

BETHANY PUBLIC SCHOOLS

Sexual Harassment Prevention Training



Rebecca R. Santiago

August 26, 2020

Objectives

To reiterate the standard of a respectful workplace

To stress a commitment to maintaining a workplace free of sexual and other harassment

Objectives

To explain what conduct constitutes sexual harassment

To highlight the role of employees in preventing and addressing harassment

To encourage communication: “If you see (or hear) something, say something”

Simple Steps To A Respectful Workplace

- Don't joke, tease or talk about sex, gender, sexual orientation, race, or ethnicity
- Don't gossip about your colleagues
- No touching
- Just because it is a personal communication or "hot topic" in the media doesn't make it ok
- Be mindful of written communication (e.g. emails, IMs, etc.)
- Speak up if you see something that is not respectful, whether directed at you or someone else



It's simple: treat people with respect

The “Time’s Up Act” – S.B. 3

- Requires all workplaces with 3 or more employees to provide two hours of sexual harassment prevention training to **all employees** by October 1, 2020.
- Requires all workplaces, regardless of number of employees, to provide two hours of sexual harassment prevention training to **all supervisors** by October 1, 2020.

Employee Responsibilities

- Although supervisors are responsible for setting the tone for the workplace, individual employees are ultimately responsible for their own behavior.



The “Golden Rules”

- Respect others
- Treat others like you expect to be treated
- Draw a line between professional and social behavior in the workplace
- Understand the power of words



Know Your District's Policy

- There should be a policy prohibiting sexual harassment.
- It should also spell out examples of types of behavior that are not acceptable.
- Know this policy, know what you can and cannot do, and know what others can and cannot do.



If You See Something, Say Something

- Supervisors cannot be everywhere all the time.
- Sexual harassment often is not reported due to embarrassment or fear.
- Every employee should be reporting behavior that is inappropriate in order to help build a productive atmosphere.



Repercussions

- “Sexual harassment” encompasses many different types of behavior.
- Some behavior may warrant minor discipline, while others could lead to criminal liability.
- In general, employees can be liable in a professional capacity, a civil capacity, a criminal capacity, or any combination.

Professional Liability

- Improper conduct, even if not necessarily “sexual harassment” can lead to discipline up to and including discharge.
- Although not all allegations will lead to punishment—there should be a thorough investigation first—know that, at a minimum, you could face discipline for violations of your district’s policy.

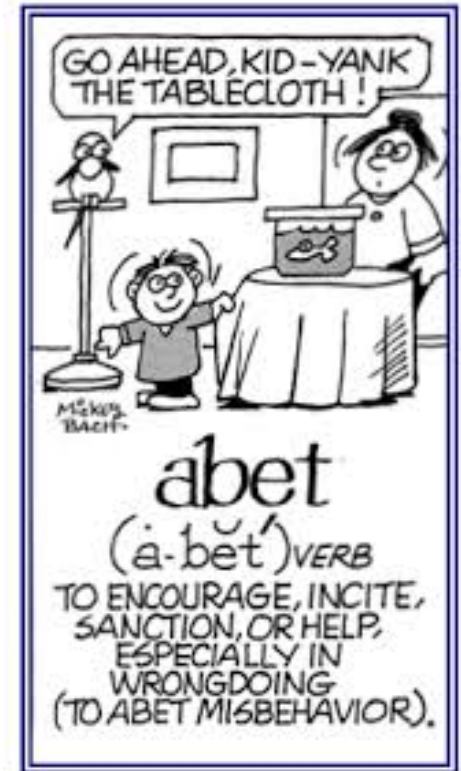
Civil Liability

- Employees, in general, are not liable for claims of “sexual harassment.”
 - ◆ A claim of sexual harassment is brought against the school district, not the individual.



Civil Liability (cont.)

- That being said, employees *are* liable under CT law, individually, if they “aid and abet” sexual harassment.
- “Aiding and abetting” occurs when a person “assist[s] the perpetrator of the crime while sharing the requisite intent.”



Civil Liability (cont.)

- Employees are also liable, individually, for civil wrongs that constitute sexual harassment.
 - ◆ Examples: defamation, assault & battery, negligent/intentional infliction of emotional distress, etc.



Criminal Liability

- Some acts constituting sexual harassment may lead to criminal arrests and convictions.
 - ◆ Examples: assault, sexual assault, threatening, harassment, stalking, etc.



Where Do Sexual Harassment Laws Come From?

Evolution of Sexual Harassment Claims

- 1964 → Title VII of the Civil Rights Act prohibits discrimination in employment based on sex and other protected categories
- 1975 → The phrase “sexual harassment” is coined by Working Women United at Cornell University
- 1980 → EEOC established guidelines construing sexual harassment as a form of sex discrimination prohibited by Title VII

Evolution of Sexual Harassment Claims

- 1981→ Bundy v. Jackson recognized the idea of a sexually hostile work environment. First federal appeals court to rule that sexual harassment is sex discrimination prohibited by Title VII.
- 1986→ In Meritor Savings Bank v. Vinson the Supreme Court agreed that Title VII prohibited sexual harassment.

Connecticut Fair Employment Practices Act (“CFEPA”)

- Prohibits harassment by employers with three or more employees
- Prohibits any person, whether an employer or an employee or not, from aiding, abetting, inciting, compelling or coercing the doing of any act declared to be a discriminatory employment practice or to attempt to do so

What is Sexual Harassment?



Basic Elements

- Unwelcome
- Conduct of a sexual nature
- Severe or pervasive and
- Affects working conditions or creates a hostile work or educational environment

A Practical Definition

- An abuse of power sexually expressed
- Poor personal vs. professional boundaries
- Demeaning sexual or gender-based behavior calculated to diminish victim's self-esteem

Breaking Down the Elements

Two Types of Harassment

- Quid Pro Quo (“this for that”)
- Hostile Work Environment



Quid Pro Quo Harassment

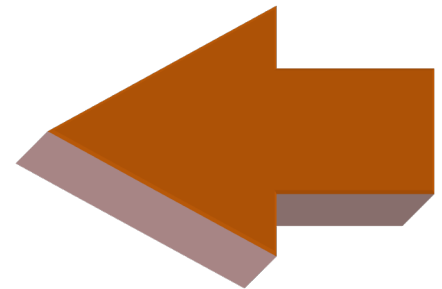
- This is considered the “paradigm” of sexual harassment.
- “[W]hen an employee’s expressed terms of employment, such as salary or continued employment, are conditioned upon compliance with the employer’s sexual demands.”
- In such a case, the sexual harassment explicitly alters the terms and conditions of employment.

Scenario #1

- Frank supervises Sally. One day, he asks her out on a date. When she refuses, he says that she should “consider” his offer if she wants to remain employed at the company.

Hostile Work Environment Harassment

A hostile work environment exists “[w]hen the workplace is permeated with ‘discriminatory intimidation, ridicule, and insult,’ that is ‘sufficiently severe or pervasive to alter the conditions of the victim’s employment.’ ”



Harris v. Forklift Systems, Inc., 114 S. Ct. 367, 370 (1993).

“Severe” or “Pervasive?”

- The Harassment must be *either* “severe” or “pervasive.”
 - ◆ Does *not* have to be *both*
 - ◆ One instance of extreme conduct can be “severe” enough to be considered sexual harassment.
 - Examples: groping, explicit verbal remarks, sexual assault.
 - ◆ Minor instances over a long period of time, although perhaps not “severe” may be considered “pervasive.”
 - Examples: sexual jokes every day for weeks, comments about coworker’s body every day for weeks.

Scenario # 2

Jan and Joe worked together as co-workers. Jan would often remark how Joe needed to find himself a wife, and would tell him, in a joking manner, that they should “go out” sometime. Jan would often flirt with Joe, make sexual jokes, and, on one occasion, sent him photos of her in a bikini. Joe felt uncomfortable with this attention, and told her on several occasions that he “just wanted to work” and asked if their relationship could remain professional. She continued the flirting, however.

Sexual Conduct

- Behavior has to be of a “sexual nature.”
- Conduct can occur a variety of ways: physical, verbal/written, or non-verbal



Physical Conduct of a Sexual Nature

- Touching
- Patting
- Pinching
- Assault



Verbal Conduct of a Sexual Nature

- Sexual remarks about a person's clothing, body, or sexual activities
- Sex-stereotyped or sexually-based jokes
- Unwanted phone calls or texts
- Emails of a sexual nature



Non-Verbal or Physical Conduct of a Sexual Nature

- Sexually suggestive looks, leering, or ogling of a person's body
- Public display of sexually explicit materials



Scenario # 3

Sarah is a resident in a male dominated department. She complains to the medical director that her department chair attempted to hug her, which she felt was inappropriate. After making the complaint, she believes that her male colleagues were “shunning” her, and would not engage her in conversation other than in passing. She later applies for a permanent position in the department, but is told the “timing isn’t right”.

What Type of Conduct?

- “Welcome”
 - ❖ Conduct is NOT sexual harassment if it is welcome
- “Unwelcome”
 - ❖ Employees should communicate to the harasser that the conduct is not welcome and should stop
 - ❖ But, is this always possible?

Unwelcome Conduct

- The sexual conduct must be *both* objectively *and* subjectively severe or pervasive and of a sexual nature
- That is, whether a reasonable person would think that the actions were sexual harassment, *and* whether the actual alleged victim perceived it as sexual harassment.
- This requirement is often expressed as the “unwelcome” requirement—the alleged victim cannot be a “victim” if he or she actually welcomed and liked the conduct.

Unwelcome Conduct (cont.)

- Stereotypes play no role in this evaluation—e.g., cannot just assume that all men will engage in “locker room talk.”
- Of course, someone saying “no” is a strong indicator of unwelcomeness, but is someone always able to say no?



Scenario # 4

Jane is the first woman to work in a factory. The men often have sexual discussions and tell dirty jokes to each other. Everyone engages in the conduct, including her supervisor. Jane thought this type of conduct might occur, but chose to work there anyway.



Unwelcome Conduct (cont.)

- The standard for sexual harassment does not change based on the work environment!
- Some work environments tend to be dominated by men or women, that does not mean that the employees can behave as they see fit.



Scenario # 5

A female supervisor brought a group of female coworkers out one night for a “girls’ night out.” Management did not know that this event was occurring, and had no part in organizing or paying for the event. The group ended up at a sex shop, and one employee bought another employee a sex toy. One employee who was present felt uncomfortable with the whole situation, and later reported it to management.

Off-Duty Conduct

- Employers can be held liable for conduct that occurs off-duty in certain circumstances
 - ◆ If the event is sponsored by the employer
 - Example: company picnics, holiday parties, etc.
 - ◆ If the event interferes with the terms and conditions of a person's employment.



Off-Duty Conduct (cont.)

- Most importantly: EMPLOYEES are still liable for all their actions to the same extent as sexual harassment in the workplace
 - ◆ E.g., liable for crimes, civil wrongs, and aiding and abetting.



Filing Complaints

- With an understanding of what sexual harassment is, the next question is: how does someone raise concerns regarding sexual harassment?
 - ◆ Understand the procedure for filing complaints



Procedure for Filing Complaints

- Concerns should be brought to a supervisor whom you feel comfortable speaking with about these issues
- Although your immediate supervisor is a logical starting point, if you feel uncomfortable speaking with them, then you should speak with another supervisor with whom you are more comfortable.

What Will the Supervisor Do?

- Understand that supervisors do not have discretion when it comes to investigating complaints of sexual harassment.
- The Supervisor cannot, and should not, ignore complaints, or “just listen” and not do anything.



Retaliation

- Under the Civil Rights Act and the CT Fair Employment Practices Act, an employer cannot take any adverse employment action against an employee for “engaging in protected activity.”
- “Protected activity” includes:
 - ◆ Refusing sexual advances;
 - ◆ Filing a complaint of harassment with either the employer, the CHRO, or filing a lawsuit;
 - ◆ Helping other alleged victims in any capacity;
 - ◆ Acting as a witness in an investigation or lawsuit;
 - ◆ Or any other activity in pursuit of protecting yourself from sexual harassment.



Retaliation and Filing Complaints

- Do not be afraid of adverse employment actions for reporting sexual harassment.
- Employers are prohibited from disciplining, terminating, or taking any adverse actions against you for making a good faith report of sexual harassment.
 - ◆ Of course, if you make a *blatantly false* accusation, and the employer can prove so, then you can be disciplined for making a false accusation.

Outcome of Investigation

- Your employer will determine whether the conduct was in violation of policy and whether it warrants discipline.
- Depending on the findings, your employer may take disciplinary action equal to the offense.
- This action may include:
 - ◆ Informal counseling, or
 - ◆ Discipline “up to and including termination”

Scenario # 5 (revisited)

Sarah is a resident in a male dominated department. She complains to the director that her department chair attempted to hug her, which she felt was inappropriate. After making the complaint, she believes that her male colleagues were “shunning” her, and would not engage her in conversation other than in passing. She later applies for a permanent position in the department, but is told the “timing isn’t right”.

Scenario # 6

A supervisor and an employee have a romantic relationship. Neither has considered it a problem. They are quite open about it at work. Other employees in the department are complaining that the employee having the affair gets all the best assignments.

Work Relationships

- Although frowned upon, relationships in the workplace are not necessarily illegal
- They can present problems, however, especially when one person is a supervisor.
- Best advice: avoid them.



Case Study # 1

- John and Sandy work on a team with six others. They had a team building event that everyone attended at Chelsea Piers.
- At the end of the evening, John and Sandy stay for another drink at the bar.
- Is this inappropriate?

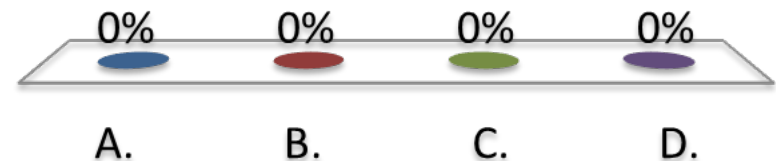


Case Study # 1 (cont.)

- John began sending Sandy text messages, many times late at night and on weekends.
- He often asked her about her personal life, including if she was dating anyone.
- He invited her to join him for happy hour after work frequently, and to “meet up” with him on the weekends.
- Sandy was very uncomfortable with the attention, and eventually told him to leave her alone.
- She did not report any of these acts to management.

Is this a hostile work environment?

- A. Yes
- B. No, he stopped when she told him to leave her alone
- C. No, she did not report the conduct
- D. No, not yet

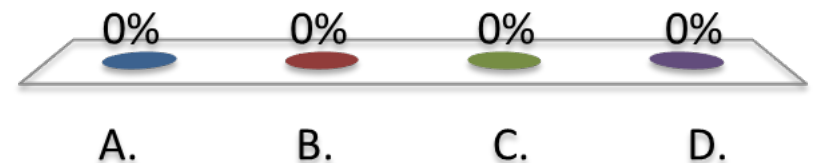


Case Study # 1 (cont.)

- John left the company but came back three years later to Sandy's department.
- He told her that he missed her, and that he had dreams about working with her.
- He also told her that he was trying to get assigned to her team on an upcoming project because he enjoyed working with her.
- He again started texting her outside of work, but many times the texts were to a group that included other co-workers.
- On one occasion, he left her a card and a present on her birthday.

Is this a hostile work environment?

- A. Yes
- B. No, he still has not done anything “sexual”
- C. No, the texting is happening outside of work and included other people
- D. No, he is just being nice

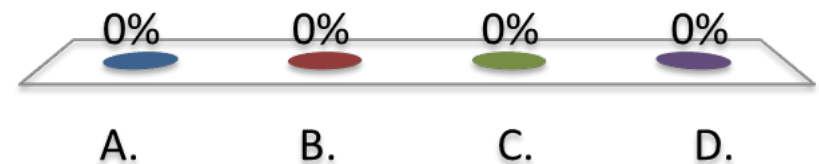


Case Study # 1 (cont.)

- John commented on a regular basis that he liked the way that Sandy dressed.
- He also teased her that she was pretty smart “for a girl” and that she would have to pay more attention to sports if she wanted to fit in.
- On one occasion, John grabbed her hand as they were walking to a meeting and made a joke that she was his “work wife”.
- Sandy eventually confronted him and told him to stop paying so much attention to her.

Is this sexual harassment?

- A. Yes, this is a hostile work environment
- B. No, John is just teasing her and does not mean any harm
- C. No, provided that John stops immediately
- D. It depends on whether Sandy reports John

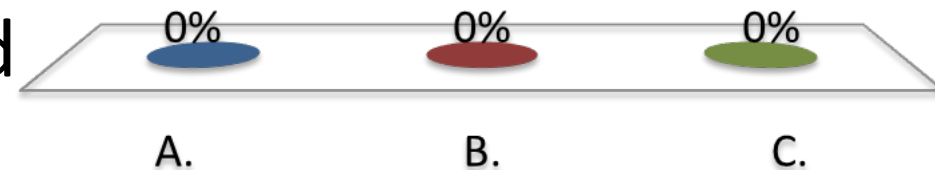


Case Study # 1 (cont.)

- Sandy complained to her boss, who immediately moved her and told John to have nothing but incidental conduct with her at work, and suggested that he not have any outside contact with her.
- The Company conducted an investigation and suspended John for “failure of good behavior” and “exercise of poor judgment”.

Was the Company's reaction appropriate?

- A. The Company got it right
- B. The Company went too far and John should have only received a warning
- C. The Company should have fired John



Case Study # 1 (cont.)

- What could John have done differently?
- Was there any of his conduct that was appropriate?
- What should the Company have done?
- Did John's co-workers have any obligation to do anything?
- How would you handle this situation?

Case Study # 2

Li Yan's coworker Ralph has just been through a divorce. He drops comments on a few occasions that he is lonely and needs to find a new girlfriend. Li Yan and Ralph have been friendly in the past and have had lunch together in local restaurants on many occasions. Ralph asks Li Yan to go on a date with him—dinner and a movie. Li Yan likes Ralph and agrees to go out with him. She enjoys her date with Ralph but decides that a relationship is not a good idea. She thanks Ralph for a nice time, but explains that she does not want to have a relationship with him. Ralph waits two weeks and then starts pressuring Li Yan for more dates. She refuses, but Ralph does not stop. He keeps asking her to go out with him.

Case Study # 2 (cont.)

- ◆ When Ralph first asked Li Yan for a date, this was sexual harassment. True or False?
- ◆ Ralph's subsequent pestering for dates was sexual harassment. True or False?
- ◆ Li Yan cannot complain of sexual harassment because she went on a date with Ralph. True or False?


Case Study # 3

Tom is a computer technician and maintains the school's network. One day when Tom is out sick, one of his female subordinates, Laurie, accesses Tom's computer to work on the system, and finds that Tom has visited hundreds of pornographic websites while at work. Laurie is very upset with what she finds and immediately reports it to Human Resources prior to going home sick. Because Tom is technologically astute, the company had no prior notice of this activity.

Case Study # 3 (cont.)

- Does finding the pornographic material amount to a claim of sexual harassment?
- Is Laurie permitted to take sick time in this circumstance?
- What should Laurie do?
- What do you think the employer should do?

STUDENT-TO-STUDENT HARASSMENT

- 
-
- On May 6, 2020 the United States Department of Education issued the 2,033 page document that amended the regulations implementing Title IX of the Education Amendments of 1972 and which contained the new **Final Regulations**.
 - Final Regulations became effective August 14, 2020.
 - New Title IX regulation holds schools accountable for failure to respond **equitably and promptly** to sexual misconduct incidents.
 - These Final Regulations, unlike past guidance issued from the Office of Civil Rights (OCR), have the full effect of law and override any past guidance.
 - Final Regulations are a significant change to how Title IX is managed and include extensive procedural requirements.



A definition of sexual harassment



A duty for schools to only investigate complaints of conduct that occurred within their program or activity

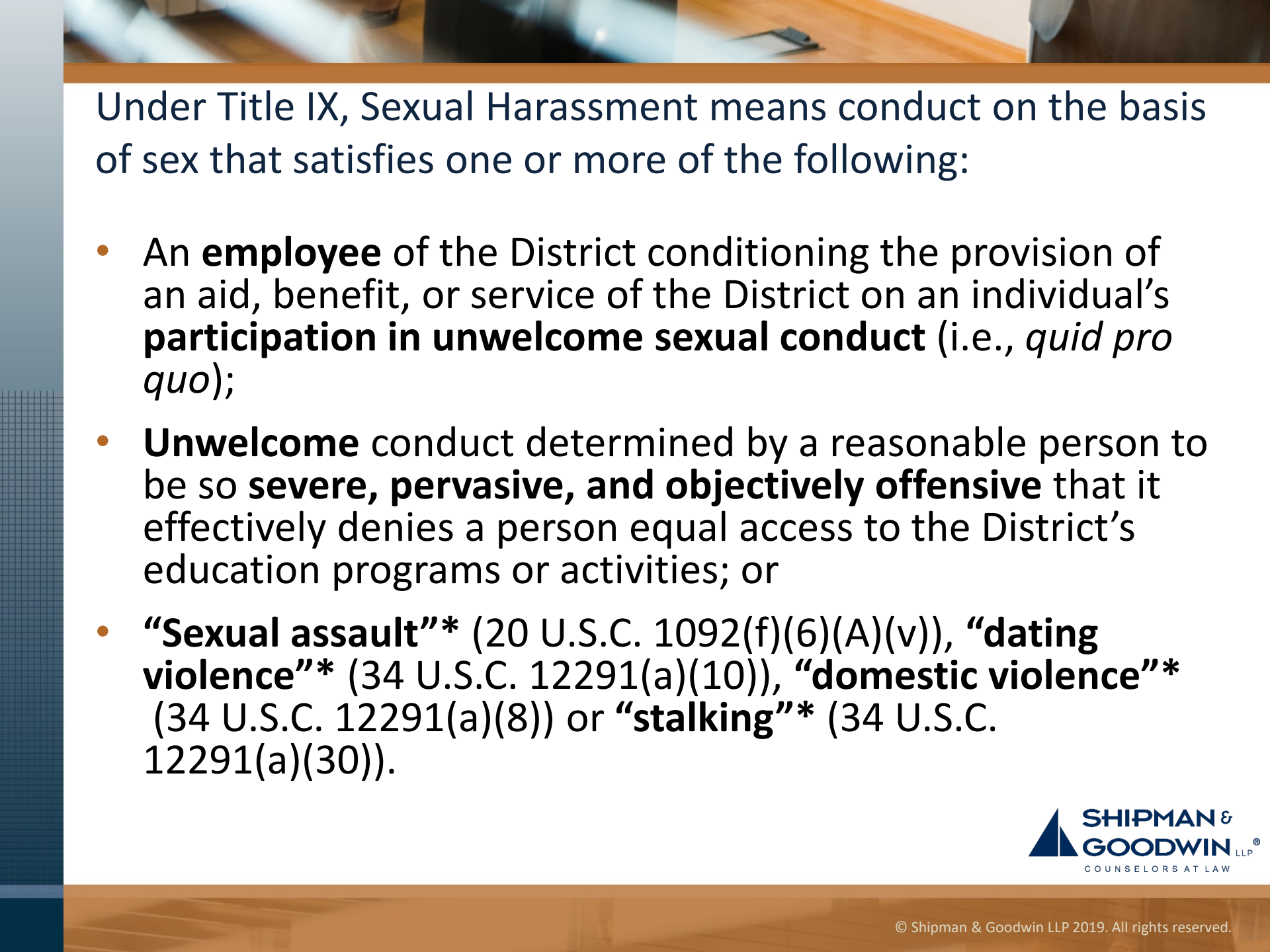


Adoption of an “actual knowledge” and “deliberate indifference” standard

Under the Final Regulations, if a school district has **actual knowledge** of sexual harassment in a district education program or activity, the district must respond **promptly** in a manner that is not **deliberately indifferent**.



A detailed grievance process for formal complaints of sexual harassment



Under Title IX, Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

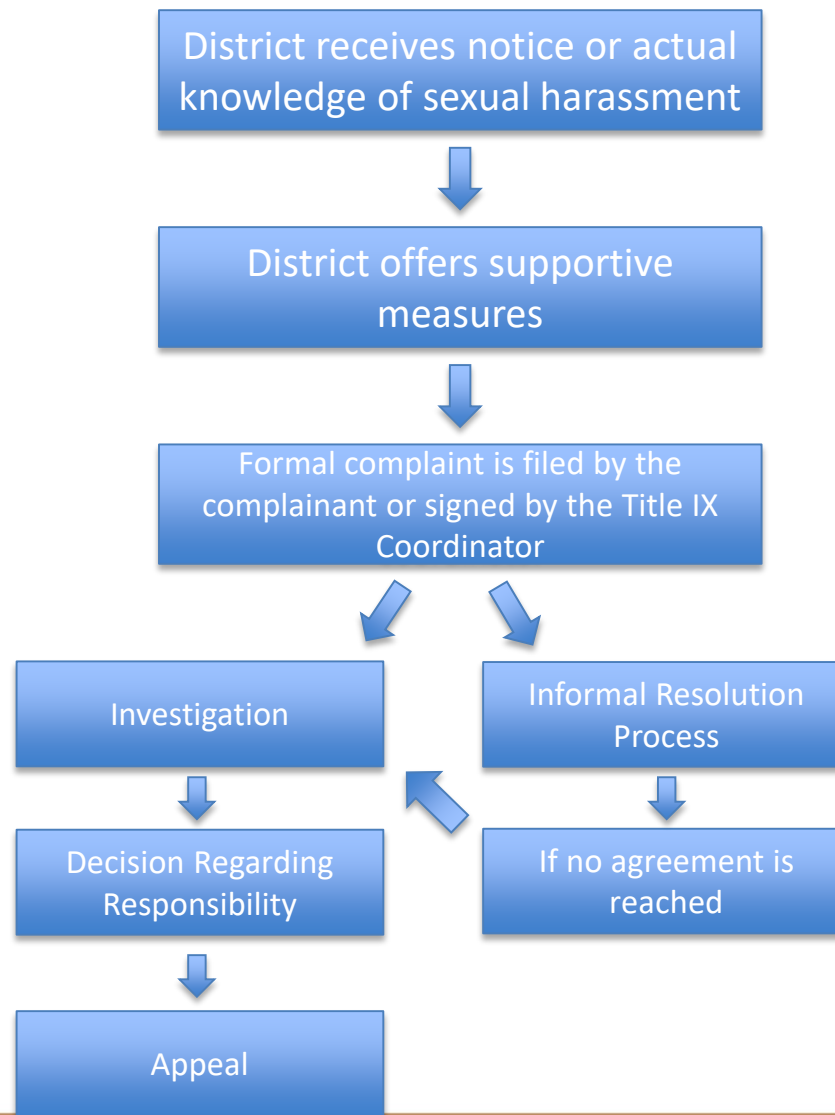
- An **employee** of the District conditioning the provision of an aid, benefit, or service of the District on an individual's **participation in unwelcome sexual conduct** (i.e., *quid pro quo*);
- **Unwelcome** conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the District's education programs or activities; or
- **"Sexual assault"*** (20 U.S.C. 1092(f)(6)(A)(v)), **"dating violence"*** (34 U.S.C. 12291(a)(10)), **"domestic violence"*** (34 U.S.C. 12291(a)(8)) or **"stalking"*** (34 U.S.C. 12291(a)(30)).

ACTUAL KNOWLEDGE

- In elementary and secondary schools, the District is deemed to have **actual knowledge** when notice of sexual harassment or allegations of sexual harassment:
 - is given to the Title IX Coordinator
 - is given to any official of the District
 - is given **to any employee of an elementary or secondary school.**

Once the District has “actual knowledge” of sexual harassment, it must respond in a way that is not “deliberately indifferent.” Response must:

- ☒ Be prompt
- ☒ Treat the parties equitably
- ☒ Include offering supportive measures to the complainant and ensuring that the Title IX Coordinator contacts the complainant to discuss supportive measures (even if no formal complaint has been filed)
- ☒ Consider the complainant’s wishes with regard to supportive measures
- ☒ Explain the process for filing a formal complaint and the grievance process
- ☒ Follow the grievance process before making a responsibility determination and before imposing any disciplinary sanctions
- ☒ Implement remedies designed to restore or preserve educational access



Title IX Coordinator: Obligations

Title

- The District must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under Title IX. This is the “Title IX Coordinator.”
- This specific title must be used to identify this individual.

Training

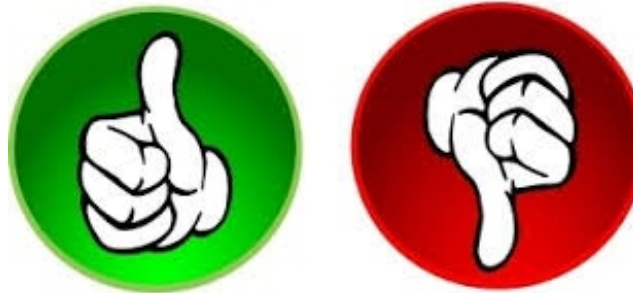
- Must be trained on Title IX policies and procedures.
- All training materials must be posted on the District’s website.

Obligations

- Monitoring the District’s compliance with Title IX.
- Ensuring appropriate education and training is provided.
- Coordinating the response to all reports of sex discrimination and sexual harassment.

Best Practices

- Report instances of even questionable behavior
- Do not cross boundaries
- Do not try to make jokes about sexual topics



The Bottom Line

- BE RESPECTFUL
- Everyone is entitled to a reasonable workplace and comfortable school.



Questions?



These materials have been prepared by Shipman & Goodwin LLP for informational purposes only. They are not intended as advertising and should not be considered legal advice. This information is not intended to create, and receipt of it does not create, a lawyer-client relationship. Viewers should not act upon this information without seeking professional counsel.