawful discrimination or harassment may still be in violation of workplace/school setting rules or expectations.

- Conduct protected by the First Amendment that is not otherwise deemed unlawful (i.e., constitutes unlawful harassment) or inappropriate.

Even if not unlawful, the conduct may violate a work rule:

ANSWER: No. The laws governing discrimination and harassment are based upon protected characteristics and do not create a civility code.

HOWEVER...

Everyone must be mindful that there are still ethical considerations, a code of conduct, and District expectations.

Is it harassment?

If my boss or coworker is mean to me and everyone else without a reason?

OR

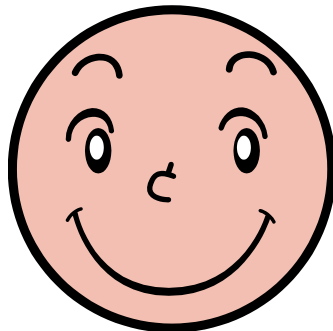
If a supervisor treats employees differently based upon unprotected characteristics (e.g., work performance)?

All inappropriate conduct should be reported.

REMEMBER . . .

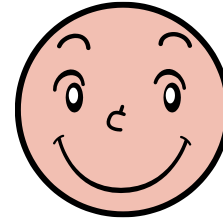
- There is often disagreement in what is “Humorous”.
- Your view of the world is not necessarily shared by others.
- There is nothing to be gained by rebuffing a request to desist.

HAPPY FACES
ARE NOT
THE LITMUSTEST



WHAT IS WELCOME TODAY
MAY BE UNWELCOME
TOMORROW

For example...



Teacher Aide Jake, who is assigned to Teacher Mary's classroom, just went through a divorce. Mary has always had a "crush" on Jake.

- Jake and Mary have had lunch together during the school day in the past, and consider each other friends.
- When Mary heard Jake finalized his divorce, she mentioned to Jake that they both are single and that she recently went through a break up.
- Mary decides to ask Jake to come to her house on Friday night for dinner. Jake accepts. They have fun.
- By Monday, Jake decides it's too complicated. Jake tells Mary he is not ready for a relationship and wants to keep things professional.
- Mary continues to text and call Jake and asks him again and again to go out. Jake repeatedly rejects her requests. Jake grows annoyed.

Check your understanding...

When Mary first asked Jake to dinner, did it constitute sexual harassment?

No.

Mary's initial comments regarding her being single and that she recently went through a break up, along with asking Jake to dinner are not unlawful sexual harassment. Even if Jake declined Mary's invitation, Mary did nothing wrong by asking. Occasional general comments that are not sexually explicit about one's personal life are not sexual harassment. That said, one should use caution when sharing personal information with coworkers.

Another ...

- Mary continues to pressure Jake to go out. Jake is growing uncomfortable. Mary moved his desk closer to her desk. She changed his student assignment and they are working together more. Mary made sexually suggestive comments to Jake. Mary also left flowers on Jake's desk. Jake is trying to "just ignore her."

Should Jake "just ignore" Mary's conduct?

No. Jake should contact the District's Title IX Coordinator (or report Mary's conduct to his supervisor or another administrator if Mary is the Title IX Coordinator).

Remember...No Retaliation

- It is unlawful to take an adverse employment action (e.g., termination, demotion, sudden unfavorable change in work schedule or work location, etc.) against an employee for, in good faith:
 - filing a complaint of harassment or discrimination;
 - making a report of suspected harassment, even if you are not the recipient;
 - opposing discrimination; or
 - cooperating in an investigation (e.g., providing information during an investigation, or testifying in connection with a complaint).



No Retaliation

- Employees should expect to be free of any negative actions by supervisors, managers or the employer motivated by protected activities.
- Retaliation can be any adverse action taken by an employer against the employee that could have the effect of discouraging a reasonable worker from making a discrimination or harassment complaint.
- The negative action need not be work related or occur in the work place, and could occur after the termination of employment.

ALERT: the new Title IX Rule contains an anti-retaliation provision to protect individuals from suffering intimidation, threats, coercion, or discrimination that might curtail the person's rights under Title IX.

So, what is “not” Retaliation?



- A negative employment action that merely occurs after an employee engages in protected activity is not per se retaliation.
- Employees continue to be subject to all job requirements and rules of the employer after having engaged in such protected activity.

Let's Review:

August 14, 2020
Title IX Rule amended

- Title IX regulations now:
 - define “sexual harassment,” and set forth procedures for how schools must respond to allegations of sexual harassment;
 - codify that sexual harassment, including sexual assault, dating violence, domestic violence and stalking is prohibited under Title IX; and
 - provide due process protections to those facing accusations of sexual harassment.

Among other things:



Districts must:

- Appoint a Title IX **Coordinator**;
- **treat complainants and respondents (the accused) equitably**;
- respond **promptly and supportively**;
- **resolve allegations** of sexual harassment promptly and accurately under a predictable, fair grievance process that provides **due process protections to alleged victims and alleged perpetrators** of sexual harassment; and
- effectively implement **remedies** for victims.

More on Title IX Rule

- K-12 school must respond whenever **any employee** has notice of sexual harassment, *including allegations* of sexual harassment.
- Title IX covers sexual harassment that happens in a “**school’s education program or activity.**”
- **Not just “on campus.”**
 - Schools must respond where the school exercises substantial **control over the context** of the alleged harassment and the person accused.
 - Schools **must always respond** when alleged sexual harassment happens at conferences, field trips, etc.

... *any elementary or secondary school employee* ...

On Notice? Report.

Whenever any elementary or secondary school employee has notice of sexual harassment, including allegations of sexual harassment, the school must respond.

This means:

- If you know sexual harassment occurred or is alleged to have occurred – **you must report it!**
- Contact your Title IX Coordinator.
- If you are unsure of who to tell, ask your Superintendent or check your school website.

The school must promptly respond to an allegation.

Your District's Title IX Coordinator?

- Your District/BOCES will provide you specific information on how to contact the Title IX Coordinator.
- If you need to be reminded who your Title IX Coordinator is – ask your supervisor or contact your District Office. You can also check your District's website.

ALERT: Depending upon the type of harassment or discrimination alleged, different laws, procedures and responsibilities may be triggered. No matter the type of harassment or discrimination alleged, it should always be reported.

WHAT CAN I DO?

Preventative Measures



- Become familiar with District policies.
- Monitor your own conduct.
- Do not put yourself in a vulnerable position that could be misconstrued or perceived as discriminatory in nature, or unlawful harassment.
- Always be aware of others around you, third parties may take offense.
- The best course of action is to avoid any conduct that could be interpreted as offensive in the workplace.
- Follow the law and your District's policy. When you are aware of harassment/discrimination or allegations of harassment/discrimination – report it. If you are unsure – report!

Think about it.



- Do you know who your District's Title IX Coordinator is?
- Do you know what your district policies say about unlawful discrimination and harassment?
- Do you know your school's reporting obligations and procedures for different matters?