

# SEXUAL HARASSMENT AND DISCRIMINATION IN SCHOOLS

For: Englewood BOE  
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# Overview

- What is sexual harassment
- N.J. Law against discrimination (LAD)
- Protected classes
- Hostile Work Environment
- What to do
- Sexual misconduct

# Cases Are/Could:

- Messy and Divisive
- Time Consuming
- Costs- direct and indirect
- Bad PR
- Jeopardize Career
- Embarrassment Factor
- Private info made public

# Pre-Quiz

- ⦿ Jill has pictures of famous works of art on her office walls. Some of the pictures depict nudity- The David, Venus. Could this be a potential sexual harassment problem?

# Pre-Quiz

- Jill's supervisor, Tony noticed that she was in a bad mood and asked, "Are you okay or is it just PMS?"
- Could this be a potential sexual harassment problem?

# Pre-Quiz

- ① Tony receives an email containing a 'dirty' joke from a male co-worker?
- ① Could this be a potential sexual harassment problem?

# Common Discrimination

- Disability
- Religion
- Age
- Race
- Sexual Orientation
- Medical Status



# Riddle

- ⦿ What lies at the bottom of the ocean and twitches?



# A Nervous Wreck!!!



# What Is Sexual Harassment?

- ⦿ Sexual Harassment is any unwelcome sexual advances or requests for sexual relations or other verbal or physical conduct of a sexual nature on the job that creates an intimidating, hostile, or offensive working environment.

# What Is Sexual Harassment?

- *The harassment need only be perceived to exist.*
- *No damages required.*
- *The harassment can come from a male to a female, female to a male, or same gender.*
- *Behavior is severe and pervasive*

# N.J. Law Against Discrimination

- makes it unlawful to subject people to differential treatment based on race, creed, color, national origin, nationality, ancestry, age, sex (including pregnancy), familial status, marital status, domestic partnership status, affectional or sexual orientation, atypical hereditary cellular or blood trait, genetic information, liability for military service, and mental or physical disability, perceived disability, and AIDS and HIV status.



*"All the other women in the office are suing you for sexual harassment. Since you haven't sexually harassed me, I'm suing you for discrimination."*

# Two Types of Harassment

**Quid pro quo** harassment occurs when an employer, or an employer's agent, implicitly or explicitly attempts to make submission to sexual demands as a condition of employment.



# Two Types of Harassment

**Hostile work environment sexual harassment** occurs when an employee is subjected to sexual, abusive, or offensive conduct because of his or her gender.

# What are some examples of sexual harassment in schools?

- Staff to Staff
- Student to Student
- Staff to Student
- Student to Staff (Disciplinary)
- Vendors, Parents, Others



# Examples of types of sexual Conduct that may create a hostile work environment

- Non-Verbal/Visual
- Verbal
- Physical

Source: Geraldine Jaffe, Orange County Department of Education, Costa Mesa, CA

# Non-Verbal/Visual

DISPLAYING SEXUALLY SUGGESTIVE MAGAZINES, POSTERS,  
CARTOONS, WEBSITES

DOUBLE ENTERDREES

OBSCENE GESTURES

LIP OR TONGUE MOTIONS

SEXUALLY EXPLICIT E-MAIL, LETTERS, WRITINGS ON DESKS, BOOKS,  
AND LOCKERS

GRAFFITI OF A SEXUAL NATURE

LEERING OR STARING IN A SEXUAL MANNER

LOOKING DOWN SOMEONE'S BLOUSE OR UP SOMEONE'S SKIRT

EXPOSING SEXUAL OR PRIVATE BODY PARTS

MANIPULATING OBJECTS OR FOOD TO CREATE A SEXUAL INNUENDO

UNWANTED NOTES OR LOVE LETTERS WITH A SEXUAL MESSAGE

# Verbal

## **SEXUAL INNUENDOES, RUMORS, SUGGESTIVE COMMENTS**

COMMENTS ON CLOTHING OR PHYSICAL APPEARANCE

ASKING UNWANTED PERSONAL, SEXUAL, INTIMATE QUESTIONS

WHISTLING, CATCALLS, PATRONIZING NAMES, OFFENSIVE LANGUAGE

SUCKING, MOOING, KISSING, HOWLING SOUNDS

RATING APPEARANCE, BODY PARTS, SEXUALITY

PESTERING OR PRESSURING FOR DATES, ASKING FOR SEX OR SEXUAL CONTACT

TELLING SEXUAL JOKES, RAPE JOKES OR DEMEANING GENDER BASED JOKES

VERBALIZING SEXUAL OBSCENITIES

TEASING, TAUNTING, INSULTING REMARKS ABOUT SEXUALITY, BODY PARTS, OR ATTRACTIVENESS

COMMENTING ABOUT SEXUAL ACTIVITIES, FANTASIES, SEXUAL PREFERENCES OR INTERESTS OF OTHERS OR SELF

# Physical

## UNWANTED SEXUAL TOUCHING

PULLING UP, SNAPPING, PULLING DOWN, GRABBING CLOTHING  
MASSAGING, GRABBING, PINCHING, FONDLING, BRUSHING THE  
BODY

PHYSICAL INTERFERENCE WITH MOVEMENTS, CORNERING,  
BLOCKING OR FOLLOWING, LEANING OVER, IMPEDING  
MOVEMENT

BLOWING ON SOMEONE'S NECK, HAIR OR EAR

FONDLING, STROKING, LICKING SOMEONES EAR

COERCED SEXUAL INTERCOURSE, RAPE, SEXUAL ASSAULT

ASSAULTIVE AND INTIMIDATING PHYSICAL CONDUCT DIRECTED AT  
SOMEONE BECAUSE OF THEIR GENDER

BRUSHING UP AGAINST, LEANING ON SOMEONE

BACK OR NECK RUBS

KISSING

# DISCRIMINATION

- **Discrimination** is the prejudicial treatment of an individual based on his or her membership - or perceived membership - in a certain group or category

# Protected Classes

remember- evolutionary

- race, creed, color, national origin, nationality, ancestry, age, sex (including pregnancy), familial status, marital status, domestic partnership status, affectional or sexual orientation, atypical hereditary cellular or blood trait, genetic information, liability for military service, and mental or physical disability, perceived disability, and AIDS and HIV status.

# The Law

- ⦿ The NJ LAD prohibits harassment based on protected classes.
- ⦿ Federal- Title VII, EEOC
- ⦿ Criminal vs. Civil
  - Touching = battery



# The Law

- ⦿ Time Limit- 180 days (courts can extend)
- ⦿ Retaliation Protection
  - Adverse Actions
  - Covered Individual
  - Protected Activity (opposition to a practice believed to be unlawful discrimination)



# Perception Balance

- ① Lehmann V Toys R Us Inc., 132 NJ 587 (1993) Reasonable woman standard and an Employer has an affirmative duty to take prompt remedial action.
- ① Standard holds that- “an ordinary, reasonable, prudent person in like or similar circumstances would have been similarly offended.”

# What to do- preventive

- ⦿ Think before you speak
- ⦿ Be careful with humor in the workplace. Stay away from jokes that center on race, religion, gender or ethnicity.
- ⦿ Don't let peer pressure influence you to say things you normally would not.
- ⦿ Ask yourself if the behavior you're displaying is something you would not want your spouse, children or parents to witness.
- ⦿ We are Adults!

# What to Do?

- ⦿ Make it know that the attention or environment is **unwelcome** and that you would like it to **stop**. Once exhausted-
- ⦿ Follow District Policy- **Notify** Supervisor, EEOC/AA Officer, or Administrator.
- ⦿ **Action** must be taken by employer at this time.
- ⦿ Investigation may be initiated. If it seems to prove out- **appropriate actions** until completed, then appropriate disciplinary actions.

# What to Do?

- ⦿ Could go to EEOC directly. (no \$ cost)
- ⦿ Could hire an attorney and file suit.
  
- ⦿ Time Consuming
- ⦿ Cost/District Resources
- ⦿ Embarrassment Factor
- ⦿ Private info made public
  - story

# Inappropriate Behaviors

- Language/Body Language
- Decorum/Attitude
- Disrespectful
- Inappropriate Conflict Resolution
- More.....
  
- Be a role model

# These are Not AA

- ⦿ Work it out
- ⦿ Supervisor
- ⦿ Administrator
- ⦿ Human Resources
  
- ⦿ AA is for Protected Classes/Sexual Harassment

# Staff vs. Student

- ⦿ Discussing sex, sexual orientation, gender differences, etc. outside the proper forum
- ⦿ Failing to follow policy/procedures
  - Report/Take **Action**
  - Dress code
  - Unfair/inequitable application

# NJSIG Cases

- ⦿ Student babysat for teacher- pregnant, civil and criminal- misconduct
- ⦿ Supervisor displayed porno, hostile work environment
- ⦿ Male supervisor harassed by female, gifts, when sick came to house- emotional/physical, wrecked career
- ⦿ Discrimination- religious, age, race, sexual orientation, etc.



# How Did We Get Here?

- 1964- Congress passes **Title VII** prohibiting discrimination at work.
- 1972- Congress passes **Equal Employment Opportunity Act** for enforcement of Title VII.
- 1985- *McKinney v Dole* establishes **unequal treatment** because of sex actionable.
- 1986- *Meritor Savings V Vinson* establishes **hostile work environment and employer's duty to respond to grievances**.
- 1991- Anita Hill charges Clarence Thomas with sexual Harassment.

# How We Got Here

- 1992- EEOC reports 62% increase in sexual harassment complaints.
- 1993- *Lehmann V Toys “R” Us* upheld the **reasonable woman/person standard** and held employer has affirmative duty to take prompt action.
- 1998- *Faragher V Boca Raton* held **employer is vicariously liable** for actionable discrimination caused by a supervisor.
- 1999- *Davis v Monroe County BOE* school held responsible under Title IX in case of **student against student Harassment** due to indifference.
- **2002-Gaines V Bellino-** Having a written sexual harassment policy is not enough. An employer can be held liable if they fail to train their employees.

# Summary

- ⦿ Sexual harassment includes unwelcome sexual advances, requests for sexual relations or other verbal or physical conduct of a sexual nature.
- ⦿ Quid pro quo or hostile work environment
- ⦿ The harassment need only be perceived to exist.
- ⦿ No damages required.
- ⦿ Cases will be expensive to defend, embarrassing, and time consuming.

# New Jersey Law Against Discrimination

- ◎ The LAD prohibits unlawful discrimination in employment, housing, places of public accommodation, credit and business contracts. Not all of the foregoing prohibited bases for discrimination are protected in all of these areas of activity. For example, familial status is only protected with respect to housing.

# Summary

- Professionalism

- Respect



# SEXUAL MISCONDUCT



# Sexual Misconduct

- ⦿ No Win Scenario
- ⦿ Sexual Misconduct is criminal behavior
- ⦿ The perpetrator faces criminal charges
- ⦿ It can be deemed to be child abuse
- ⦿ Must be reported promptly to police and DCF
- ⦿ Expensive to defend
- ⦿ Punitive damages not covered

# Summary

- ① Protect yourself from situations
- ① Act according to policy
- ① Communicate
- ① Be mindful of student behavioral changes
- ① Be professional and respectful
- ① Know limits



# Resources on Line

- NJ Division on Civil Rights (LAD)

<http://www.njcivilrights.org>

- Equal Employment Opportunity Commission <http://www.eeoc.gov>



# Questions

